

Case No: CO 1475/99

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CROWN OFFICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26th July 2000

Before:

THE HON MRS JUSTICE SMITH

The Queen

- v -

Immigration Appeal Tribunal

ex parte

Vanessa Elizabeth Proano Parra

(A National of Ecuador)

(Transcript of the Handed Down Judgment of
Smith Bernal Reporting Limited, 190 Fleet Street
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Official Shorthand Writers to the Court)

Mr E.W.B. Fripp appeared on behalf of the Applicant
Mr A. Underwood appeared on behalf of the Respondent

Judgment
As Approved by the Court

MRS JUSTICE SMITH:

1. This is an application for judicial review of the decision of the Immigration Appeal Tribunal (IAT) on 25 February 1999 refusing leave to appeal against the decision of a Special Adjudicator, Mr C.J. Hopkinson delivered on 30th November 1998. The Special Adjudicator had rejected the Applicant's appeal from the Secretary of State's decision dated 24th February 1998 that she did not qualify for asylum under the 1951 United Nations Convention relating to the Status of Refugees (the Convention).
2. Article 33(1) of the Convention provides:

'No contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'.
3. By Article 1A, a 'refugee' is defined as a person who 'owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.'
4. Following an application for asylum, the initial decision is taken by the Secretary of State for the Home Office. There is a right of appeal to a Special Adjudicator pursuant to section 8(1) of the Asylum and Immigration Appeals Act 1993 and, with permission, from the Special Adjudicator to the IAT, pursuant to Part II of the Immigration Act 1971. The IAT has the power to overturn the Special Adjudicator's determination on a point of law and also on questions of fact. There is no right of appeal from the IAT's refusal to grant leave and the only channel by which such a refusal may be challenged is by judicial review.
5. The applicant is a citizen of Ecuador and was born in 1976. She arrived in the UK on 22nd June 1997, having flown from Ecuador with a short transit stop in Holland. On arrival in the UK she claimed asylum and, in interview on the day of arrival, speaking through an interpreter, gave an account of her reasons for so doing. She said that about 2 years before, she had joined the Partido Social Cristiano, which roughly translated means the Social Christian Party (SCP). This is a lawful political party, one of the two main parties in Ecuador. She had been an active member, distributing leaflets and notices and attending meetings to support the leaders. All her family were members of the party. Between February and March 1997, she and other members of the SCP had been insulted and verbally threatened with death by members of a rival political party the Partido Roldosista Ecuatoriano (PRE). The PRE is the other main political party. These threats had not been directed at her individually but at the members present. She had not reported this to the police as such threats were not unusual.
6. Her flight to the UK had been precipitated by an incident on 9th June (12 days earlier) in which she said she had been sitting in a parked car with two SCP colleagues when two men had approached. She said 'now we think that they were employed by the PRE'. Without saying anything, they began shooting at the car tyres. Because the car was low and the windows open, one of her

colleagues, Douglas Peralta, was hit in the face and was killed 'on the spot'. The other, Jorge Bastidas, was injured and was still in hospital. The attackers then ran away. She, who was in the back of the car, had got down on the floor and had not been hit. After the incident, people came to help and called for an ambulance. Her two friends were taken to hospital. She went by taxi straight to her friends' parents' houses to tell them what had happened. She had not waited for the police at the scene as she was too nervous. After going to her friends' houses, she went home and told her father what had happened. He asked her if she wanted to leave the country. She thought about it for a while and, as her mother lives in England, she decided to come. She had never been interviewed about the incident by the police and had been in hiding at her aunt's house between the incident and her departure. Her aunt had made enquiries at the hospital and had found out that one of her friends had died. Also her aunt had talked to members of the SCP who had provided funds for her journey to England. Her passport had been obtained through normal official channels.

