1996 M.P. No. 3961

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

BETWEEN

CHIENG A LAC and 1375 others — Applicants

and

(1) THE DIRECTOR OF IMMIGRATION

(2) THE SUPERINTENDENT OF WHITEHEAD DETENTION CENTRE

(3) THE SUPERINTENDENT OF HIGH ISLAND DETENTION CENTRE

(4) THE SUPERINTENDENT OF LAI CHI KOK RECEPTION CENTRE

(5) THE SUPERINTENDENT OF VICTORIA PRISON

(6) THE SUPERINTENDENT OF KAI TAK VIETNAMESE MIGRANT TRANSIT CENTRE — Respondents

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Before: The Hon. Mr. Justice Keith in Court
Date of Commencement of Hearing: 7th January 1997
Date of Delivery of Ruling: 20th January 1997

[Hearsay evidence is admissible in habeas corpus proceedings if it is impracticable for the relevant facts to be proved in any other way, even if the evidence would not be rendered admissible by any of the provisions of Part IV of the Evidence Ordinance (Cap. 8).]

R U L I N G

INTRODUCTION

Ms. Gladys Li Q.C. for the Applicants objects to the admissibility of various passages in some of the affirmations of Choy Ping Tai, the Assistant Director of Immigration and the head of the Vietnamese Refugees Branch of the Immigration Department. One of the grounds of objection is that a number of the passages of which complaint is made contain hearsay evidence which is not rendered admissible by any of the provisions of Part IV of the Evidence Ordinance (Cap. 8). The primary response of Mr. Nicholas Bradley for the Respondents is that hearsay evidence is admissible on applications for habeas corpus, even if it does not come

within any of the provisions of Part IV of the Evidence Ordinance. The fact that the evidence is hearsay, and perhaps hearsay on hearsay, goes only to the weight which should be attached to it. References in this ruling to sections of an ordinance are references to sections of the Evidence Ordinance.

THE *RAHMAN* CASE

The basis on which it is said that hearsay evidence is admissible on an application for habeas corpus, even if it is not rendered admissible by the Evidence Ordinance, is the recent decision of Collins J. in *R. v. Secretary of State for the Home Department ex p. Rahman* [1996] 4 All E.R. 945. An appeal from his decision was recently dismissed by the Court of Appeal: "The Times", 24th December 1996. However, I proceed on the basis of Collins J.'s judgment at first instance because (a) the report in "The Times" is necessarily incomplete, and (b) it looks as if the Court of Appeal approved Collins J.'s approach to the issue of principle which he had to decide.

The facts of the case were that the Applicant, who lived in Bangladesh, applied for a certificate of entitlement to live in the U.K. The basis of his application was that his father, Abdus Somed, was already living in the U.K. His application was granted. However, after he had arrived in the U.K., two letters were received which accused him of not being the son of Abdus Somed. Accordingly, entrance clearance officers made inquiries in Bangladesh. Through interpreters, they spoke to the inhabitants of two local villages about the Applicant's true name and his

paternity. Their responses were translated and, together with an interview of the Applicant, they satisfied the Secretary of State that he was not the son of Abdus Somed, and that he had therefore obtained the certificate of entitlement by deception. He was served with a notice that he had entered the U.K. illegally, and he was detained pending his deportation. He applied for a writ of habeas corpus, contending that, as the villagers' evidence was hearsay and thus inadmissible, the court could not take that evidence into account in determining whether the Secretary of State had proved that he had entered the U.K. illegally. Collins J. held that, although the villagers' evidence was hearsay, the court could take it into account. It was, however, for the court to decide what weight to attach to it.

