Hilary Term
[2014] UKSC 6
On appeal from: [2011] CSIH 28

JUDGMENT

I.A. (Appellant) *v* The Secretary of State for the Home Department (Respondent) (Scotland)

before

Lady Hale, Deputy President
Lord Kerr
Lord Wilson
Lord Hughes
Lord Hodge

JUDGMENT GIVEN ON

29 January 2014

Heard on 26 November 2013

Appellant
Jonathan Mitchell QC
Daniel Byrne
(Instructed by Drummond LLP)

Respondent
Mark Lindsay QC
John MacGregor
(Instructed by Advocate General)

Intervener (United Nations High Commissioner for Refugees)
Ailsa Carmichael QC
Tom Hickman
(Instructed by Baker & McKenzie LLP)

LORD KERR (with whom Lady Hale, Lord Wilson, Lord Hughes and Lord Hodge agree)

1. The appellant has been allowed to remain anonymous for the purpose of these proceedings and has been referred to by the initials, I.A. He is a native of Iran, having been born there on 20 September 1976. He arrived in the United Kingdom on 23 August 2007 and applied for asylum the following day. An initial, screening interview of the appellant took place on 24 August 2007 followed by a substantive interview on 20 September 2007. In anticipation of the second of those interviews, he made a statement dated 19 September in which he described his background and the circumstances in which his claim to asylum was made. The account which follows in the next 5 paragraphs is taken from that statement.

2. The appellant stated that he was a member of a Kurdish family. He said that his parents, 3 sisters and 4 brothers continued to live in Iran. While still a young man, the appellant claimed to have witnessed ill-treatment of people who visited detainees in a detention centre near his place of work. This experience prompted a desire to join the Kurdistan Democratic Party of Iran (KDPI). Initially thereafter, he had some loose association with that party, largely consisting of the distribution of leaflets and writing political slogans on walls. On one occasion he and another man, who was a member of KDPI, sprayed anti-colour paint on a car belonging to the prison authorities of Bukan, his home city in West Azerbaijan. They were seen by a prison guard who shouted at them but they were able to flee the scene without being detained. The appellant was, he alleged, terrified that the authorities would arrest him because of his involvement in this incident, so he decided to leave the country.

3. At that time, the appellant was 16 years old. After the car painting incident, he did not return home. He stayed briefly with an aunt in Saghez and then went to another city. Shortly afterwards he was smuggled from there into Kurdistan in Iraq where he joined the KDPI. He was involved with them for about 6 or 7 years and then separated from them because, he said, the leaders began thinking more of their own interests than the interests of the Kurdish people of Iran.

4. In 1998 the appellant applied for asylum at the United Nations High Commission for Refugees (UNHCR) in Kurdistan and was recognised as a refugee. He was advised that he would be sent to a safe country in due course. He claimed that this did not happen because Saddam Hussein's regime refused to offer any assistance to UNHCR refugees. He therefore decided to leave Iraq and go to Turkey. It appears that he arrived in Turkey in May 2002.

5. After he arrived in Turkey the appellant presented himself to the UNHCR in Van city. He was again recognised as a refugee. (From information lately received from UNHCR it is clear that this second recognition occurred in May 2003.) UNHCR again undertook to send him to a safe country. Despite this, the appellant remained in Turkey for a further 3 years. He claimed that after he had been accepted by the UNHCR as a refugee he was sent to Kutahya city in western Turkey and was not permitted to leave. In 2006, frustrated by UNHCR's inaction, the appellant and 20 other refugees protested in front of their offices. The police arrested and detained them. After some 3 months the appellant was served with a court summons to appear in court. He claimed that he was frightened to appear in court and so went into hiding until he managed to leave Turkey and travel to the United Kingdom.

6. After arriving in the United Kingdom the appellant had been in contact with his family in Iran. He learned that the authorities had visited his home on a number of occasions and that his father had been taken to the Intelligence Office in Bukan and had been questioned about the appellant's whereabouts. He claimed that his parents had been "expelled" from Iran to Iraq because of his involvement with KDPI. They remained there for only 2 days, however, and were then permitted to return to Iran.

7. During his interview on 20 September 2007, the appellant said that after joining the KDPI he carried out activities for them in the organising department of the party. He also claimed that he had gone back to Iran in 1993, 1994 and 1995 in order to recruit for KDPI and for propaganda purposes. He and others who accompanied him were attacked by Iranian security forces with rockets and mortars.

8. He said that he was in charge of 15-20 freedom fighters within the KDPI. On their trips to Iran, they would stay about 3 months at a time. They carried weapons in case they were involved in fighting with Iranian troops. In the event they did not engage in fighting although they were on occasions attacked by cannons and mortars. The appellant also told his interviewers that he had discovered in 2002 that his father had been imprisoned by the Iranian authorities but he did not know when.