7. She said she had had no problems with the authorities in Ecuador and, apart from the incidents described, she had had no other problems of any kind. She was asked about the history, objectives and leadership of the SCP. Her answers were very brief. She said the party was founded in 1980, which was wrong; it was founded in about 1951. She did not know the name of any founding member. She named one current leader as Heinz Mollees. Asked about her employment history and financial support, she said her sister and father worked; then she said that her father had not worked for 3 years as he was disabled. He had been a security guard at a prawn farm.
8. The information provided in interview was corrected and amplified in a statement and documentary material sent to the Secretary of State on 24th October 1997. The applicant explained that she had completed one year at university. Her SCP membership card was provided, dated 1st March 1992, that is 3 years before she had said she had joined the party. She said she had joined when she was about 16 and had been mistaken when she had said in interview that she had joined about two years ago. She said her mistake in giving the date of the founding of SCP as 1980 was due to tiredness after her flight. She corrected the name of the leader of the party to Heinz Mollers. She said that the threats against her had begun in 1996, not February 1997 and had been directed at her individually. They had become worse and she had been told that she would be 'made to disappear'. On one occasion insults and stones had been hurled at her and others. She sought to correct the impression given that the attackers on 9th June had shot at the tyres of the car. They had shot at the people but the first shots hit the tyres. Also supplied was a medical certificate dated 9th June, which stated that Jorge Bastidas had been treated for serious firearm injuries and was in a critical condition. Also enclosed was a newspaper cutting dated 11th June 1997, describing a shooting incident said to have taken place the previous Monday as a result of which Douglas Peralta had died the following day from internal haemorrhage. A second man had been seriously injured. She was named as having been involved and having sustained injuries to the face and body. It was said that she had been trapped in the back seat due to the impact following the abrupt manoeuvring of the vehicle when the driver had seen two vehicles blocking their way. Two men had got of the car and shot at point blank range. She had recognised the men as PRE members. The victims belonged to the SCP.

9. On the basis of that evidence, the Secretary of State made his decision by letter dated 24th February 1998. This expressed the view that the material submitted on 24th October 1997 had been an attempt to bolster the application. The Secretary of State noted the discrepancy arising out the membership card and other discrepancies between the applicant's account and that in the newspaper report. He did not consider that the medical report on Jorge Bastidas confirmed the veracity of the applicant's account. He drew attention to the inaccurate answer she had given as to the date when the SCP had been founded and the inaccurate naming of the current leader said to be called Dr Heinz Moeller Freile. He said that these shortcomings served to further doubts about her degree of claimed involvement with the SCP. He observed that as the Ecuadorian constitution provided for freedom of speech, opinion and assembly and as Ecuadorians were free to join parties such as the SCP and were not harassed on account of membership, he did not consider that membership of the SCP, even if accepted, would give arise to a claim for asylum. He observed that there was no evidence that the attackers on 9th June were in fact members of the PRE. In any event he took the view that the attackers could not be regarded as the agents of persecution within the meaning of the 1951 Convention. There was no reason why the applicant could not have sought protection from the authorities. He thought the harassment she claimed to have faced was in any event of a localised nature. She could have lived safely in another part of the country where she was not known. He observed that the easy and open manner in which she had left Ecuador confirmed that she was of no interest to the authorities.
10. The applicant and her advisers can have been in no doubt from that time that her credibility was under suspicion. The applicant appealed against the Secretary of State's decision and by letter dated 15th September 1998 submitted further material for consideration by the Special Adjudicator. Much of this was background material relating to civil rights in Ecuador. Also included was a newspaper cutting dated 7th February 1997 naming 3 members of the PRE who had been identified as being responsible for attacks, such as 'gagging' students at the University of Guayaquil. The applicant was a student at that university which was in her home town. She was one of the two students named as victims of such treatment. Others had not wished to be named as they feared retaliation. All were members of the SCP. The other document of significance submitted at this time was an affidavit dated 18th July 1997 sworn by the applicant's father. He said that the applicant had travelled to London on 21st June 1997 in order to be reunited with her mother. She had done so because she was being harassed, sexually accosted, pursued with intent to rape and threatened with death by individuals with 'bad history.'
11. Two weeks later on 30th September 1998, the applicant submitted a further witness statement for use at the hearing before the Special Adjudicator. For the first time she claimed she had been 'sexually accosted' but gave no details of this. She said she had been very scared by the threats she had received. In respect of the incident of 9th June 1997, she asserted that the attackers had been firing at her as well as her friends. She had got away with minor injuries. She had been very frightened and her father had suggested that she leave the country. She had agreed to do so as she did not want to 'keep hiding from these people.' As for the Secretary of State's letter of refusal she denied that she had tried to bolster her

claim. She claimed that many misunderstandings had arisen due to difficulty in communicating through an interpreter. She had not had the opportunity to describe the injuries she sustained on 9th June 1997. These had been minor injuries to the face and body but were nothing in comparison with those of her friends. She said she was afraid to return to Ecuador. She had been forced to leave due to abuse and attacks by the PRE which had resulted in the death of her friend. She believed she would be persecuted and harassed again if she returned.

