OUTER HOUSE, COURT OF SESSION

[2006] CSOH 125

OPINION OF LORD HODGE

in the Petition of

MORTEZA FAFSCHI

Petitioner;

for

Judicial Review of (i) a determination of an Adjudicator; and, (ii) a determination of the Immigration Appeal Tribunal

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Act: Mr. Devlin; Drummond Miller
Att: Miss Carmichael; Office of the Solicitor to the Advocate General

15 August 2006

[1] This is an application, which the petitioner raised in December 2004, for judicial review of a determination of the Immigration Appeal Tribunal ("IAT") dated 5 September 2001 and notified on 5 October 2001. In that determination the IAT refused leave to appeal against the determination of an adjudicator dismissing his appeal against the decision of the Secretary of State for the Home Department to give directions for his removal from the United Kingdom. In his appeal the petitioner argued that he had a well-founded fear of persecution under the 1951 UN Convention

Relating to the Status of Refugees ("the Refugee Convention") and that removal would breach his rights under the European Convention on Human Rights ("ECHR").

Factual summary

[2] The petitioner is an Iranian national. The circumstances which he alleges were the cause of his application for asylum may be summarised shortly. He alleges that he had an adulterous affair with a woman in Tehran and that he was stopped by police in a car which he was driving in the company of that woman. Unfortunately for the petitioner, the woman turned out to be the wife of a police sergeant and he was treated in a cruel, inhumane and degrading way by the police. He was told that he would be taken to court to face a charge of adultery, for which in Iran the authorities may execute the offender. When being transferred to the court he escaped from custody and fled to Turkey. He remained for two months in Turkey, hoping that his position in Iran would improve, but when it did not and he feared that the Turkish authorities would return him to Iran, he left Turkey and came to the United Kingdom. He entered the United Kingdom on 24 July 2000, using a false passport and applied for asylum on 3 August 2000.

[3] The Immigration and Nationality Directorate of the Home Office refused his application for asylum by letter dated 14 March 2001 and the Secretary of State for the Home Department decided on 21 March 2001 to issue directions for the petitioner to be returned to Iran. The petitioner appealed to an adjudicator against that decision. On 15 August 2001 the adjudicator dismissed the petitioner's appeal. The petitioner sought leave to appeal to the IAT but in a determination dated 5 September 2001 and notified on 5 October 2001 the IAT refused him leave to appeal, holding that there was no merit or arguable point of law disclosed in the petitioner's grounds of appeal.

The relevant statutory framework

[4] The determination under challenge is an application for leave to appeal to the IAT under the Immigration and Asylum Act 1999. As a result of changes in the statutory framework for asylum and immigration since the IAT made its determination in 2001, this application falls to be treated differently from applications under the new legislation. Parties were agreed that the relevant legislation was section 103A of the Nationality, Immigration and Asylum Act 2002, paragraph 30 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants etc) Act 2004 and Articles 6(1) and 9(4) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (Commencement No 5 and Transitional Provisions) Order 2005 (SI 2005/565). As a result, if I were to conclude that the challenge to the legality of the determination of the IAT was well founded, parties were agreed that I should pronounce an order reducing the determination. In that event the petitioner's application for leave to appeal would be considered by a single member of the Asylum and Immigration Tribunal. I agree with that analysis.

The grounds of challenge in the petition

[5] The petitioner's submission was that the IAT erred in law in finding that his appeal from the decision of the adjudicator had no real prospect of success. Mr Devlin submitted that the decision of the adjudicator was open to challenge for four principal and closely related reasons. First, he submitted that the adjudicator erred in law in excluding parts of the petitioner's claims as incredible. Secondly, he submitted that the adjudicator acted unreasonably by engaging in speculation and conjecture against the petitioner. Thirdly, he asserted that the adjudicator had failed to use due care and

sensitivity in drawing conclusions adverse to credibility of the petitioner. And fourthly, he submitted that the adjudicator had acted unreasonably in failing to consider the likely punishment that the petitioner would have faced for his adultery if he had returned to Iran. As a result of these challenges, Mr Devlin submitted that no reasonable IAT could have reached the conclusion that there was no merit or arguable point of law disclosed in the petitioner's grounds of appeal.

