Case No: C5/2008/1888 & B

Neutral Citation Number: [2009] EWCA Civ 771
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No: AA/00286/2008]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 18th June 2009

Before:

LORD JUSTICE WARD
LORD JUSTICE CARNWATH
and
LORD JUSTICE WILSON

- -

Between:

HS (AFGHANISTAN)

Appellant

- and -

SECRETARY OF STATE
FOR THE HOME DEPARTMENT **Respondent**

- -

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Ms L Dubinsky (instructed by Lawrence Lupin) appeared on behalf of the **Appellant**.
Mr S Singh (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.

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Judgment

Lord Justice Carnwath:

1. This is an appeal against a reconsideration decision made by the Asylum and Immigration Tribunal. The appellant made claims to asylum under Article 3 and 8 of the Human Rights Convention. Her Article 8 claim has now been conceded following the grant of permission by Richards LJ. Keene LJ has since granted permission to appeal on the grounds which are before us.

2. I take the summary of her case from her counsel's skeleton. She is an Afghan national who arrived in the UK and claimed asylum on 27 November 2007. Her youngest child arrived with her at the same time and is dependent on her claim. Her claim is that she and her husband were deliberately active in the PDPA, the Afghan Communist Party, and that her husband was a senior official in the KHaD, the security service under the former communist regime. After the fall of the communist regime, her husband was repeatedly detained and persecuted, first by the Mujahadeen and then by the Taliban because of his links with the former regime. He fled Afghanistan in 1999 to the UK. She subsequently relocated to Kabul with her children seeking safety but she was harassed by members of the public who were aware of her own and her husband's political past. Her home was raided in September 2006 by armed men allied to the current Afghan government. She was subsequently targeted by a local commander/warlord with ties to the current regime demanding first her elder then, after the eldest daughter was sent out of Afghanistan, her youngest daughter in marriage.

3. Subsequently the appellant's home was repeatedly raided and her family repeatedly attacked. During these raids her father was severely beaten and died from his injuries. Her son was temporarily abducted and she herself was raped. That is -- in very short summary -- her case.

4. It is also necessary to bear in mind what happened to her husband. He applied in this country for asylum and made claims under Articles 2, 3 and 8 of the Convention. That was in August 2007. In August 2007 Immigration Judge Hodgkinson heard that claim. He accepted that the husband had been a senior KHaD officer and was at real risk of serious harm if returned to Afghanistan as a result of his former role. However, he found that he had been responsible for torture in his KHaD role and was therefore excluded from the Refugee Convention under Article 1F and from humanitarian protection under paragraph 339B of the Immigration Rules. That finding was confirmed when a request for reconsideration to the Secretary of State was refused. That was on 3 January 2008.

5. The consequence is that he has been granted discretionary leave until 1 June 2009, but his application for extension of that is outstanding. Going back to the position of the applicant before us, her claim was refused by the Secretary of State on 20 December 2007: that is, before the final confirmation of the decision on the husband's case. The Secretary of State's decision letter is a very detailed review of her case running to some eight pages, in the course

of which it is made clear that the Secretary of State does not accept her credibility.

6. The matter then came before Immigration Judge Martins, who gave her decision on 3 April 2008. Before Judge Martins the appellant was represented by counsel, Ms Shirjan, and she gave evidence. There was also a medical report prepared on her behalf by Dr Emma Russell, chartered clinical psychologist. Immigration Judge Martins set out the material that had been put in front of her and the arguments in considerable detail. Her decision runs to some 24 pages. In the course of that, she summarised the Secretary of State's reasons for challenging the credibility of the claimant. She also referred to the previous decision in relation to the husband and she referred to the medical report and to the submissions that had been made by each party on that.