12. At the hearing, she gave evidence orally. She said she had been very tired when interviewed on arrival in the UK, especially at the end of the interview. Asked why she had not sought asylum in Holland, she said she had not known the aeroplane would land in Holland. Her ticket was for London. She had sat in a transit lounge for about half an hour. She said she had not sought protection from the police in Ecuador because they would not have taken any notice. She knew this from personal experience because 3 years earlier, her father had been attacked and the police had made no attempt to investigate. She explained the circumstances in which her father had been injured while acting as a bodyguard for someone in the SCP. She said he had been shot in the face by someone in the opposition party, had been unconscious for 6 hours and was now paralysed. He was now lucid at times and could walk a bit but was not a normal person. This had not been a factor in her decision to leave. Finally she said that she could not safely live in any part of Ecuador. It was a small country and 'the attack would come wherever she was.' She was still worried for herself and her family despite the lapse of a year since her departure.
13. When cross examined about her membership of the SCP, she asserted that the interview record was wrong when it stated that she had joined the party two years earlier and the threats had been made in February/March 1997. She had joined the party at the age of 15 but had not become active until the age of 18. She said that the threats had begun two years before she came to England. She could not name those who had threatened her as there were too many but she knew they were members of the PRE as they wore identifying T shirts. She agreed the party was not illegal and that many members of the party held high office in local and national positions. In respect of the 9th June, she said (for the first time) that she knew the attackers were members of the PRE because their car carried stripes, in the PRE colours. The car she had been in also carried stripes, in the SCP colours. She said that afterwards she had not spoken to the police as she was frightened and because she knew they had gone to the hospital to speak to her injured friend. She did not think the police had tried to contact her as they would not have had her address or telephone number. She said it had never crossed her mind to move to another part of Ecuador. She had been in touch with her family since she had come to England and they had not been harassed in any way.
14. She then gave an account of the 9th June in her own words. She said the car she was in had been stopped on a corner for only a few moments. She and her friends saw a car on the other corner with two people in it. Then the shots came. She did not know how many shots were fired and did not see the gun. She got down quickly and felt a blow or two but not from the firing of bullets. The gunmen went off. People came to help. She said her friends did not get out of the car as they were waiting for the ambulance. She got out through the back door. She had no treatment for her injuries which were only bruises.

15. She said that if she went back to Ecuador her political opponents would want to get her because their president was in exile and they wanted to be stronger and to take revenge because of that. When asked whether all members of the SCP faced the same risks as she, she said that it was only the active members who needed to seek refuge in other countries. When asked if there were any active members left in the party she said she thought from what her sister had told her that there were some new ones.
16. The Special Adjudicator rejected the applicant's evidence as untrue and unreliable on a number of grounds. Before he came to consider her evidence in detail he correctly set out the applicable law and also considered the background documents put before him concerning the state of affairs in Ecuador. These included several Amnesty International reports and a US Department of State report of 1997. He noted that Ecuador was a democratic republic with a unicameral legislature chosen in periodic free elections with universal suffrage. The judiciary was constitutionally independent but in practice corrupt. The legal system was politicised and inefficient. He noted the significant autonomy of the military but observed that they did not interfere in domestic affairs. He also noted that there were credible allegations of human rights abuses against the police and on isolated occasions the military too. The constitution guaranteed freedom of speech and this was generally respected in practice. There was a free press. Rights of assembly and association for peaceful purposes were respected. There was freedom of movement within the country and abroad. Human rights organisations operate openly and publish their findings. There had been no reports of disappearances or of political killings in the last two years. But there were credible reports of police involvement in extrajudicial killings, arbitrary arrests and physical mistreatment of suspects. There were reports of the government's failure to investigate allegations of human rights violations. As these human rights violations related to abuses by the police and government authorities and not by members of political parties on their opponents, the Special Adjudicator did not consider they were of relevance to the applicant's case. He concluded that the background documents did not show that politics were conducted in an atmosphere of animosity or hostility likely to result in the death, serious injury or persecution of those involved.
17. I return to the Special Adjudicator's decision to reject the applicant's evidence. As this is the underlying issue in this application, it will be necessary to go through his reasons in detail.
- i) He found that she had deliberately changed her story about when she had joined the SCP, in order to bring it in line with the membership card she had produced. He did not accept that the membership card was genuine and noted that she had not signed it. For someone said to be active in the party he was sceptical of her inability to answer questions about its history and leadership. He did not accept that she had ever been a member of or active in the SCP.
 - ii) He did not accept her evidence in respect of the incident of 9th June 1997. In particular, he noted that she had first said that her friend had died 'on the spot' and on another occasion had said that he died later. He thought