9. The appellant's claim for refugee status was refused by the Secretary of State on 27 September 2007. That initial refusal was withdrawn, however, while further inquiries were made of UNHCR. Before the second decision on his application was made, another statement dated 30 November 2007 was submitted on the appellant's behalf. This purported to deal with some of the matters raised in the first refusal letter.

10. In the second statement the appellant said that he had not referred to his having returned to Iran in 1993-1995 because the solicitors who had acted for him at the time that the first statement was compiled had prepared it on the basis of questions that they had put to him and the answers that he had given. The question of his having returned to Iran had not been raised in this exchange.

11. The appellant also said in the second statement that he had been a peshmerga between 1992 and 1994. (A peshmerga or peshmerge (in Kurdish: *Pêşmerge*) is the term used by Kurds to refer to armed Kurdish fighters. Literally meaning "*those who face death*" the peshmerga forces of Kurdistan have been in existence since the advent of the Kurdish independence movement in the early 1920s.) During this time the appellant also wrote articles and poetry in support of the peshmerga cause, he said. He also described the guns which he had been trained to use and claimed that he had worked as a radio operator and had trained other peshmerga. He alleged that he had been on a mission with one Mohammed Armandzadeh in about 1995. Mr Armandzadeh had been arrested in the course of the mission and had later been executed.

12. Mr Armandzadeh's brother, Kamaran, was a friend of the appellant and in his second statement the appellant claimed that he and Kamaran had lived together in Iraq. Kamaran had worked as a paramedic in a hospital run by KDPI. It was claimed that the two had worked together for "some years" or for "3-4 years".

13. In his second statement the appellant claimed that the only document that he had taken with him when he left Iraq was his certificate of refugee status that had been issued by UNHCR. He said that he had left all other documents with a Dr Maraf Khazadar. Even after he had been refused asylum in the United Kingdom, he did not ask Dr Khazadar to send the documents to him. He explained that he did not do so because, "culturally, [Dr Khazadar] is a respected elder gentleman, [and] it would not be appropriate to ask such a favour of him." The appellant claimed that after he had been refused asylum on the second occasion, he knew that one of his sisters was living in Iraq and he asked her to obtain the documents for him. The documents included a card with a photograph of the appellant which, he claimed, showed that he was a security guard at a KDPI Congress; a second card with his photograph purporting to show that he was a trainee in the Political and Military School of the KDPI; and a document which stated that the appellant was a former peshmerga for KDPI. These documents and their late production played an important part in the determination of the appellant's appeal against the refusal of asylum for reasons that I will consider below.

14. The second refusal letter was issued on 5 November 2008. The appellant's account was deemed to be incredible. It was considered unlikely that the appellant would have been sought by the Iranian authorities as a result of the car spraying

incident in Iran. His story was that he had been observed engaging in what was thought to be a low level of vandalism. It was not accepted that this would result in his acquiring a noteworthy profile in Iran or that he would be at significant risk throughout Iran. The claim that the appellant's parents had been expelled from the country 2 years later in 1994 as a result of his activities was considered not to be believable. If the authorities had positively identified the appellant, it would not have taken them 2 years to take action against his parents. Nor would such action have taken the form of such a brief period of exile. Moreover, if they had been exiled while the appellant was active as a peshmerga, it was thought unlikely that they would have returned to Iran. It was also noted that, despite the appellant's claims that the Iranian authorities were aware of his activities as a peshmerga with the KDPI, his family had not received adverse interest from the authorities since 2002. If the appellant's claim of repeated armed incursions into Iranian territory with the KDPI was true, it was considered that he would have noticed the omission of such significant evidence from his first statement of 19 September 2007. He would have ensured that these details were included in his submitted statement. Their omission from his statement severely damaged his credibility.

15. A discrepancy was also identified in the accounts which the appellant and Mr Armandzadeh gave of their having worked together. When these accounts were compared it was concluded that the two men could only have been together for something short of a year at most. This was considered to be a significant discrepancy. There was also a divergence in their accounts of how many people had attended the protest In Turkey. In the respondent's estimation, these inconsistencies meant that Mr Armandzadeh had failed to offer suitable corroboration of the appellant's story.

16. At the time that the appellant had submitted his second statement to the respondent he also sent a statement purporting to come from the KDPI which, he claimed, confirmed that he had been a member of that organisation. This was dismissed by the respondent as being lacking in details that might have supported the appellant's account. The respondent did not accept that the appellant had been a member of the KDPI. It was concluded that if he had genuinely been in fear of returning to Iran he would not have left the protection of UNHCR on two occasions. Even if his claims were true, it was considered that he would not have been identified as a KDPI supporter if he was now returned to Iran.

