THE HIGH COURT

(JUDICIAL REVIEW)

Record No. 390 JR1999

BETWEEN

F A

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY

AND LAW REFORM AND APPEALS

AUTHORITY OF IRELAND AND THE

ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr Justice Aindrias O Caoimh

delivered the 21st day of December 2001

On the 3rd March 2000 the Supreme Court gave the applicant leave to seek judicial review for the following relief:

1. An Order of *Certiorari* quashing the recommendations of the first and second named respondent to refuse the applicant recognition of refugee status.

2. An Order of *Certiorari* quashing the decision of the first named respondent its servants or agents to refuse the applicant recognition of refugee status.

3. A declaration that the applicant is entitled to a proper and independent appeal of a refusal of recognition of his refugee status and

4. An Order of Prohibition restraining the first named respondent, his servants or agents from removing the applicant from the jurisdiction.

The grounds upon which the applicant was given leave to seek the aforesaid reliefs are as follows:

(a) The applicant did not receive a just and proper appeal from the original refusal of recognition of his refugee status; the first named respondent, his servants or agents participating in and in deciding against his own decision and being seen to do so and further disinterested and unbiased adjudication being absent and/or in the alternative

(b) the first named and second named respondents exercised discretionary powers without regard to relevant considerations and discriminated evidence in a partial manner and/or in the alternative

(c) the first named respondent applied an arbitrary, inapplicable, unestablished standard of proof in reaching a recommendation and/or in the alternative

(d) the first named and second named respondents provided incomplete and inadequate reasoning in regard to the decision reached and in particular contrary to rule of law failed to address and to consider and to be seen to so do

substantial arguments advanced on behalf of the applicant and/or in the alternative

(e) the applicant was not provided with evidence which the second named respondent relied on in coming to the recommendation and/or in the alternative

(f) the applicant is in real and substantial risk of violation of his human rights including his rights as a refugee and in particular his rights deriving under (1) Article 40.3 of the Constitution (2) the Refugee Act 1996, (3) the United Nations Convention relating to the Status of Refugees 1951 and the 1967 Protocol"

At the time of granting the applicant leave the Supreme Court granted a stay on the deportation order made on foot of a letter dated the 31st December, 1998, from the Asylum Division of the Department of Justice, Equality and Law Reform to the applicant.

An affidavit has been filed on behalf of the applicant which has been sworn by his solicitor Mr Anthony Conleth Pendred. He says that the applicant arrived in this country on the 3rd July, 1997, and sought asylum. The first named respondent on the 30th June, 1998, refused to grant the applicant recognition of Refugee Status. An appeal from this decision came before the second named respondent on the 21st October, 1998, when he was represented by Mr Pendred. At the appeal the applicant gave evidence of his experience of arrest, imprisonment and subjection to torture, cruel, inhumane and degrading treatment in Sierra Leone and further that such treatment occurred by reason of political activity and membership of a social group. Mr Pendred states further that the applicant gave evidence of his fear of further such

treatment and victimisation should he return to Sierra Leone. It is stated that the applicant further gave evidence of grave national civil and political disorder and violence in Sierra Leone.

It is stated that no evidence was offered at the hearing in contradiction of this testimony. On the 31st December, 1998, a Mr Richard Fennessy representing the Minister wrote to the applicant to inform him of the outcome of the appeal. It appears that this decision was arrived at following recommendations made by the second named respondent. Mr Pendred says that the letter fails to address the substantial arguments advanced on behalf of the applicant at the hearing. He says that the letter purports to show that the applicant's evidence lacked *bona fides* by means of giving a single instance of an alleged untruth on the part of the applicant and that the said letter states that the applicant actually gave a correction to his evidence in this regard during the hearing. Mr Pendred further points out that the letter makes reference to an alleged source of information known as the Political Handbook of the World. He says that by reference to this book it was purported to discredit the evidence of the applicant that his persecution and fear of persecution in Sierra Leone in part arose from his membership of the Kabbah Party. He says that the applicant was not informed of this purported source of evidence prior to the hearing nor was he provided with same at the hearing. He says that no evidence of further investigation by the first named respondent in this regard was offered to the hearing and that in particular no reference made to the United Nations High Commission for Refugees investigation. Mr Pendred says that in purporting to rely upon the applicant's membership of the Kabbah Party the first named respondent in the letter proposes that this fact would ensure the applicant's safety in Sierra Leone. He says that

independent sources state that no such presumption is possible, that stable Government is not established, that all political activity in Sierra Leone is highly dangerous and that members of all factions have suffered indiscriminate violence in a Civil War environment. In further reference to the letter from Mr Fennessy, Mr Pendred says that it purports to state that the Appeals Authority applied a standard of proof in considering evidence of "reasonable likelihood" of persecution. He says that the purported standard was not at any time stated as that to be applied. He says further that the purported standard is not present in relevant Conventions applicable to refugees and in particular is not present in the 1951 Convention relating to status of refugees and the 1967 Protocol thereto.

Mr Pendred says that by letter of the 7th January, 1999, he wrote to the Minister in reply to the letter of the 31st December, 1999, outlining therein his objections to and concerns with the contents of the letter. He says that he further petitioned the Minister on behalf of the applicant for leave to remain in this jurisdiction on humanitarian grounds. He says that he has received no reply to this letter. He says that the applicant has received no further notice of being made subject to deportation.

The letter of the 31st December, 1998, indicates that the Appeals Authority stated that he was unable to accept the *bona fides* of the applicant's claim and concluded that he had difficulty in believing his account of events. Mr. Fennessy, in reference to the decision/recommendation of the Appeals Authority stated as follows:

> "For instance, he has stated that when asked about details about your mother's death you originally stated that she was killed in May 1997. He indicated that you could not confirm the precise date. Later, he

> stated that you change your mind about the date of her death and confirm that she was, in fact, killed earlier in 1995.
>
> The Appeals Authority stated that your convention grounds for asylum in Ireland are based on your membership of a social group and your political activity. However, he pointed out that the Political Handbook of the World, 1998 outlines that the Kabbah Party which is the party you indicated you would have voted for, is currently in Government in Sierra Leone. He stated further that your claim lacks credibility. He has applied the appropriate standard of proof to the hearing of this case which is that there must be "reasonable likelihood" of persecution in the past or in the future. He does not believe that you have established a well founded fear of persecution pursuant to Article 1 A(2) of the 1951 Convention and 1967 Protocol. He has therefore recommended that your appeal should not be allowed."

