Neutral Citation Number: [2009] EWCA Civ 17

Case No: C5/2008/0471

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM ASYLUM AND IMMIGRATION TRIBUNAL
Mr C M G OCKELTON
AA/06857/07

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/01/2009

Before :

LORD JUSTICE RIX
LORD JUSTICE SCOTT BAKER
and
LORD JUSTICE JACOB

- -

Between :

MS (PALESTINIAN TERRITORIES)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

Mr Duran Seddon (instructed by **Refugee Legal Centre**) for the **Appellant**
Mr John Paul Waite (instructed by **Treasury Solicitor**) for the **Respondent**

Hearing dates : Thursday 30th October 2008

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Judgment

Lord Justice Rix :

1. The issue in this appeal is whether under the Nationality, Immigration and Asylum Act 2002 it is possible to challenge by way of appeal to the AIT an immigration decision under section 82(2)(h) of that Act to remove an illegal entrant, where the ground of appeal is an allegation that removal directions for the proposed country of return could not lawfully be made pursuant to Schedule 2 of the Immigration Act 1971. This issue arises in circumstances where the asylum and human rights claims of the appellant have failed and been spent and are no longer in issue, and where therefore the sole ground of appeal is that under section 84(1)(e), namely that "the decision is otherwise not in accordance with the law".

2. The appellant, MS, describes his nationality as Palestinian. His evidence was that he was born on 1 January 1985 in Gaza, but at the age of about 5 had gone to Libya, where he remained for about 12 years. Thereafter he spent a number of years in first Italy and then France, from where he came to the United Kingdom in the back of a lorry. He did not claim asylum here immediately. When he did so, he also claimed that it would be a breach of his human rights (articles 2, 3 and 8) to be returned to the Palestinian National Authority.

3. The Secretary of State's refusal letter dated 24 May 2007 rejected his claims on each ground. It also concluded that his motivation for claiming asylum in the UK was based upon a desire for economic betterment, not a fear of persecution.

4. On the same day the Secretary of State issued a notice of immigration decision under the 2002 Act, headed "Decision to remove an illegal entrant". The notice recorded that "You have made an asylum and/or human rights claim. The Secretary of State has decided to refuse your claim for asylum and/or human rights…A decision has now been taken to remove you from the United Kingdom". Following details about his right of appeal the notice continued with a paragraph against the rubric "Removal Directions" as follows:

> "If you do not appeal, or you appeal and the appeal is unsuccessful, you must leave the United Kingdom. If you do not leave voluntarily, directions will be given for your removal from the United Kingdom to Palestine National Authority."

5. MS did appeal and that led to the AIT determination of IJ Lloyd promulgated on 19 July 2007. His appeal was unsuccessful on all counts. The details no longer matter. A previous determination of the AIT in *MA (Palestinian Arabs – Occupied Territories – risk) Palestinian territories CG* [2007] UKAIT 00017 was influential in a number of

respects. (Since then this court has dismissed an appeal on limited grounds from that determination, in *MA (Palestinian Territories) v. Secretary of State for the Home Department* [2008] EWCA Civ 304 (9 April 2008): the primary issue in that appeal was whether a stateless person is entitled to protection under either the asylum or the human rights conventions if there is a reasonable likelihood that on return to his habitual place of residence, there the West Bank, he would not be permitted entry by the authorities in that country.)

6. IJ Lloyd's determination in the case of MS also considered a separate submission that the removal directions referred to in the notice of decision were unlawful because of evidence from the Palestinian Delegate Office in London that MS would not be admitted to the Palestinian Territories. This submission was also rejected. IJ Lloyd said:

> "78…The immigration decision was lawful as the Home Office was quite clearly entitled to issue such a notice given that the Appellant was an illegal entrant. It was also undisputed that he originated from the PNA – he said so himself – and so the reference to the PNA as the proposed destination was lawful.
>
> 79. The notice of immigration decision to remove is not the same as "removal directions". A notice of immigration decision simply gives notice of the country or territory in question that is the PNA. Notice of the country of proposed removal is required by the Notice Regulations. It is somewhat misleading to have the side heading "Removal Directions" on the second page of the notice as this document does not constitute the removal directions.
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> 80. Removal directions are not of themselves immigration decisions under Section 82. The specific provisions for destination appeals relating to removal directions under the Immigration Act 1999 have been removed from the 2002 Act.
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> 81. Can an appeal be brought against the proposed country of removal in the notice of immigration decision on the grounds that the removal direction for that country when given would be outside paragraph 8 of Schedule 2 to the Immigration Act 1971?
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> 82. All this turns on the meaning of immigration decision in section 82, more specifically Section 82(2)(h). The country of proposed destination is not part of the immigration decision. The country is referred to because it affects the said breaches of the UN Convention or the ECHR and is necessary in order to focus the appeal.
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> 83. AS **GH** found there is no freestanding right of appeal against the removal directions under s82…In accordance with **GH** if and when issued by the Home Office the removal directions can if disputed be challenged by way of judicial review.