The determination of the Asylum and Immigration Tribunal

17. In January 2009 Immigration Judge (IJ) Agnew conducted a hearing of the appellant's appeal against the Secretary of State's decision under section 82(1) of the Nationality Immigration and Asylum Act 2002. The judge heard testimony from the appellant and Mr Kamaran Armandzadeh. She also received voluminous

documentary evidence. This included background evidence relating to the situation in Iran and the Kurdish population in that country. It also included expert evidence submitted on behalf of the appellant and this is fully summarised in the judge's written determination.

18. IJ Agnew considered the documents which the appellant claimed had been sent by his sister from Iraq. She noted that a residence card in the bundle of documents disclosed that the appellant's sister had permission to reside in Iraq until 11 November 2008 but the postage date on the package containing the documents was 16 November 2008. She found the appellant's explanation for failing to obtain the documents before he did to be wholly implausible. She considered therefore that they were to be approached with "considerable caution". On that account she attached little weight to them. A letter purporting to come from the KDPI and signed by Khosro or Khostow Abdallahi (said to be the leader or chief representative of the KDPI in Europe) attracted IJ Agnew's particular attention. Having reviewed the evidence about this letter and its avowed provenance, the judge declared herself to be not satisfied that the letter was signed or written by the leader of KDPI.

19. The appellant's explanation for omitting to mention in his first statement that he had returned to Iran on several occasions was rejected by the judge. This was, she said, "most crucial" to his case. It was not believable that he would not have been given the opportunity by his solicitors to give an account about these incursions into Iran. The failure to give that account was all the more striking because of the importance attached to it by the experts who provided reports on the appellant's behalf.

20. The judge found the account given by the appellant of what had happened to his family, particularly the brief expulsion of his parents to Iraq, to be entirely unconvincing. She also pointed to a number of discrepancies in the statements supplied by Kamaran Armandzadeh, the most significant of which was that in the first statement it was suggested that IA had been with Mr Armandzadeh's brother when the latter was captured whereas in the second statement it was stated that he did not know whether IA was with his brother on the mission or not. The judge stated that she did not find IA or Kamaran Armandzadeh to be credible witnesses; the appellant had not established that he was involved with the KDPI or that the Iranian authorities had or would have any interest in him. She therefore dismissed his appeal.

21. In paras 18-26 of her determination IJ Agnew dealt with the argument that the grant of refugee status by UNHCR should be followed by the grant of asylum in the United Kingdom unless there were "the most clear and substantial grounds" for departing from that decision. The judge referred to the decision in *Secretary of*

State for the Home Department v KK (Congo) (Recognition elsewhere as refugee) [2005] UKIAT 54 and, applying the decision in that case, at para 25 said:

> "As I have noted, independent documentary evidence regarding the procedures used to issue the appellant the refugee certificate in Iraq and refugee status in Turkey by-the UNHCR was not before me, nor evidence regarding on what basis the appellant applied for this status and on which it was granted. The appellant's evidence was most vague. Therefore, whilst the granting of refugee status to the appellant should be regarded as a starting point, it is not necessarily a very strong one, on its own, without any helpful evidence as to the basis and procedures for the previous grant. I, however, do bear in mind that it is a starting point, that it is significant and that whilst considering the substantive merits of the case, the most clear and substantial grounds, if they exist, must be provided for coming to a different conclusion"

The appeal to the Extra Division of the Court of Session

22. The decision of IJ Agnew was challenged in the Court of Session on the basis that she had failed to give any weight to the decision of UNHCR to grant refugee status. That circumstance, counsel argued, should have loomed large in the consideration of the appellant's case. It ought to have been taken into account in the assessment of his credibility. Instead it was "compartmentalised" so that it remained detached from other evidence adduced at the hearing. It was, moreover, wrongly discounted by the judge because she had no information about how or why UNHCR came to its decision.

23. These arguments were rejected by the Extra Division: [2011] CSIH 28; 2011 SC 625. It considered that the immigration judge had approached the effect of the UNHCR's decisions properly and had accorded them appropriate weight. Lord Clarke, who delivered the opinion of the court, said that the tribunal had followed the approach commended by Sullivan LJ in the case of *MM (Iran) v SSHD* [2011] INLR 206 (in a judgment delivered after the tribunal's determination in the present case). Sullivan LJ at para 27 of *MM* had said:

> "In reality, a decision by the UNHCR as to refugee status will, given the UNHCR's particular expertise and responsibilities under the Refugee Convention, be given considerable weight by the Secretary of State and the tribunal *unless* in any particular case the decision taker concludes that there are cogent reasons not to do so on the facts of that individual case. It would be just as unrealistic to contend that

> a decision by the UNHCR as to refugee status must always be given considerable weight regardless of any indications to the contrary as it would be to contend that it could be given less than considerable weight for no good reason."