The law to be applied to the case

[6] There was substantial agreement between the parties on the legal rules that applied in this case. I summarise the relevant rules on which there was agreement before discussing parties' differences on the law in my consideration of the grounds of challenge.

[7] The legal rules on which parties were agreed were as follows. First, the court is acting as a court of judicial review and the normal grounds of legal challenge of administrative action - such as are stated in *Associated Provincial Picture Houses Ltd* v *Wednesbury Corporation* [1948] 1 KB 223 - are to be applied, but the court must scrutinise with great care a decision which could result in the removal and thus endanger the life or liberty of an asylum seeker (see *Bugdaycay* v *Secretary of State for the Home Department* [1987] AC 514). Secondly, in exercising its rigorous scrutiny of an asylum decision, the court should have regard primarily to the petitioner's grounds of appeal but, nevertheless, should intervene if the petitioner has a readily discernable and obvious point which has a strong prospect of success, which was not stated in his grounds of appeal (see *R* v *Secretary of State for the Home Department ex parte Robinson* [1998] QB 929). Thirdly, in deciding whether an applicant for asylum has a reasonable fear of persecution for a reason within the

Refugee Convention or of violation of his fundamental human rights under ECHR the standard of proof is whether there is a reasonable degree of likelihood (see *R* v *Secretary of State for the Home Department ex parte Sivakumaran* [1988] AC 958, *Karanakaran* v *Secretary of State for the Home Department* [2000] Imm AR 271 and *Hariri* v *Secretary of State for the Home Department* [2003] EWCA Civ 807). Fourthly, (although, as mentioned below, parties varied in their emphasis on this point) when an adjudicator makes a judgment on the credibility of an applicant for asylum, he or she must use common sense with sensitivity, making due allowance, in an appropriate case, for cultural differences, avoiding conjecture, and using the evidence before him or her to draw proper inferences (see, for example, *Asif* v *Secretary of State for the Home Department* 1999 SLT 890 and 2002 SC 182).

Parties' submissions on the grounds of challenge

[8] Mr Devlin challenged the basis on which the adjudicator had decided that the petitioner's account lacked credibility. He emphasised that there required to be a nexus between an adverse finding of credibility and the decision taken on the merits of an application; a trivial or understandable discrepancy in an applicant's account should not lead to the rejection of his application. He submitted, first, that the adjudicator erred by taking a subjective approach to the assessment of the credibility of the petitioner's account of his affair with the wife of a police sergeant and of driving in a car with her in Tehran when there was a risk of being stopped by the police. He also suggested that it was inappropriate to apply the test of the reasonable man because people did commit adultery in Iran and risk the consequences. Secondly, he submitted that the adjudicator failed to take account of paragraph 198 of the UNHCR Handbook of Procedures and Criteria for the Determination of Refugee

Status ("the UNHCR Handbook") in her failure to show due care and sensitivity in assessing the credibility of the petitioner's account of his affair with the wife of the police sergeant and his inability or unwillingness to name the police sergeant. The name of the lover's husband had no relevance to the petitioner's account. The guidance given in that paragraph of the UNHCR Handbook was not mentioned in the petitioner's grounds of appeal but it was, he submitted, a point which should have been obvious to the adjudicator and the IAT.