The letter from Mr Fennessy indicates that as an authorised officer of the Minister he considered the recommendation of the Appeals Authority and decided to uphold the original decision and refuse the appeal.

In his letter to the Minister, Mr Pendred said, contrary to the assertion that the Kabbah Party was in Government in Sierra Leone, that a newspaper article, dated the 7th January, 1999, being the date of the letter, indicates the contrary and reinforces the client's assertion of the instability of the political situation in Sierra Leone.

With reference to the standard of proof Mr Pendred asserts that it is not *"a*

reasonable likelihood" but less. He says that it is greater than a mere possibility but only to the extent that it should be *"a serious possibility"* on good grounds with a real or reasonable chance. This standard of proof he says is far less than a *"reasonable likelihood"* which is more equivalent to the standard of a balance of probabilities. The letter sought that the applicant's claim be reconsidered in light of the new evidence, namely, the newspaper article referred to.

On behalf of the respondents a statement of grounds of opposition dated 31 May, 2000, has been filed in which the following grounds are pleaded:

1. The applicant failed to make this application within the time prescribed by Order 84 Rule 21 of the Rules of the Superior Courts and has failed to advance any grounds upon which such time limit should be extended. The applicant is not entitled to the relief sought by reason of his delay in making this application. Without prejudice to the foregoing:
2. It is denied that the applicant did not receive a just and proper appeal from the original refusal of this application for refugee status as alleged or at all.
3. The second named respondent is entirely independent of the first named respondent. In the premises it is denied that the appeal conducted by the second named respondent and the recommendation made by the second named respondent are biased as alleged or at all.
4. It is denied that the respondents exercised discretionary powers without regard to relevant considerations or discriminated evidence in partial manner as alleged or at all.

5. It is denied that the standard of proof applied by the respondents was arbitrary, inapplicable or unestablished as alleged or at all.

6. The alleged failure to provide adequate or complete reasons on the part of either respondent is hereby denied.

7. It is denied that the respondents failed to address arguments allegedly advanced on behalf of the applicant. It is denied that the second named respondent did not provide the applicant with the evidence relied upon in reaching his decision.

8. It is denied that the applicant is in real or substantial risk of a violation of human rights as alleged or at all. Further the applicant is not a refugee having failed to establish his entitlement to refugee status. consequently, the applicant cannot claim the benefit of any rights specifically accorded to refugees under any of the illegal instruments referred to or at all.

9. The applicant is not entitled to the relief claimed or to any relief.

An affidavit has been sworn by Linda Grealy of the Department of Justice, Equality and Law Reform on behalf of the respondents. She is an Assistant Principal Officer in the Asylum Division of the Department of Justice, Equality and Law Reform. She says that the applicant's appeal was conducted in accordance with the procedures adopted by the Minister for Justice, Equality and Law Reform for processing asylum claims in Ireland and was notified to the U.N.H.C.R. on the 10th December, 1997, and was amended on the 13th March, 1998, and the 27th January, 2000. She says that the purpose of these procedures is designed to ensure that an applicant for refugee status is given every opportunity to explain the grounds behind

his or her claim to asylum status and that the procedures were drawn up after consultation with the U.N.H.C.R. She says that the initial decision and the decision on the applicant's appeal therefrom were taken in accordance with the procedures and the principles set out in the 1951 Geneva Convention on the status of refugees and 1967 Protocol and the Refugee Act 1996 (as amended).

In her affidavit Ms Grealy points out the nature of the documentation that was furnished to the applicant and/or his solicitor prior to the appeal hearing on the 21st October, 1998. It is pointed out that the Department was represented at the appeal hearing by an official known as a Presenting Officer, in this case a Ms Kathleen Bonnar. The applicant at the time was represented by counsel, Mr Chris Boudren. She has exhibited a record of the attendance at the appeal hearing. It was pointed out that the Appeals Officer was presented with evidence both oral and written and representations on behalf of both the Department and the applicant.

Ms Grealy takes issue with some of the averments in the affidavit of Mr Pendred. She says that contrary to what is stated by him there is no evidence that the applicant gave evidence of his "experience of arrest, imprisonment and subjection to torture, cruel, inhuman and degrading treatment in Sierra Leone". She points out that in the written questionnaire completed by the applicant on making his application for refugee status he stated that he went into hiding after the killing of his mother in 1995 and then ran away after the arrest of his father and joined a group of young men who were leaving the country. She says that in an interview of the applicant conducted by the Department on the 27th May, 1998, in connection with his application for refugee status the applicant says that he was captured by Kamajors and coup makers and taken to an A.F.R.C. camp to be trained in the use of arms. He further stated that he

ran away from this camp after four days. It is stated that in the course of his appeal the applicant based his claim for asylum on his membership of a social group and his political activity. It is stated that he claimed he was vulnerable to attack because of his father's former membership of the Army pre the present regime and his membership of the Timine tribe. However, in his earlier interview on the 27th May, 1998, the applicant had informed the interviewer that there were three main tribes in Sierra Leone of which the Timine was one and that there was no conflict between the tribes and that the Kamajors included members of all the three tribes.

Ms Grealy says that in many instances in the assessment and determination of a claim for refugee status or of an appeal from a refusal of refugee status it will not be possible for direct evidence to be adduced to contradict the asylum seeker's testimony as to events that occurred in his or her own country of origin. For this reason, much importance is attached to the credibility of the asylum seeker's evidence and to independent documentation verifying (or otherwise) his or her account of the general situation in the country of origin and the occurrence of events of the nature described in his or her testimony. Ms Grealy says that it is apparent from the recommendation of the second named respondent that he did not regard the testimony of the applicant given at the hearing of his appeal as credible. Ms Grealy relies upon the recommendation of the second named respondent and points out that the recommendation was not based solely on the applicant's changing his factual evidence as to the date of his mother's death. She says that the concern was based also on the applicant's denial of having informed the captain of the ship in which he was stowed away that he had boarded the ship *"to see the World"* when he had signed a form setting out these details when put to him on the 28th day of June 1996. In that

regard she exhibits a document dated and signed by the applicant. Further the second named respondent found the applicant's account of his travel, both within Africa and from Africa to Spain lacked credibility. He doubted that the journey described by the applicant could possibly have been made within the time frame asserted by the applicant.