In order to understand the route by which Collins J. reached his conclusion, it is necessary to consider an alternative scenario. Suppose that, instead of applying for a writ of habeas corpus, the Applicant had applied for judicial review of the detention order. On such an application, the question whether he was the son of Abdus Somed would have been a jurisdictional or precedent fact. That is the effect of the decision of the House of Lords in *R. v. Secretary of State for the Home Department ex p. Khawaja* [1984] A.C. 74. The court would have had to decide whether on the material before the Secretary of State, including the villagers' evidence, the evidence was sufficient to justify the Secretary of State's belief that the Applicant was not the son of Abdus Somed. As a matter of form, the court would have been reviewing the Secretary of State's decision. However, in substance it would have been conducting a fact-finding exercise of its own. In that respect, there would have been no difference between an application by the Applicant for judicial review and his application for a writ of habeas

corpus. In both applications, the court's role would have been to decide whether the Secretary of State had proved to the court's satisfaction that the Applicant was not the son of Abdus Somed.

It was against that background that Collins J. came to the conclusion which he did. He identified a number of passages in the speeches in *Khawaja* which indicated that hearsay evidence was admissible in that case, even though the court's role was essentially a fact-finding one. On this footing, the villagers' evidence would have been admissible if the Secretary of State's decision had been challenged by judicial review. Collins J. reasoned that it should likewise be admissible in the habeas corpus proceedings before him, because the court's fact-finding role was the same.

In my view, the *Rahman* case is distinguishable from the present case. In *Rahman*, it had been open to the Applicant to challenge the legality of his detention either by habeas corpus or by judicial review. Whichever remedy had been sought, the question for the court to decide would have been the same. Accordingly, the admissibility of the evidence should not have been dependent on the nature of the remedy which the Applicant had chosen to seek. On the other hand, in the present case, the Applicants can really only challenge their detention by habeas corpus. None of the grounds on which the legality of their detention is challenged (apart from one) relates to the legality of the original orders pursuant to which they have been detained. Accordingly, the basis on which Collins J. ruled the villagers' evidence admissible in *Rahman* - namely, that it would have been admissible on an application for judicial review which it had

been open to the Applicant to bring - does not apply to the present case because judicial review was not available to the present Applicants.

IMPRACTICABILITY

But that is not the end of the matter. I return to *Khawaja*, and to those passages which show that hearsay evidence was admissible in that case, even though the court's role was essentially a fact-finding one. The observations in those passages were made in the context of judicial review proceedings, because the legality of the Applicants' detention in *Khawaja* was challenged by way of judicial review only. However, it is still necessary to identify the rationale for treating the hearsay evidence in *Khawaja* as admissible. That is because the hearsay evidence in the present case may be rendered admissible if the rationale applies equally to it.

Khawaja consisted of two cases: Khera and Khawaja. They had been living in Pakistan and India respectively. They both obtained leave to enter the U.K. After they had gone to live in the U.K., further information about them came to the attention of the Home Office. As a result, immigration officers decided that they had obtained leave to enter the U.K. by deception. They were ordered to be detained pending their removal from the U.K. They applied for judicial review of the detention orders. In order to understand the relevant passages in the speeches in *Khawaja*, it is necessary for me merely to mention that Khera was alleged to have lied about his marital status when he underwent a medical examination in India. Although he was alleged to have claimed that he was unmarried, he had married his wife almost two years earlier.

Lord Templeman said at pp.128C-129A:

"... the burden of proving that leave to enter was obtained by fraud and that consequently the entrant is an illegal entrant liable to arrest and expulsion can only be discharged by the immigration authorities manifesting to the satisfaction of the court a high degree of probability. It does not follow that the court must disregard written statements by witnesses who are not available for cross-examination or documents which are not supported by direct written or oral evidence as to the circumstances in which they came into existence.

In habeas corpus and judicial review proceedings evidence will be by affidavit, subject to cross-examination at the discretion of the court. It may be necessary for the court to reach a conclusion on the available information and without the benefit of oral evidence or of a prolonged investigation in the country of origin of the entrant. If fraud has been concealed for a number of years, witnesses of recorded statements may not be available to provide affidavits as to the circumstances in which those statements were prepared, composed and signed. Those statements may appear before the court as exhibits to affidavits from persons in whose custody the statements have been preserved. It will be for the court to determine what weight to attach to any of the information provided. It will be for the court to consider any explanations furnished by the entrant and his witnesses and to judge the reliability of the entrant under cross-examination.