[9] Thirdly, he submitted that no reasonable adjudicator would have concluded that the petitioner was not credible because of the inconsistent accounts which he gave as to whether there was a "criminal file" opened against him, without inquiring into the nature and status of a criminal file. The adjudicator had no evidential basis for equating a "criminal file" with a formal charge. Fourthly, he submitted that the adjudicator had failed to show the necessary sensitivity and care in her rejection of the petitioner's account of the circumstances of his escape from detention and in particular her view that he had been inconsistent on whether and with how much money he had bribed his guard to obtain his release. The petitioner's account was not truly inconsistent and there was no logical or factual basis for the adjudicator's criticisms. It was not appropriate to measure the actions of the guard by the standard of the reasonable man. In relation to the bribe allegedly paid to the guard, any discrepancy in the recording of the petitioner's account could be explained by a typographical error.

[10] Fifthly, he submitted that the adjudicator had failed to show the required sensitivity and care in her rejection of the petitioner's account of why he stayed in Turkey for two months. There was no necessary inconsistency between going to Turkey in the hope that matters would calm down at home but then, when he was informed that the authorities were still looking for him in Iran, changing his mind and

leaving Turkey in fear of being returned to Iran. His initial hope that things would calm down and his later fear could explain why he did not apply for asylum in Turkey. Sixthly, he submitted that the adjudicator erred in law in rejecting his account on the basis that she could not find on objective evidence that he would have been convicted of adultery and, if so, executed. This was the wrong test; the test was whether there was a reasonable degree of likelihood of the punishment being carried out. Seventhly, he submitted that the adjudicator erred in failing to consider the likelihood of inhumane punishments other than execution. Finally he submitted that the IAT had erred in law by applying the wrong legal test to its determination. The IAT had failed to consider whether if some of the criticisms of the adjudicator's decision were justified, there was nevertheless enough that was correct in her determination to justify her decision.

[11] In support of his submissions, in addition to the authorities to which I have already referred, Mr Devlin referred me to the following British authorities: *R* v *Secretary of State for the Home Department ex parte Shokrollahy* [2000] Imm AR 580, *R* v *Broadcasting Complaints Commission ex parte Owen* [1985] 1 QB 1153 and *R* v *Lewisham LBC ex parte Shell UK Ltd* [1988] 1 All ER 938 (on the effect of a defect in the decision-making process on the validity of the decision) and *R* v *Ministry of Defence ex parte Smith* [1996] QB 517 (on the need for the court not to overlook a minor flaw in the decision-making process where fundamental human rights are at stake). He also referred me to the following foreign authorities: *Minister for Immigration and Ethnic Affairs* v *Guo Wei Rong* (High Court of Australia Matter No S151 of 1996), *W321/01A* v *Minister for Immigration & Multicultural Affairs* [2002] FCA 210, *Lubana* v *Minister of Citizenship and Immigration* 2003 FCT 116 (Federal Court of Canada), *Lopez-Reyes* v *Immigration and Naturalisation Service* 79

F.3d 908 (9th Cir.1996) and *Shah* v *Immigration and Naturalisation Service* (US 9th Circuit Court of Appeals 9870845. 15 August 2000). On the status to be given to the UNCHR Handbook, he referred to *T* v *Immigration Officer* [1996] AC 742, *Birungi* v *Secretary of State for the Home Department* [1995] Imm AR 331, *R* v *Secretary of State for the Home Department ex parte Akdogan* [1995] Imm AR 176, and *The Queen (on the application of Dirisu)* v *Immigration Appeal Tribunal* [2001] EWHC Admin 970. He referred to the following textbooks: Fordham, "Handbook of Judicial Review" (4th ed), Symes and Jorro, "Asylum Law and Practice", de Smith, Woolf and Jowell, "Judicial Review of Administrative Action" (5th ed), and Macdonald and Webber, "Immigration Law and Practice" (6th ed). He also referred to Lord Bingham's essay on judicial determination of factual issues in [1985] Current Legal Problems 1.