Ms Grealy further takes issue with the assertion of Mr Pendred to the effect that the applicant claimed to be a member of the Kabbah Party and was persecuted or feared persecution by reason of such membership in the course of the asylum process. She points out that in fact the applicant denied membership of any political organisation or party both in his initial questionnaire and in the interview conducted on the 27th May, 1998. The witness has exhibited the documentation in this regard. She points out that the applicant stated that he had voted for the Kabbah Party in the elections held immediately prior to his leaving Sierra Leone. She denies that the letter sent to the applicant refusing his appeal and dated the 31 st December, 1998, attempts to discredit the applicant's claim arising out of his membership of the Kabbah Party and she says that it does not refer to the applicant's claimed membership of that party since no such claim had at any time been made by the applicant. She points out that the letter merely refers to the Kabbah Party being the party the applicant indicated he would have voted for.

With reference to the book entitled the Political Handbook of the World 1998, Ms Grealy points out that she has been advised by Ms Kathleen Bonar and believes that copies of relevant pages were handed by the presenting officer (Ms Bonar) to the second named respondent and to the applicant's legal representative at the hearing of the applicant's appeal. She says further that relevant sections of the handbook

generally formed part of the material considered by the Appeals Authority in the determination of an appeal and that it is standard practice that the relevant sections of the handbook are also handed to the appellant's legal representatives.

Ms Grealy states that the respondent is not obliged to undertake any further investigations into the appellant's claims of political persecution at the appeal stage of the asylum process. She says that the initial decision on the applicant's application for refugee status had been made and the function of the presenting officer acting on behalf of the Minister is to assist the Appeals Officer in reviewing the decision on appeal. She says that the applicant's claim was not referred to the U.N.H.C.R. for investigation as the U.N.H.C.R. was unable to continue to investigate individual claims and has not done so since December 1997. She says that since that time the Minister conducts an investigation into each claim made for refugee status in accordance with the procedures referred to, which were drawn up in consultation with the U.N.H.C.R., and each applicant for refugee status is afforded an oral interview and a right of appeal neither of which were available as of right prior to December 1997.

Ms Grealy says that it is a misconstruction of the letter of the 31st December, 1998, to state that the Minister was relying on the fact of the applicant's membership of the Kabbah Party to ensure his safety in Sierra Leone. She reiterates that no claim to membership of this party or to persecution based on such membership had been made on behalf of the applicant. The applicant gave no evidence at any stage of having being involved in political activity. She points out, however, that the evidence of the applicant was that he broadly supported the Kabbah Party being the party in power in Sierra Leone at the time of the determination of his appeal and she says that this did not lend credence to his claim of persecution on the grounds of political

activity.

With regard to the standard of proof applied by the appeals officer Ms Grealy says that this was appropriate and correct to the determination of the applicant's claim for refugee status. She believes that the 1951 Geneva Convention on the status of refugees and the 1967 Protocol thereto do not contain or set out any standard of proof to be applied in such cases nor is such standard set out in any U.N.H.C.R. guideline. She says that the standard of *"reasonable likelihood"* is the lowest standard available consistent with the applicant establishing an entitlement to refugee status and is used internationally, particularly in the United Kingdom.

Ms Grealy states that the members of the Appeals Authority who have been appointed to hear appeals from refusal of claims for refugee status are persons independent both of the Department and of the Minister. She points out that the Appeals Authority makes a recommendation as to whether the original decision to refuse should be upheld and this recommendation is submitted to another authorised officer who makes the decision on appeal on behalf of the Minister. This officer has not been involved with or played any part in the asylum process relating to that application for refugee status prior to his or her determination of the appeal on behalf of the first respondent. The decision of the authorised officer is based on the recommendation of the Appeals Authority subject to public order and public policy. She says that in approximately 30% of cases the original decision to refuse refugee status is overturned on appeal. It is her view that the significant number of successful appeals is indicative of the lack of bias in the appeals procedure.

Finally, Ms Grealy points out that an application for leave to remain within the State on humanitarian grounds has been made on behalf of the applicant by his

solicitor Mr Pendred. She says that the application is under consideration and that the applicant will be notified of the outcome thereof in due course. She says that the applicant is not in any way prejudiced by the time taken to consider his application for leave to remain within the State on humanitarian grounds as he has not been made the subject of a deportation order pending the determination of this further application on his behalf.

An affidavit was sworn on the 26th May, 2000, by Kathleen Bonnar, an Assistant Principal Officer in the Asylum Division of the Department of Justice, Equality and Law Reform. She says that she acted as the presenting officer on behalf of the Department at the hearing of the applicant's appeal against a refusal of refugee status. The appeal was heard by the second named respondent on the 21st October, 1998. Ms Bonnar indicates the practice which is invariably followed by her as a presenting officer on behalf of the Minister. She presents copies of objective country of origin material, properly sourced, to the sitting Appeals Authority and the appellant's legal representative(s) to support the Department's case where same is not already on the applicant's file. She says it is invariably her practice to write the source of the copied documents on the said document as is required by the Appeals Authority. In the course of the appeal taken by the applicant she made submissions and representations on behalf of the Department to the Appeals Authority and her representations included a reference to the fact that the Kabbah Government was in fact reinstated in March 1998. In this regard she referred the Appeals Authority to the relevant pages of the Political Handbook of the World 1998 which deals with the political situation in Sierra Leone. She states that she handed the relevant pages of this book to the appellant's legal representative Mr Boudran. She points out that this

book is a publication by C.S.A. Publications, Bing Hampton University, University of New York, and is publicly available. She says that it provides essential political information about every country in the World and it is updated on an annual basis to take account of changing situations. She says that it does not contain any information which is not widely available through a number of sources including international and national media.

A supplemental affidavit has been sworn by Mr Pendred on the 7th June 2000. The nature of this affidavit is essentially in the form of submissions made by Mr Pendred in relation to the respondent's case. Mr Pendred complains that certain of the evidence relied upon by the respondent is not a matter which should have formed any part of an appeal and it is furthermore hearsay. This is in reference to a form signed by the applicant which has been exhibited by Ms Grealy. While Ms Grealy asserts that the Appeals Authority is independent of the Minister, Mr Pendred says that in practice this is not the case as the Minister retains staff at the premises of the Appeals Authority providing secretarial services and further consulting with the appeals authorities prior to the hearing of appeals and providing documents and information to them concerning applicants and other matters. He says that the Appeals Authority has no security of tenure and its members are paid by the Minister on a case by case basis. He says further that the posts of Appeals Authority are not publicly advertised but are filled by the Minister in a secret or undisclosed manner further to no statutory authority and without any safe grounds as to the manner of appointment.