84. If removal to the country specified in the immigration decision that is the Palestinian National Authority would involve a breach of either the UN or the Human Rights Convention, the appeal should be allowed but reference to removal directions of themselves do not give rise to an appeal at this stage as the actual removal directions have not as yet been set."

7. There was then an application for review solely on grounds related to this last point. The application stated that it was "limited to the ground set out in section 84(1)(e) of the 2002 Act, that the decision to remove was not in accordance with the law on the basis that there was no power to set removal directions to PNA". On 17 August 2007 SIJ Jordan granted reconsideration on that ground.

8. The reconsideration determination was made by a tribunal presided over by Deputy President of the AIT, Mr CMG Ockelton. The decision was that IJ Lloyd had made no material error of law and that her determination should therefore stand. DP Ockelton's reasoning considered case law found in not only *GH* [2005] EWCA Civ 1182, [2006] INLR 36 to which IJ Lloyd had referred, but also *KF* [2005] UKIAT 00109. He concluded as follows:

"9. This is not a case where the appellant can show that any decision to issue removal directions against him as an illegal entrant would be unlawful. He does not challenge the decision that he is an illegal entrant and, although he says that his removal to Palestine would be either unlawful or impossible, it is clear that Palestine is not the country from which he embarked for the United Kingdom, and so there is another possible destination which has not yet been investigated. It is right to say that the Secretary of State, in compliance with the Notices Regulations, specified Palestine as the destination to which removal would be if removal directions were given. But, like *GH* this is a case in which no removal directions have been given. Unlike *GH*, however, it is not a case in which the matter with which we are concerned is the consequences of removal as proposed. We are concerned only with the legality of the decision to give removal directions.

10. That, it seems to us, is sufficient to show that the appellant's appeal on that ground was doomed to failure. Mr Ravindran has suggested that the one stop ethos of the 2002 Act is sufficient of itself to include an appeal against the destination in all appeals against removal directions. We reject that submission. We agree entirely, and with respect, with the views expressed by Scott Baker LJ, that the simple appeal against removal directions was deliberately abolished in the 2002 Act. It cannot be revived by the reading suggested by Mr Ravindran. The effect of the 2002 Act, as it seems to us in these circumstances, is that destination is relevant in an appeal on the grounds specified in s84(1)(g), but is [neither] integral to the appeal [nor] relevant to it when the ground is that in s84(1)(e)."

9. In this further appeal Mr Duran Seddon submits that this is wrong. He submits that it is always possible to challenge a decision to remove in which a proposed country of return is specified (as is required by regulation 5(1)(b)(i) of the Immigration (Notices) Regulations 2003), on the ground that removal directions, if subsequently given for that country, would be unlawful under Schedule 2 to the Immigration Act 1971. Although removal directions *per se* are not an immigration decision under section 82 of the 2002 Act and therefore cannot directly be made a matter for appeal under that Act, under which the statutory appeal regime is limited to "immigration decisions", and although removal directions, the validity of which are governed separately by the Immigration Act 1971, lie in the future and have not yet been made in the case of MS: nevertheless Mr Seddon's submission in effect is that, by virtue of the 2003 Regulations, which are linked to the 2002 Act and came into effect on the same day as that Act, a decision to remove can be attacked on the ground that it is not in accordance with law *because* any removal directions which would subsequently be made for the specified destination would not be in accordance with law under Schedule 2 to the 1971 Act. He submits that this is essentially because the proposed country of return specified in the notice of decision to return is, by virtue of the 2003 Regulations, an *inherent part* of the decision to return and that that provides the necessary link as it were by which the 2002 Act immigration decision (the decision to return) can be attacked by virtue of the unlawfulness of future removal directions (which, not being an immigration decision in themselves) could not be directly attacked. Mr Seddon says that this is supported by, or at any rate not undermined by, jurisprudence on the 2002 Act appeal regime, and is further supported by the doctrine of "one-stop" appeals written into the 2002 Act in its section 120. He also submits that it is supported by the opinion of the learned editors of *Macdonald's Immigration Law and Practice in the United Kingdom, 7th ed*.