7. Against that extended background, the reasons for the conclusion are stated quite shortly. The material paragraphs read as follows:

> "95. I had the opportunity of hearing and observing the appellant give evidence which she did in a straightforward manner and against the background of the objective evidence and the doctor's report I find her credible. I note that the core of the appellant's husband's account of what happened to him in Afghanistan was accepted by the Immigration Judge in his appeal. I accept that the appellant herself was politically inclined and had involvement with the Communist Party as did her husband. She is a family member of a high ranking KHaD officer. I find that satisfactory explanations have been given by the appellant herself and by Dr Russell for the confusion that occurred in terms of her accounts and the occasions on which the commander's men and family attended at her home. The appellant herself has stated that she became confused and the doctor's report is to the effect that in the light of her mental state the confusion is not unusual or surprising. The only significant discrepancies in the appellant's account were in this respect.
>
> 96. I find that as a family member of a high-profile KHaD officer and as someone who had communist leanings herself and now as a woman without any male protection in Afghanistan, on her return, she will be at risk of persecution on account of the political opinion imputed to her and on account of the fact that she is a member of a particular social group namely women in Afghanistan.

> 97. In the light of these findings I also conclude the appellant would be at risk of inhuman and degrading treatment in breach of her rights under Article 3."

8. It should be noted that immediately before stating her conclusions she referred to a Country Guidance case called NS [2004] UKIAT 00328, which dealt with the position of women in Afghanistan. That, among other things, discussed the position of women in Afghanistan and made clear that membership of a particular social group is not sufficient to support a claim under the Refugee Convention. There needs to be some nexus between the persecution and the reason for the persecution: see paragraph 66. But it went on, at paragraph 74, to refer to the circumstances of that case which, on the evidence before the adjudicator had shown that there had been harassment, ill-treatment and serious harm meted out to the appellant and her family which was motivated by animosity due to the family's connections to the former communist regime and it was "a form of intentional destruction of the family". Also, it referred to the evidence in that case of attempts to force the appellant into a marriage against her will. So when the Judge Martins in this case referred to the position of women in Afghanistan as a particular social group, she clearly had well in mind the guidance given in that case. So she allowed the appeal under the Convention and under Article 3 and 8.

9. The Secretary of State then sought reconsideration on the grounds that the immigration judge:

> "has materially erred by failing to give clear or sustainable reasons as to why [she] considers the appellant has [a] well-founded fear of persecution in Afghanistan."

The grounds then referred to the conclusions based on her being a family member of a KHaD officer and having communist leanings, and continued:

> "It is submitted that it is not clear on what evidence the Judge bases his finding that the appellant would be at risk on return to Kabul due to her relationship with her husband, who has been found to be a high-profile KHaD officer."

It was submitted that the findings based on her communist leanings were sufficiently clearly stated.

10. That application came before Senior Immigration Judge Storey, who on 24 April ordered reconsideration for the following reasons:

> "The grounds, which submit that the IJ failed to give adequate reasons for finding that the A would be at risk by virtue of her husband's KHaD involvement, disclose an arguable area of law, having a real possibility of leading on reconsideration to a different decision."

It is to be noted that up to this point there had been no challenge to the immigration judge's conclusions as to the credibility of the appellant overall. The first stage of the reconsideration was concerned simply with the question whether there had been an error of law. That resulted in a decision of two senior immigration judges on 14 May 2008. They had heard submissions on behalf of the Secretary of State dealing with the point on which reconsideration had been ordered; but they noted also that the representative had concluded his initial submission by arguing:

> "that Immigration Judge Martins had also failed to give adequate reasons for accepting the appellant's account despite the detailed challenges to her credibility raised by the respondent in her reasons for refusal letter. Whilst it was open to the Immigration Judge to decide whether or not she believed the appellant's account, it was necessary for her to explain why she accepted it despite those detailed credibility challenges. She had not done so. That was likely to be a material error or law on her part."

11. As I understand it, that was the first time that any notice had been given that the grounds were to extend to the question of credibility. The decision records that, in response to a question from the bench, Ms Shirjan, who was again representing the appellant:

> "accepted that the Immigration Judge's finding of in she had accepted the credibility of the appellant's evidence despite the challenges raised by the respondent in her reasons for refusal letter were short. Nevertheless, she submitted that they did not show any error of law on the Immigration Judge's part."