A supplemental affidavit has been sworn by Linda Grealy. She says that she does not propose addressing the observations of Mr Pendred in his affidavit in so far as

they constitute arguments of law. She denies any failure to respond to the correspondence from Mr Pendred. She says that the applicant was notified of the decision to refuse his appeal by letter dated the 31st December, 1998. A copy of this letter was sent to Mr Pendred as the applicant's solicitor. She points out that a letter was received from Mr Pendred on the 7th January, 1999, questioning this decision on appeal and making an application on behalf of the applicant for leave to remain in the jurisdiction. This letter was replied to on the 15th January, 1999, by the Asylum Division of the Department indicating that the applicant's asylum application was finalised and could not be considered further. She points out that the portion of Mr Pendred's letter dealing with the applicant's application for leave to remain was brought to the attention of the Immigration Division who wrote to Mr Pendred on the 23rd February, 1999.

Unfortunately a substantial portion of Ms Grealy's supplemental affidavit can also be categorised as submissions or argumentation and I do not propose to refer to same. However, she points out that the procedures adopted by the Minister for determination of asylum claims provides that the applicant is to be provided with all of the material on which the original decision was based and that this information is provided to the Appeals Authority. On this basis she says that the applicant was in possession of and aware of the contents of all of the material constituting his application before the date of his appeal hearing.

Ms Grealy further points out that the recommendation of the Appeals Authority was sent to Mr Pendred in his capacity as the appellant's solicitor on the 26th May, 2000, together with a notification that it would be exhibited on behalf of the respondents. She accepts, however, that the recommendation was not supplied to

the applicant with the letter of refusal of his appeal. She points out, however, that no request for the recommendation was made by or on behalf of the applicant between the date of the letter refusing his appeal (the 31st December, 1998) and the date upon which leave to apply for judicial review was first sought in the High Court (being the 12th October, 1999). With reference to the form signed by the applicant dated the 28th June, 1996, Ms Grealy points out that this was forwarded to Mr Pendred on the 21st July, 1998, together with all other material on which the original decision to refuse the applicant's claim for refugee status was based. This same material was also provided to the Appeals Authority. Ms Grealy denies that she made any suggestion in her principal affidavit that there were shortcomings in the consideration of the applicant's application. She indicated that a previous system whereby appeals were referred to the U.N.H.C.R.. for comment has been replaced by a system which allows an unsuccessful applicant for refugee status a right of appeal and an oral hearing in the context of that appeal. She denies that she was the authorised officer who made the decision on appeal on behalf of the Minister in respect of the applicant's appeal.

A further affidavit was sworn by the applicant on the 25th September, 2000. He deposes to his ongoing concerns. He said that he was not aware that the application form which he completed at the request of the Minister would be used as evidence against him in seeking asylum. He says he furthermore was not aware that what he said at the interview which he was required to attend would also be used against him. The applicant further says that he was not aware that the Minister's officials to whom he was recounting his experiences in what he was informed was confidence would proceed to oppose his refugee status. He says that he did not have any legal advice or representation prior to or when completing the application form or

attending for the interview and further he had no money to get a solicitor. The applicant further refers to the situation in Sierra Leone since he left the country and deposes to his understanding of the current situation there.

A further affidavit has been filed sworn by Mr Pendred on the 1 Oth November, 2000. This affidavit was sworn in support of an application to cross-examine the deponents who have sworn affidavits on behalf of the respondents and consists essentially of comment on Ms Grealy's affidavit.

Submissions on behalf of the applicant

It was submitted by Mr David Goldberg S.C. on behalf of the applicant that, in relation to the standard of proof applied, facts were taken into account which should not have been taken into account by the respondents. It is submitted that unreasonable conclusions were reached. He points out that the applicant has to show a basis for subjective fear. He says that a query is raised as to whether there is an objective basis for same. Counsel referred this court to the definition at Section 2 of the Refugee Act 1996 defining "refugee". Counsel further referred this court to the decision of the United States Supreme Court in the case of ***Immigration and Naturalization*** *Service* v *Cardoza-Fonseca* 480 US 421,107 S.ct.1207; 94L.Ed.2d.434; 1987 US where it was held by a majority that in order for an alien to show a *"well founded fear of persecution "* within the meaning of Section 101(a)(42) of the Immigration and Nationality Act 1952 so as to be eligible for consideration for asylum as a refugee under Section 208(a) of the Act, the alien need not prove that it was more likely than not that he or she would have been persecuted if returned to his or her own country. The effect of Section 208(a) was that an alien who qualified

as a refugee under Section 101(a)(42) which reflected the language of Article 1(A)(2) of the U.N. Convention of 1951 might be granted asylum at the direction of the Attorney General.

In that case Stevens J. delivering the majority opinion of the Supreme Court observed that the language appearing in Section 243(h) of the Act, where deportation of an alien to any country was prohibited if the Attorney General determined that his "life or freedom would be threatened in such country on account of race, religion, nationality, membership in **a** particular social group or political opinion", had no subjective component whereas the word "fear" appearing in the requirement for an alien to show a 'well founded fear of persecution' in Section 101(a)(42) of the Act made the eligibility determination turn to some extent on the subjective mental state of the alien. In that case Stevens J. indicated:

> "That the fear must be 'well founded' does not alter the obvious focus on the individual's subjective beliefs, nor does it transform the standard into a 'more likely than not' one. One can certainly have a well founded fear of an event happening when there is less than a 50% chance of the occurrence taking place."

Stevens J. stated that there was no room for the view that because an applicant had only a 10% chance of being shot, tortured or otherwise persecuted he or she had no *"well founded fear"* of the event happening.