The legislative material

10. Section 82 of the 2002 Act in its subsection (2) lists a series of decisions as an exclusive definition ("In this Part "immigration decision" means…") of "immigration decision". Removal directions are not so listed and are not an "immigration decision". That has been decided both in the AIT (or IAT) and in this court (for instance in *GH*) and is not in dispute in this appeal. Section 82(1) provides a right of appeal only in the case of an "immigration decision".

11. Among the decisions listed in section 82(2) are various kinds of decisions to remove, including that in subsection (2)(h), viz –

> "(h) a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971…"

That is the immigration decision relevant to the present appeal.

12. Section 84(1) sets out the exclusive grounds of appeal upon which an immigration decision may be challenged ("An appeal…must be brought on one or more of the following grounds…" Such grounds include one, namely ground (g), under which an asylum and/or human rights challenge has to be made, and another, namely ground (e), under which a challenge can be made that "the decision is otherwise not in accordance with law". That is the ground in question here. The further ground (g) had been relevant to MS's earlier asylum and human rights claims, but is no longer relevant. Ground (g) provides –

> "(g) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom's obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant's Convention rights."

13. The 2003 Regulations came into effect on 1 April 2003, on the same day as the 2002 Act. Regulation 4 provides that "the decision-maker must give written notice to a person of any immigration decision…in respect of him which is appealable"; and regulation 5 provides:

> "(1) A notice given under regulation 4(1)…
> (b) if it relates to an immigration decision specified in section 82(2)(a), (g), (h)…of the 2002 Act –
> (i) shall state the country or territory to which it is proposed to remove the person…"

By amendment in 2006, the following was added –

> "(ii) may, if it appears to the decision-maker that the person to whom the notice is to be given may be removable to more than one country or territory, state any such countries or territories."

That amendment appears to have been Parliament's reaction to the suggestion by the AIT in *KF* that it would not be possible to specify more than one destination in the notice of decision: see *KF* at [78]-[80].

14. As for removal directions under Schedule 2 to the Immigration Act 1971, the relevant possibilities are those set out in paragraph 8(1)(c) as follows:

> "(i) a country of which he is a national or citizen;
> (ii) a country or territory in which he has obtained a passport or other document of identity;
> (iii) a country or territory in which he embarked for the United Kingdom;
> (iv) a country or territory to which there is reason to believe that he will be admitted."

MS submits that none of these categories could apply to him so as to permit lawful removal directions to the PNA. (i) and (iii) do not apply even in theory. As for (ii), he lacks any passport or document of identity for the PNA. As for (iv), there was evidence before the AIT that the PNA would not admit him without any identification documents of any kind to show his nationality. That is the submission upon which the AIT said they had no need to rule.

The jurisprudence

15. In *Regina (Kariharan) v. Secretary of State for the Home Department* [2002] EWCA Civ 1102, [2003] QB 933 (*"Kariharan")* this court held that under section 65(1) of the Immigration Act 1999 removal directions were themselves within the regime of appeals of that Act. In *GH* Scott Baker LJ was to say that the change in the law removing removal directions from within the definition of "immigration decision" may well have been precipitated by *Kariharan* (at para 40).

16. In *KF* a notice of decision to remove a Kurd, who had been born in Iran but had lived in Iraq since he was about 4, specified Iran as the proposed country of return. The adjudicator had allowed his appeal under the 2002 Act on the ground upon which MS relies in the present appeal, namely that removal directions to Iran would not have been lawful within Schedule 2 of the 1971 Act. On appeal to the IAT, that decision was overturned and the case remitted to an adjudicator to consider whether return to Iran would have breached either the refugee or human rights conventions. In the course of the wide-ranging determination of the IAT, given by its President, Ouseley J, the distinctions between the 1999 and 2002 Acts and between a decision to remove and removal directions were firmly made. Thus Ouseley J said –

"[59]…It cannot now be said that removal directions are an appealable immigration 'decision', in view of the definition and listing of appealable 'immigration decisions'…The language of the 2002 Act is clearly designed to overturn *R(Kariharan).*

[60] Section 84 does not permit an appeal on the grounds that the proposed destination is outside Sch 2. Removal in consequence of the immigration decision may or may not breach the European Convention or the Refugee Convention [a reference to ground (g)], but that does not turn on whether the country of proposed destination falls within Sch 2 to the 1971 Act.