In Khera's case, for example, it is said that there was available a record of Khera's medical examination bearing the thumb-print or signature of Khera himself and the signature of the medical officer. The record is said to have contained the statement that Khera was

> unmarried. The medical officer might or might not have been available, and might or might not have recollected the interview. Faced with any such record Khera himself could have given evidence and been cross-examined as to the recorded statement that he was unmarried. It would have been open to the court on consideration of the record and other circumstances, and on consideration of the cross-examination of Khera, to have decided that fraud was not made out. But it would also have been open to the court to conclude that Khera had lied to the medical officer, and to disbelieve any proffered explanation that the record had been prepared previously to Khera's marriage, or that Khera from Amritsar had failed to make himself understood to anyone present at the interview in Delhi. It would also have been open to the court to infer that Khera had told a lie to the medical officer and subsequently kept silent to the immigration officer about his marriage because he must have appreciated that his marriage had defeated or prejudiced his chances of obtaining admission to the United Kingdom. But in the event the immigration authorities failed to produce any record of the medical examination which in correspondence they claimed to exist."

It is plain that if the record of the medical examination had been produced, Lord Templeman would have regarded its contents - particularly the attribution to Khera of the admission that he was unmarried - as admissible, even though, in the absence of an affidavit from the medical officer who compiled the record, the contents of the record would normally have been inadmissible as hearsay.

Although Lord Templeman was the only member of the House of Lords to address the question of admissibility expressly, it is plain that the

other members agreed with him. The evidence as to what was alleged to have been said at the medical examination was included in the affidavit of the immigration officer who had made the decision challenged. Since the record of the medical examination was not exhibited to the affidavit, the evidence of the immigration officer was at the very least second-hand hearsay. Despite that, none of the judges questioned the admissibility of the immigration officer's evidence. What they questioned was the weight to be attached to it, and they concluded that it did not amount to sufficient proof of any deception on Khera's part.

Why would Lord Templeman have regarded the contents of the record as being admissible despite the fact that they were hearsay? The answer can only lie in his comments about the unavailability years later of evidence from overseas. It is noteworthy that Lord Templeman referred to habeas corpus proceedings as well. Accordingly, what Lord Templeman was saying was that evidence which would not normally be admissible is nevertheless admissible in habeas corpus and judicial review proceedings (even where the court's role is essentially a fact-finding one) if it is not practicable to expect the primary evidence to be available, whether because of the passage of time, or because the evidence would have to be obtained from overseas. The fact that the person within whose knowledge the material facts are does not file an affidavit and is not available for cross-examination as to its contents goes only to the weight to be attached to its contents, and not to their admissibility.

For these reasons, I rule that the mere fact that the evidence of Mr. Choy is hearsay does not necessarily render it inadmissible. Even if it

could not be rendered admissible by Part IV of the Evidence Ordinance, it would still be admissible if it was not practicable for the relevant facts to be proved in any other way.

OTHER CONSIDERATIONS

(i) Mr. Choy's sources. Much of Mr. Choy's evidence relates to the practice adopted by the Vietnamese authorities to decide whether to permit the repatriation to Vietnam of Vietnamese asylum-seekers in Hong Kong. Three specific criticisms are made. First, in many instances, Mr. Choy has not identified whether his evidence is based on his own knowledge or on what he has been told. Secondly, to the extent that his evidence is based on what he has been told, it is frequently silent as to the source of that information, and when it was given to him. Thirdly, it is possible that Mr. Choy's informants, whoever they were, did not have first-hand knowledge themselves of what they told him, and that they were themselves going only on what they had been told by others.

