Court of Appeal, Civil Division, before Pill, Dyson and Hallett LJJ. 21st June 2006

JUDGMENT : LORD JUSTICE DYSON:

1. The appellant appeals against a determination of the Asylum and immigration Tribunal ("AIT") of 14 October 2005 dismissing her appeal on asylum and human rights grounds against the respondent's decision to remove her to the Democratic Republic of Congo ("DRC").

2. The appellant is a citizen of the DRC. She arrived in the United Kingdom illegally on 18 August 2001. She claimed asylum. This was refused by the respondent by letter dated 9 January 2002. The letter ("the refusal letter") identified a number of what were described as "serious discrepancies" between the account given by the appellant in her Immigration Interview on 17 September 2001, in her Statement of Evidence Form ("SEF") dated 21 September 2001 and at her Asylum Interview on 12 November 2001. The Secretary of State said that these discrepancies "completely undermine the veracity and credibility of your claim". He concluded that it was unlikely that she had been detained and abused in the way that she described, and in the light of all the evidence available to him, he was not satisfied that she had established a well-founded fear of persecution. On 29 September 2003, the appellant made a witness statement ("the response statement") in response to the refusal letter.

3. She appealed against the Secretary of State's decision. On 19 March 2004, an adjudicator allowed her appeal on asylum and human rights grounds. For reasons that I shall explain, it will be necessary to consider this decision in some detail. In short, the adjudicator found the appellant to be credible and she accepted her account of being subjected to rape and torture while in detention.

4. The Secretary of State appealed to the Immigration Appeal Tribunal ("IAT"). The most important ground of appeal for the purposes of the present appeal was ground 2 which was in these terms:

   "*It is respectfully submitted that the adjudicators credibility findings at paragraph 14 are flawed. It is unclear from the determination as to why the appellant did not give oral evidence at her hearing. Further, the adjudicator has accepted that there are discrepancies in the appellants account but having regard to the appellants statement in response to the refusal letter believes these do not go to the core of her claim. The adjudicator has failed to provide the reasons behind this conclusion and it is therefore submitted that the adjudicator has erred in law and that the discrepancies raised in the RFRL do go to the core of her claim.*"

5. On 17 September 2004, the IAT allowed the appeal and remitted the case for a fresh hearing before a different adjudicator. The IAT stated at para 13 of their determination that the question of law that arose on the appeal was whether the adjudicator "has failed to take into account the points made in the Secretary of State's refusal letter when assessing credibility and has failed to give adequate reasons for accepting the credibility of the applicant's account". The IAT concluded that the adjudicator's treatment of the credibility issue was "not adequate" and that the credibility issues raised by the refusal letter and the response statement should have been "specifically addressed" by her (para 17). At para 18, they said that they could not be satisfied that the issues raised by the refusal letter had been properly taken into account. "The Adjudicator has not given adequate reasons for her finding that the applicant was a credible witness".

6. Before the fresh hearing before an adjudicator could take place, the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (Commencement No 5 and Transitional Provisions) Order 2005 ("the Transitional Provisions Order") came into force on 4 April 2005. The effect of article 5 was that the pending appeal before the adjudicator was to be dealt with by the AIT "in the same manner as if it had originally decided the appeal and it was reconsidering its decision".

7. The fresh hearing took place before the AIT on 8 September 2005. By their decision dated 14 October, they dismissed the appeal. She was given permission to appeal to this court by a senior immigration judge on 15 November. Her notice of appeal was filed on 5 December. She advances several grounds of appeal and contends that the AIT committed a number of errors of law. The Secretary of State accepts that the AIT did indeed commit a number of errors of law and agrees that the appeal should be allowed.

