OUTER HOUSE, COURT OF SESSION

[2007] CSOH 83

P1753/06

OPINION OF LADY SMITH

in the Petition of

ALI ASHGAR HASISBI

Petitioner

for

Judicial Review of a determination of the Immigration Appeal Tribunal to refuse leave to appeal

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Petitioner: Caskie, Advocate; Drummond Miller WS
Respondent: Carmichael, Advocate; C Mullin, Solicitor to the Advocate General

15 May 2007

Background

[1] The Petitioner was born in 1963, in Tehran and is a national of Iran. He arrived in the United Kingdom clandestinely, in the back of a lorry, on 29 August 2001 and claimed asylum on 30 August 2001. By letter dated 11 April 2002, his application was refused by the Secretary of State for the Home Department. On 17 April 2002, a notice of decision to issue removal directions was issued. He then appealed against the refusal of his claim for asylum to an adjudicator. The appeal was

heard on 18 October and 27 November 2002. The petitioner was represented. By determination promulgated on 10 February 2003 the adjudicator refused the appeal. The petitioner then applied to the Immigration Appeal Tribunal ("IAT") for leave to appeal against the determination of the adjudicator. Leave to appeal was refused in a determination dated 13 March 2003. In this petition, the petitioner seeks the reduction of the determination of the IAT to refuse him leave to appeal. The only respondent is the Secretary of State for the Home Department.

[2] In order to qualify for asylum, the petitioner required and requires to have the status of refugee under article 1A(2) of the Geneva Convention relating to the Status of Refugees (Geneva, 28 July 1951; Cmnd 9171), as amended by the 1967 Protocol (New York, 31 January 1967; Cmnd 3906). That article requires that an applicant establish that he is outside the country of his nationality owing to a well-founded fear of persecution for a reason recognised under the Convention. The reason founded on by the petitioner was his political opinions. It is for the petitioner to show that he is a refugee. He bears the burden of proof.

The Petitioner's Statement

[3] The petitioner's application for asylum was supported by a statement prepared and signed by him dated 9 April 2002. It included the following:

> " 3. I was forced to flee from Iran in fear of my life after being discovered recording and distributing illegal videotapes of Iranian entertainers who are banned in Iran. I ran a café in Tehran City through which I befriended many customers. As a group of friends we were all fans of the entertainers Hadi Khnosandy and Parvis Sayad. Some of their work is banned by the regime in Iran. I had become involved in copying videos of their work and selling them

for a modest profit to friends and acquaintances in the café. My friends and I also sold copies of the tapes to selected students in the hope that we might influence their minds against the regime. We see the regime as corrupt and self serving. It does not serve the people, as it should.

....

5. On or about the 9 or 10 August I was returning to my café in Narmak Farjam Shargy 141. I had been home in order to get some tapes in order to sell them in the café. I had two video recorders at home from which I copied tapes for sale. I arrived at the café to find vans full of Sepah and Komiteh officials had surrounded the café. I could see arrests were being made. I was frightened and decided not to proceed any further. My immediate instinct was to return home. I then realized that the next call would be my house. I decided to go to my brother-in-law's house and lie low. My brother-in-law made enquiries in order to find out exactly what had happened. He found out that three of my friends at the café had been arrested and that subsequent to that the authorities had raided my house and seized the video recorders. I knew then that it was a matter of time before the authorities put out a summons for my arrest. Because of my past and my father I knew that the authorities would come after me and I faced execution.

6. My wife had been at home when the authorities arrived. My wife was beaten by a female officer and pushed to the floor. They had questioned my wife as to my whereabouts and abused me verbally to my wife. They told my wife that when they found me they would arrest me and kill me.

7. I have heard of individuals who have been arrested in possession of banned videos that have been executed by the regime. These videos are viewed as anti-Islamic and therefore a crime against the State.

....

16. I know that if I were to be returned to Iran that I face arrest and execution. The authorities want me for crimes against the Islamic State. As such these offences are punishable with death."