Having referred to the U.S. decision, counsel referred me to the decision of the House of Lords in the case of ***R v Secretary of State for the Home Department. Ex Parte Sivakumaran*** [1988] 1 All E.R. 193 and submitted that the House of Lords

had applied a different test to that applied in the U.S. Supreme Court. It is submitted that applying the U.S. Supreme Court test that one has to demonstrate a reasonable degree of likelihood that the applicant will be persecuted for a conventional reason if returned to his own country. In this decision it can be observed that the House of Lords considered appropriate the test applied by Lord Diplock in the case of *R v Governor of Pentonville Prison, ex P. Fernandez* [1971] 1 W.L.R. 987, [1971] 2 All E.R. 691. Based upon a perceived difference between the decisions of the English Courts on the one hand and the U.S. Court on the other hand, it is submitted that the test applied in the instant case by the respondents was the inappropriate test. It is to be noted that in the *Sivakumaran* case the House of Lords reversed the decision of the Court of Appeal which itself quashed the Secretary of State's decision on the ground that he had misinterpreted the expression *"well founded fear"* because an applicant for refugee status had merely to establish that he had what appeared to him to be a well founded fear of persecution. It is to be noted that in this case the House of Lords held that the requirement in Article 1(A)(2) of the Convention that an applicant for refugee status had to have a *"well founded* fear of persecution" if he was returned to his own country meant that there had to be demonstrated a reasonable degree of likelihood that he would be so persecuted, and in deciding whether the appellant had made out his claim that his fear of persecution was well founded, the Secretary of State could take into account facts and circumstances known to him or established to his satisfaction but possibly unknown to the applicant in order to determine whether the applicant's fear was objectively justified. Counsel further referred this court to the decision in the case of *R.* v. *Secretary of State for the Home Department ex parte Adams* [1995] All E.R. (EC) 177, [1995] 3

CMLR476 [1995] 1 A.C. 293 and to the case of *Karaviakaran* v *Secretary of State for the Home Department* [2000] 3 All E.R. 449. Based upon this latter decision counsel submits that the appropriate course is as indicated by Lloyd J., namely to take a broader approach rather than a narrow linguistic approach. It is submitted that in the instant case what the respondent has done is to have taken a narrow linguistic approach rather than a broad approach. Counsel submits that by reference to authority in Australia and to the *Cardoza-Fonseca* case that the Australian and U.S. Supreme Courts have accepted a test different to that applied by the Courts in England. With regard to the approach of the Courts in Australia, counsel has referred this court to the decisions of the High Court of Australia in 1989 in the case *of Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 C.L.R. 379. It is submitted by counsel that on an examination of the facts of the instant case, the applicant made out a case for subjective fear of persecution and that insofar as this was rejected that it represents a misapplication of the law and of the U.N. Convention. It is further complained that the respondents took into account matters which were not relevant to the determination, in particular the manner in which the applicant left Sierra Leone and got to the port of embarkation and his arrival in Spain. It was further submitted that what was allegedly said to the sea captain of the ship on which the applicant travelled should not have been taken into account. It is submitted that in the instant case the respondents relied totally on evidence to which they gave no credence and gave no consideration to evidence about which they were certain, evidence which they thought was probably true, or evidence on which the authorities were entitled to attach some credence even if they were not to go so far as to say that it was probably true. It is submitted that the respondents did not examine

whether the applicant's story was inconsistent with the known facts.

Counsel further referred this court to paragraph 199 of the U.N. Handbook wherein it is stated:

> "While an initial interview should normally suffice to bring an applicant's story to life, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts. Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case."

Counsel further referred me, by reference to the decision of McHugh J. in *Chan's* case at page 425, to paragraph 42 of the U.N.H.C.R. Handbook which reads as follows:

> "42. As regards the objective element, it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgment on conditions in the applicant's country of origin. The applicant's statement cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin - while not a primary objective - is an important element in assessing the applicant's credibility. In general, the applicant's fear should be considered well founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the

same reasons be intolerable if he returned there."

On behalf of the applicant it was submitted by Mr McMorrow that there has been a breach of the principle of *nemo iudex in causa sua* to the effect that the appeal authority is not independent of the Minister and that he is in effect deciding an appeal from himself. Counsel referred this court to the decision of the High Court in the case of *Flanagan v University College Dublin* [1988] I.R. 724 together with the cases of *O'Donoghue* v *The Veterinary Council* [1975] I.R. 398 and *Heneghan v Western Regional Fisheries Board* [1986] I.L.R.M225. It was submitted by counsel that in the instant case the Minister in effect opposed the appeal which was to be determined. Counsel further referred this court to the decision of the European Court of Human Rights in the case of *Van De Hurk v Netherlands* [1994] 18 E.H.R.R. 481 dealing with the application of Article 6 of the European Convention on Human Rights relating to a fair hearing. Counsel submitted that there was a perception of bias and that there will be loss of standing of a body as a tribunal if its decision is susceptible to being ignored or overturned. Counsel referred this court to a number of other authorities dealing with the question of objective bias or in other words a perception of bias. In the instant case he relied upon the fact that the materials supplied to the Appeals Authority are supplied by the Minister for Justice. It is submitted that the presenting officer went beyond the requirements to inform the Appeals Authority of what the case was about. Counsel further submitted that in the instant case the materials supplied were to form a view in the mind of the Appeals Authority before the appeal ever came on for hearing. It is submitted that the action in question was taken by public servants who are servants and agents of the Minister.

Submissions on behalf of the respondents

On behalf of the respondents Ms Nuala Butler of counsel submitted that it is important to place the case in its correct context insofar as the issue of delay had been raised. It is submitted that in its general context this is an unusual case. It is submitted that for nine months after the appeal the applicant did nothing. The applicant applied for humanitarian leave to stay in the State and it was indicated that this had been granted by the Minister. Nevertheless the applicant has continued to prosecute the instant proceedings before this court. It is submitted that this can have no impact on the humanitarian leave granted. At the same time it was conceded on behalf of the respondents that the applicant is entitled to take the proceedings. It is submitted that many of the issues raised and much of the material relied upon is that relating to an existing state of war. It is submitted that it has never been an issue in the instant case that Sierra Leone was in a state of war. Based upon this fact alone it is submitted that it does not give an automatic right to refugee status. It is submitted that the applicant must show persecution for a convention reason. It is submitted that the existence of a civil war of itself is not sufficient but it may be an element to be taken into account in assessment of whether a convention reason exists. With reference to the Immigration Act it is submitted that different reasons may exist. With regard to the issue of delay it is submitted that there was considerable delay on the part of the applicant in bringing this application to this court insofar as the appeal decision was notified to the applicant on the 31st December, 1998, and he did not move to this court until the 12th October, 1999, when he applied to the President for leave to apply by way of an application for judicial review and for an order extending the time to make the application for leave. It is clear from the correspondence that