8. The sole issue is what relief this court should grant. Mr Henderson submits that the adjudicator's determination should be reinstated, since (a) the IAT had no jurisdiction to conclude that the adjudicator had made a material error of law in finding that the appellant was a refugee, so that (b) the AIT had no jurisdiction to reconsider her determination. Mr Kovats submits that the IAT did have jurisdiction to decide that the adjudicator had made an error of law because, for the reasons given by the IAT, the adjudicator did in fact make an error of law. Accordingly, he submits that this court should remit the case to the AIT for a reconsideration.

9. As the argument developed, it became clear that the only issue between the parties was whether the adjudicator did make an error of law in relation to her findings as to the appellant's credibility. Before I turn to this issue, I must express my serious concern about the way the Secretary of State has approached this appeal. CPR 52 PD 7.7(1)(b) required him to serve his skeleton argument at least 7 days before the appeal hearing. Despite several requests by the court for the skeleton argument, a skeleton argument was not received from Mr Kovats until the morning of the day before the hearing of the appeal. Quite apart from its lateness, there were several unsatisfactory features about this document. First, apparently because it had not been approved by his client, Mr Kovats did not feel able to send a copy of it to Mr Henderson. In my judgment, he should either have sent the document both to the court and Mr Henderson or to neither. Secondly, Mr Kovats drafted the skeleton without the appellant's bundle and supplementary bundle. I do not understand how Mr Kovats could have been instructed to

draft the skeleton without these bundles. Thirdly, he had only received Mr Henderson's skeleton and supplementary skeleton on the day on which he (Mr Kovats) drafted his skeleton. In these circumstances, it is hardly surprising that his skeleton did not address what is now the only issue in the appeal. Late on the day before the appeal hearing, Mr Kovats produced a revised skeleton argument which he served on the court and Mr Henderson. Even that document gave no real clue as to the detailed nature of the attack that Mr Kovats intended to make on the adequacy of the reasons the adjudicator gave for her findings in relation to the appellant's credibility. It is true that he did say at para 30 that the IAT had correctly identified the error of law at paras 17 and 18 of their determination, but the criticisms of the adjudicator's decision made by Mr Kovats went further than those made by the IAT.

10. As I have said, it is common ground that, if the adjudicator did not make an error of law, the IAT had no jurisdiction to allow the appeal and this court should restore the adjudicator's decision. At the outset of the appeal, however, this court raised the question whether it was right to say that the IAT had no jurisdiction to allow the appeal even if they were wrong in deciding that the adjudicator had made an error of law. The appeal to the IAT was governed by section 101 of the Nationality, Immigration and Asylum Act 2002 which provided for appeals only "on a point of law". It seemed to us that the grounds of appeal did raise a point of law for the IAT to determine, namely whether the adjudicator had erred in law in failing to provide reasons for her conclusion on the appellant's credibility. In our view, it was well arguable that the IAT had jurisdiction to determine this point of law, and that, if it determined the point incorrectly, that does not mean that its decision was beyond their jurisdiction. The distinction between errors of law which render a decision a nullity and those which do not was well made by Lord Reid in ***Anisminic v Foreign Compensation Commission*** [1969] 2 AC 147, 171 B-E. Mr Kovats, however, made it clear that the Secretary of State did not wish to take this point. In these circumstances, we thought that we should decide whether the adjudicator did made an error of law. If she did, it was common ground that the appeal should be remitted to the AIT for a reconsideration. If she did not, then, despite the position taken by the Secretary of State, we might have to consider whether to investigate the "Anisminic point", since, as Mr Kovats recognised, it raises an important question of jurisdiction.

Was the adjudicator's decision wrong in law for lack of reasons?

11. It is necessary to start with the material part of the refusal letter.

"5. You claim to fear persecution from the DRC security forces on account of your activities as a member of the UDPS party. Although public meetings and other similar public activity by political parties such as the UDPS were not permitted soon after the regime took power in May 1997, the party was not banned, continues to function and its viewpoint is reflected in the press. The Secretary of State concludes that membership of the UDPS and low level political activity on behalf of the UDPS would not normally attract adverse attention from the authorities. There is no evidence that you have taken such a prominent role as a member of your party in the DRC that you would be identified as a high profile activist if you returned to the DRC. Furthermore, the Secretary of State does not consider that your political beliefs, membership of the UPDS or participation in its lawful activities would be likely to attract persecution.