her account of her conduct immediately after the incident was incredible. She would not have gone to her friends' homes and then to her own home as she claimed. She would have gone to the hospital, as she claimed to have received some bruises. He noted that the Immigration Officer had not noted any marks on her face on 22nd June. He found her reasons for not speaking to the police after the incident to be incredible. Seeing how serious the incident was she would have wanted the perpetrators to be caught. Her explanation, that the police would not be interested was not plausible. He accepted that the newspaper reports of the incident were genuine extracts from publications. But he did not accept that the account was true or that it corroborated the Applicant's story. He said: 'You cannot believe everything you read in a newspaper. Members of the public can and do submit reports which regrettably are sometimes published without proper verification by an independent reporter'. He drew attention to the several differences between the reports and the applicant's account in evidence. Finally he rejected as not genuine the medical certificate on Jorge Bastidas. He noted that it was dated 9th June. As the alleged incident had not occurred until about 9.40 that evening, he could not accept that a doctor would have prepared and had typed such a certificate on that evening. It could have served no useful purpose.

- iii) Next he considered the applicant's father's evidence. He noted apparent inconsistencies in her evidence about him, his employment and how he came to sustain injury. He rejected her claim that he was only occasionally lucid and had difficulty moving around. If that were so he would not have been able to swear his affidavit. He noted that the affidavit did not support the applicant's claim. He thought there was a ring of truth in the passage which said that the applicant had come to London to be reunited with her mother. He noted that the affidavit said that she had left Ecuador because she was being harassed, sexually accosted and pursued with intent to rape. This did not accord with the applicant's evidence. The father had not mentioned any political background to any harassment or to her flight. Nor did he mention the incident of 9th June. He found that these documents were prepared to bolster a bogus claim for asylum.
- iv) Finally he considered the credibility of the applicant overall. He said that the way in which the evidence had come out showed a gradual embellishment of her claim. He took account of language difficulties and made allowance for the small discrepancies which inevitably creep into an account when it is repeated over a period of time. But he rejected her story as untrue.

18. In a section headed 'Findings of fact' he noted nine points which led to his conclusion that the applicant had failed to show that she had a well founded fear of persecution for a Convention reason on her return to Ecuador for which she required protection. These were:

1. Her failure to claim asylum in Holland which undermined her claim to be in fear.

2. She had come to the UK to be reunited with her mother who had been here for 5 or 6 years.
3. She did not have a genuine subjective fear of persecution at the time of leaving Ecuador either on account of her political opinions or any other reason.
4. There was no objective evidence that members of the SCP risk persecution in Ecuador from the authorities or other political parties including the PRE.
5. There was evidence that the necessary constitutional legal and security safeguards were in place in Ecuador to provide a sufficiency of protection against the agents of persecution. There was no reason why the applicant should not have sought the protection of the Ecuadorian authorities if she needed it.
6. There was no evidence, which he accepted, that the applicant could not have lived safely in some other part of Ecuador than Guayaquil, if she had been in danger there. She had simply not considered it.
7. Although there were credible reports of human rights abuses in Ecuador, these were not relevant to the applicant's case. She was not wanted for any offence and had left Ecuador openly using her own passport without any difficulty.
8. There was no evidence that failed asylum seekers were persecuted on their return to Ecuador.
9. There was no risk of persecution to the appellant on her return.

19. In her notice of application for permission to appeal this decision, the applicant alleged that the Special Adjudicator had failed to have sufficient regard to various aspects of the evidence. It was said that his conclusions were inconsistent with the evidence. In particular complaint was made about the findings in respect of the membership card and the medical certificate. Finally it was said that the Special Adjudicator should have accepted the newspaper report of the incident of 9th June as some support for her account. A further witness statement dated 29.9 98 was submitted in support of the application which purported to clarify various matters which she thought might have been misunderstood.

20. In refusing permission, Mr Maddison, a chairman of IAT, said that all the Special Adjudicator's conclusions were fully supported by evidence, bearing in mind his assessment of the applicant's evidence and the documentation put before him. There was no misdirection of law. Read as a whole, the determination was a full fair and reasoned view of the case.

21. In this application for judicial review of that refusal of leave, Mr Fripp on the applicant's behalf submitted that the IAT had acted irrationally in refusing leave to appeal because 'the authority of the (Special Adjudicator's) determination is vitiated by deep seated errors of law, reasoning and logic' of which he sought to give examples. There were, he said, a number of respects in which the Special Adjudicator's findings of fact were unsupported by adequate reasoning or were against the weight of the evidence or had been reached without giving the applicant an opportunity to address points which were about to be taken against her. In order to make clear what the applicant would have said on such issues, had she been given the opportunity, he applied to admit further evidence from the

applicant. This was late and the respondent objected. I admitted it, out of an abundance of caution, although I was not entirely satisfied with the explanation for the delay.