24. In agreeing with Sullivan LJ's judgment on this aspect of the matter, Lord Clarke said at para 15 of the Extra Division's judgment:

> "While UNHCR decisions as to status … have no binding legal effect, they are to be treated with great respect in the interests of legal diplomacy and comity having regard to their source. The mind of the decision maker, in this jurisdiction, where an applicant can lay claim to UNHCR status, as a given datism, must in its decision making process not lose sight of that fact in reaching its disposal of the case before it. A decision of the UNHCR on refugee status will be a very important piece of evidence throughout the decision maker's journey. But it has ultimately no greater claim than that and, if the other material before the decision maker leads him/her to considerations that point cogently against the conclusion arrived at by the UNHCR, then the decision maker is fully justified in departing from the latter conclusion."

The UNHCR material

25. No information was available to IJ Agnew or the Extra Division as to how UNHCR had arrived at its decisions to grant IA refugee status. In an extremely helpful intervention Ms Carmichael QC on behalf of UNHCR explained why it is not always possible or desirable to respond to requests for information about why a particular decision on refugee status had been taken. At para 35 of its written case, UNHCR said this:

> "UNHCR is not always able [to], nor can it be expected to, respond to every request for documentation and/or information on a particular decision. There are good reasons why UNHCR is not able to provide such information in an individual case, including the observance of confidentiality/data protection principles, capacity or resources, access and/or the security of staff, refugees and/or operations which may be compromised."

26. I recognise the force in these reasons but it was helpful to be informed that UNHCR is currently reviewing the question of the release of documentation on

request from individuals who make claims to asylum in particular countries. As I shall discuss in the next paragraph, experience in this case has illustrated how information about the reasons that refugee status has been granted by UNHCR and about its method of assessing claims can be of pivotal importance to an examination of a claim for asylum in this country. It is of particular assistance that the basis on which the decision to accord refugee status be disclosed, even if no further information can be provided.

27. As it happens, in response to a request from the appellant's legal advisers and following confirmation from him that he consented to disclosure of documentation about the grant of refugee status for the purposes of this appeal, UNHCR provided redacted notes of an interview and assessment of the appellant by UNHCR staff in Turkey in May 2003. The solicitors acting on behalf of UNHCR have intimated (in the letter to the appellant's solicitors which enclosed the material) that they wished to preserve as far as possible the confidentiality of these notes. It would not be appropriate therefore to set out their contents in extenso. It is sufficient for present purposes to say that they contain details of the appellant's incursions into Iran, a considerable amount of information concerning the organisation, command structure and areas of operation of KDPI and a rather more believable explanation of the circumstances in which his parents were sent to Iraq. Of particular importance, potentially at least, is that some of the information given by the appellant in the interview ought to be capable of being checked for accuracy. It is eminently possible that a significantly different view about his credibility would have been formed had this information been available to IJ Agnew.

The effect of the grant of refugee status by UNHCR

28. By virtue of the Convention relating to the Status of Refugees (the 1951 Convention) and its 1967 Protocol, UNHCR has a supervisory responsibility in relation to the observance and application of the 1951 Convention. Under the 1950 Statute of the Office of the High Commissioner (the Statute), UNHCR is required to provide international protection to refugees. It is also tasked with the duty to work with governments in order to seek permanent solutions to problems presented by refugees. Para 8(a) of the Statute requires UNHCR to fulfil its mandate by, "promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto." Article 35 of the 1951 Convention and Article II of the 1967 Protocol oblige state parties to cooperate with UNHCR in the exercise of its functions. One aspect of the discharge by UNHCR of its supervisory responsibility is the issuing of interpretative guidelines, including UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* and UNHCR's subsequent Guidelines on International Protection.

29. It is accepted by all that, despite the expertise and experience in dealing with refugees which UNHCR enjoys and despite the responsibilities with which it is charged, its decisions as to refugee status do not oblige countries to accede to applications for asylum by those who have been accorded that status by UNHCR. This is frankly accepted by UNHCR itself. Importantly, it is not only accepted, it is positively asserted by UNHCR, that states have an independent, autonomous responsibility under the 1951 Convention and the 1967 Protocol to determine a person's refugee status when that is claimed. That duty cannot be relinquished to UNHCR. These considerations provide the setting for the examination of the role that a UNHCR decision on refugee status should play in the assessment by a country of a claim to asylum.