[4] In the statement the petitioner also explained that his father was a monarchist, had worked inside the Shah's office during the Shah's reign and that he had been arrested and imprisoned for two years after the departure of the Shah. He had, he said, himself been discriminated against, the discrimination in question consisting of him being refused a place at university.

[5] Further, in his statement the petitioner said that he and his family left Iran on around 16 or 17 August 2001. Their journey is described in paragraphs 10-14:

"..We left Tehran city by bus. We travelled to Tabriz. We stayed there for a couple of hours. We then travelled on by mini-bus to Khoi....We stayed in Khoi for one hour, we then travelled on to a village near the Turkish border. We then travelled by donkey for three days over the border into Turkey.

11. Once in Turkey we stayed in a village called Dobai Yazid. We stayed there for an hour or so and then travelled onto Istanbul in a bus. The agent took us to a house ......"

The statement then explains that the agent returned three or four days later and they boarded the lorry that night. They travelled in the lorry for eight days. The petitioner thus describes a journey that took at least fourteen days plus the time taken to get to

the village near the Turkish border and the time taken to get from Dobai Yazid to Istanbul.

The Petitioner's Asylum Interview

[6] The petitioner was interviewed on 10 April 2002. He said that he was aware of the contents of his statement and was satisfied that it explained his reasons for claiming asylum. At that interview, he refuted selling the videotapes referred to and asserted that he had been distributing them free of charge. That has remained his position. In his oral evidence before the adjudicator, he asserted that the videotapes were not merely of entertainers; they were, he said, political. His descriptions of the "political" tapes were, however, on the findings of the adjudicator, "so vague as to be quite useless".

The Adjudicator's Determination

[7] The adjudicator did not believe the petitioner.

[8] Amongst other things, he took the view that whilst the petitioner's statement referred to the videos being of entertainers, of them being banned videos and of the petitioner being aware of that fact, it did not explain that they had a substantive political content. To that extent it was at odds with what was said by him in evidence at the hearing. Similarly, it was at odds with his position being that he was not selling the tapes but distributing them free of charge. At paragraph 31 of his determination he said:

> "The Appellant has said he had to flee Iran because he was facing imminent arrest detention and, potentially execution for distributing subversive video tapes. The first statement of his evidence is the narrative one incorporated,

indeed the basis for, his SEF. In his subsequent interview he stated he had written the statement himself and it had been translated by his solicitors. In oral evidence, he said it had been read over to him on the telephone or perhaps a summary given to him over the phone. However I note that corrections have been made on the text, and they must have come from him. He was certainly prepared to adopt it as his evidence at his interview, the day after he had signed it. In that statement he very clearly says at paragraph 3 ...he and his friends were fans of the entertainers Khonsandy and Sayad, some of whose work was banned in Iran and that 'I had become involved in copying videos of their work and selling them for a modest profit to friends and acquaintances in the café.' Again, in paragraph 5 he notes that he was bringing tapes to the café on the date it was raided 'in order to sell them in the café'. He went on to say that he had two video recorders at home 'from which I copied tapes for sale.' Two things are abundantly clear in his statement. The first is that the tapes were of two political entertainers 'some of whose work was banned' and the second is that these videos were made for sale. I do not find plausible at all the Appellant, recognising the import of his statement, would have clearly emphasised the entertainers to the complete exclusion of the more substantive political content of these tapes as he has subsequently alleged. Likewise, and at the same time - the interview on the following day - the Appellant has suddenly remembered he never ever sold these tapes but that they were distributed free. When confronted with this inconsistency, the Appellant could only say it was an error of translation. I have considered this. I do not see how an error of translation could have occurred in three different places in a statement that was, by the Appellant's own admission, drafted by himself in

Farsi. Nor can this account for the focus on the entertainers to the exclusion of all other subject matter."