[12] Miss Carmichael, for the respondent, stated that she disagreed on Mr Devlin's presentation of the law on only a few issues. She accepted that the Australian cases to which Mr Devlin referred were persuasive authorities. She pointed out that the petitioner had not challenged the adjudicator's finding that he did not fall within a recognised social group and accordingly his removal would not be contrary to the Refugee Convention. The only issue for the IAT therefore was whether there was merit in the petitioner's case that his removal would breach his rights under ECHR. She commented on the approach which the court should take to an adjudicator's assessment of the account given by an applicant, suggesting that the concepts of speculation and conjecture in certain of the cases were not very helpful but that the court should ask itself whether there was evidence on which an adjudicator could properly make an inference as to whether there was a reasonable likelihood of persecution. In this case the adjudicator had decided that the petitioner's account was

not credible and that therefore he was not likely to be persecuted on being returned to Iran. The correct approach was for the adjudicator to use her common sense in examining the evidence and to have regard to the consistency or inconsistency of the applicant's account. There was no nexus test in British immigration law and *Shah* v *INS* (above) was not authority in this context. The adjudicator could look at the applicant's evidence on both directly relevant issues and peripheral issues in assessing his credibility and reliability. In this context she referred to *Wani* v *Secretary of State for the Home Department* 2005 SLT 875, in which Lord Brodie considered the Australian case of *W321/A* (above) and *Asif* v *Secretary of State for the Home Department* 2002 SC 182.

[13] In response to the petitioner's criticism of the adjudicator's decision, she submitted, first, that she was entitled to disbelieve the petitioner's account of his pursuit of an adulterous affair when he might face execution as a punishment. To disbelieve that account was not to impose Western values on a foreign culture but simply to recognise that self-preservation would normally militate against such behaviour. Secondly, she submitted that the adjudicator was entitled to treat the petitioner's repeated and unexplained failure to give the name of his lover's husband as prevarication. It did not matter that the name was not material to his account of events; the failure called into question the petitioner's credibility. She submitted that the issue of paragraph 198 of the UNHCR Handbook was not raised in the grounds of appeal and was not obvious. That paragraph alerted the authorities to the possibility that an applicant might be afraid of authority and therefore not give a full and accurate account of his case. It was unrealistic to expect the adjudicator to enumerate in her decision every possible reason why an applicant might be evasive. Thirdly, the adjudicator was entitled to conclude that the petitioner had been inconsistent and

evasive as to whether or not there was a "criminal file" in existence in relation to his case. He was attempting to argue two inconsistent positions, namely that on the one hand he had stayed in Turkey to allow the matter to cool down and on the other that he was facing a criminal file and that he was therefore in fear of punishment. The petitioner was evasive when replying to the question as to how he knew that charges had been brought against him.

[14] Fourthly, the adjudicator had four sound reasons for disbelieving the petitioner's account of his escape. First, he had given conflicting explanations as to why the guard had allowed him to escape. Secondly, he had given conflicting accounts as to the size of the bribe which he paid and he had not explained this discrepancy. Thirdly, she was entitled to conclude that it was not credible that the police would not have searched the petitioner when they detained him and that they would have let him retain the guaranteed cheque or traveller's cheque with which he bribed the guard. Finally, it was highly unlikely that the guard would have put himself at risk by releasing the petitioner if the offended husband was a police sergeant known to the policemen who detained the petitioner and was present in the police office where he was detained.

[15] Fifthly, the petitioner had not foreshadowed his challenge to the adjudicator's treatment of his account of remaining in Turkey in his grounds of appeal to the IAT. Paragraph 9 of the grounds of appeal stated:

> "At paragraphs [46], [47], [48] and [49] the Appellant is criticised for staying in Turkey to see if matters would clear up or cool down or if his situation would improve. It is unreasonable to criticise the Appellant for pursuing this course of action."

