Daqlawi, Re Judicial Review [2003] ScotCS 165 (05 June 2003)

OUTER HOUSE, COURT OF SESSION

P701/02

OPINION OF LORD MENZIES

in the Petition of

ALI AHMED KHALAF DAQLAV

for

Judicial Review of a determination of the In
Appeal Tribunal refusing leave to ap

Petitioner: Sutherland; Morton Fraser

Respondent: Carmichael; H. MacDairmid,

Office of the Solicitor to the Advocate General

5 June 2003

[1] The petitioner is an Iranian national. He is of Arabic descent and formerly lived in the Al Ahwaz region of Iran. In about 1990 he joined the Democratic Movement for the Student Youth of Al Ahwaz. The petitioner avers that this was a secret movement dedicated to freeing the region from Iranian control. Leading figures in the organisation have been arrested by the Iranian intelligence forces or have disappeared. In about late 1998 the petitioner fled to Turkey, where he went into hiding. On 13 May 1999 he arrived in the United Kingdom and claimed asylum. The respondent is the Secretary of State for the Home Department.

[2] On about 18 March 2000 the respondent made a decision to refuse the petitioner's application for asylum. Thereafter the respondent conceded a judicial review petition of a determination refusing an appeal against that decision. A fresh appeal hearing took place on 10 January 2002. A determination by an adjudicator was issued on 8 February 2002 dismissing the appeal. An application for leave to appeal against that determination was refused by the Immigration Appeal Tribunal

on 12 March 2002. In these proceedings for judicial review the petitioner seeks reduction of the determination of 12 March 2002 refusing leave to appeal against the adjudicator's determination of 8 February 2002.

SUBMISSIONS FOR THE PETITIONER

[3] Mr Sutherland began his submissions on behalf of the petitioner by referring me to guidelines and authorities as to how an application for asylum should be treated. He referred me to the definition of a refugee in Article 1 of the 1951 United Nations Convention relating to the status of refugees, and to the UNHCR handbook on procedures and criteria for determining refugee status, paragraphs 195-205. He emphasised that paragraph 203 of this handbook provides "after the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. As explained above, it is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognised. It is therefore frequently necessary to give the applicant the benefit of the doubt". He referred me to Hathaway on the *Law of Refugee Status*, which states (at page 85) that:

> "It is critical that a reasonable margin of appreciation be applied to any perceived flaws in the claimant's testimony. A claimant's credibility should be not impugned simply because of vagueness or inconsistencies recounting peripheral details, since memory failures are experienced by many persons who have been the object of persecution. Because an understandable anxiety affects most claimants compelled to recount painful facts in a formal and foreign environment, only significant concerns about the plausibility of allegations of direct relevance to the claim should be considered sufficient to counter the presumption that the sworn testimony of the applicant is to be accepted as true."

[4] Counsel referred me to three unreported decisions of the Immigration Appeal Tribunal which indicated the approach of that Tribunal to an adjudicator's findings of credibility. In the appeal of *Majorie Kasolo* (1/4/1996) the Appeal Tribunal made general observations as to how the credibility of an asylum seeker should be assessed. In *Cledias Moyo* (15/3/2002) the Immigration Appeal Tribunal stated that they were reluctant to interfere with the adverse credibility finding of an adjudicator who heard the evidence, but in that case they found that all the reasons for the adverse credibility finding were flawed. They observed (at paragraph 14) that:

> "The only reason given by the Adjudicator for deciding to place no reliance on the letters submitted by the appellant was that they were 'self serving'. This is not a good reason. If every document submitted by every party was to be rejected because it was 'self serving' it is

> likely that no documentary evidence would ever be admitted. Most documentary evidence is self serving in the sense that it assists the case of the party who submits it. The Adjudicator may have had better reasons for deciding not to place any reliance on the documents, but he has not said what these are and they are not obvious."