22. Mr Fripp properly described the Special Adjudicator's duty to reach conclusions based on the whole of the evidence and to express intelligible reasons for his conclusions on the main points. Fairness includes the requirement that the applicant must have an opportunity to deal with any point of substance which is to be taken against her. My attention was drawn to the unreported decision of this Court in **R v IAT ex parte Gunn** (22nd January 1998) where Turner J had said that where an allegation were to be rejected on the ground that it were untrue, the allegation must be specifically challenged and adequate reasons should be given as to why it has or has not succeeded. I was also shown the decision of the IAT in **Mayiskole**, where the tribunal had adopted the view of Ognall J in earlier unnamed proceedings that where an adjudicator relies on apparent discrepancy in statements by the appellant, he must give the appellant an opportunity to deal with the matter. All this is not contentious. Mr Fripp set about demonstrating that this decision fell short of those requirements to an extent that required the IAT to conclude that an appeal was at least properly arguable. He complained of the following matters:

- (i) The Special Adjudicator was not entitled to conclude that the applicant had never been a member of the SCP for the reasons he gave. He did not spell out which questions she had failed to answer about the history or leadership of the party and had not given her, as it was submitted he should, an opportunity to demonstrate her knowledge of party matters. I reject this complaint as groundless. The applicant must have known from the Secretary of State's letter that her knowledge of the party had not been thought impressive. It would have been quite pointless to give her an opportunity some months later to show what she knew. She could have learned a lot more in between times. In any case, her lack of knowledge was but one factor in the Special Adjudicator's decision on that point. He also had in mind that the unsigned membership card did not bear the date on which she had said she had joined and he was entitled to reject, as late invention, her claim that she had joined when she was 15 but not become active until she was 18. The applicant had ample opportunity to deal with this point about membership at the hearing and was cross examined about it.
- (ii) In respect of the incident of 9th June, it was submitted first is that the Special Adjudicator was not entitled to say that the applicant's credibility was damaged by the discrepancy between her accounts of the death of her friend. In interview with the Investigating Officer (IO) she had said that her friend died on the spot. Later, when she had produced the newspaper report, which said he had died the next day from internal bleeding, the applicant had said that he had died in hospital. Mr Fripp complains that this difference was never put to her. It was unreasonable to expect her to give a clear account in the initial interview and if she had had the opportunity to explain what she had meant, she would have said that she had thought he was dead when he was shot in the car but later she found out that he was still alive then and died later. Mr Underwood submitted that that does not sit comfortably with her evidence at the

hearing that after the shooting, her friends ‘did not get out of the car but waited for the ambulance’, while she was able to get out of the back of the car. In a perfect world, it would be desirable that a point such as this should be put to the applicant specifically. As Mr Underwood pointed out, there was until the most recent affidavit, no evidence that the applicant was not given the opportunity to deal with this point. There is no confirmation that this was not put to her. The notes of evidence have not been called for. In my judgement it would have been desirable for her to be asked about this discrepancy so as to give her a chance to deal with it. However, I do not think the explanation now given would have removed the Special Adjudicator’s suspicion that she was trimming her evidence to make it tally with the supporting evidence. In any case the point is of modest significance.

(iii) Next Mr Fripp complains that the Special Adjudicator’s approach to the applicant’s reactions to the shooting incident were unrealistic. He had said that if the applicant had really been in this situation, she would not have just gone away; she would have gone to the hospital and would have sought help for her own injuries even though they were not serious. Mr Fripp says she was not asked about this and, if she had been, she would have explained that, unlike in England, people in Ecuador are not allowed to accompany injured friends to hospital in an ambulance. For one thing there would not be room. Mr Fripp complains that the Special Adjudicator was here judging the applicant by the standards of what someone could be expected to do in England. Mr Underwood submitted that Mr Fripp had misunderstood this passage of the decision. What the Special Adjudicator had meant was that he did not think the applicant’s behaviour showed a normal human reaction to the situation she claimed to be in. One would normally expect a person who herself had been slightly injured and whose friends had been very seriously injured or killed to go to the hospital for several reasons, possibly to seek treatment for herself but also to see how her friends were. There was no suggestion that she could not have done so; she took a taxi and went to her friends’ homes, (which may have been entirely reasonable) but did not then go to the hospital. I accept Mr Underwood’s submission on that point. It seems to me that the Special Adjudicator was entitled to judge her conduct by what he regards as a normal human behaviour which is the same the world over. In my view, the Special Adjudicator was entitled to reach this conclusion and to take it into account.