30. The Extra Division considered that a decision of the UNHCR on refugee status would constitute an important "piece of evidence" in the decision maker's evaluation of the claim for asylum. But in circumstances where no material as to how or why UNHCR reached its decision is available (as was the case here) it is difficult to see how its conclusion can properly be regarded as evidence other than of the fact that that determination had been made.

31. In *Secretary of State for the Home Department v KK (Congo)* [2005] UKIAT 54, Ouseley J described an earlier grant of refugee status by another country as a starting point. At para 18 he said:

> "The earlier grant of asylum is not binding, but it is the appropriate starting point for the consideration of the claim; the grant is a very significant matter. There should be some certainty and stability in the position of refugees. The adjudicator must consider whether there are the most clear and substantial grounds for coming to a different conclusion. The adjudicator must be satisfied that the decision was wrong. The language of *Babela* is that of the burden of proof: their status is prima facie made out but it can be rebutted; the burden of proof in so doing is on the Secretary of State. We do not think that that is entirely satisfactory as a way of expressing it and it leaves uncertain to what standard the burden has to be discharged and what he has to disprove. The same effect without some of the legal difficulties is established by the language which we have used."

32. The statement that the adjudicator must be satisfied that the decision was wrong gives rise to difficulty. Is this a requirement that the adjudicator be satisfied that the decision was wrong when taken, or is wrong in light of the information available at the time that the adjudicator's decision is being made? If the former, it is difficult to see how any judgment could be made of its correctness if it is a decision of UNHCR which (as will currently be the position in the majority of

cases) is unaccompanied by any information as to the reasons that it was taken. If it means that the decision is not the correct one in light of the information available at the time the adjudicator makes its decision, it is not easy to see what part it plays in influencing the contemporary decision.

33. It appears that Ouseley J contemplated that the wrongness of the original decision could arise from either of the scenarios mooted in the preceding paragraph for in para 19 of his judgment he said:

> "But the important point is that it does not prevent the United Kingdom from challenging the basis of the grant in the first place. It does not require only that there be a significant change in circumstances since the grant was made. Clear and substantial grounds may show that the grant should never have been made by the authorities; it may be relevant to show that the authorities in the country in question lacked relevant information or did not apply the Geneva Convention in the same way. Exclusionary provisions may be relevant. The procedures adopted for examination of the claim may also be relevant. Considerations of international comity may be rather different as between EU member states and those with less honest administrations or effective legal systems."

34. In *MM*'s case Sullivan LJ dealt with the issue in para 27 of his judgment in this way:

> "In reality, a decision by the UNHCR as to refugee status will, given the UNHCR's particular expertise and responsibilities under the Refugee Convention, be given considerable weight by the Secretary of State and the tribunal *unless* in any particular case the decision taker concludes that there are cogent reasons not to do so on the facts of that individual case. It would be just as unrealistic to contend that a decision by the UNHCR as to refugee status must always be given considerable weight regardless of any indications to the contrary as it would be to contend that it could be given less than considerable weight for no good reason."

35. This formulation is different from the approach in *KK*. In the latter case, Ouseley J considered that clear and substantial grounds should exist *for coming to a different conclusion* from the earlier grant of refugee status. It is implicit in his approach that the earlier grant must be given considerable weight in any event. But a different conclusion can be reached if, notwithstanding the considerable weight that should be accorded the earlier grant, substantial grounds for

considering that the decision was wrong are established. On Sullivan LJ's formulation the weight to be attached to a decision of UNHCR to grant refugee status should initially be regarded as considerable but that can be substantially reduced if the decision maker concludes that there are cogent reasons not to accord it that level of influence on the facts of a particular case. On this approach it would not be necessary to show that the decision of UNHCR was wrong (which is what Ouseley J in *KK* considered was necessary), merely that there are reasons for diminishing the weight to be applied to it. Sullivan LJ's is a much more open-textured approach to the part that the UNHCR decision should play.

36. Departure from an earlier decision of UNHCR for the reason that it can be considered to be wrong is inevitably problematical if the basis on which that decision was taken remains unexplained. This is so even if the judgment is that the earlier UNHCR determination is incompatible with what is currently considered to be the right decision. If nothing is known of the basis on which the earlier determination was made, it is difficult to see how it can be condemned as wrong even if the current view is that refusal of asylum is plainly right. On that account, I do not consider that it is helpful to approach the question of the weight to be given to the UNHCR determination by asking whether it was right or wrong.