the applicant had instructed his solicitor prior to the 7th January, 1999, when Mr Pendred wrote following upon the hearing of the appeal. This letter is referred to in turn by Mr Pendred in his principal affidavit at paragraph 10 thereof. In his affidavit Mr Pendred says that there were no replies to the letter of the 7th January, 1999. However, Ms. Grealy in her affidavit indicates that two replies were sent in response to this letter. The first of these letters is one dated the 15th of January, 1999 in which it was stated on behalf of the respondent Minister that the applicant's asylum application had been fully processed and had been finalised and that it could not be considered further under the asylum procedures. It was stated that a decision had been made and that the applicant was bound by time limits to make a submission to the Minister if he wished to be allowed to remain in the State on humanitarian grounds. A further letter was sent on the 23rd February, 1999, on behalf of the Immigration Division by Colette Morey indicating that the applicant's leave to remain in the State on humanitarian grounds was then currently under examination and that a decision would be made on the basis of the information then available on the matter. Accordingly, it is submitted that it is not the case here that no reply was received by Mr. Pendred to his letter but it is true, nevertheless, that no decision had been made in relation to the request to remain in the State on the basis of humanitarian leave at that time. There was no further correspondence thereafter from Mr. Pendred to the Minister. It is submitted that thereafter nothing occurred for a further six months prior to the bringing of the application for leave to institute these proceedings by way of an application for judicial review. It is submitted that it was open to the applicant to apply to the High Court if he so wished after the receipt of the letter in January, 1999 indicating that it was not the intention of the Minister to reopen the application

for refugee status. On this basis it is submitted that the applicant has failed to move promptly and in accordance with the Rules of the Superior Court and that no good reason has been advanced on foot of which this court should grant an extension of time to the applicant. It is further submitted that no issue has been taken with regard to the correspondence referred to by Ms. Grealy in her affidavit.

Standard of Proof

With regard to the submissions made on behalf of the applicant that a higher standard of proof should have been applied than actually applied in the instant case, it is submitted that the standard contended for is not one that is applied in other jurisdictions. It is submitted further that the standard applied by the respondents in the instant case is equivalent to the standard applied both in the United States of America and in Australia. It is submitted that it had never been contended for by the respondent that the appropriate standard was on the balance of probabilities. The contention on the part of the respondents is that the appropriate test is one of "reasonable likelihood". It is submitted that this is the lowest civil standard known in this jurisdiction consistent with having to establish anything at all. Counsel queried whether the standard of "reasonable likelihood" varies in any event from the standard of a "reasonable chance" or "real chance" referred to in the authorities cited on behalf of the applicant. It is submitted that there is nothing improper with the standard of reasonable likelihood relied upon by the respondents. It is further submitted that there is no significant difference between that standard and the standard as applied in other jurisdictions. Counsel submitted that one has to examine what was being contended for in the other cases cited by counsel as opposed to the

decision of the court in those cases.

By reference to the case of *Cardoza-Fonseca.* counsel submitted that the U.S. Supreme Court considered the argument advanced that the appropriate standard was one of a clear probability. The United States Court of Appeals for the Ninth Circuit held that the "well-founded fear" standard that governs asylum proceedings under Section 208(a) of the Immigration and Nationality Act is different and more generous than the "clear probability" standard that governs withholding of deportation proceedings under Section 243 (h) of the Act. This decision was affirmed by the United States Supreme Court. The judgment in this case indicates that under Section 243(h) of the Immigration and Nationality Act, the Attorney General was required to withhold deportation of an alien who demonstrated that his "life or freedom would be threatened" on account of one of the listed factors if he is deported. The Supreme Court mdicated that it had previously held that to qualify for this entitlement to withholding of deportation, an alien must demonstrate that "it is more likely than not that the alien would be subject to persecution" in the country to which he would be returned. However, under Section 208(a) of the Act, the Attorney General was authorised in his discretion to grant asylum to an alien who is unable or unwilling to return to his home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion". At page 448 of the report it is indicated by the Supreme Court that the contrast between the language used in the two standards, and the fact that Congress used a new standard to define the term "refugee" indicated that Congress intended the two standards to differ. In this particular case the court addressed Congress' intent with respect to the meaning of the term "well-founded

fear".

The Supreme Court indicated that while the argument put forward was that in support of the proposition that the "well-founded fear" and "clear probability" standards were equivalent, it was not attempting to set forth a detailed description of how the "well-founded fear" test should be applied. It indicated at page 458 of the report that instead it merely held that the Immigration Judge on the Board of Immigration Appeals was incorrect in holding that the two standards are identical. The court indicated that it was led inexorably the conclusion that to show a "well-founded fear of persecution" an alien need not prove that it is more likely than not that he or she will be persecuted in his or her home country. In the conclusion of the majority of the court at page 459 it is stated that Congress did not intend to restrict eligibility for refugees seeking to be accorded refugee status to those who could prove that it is more likely than not that they will be persecuted if deported.

Counsel submitted that in the ***Sivakuntaran*** case (supra) the House of Lords did not consider itself applying a markedly different standard and in this regard reference has been made to the judgment of Lord Diplock in the case of **R. v. *Governor of Pentonville Prison. Ex P. Fernandez*** [1971] 1 WLR 987 [1971] 2 All ER 691 where Lord Diplock indicated that "a reasonable chance", "substantial grounds for thinking", "a serious possibility" amounted to various ways of describing the degree of likelihood of the detention or restriction of the fugitive on his return which justify the court in giving effect to the provisions of Section 4(l)(c) of the Fugitive Offenders Act, 1967 and in respect of which Lord Keith of Kinkel said that he considered that the passage appropriately expresses the degree of likelihood to be satisfied in order that the fear of persecution may be well-founded. In that case he

indicated that a lesser degree of likelihood than it was more likely than not that the fugitive will be detained or restricted if he was returned was sufficient.