(iv) The next complaint is similar to the last. The Special Adjudicator said that he found it incredible that if the applicant really had been involved in this shooting, she never made any attempt to give the police an account of what she had seen. He found her explanation that the police would not have been interested to be implausible. Mr Fripp complains that the Special Adjudicator did not have regard to the evidence before him to the effect that there were known examples where the police were not prepared to investigate crime in indigenous areas or the poor areas of large cities. He accepted that the area in which this shooting took place could not be so described. He submitted that the implausibility of her behaviour had not been put to her so that she could deal with it. In my view she had every opportunity to deal with this issue. She was asked about her reasons for not waiting for the police or otherwise

making any report to them. The issue was raised fairly and squarely and she had every chance to deal with it. Moreover on the basis of the evidence before him about police behaviour, the Special Adjudicator was entitled to say that her reasons for not speaking to the police at some time were implausible.

(v) Next it is said that the Special Adjudicator should not have held it against the applicant that the IO did not notice any marks on the applicant's face at the time of the interview. It is said that she did not have the chance to deal with this point at the hearing. It will be recalled that at interview she had then said that she had escaped the shooting incident without injury. Later she said she had had bruises. In her evidence to the Special Adjudicator she had said that she had sustained injuries but nothing serious; she had bruises to her face and body not requiring treatment. She had not had the opportunity to expand on this during her interview on 22nd June. She now says, in her most recent affidavit that in fact she still had visible marks on her face on 22nd June but she had not thought to mention them. The IO had stared at her face but had not mentioned the marks and she did not think to do so. In my judgment, this small point in the Special Adjudicator's decision has been taken out of context and has been blown up into something it was never intended to be. As I read the decision, the Special Adjudicator was not making a finding against the applicant in saying that the IO had not noticed any marks on the applicant's face. He was merely pointing out that a piece of potentially corroborative evidence was not available because the IO had not noticed any marks. It seems to be common ground that the applicant did not mention them to him, which if they were there to be seen, was a pity and an opportunity lost. In my view this was a point of no significance whatever.

(vi) Next Mr Fripp complains about the Special Adjudicator's approach to the newspaper report. This was presented as support for her claim to have been involved in the incident of 9th June 1997. Mr Fripp had to accept that there were many discrepancies between the report and the applicant's account. However, he submitted that the Special Adjudicator should have applied the appropriate lower than usual standard of proof (see **Kaja (1995 IMR1)** and should have accepted that there was at least a reasonable degree of likelihood that the account was true and related to the applicant. This he said went to the core of the applicant's case because if there were such a reasonable likelihood then the Special Adjudicator's decision was completely undermined. He submitted that, if the unreliability of the report had been raised at the hearing, the point could have been made that the report appeared to have been written by someone who did not have first hand knowledge of the incident and also the applicant would have explained that it was quite common for newspapers in Ecuador to dramatise events to make them more attractive for readers. I am quite unimpressed by this last point. The honesty and reliability of the applicant's claim to have been involved in this incident, as supported by this report, were plainly in issue at the hearing and the applicant's representative must have realised that the discrepancies between her account and the report were a matter of interest and concern. There was every opportunity to explain the bad habits of Ecuadorian editors and to draw attention to the hearsay nature of the

material. However, as to this, Mr Underwood pointed out that the writer of the report appeared to have received information either directly from the applicant or from someone who had spoken to her. From the wording, it even appeared that she might have been involved in its compilation. Yet the report was different from her account in important respects. She had proffered no explanation as to how her apparent contribution had been made. I have considered this point with some anxiety as it appears that this was the point on which the Judge gave leave to move for judicial review, but considering all the factors and bearing in mind that he had the benefit of seeing the applicant, it does seem to me that the Special Adjudicator was justified in rejecting this report as unreliable and not worthy of belief.