37. Moreover, if one starts with the proposition that the decision must be given considerable weight unless shown to be wrong, this partakes of the application of a presumption that the UNHCR decision must carry the day unless it is shown to be wrong. Since the circumstances in which the determination of refugee status by UNHCR was made are likely, in most cases, to be unknown when the decision on asylum is reached, the foundation for a presumption and its aptness to play such an important role cannot be assessed. Applying a presumption against a background of such a lack of knowledge cannot be a sound basis for a reliable determination.

38. Although the reasons underlying a decision by UNHCR to grant refugee status will not generally be disclosed before a determination of a claim to asylum is made, the nature and range of the functions undertaken by UNHCR in the matter of refugees and displaced persons should inform the approach of a decision maker in determining whether asylum should be granted to a claimant who has been recognised as a refugee by that organisation.

39. Paragraph 1 of the UNHCR Statute provides that:

> "The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United

Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees ..."

40. This mandate has been enlarged by successive UN General Assembly and UN Economic and Social Council resolutions. It extends to situations of forced displacement as the result of conflict or public disorder. Quite apart from its own role in the determination of refugee status of claimants, UNHCR has a supervisory function in monitoring the procedures and criteria applied by states engaged in the same exercise of determining claims for asylum. It also has an obligation to determine and declare whether individuals or groups give rise to particular need of protection, even when a government may have carried out a similar determination and despite any different finding that state institutions may have reached. Indeed, refugee status determinations are considered by UNHCR to be a core protection function.

41. Certain core principles and standards are incorporated into refugee status determinations in every UNHCR office to ensure that all asylum seekers, regardless of where they apply for refugee status can depend on the application of consistent adjudication of their claims. And, in order to ensure a harmonised and dependable approach, in November 2003 UNHCR produced *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*. These, together with existing guidance on the procedural aspects of refugee status determinations, are designed to establish and promote fundamental principles to enhance the quality, fairness and integrity of UNHCR procedures. Standards are set in relation to case management, training and supervision of those who make decisions on refugee status claims.

42. In addition to the *Procedural Standards* UNHCR offices are required to follow and implement various other guidelines which are contained in a wide variety of instruction manuals. The organisation seeks to ensure high standards of quality and consistency in decision-making on refugee claims by requiring strict adherence to the guidelines. The guidelines themselves are the product of accumulated learning which draws on the jurisprudence of international, regional and national courts and an abundance of other sources.

43. In 2012 UNHCR conducted refugee status determinations in 62 countries; in 49 of those it had sole responsibility for this form of determination and in the remaining 13 countries it carried out these determinations jointly with governments or under a parallel procedure. UNHCR's decisions on refugee status have been accepted as the basis for the departure and recognition in receiving states of over 330,000 refugees from 2008 to 2012 to 24 resettlement countries. These have involved approximately 60-85,000 departures per year. It can be seen,

therefore, that UNHCR exerts considerable influence throughout the world in the recognition of and care for refugees.

44. Although little may be known about the actual process of decision-making by UNHCR in granting refugee status in an individual case, the accumulated and unrivalled expertise of this organisation, its experience in working with governments throughout the world, the development, promotion and enforcement of procedures of high standard and consistent decision-making in the field of refugee status determinations must invest its decisions with considerable authority. But translating respect for that authority into tangible impact on decision-making by national authorities is not straightforward.

45. For the reasons given at para 37 above, I do not believe that the application of a presumption that the UNHCR decision should be followed unless shown to be wrong is appropriate. A fortiori, the imposition of a burden of proof on the state authorities to establish that the UNHCR decision was wrong is inapposite. How then, is the prior decision to be treated? In its written submission UNHCR suggested a practical approach to this question in the following passage from para 4(3) of its written case:

> "A state decision-maker cannot disregard UNHCR's recognition of refugee status in evaluating the individual's claim unless there are cogent reasons for doing so. A state decision-maker may, after an examination of all the evidence available to him or her arrive at a decision regarding an applicant's eligibility for refugee status different from the UNHCR recognition where there are cogent reasons for doing so. Cogent reasons would include:
>
> > a. Where reliable information is available to the state decision-maker which supports a finding that the applicant does not meet the definition of a refugee in article 1A(2) of the 1951 Convention, for example where changes have occurred in the circumstances of the applicant or his or her country of origin which directly affect the assessment of the claim for refugee status. Other examples could include where previously unavailable or new information is now before the state decision-maker and which directly affects the assessment of the claim for refugee status. Information of this sort will often be information which post-dates UNHCR's decision.