[5] In *Ernesto Mendes* (12/5/1995) in which the Immigration Appeal Tribunal sustained an appeal because the decision of an adjudicator was unsafe in his assessment of credibility, the Appeal Tribunal emphasised that an adjudicator who is assessing credibility should be careful not to apply the norms and perceptions of the country of adjudication. In that case the adjudicator reached a view as to the credibility of the appellant partly because of his confusion about dates, but the Appeal Tribunal reached the view that this was not the most important consideration. Counsel pointed out that the practice of the Immigration Appeal Tribunal is to be more prepared to intervene on matters of credibility than an appellate Court would normally be, and that in assessing whether the appellant has a well-founded fear of persecution it is settled that this test is met if there is a serious possibility of persecution. Indeed, as Lord Diplock observed in *Fernandez* [1971] 2 All ER 691 even a possibility as low as 10% could not be discounted. Accordingly, although the burden of proof is on the applicant, the extent of that burden is considerably lower than in normal civil proceedings.

[6] Counsel relied on the well known case of *Karanakaran* v *Secretary of State for the Home Department* [2000] 3 All ER 449. He referred me to the Opinion of Brooke, L.J. at 459 when he commented about the majority decision in *Kaja* as follows:

> "... when assessing future risk decision makers may have to take into account a whole bundle of disparate pieces of evidence: (1) evidence they are certain about; (2) evidence they think is probably true; (3) evidence to which they are willing to attach some credence, even if they could not go so far as to say it is probably true; (4) evidence to which they are not willing to attach any credence at all. The effect of *Kaja*'s case is that the decision maker is not bound to exclude category (3) evidence as he/she would be if deciding issues that arise in civil litigation".

Again at page 471 Booke, L.J. observed that:

> "Unless something is so trivial that even on a cumulative assessment it would be bound to carry no weight, or the decision maker has no real doubt that it is entitled to discard some point from its consideration altogether, it would be wrong to eliminate that point completely."

[7] Counsel also relied on the Opinion of Sedley, L.J. at pages 476 and 477. He submitted that an adjudicator in assessing credibility in an asylum case must have regard to a wider spectrum of evidence than is normally considered in a civil litigation, and must look cumulatively at anything in categories 1, 2 and 3 of Brooke, L.J.'s categorisation.

[8] Finally, counsel for the petitioner referred me to *Gurjit Singh* v *The Secretary of State for the Home Department* (an unreported decision of Lady Paton on 30 May 2001) and in particular to paragraph 41 of that opinion, where Lady Paton accepted that questions of credibility are primarily matters for the adjudicator, but observed that "nevertheless, in immigration cases, as Collins, J. observed in *R* v *Home Secretary, ex partie Chugtai* [1995] Im.A.R. 559:

> "If there is a question of disbelieving anything an applicant has said, that ought to be spelt out. It is obviously desirable to indicate specifically why any witness is being disbelieved." Collins J.'s views were noted in the Inner House in *Daljit Singh*, and it was accepted that his *dicta* might be highly relevant where "a question of credibility arises which has to be resolved by an adjudicator'".

[9] Counsel for the petitioner then turned his attention to the adjudicator's determination in this case, dated 8 February 2002 (number 6/1 of process). His first point about this determination was that nowhere does the adjudicator set out what the petitioner's oral evidence at the hearing was. The adjudicator sets out other evidence, from documents and from other witnesses, but does not set out the petitioner's own oral evidence. The only comments by the adjudicator on the petitioner's evidence come from discrete passages dealing with particular areas of evidence; there is only a very partial record of the petitioner's evidence, and no overall evaluation of it. Counsel for the petitioner submitted that this was extraordinary, and founded on this omission by itself, and together with his other criticisms, as the basis for arguing that the Immigration Appeal Tribunal erred in law in refusing leave to appeal.