I propose to proceed on the basis that where there is doubt as to whether Mr. Choy's evidence is based on his own knowledge or on what he has been told, I should assume that it was not based on his own knowledge. However, it is plain from Mr. Choy's 15th affirmation that, to the extent that his evidence in his earlier affirmations was based on what he was told, the source of his information were various Vietnamese officials. Moreover, it is difficult, if not impossible, for Mr. Choy to identify which Vietnamese official gave him a particular piece of information and when. As he puts it in paras. 4 and 12 of his 15th affirmation:

> "4. In the course of my duties I have frequent meetings and dialogue with officials representing the Vietnamese Government's Ministries of the Interior and Foreign Affairs, including senior officers from the Immigration Department. I am the person responsible for liaising with the Vietnamese Government Delegation in Hong Kong and with other Vietnamese officials when they visit Hong Kong including, for example, the recent interviewing team which comprised a Divisional Head of the Vietnamese Immigration Department and three others. I am also involved in receiving visitors from Vietnam who come to participate in policy level meetings.
>
> 12. Since my attachment to the Vietnamese Refugees Branch, I have absorbed an enormous amount of information about Vietnam, its laws, its culture, its Government (especially its Immigration Department), and, most importantly, the practical implications to the Vietnamese officials of the implementation of the international policy of repatriation to Vietnam of those screened out as non-refugees. I cannot always remember exactly when and how I have received the information that I now know. It is an accumulation of knowledge gathered over a period of time."

The fact that some of Mr. Choy's evidence is based on information given to him by Vietnamese officials who he cannot now identify, or on dates which he cannot now remember, or from officials who might not have had direct knowledge themselves of the information, is important for two reasons. It renders it even more impracticable for the Respondents to prove by orthodox means the facts to which the information relates. On the other hand, to the extent that that impracticability renders the evidence admissible, it affects to a considerable extent the weight to be given to the evidence.

(ii) Interpreters. Mr. Choy candidly observed in para. 17 of his 15th affirmation that the majority of his conversations with Vietnamese officials had been conducted through interpreters. He does not speak Vietnamese, and few of the Vietnamese officials speak either English or Cantonese. Mr. Choy does not indicate which of his conversations were not conducted through interpreters. It may be that he simply cannot now remember. But the absence of evidence from him on the topic means that I have no alternative but to assume that where he relies in his evidence on what he has been told by Vietnamese officials, interpreters were used.

Does that automatically convert what would have been first-hand hearsay (assuming that the Vietnamese officials were basing what they told Mr. Choy on their own first-hand knowledge) into second-hand hearsay? My initial reaction was that it did not. The interpreters were simply the medium, the conduit, through which the conversations took place. However, having done my own research on the topic, it is plain that that is not the correct approach. In *R. v. Attard* (1959) 43 Cr.App.R. 90, the prosecution sought to prove a conversation between the defendant (who only spoke and understood Maltese) and a police officer (who only spoke and understood English). The judge at first instance held that the evidence of the police officer was hearsay and inadmissible in the absence of evidence from the interpreter who had been present. This was adopted as a correct statement of the law by the Court of Appeal in *Attorney-General v. Phung Van Toan* [1992] 1 H.K.C.L.R. 56. The failure to call the interpreter as a witness - if only to say that he had well and faithfully interpreted the speech of one person to another and vice versa - meant that the evidence

would be hearsay. I note that Collins J. in ***Rahman*** thought likewise: see p.947h.

It follows that I must treat everything which Mr. Choy claims he was told by Vietnamese officials as second-hand hearsay. Section 47(1) renders only first-hand hearsay admissible: see section 47(3). It follows that what Mr. Choy claims he was told by Vietnamese officials can only be admissible if it is not practicable for the information which they gave to Mr. Choy to be proved in any other way.