> b. Where reliable information is available to the state decision-maker which brings the applicant within the exclusion clauses in article 1F of the 1951 Convention.
>
> c. Where reliable information is available to the decision-maker which, when considered in the light of all the available information, supports a finding that the applicant's statements on material elements of the claim are not credible."

46. As a template of how the matter should be approached by national authorities (provided it is not considered to be wholly exhaustive of the factors that might be taken into account) I consider that this has much to commend it. It is to be observed that the credibility of the applicant is accepted as a basis on which the earlier UNHCR decision may be departed from. But it should also be noticed that this is dependent on the availability of reliable information which calls the believability of the applicant's claim into significant question. This suggests that information should be from a source other than the applicant's own account and, as a general rule, I would accept that this is a sensible requirement. Of course, where a claimant's story is so riddled with inconsistency and implausibility as to render it unbelievable, a national decision-maker would not be obliged to accept it simply because it was accompanied by a favourable UNHCR decision on refugee status. Absent such an extreme example, however, it seems to me that where the possible rejection of a claim for asylum rests solely on credibility, if the claimant has UNHCR refugee status, his claim should not be rejected unless his credibility is undermined by information that emanates from a source other than his own account.

47. Fitting the fact of an earlier UNHCR decision in favour of refugee status into (in the case of a determination by the Secretary of State) the quasi-judicial and (in the case of the tribunal) the judicial model of determination of a claim to asylum is not easy. It does not supply evidence which can be independently evaluated by the decision-maker. Nor does it, in my opinion, raise a presumption by which the adjudicator's assessment of the evidence is adjusted. It does not impose a burden of proof on the state authorities who resist the claim. It must be given weight but the manner in which it should be accorded weight does not conform to any conventional trial norm. Unsatisfactory though it may be, it seems to me that the influence that such a decision has on the determination of a claim to asylum must be expressed in general (and consequently, fairly imprecise) terms.

48. The circumstance that the weight to be given to the UNHCR decision cannot be articulated in an exact way must not be allowed to detract from the influence that it wields. Quite apart from the respect that is due to such a decision

by reason of the unique and matchless experience and expertise of UNHCR, considerations of comity, legal diplomacy and the need for consistency of approach in international protection of refugees demand no less. The United Kingdom's obligation to cooperate with UNHCR also impels this approach. Moreover, as a general rule, the UNHCR decision will have been taken at a time more proximate to the circumstances which caused the claim to have been made. Frequently, it will have been made with first-hand knowledge of and insight into those conditions superior to that which a national adjudicator can be expected to possess.

49. All of these factors require of the national decision-maker close attention to the UNHCR decision and considerable pause before arriving at a different conclusion. The approach cannot be more closely prescribed than this, in my opinion. The UNHCR conclusion on refugee status provides a substantial backdrop to the decision to be made by the national authority. A claimant for asylum who has been accorded refugee status by UNHCR starts in a significantly better position than one who does not have that status. But I would be reluctant to subscribe to the notion that this represents "a starting point" in the inquiry because that also hints at the idea of a presumption. Recognition of refugee status by UNHCR does not create a presumption, does not shift the burden of proof and is not a starting point (if by that one implies that it is presumptively assumed to be conclusive) but substantial countervailing reasons are required to justify a different conclusion.

Did the immigration judge give sufficient weight to the UNHCR decision?

50. In para 25 of her determination IJ Agnew said this:

> "… whilst the granting of refugee status to the appellant should be regarded as a starting point, it is not necessarily a very strong one, on its own, without any helpful evidence as to the basis and procedures for the previous grant. I, however, do bear in mind that it is a starting point, that it is significant and that whilst considering the substantive merits of the case, the most clear and substantial grounds, if they exist, must be provided for coming to a different conclusion."

51. This discussion might be considered to be internally inconsistent in that the suggestion that the grant of refugee status is "not necessarily a very strong one" does not rest easily with the later observation that it is "significant". Quite apart from this, however, the grant of refugee status should always be regarded as significant. It does not require to be bolstered by "helpful evidence as to the basis and procedures" on which it was granted for it to amount to an important

consideration. Of course, if such information is present the significance of the grant of refugee status may be increased. But it is not diminished by the absence of such material.

52. It is unwise, however, to isolate parts of the determination from its overall treatment of the approach to be taken to the prior grant of refugee status by UNHCR. IJ Agnew was careful to say that clear and substantial grounds were required to justify a different conclusion. It is clear that she conducted a careful analysis of the material which led her to decide that she should not follow the UNHCR's determination. And it is also clear that there was material extraneous to IA's account by which its veracity could be tested. The judge was entitled to have regard to his failure to mention that he had led incursions into Iran in the first statement. Likewise, she could quite properly take into account the discrepancies between IA's and Kamaran Armandzadeh's accounts of their time together and the striking inconsistency in the latter's versions of whether IA had been on a mission with Mr Armandzadeh's brother. The (apparently) unexplained post mark on the package containing the documents said to have been dispatched by the appellant's sister was another relevant factor.