[10] Mr Sutherland then subjected the adjudicator's determination to a detailed criticism, paragraph by paragraph. He observed that she accepted that opposition and independent movements are reportedly suppressed by the Iranian government; that among the victims of human rights violations were members of opposition political groups and ethnic minorities; and that the Amnesty International Report of 1998 stated that unfair trials have led to long prison terms for various groups including supporters of those groups representing minorities such as Arabs. However, in paragraphs 18 and 19 she deals with two letters written to the General Secretary of the United Nations in a dismissive fashion, concluding with the view that:

> "There appears to be a distinct lack of organisation and policy judging from these documents and I cannot accept that the Iranian authorities

would consider themselves in any way threatened by this organisation if these documents are an example of their activities and strength."

[11] Counsel submitted that this passage ran contrary to the first paragraph of the Immigration Appeal Tribunal's conclusions in *Mendes* (*supra*), and was therefore objectionable.

[12] In paragraph 20 the adjudicator deals with a letter dated 12 August 2000, and states: "I cannot attach any weight to this document. First and foremost, the name of the appellant is incorrect." Counsel submitted that the adjudicator was entirely wrong to place no weight on the document because of the spelling of the appellant's name. The appellant's name is Arabic, and the transliteration from Arabic script could justifiably be made in a variety of ways. He observed that the adjudicator herself spelt Arabic names in a variety of ways in her determination - she referred to one witness variously as Mr Omid Rady, Mr Omad Radi and appeared to regard the forms Rady and Radi as interchangeable. Counsel submitted that the adjudicator appears to have placed this document in category 4 of Brooke, L.J.'s categorisation in *Karanakaran* (quoted above) without giving any satisfactory reason for doing so. If this document had been categorised in any of categories 1, 2 or 3, as it ought to have been, this might have affected the outcome of the determination. With regard to the third ground for the adjudicator attaching no weight to this document (beginning with the words "I also find it utterly bizarre" in the eighth line of page 9 of the determination) counsel observed that there was no information as to when the London branch of the organisation began, nor as to whether the appellant knew of its existence. In any event, this was not put to the petitioner for his comment. It was not a valid ground of criticism that the appellant was able to produce a letter from the London group at this adjudication hearing although not at the previous hearing of his appeal - the appellant was merely doing what the United Nations expected him to do. There was nothing wrong in the appellant looking for material to support his claim, and this did not mean that it was unworthy of consideration. Counsel submitted that every aspect of the adjudicator's reasoning in paragraph 20 was perverse, and that if any of his criticisms were accepted by the Court, this would entitle the Court to quash the decision to refuse leave to appeal.

[13] In paragraph 24 the adjudicator appears to reject another document because it "was obtained by the appellant to bolster his claim, the earlier documents clearly having failed to fulfil this purpose". As observed in the passage in *Moyo* quoted above, it is not a good reason for placing no reliance on a letter submitted by an appellant that it is "self serving". The adjudicator states that she attaches little weight to this letter, but gives no good reason for doing so.

[14] In dealing with two further documents at paragraphs 25-27, the adjudicator appears to have attached no weight to these documents and does not find that they are genuine largely because they were faxes rather than original documents. She stated that the copy, despite being some six years older than the other "notifications" was uncannily similar in format, and she could not see the danger in posting such documents anonymously rather than faxing them. Counsel submitted

that these did not amount to good reasons for the adjudicator to find that the documents were false.

[15] At paragraph 28 and following paragraphs the adjudicator deals with the oral evidence of witnesses (although, as already observed, not the evidence of the appellant himself). Counsel submitted that there was no material before the adjudicator to enable her to hold that there was a "tightly knit community of Iranian Arabs"; moreover, Mr Abdul Kadr Daqlawi was the second cousin of the petitioner, and 15 years older than him, and there was no evidence before the adjudicator as to how close he lived to the petitioner, although he lived in the same area as his brother. With regard to Mr Omad Radi it was impossible to understand what the adjudicator made of his evidence. In any event, with regard to the last sentence of paragraph 29, it was difficult to understand what Mr Radi's evidence has got to do with the documents to which the adjudicator refers.