Thus, Miss Carmichael submitted, the IAT had not received notice of a challenge to the adjudicator's finding of inconsistency in the petitioner's account of his reasons for initially staying in and then fleeing Turkey. No mention was made to the adjudicator that what he feared was extradition to face a criminal charge. Nor did the petitioner assert in his SEF interview or in his precognition that what he feared in Turkey was extradition to Iran to face a criminal charge. She referred me to *The Queen (on the applications of Naing and Eyaz)* v *IAT* [2003] EWHC 771 (Admin) for the proposition that while the approach in *ex parte Robinson* (above) could in principle apply to errors of fact, it would be rare that such errors, which were not raised in grounds of appeal, would be readily discernible by the IAT.

[16] Sixthly, Miss Carmichael submitted that while one could interpret paragraph [52] of the determination as the adjudicator applying an incorrect test in relation to the likelihood of conviction and execution, that was not a correct interpretation of her meaning as she had accurately recorded the test appropriate to the Refugee Convention in paragraph [16] of her determination and the appropriate ECHR test in paragraph [59]. All that the adjudicator was doing in paragraph [52] was looking at inconsistencies in the petitioner's account. In any event, paragraph [52] was severable as the adjudicator had concluded by the end of paragraph [51] of her determination that the petitioner's account of adultery and escape from Iran lacked credibility and that was the basis of her decision. The petitioner's criticism of the adjudicator for failing to consider the likelihood of punishments short of execution raised a point that was not argued either before the adjudicator or in the grounds of appeal to the IAT.

[17] In concluding her submission, Miss Carmichael conceded that the adjudicator's assessment of the petitioner's credibility between paragraphs [28]

and [51] of her determination was a cumulative assessment and that if there were a flaw in that part of her reasoning, it would not be safe to ignore the flaw on the ground that it was immaterial to the determination. She referred me in this regard to *ex parte Shokrollahy* (above).

Decision

[18] At the heart of the challenge to the decision of the IAT is the petitioner's attack on the way in which the adjudicator assessed his credibility. This issue lay behind nine of the eleven paragraphs of his grounds of appeal to the IAT. The court has often commented on the difficult issues facing an adjudicator in assessing the credibility of an applicant for asylum. In particular it has recognised the difficulties which an applicant may face in presenting his or her story in a coherent way, the likelihood of the lack of corroboration for that story and the need for the decision maker to be sensitive to cultural differences. As Sedley LJ stated in *Karanakaran* (above at p.304), the decision maker is not choosing between two conflicting accounts but is evaluating the intrinsic and extrinsic credibility, and ultimately the significance of the applicant's case. In addition, before the Nationality, Immigration and Asylum Act 2002 confined appeals to the IAT to appeals on points of law, it was exceptional for the IAT to interfere in an adjudicator's findings of primary fact which were based essentially on an assessment of a witness (see for example *Borissov* v *Secretary of State for the Home Department* [1996] Imm AR 524, *Secretary of State for the Home Department* v *Chiver* [1997] INLR 212 and *Subesh* v *Secretary of State for the Home Department* [2004] EWCA Civ 56.

[19] An adjudicator is entitled to use objective knowledge of relevant circumstances, such as that contained in a CIPU country assessment, to test the

applicant's account. Where the adjudicator relies on personal knowledge or experience as an important part of the basis for rejecting the evidence of an applicant, it is incumbent on him or her to declare that knowledge as part of his or her reasons: *Jaswinder Singh* v *Secretary of State for the Home Department* 1998 SLT 1370. He or she is also entitled to assess the consistency or inconsistency of the applicant's account. He or she requires also to form a view on whether the applicant is being open or evasive when faced with difficult questions and is entitled to form an adverse view of an applicant who prevaricates. As the Extra Division stated in *Asif* (2002 SC 182 at paragraph 16), case law and the UNHCR Handbook rightly emphasise that:

> "credibility is an issue to be handled with great care and sensitivity, and that lack of credibility, on peripheral issues or even on material issues, is not to be made an easy excuse for dismissing a claim by an applicant who comes from a state or situation in which persecution is an established fact of life. It does not, however, ... follow that the question of the applicant's credibility can be set aside or that the account he gives is not to be tested".