- (vii) Mr Fripp submitted that the Special Adjudicator had not been entitled to reject as false the medical certificate on Jorge Bastidas on the basis that no doctor would ever have made such a report within a few hours of the event. There had been no warning that he was going to take this point against her. She had had no chance to explain how things were done in Ecuador. In her most recent affidavit she explained that it was quite possible that a report such as this might be made on the very night of the incident if the incident might give rise to a claim in future. There is no confirmation of the applicant's claim that this matter was not raised at the hearing. For present purposes I give her the benefit of the doubt on that and accept that it is possible that had the Special Adjudicator heard that explanation he might not have rejected the certificate as false. However, the document is still of no real assistance to the applicant as it does not provide any support for her claim that she was involved in the incident in which Jorge Bastidas was injured.
- (viii) Mr Fripp only faintly pursued his eighth point which was a complaint that the Special Adjudicator failed to make clear specific findings about the 9th June incident. He had not made it plain whether the incident happened at all and if so whether she had played any part in it. That is true. The Special Adjudicator did not. Nor was he under a duty to do so. The burden of proof lay on the applicant to prove to the requisite standard that she had been involved in a shooting incident which had frightened her so much that she had fled the country. If she failed to satisfy the Special Adjudicator that there was a reasonable probability that the kernel of her evidence on this issue was true, one is bound to ask rhetorically how he could possibly be expected to decide what had actually happened.
- (ix) Mr Fripp's ninth point concerned the evidence about and from the applicant's father. It is said that the Special Adjudicator should not have said that if the father had been injured to the extent the applicant had claimed, he would not have been able to go to court to swear his affidavit. That in itself is a small point but the applicant's real problem here is that she produced a piece of evidence from a person who, of all people besides her, should know why she had fled Ecuador. On her account, her father advised her to go when she told him about the shooting incident. Yet his evidence does not mention any such incident. It says she has been subject to sexual harassment which is a reason she herself had never mentioned until after the affidavit arrived. Even then she gave no details of it. The father makes no reference to 9th June or to politics or rival

parties or anything of that kind. The complaint is made on her behalf that these points were not specifically put to her. Well maybe they were not. They were so obvious that if she had had anything to say about them she would have said it. In any event, she has not proffered any explanation of what she would have said, given the chance. Her complaint about the conclusions drawn from the father's evidence is hopeless and the evidence itself points to this being a bogus claim.

(x) The tenth point is a complaint that the Special Adjudicator found there was a discrepancy between her two accounts relating to her belief that the two attackers were members of the PRE when in fact there was no inconsistency between them. In interview she had said 'Now we think they are members of the PRE'. In evidence she said that she knew immediately that they were because they were in a car bearing the PRE's coloured stripes. It is submitted that this is really no more than the kind of difference or misunderstanding which can arise due to language difficulties and the problems of speaking through an interpreter. So it may be but the Special Adjudicator is entitled and obliged to make a judgement as to whether this discrepancy was innocuous or whether it was an attempt to embellish the claim. He is not required to demonstrate the validity of his conclusions as if he were proving a theorem. He has to exercise judgement and his judgement should not be attacked if he reaches a conclusion which was open to him on the evidence. This one was.

(xi) I now come to the applicant's best point. It is that the Special Adjudicator should not have found that the applicant's decision to come to England rather than seeking asylum in Holland damaged the credibility of her claim to be in fear. With respect to the Special Adjudicator, this seems to me to be a thoroughly bad point on which to have relied. This young single woman, aged 20, has a mother living in England. If she were in fear of her life in Ecuador and had decided to flee, it would be natural that she would choose England as she would there have the support and protection of her mother. She would obviously not wish to stay in Holland if she could reach England in safety. Also, assuming that her fear for life and limb while in Ecuador were genuine, it seems to me obvious that that fear would be largely abated as soon as she landed in any European country. Her concern would then be to reach a country where she would have not just physical safety but a degree of support. In any event she had a ticket for London. Why, assuming her story to be true, would she want to stay in Holland? On this point, the applicant makes good her complaint.

(xii) Next it is said that the Special Adjudicator erred in finding that the background material did not warrant his conclusion that the constitutional, legal and security safeguards were in place in Ecuador to provide a sufficiency of protection against agents of persecution. It is said that he failed to heed the US State Department report which referred to the failure of the police to deal with crime in indigenous areas and poor quarters of large cities. It is said that he also failed to heed another passage from the same report which spoke of an increasing tendency for groups of citizens to take the law into their own hands on account of their dissatisfaction with efforts made by the police. Also it was said that he had not heeded the newspaper report of February 1997 relating to student

political activity at the University of Guayaquil. This report had named the applicant as a victim. Dealing with the last point first, the applicant spoke about political harassment which she and others had suffered in February 1997. She described it in rather different terms from the newspaper report and said she had not reported it to the police because such conduct was not unusual. As for the background material, I have read it and it seems to me that the Special Adjudicator summarised it fairly, (as Mr Fripp at one stage conceded) and that it fully justified his conclusion. I think it important to note that the Special Adjudicator's conclusion on this point is plainly intended to mean that even if the applicant had been the victim of a politically motivated shooting attack (which on the facts he rejects) he would still find that there was no reason why she should not have sought the protection of the Ecuadorian authorities. In other words, even if her story were true, she would not be entitled to asylum.