[9] The corrections referred to by the adjudicator occurred at paragraph 14 of the statement and related to what the petitioner did after arriving in the United Kingdom. As typed, the statement indicated that he spoke to a friend who "was in" Dover. As corrected, the statement read that that friend "came to" Dover. Nothing of significance seems to have turned on the matter of whether the friend went to Dover to speak to the petitioner or was already in Dover. The need for the correction was, nonetheless it seems, identified and the correction made.

[10] At paragraph 33 of his determination, the adjudicator said:

" The appellant has stated he was not a member of any political organisation or activity. He claims he was, nonetheless, prepared to risk himself and all dear to him in distributing these videos. It seems to me fundamentally inconsistent that a man would have no more specific a political agenda than to encourage democracy when he was inviting the most serious repercussions from the regime on a daily basis. I have heard nothing from the Appellant that would lead me to believe he actually has a strongly developed political consciousness or any political aim, programme or agenda. I find this lack of political acumen and aim inconsistent, therefore, with the risk inherent in distributing seditious videos. I find it consistent, however, with the situation first described by the Appellant in copying and selling satirical comedy video tapes."

[11] Another concern of the adjudicator's was the petitioner's account of his journey from Iran to the United Kingdom. The first difficulty arose from the fact that in his statement, the petitioner said that the raid on his café was on 9 or 10 August and that he and his family had left Iran on 16 or 17 August. Thereafter, on the

adjudicator's findings, the petitioner consistently maintained that they had left on 16 August. At his screening interview on 30 August, he had though said that they had left on 11 August.

[12] At paragraph 37 of his determination, the adjudicator explains his concern that, in short, the petitioner's account of a journey starting on 11 August was not plausible as that would not have given time to get together the requisite funds and make the necessary arrangements, assuming that the decision to leave was, as the petitioner alleged, prompted by a raid on his café at the time he said it was raided.

[13] Moreover, the adjudicator was concerned that on the petitioner's account of the journey, assuming a start date of 16 (or 17) August, he simply could not have reached the United Kingdom by 29 August. The adjudicator comments:

> "what is not noted is the distances involved. I have looked at an atlas and measured out roughly the distances. From Tehran to Tabriz is approximately 650 kilometres. It is some 120 kilometres on to Khvoy. ....the nearest Turkish border is some 50 kilometres beyond that for a total of something like 820 kilometres by bus and minibus...........That would appear to be approximately 1600 kilometres across the entire width of the country."

[14] He concludes that if the petitioner left on the 16th he cannot have been in England on the 29th. He adds that a better estimate of the journey would be that it took nineteen days.

[15] I also note that, at paragraph 22, the adjudicator expressed concern about some translations that had been provided of some of the documents that were put before him. They were, according to the adjudicator "inadequate and defective". He drew attention to the failure to identify the chronology of the documents, errors in the translation of dates, and the translations amounting in two places to précis rather than

giving full details. I note, however, that the précis concerned did not alter the sense of what is written.

Submissions for the Petitioner

[16] For the petitioner, Mr Caskie referred to the Immigration and Asylum Act 1999 Sch 4 para 22 and the Immigration and Asylum Appeals (Procedure) Rules 2000, Rule 18. The test for the IAT had not been whether or not the adjudicator had erred in law although in this case, the adjudicator had in fact done so. His decision was irrational, suffered from procedural irregularity and he had made a mistake about a material fact. The appeal to the IAT had a real prospect of success because there was proper foundation for the petitioner feeling dissatisfied with the outcome of his appeal to the adjudicator.

[17] His submission as it developed was, however, that the test was not whether the petitioner's appeal would succeed but whether it was arguable. Whilst he was not saying that all the negative findings made by the adjudicator were not open to him, there was enough by way of wrong conclusion on his part as to call into question his overall conclusion. The appeal was, accordingly, arguable and leave to appeal should have been granted.