12. On the credibility point the judges say this:

> "14. We are satisfied that she did [make a material error of law]. Although she accepted the account given by the appellant in evidence before her, there had been detailed credibility challenges to that account raised by the respondent in her reasons for refusal letter. It was therefore incumbent upon the Immigration Judge to explain why she had nevertheless accepted the appellant's account despite those detailed challenges. She did not do so. That was a material error on her part."

13. They then go on to deal with the question of risk on return. They say that the judge had failed to explain why she considered that the appellant would be at risk on return because of the KHaD background and the communist involvement. They say that she had also erred in failing to take account of the current country guidance in a case called SO and SO (KHaD --members and

family) Afghanistan CG [2006] UKAIT 00003 and they summarise the headnote in these terms:

> "Given recent evidence, which includes evidence about significant numbers of former KHaD officers working in the present Afghanistan Intelligence Service, it cannot be said that past service in KHaD suffices to establish a risk on return. Cases have to be considered by weighing up a number of factors, including some personal to the appellant. In this regard it is important to bear in mind that past or present personal conflicts are more important than political conflicts. In assessing whether family members of a PDPA and/or KHaD members would be at risk, it must be borne in mind that there may be factors reducing or removing risk such as the death of a PDPA/KHaD member, and the amount of time that has lapsed since his death."

The judges go on:

> "In light of that country guidance authority, which the Immigration Judge was required as a matter of law to take into account when reaching her decision, it was necessary for her to consider and identify the risk factors which she regarded as applicable in the appellant's case. She did not do so. That was likewise an error of law on her part."

They directed that reconsideration was to take place on the basis "that all issues including credibility are to remain at large".

14. That decision was made on 19 May. The second stage of the reconsideration was a few months later. The hearing was on 5 August 2008 before two immigration judges and, again, the appellant was represented by the same counsel. Those judges took a very different view of the case to that taken by Judge Martins. They thought that the starting point should be the findings made in relation to the determination of the husband's appeal and they went on to consider the consequence of that. They took into account the Country Guidance case of SO and SO, to which I have referred, and they made a number of observations on the consistency and credibility of the appellant's account, which I will not go into in detail at this stage. Then, at paragraph 38, they considered the clinical psychologist's report, which they found not to be of assistance to them because it was based to a large extent on the appellant's own account. They generally did not accept the credibility of the appellant and they rejected her case on all grounds.

15. The matter has now come to this court. Unfortunately, as is the way in these cases, we have to go back over rather a lot of ground, because it is well established that challenges to the first decision in this sequence cannot be resolved until the process has been completed.

16. So there are two sets of issues: first, issues relating to the credibility of her account of what has happened to her in the past, and secondly, issues relating to the risk on return. Ms Dubinski, who has appeared for the appellant, says in relation to the first that there was no error of law in Judge Martins' decision but that in any event the senior immigration judges should not have allowed that matter to be reopened, it not having been flagged up in the Secretary of State's grounds of appeal; and further, in any event, that the reconsideration by the two immigration judges at the end of the process was itself flawed.

17. On the risk of return question, which she accepts was properly before the reconsideration panel, she says they erred in finding that there was any error of law in Judge Martins' decision and, again, she says their own reconsideration was flawed.

18. This case raises again the problem of the extent to which, on reconsideration decisions, all aspects of the claim should be revisited. This has been considered in at least three cases to which we have been referred. The leading authority is DK (Serbia) v Secretary of State [2001] WLR 1246. But there have been two other cases, in both of which I gave the lead judgment: HF (Algeria) [2007] EWCA Civ 445 and NJ (Iran) [2008] EWCA Civ 77.

19. In HF (Algeria) I identified the three steps which are involved under the procedure in the AIT (at paragraph 13). First, one has a decision that the tribunal may have made an error of law which might have affected the decision, leading to an order for reconsideration. Then, secondly, there is the reconsideration itself, falling into two stages: (a) a decision that there has been an error of law; (b) if so, reconsideration of the substance of the appeal. So, there are three steps. The first in this case was Senior Immigration Judge Storey's decision; then 2(a), whether there has been an error of law (that was the two senior immigration judges' decision) ; and finally 2(b) the reconsideration, which was the two immigration judges' decision. There has been some discussion before us as to whether I, or indeed Latham LJ in DK (Serbia), were addressing ourselves to stage 2(a) or 2(b) and whether there is any difference between them.