[20] In this case, one of Mr Devlin's major criticisms of the adjudicator was that she had judged the petitioner's credibility on issues which had no nexus with the merits of his application. He founded on the American case of *Shah* v *INS* (above). Miss Carmichael for the respondent challenged the contention that a "nexus test" was part of United Kingdom immigration law. In *Shah*, the US 9th Circuit Court of Appeals held that an adverse credibility finding against an applicant for asylum rested on impermissible grounds. Among the criticisms made of the adverse decisions on the applicant's credibility by the lower tribunals was their reliance on a discrepancy between the date stamp on the death certificate of applicant's husband and her evidence as to his date of death. The Court considered that the discrepancy could have

been caused by a typographical error but it also criticised the failure of the decision makers to explain the significance of the discrepancy or to point to the applicant's obvious evasiveness when asked about it. Mr Devlin used this statement in support of his "nexus test", namely that there required to be a nexus between the factual assertions that the decision maker disbelieved and the substance of the applicant's claim. For example, he criticised the adjudicator's reliance on the petitioner's failure to name his lover's husband, submitting that the fact that the husband was a police sergeant was relevant to the petitioner's claim for asylum but his name was not.

[21] In my opinion Mr Devlin's argument in favour of a "nexus test" was misconceived. I am not persuaded that he was correct in his interpretation of *Shah*. I do not doubt that it is correct that an adjudicator should not reject an applicant's account because of a few discrepancies on unimportant matters where the discrepancies may be innocently explained, particularly where such explanations have been put forward. Thus, for example, if the petitioner had convincingly explained that the discrepancy in his evidence as to the size of the alleged bribe to the guard was the result of a typographical error, I would have expected the adjudicator to attach little if any weight to the discrepancy. Minor discrepancies of themselves may be insufficient to support a finding of incredibility. But it is a quite different proposition to assert that an adjudicator cannot have regard, as part of a general assessment of credibility and reliability, to what he or she assesses as incredible assertions of fact because the assertions are not central to the applicant's case in support of his application for asylum. I cannot accept that proposition. Similarly, where an adjudicator reaches the conclusion that an applicant has failed to answer a question which should have been within his knowledge and was being evasive, it is of little significance that the matter on which he was evasive was not central to his account. Testing a witness's account of

events by asking him to disclose details that are not central to his case is a well-known forensic technique. It is important that an adjudicator should build up his or her assessment of an applicant's credibility and reliability from all the available evidence. It is not appropriate for an adjudicator to adopt a salami-slicing approach by which he or she excises from consideration all occasions on which he or she disbelieves the applicant where the matter in question is not central to the applicant's case. When carrying out what Sedley LJ described in *Karanakaran* (above at p.305) as a "unitary process of evaluation" an adjudicator requires to look at all of the available evidence.

[22] I do not consider that there is substance in the criticisms by Mr Devlin of the adjudicator for her assessment of the credibility of the petitioner's account of his adulterous affair, his detention and his escape. Taking her discussion of those matters individually, I do not accept that she erred in law in her approach. But her assessment of credibility was made having regard to all the aspects of the petitioner's account and, as I recorded in paragraph [17] above, Miss Carmichael conceded that the court should not sever any one matter in that account from the rest of that account, if it were satisfied that the adjudicator had erred in law in relation to that matter.

[23] Having given the adjudicator's determination the anxious scrutiny that I am enjoined to give it, I have reached the conclusion that the adjudicator's assessment of the credibility of the petitioner is flawed in two respects. First, in paragraphs [46] to [49] of her determination, the adjudicator rejected as incredible the petitioner's account of why he remained in Turkey for two months and then chose to leave Turkey. Secondly, in paragraph [52] of her determination she appears to criticise the petitioner on the basis that it was not certain that he would be convicted or executed if he were to be returned to Iran.