[18] In the course of his submission as to the applicable principles, he referred to: *R(Iran) and others* v *Secretary of State for Home Dept* [2006] EWCA Civ 353, *HK* v *Secretary of State for Home Department* [2006] EWCA Civ 1037, and *Hamden* v *Secretary of State for Home Dept* [2006] CSIH 57.

[19] Mr Caskie relied specifically on four matters. Firstly, he submitted that the adjudicator was wrong to have regarded the petitioner's statement as not showing that the tapes had a substantive political content. He should have inferred from the

statement that they did. He referred in particular to paragraphs 3, 7 and 16 of the statement in support of that submission.

[20] Secondly, he submitted that where, after "Likewise." in paragraph 31 of his determination, the adjudicator had concluded that he could not see how an error about whether the tapes were sold or distributed free of charge could have been made three times, he was wrong. He should have taken account of difficulties that there had been with interpretation as set out at paragraph 22. Mr Caskie added, however, that he was not saying that the IAT would necessarily on appeal, have come to a different conclusion.

[21] Thirdly, Mr Caskie submitted under reference to paragraph 33 that in saying that the petitioner's actions were inconsistent with his account of political awareness, the adjudicator erred because he left out of account that in his statement, the petitioner had said that he was a fan of the two entertainers in the video tapes, fan being a word that was derived from "fanatic".

[22] Fourthly, Mr Caskie submitted that there had been procedural impropriety in that the adjudicator had consulted an atlas after the hearing. The impropriety was comparable to that that had been found to have occurred in the case of *Singh* v *Secretary of State for the Home Department* 2002 SLT 73. He did not dispute the distances stated by the adjudicator; indeed, he accepted that they were accurate. They would not have been disputed at the hearing had they been referred to at that stage. The adjudicator should not, however, have ingathered evidence after the hearing. There was unfairness in that the petitioner did not have the opportunity to seek to explain his account of the journey in the light of the distances to which the adjudicator refers.

[23] In his initial submission, Mr Caskie made no reference at all to the grounds of appeal that were before the IAT in support of the application for leave notwithstanding the terms of rule 18(6), to which I refer below. In response to Miss Carmichael, he submitted that a liberal approach should be taken to the grounds. He noted that she accepted that his first argument was foreshadowed in those grounds and submitted that his third argument should also be regarded as having been foreshadowed (by the fourth ground of appeal). Otherwise, he did not suggest that his arguments had been foreshadowed by them but made a short and general submission that they were obvious points that should have led the IAT to grant leave, particularly that relating to procedural irregularity.

[24] I note in passing that the arguments advanced on behalf of the petitioner amounted to a small fraction of those set out in the lengthy (48 page) petition that was presented in this case and to which Mr Caskie made no reference at all in the course of his submissions, save for making a motion that the plea in law be sustained. That plea was to the effect that the IAT had acted unreasonably *et separatism* erred in law in refusing the petitioner's application for leave to appeal and its decision should accordingly be reduced.

Submissions for the Respondent

[25] On behalf of the respondent, Miss Carmichael drew attention to the terms of Rule 18(1) and (7) and took issue with Mr Caskie's assertion that all that was required for leave to appeal to be granted was that there was an arguable case . On the contrary, there required to be a real prospect of success and the IAT had not erred in concluding that no such prospects existed.

[26] She also founded on the terms of rule 18(6). The IAT was not obliged to consider any grounds not contained in the application for leave. Whilst recognising that there were cases where the Tribunal had an obligation to go beyond the stated grounds and consider whether there was an obvious Convention point which has strong prospects of success if argued or whether a question was raised that was crying out for an answer (*R* v *Secretary of State for the Home Department ex parte Robinson* 1998 QB 929*; Parminder Singh* v *Secretary of State for the Home Department* 10 July 1998 unrepd (Lord Penrose)*; Mutas Elabas* v *Secretary of State for the Home Deparment* unrepd OH (Lord Reed) 2 July 2004), this was not such a case. Only the first of the arguments advanced on behalf of the petitioner had been covered by the grounds of appeal attached to the application for leave to appeal.