(iii) Mr. Choy's conclusions. Ms. Li complains that on occasions Mr. Choy has purported to give factual evidence when in fact he has been expressing his opinions on what conclusions should be drawn from various facts. To the extent that that was what Mr. Choy was doing, Mr. Bradley seeks to justify that practice. He argues that Mr. Choy's evidence relating to the practice of the Vietnamese authorities in deciding whether to permit the repatriation to Vietnam of Vietnamese asylum-seekers in Hong Kong is expert evidence, and therefore admissible on that ground by virtue of section 58(1). I cannot go along with that argument. Mr. Choy may have acquired considerable knowledge about the practice of the Vietnamese authorities, but that knowledge is still based on what he was told. I do not believe that it would be right to regard him as qualified to give evidence about the conclusions which he has drawn from the facts which he has been told.

THE PARTICULAR PASSAGES

With these considerations in mind, I have decided that a number of the passages in Mr. Choy's affirmations to which objection is taken are in fact admissible. The sources of Mr. Choy's information have been expressed to be Vietnamese officials, even though Mr. Choy has not been able to identify them or the occasions on which they gave information to him. The evidence is at least second-hand hearsay, because I am having to assume that all the information was given to him through interpreters, but I am satisfied that it would not be practicable for the facts to which the evidence relates to be proved in any other way. That applies to the following passages:

(i) Choy (1), para. 11, last sentence.
(ii) Choy (1), para. 14, first sentence.
(iii) Choy (1), para. 19, "but the Vietnamese Government ... of an individual case", and the sentence "The Vietnamese are swamped and it takes time".
(iv) Choy (1), para. 20, second sentence.
(v) Choy (1), para. 37 (save for the first two sentences).
(vi) Choy (4), para. 10, first sentence.

I turn to the other passages in Mr. Choy's affirmations which are said to be inadmissible:

(i) Choy (1), para. 9, last sentence. This sentence is ambiguous. It could mean: "I know of no substantiated case of persecution". Alternatively, it could mean: "There has in fact been no substantiated case

of persecution". Mr. Choy's 15th affirmation suggests that he meant the former, i.e. that in those monitoring reports which he has read, there has been no substantiated case of persecution. I do not propose to decide whether that evidence is technically admissible. That is because Mr. Choy accepts that he does not usually read the monitoring reports prepared by the U.N.H.C.R., and that he has only read some of the monitoring reports prepared by the British and Hong Kong Governments. It does not follow that, because no persecution was substantiated in the particular reports which Mr. Choy has read, therefore persecution has not been substantiated at all. I therefore attach no weight to this evidence, though I am not at present persuaded that the evidence would have been irrelevant. Part of the Respondents' case is that the Applicants have delayed their repatriation to Vietnam by refusing to volunteer for repatriation until recently or at all. This evidence would plainly have been relevant to the reasonableness of that refusal. It may be that I shall decide in due course that the reasonableness of the refusal to volunteer for repatriation is not relevant, and that all that is relevant is the fact of any refusal, but that is not an issue on which I have been addressed at any length, and it would therefore be premature for me to make a final ruling on it.

(ii) Choy (1), para. 14, first sentence. I have already addressed the criticism that this sentence is inadmissible as hearsay. Ms. Li also objects to it on the ground of lack of relevance. I do not agree with that objection. The Applicants' case is that the machinery for repatriation has broken down. The limits placed by the Vietnamese authorities on the number and frequency of flights for returnees under the Orderly

Repatriation Programme, and the recent relaxations on those limits, are relevant to whether the machinery for repatriation has in fact broken down.

(iii) Choy (1), para. 19. I have already addressed the criticism that some of the sentences in this para. are inadmissible as hearsay. No reliance is now placed by Mr. Bradley on the words "giving favourable consideration ... in March 1995". As for the next sentence, Mr. Bradley is content for it to be treated as reading: "It is a fact that Vietnam has given express refusals". However, I rule as inadmissible the sentences: "As far as we can now see ... habitual residents of Vietnam". Those sentences are an expression of Mr. Choy's opinion. There is, however, nothing to prevent Mr. Bradley submitting to me in due course that I should draw from the primary facts the conclusions which Mr. Choy has drawn.