Counsel further referred this court to the decision of the Australian High Court of Appeal in the case of ***Chan* v. *Minister for Immigration and Ethnic Affairs*** (supra) where at page 389 of the report Mason CJ. stated as follows:-

> "I agree with the conclusion reached by McHugh J. that a fear of persecution is 'well-founded' if there is a real chance that the refugee will be persecuted if he returns to his country of nationality. This interpretation accords with the decision of the House of Lords in Reg v. Home Secretary: Ex. Parte Sivakumaran. There Lord Keith of Kinkel spoke of the need for an applicant to demonstrate 'a reasonable degree of likelihood that he would be persecuted for a convention reason if returned to his own country' and Lord Goff of Chieveley spoke of 'a real and substantial risk of persecution'. Lord Bridge of Harwich, Lord Templeman and Lord Griffiths agreed with Lord Keith and Lord Goff. A similar opinion was expressed by the Supreme Court of the United States in Immigration and Naturalisation Service v. Cardoza-Fonseca where Stevens J., with reference to his statutory provision (which reflected the language of Article 1(A)(2) of the Convention), in delivering the majority opinion and citing Immigration and Naturalisation Service v. Stevic observed that the interpretation favoured by the majority would indicate that 'it is enough that persecution is a reasonable possibility'. I do not detect any significant difference in the various expressions to which I have referred. But I prefer the expression 'a real chance' because it clearly conveys the notion of

a substantial, as distinct from a remote chance, of persecution occurring and because it is an expression which is being explained and applied in Australia: see the discussion in Bouehev v. The Queen. (1986) 161 CLR 10. per Mason, Wilson and Deane JJ. If an applicant establishes that there is a real chance of persecution, then his fear, assuming that he has such a fear, is well-founded, notwithstanding that there is less than a 50 per cent chance of persecution occurring. This interpretation fulfils the objects of the Convention in securing recognition of a refugee status for those persons who have a legitimate or justified fear of persecution on political grounds if they are returned to their country of origin."

Based upon these cited decisions it is submitted by counsel that the applicant in the instant case has failed to show that the standard applied by the respondent was illegal or contrary to the objectives of the U.N. Convention or wrong in any way.

It is submitted that the process of determination of a claim for refugee status is not a judicial process. Counsel has referred this court to a portion of the judgment of Gaudron J. in the *Chan* case where at page 413 of the report he stated as follows:-

"The humanitarian purpose of this Convention, the fact that questions of refugee status will usually fall for executive or administrative decision and in circumstances which will often not permit of the precise ascertainment of the facts as they exist in the country of nationality, serve, I think, to curb enthusiasm for judicial specification of the content of the expression well-

> founded fear as it is used in the Convention. Perhaps all that can usefully be said is that a decision-maker should evaluate the mental and emotional state of the applicant and the objective circumstances so far as they are capable of ascertainment, give proper weight to any credible account of those circumstances given by the applicant and reach an honest and reasonable decision by reference to broad principles which are generally accepted within the international community."

It is submitted that in the instant case the recommendation meets these requirements. While it has been alleged that the respondents ignored relevant matters and on the other hand picked on details, it is submitted that there has been a misinterpretation of the recommendation of the Appeals Authority and in some respect the applicant is inaccurate. It is submitted by counsel that the respondents were entitled to ask why the applicant did not originally seek the protection of the Spanish authorities. It is submitted that this is a relevant matter to be addressed. On the other hand it is clear that in making the recommendation the Appeals Authority did not draw too much significance from the fact that the applicant was unfamiliar with the asylum procedure. It is further submitted that the account given by applicant of his flight from Sierra Leone is relevant in assessing the credibility of his claim. Insofar as the Appeals Authority believed that the applicant's claim lacked credibility he has given a reason for this by reference to the route he took and by reference to the fact that he could not name the port from which he took a boat to Spain. He further expressed the view that he did not understand how the applicant could have made the very long trip in such a short space of time. With regard to what was alleged to have

been stated by the applicant to the master of the ship, this is relied upon, not as a matter going to the facts of the case but as to the credibility of the applicant. In this regard it is noted that the applicant is alleged to have said that he wanted to see the world. This appears on a document signed by the applicant. If one reviews the report of Mr Martin O'Mahony, it will be seen that it was considered that a number of matters on the file cast doubt on the applicant's credibility. When one examines the report it can be seen that aside from questioning the credibility of the applicant's claim the conclusion reached was that even if his version of events was to be believed that it did not amount to showing a well founded fear of persecution. It is submitted that the applicant's story has been inconsistent throughout the process. In that regard reference is made to the document signed by the applicant on the 18th of July, 1997, which makes no reference to being captured by rebels in Sierra Leone and contains no account of his father's house being burnt down. It is submitted that when the accounts given by the applicant are considered and one establishes a significant variation in relation to the stories given that this reasonably gives rise to a finding in the nature of that made by the Appeals Authority regarding the credibility of the applicant. It is submitted that this does not involve ignoring the evidence but is assessing the credibility of the evidence by reference to the account given by the applicant. It is submitted that insofar as a consideration was reached that the applicant's account lacked credibility that there is nothing on file leaving this court to conclude that the decision of the Appeals Authority was unreasonable or irrational. It is submitted that there is ample support for the conclusion reached and that it cannot be said that anything material was ignored by the Appeals Authority.

With regard to the submission made that the appeals process represents a

decision by the Minister in which he has a vested interest in the outcome, it is submitted that the Minister has no vested interest in the outcome and that there is no breach of the principle of *nemo iudex in causa sua* It is submitted that the appeals process is one of applying standards drawn from international conventions. It is submitted that many of the factors relied upon by the applicant's solicitor as indicative of a lack of independence are common features of quasi judicial bodies in this State. The provision of secretarial and administrative back up is essential to the work of such bodies to enable them to proceed in an efficient manner. The making available of funds or personnel for such back up services through a government department is a standard administrative mechanism and cannot and should not be construed as imputing a bias in the decisions of the quasi judicial body involved. Such a general imputation necessarily involves an assumption of a lack of professionalism and integrity on the part of all of the relevant civil servants and of the persons appointed as Appeals Authorities. Further, it is submitted that it is unusual for persons to be appointed to quasi judicial bodies or positions on a permanent or semi permanent basis akin to a judicial appointment. It is submitted that the first respondent has, as regards applications for asylum in the State, been faced with a relatively sudden and very substantial increase in the number of such applications in the late 1990s with a consequent increase in the number of appeals. It is further submitted that the involvement of the Department in the appeals process does not mean that the first respondent has any interest in the outcome, such as to render the appeals process unfair. Once the applicant appealed he was furnished with a copy of the departmental file. The Appeals Authority on being assigned the appeal was furnished with the same documentation.