[27] Regarding that first ground, Miss Carmichael submitted that if the statement was read properly, it was plain that no proper criticism could be levelled at the adjudicator for the approach he took. There was nothing in the statement to indicate that the tapes had a political content. It only said that they were banned and were the work of entertainers. Paragraph 7 of the statement was not a reference to the tapes that the petitioner had been distributing. Regarding paragraph 16, even if it was correct that being involved with distribution of the banned tapes was criminal, that did not mean that the tapes had political content. Further, regarding the narrative in paragraphs 5 and 6 whilst it indicated that the authorities had an interest in the video recorders used by the petitioner, it did not show that the tapes had any political content.

[28] Regarding the petitioner's second argument, it was not foreshadowed in the grounds of appeal and did not concern an obvious Convention point. The petitioner was asking for it to be considered that there may have been three separate

mistranslations. He was asking the IAT to speculate that there may have been an error in reading the statement back to the petitioner yet the reference to sale occurred three times and there was a reference to making a profit. Further, sufficient care had been taken to achieve the correction to which I have already referred. Nor was any inference to be drawn from the fact that the adjudicator had voiced some criticisms of the translation of certain documents that had been carried out (see paragraph 22 of the adjudicator's determination). There was no suggestion that the same interpreter had been involved and even as regards those difficulties, they amounted to excessive précis and lack of detailed translation which was not what was being suggested by the petitioner in relation to the references to sale and making a profit.

[29] Regarding the third argument, Miss Carmichael again noted that it was not foreshadowed in the grounds of appeal nor was it an obvious Convention point or one that cried out for an answer. That the petitioner said he was a fan of the entertainers did not indicate political content to the tapes. He said it in a context which simply showed that he liked them.

[30] Regarding the fourth ground of appeal, it too was not foreshadowed in the grounds of appeal, was not an obvious Convention point and did not jump off the page as being something crying out for an answer. *Singh* turned on its own facts but, in any event, might be thought not to be consistent with what was said in *Secretary of State for the Home Department* v *Maheshwaran* [2002] EWCA Civ 173. The discussion in *Mohammed Ali Majead* v *Secretary of State for the Home Department* unrepd 16 May 2006 was also relevant. It was not obviously unfair for the adjudicator to have consulted the atlas and it did not give rise to unfairness in his decision making. However, even before one got to the stage of considering the days of journey that were factored in when the distances noted from the atlas were accounted for,

there was a problem. That was that even only allowing for the days specified in the petitioner's statement and giving him the benefit of 3 days having been spent in Istanbul rather than 4, he could not have left on 16 August and arrived in the UK on 29 August.

[31] In all the circumstances, the petition should be refused.

Relevant Law

[32] Paragraph 22 of Schedule 4 to the Immigration and Asylum Act 1999 applies to this case. It provided:

> "22-(1) Subject to any requirement of rules made under paragraph 3 as to leave to appeal, any party to an appeal, other than an appeal under section 71, to an adjudicator may, if dissatisfied with his determination, appeal to the Immigration Appeal Tribunal."

[33] Rule 18 of the Immigration and Asylum Appeals (Procedure) Rules 2000 also applies. It made provision for the application for and granting of leave to appeal to the IAT. Its provisions included:

> " (6) The Tribunal shall not be required to consider any grounds other than those included in that application.
>
> (7) Leave to appeal shall be granted only where-
>
> (a) the Tribunal is satisfied that the appeal would have a real prospect of success ; or
>
> (b) there is some other compelling reason why the appeal should be heard."