6. The Secretary of State has noted your claim to have been actively involved in the organisation of marches for the UDPS. In reaching his decision on your asylum application, the Secretary of State has assessed a wide range of information about conditions in Democratic Republic of Congo. This includes information provided by the United States State Department, the UNHCR Background Paper, and Amnesty International, as well as the Foreign and Commonwealth Office. He is aware that women in the Democratic Republic of Congo are relegated to a secondary role and rarely occupy positions of authority or responsibility. He is therefore of the opinion that it is highly improbable that you would have been in a position to organise such events.

7. The Secretary of State is also aware that despite your claim to have organised such events you were unable, when questioned at your asylum interview to give any specific details relating to the number of marches you had planned. He is also aware that despite claiming to have organised the reception at Nd'jili airport on 23.4.01 you were unable to state how many people were in attendance. The Secretary of State believes that if you had been responsible for such an event you would be able to provide such information and considers that the fact you could not seriously undermines the veracity and credibility of your claim.

8. He also notes that when questioned at your Asylum Interview on 12.11.2001 you failed to name correctly the General Secretary of the UDPS. He believes that if, as you claim, you had been a member of the party for over 10 years and active in the organisation of events for the party, you would have known the name of such a prominent official.

9. The Secretary of State notes that there are significant differences between your account of events given in your Statement of Evidence Form (SEF) dated 21.09.2001 and at you Asylum Interview (AI) on 12.11.2001. He notes that in your SEF you claim to have been an 'official' of the UPDS (Qu C5 refers). However, in your AI you state that you were 'just a member'. (Qu 5 refers).

10. He also notes that in your SEF you state that 'when your leader arrived' you 'went to the airport to collect him' and that as you were 'escorting him, soldiers came and dispersed' you. You also state that 'he was arrested'. (Qu C1 refers). The Secretary of State is aware, however, that in your AI you contradict this assertion and claim that you were in 'a group of students' who were at the airport to 'cheer his arrival' and that Tshisekedi was not arrested at his arrival. (Qu's 18, 19 and 26 refer).

11. Furthermore the Secretary of State notes that in your Immigration Interview on 17.9.01 you stated that your 2 children were still in Democratic Republic of Congo. However he notes that in your SEF you state the whereabouts of your children is unknown (Qu's 2.8 - 2.20) an in your AI you claim your mother had 'left' with the children.

12. The Secretary of State considers that these are serious discrepancies and as such that they completely undermine the veracity and credibility of your claim.

13. The Secretary of State has given due consideration to your allegations of ill-treatment by the military authorities following the events of 23.4.2001. However in light of his above considerations he is of the opinion that it is unlikely that you were in fact detained and abused in the way you describe."

12. In her response letter, the appellant said this:

"1. In response to paragraph five of the reasons for refusal letter I submit that the government did not allow the meetings for members of the UPDS. I confirm that the government wanted me to become a member of the CPP, Committee Popular Power, who are closely associated with the government. The reason I was asked to join the CPP was because the government wanted everybody to join the one party, they did not want different Political parties they were after unity. When I initially joined I was a member I then later acquired the position of Public Relations. I believe it was because of my rank in the party that the government developed an interest in me. I refused and that is when my persecution began. I was imprisoned, tortured and raped. This was because of my position in the UDPS and my association with the UDPS.

2. In response to paragraph 6 of the reasons for refusal letter I submit that although it is rare for women to occupy positions of authority it does not mean that no women occupy position of authority. I confirm that men in positions of authority largely dominate the UDPS. However positions of authority are not 100% men, women do hold some positions. I submit that Marie Ngalula held the position of President of the UDPS branch in the commune of Ngaliema. I submit that I also had a high-ranking position. I was also nominated UDPS President of the area of Limete.