20. In this connection I would start by referring to paragraph 21 of Latham LJ's judgment in DK (Serbia), where, having noted in the previous paragraph that the jurisdiction is being exercised by the same tribunal conceptually at all stages, he continues:

> "In the first instance, in relation to the identification of any error or errors of law, that should normally be restricted to those grounds upon which the immigration judge ordered reconsideration, and any point which properly falls within the category of an obvious or manifest point of Convention jurisprudence, as described in *Robinson* (supra). Therefore parties should expect a direction either from the immigration judge ordering reconsideration or the Tribunal on reconsideration

> restricting argument to the points of law identified by the immigration judge when ordering the reconsideration. Nothing in either the 2004 Act or the rules, however, expressly precludes an applicant from raising points of law in respect of which he was not successful at the application stage itself. And there is no appellate machinery which would enable an applicant who is successful in obtaining an order for reconsideration to challenge the grounds upon which the immigration judge ordered such reconsideration. It must however be very much the exception, rather than the rule, that a Tribunal will permit other grounds to be argued. But clearly the Tribunal needs to be alert to the possibility of an error of law other than that identified by the immigration judge, otherwise its own decision may be unlawful."

21. One can see the background to that analysis in the Rules which Latham LJ set out at paragraph 7. Rule 26 deals with the first stage where the immigration judge considers whether there may have been an error of law. It says, in terms, that he is not required to consider any grounds other than those set out in the application notice. Then by rule 27(2), where an immigration judge makes an order for reconsideration, his notice of decision must state the grounds on which the Tribunal is ordered to reconsider its decision on the appeal and he may give directions for the reconsideration of the decision on the appeal, and so on. Rule 31 deals with the procedure for a reconsideration and the Tribunal may at that stage give directions as to the matters to be taken into account.

22. That sequence, to my mind, clearly implies that the whole process is going to be limited in the normal case to the grounds on which the first judge has ordered reconsideration, which in themselves, in the normal case, will be limited to those on which reconsideration have been sought. I accept, as Latham LJ makes clear, that is not mandatory in the sense that no departure is possible. But, as he says, that should be very much the exception. In NJ (Iran), which is perhaps closer to the present case in that the expansion of the grounds came at the second stage, I (with the agreement of Hallett LJ and Lawrence Collins LJ) applied the same approach. I said that, in that case, the second-stage panel had been wrong to allow reconsideration of the whole case in circumstances where that had not been challenged in the request for reconsideration.

23. I also noted the argument that the AIT had been entitled to conclude that the appropriate course was for reconsideration as a whole, and that one could not compartmentalise the various issues. I said:

> "25. I see the theoretical force of this argument. But it ignores practical reality and human considerations. Judgment of credibility in cases such as this is inevitably a difficult and imperfect

> exercise. Different tribunals hearing the same witnesses may reach quite different views. A search for theoretical perfection is doomed to failure. In practice many of these cases fall naturally into two parts: the first depending on as assessment of the applicant's account of his own past experiences, the second on a more objective appraisal of his prospects on return. That was the distinction drawn in *PE* and it is equally valid here in my view. It is sensible case-management and convenient for everyone to treat the decision on the first part as a fixed factor, so that the debate concentrated on the second part."