[16] With regard to paragraph 30, counsel observed that in paragraph 14 the adjudicator had already accepted reports as showing persecution of Arabs in 1998, and there was no material before her to suggest a change in this situation since 1998. She had left important material out of account in her assessment in paragraph 30. In particular, she had left out of account the appellant's own sworn evidence, which was clearly highly relevant material on the basis of *Karanakaran*. As Hathaway observed (*supra*) at page 84 "the primary rule has been stated by the Federal Court of Appeal" (in Canada) "to be that 'when an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness.'". There was no evidence before the adjudicator to justify her finding that "If such an organisation as the Democratic Movement for Students Youth of Al Ahwaz existed in the appellant's locality and he was involved in it, it was at such a low level that it would not have raised the interest of the authorities and they would not have been seeking him out as a political activist".

[17] Paragraph 30 was based on assumption and surmise without evidential basis. Moreover, documents 2 and 4 in bundle C for the appellant showed that organisations interested in monitoring human rights were not being allowed to visit Iran to obtain material. These documents were before the adjudicator; her comments on the absence of reports in 2000 and 2001 ought to have reflected the difficulties in collecting information.

[18] In conclusion with regard to the adjudicator's determination, Mr Sutherland submitted that paragraph 32 of the determination amounted to an obvious misdirection by the adjudicator. The adjudicator has failed to have regard to relevant material before her (principally the evidence of the appellant himself); she has erred in law; and her decision is unreasonable in the *Wednesbury* sense.

[19] All of the above arguments were focused fully in the petitioner's grounds of appeal to the Immigration Appeal Tribunal. These complied with Rule 18(4) of the Immigration and Asylum Appeals (Procedure) Rules 2000. By virtue of paragraph 22 of Schedule 4 to the Immigration and Asylum Act 1999, the Immigration Appeal Tribunal may affirm the determination or make any other determination

which the adjudicator could have made. The Appeal Tribunal were therefore empowered to look at all the facts *de novo*. They were not bound to consider only whether the adjudicator had erred in law or had reached a decision which was unreasonable in the *Wednesbury* sense. In all these circumstances, and having regard to the criticisms made of the adjudicator's determination, the Immigration Appeal Tribunal's decision to refuse the petitioner's application for leave to appeal was unreasonable and amounted to an error in law. For these reasons Mr Sutherland moved me to reduce the determination of the Immigration Appeal Tribunal to refuse the petitioner leave to appeal.

SUBMISSIONS FOR THE RESPONDENT

[20] For the respondent Miss Carmichael moved me to dismiss the petition. She accepted the definitions of refugee and the guidelines provided in the UNHCR handbook relied on by Mr Sutherland. She pointed out that decisions of the Immigration Appeal Tribunal are illustrative, not authoritative. However, she accepted the general point that persons making decisions in asylum matters must take particular care when assessing the credibility of applicants. Nonetheless, they still required to test the evidence, and she maintained that the ordinary methods of testing evidence applied in an asylum application, notwithstanding the observations in *Karanakaran*. In this regard she referred me to *Kulwinder Singh* v *Secretary of State for the Home Department* 2000 S.C. 288. In that case Lord Reed held that an inconsistency between various accounts given by the applicant was something which could properly be regarded as affecting his credibility. He went on to observe (at page 293F):

> "I bear in mind that a special adjudicator must be careful before rejecting an asylum-seeker's account as incredible, given that the decision under appeal is said to be one which may put the appellant's life at risk, and given also the cultural, linguistic and other difficulties (including those described in para. 198 of the UN handbook) which may affect a genuine asylum-seeker. Nevertheless, I must also bear in mind that credibility is a question of fact (c.f. *R* v *Secretary of State for the Home Department, ex parte Agbonmenio*). Such questions have been entrusted by Parliament to the tribunal of fact - in this case, the special adjudicator - and it would be constitutionally improper for the Court to interfere with that tribunal's assessment except on *Wednesbury* grounds. It is also important - especially in a case such as the present, when the Court has the same evidence before it, in the same form, as the special adjudicator - to bear in mind that the special adjudicator has been specially appointed to hear asylum appeals and has the benefit of his own training and experience in dealing with asylum-seekers from different societies and cultures: something of which a judge is unlikely to have any comparable experience."