3. In response to paragraph 7 of the reasons for refusal letter I submit that I cannot recall the exact number of marches as we organised so many. This was why I answered truthfully at my interview. I confirm that the number of marches I organised estimated at around fifty. I confirm that I myself was not solely responsible for the reception at the airport. I was part of a committee, Students of the UDPS, who organised the reception. This is why I answered in Q16 that this was the last march/reception I organised. As I did not have sole responsibility I was unable to state the exact number, I did not count every single attendee. I can only guess a figure of around 100.

4. In response to paragraph 8 of the reasons for refusal letter I confirm that I was not asked who the Secretary General of the UDPS was as stated in Q9 of the Interview Record. I confirm that this is incorrectly stated. I was in fact asked who is the second to the Secretary General. I answered correctly and truthfully sating Mbayo. I confirm that the Secretary General of the UPDS is Adrian Mpongo. I do not know why the question asked was not correctly written in the interview record.

5. In response to paragraph 9 of the reasons for refusal letter I submit that in order to be an official you have to be a member of the UDPS. I confirm that I am a member of the UDPS party. I further confirm that I was in charge of Public relations and later because of my membership became the President of the area of Limete. I submit that I was confused with what is considered to be an official. I confirm further that in order to be an official you have to be a member this is why I answered that I was a member; I also stated my role in the party, that of public relations, this would have indicated that I was an official.

6. In response to paragraph 10 of the reasons for refusal letter I submit that we as students went to the airport to welcome our leader. We were there to great his arrival. Our leader entered a car, we too entered a bus and therefore we escorted him home. I confirm that I was correct in stating that our leader was at home and was under the guard of soldiers. In my answer to Q26 I did answer that he could not participate in any political movements. In my SEF form it is stated that the leader was arrested. I informed the interpreter that the leader was being guarded by soldiers at his house and was not free to participate in any political activities. I believe that there has been an assumption made upon this fact and confusion that the leader was arrested also, this is why the SEF states this. I confirm that I was arrested after escorting the leader home.

7. In response to paragraph 11 of the reasons for refusal letter I submit that I left my children with my parents, however when the trouble started my father was burnt alive and my mother fled with my children. Therefore I did not know their whereabouts. I confirm that I answered in my interview that I believed they were in the DRC, which is true however I do not know the whereabouts of my children."

13. The appellant attended the hearing before the adjudicator and was represented by a solicitor. She started to give evidence and confirmed that the contents of her response letter were true. The adjudicator records that she became increasingly distressed and was unable to continue with her evidence. The adjudicator decided to adjourn the hearing from 13 January to 26 February 2004. The Secretary of State was represented by a Home Office Presenting Officer on the first occasion, but was unrepresented at the adjourned hearing. The adjudicator did not have the benefit of any cross-examination of the appellant or of any submissions on behalf of the Secretary of State. She did, however, have some in-country material. She also had the psychiatric report of Dr Pilgrim, consultant psychiatrist, to whom the appellant had been referred by her general medical practitioner in September 2003. In his report, Dr Pilgrim expressed the opinion that she was suffering from Post Traumatic Stress

Disorder and depressive symptoms. He said that he did not have access to any information that either confirmed or refuted her account of what happened to her in DRC. He added *"However, the extent of the obvious distress that she experiences every time she is asked to recount these events, suggest strongly that these events (or similar events) did occur"*.