53. I find it impossible to say that these matters, taken together with the judge's marked reservations about the believability of the appellant's own story, were not sufficient to justify her rejection of his appeal. I should say that I consider that the judge was entitled – indeed bound – to consider the credibility of the appellant's account, judged on its own terms, once she had found that there were sufficient reasons from external sources to question its reliability. While his account would not justify the description "so riddled with inconsistency and implausibility as to render it utterly … unbelievable" – (see para 46 above), once there was material outside his statements and evidence which challenged it, the judge was right to examine the appellant's various versions for any intrinsic lack of trustworthiness.

The fresh evidence

54. In *E and R v Secretary of State for the Home Department* [2004] QB 1044, the Court of Appeal considered the question of when it was appropriate to permit fresh evidence to be introduced in an asylum appeal. It was held that mistake of fact giving rise to unfairness was a separate head of challenge on an appeal on a point of law. Admission of fresh evidence designed to establish misunderstanding or ignorance of an established and relevant fact was subject to *Ladd v Marshall* principles, which may be departed from where the interests of justice require. In para 66 Carnwath LJ said this about the "ordinary requirements for a finding of unfairness":

> "First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been 'established', in the sense that it was uncontentious and objectively verifiable. Thirdly the appellant (or his advisers) must not been have been [sic] responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the tribunal's reasoning."

55. In the present case it was argued that the evidence of the interview of the appellant by UNHCR in May 2003 established a mistake about an existing fact in that the immigration judge had concluded that the appellant had not been present on incursions into Iran as he had claimed. In my view, evidence of the UNHCR interview does not establish a case of mistake about an existing fact, if indeed, the finding of the immigration judge on this issue can properly be described as a "fact". It is certainly evidence of an earlier account which, on one view, adds credence to a number of elements of the account which IA subsequently gave. But it cannot be described as an uncontentious and objectively verifiable fact.

56. The appellant advances an alternative basis on which the evidence should be admitted. This is that it informs consideration of the general issues of principle and it is in the interests of justice that it should be received. While it is open to the appellant to argue that the determination of UNHCR was properly made, it is submitted that it would be artificial to rely on an assertion to that effect when the true facts about why the determination was made are now known.

57. I would admit the evidence in the interests of justice but for somewhat different reasons from those advanced on behalf of the appellant and for a slightly different purpose. The interview record discloses the approach that is taken to the investigation of a claim to refugee status and the range of subjects covered in the interview. As a tangible example of this type of inquiry, it provides useful material on which to make a judgment as to how influential a grant of refugee status should be as a matter of general practice. This stands quite apart from the question whether it rehabilitates the case that the appellant made to the immigration judge. The interview notes should be admitted, in my opinion, therefore, solely for the purpose of assessing the level of influence that a decision by UNHCR on refugee status should have.

Disposal

58. Since I have concluded that the judge was entitled, on the information before her, to reject the appellant's account and to find that, notwithstanding the

grant of refugee status by UNHCR on two occasions, the appellant should be refused asylum, I would dismiss the appeal.

59. It was submitted on the appellant's behalf that the matter should be remitted to the immigration judge so that she could consider the new material contained in the UNHCR record of interview with the appellant. I can see the force in that suggestion, not least because of my conclusion (at para 27 above) that, had this information been available to IJ Agnew, it is distinctly possible that she might have reached a different view on his credibility. But it appears to me that the better course is for the appellant to submit a fresh claim under rule 353 of the Immigration Rules (which, we were told, he would do in the event of failure in the appeal).

60. Rule 353 provides:

> "When a human rights or asylum claim has been refused... and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content: (i) had not already been considered; and (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection."

61. It will be, of course, a matter for the Secretary of State and, if necessary an immigration judge, to decide whether the new material from UNHCR constitutes a fresh claim. But it appears to me that submissions based on the UNHCR interview record are plainly of a significantly different order from those which have already been submitted on the appellant's behalf. It will also be for the Secretary of State to consider if the new material creates a reasonable prospect of success. Given that the rejection of the appellant's claim depended so heavily on the conclusion that his account was not believable, and that the new material sounds directly on the question of his credibility, one would have thought that the relatively modest hurdle of "reasonable prospect of success" would be comfortably overcome. And this is the more so because the interview record appears to reinforce in some material particulars the account that he gave in his second written statement and during the hearing before IJ Agnew.