[24] In my opinion there is nothing inherently incredible about a person initially going to Turkey in the hope that the police in Iran would not pursue him for adultery and thereafter, having formed the view that the issue was not to go away, becoming concerned that he might be extradited to Iran. While the petitioner did not speak of the fear of extradition from Turkey in his SEF interview, in his precognition or in his account to the adjudicator, his account was consistent with that fear. At the SEF interview he stated that he believed that the authorities were still looking for him in Iran and that he was at risk of being sent back to Iran by Turkey. In his precognition he said that he had initially hoped that matters in Iran would clear up when he went to Turkey but that after two months the authorities were still looking for him (in Iran) so he left Turkey. I consider that the petitioner raised the issue sufficiently clearly in paragraph 9 of his grounds of appeal for the IAT to consider it: the criticism to which he there referred could only be the adjudicator's criticism that his account was incredible. The adjudicator does not explain why she found this account incredible beyond contrasting it with the petitioner's assertion on at least one occasion that, having committed adultery, he was bound to be executed. But while the adjudicator was entitled to reject an assertion by the petitioner that he was certain to have been executed if he were returned to Iran, it is not clear to me how that assertion, once rejected, renders the petitioner's account in paragraphs [46] to [49] incredible. If, as the adjudicator inferred, the petitioner did not believe that he was certain to be executed in Iran but that that fate was a possibility, his behaviour in Turkey was not irrational.

[25] Secondly, in her discussion in paragraph [52] of the determination, I consider that the adjudicator erred in her assessment of the petitioner's case. She criticised the petitioner's case on the basis that there was no certainty that he would have been

convicted of adultery and, if he had been, that he would have been executed. If in this passage she had been addressing the legal test to be applied under the ECHR, she would have erred in law as the test is whether there was a substantial likelihood of harm. If, as is more likely, she was criticising the petitioner for inconsistency in suggesting on one occasion that he was certain to be executed and on another that it was probable that he would be executed, I do not see the force of that criticism. An applicant for asylum is not likely to know with any certainty the fate that would have befallen him if he had not sought refuge. It is a question of likelihood. I see no good basis in this case for criticising the petitioner's credibility where he used different expressions to express the probability of the persecution which he asserted he feared. In my opinion inconsistencies of this nature are to be expected. If, as appears to be the case, this paragraph is part of the adjudicator's assessment of the petitioner's credibility, I do not consider, as Miss Carmichael submitted, that it can be severed from the discussion in the preceding paragraphs, not least because similar reasoning may lie behind the adjudicator's criticisms in paragraphs [46] to [49].

[26] I do not think there is substance in the other criticisms which Mr Devlin made of the adjudicator's determination and of the IAT's determination refusing him leave to appeal. For completeness, I should indicate that I do not accept that the adjudicator was under any obligation to refer to paragraph 198 of the UNHCR Handbook in her determination. An adjudicator should take account of the possibility that an applicant for asylum may have suffered experiences that have made him afraid to speak to a governmental authority even in the country in which he seeks refuge. But I accept Miss Carmichael's submission that it would impose an intolerable burden on adjudicators if they had to narrate every possible explanation which they took into account in their assessment of an applicant's story. I also do not consider that the issue

of inhumane punishments other than execution was raised in the grounds of appeal to the IAT or was an obvious point which the IAT were bound to consider.

[27] Whether, notwithstanding any criticisms of the adjudicator's reasoning in paragraphs [46] to [49] and [52], there was sufficient material to justify her decision is a matter which the IAT has not yet considered.

Conclusion

[28] As I am satisfied that the IAT erred in law in rejecting as not arguable the petitioner's challenges of the adjudicator's reasoning in paragraphs [46] to [49] and [52] of her determination, I uphold the petitioner's second plea-in-law to the extent of granting decree of reduction of the IAT's determination dated 5 September 2001 and notified on 5 October 2001.