24. I said that from a human point of view it was important not to add to the "gruelling experience" of appearing in front of the asylum for the second time on an issue which the applicant had already succeeded. I also pointed to the consequence of that case, which was what would otherwise have been a relatively narrow reconsideration was expanded into a full scale review of the whole case, leading to a long reconsideration running to some 68 paragraphs. Mr Singh fairly says that in that case there was a difference, in that the second stage panel had ordered full reconsideration without in fact finding a material error of law on the credibility point, whereas here such an error has been found. However, I believe that what I said there about the need for fairness and efficiency should be taken into account in all these cases, as a matter of case management if not a strict law, to ensure that the whole process does not get extended beyond any reasonable proportionality.
25. Notwithstanding these general comments, it seems to me, for reasons which will become apparent, that it is unnecessary to make a final conclusion on their application to this case. In any event, the issue is complicated by the fact that, when the matter came before the final tribunal, counsel for the appellant did not take a point on the scope of the rehearing. Indeed, having noted that this was a matter that had come as an appeal to be heard afresh, the decision records:

> "There was no dissent from either representative in relation to our doing so."

26. Mr Singh fairly says that that, in those circumstances, it is not reasonable now to say that this court can go behind what was clearly common ground. He draws an analogy with another case in which I gave the lead judgment, MJ (Iran). In response, Ms Dubinsky has sought to rely on evidence that there was not in fact a concession and that at most there was acquiescence. However, I prefer not to enter into discussion of that point, because it is unnecessary to do so.
27. It seems to me that she is entitled to succeed on the main point, which is that there was nothing wrong, or at least nothing sufficient to justify an order for reconsideration, in Immigration Judge Martins' decision. In that context it is important to have in mind that both challenges were reasons challenges. For that we have been referred to the helpful guidance given on this, as on most

subjects, by Brooke LJ in R (Iran) v SSHD [2005] EWCA Civ 982. In that judgment he referred to the well-known cases in the Court of Appeal, indicating the limited circumstances in which one should set aside the judgment for inadequate reasons. I note in particular the emphasis that the reasons are required to explain why the judge reached his or her decision, but that it is not necessary in every factor in the balance is to be examined or set out.

28. Brooke LJ referred to the judgment of Lord Phillips, MR, in English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, which revealed the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when he or she was making material findings.

29. A claim that the reasons are inadequate must be distinguished from a claim that the reasons are wrong. That is only permissible in this jurisdiction if it can be shown that the reasons are not merely wrong, in the sense that the conclusions are not ones with which the appellant or indeed the court might agree, but that they are irrational. In this case, as I say, the challenge is to the adequacy of the reasons. So we have to ask ourselves whether we have any serious doubt about Immigration Judge Martins, thought processes leading to her decision. For my part, I do not see any real difficulty in that. On the credibility issue she relied on having heard and observed the appellant and on the way in which her evidence was given, and she looked at that against the background of the objective evidence and the doctor's report. That was an entirely appropriate approach for a judge , and indeed that was her job. She also relied on the fact that "the core" of the appellant's husband's account had been accepted. That reference to the core is in fact a reference back to the decision in her husband's case, where the judge did indeed accept, as he said, the core in his case, although he did not accept his evidence on certain other aspects.

30. Immigration Judge Martins was also assisted by the evidence of Dr Russell both as supporting the credibility of her account in general, but also as helping to explain some of the inconsistencies which the Secretary of State had found in her account. That, to my mind, is all perfectly clear. It is even clearer when it is read against the background of the very long rehearsal of the cases of both the appellant and the Secretary of State. Thus, when one finds the judge accepting the appellant's account on particular issues, if one wants more detail one can go back and look at the detail of her case as summarised in the decision. Similarly, on the other question of risk on return, on which the conclusion is very shortly stated in paragraph 96 of the decision, one needs to look at that against the background of the case as it was presented. At paragraph 75 and 76 there is a fuller statement of what Ms Shirgan was submitting on the appellant's behalf, which, as I read it, the judge by implication accepted.

31. Mr Singh points out that the Secretary of State had, both in the decision letter and in the submissions made to Immigration Judge Martins, set out a whole range of inconsistencies and factors which should have been taken into

account and with which it was necessary for the judge "to deal". He has helpfully summarised those points in paragraph 33 of his skeleton. With respect, that, to my mind, is a misstatement of the position. If by "to deal" he means that there is some duty to go through those points one by one and say how they were taken into account, that, to my mind, is directly contrary to the approach which one finds in R (Iran). So far as the Secretary of State relied on her inconsistencies, the judge dealt with those by what by way of explanation of her confusion.