[21] Miss Carmichael contrasted the provisions for the granting of leave to appeal under the present rules (i.e. Rule 18(7) of the Immigration and Asylum Appeals (Procedure) Rules 2000) with the provisions previously in force (i.e. Rule 14 of the Immigration Appeals (Procedure) Rules 1984). The present rules, under which the application for leave to appeal in the present case was determined, provide that leave to appeal shall be granted only where - (a) the tribunal is satisfied that the appeal would have a real prospect of success; or (b) there is some other compelling reason why the appeal should be heard. This is a higher test for the granting of leave to appeal than formerly existed, when the authority only had to be satisfied that the determination of the appeal involved an arguable point of law.

[22] In answer to Mr Sutherland's submission about the adjudicator's failure to record the petitioner's oral evidence, Miss Carmichael made three points. First, she pointed out that in paragraph 4 of the adjudicator's determination she summarises the appellant's position at interview on 25 May 1999. This was the basis for the petitioner's claim for asylum, and it was not being suggested that his evidence at the hearing differed from this. Moreover, the adjudicator had in front of her a written statement from the applicant, being No. 6/12.1 of process. Second, there was no duty on an adjudicator to set out the terms of an applicant's oral evidence. In support of this proposition she referred me to *Daljit Singh* v *Secretary of State for the Home Department* 2000 S.C. 219, and in particular the observations of the First Division at page 222B to 223C. Third, she observed that there was no formal requirement in the Immigration Asylum Appeals Rules 2000 for a particular style or content of an adjudicator's determination.

[23] With regard to the various criticisms made by counsel for the petitioner on individual paragraphs of the adjudicator's determination, counsel for the respondent observed that the documents referred to in paragraphs 17 and 19 do not appear to relate to the petitioner's organisation, and the Court should not rely on these paragraphs in reaching a decision because Mr Sutherland was not suggesting that these paragraphs were unreasonable.

[24] With regard to paragraph 20, counsel for the respondent accepted that the adjudicator's position regarding the spelling of the petitioner's name gave her some difficulty. The adjudicator did not appear to have taken on board that different spellings might arise on translation from the original Arabic. With regard to the other factors which were criticised in paragraph 20, she submitted that the adjudicator was entitled to test the petitioner's credibility in the normal way (albeit with extra caution); in support of this she relied on *Kulwinder Singh (supra)*.

[25] With regard to paragraph 24, in which the adjudicator attached significance to the petitioner's failure to produce a document before, and suggested that the organisation had for its purpose educational advancement, counsel submitted that in order to rely on this paragraph the petitioner would have to assert that no reasonable adjudicator could have drawn the inference which this adjudicator did in fact draw. Counsel for the petitioner was not asserting this.

[26] With regard to paragraph 25, counsel noted that the petitioner's interview with the Home Office took place on 25 May 1999 (as narrated in paragraph 4 of the determination). She accepted that it was difficult in light of this to support the adjudicator's reasoning in the first sentence of paragraph 25. However, she suggested that there was a wealth of reasonable reasons for reaching the conclusion in paragraph 27 that these documents were not genuine.
[27] With regard to paragraph 28, counsel pointed out that the words "his brother" in the third line of page 13 of the determination related to the petitioner's brother, not to the witness's brother. This is clear from the first two pages of the written statement of Mr Abdul Kadr Daqlawi (No. 6/12-2 of process). On this basis the adjudicator's conclusion was reasonable and understandable.
[28] With regard to paragraph 29, the adjudicator was entitled to take into account the discrepancies in Mr Radi's accounts. Any difficulty caused by the adjudicator's reference to the documents in the last two sentences of this paragraph was more apparent than real - the adjudicator was simply expressing the view that she did not accept Mr Radi as a credible witness.
[29] Counsel submitted that when one looks at the whole of the adjudicator's determination, her conclusions remain sustainable. The cumulative effect of a number of pieces of evidence might have a negative result for an applicant - it was not inevitable that the cumulative effect would be to help the applicant's case. If the adjudicator had made no error of approach in her determination, there was no error of law by the Appeal Tribunal in refusing leave to appeal. Counsel conceded that the Immigration Appeal Tribunal could look at all of the facts *de novo*. She accepted that by reason of paragraph 22 of Schedule 4 to the Immigration and Asylum Act 1999 the Immigration Appeal Tribunal was not bound to consider only whether the adjudicator's determination was unreasonable in the *Wednesbury* sense. In this regard she referred me to David Jackson's *Immigration Law and Practice*, and particularly to paragraphs 25.38 and 25.39 thereof, wherein the author (who was at the time of publication the chairman of the Immigration Appeal Tribunal) states that the Immigration Appeal Tribunal may review findings of fact, even if these are not perverse. However, counsel pointed out that there would have to be something wrong with an adjudicator's decision to enable the Immigration Appeal Tribunal to interfere, otherwise all applications for leave to appeal would be granted even if there was no question of perversity.