[61] This conclusion is not affected by s 84(2(e); the same question arises as to the content of the 'decision' and whether it includes the specified destination country. The 'decision' does not include the country of destination."

17. Ouseley J then went on to explain how the country specified in the notice was nevertheless relevant to the determination of the asylum and human rights claims, pointing out –

"[64] "…." The purpose of the specification of the country is to focus on the consequences of removal. It is irrelevant for these purposes that removal to the country in question would not be permissible under Schs 2 or 3 to the 1971 Act…

[66] If the appeal were dismissed on the basis that the removal would not breach either Convention, but if the Secretary of State were later to decide that removal there would not take place because that would not be lawful under the Schedules to the 1971 Act, or even if the removal directions were quashed for the same reason on judicial review, the question arises as to whether the consequential intention to remove the claimant to another country would generate a fresh decision which could be appealed…

[67] The answer to our mind is that the mere issue of removal directions itself is not the appealable decision and, as we have said, the directions do not afford a specific ground of appeal. But the issue of them for a different country evidences the fact that a different appealable immigration decision must have been taken…"

18. *KF* was not considered in *GH v. Secretary of State for the Home Department* [2006] INLR 36. There the appellant was a Kurd from Iraq who had lived in the Kurdish Autonomous Area ("KAA") and who feared return via Baghdad for the purposes of his section 84(1)(g) ground of appeal. This court was prepared to reject the Secretary of State's narrow construction of that ground as not being capable of encompassing examination of the route of return as well as the country of return, but only where removal directions were given at the same time as the notice of decision to return, or where the route was implicit in the proposed destination; and only in the context and

for the purpose of the section 84(1)(g) ground itself. As it was, these exceptional situations did not apply to GH and his appeal failed. Thus Scott Baker LJ said –

> "[44] In my judgment the first and fundamental matter that is fatal to the appellant's case is that no removal directions have ever been set. Even assuming jurisdiction, there is nothing against which any appeal could bite.
>
> [45] In my judgment the fact that the 2002 Act does not include 'removal directions' within the description of 'immigration decision' against which there is a right of appeal is determinative of Parliament's wish that there should be no free-standing right of appeal against removal directions. This seems to me to be entirely consistent with the desire to streamline the appellate process in immigration and asylum cases and prevent repeat applications. That, however, leaves open the question of jurisdiction in cases where removal directions are given as part of, or are entirely incidental to, an immigration decision that is itself appealed as falling within section 84(1)(g). Also there may be circumstances in which the Secretary of State adopts a routine procedure for removal and return so that the method or route of return is implicit within the decision to remove. There would obviously be advantages in such cases for all issues, including any arising out of the proposed route or method of removal, to be dealt with at one and the same time…
>
> [47] What I do not think the present legislation permits is an appeal against entirely freestanding removal directions as would be the case when they are made separately on a latter occasion. In such circumstances the remedy for unlawful directions would be judicial review. It is, however, unnecessary to decide the extent of the tribunal's jurisdiction in circumstances where removal directions are given at one and the same time as an appealable immigration decision , or where there is an established route of return which it is known will be used.
>
> [48] The present appeal in my judgment fails because no removal directions have been set. The question whether, when they are, there could be a breach of the United Kingdom's international obligations is wholly academic. What directions the Secretary of State eventually decides to give, if any, are a matter for him. If when he gives directions it is contended that they are unlawful because they breach the United Kingdom's international obligations the remedy would be judicial review. There is no right of appeal under the 2002 Act."

19. Keene LJ said:

> "[50] I agree. In particular I agree that what is of fundamental importance in this case is that no removal directions have yet been given. That means that the method of return to the appellant's home area and the route which would be taken in pursuance of such directions are wholly unknown. In such circumstances the appellant is in no position to establish either a well-founded fear of persecution or a risk amounting to a breach of Art 2 or Art 3 of the European Convention,

arising solely as a consequence of the method or route of return to his home area."