14. The central part of the adjudicator's reasoning is at paras 14-16 of her determination:

> *"14. Having considered the evidence before me as a whole, I find the Appellant to be credible. I accept the Secretary of State's view that there are discrepancies in her account, but having regard to the statement in response to the refusal letter, I do not consider these go to the core of her claim. I accept the Appellant's account of being arrested and detained during which time she was raped and tortured. I accept as plausible her account of being allowed to escape by means of a substantial bribe paid to a guard.*
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> *15. From the psychiatric report of Dr Pilgrim, it is clear that the Appellant has suffered a severe psychiatric illness from which she has not yet recovered. In the recent past the Appellant was sectioned and admitted to a psychiatric ward where her mental condition was stabilised by heavy medication. Dr Pilgrim's report is fairly lengthy and of great assistance. He noted that in the course of his meeting with her she became acutely distressed and suffered hallucinations. In his opinion, she suffered PTSD at a moderate to severe degree of severity. He came to this conclusion after applying the standard diagnostic tests used by British psychiatrists. Dr Pilgrim stated he did not have access to any information either confirming or refuting the Appellant's descriptions of the events she experienced in DRC, but he concluded the extent of the obvious distress she experienced every time she was asked to recount her story strongly suggested these events or others similar did occur.*
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> *16. Having considered the evidence before me as a whole, seeing the Appellant in person and placed particular reliance on the psychiatric report of Dr Pilgrim, I find the Appellant to be credible and I accept her account of being subjected to rape and torture whilst in detention. From the objective evidence it is clear that low level members of UDPS are subject to arbitrary arrest, imprisonment and severe ill-treatment. Although obviously ill and unable to speak for herself, it is clear that the Appellant is a women of intelligence who would be capable of fulfilling her claimed role in public relations in the party. I therefore accept she did come to the attention of the authorities and would be at risk of again doing so if she were to return."*

15. Mr Kovats's principal submission is that the adjudicator failed to address the significant discrepancies relied on by the Secretary of State in his refusal letter and explain what her findings were in relation to them. Since the Secretary of State concluded that the discrepancies completely undermined the veracity and credibility of her claim, the adjudicator was under a legal duty to give reasons for her finding that the appellant was credible. Mr Kovats also advances two other submissions. First, he says that the adjudicator failed to explain the significance of the medical evidence on which she said that she placed "particular reliance". Secondly, she failed to identify the objective evidence which supported the finding that "low level supporters of UDPS are subject to arbitrary arrest, imprisonment and severe ill-treatment".

16. I shall start with the principal submission. The critical sentence in the adjudicator's determination is: "I accept the Secretary of State's view that there are discrepancies in her account, but having regard to the statement in response to the refusal letter, I do not consider that these go to the core of the claim". This is not an easy sentence to interpret. Mr Henderson submits that the adjudicator is saying that, having regard to the explanations given in the response statement, the discrepancies do not undermine the core of her claim. I am prepared to accept that this is what the adjudicator meant.

17. Mr Henderson undertook a detailed analysis of each of the discrepancies and the appellant's responses. He submitted that, especially in the light of her responses, the alleged discrepancies are not discrepancies at all, or if they are, they clearly do not damage her credibility so as to undermine the core of her claim. For example, she explained (in relation to paragraph 8 of the refusal letter) that she did not name the General Secretary of the UDPS because she was asked to name the person who was second to the General Secretary and the question was incorrectly written down in the interview record. Mr Henderson says that this is the kind of mistake that often occurs when interviews are conducted through interpreters: it was not a discrepancy in the appellant's account.

18. We were addressed in detail about paragraphs 7 and 10 of the refusal letter and the appellant's account of the events of 23 April 2001 when the leader of the UDPS returned from Europe to an airport in DRC. These events were central to the appellant's claim because her case was that shortly after his return to the DRC she was arrested, detained for two months and abused. In her SEF (Q1) she said: "When our leader arrived we went to collect him. As we were escorting him, soldiers came and dispersed us. He was arrested and I was also arrested. I was detained for two months. I was tortured and abused". It might be said, with some force, that the impression given by these answers is that both the leader and the appellant were arrested at the airport. In her asylum interview, she said that she was in a group of students who were at the airport "just to cheer his arrival" (Q18). In answer to question 26, she said that the leader was not arrested at the airport, but that he was placed under house arrest: she did not say when. I have already referred at para 12 above to what the appellant said at paragraph 6 of her response statement to explain the apparent discrepancies. In my judgment, the discrepancies were serious and went to the heart of the appellant's case. To say that she went as a member or official of the UDPS to "escort" her leader and that he was arrested at the airport is quite different from saying that she went as a student to cheer the arrival of the leader of the party and that he was placed under house arrest at some later date.