[34] Despite the terms of rule 18(6), it is evident that there may be circumstances where the IAT is obliged to grant leave on the basis of a ground of appeal that is not

contained in the application but they are limited. In particular, they are limited to those where there is: "...readily discernible an obvious point of Convention law which favours the applicant."(*Ex parte Robinson* per Lord Woolf MR at p. 945)
on the perhaps equally obvious basis that if the IAT does not do so then there will be a risk of the United Kingdom breaching its Convention obligations. However, the point must be one which, as Lord Woolf put it:

> " ...has a strong prospect of success if it is argued. Nothing less will do." (at p. 946)

[35] They possibly also extend to circumstances where the adjudicator has made an obvious error of fact (*R* v *Secretary of State for the Home Department Ex parte Kolcak* [2001] Imm A R 666]. However, it is plain that the point requires to be a clear and obvious one before it can be said that it should, absent the existence of a ground of appeal referring to it, have caused the IAT to grant leave. In the case of *Parminder Singh*, Lord Penrose remarked:

> " .....it is clear that there is and can be no duty to pursue each and every hypothesis that could be postulated in the search for possible grounds for support of an appeal which may have escaped the notice of the appellant's advisers...............
>
> ....
>
> in considering whether the IAT has erred in relation to matters of fact, or to inferences properly to be drawn from facts and circumstances, one is concerned only with the obvious, with questions that cry out for answer."

[36] I bear in mind also the discussion in the judgment of Lord Justice Schiemann in the case of *Maheshwaran*, particularly where at paragraphs 2 to 6 he stresses that in a case such as the present one, the burden of proof is on the asylum claimant, that

whether or not he is to be believed will frequently be very important and that where a party makes inconsistent statements which are before the decision-maker he "manifestly has a forensic problem". As regards the latter, Lord Justice Schiemann does not envisage that the decision-maker will necessarily intervene if it appears that there is an inconsistency; at paragraph 5, he states that where that occurs:

> "Usually the tribunal, particularly if the party is represented, will remain silent and see how the case unfolds."

[37] Earlier, at paragraph 3, he had commented:

> "Adjudicators will in general rightly be cautious about intervening lest it be said that they have leapt into the forensic arena and lest an appearance of bias is given."

and he allowed, in that same paragraph, for the possibility that after having reserved judgment:

> "Points will sometimes assume a greater importance than they appeared to have before the hearing began or in its earlier stages."

[38] Then generally as regards the requirements of fairness, he stated at paragraph 6:

> "Whether a particular course is consistent with fairness is essentially an intuitive Judgment which is to be made in the light of all the circumstances of particular case...".

[39] Lord Justice Schiemann's discussion appears to be of particular relevance to the last of the arguments advanced on behalf of the petitioner.

Discussion

[40] I am readily satisfied that there is no merit in this application.

[41] It seems logical to deal firstly with the matter of whether any of the arguments advanced before me could be regarded as having been before the IAT. I agree with Miss Carmichael that only the first argument can be so regarded. On no view could the fourth ground of appeal, relied on by Mr Caskie as relating to what was his third argument, be so regarded. The complaint in the fourth ground of appeal is that the adjudicator failed, in considering at his paragraph 33 whether the petitioner did have a political agenda, to take into account his oral evidence whereas the argument put by Mr Caskie was restricted to an alleged failure to take account of what was contained in the petitioner's written statement. Mr Caskie placed no reliance on the petitioner's oral evidence.

[42] Turning then to the question of whether any or all of the petitioner's second, third and fourth arguments ought nonetheless to have occurred to the IAT and to have caused it to grant leave, I am not persuaded that they fall into that category. None of them concern Convention matters. None of them concern obvious errors of fact. None of them were arguments that had, on the face of it, strong prospects of success.

[43] Turning then to the petitioner's first argument, it seems to me to be without foundation and thus clearly cannot be said to have a real prospect of success. The respondent's analysis is a fair one. Paragraph 3 does not give rise to the inference that the tapes had political content. I do not see that the reader is driven to drawing such an inference from paragraphs 5, 6, 7 and 16, as was suggested. Paragraphs 5 and 6 make no reference to the authorities having any knowledge of what was on the tapes; only their interest in the video recorders is referred to. The tapes referred to in paragraph 7 are different tapes, unspecified banned tapes held by other people. The reference to criminal activity in paragraph 16 does not refer to any political activity or to any political content in the tapes that the petitioner was distributing.