Sir Mark Potter P agreed with both judgments.

20. *GH*, unlike *KF*, was not concerned with ground (e), but with ground (g). Whereas it is possible that, unlike the case of a method or route of return, the fact of return to the PNA would, in the circumstances of the present case, involve removal instructions that were unlawful under Schedule 2 to the 1971 Act, that issue goes solely to that Schedule and not to the immigration decision itself. Therefore, both these authorities are against Mr Seddon's current submission. *KF* is so directly, because it was dealing with the potential problem under Schedule 2 of a notice of a decision to return to Iran, when those removal directions had not yet been set, and Iran had only been proposed. *GH* is so indirectly, because its logic is again to emphasise the separateness of the removal directions and the fact that they are not an immigration decision within the appeal regime of the 2002 Act; and its decision contemplates the possibility of a connection between the proposed destination (and thus method or route of return) and the immigration decision only for the purposes of investigating the consequences of that decision for the asylum and human rights challenges which ground an appeal under ground (g).

21. The last case to consider is *AK v. Secretary of State for the Home Department* [2007] INLR 195. It concerned a Palestinian who was refused asylum. His appeal on asylum and human rights grounds (ground (g)) failed before the adjudicator and the IAT. In this court he submitted that the fact that he would be refused entry would itself lead to the vindication of his asylum or human rights claims. Thus the argument concerning the impossibility of return remained an argument based on ground (g). This court considered *GH* and concluded that the risks of refusal of entry on return were part and parcel of the ground (g) argument itself. However, the appeal was dismissed on the facts because the IAT had found that it was possible to return AK to the PNA through Jordan. As Richards LJ put it –

"[29] To put the above point in a slightly different way, in *GH* it was contended for the Secretary of State that s 84(1)(g) is concerned with removal 'in principle'; but it seems to me that the argument that the appellant would be denied re-entry into the Occupied Territories and that this would amount to persecution or Art 3 ill-treatment relates as much to the principle of his removal (or attempted removal) as does the question whether he would be at risk of persecution or art 3 ill-treatment within the Occupied Territories. Both aspects are central to the case raised under the Refugee Convention and under Art 3, and both fall naturally to be determined in the appeal against the immigration decision rather than by way of a later challenge to removal directions."

22. It seems clear to me that none of this reasoning applied to the present case, where there is no longer any challenge on asylum or human rights grounds, and the sole issue is as to the lawfulness of any future removal directions under Schedule 2.

23. Under this heading, however, I would also mention what *Macdonald* has to say on the subject, which is in the appellant's favour. At para 16.60 of the 7th ed, 2008, this appears:

> "In all appeals against a decision to remove, all the potential grounds of appeal set out in section 84 of NIAA 2002 are available, including the argument that the decision is 'not in accordance with the law', enabling arguments about both whether the condition precedent for removal in each case is met (ie whether the person is in fact liable to removal as a member of the particular category), and whether the specified country of removal is a lawful one [citing Schedule 2 of the 1971 Act]."

Similarly, in para 18.41 it is said –

> "That right of appeal has not been reproduced by NIAA 2002, but since one of the statutory grounds of appeal is that 'the decision is…not in accordance with the law', this allows an appellant to allege that there is no power in law to remove the person to the destination specified in the notice."

However, none of the jurisprudence under the 2002 Act discussed above is there cited.

Discussion and decision

24. Mr Seddon's essential argument contains its positive and responsive strands. The positive strand is simply to point (i) to section 82(2)(h) and its express reference to Schedule 2 of the 1971 Act, (ii) to the 2003 Regulations' requirement for the Secretary of State to specify the proposed country of return, (iii) to section 84(1)(e) and the width of its language "otherwise not in accordance with the law", (iv) to section 86(3)(a), where the same concept of "not in accordance with the law" is used for the primary basis of allowing an appeal, and (v) to section 120, which provides the statutory basis for the concept of "one-stop" appeals by having the Secretary of State put an applicant (of all types) on notice inter alia to state any grounds on which he should not be removed from the United Kingdom. On that basis, he submits that it must follow that the legality of a removal under the express provisions of Schedule 2

can and should be the basis of a challenge to an immigration decision under section 82(2)(h).