32. One matter is given particular emphasis by Mr Singh. That is the apparent departure in this decision from what had been found by the judge in the husband's case. There the husband had given evidence about enquiries made about him in Afghanistan after he had left. Obviously his own ability to talk about that was somewhat limited, but his 16-year-old daughter had given evidence in support. That evidence was not accepted by the judge on that occasion. He rejected this aspect of the husband's case, and he said that the daughter's evidence could be given no weight whatsoever in regard to her claim that people had been enquiring about the appellant in recent years.

33. Mr Singh refers to authority to the effect that, where one has sequential asylum cases relating to the same or overlapping issues in relation to members of the same family, one should not reopen them without good reason. He says that Immigration Judge Martins has not given any reasons for taking a different view. It is true that Immigration Judge Martins does not spell out why she is not adopting the same approach as the previous judge, but there is no doubt that she has had regard to the earlier decision. It seems to be fairly obvious why she took a different view, because the evidence before her was different. Before the first judge the only evidence on this point had been the 16-year-old daughter, whereas before Judge Martins the appellant herself gave strong evidence about what had been going on since her husband had left. In my view, Immigration Judge Martins was entitled to give weight to that and not to regard himself as bound by finding on evidence given by her daughter at the previous hearing, at which she had not been present.
34. I conclude that the appeal should succeed. I would make one other point. I referred in HF (Algeria) to the inherently imperfect nature of the enquiry which has to take place in these sort of cases. Assessing credibility of harrowing accounts of this kind, relating to events in a part of the world of which the immigration judges will not have direct familiarity, is a inevitably very difficult task. I do not find it necessary to go on to consider the reasoning of the final panel, but it is perhaps illustrative of the point. Whereas Immigration Judge Martins regarded the appellant as giving direct and persuasive evidence, and was assisted by the support given by the psychologist, the latter tribunal took exactly the opposite view. What was seen by the first tribunal as convincing directness was seen by the second tribunal as "feistiness", and as apparently throwing doubt on the conclusions reached by Dr Russell based on her demeanour at her interview. I do not need to go into the appropriateness of the tribunal making that sort of judgment in relation to expert evidence. But the difference illustrates how difficult these cases can be, and why it is important that there should be a presumption of respecting the first decision, unless there is something materially wrong with it

in law, or unless the reasons really are so defective that one simply cannot work out what was the basis of the decision.

35. For those reasons, I would allow this appeal. I would restore the decision of the order made by Immigration Judge Martins.

Lord Justice Wilson:

36. I agree. I agree that at first stage reconsideration the tribunal erred in discerning an error of law in the way in which Immigration Judge Martins had arrived at her positive credibility findings. In those circumstances, as my Lord has explained, there is no need for us this afternoon to enquire at length whether it was open to the tribunal at first stage reconsideration to enquire into whether there had been an error of law in that regard, notwithstanding that the order for reconsideration had not encompassed reference to that error. My Lord has referred to the cases which, put very simply, clearly state that if there is to be any enlargement of the reconsideration beyond that identified in the notice of appeal and made subject to the order for reconsideration, there have to be exceptional circumstances – see DK (Serbia) per Latham LJ at 21 and HF (Algeria) per my lord Carnwath LJ at 23.

37. But there is surely an element of elasticity within the concept of exceptional circumstances, and there may need to be a differentiation, as Mr Singh has submitted to us, between two different situations, the first where, at first stage reconsideration, there is an enlargement of the enquiry beyond the tramlines set by the order for reconsideration, and secondly, the situation where, at second stage reconsideration, the enquiry goes beyond the tramlines set by the first stage reconsideration. At least one can say if the litmus test in relation to all these matters is to be fairness that if there is an enlargement at first stage reconsideration, both sides at least have time to prepare for the enlarged enquiry which will take place at second stage. So broadly, one might be able to infer that even more would be needed to justify enlargement at second stage than enlargement at first stage. Put in terms of exceptionality, it might be that the exceptionality test is somewhat more easily satisfied in the case of enlargement at first stage and conversely even less likely to be satisfied in respect of purported enlargement at second stage. It does seem that this appellant has been very well represented, not only on this appeal by Ms Dubinsky but by an admirable solicitor and advocate, Ms Shirjan.