It is further submitted that an appeal from a failed application for refugee status is not equivalent to an appeal in *inter partes* litigation. In different but somewhat analogous circumstances the Supreme Court has rejected a contention of bias (in the *nemo iudex in causa sua* sense) in respect of the determination of a claim of public interest privilege by a tribunal of inquiry on foot of whose order the documents in question were sought. Hamilton CJ stated as follows in ***F. Murphy* v *Flood*** [1999] 3 I.R. 97 at p. 105:-

> "As to the second proposition relied upon on behalf of the applicant - that the procedure adopted by the respondent is in breach of the *maxim nemo iudex in causa sua,* - it is hardly appropriate to describe the respondent as being in a "dispute" with the applicant. He has exercised the powers vested in him by the Oireachtas for the purpose of the inquiry which he had been required to conduct by the two Houses and the applicant has sought to resist the exercise of the powers on the ground of privilege. The decision as to whether such a claim is well founded is not in any sense the resolution of a "dispute" between the Tribunal and any other party and the same could be said of the many other rulings which a tribunal of this nature may be required to make in the course of its lengthy proceedings.
>
> "The object of the maxim is to ensure that in judicial and quasi judicial proceedings, decisions are not made by persons who could be perceived as having an interest in the decision, subject to certain

> qualifications in the case of quasi judicial tribunals, the membership of which may necessarily include persons who might be regarded as having an interest in the decision. In that sense the respondent has no interest whatever in the decision."

Based upon this quotation it is submitted that in the instant case there is no dispute as such between the applicant and the respondent and his officials. With regard to the allegation of a perception of bias it is submitted that insofar as there is no dispute in that sense, that objective bias does not fall to be considered.

It is submitted that the appeal taken in the instant case was conducted in accordance with published procedures. In the instant case the appeal was conducted in accordance with paragraph 15 of the published procedures for processing claims for asylum. It is further submitted that the procedures at paragraphs 17 and 18 indicate that the Appeals Authority will make a recommendation to the Minister as to whether refugee status should be granted and further that a duly authorised officer of the Department will make a final decision on refugee status on behalf of the Minister based on the recommendation of the Appeals Authority but subject to considerations of national security or public policy *(ordre publique).* Further with regard to the allegation of bias it is submitted that the applicant has not identified any personal involvement of anyone warranting a conclusion of bias.

In reply, Mr Goldberg has referred to the report of Mr McGinty which indicates that he considered that the applicant had given him an account which appeared to be credible and consistent with the country information. With regard to the appeal itself it is submitted that there is no reference to the applicant establishing

a well founded fear. It is submitted that the applicant's case cannot be dismissed solely on the basis of credibility unless the decision maker shows what weight is given to the other facts before him. It is submitted that the Appeals Officer gives no weight to other considerations, and that the applicant should have been granted asylum having regard to the report of Mr McGinty.

With regard to the standard referred in the *Cardoza-Fonseca* case it is submitted that nothing approaching this standard was taken into account in the instant case.

With regard to the alleged delay on the part of the applicant in moving to this court for judicial review, counsel has referred to the recent decision of the Supreme Court on the reference under Article 26 of The Illegal Trafficking Bill and to the portion of the judgment in that case dealing with extension of time. It is submitted that in the instant case the applicant was entitled to await the outcome of his application to stay in the country on humanitarian grounds before moving to this court.

Conclusions

In the first instance in regard to the standard of proof applied by the Appeals Authority of a well founded fear of persecution, I am satisfied, having regard to the decision of the High Court of Australia in the *Chan* case, that no essential difference exists between the standard as applied in the US case *ofCordoza Fonseca* and that applied by the Australian Courts or the courts in England as reflected in the decisions *of Chan* or *R ,v Secretary of State (Ex Parte) Sivakumaran.* I am satisfied that the decision in the applicant's case correctly applied paragraph 42 of the

U.N.H.C.R. handbook, previously referred to herein, in particular insofar as the decision involved a consideration of the relevant background situation of the applicant. It is clear that a knowledge of conditions in the applicant's country of origin is an important element in assessing the applicant's credibility. The applicant's case largely turned on an assessment of credibility and that is something that is clearly permissible in light of the guidelines set out in the U.N. handbook previously referred to herein. I am further satisfied that in considering the applicant's case it has not been sought to apply a standard in excess of that applied in other jurisdictions in the application of the U.N. Convention. I am further satisfied that the respondent had regard to the fact that the assessment of the applicant's fear was an assessment of a subjective matter. With regard to the test applied by the Appeals Authority in the instant case that there must be a "reasonable likelihood" of persecution, I am satisfied that this accords with the test applied by the House of Lords in the *Sivakumaran* case where Lord Keith of Kinkel spoke of the need for an applicant to demonstrate "a reasonable degree of likelihood that he would be persecuted for a conventional reason if returned to his own country".

I am further satisfied that it has not been shown in the instant case that the decision reached on the applicant's case was in any way irrational or unreasonable.

With regard to the submission that there had been a breach of the principle *of nemo iudex in causa sua* I am satisfied, insofar as the scheme applied in the instant case was one applying standards agreed in an undertaking to the United Nations High Commissioner for Refugees in circumstances where the scheme was not on a statutory footing, that there has been no breach of the principle of *nemo iudex in causa sua*. Insofar as the matter fell to be considered by an authority in the absence of statutory framework, it had to be considered by the Minister himself who is the

person vested in law with the decision whether to grant or refuse an application for refugee status or by an official to whom the power has been delegated. I am further satisfied that the involvement of officers within the Department of Justice, Equality and Law Reform was not such as to offend the principle of *nemo iudex in causa sua*. The Minister had no particular interest in the outcome of the appeal process and, furthermore, the guidelines or rules governing applications were published and these indicate that as a matter of general principle the recommendation of an Appeals Authority will be followed. Insofar as consideration of objective bias is concerned, I am satisfied that no reasonable man in the position of the applicant upon being properly informed of the matter would conclude that there was a likelihood of bias in the instant case.

On a further level, I am satisfied that the applicant's claim must fail on the basis of a failure to move to this court promptly for the relief which he has sought I am satisfied on the evidence before me that the applicant has not shown any reasonable basis upon which this court should extend the time for application for judicial review. Were the matter to be determined on the basis of the discretion of this court I would in my discretion refuse the relief which the applicant seeks.

In conclusion, I am satisfied in the first place that the applicant received a proper appeal from the original refusal of recognition of his refugee status. Secondly, that the applicant has failed to show that the first or second named respondent exercised discretionary powers without regard to relevant considerations or discriminated evidence in a partial manner. Thirdly, the applicant has failed to show that the respondents applied an arbitrary, inapplicable or unestablished standard of proof in reaching the recommendation which was made. Fourthly, I am satisfied that the decision did not take into account any irrelevant considerations and furthermore

did not fail to take into account relevant considerations in the determination of the applicant's case. It is furthermore clear that the applicant was provided with all the evidence that was before the decision maker. In these circumstances the applicant's claim in these proceedings must fail and I accordingly refuse him the relief sought.