19. It follows that at least in this important respect, there were significant discrepancies in the appellant's account. Indeed, the adjudicator said that she accepted the view of the Secretary of State that there were discrepancies. As we have seen, the Secretary of State had said that the discrepancies were so serious that they completely undermined the credibility of her claim. A number of possible conclusions were available to the adjudicator. First, she could have said that, accepting the discrepancies at face value (without taking account of the response statement), they did not undermine the core of her claim. Secondly, she could have said that, if taken at face value, the discrepancies completely undermined the core of her claim; but she accepted the explanations given in the response statement and for that reason concluded that the discrepancies were more apparent than real and did not undermine the core of her account. Thirdly, she could have said that she accepted that some of the alleged discrepancies had not been adequately explained by the appellant in the response statement, but that these did not undermine the core of the account. Fourthly, she could have accepted that some of the alleged discrepancies had not been adequately explained in the response statement, and that these did undermine the appellant's account.

20. In my judgment, the existence of these possibilities underlines the fact that it was imperative for the adjudicator to explain how she reached her main conclusion that, having regard to the response statement, the discrepancies did not completely undermine the core of the claim. It was insufficient simply to say that she had had regard to the response statement. She should have identified the discrepancies which she considered had been satisfactorily explained by the appellant and those which had not, giving short reasons for her findings, and explained why such discrepancies as had not been satisfactorily explained did not completely undermine the appellant's account. I agree with the conclusion of the IAT that the adjudicator did not give adequate reasons for her finding that the appellant was a credible witness, particularly in circumstances where she did not give oral evidence beyond the adoption of her witness statement. Even if it was open to the adjudicator to place any, still less "particular", reliance on the medical report of Dr Pilgrim, her reliance on that report to support her finding that the appellant's account was credible did not absolve her from the duty to provide adequate reasons for her finding in relation to the discrepancies.

21. In these circumstances, I do not find it necessary to deal with the criticisms made by Mr Kovats of (a) the finding based on the objective evidence that low level members of UDPS are subject to arbitrary arrest, imprisonment and severe ill-treatment and (b) her reliance on the report of Dr Pilgrim. In his written submissions in response to these criticisms, Mr Henderson has made a number of cogent points. But the adjudicator's critical finding was that the discrepancies relied on by the Secretary of State as undermining the appellant's account of arrest, detention, rape and torture by reason of her support for the UDPS did not in fact undermine the credibility of that account, so that she accepted it as true. In my judgment, the adjudicator's **failure to provide reasons** for this finding is a fatal error of law.

22. For the reasons that I have given, therefore, I would hold that the decision of the adjudicator was bad for lack of reasons. In the result, this appeal must be allowed and the matter remitted to a fresh AIT for reconsideration.

LADY JUSTICE HALLETT:

23. I agree.

LORD JUSTICE PILL:

24. I agree. I too would wish to express my concern about the way the Secretary of State ("the respondent") has approached this appeal:
    a) He was not represented before the adjudicator at the adjourned hearing on 26 February 2004.
    b) Having regard to the points taken on the respondent's behalf at the hearing of the appeal before this court, scant attention appears to have been given to the drafting of the grounds of the appeal, justifiably made, to the Immigration Appeal Tribunal.
    c) The appellant's skeleton argument was submitted, by his counsel Mr Henderson, on 17 January 2006, following the filing of bundles of documents.
    d) In spite of requests from the Court, no skeleton argument was received from the respondent until the morning of the day before the hearing of the appeal, by which time a direction that an explanation was to be given in court at 11am that morning had been given.
    e) When the skeleton argument was submitted, it was on the basis that it should not be disclosed to the other side. That is not acceptable.
    f) A disclosable skeleton argument was submitted only on the afternoon before the hearing.
    g) The document submitted was extremely brief on the issue relied on by counsel at the oral hearing and gave little clue as to the points to be taken.
    h) We have heard no explanation as to why this course was followed. I do not know what instructions counsel was given and am not assuming that it was the responsibility of counsel.

25. While this is very unsatisfactory, I do not consider that the appellant has been prejudiced by the conduct. Leave was granted to counsel for the appellant to make post-hearing written submissions on one point raised at the hearing of which no notice had been given. There always was, for the reasons given by Dyson LJ, a sound appeal on the basis of an alleged error of law by the adjudicator and Mr Henderson was aware of the central point to be taken, and had addressed it in his skeleton argument.

26. I agree with the conclusion of Dyson LJ and for the reasons he gives. The adjudicator in this case four times stated that she found "*the appellant to be credible*" but there is, in my judgment, an insufficiency of reasoning to support

that finding. In the circumstances of this case, the failure to give adequate reasons for the finding that the discrepancies in the appellant's accounts did not undermine her credibility, and that she was credible, amounted to a fatal error of law by the adjudicator. I agree that, on that ground alone, the determination of the adjudicator should not be reinstated. Errors of law in the Tribunal's decision having rightly been conceded, on the respondent's behalf, that decision too cannot stand, and remission to the Tribunal for a full consideration of the appellant's appeal from the Secretary of State's decision is required.

27. While the appeal is to be allowed on that discrete ground, I do respectfully underline the need for fact-finding judges in this jurisdiction to consider the evidence as a whole when assessing the credibility of an applicant and to give reasons for the conclusion reached. That was particularly so in this case having regard to the absence of oral evidence from the applicant at the hearing and the inconsistencies, already considered, in pre-hearing statements. Purporting to place "particular" reliance on the evidence of Dr Pilgrim, did not remedy the situation and, with respect, did not create confidence that the inconsistencies had actually been addressed. Moreover, if in-country evidence is to be relied on, as it was in passing in paragraph 16 of the adjudicator's decision, enough reference to the in-country evidence and how it is relied on as supporting credibility will usually be required. That should appear in the findings and reasoning of the judge, even if reference has been made to it when summarising the submissions of the parties.

28. The fact-finding jurisdiction of immigration judges is of course a most important one. They have a difficult task to perform, assessing the credibility of an account of events in a foreign country and, usually, without the benefit of other direct evidence of those events. An applicant's evidence has to be assessed in the context of in-country material describing the situation in that country. The judge is also entitled to have regard to evidence, such as medical evidence, which may be corroborative of the applicant's account. While there may be cases in which all a fact-finding judge can say is that, having seen and heard the witness, he or she believes or does not believe that witness, it will usually be necessary, when the lawfulness of a finding of fact on credibility is challenged, for the appellate tribunal to consider the question of credibility in the context of the evidence as a whole.

29. In assessing the adequacy of a fact-finding exercise, an appellate tribunal expects findings to be adequately reasoned. By its reasoning, the fact-finding tribunal not only tells the losing party why he has lost but may also be able to demonstrate that it has adequately and conscientiously addressed the issue of fact which has arisen. That is particularly important when it is the credibility of an applicant which is in issue. A lack of reasoning may demonstrate a failure adequately to address the fundamental question: Is the applicant telling the truth?

30. I agree with Dyson LJ, that, on the findings of the court, the ***Anisminic*** point does not arise.

Mark Henderson (instructed by the Refugee Legal Centre) for the claimant.
Steven Kovats (instructed by the Treasury Solicitor) for the Secretary of State.