38. The difficulty, however, is that at first stage reconsideration, when invited to address the tribunal on issues of credibility, she did not, with whatever degree of respect, object to that line of enquiry by reference to the notice of appeal and thus the order for reconsideration, that, during the period between late May, when she would have received the first stage reconsideration "pink slip", and early August, when the second stage reconsideration was conducted, she made no objection in writing to the tribunal or to the Secretary of State about the enlargement of the enquiry into issues of credibility, and that, at the second stage reconsideration hearing early in August, she did not in any way record her objection to the enlargement of the enquiry, with the result that, as my Lord has explained, the second stage tribunal recorded in their determination that there had been no dissent to the overall reconsideration of all matters

including credibility, and indeed they had taken there to have been an agreement in that regard.

39. Speaking for myself I would have great doubt whether in such circumstances it would be open to the appellant now to contend to this court that it had been wrong for the first stage enquiry to have enlarged the ambit of the enquiry so as to include the credibility issue. Happily, however, there is no need to reach a concluded view on that point.

Lord Justice Ward:

40. I have had similar difficulties in this appeal. Senior Immigration Judge Storey seems to me to have indicated quite clearly that the ground upon which the matter was to be reconsidered was a limited one. Had the matter come to me *de novo* I would have thought that Rule 27(2) of the Asylum and Immigration Tribunal Procedure Rules of 2005 precluded the first reconsideration going outside the scope of his order, because that rule provides that:

> "(2) Where an immigration judge makes an order for reconsideration -
>
> a) his notice of decision must state the grounds on which the Tribunal is ordered to reconsider its decision on the appeal"

41. I would have thought that was a limitation to the jurisdiction of the first tribunal, and that to exceed that limit upon jurisdiction was a fundamental error. But that is not the way the law has developed. It seems DK (Serbia) allows extension, not only if another error of the gross sort envisaged by Robinson appeared before the first reconsideration, but where it was exceptional to extend the case. I confess I find it difficult to see what was exceptional in this case which justified the broadening of the enquiry. But it was extended, and there is no challenge to the jurisdiction of either the tribunal at the first reconsideration or on the second reconsideration. Absent of challenge to jurisdiction, we may be bound by what actually happened. That, however, does not deprive this court of its own duty to ask whether the decision of Immigration Judge Martins was reasoned both in the conclusions she arrived at in finding the applicant credible and in the conclusion she arrived at that the application would be at risk of persecution if she were returned. I prefer therefore to duck all these difficult questions, like my Lords, and to ask whether this decision of Immigration Judge Martins was fully reasoned. In a nutshell I have to say to myself: do I understand why she decided how and why she did? I am in no doubt about it. She found the applicant credible because she had seen her and observed her and she gave her evidence in a straightforward manner, in other words, the classic advantage a trial judge has of seeing the witness's demeanour and deciding accordingly. That by itself is often enough to bolster a credibility finding. I saw her, I heard her, I believed her: *cadit quaestio.* But the judge went on to add that there was support from the core of the husband's account and there was

support from the medical opinion of Dr Russell which explained why she was likely to be confused, and in those circumstances the only significant discrepancies in her account were not unusual nor surprising. So I understand perfectly why the immigration judge reached the conclusion. Whether the reasons were good or bad or indifferent is not the subject of a reasons challenge; ditto when we consider why she thought there was no risk. She thought there was no risk because she was a member of a high profile officer; she had communist leanings; she was a woman without male protection in Afghanistan. Good, bad or indifferent as those reasons may be, they explain why she came to that decision and that is good enough for me.

42. I would allow the appeal accordingly.

Order: Appeal allowed