25. The responsive strand is to meet the jurisprudence on the 2002 Act discussed above by submitting that the requirements of the 2003 Regulations (to specify the proposed country of return) are general and extend to decisions to return of all kinds. They apply whatever the basis for the pre-existing application of the applicant, whether asylum or human rights or not and whatever the nature of the decision of the Secretary of State and whatever grounds of appeal are subsequently relied upon by the applicant. There is nothing special therefore about an asylum or human rights claim or ground (g). If therefore the country of return can be relevant to such claims and ground, it must be relevant in the absence of such claims or ground. Otherwise one would expect some express language to point up the distinction.

26. Whichever way one looks at it, he submits, there is a fundamental intention to tie together proposed destinations of removal and appeals against the same. The specifying of the destination is an inherent part of the immigration decision, and must therefore be capable of being challenged as part of the right of appeal from that immigration decision. The importance of any change from the 1999 Act from the 2002 Act, in particular the absence of removal directions themselves from the list of "immigration decisions", is not an intention to bar from statutory appeal the issues which would arise under removal directions as much as an intention to streamline the procedure whereby any challenge to such removal directions has to be taken at the time of appeal, thereby avoiding the possibility (as under *Kariharan* and the 1999 Act) of multiple and successive appeals. It was for the same reason that after *KF* the 2003 Regulations were amended to enable the Secretary of State to propose *alternative* destinations in one notice.

27. This is a formidable argument, but in my judgment it fails for three basic reasons. The first, is the absence of removal directions from being included in immigration decisions. That much is common ground, even if the reason for that exclusion is not. Since removal directions are not themselves an immigration decision subject to appeal, it would be in principle anomalous to allow *future* removal directions which have not even yet been made to be challenged as part of the statutory appeal scheme under the 2002 Act: and to do so not for any reason which relates to the immigration decision itself, or its consequences, but for an entirely separate reason which relates solely to the lawfulness of the removal directions themselves.

28. Secondly, that is what the jurisprudence on the 2002 Act has consistently said, and in *GH and MA* that jurisprudence is of this court and binds us. The reasoning of those cases is that the *proposed* country of destination is needed in order to focus the issues which might arise for the purpose of an applicant's asylum and human rights claims.

Those claims have to be examined against the background of return to a particular country or territory. It is because such proposed destinations relate to "removal…in consequence of the immigration decision" (ground (g)), that the proposals have to be examined as part of the appeal process to such immigration decisions themselves. Beyond that, however, the jurisprudence accepts that removal directions cannot by themselves be challenged by appeal under the 2002 Act.

29. Thirdly, the 2003 Regulations, which are the linchpin of Mr Seddon's argument, only speak of a "proposed" destination ("the country or territory to which it is proposed to remove the person"). That is the sense in which the notice of decision to remove specifies a named country against the rubric "Removal directions". However, a proposed destination is not the same as a destination to which the Secretary of State has *decided* to remove the applicant, and may not even amount to a destination to which the Secretary of State *intends* to remove the applicant. The word "proposed" seems to me well suited to the situation being contemplated, whereby a destination for return is proposed to provide a focus for an applicant's asylum or human rights claims, but in circumstances where, as some cases have demonstrated, the Secretary of States specifies a country which reflects the applicant's case about his origins even when that case is disputed and has been rejected by the Secretary of State: see this court's recent decision in *MA (Somalia) v. Secretary of State* [2009] EWCA Civ 4 (15 January 2009). It follows, in my judgment, that the (in any event) future removal directions cannot be an inherent part of the immigration decision in question.

30. Moreover, these conclusions are to my mind all consistent with the nature of removal directions themselves. They are very much the creature of the time when they are given. They may change with changing circumstances and of course with findings which emerge from the appeal process itself. The Secretary of State may have to think again about a destination for removal. In this case, the Secretary of State may consider whether he should seek removal to France, from where MS came illegally to this country (being within Schedule 2's "a country or territory in which he embarked for the United Kingdom"). The essential decision, meanwhile, is the immigration decision or decisions pursuant to which an applicant's asylum or human rights claims (or other claims within the immigration rules) have been adjudicated, and by which, where entry has been illegal, the Secretary of State must be entitled to decide to remove the illegal entrant. If that removal thereafter turns out to be, for other reasons, lawfully and practically impossible, that is another question which has to be dealt with at that time.

31. I would therefore dismiss this appeal.

Lord Justice Scott Baker :

32. I agree.

Lord Justice Jacobs :

33. I also agree.