(iv) Choy (1), para. 20, last sentence. Mr. Bradley no longer relies on this sentence.

(v) Choy (1), para. 26, last two sentences. These sentences are again an expression of Mr. Choy's opinion. They are not admissible for that reason. However, there is nothing to prevent Mr. Bradley submitting to me in due course that I should draw, from the primary facts set out in para. 14(f) of Mr. Choy's 15th affirmation, the conclusions which Mr. Choy has drawn.

(vi) Choy (1), para. 28. This para. is also an expression of Mr. Choy's opinion, and is not admissible for the same reason. Again, it is open to Mr. Bradley to invite me to draw the conclusions which Mr. Choy

has drawn. In doing so, he can rely on the primary facts set out in para. 14(g) of Mr. Choy's 15th affirmation, but not the last sentence which is again an expression of Mr. Choy's opinion. However, to the extent that Ms. Li objected to this para. on the ground of irrelevance, I disagree for the same reasons as I gave when dealing with Choy (1), para. 9, last sentence.

(vii) Choy (1), para. 32. Mr. Bradley no longer relies on the second sentence. So far as the third sentence is concerned, it is conceded that Mr. Choy was not at the meeting of 15th March 1995. His evidence is therefore hearsay. It is not impracticable for what was agreed at that meeting to be proved in some other way. Accordingly, the evidence can only be admissible if it comes within section 47(1). Mr. Choy did not identify his source. It is possible, therefore, that the information was given to him by someone who was not himself at the meeting either. I therefore cannot discount the possibility that the evidence is second-hand hearsay. Accordingly, I cannot at present rule the evidence admissible. So far as the fourth sentence is concerned, Mr. Bradley wanted to take further instructions about it, and I was therefore to ignore that sentence until Mr. Bradley asked me to take it into account.

(viii) Choy (1), para. 35. Mr. Bradley no longer relies on this para.

(ix) Choy (1), para. 38, last sentence. Mr. Bradley no longer relies on this sentence.

(x) Choy (2), para. 7, third sentence. A number of sentences similar to this sentence occur elsewhere in Mr. Choy's affirmations. None of these sentences are admissible as evidence. They are merely speculation on Mr. Choy's part as to why it takes the Vietnamese authorities a long time to process all the names sent to them. These sentences are argument on Mr. Choy's part. However, the argument purported to be based on "the large number of cases involved". That is ambiguous. Dealing with the sentence in Mr. Choy's 2nd affirmation by way of example, I do not know whether Mr. Choy is referring to the large number of people whose particulars were sent to Hanoi in July 1995 at the same time as those of Madam Chau, or whether he is referring to the large number of people whose particulars have been sent to Hanoi over the years. Mr. Choy did not resolve that ambiguity in his 15th affirmation. Until he does so, I can attach no weight to his argument because I do not know the factual basis for it.

(xi) Choy (3), para. 7, second sentence. It is unnecessary for me to rule on the objection to this sentence, because Mr. Bradley told me that the information from the British Embassy came in the form of a document, and a copy of the document would be placed before me.

(xii) Choy (3), para. 9, eighth sentence. This sentence purports to summarise paras. 7-10 of Mr. Choy's 4th affirmation. In fact, it is not an accurate paraphrase of them. Paras. 7-10 do not establish that an ethnic Chinese asylum-seeker is regarded as a Vietnamese citizen if he has been issued with a Vietnamese identity card and a birth certificate. In any event,

for the reasons which follow, paras. 7-10 of Mr. Choy's 4th affirmation are inadmissible.