(xiii) That exhausted Mr Fripp's written list of complaints. However, he added one more, namely that the Special Adjudicator should not have criticised the applicant for failing to produce Douglas Peralta's death certificate although she said she had done. This is a point of no merit whatsoever. The Special Adjudicator did not criticise her; he simply noted in passing that although the papers said that the death certificate had been produced he had not seen it. In any event, the death certificate could not have helped the applicant, which is no doubt why the Special Adjudicator did not mention during the hearing that it was missing from his bundle.

23. I have gone through these grounds in detail and with great care, mindful as I am of the need to give anxious scrutiny to a decision such as this, which will have an important effect on the life of the applicant. With the exception of the 'Holland point' on which the applicant's complaint is made good, it seems to me that all the Special Adjudicator's findings of fact are justified by the evidence.
24. Mr Fripp submitted that if even one of the findings of fact were held to have been unjustified, the whole decision would be undermined and the applicant would have made her point that the IAT had been wrong not to grant permission to appeal. This was so, he submitted, because it is not possible to tell from the decision what weight had been attached to any single factor. The Holland point may have been of real significance in the Special Adjudicator's mind. Accordingly, I should quash the IAT's decision.
25. I cannot accept that submission. It seems to me that the Special Adjudicator's decision must be looked at as a whole. That is what the Chairman of the IAT Mr Maddison purported to do when refusing permission and in my judgement he was right to do so. It will not be every single unjustifiable finding of fact or every single unwarranted intermediate judgement which will undermine a decision of this kind. The IAT when considering whether to grant leave will not do so just because one or two findings of fact cannot be justified. It will depend upon the importance of the unjustified findings within the factual framework of the case as a whole. It may be that a single finding of fact will be so central to the issues that, if it be successfully challenged, the foundation for the decision will be seen to be shaky. On the other hand, one or more findings may be so peripheral that

the appellate or reviewing body will have no difficulty in concluding that the remaining structure is sound.

26. In the present case, I have no hesitation in saying that the Holland point is peripheral to the Special Adjudicator's decision. This Special Adjudicator gave a careful, detailed and well-structured decision. He made no errors of law. I have found that one of his findings of fact was unjustified but it was plainly not a matter of any great significance. In my judgement, the IAT were right to refuse permission to appeal this decision and for that reason this application for judicial review fails.
27. I add only this. Even had I accepted more of Mr Fripp's criticisms of the Special Adjudicator, I would still not have granted judicial review. It is clear in my view that the Special Adjudicator based his decision not only on his rejection of the applicant's evidence as untrue but also on his view that even if the facts were as she claimed, she would still not be entitled to asylum. He made a finding which, although not prefaced by the words, 'even if her claim were true' was plainly based on the hypothetical assumption that it was. He found that there was no reason why she should not have sought the protection of the Ecuadorian authorities. He found that, were her claim genuine, she could have lived safely in another part of Ecuador. He observed that there was no evidence that failed asylum seekers are persecuted on their return to Ecuador. Those findings in themselves are sufficient support for his final conclusion that (even if her account of events were true) the applicant had failed to show a well founded fear of persecution for a Convention reason on her return to Ecuador, for which she required surrogate international protection.

C O S T S

MR UNDERWOOD: Thank you my Lady. I ask for costs in the usual form as it now reads.

MRS JUSTICE SMITH: Yes. Mr Fripp?

MR FRIPP: Yes, I do not seek strongly to resist that. I simply note that this is a lady who is likely to be returned to Ecuador. Her father is a disabled ex-security guard in Ecuador.

MRS JUSTICE SMITH: Well, I do not know that her father would, in any event, ever have any possible liability to costs, but if she is to be returned to Ecuador, the prospects of recovering any costs from her are remote in the extreme, but it seems to me that I should make the usual order just in case some eventuality turns up. Have you any objection to that?

MR FRIPP: I do not, save for those matters.

MRS JUSTICE SMITH: Thank you very much. The application is refused. The applicant will pay the defendant's costs but the determination of her liability for such payment will be postponed pending further application.

MR FRIPP: My Lady, may I respectfully seek legal aid assessment?

MRS JUSTICE SMITH: Yes, of course.

MR FRIPP: I am grateful.