DECISION

[30] I am persuaded that the submissions for the petitioner are well founded, that the failings and shortcomings of the adjudicator's determination were such that any Immigration Appeal Tribunal acting reasonably and applying its mind to the adjudicator's determination and the grounds of appeal would have been satisfied that the appeal would have a real prospect of success, and that the Immigration Appeal Tribunal erred in law in refusing to allow leave to appeal.
[31] I agree with counsel for the petitioner that the most notable omission from the adjudicator's determination is any record of the petitioner's oral evidence before

the adjudicator, and any analysis of that evidence. The adjudicator narrates (at paragraph 7 of her determination) that "the appellant gave oral evidence at the hearing with the assistance of an interpreter. Evidence was also given by Mr Abdul Kadr Daqlawi and Mr Omid Rady". At paragraph 28 of the determination there is a heading "oral evidence of witnesses"; in that paragraph and the following paragraph the adjudicator sets out the oral evidence of each of the supporting witnesses, together with her analysis and assessment of that evidence. Nowhere in her determination does the adjudicator set out the oral evidence given by the petitioner himself. It appears to me that where an adjudicator determines an asylum application having heard oral evidence from the applicant, and the determination rests wholly or substantially on the adjudicator's finding that the applicant is not a credible witness (which is the basis for the determination in this case, as is apparent from paragraph 32 of the determination) it is necessary for the adjudicator to include a concise statement of the applicant's oral evidence together with the adjudicator's reasons for reaching the view that the applicant was not a credible witness.

[32] In saying this, I am not to be taken as suggesting that adjudicator's determinations must comply with a style or formula, nor that the adjudicator is under an obligation to carry through a mechanical process of narration of all the evidence, analysis of it into classes and an explanation factor by factor of the relevance or irrelevance, credibility and reliability or otherwise of it. I am conscious of the observations of the First Division in *Daljit Singh (supra)* at pages 222H to 223C, and I am in entire agreement with them. However, the circumstances in *Daljit Singh* were very different from those in the present case. In *Daljit Singh* the applicant did not give evidence at the hearing before the adjudicator. Moreover, the adjudicator stated that he had proceeded upon the assumption that the applicant's assertions at his interview with an official of the Home Office Asylum Directorate were to be accepted *pro veritate*. The attack on the adjudicator's determination in *Daljit Singh* therefore proceeded on a materially different factual basis, and was argued on the basis that the adjudicator had failed to give adequate and comprehensible reasons for his decision. That is quite different from a situation such as the present, where the adjudicator narrates that the appellant and two other witnesses gave oral evidence at the hearing, and narrates the evidence of the other witnesses and her reasons for rejecting this, but does not narrate the evidence of the applicant yet finds that he was not a credible witness. I consider that this fails to meet the tests which are set out by Lord Macfadyen in *Singh* v *Secretary of State for the Home Department* 1998 S.L.T. 1370 and quoted by the First Division in *Daljit Singh* (*supra* at pages 222A to E). For completeness I repeat these as follows:

> "(i) The decision must, in short, leave the informed reader and the Court in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it" (*Wordie Property Co Limited* v *Secretary of State for Scotland* 1984 S.L.T. 345); (ii) Adjudicators should indicate

> with some clarity in their decisions (1) which evidence they accept, (2) what evidence they reject, (3) whether there is any evidence as to which they cannot make up their mind whether or not they accept it, and (4) what, if any, evidence they regard as irrelevant" (*R* v *Immigration Appeal Tribunal, ex parte Amin* 1993 Im.A.R.); and (iii) If there is a question of disbelieving anything an applicant has said that ought to be spelt out. It is obviously desirable to indicate specifically why any witness is being disbelieved" (*R* v *Home Secretary, ex parte Chugtai* 1995 Im.A.R. 559)."

[33] As the First Division observed in *Daljit Singh*, the second and third of these *dicta* may well be in point and possibly of high relevance should a conflict of evidence or a question of credibility arise which has to be resolved by an adjudicator (although in light of the facts of *Daljit Singh*, no such questions arose in that case).

[34] Particularly having regard to the need to take special care when assessing the credibility of asylum applicants, I consider that the adjudicator's determination in this case falls short of what is required. It is not clear from the determination whether the adjudicator has considered all the material which was put before her; in particular, it is not clear what weight, if any, she has attached to the oral evidence of the applicant. For this reason alone I consider that the adjudicator's determination is fundamentally flawed and that the Immigration Appeal Tribunal erred in law in refusing leave to appeal.

[35] In addition, there is force in some of the other criticisms of the adjudicator's determination. In particular, the adjudicator's reasons for attaching no weight to the document which forms document 7 of bundle B, which are narrated in paragraph 20 of the determination, suggest that the adjudicator may have taken into account irrelevant considerations. The reason which she states is her "first and foremost" reason for not attaching any weight to the document is the "incorrect" spelling of the appellant's name. As counsel for the respondent very properly conceded, this is a surprising reason, and appears to take no account of the possibility that different spellings may arise on translation from the Arabic. The criticisms by counsel for the petitioner of the adjudicator's other reasons for placing no weight on this document appear to me also to have some force. As explained in the authorities relied on for the petitioner, there is nothing reprehensible in an applicant seeking to find documentary evidence which supports his claim; this is what is done by every litigant, and does not mean that such material is unworthy of consideration. The fact that the applicant had obtained a letter from the London organisation by the time of this hearing, whereas he had not obtained such a letter by the time of the previous hearing, is not in my view a relevant reason for attaching no weight to the earlier German document. The adjudicator had no information before her as to when the London organisation was established, or whether the applicant knew of its existence at the time of the earlier hearing.

[36] The same criticism of the adjudicator's reasoning may be made in relation to paragraph 24 of the determination. The adjudicator attaches little weight to the

document in question, partly because she found "that the document was obtained by the appellant to bolster his claim". The weight to be attached to a document should not be affected merely because it was obtained for this purpose. Moreover, the adjudicator's comment that the letter "does show their aims are not of the type which would appear to draw particular interest towards its members from the Iranian authorities" is difficult to reconcile with the statement of the aims of the movement which is given in paragraph 22 of the determination, and the comments in paragraph 10 about suppression by the Iranian government of opposition and independent movements. Similarly it is difficult to find an evidential basis for the adjudicator's observations in paragraph 30, and to reconcile these observations with the documentary evidence before her regarding the persecution of Arabs in Iran.

[37] Having regard to the fact that the Immigration Appeal Tribunal was entitled to look at all the facts *de novo* and was not bound to consider only whether the adjudicator's determination was unreasonable in the *Wednesbury* sense, I consider that the above criticisms of the adjudicator's determination (which were adequately focused in the grounds of appeal) were such that the Immigration Appeal Tribunal erred in law in refusing leave to appeal.

[38] For these reasons I sustain the first plea-in-law for the petitioner and grant reduction of the determination refusing leave to appeal to the Immigration Appeal Tribunal against the determination of the adjudicator.