(xiii) Choy (4), para. 7. The passage which is objected to is the reproduction of para. 3 of a document prepared by an official in the British Embassy, Hanoi, in October 1992. It deals with the extent to which Ho Khau (the Vietnamese term for household registration) and Vietnamese identity cards are necessary or desirable in modern Vietnam. In my view, that is not relevant to any of the issues which I have to decide. The issue which I have to decide is whether the possession or non-possession of Ho Khau or a Vietnamese identity card is regarded as relevant by the Vietnamese authorities in determining whether a person is a Vietnamese national. I therefore rule that para. 3 of the document is inadmissible. I should add that the whole of the document is exhibited as part of exhbt. CPT4 to Mr. Choy's 4th affirmation. Objection is taken to paras. 4 and 6 of it. I uphold that objection. Those paras. relate to the extent to which Ho Khau and Vietnamese identity cards are issued to Vietnamese asylum-seekers who are repatriated to Vietnam. Again, that is not relevant to the issue which I have to decide.

(xiv) Choy (4), para. 8. This para. reproduces para. 7 of an unidentified document said to have emanated from the U.N.H.C.R. also in October 1992. It also deals with the extent to which Ho Khau is necessary or desirable in modern Vietnam. For the reasons I have already given, it is irrelevant to any issue which I have to decide, and is inadmissible for that reason.

(xv) Choy (4), para. 9. In this para., Mr. Choy refers to anecdotal accounts of the use to which returnees who are ethnic Chinese can continue to make of their Vietnamese identity cards and the age at which the Vietnamese authorities continue to issue them. Neither of these matters are relevant to any issue which I have to decide. As I have said, the issue which I have to decide is whether the possession or non-possession of a Vietnamese identity card is regarded as relevant by the Vietnamese authorities in determining whether a person is a Vietnamese national. I therefore rule that this para. is inadmissible, and the same applies to the interviews of Tran and A. Sang on which the para. was based.

(xvi) Choy (4), para. 10. This para. is argument, not evidence. I will take it into account in due course, but it is not admissible as evidence.

(xvii) Choy (14), para. 10, first sentence. I have already addressed the criticism that this sentence is inadmissible as hearsay. Ms. Li also objects to it on the ground of lack of relevance. Mr. Bradley realistically accepts that it cannot help on the question whether any particular Applicant delayed his or her repatriation, but I think that it is relevant as demonstrating one of the difficulties allegedly faced by the Hong Kong and Vietnamese authorities in repatriating asylum-seekers who are reluctant to return to Vietnam.

THE EXHIBITS TO MR. BROOK'S 1ST AFFIRMATION

When I ruled that various exhibits to Mr. Brook's 1st affirmation were inadmissible, I did so without having had the benefit of having the

Rahman and *Khawaja* cases cited to me. I must revisit my ruling in the light of them. I remain of the view that exhbt. RB27 is inadmissible. So far as exhbt. RB15 is concerned, I am still highly sceptical whether the reason for the policy of the Government of Vietnam not to accept for repatriation persons who it does not regard as Vietnamese nationals is relevant. But on the assumption that it is relevant, I fear that it may not be practicable for the Applicants to prove the reason for the policy in any other way. I therefore rule that exhbt. RB15, though hearsay, is admissible in these proceedings.

So far as exhbts. RB25 and RB26 are concerned, I ruled that, to the extent that reliance is placed on the information on which the authors' opinions were formed and their conclusions were drawn, that information was second-hand hearsay, and no reliance could be placed on that information. However, I do not think that it was practicable for the Applicants or their solicitors to compile that material themselves, i.e. to interview a large sample of detainees, and to get an even larger number of them to complete a detailed questionnaire. I therefore rule that the information in exhbts. RB25 and RB26 is admissible, just as the authors' opinions and conclusions drawn from that information are.

(Brian Keith)
Judge of the High Court

Ms. Gladys Li Q.C. and Mr. Philip Dykes, instructed by Messrs. Pam Baker & Co., for the Applicants

Mr. Nicholas Bradley, Senior Crown Counsel, for the Respondents