[44] Given the view that I have indicated that I take of the remaining three arguments advanced, namely that they were not covered by the grounds of appeal submitted with the application for leave and that they are not within that limited category of grounds which should, nonetheless, have persuaded the IAT to grant leave, the rejection of the petitioner's first argument means that the petition falls to be dismissed.

[45] I would, for completeness, comment as regards the other arguments advanced as follows.

[46] Regarding the second argument, the respondent was right, in my view, to point to the fact that the adjudicator had founded on the fact that the reference to the tapes being sold occurred not just once but three times. That was where the first reference was not a simple reference to sale but had the added information that the same had been for a "modest profit". That is not something which falls to be explained away by reference to the sort of difficulties with translations that the adjudicator had noticed, from paragraph 22, that some other interpreter had had with some other documents. That is not a matter of too much précis or lack of detail. It would have amounted to the insertion of some quite independent fresh detail by the interpreter in the course of translation. In short, it would have been a work of fiction emanating from the translator's hand and there is no suggestion at all that, whatever the difficulties with the other interpreter, that was something that had happened before. Further it was in circumstances where the petitioner had evidently caused a correction of an apparently unimportant detail about his friend going to Dover to speak to him rather than already being there. If such a correction was made in the case of a single small error then if the references to sale and profit were wrong it seems eminently reasonable to have expected that they too would have been corrected.

[47] As regards the third argument, it appears to me to be quite without merit. I do not see that the fact that the petitioner described himself in his statement as being a fan of the two entertainers referred to should have led the adjudicator to conclude that he had a political agenda and political acumen, which was what Mr Caskie seemed to be suggesting. The submission may have been driven by the root of the word "fan" being "fanatic" but even if it were to be assumed that the petitioner was fanatical in his enthusiasm for these entertainers, I do not see that that gives rise to any inference of there being political content to such fanaticism.

[48] Turning to the first argument, I note firstly that it relates to the adjudicator having referred to distances between certain places as can be estimated from looking at an atlas. The distances not having been referred to in evidence at the hearing, so the petitioner's submission goes, the evidence of them should not have been gathered after the hearing. The petitioner suggested that *Singh* v *Secretary of State for the Home Department* was authority for that proposition. In my view, it is not. The judge, Lord Dawson, did not hold that the adjudicator was not entitled to look at an atlas after the hearing. What he found was that on the facts and circumstances of that case (which are clearly distinguishable from those of the present case), having done so, it was not fair to have refrained from giving the petitioner an opportunity to explain the apparent discrepancy that arose when he did so. That said, had Lord Dawson been referred to the case of *Maheshwaran,* it may well be that he would not have decided as he did.

[49] Facts of geography are within judicial knowledge and I am not persuaded that it was not open to the adjudicator in this case whether by reference to an atlas or otherwise , to rely on the geographical distances involved in the journey described by the petitioner when considering his decision after having reserved judgment. As Lord Justice Schiemann commented in *Maheshwaran*, it may only be at that point that

matters which did not appear as important at the hearing assume importance to the decision maker. Further, I cannot see that there is anything about the facts and circumstances of this case which obliged the adjudicator to raise the matter of the distances involved with the petitioner. The circumstances are such that any explanation given by the petitioner directed to accommodating those distances would inevitably have involved inconsistency with the account already given, something which would have only emphasised that, to borrow Lord Justice Schiemann's terminology, he had "manifestly ...a forensic problem". In fairness to Mr Caskie, it did rather seem that that was something which, as his submission progressed, he recognised.

Disposal

[50] I am, accordingly, not satisfied that the petitioner has made out any case for interfering with the decision of the IAT to refuse leave to appeal and I will pronounce an interlocutor dismissing the petition.