UK REFUGEE & ASYLUM CASE SYNOPSES

House of Lords: 1 April 1999 to 24 March 2009
Court of Appeal 1 July 2007 to 24 March 2009

Edited by

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Cases are listed by dominant name/abbreviation. Thus, *EB (Kosovo) v Secretary of State for the Home Department* is listed as *EB (Kosovo), Secretary of State for the Home Department v Rehman* is listed as *Rehman* and *R (Yogathas) v Secretary of State for the Home Department* is listed as *Yogathas.* Key abbreviations used within the summaries are listed below:

Abbreviations

AIA	Asylum and Immigration Act 1996
AIT	Asylum and Immigration Tribunal
AITCA 2004	Asylum and Immigration (Treatment of Claimants etc.) Act 2004
ECHR	European Convention on Human Rights 1950
HRA 1998	Human Rights Act 1998
IA 1971	Immigration Act 1971
IAA 1999	Immigration and Asylum Act 1999
IAN 2006	Immigration, Asylum and Nationality Act 2006
IAT	Immigration Appeal Tribunal
IJ	Immigration Judge
NASS	National Asylum Support Service
NIAA 2002	Nationality, Immigration and Asylum Act 2002
OEM	Operations Enforcement Manual
Qualification Regulations 2006	Refugee or Person in Need of International Protection (Qualification) Regulations 2006
Refugee Convention	Convention Relating to the Status of Refugees
SIAA 1997	Special Immigration Appeals Act 1997
SIAC	Special Immigration Appeals Commission
UNHCR	United Nations High Commissioner for Refugees

NOTE: these synopses give an overview of the key principles and context of each case; they are not comprehensive and in no way a substitute for the full case report.

A: R (on the application of A) v Secretary of State for the Home Department [2007] EWCA Civ 655 (4th July 2007; Sir Igor Judge, May LJ, Moore-Bick LJ)
Deciding whether it was consistent with Art. 8 ECHR for the Secretary of State to dismiss the applicant's application for leave to remain and to require her to apply from outside the UK: since the applicant had not been lawfully entitled to remain in the UK, the refusal of her application for leave to remain based upon marriage, after a delay of some 23 months, during which time she had given birth to two children, did not breach the applicant's rights under Art. 8 ECHR as it was not disproportionate for the Secretary of State to insist on the policy of requiring marriage applications in these particular circumstances to be made from outside the UK. [HM]

A (No.2): A and others v Secretary of State for the Home Department (No 2) [2005] UKHL 71; [2006] 2 AC 221; [2005] 3 WLR 1249 (8th December 2005; Lord Bingham, Lord Nicholls, Lord Hope, Lord Carswell and Lord Mance)
Allowing the applicants' appeals, SIAC, when hearing an appeal under section 25 of the Anti-terrorism, Crime and Security Act 2001 by a person certified and detained under sections 21 and 23 of that Act, could not receive evidence which has or may have been procured by torture inflicted, in order to obtain evidence, by officials of a foreign state without the complicity of the British state, (1) due to the revulsion of the courts against torture, there was a general rule that evidence obtained by torture might not lawfully be admitted against a party to proceedings; express statutory words would be required to override this exclusionary rule; rule 44(3) of the SIAC (Procedure) Rules 2003, which simply provided that SIAC may receive evidence that would not be admissible in a court of law, contained no such wording and accordingly such evidence could not be admitted before SIAC (2) in proceedings before SIAC a detainee should only be required to raise plausible reasons as to why the evidence against him may have been obtained by torture and once he did so, the burden was on SIAC to make further inquiries; the test to be applied by SIAC (Lords Bingham, Nicholls, and Hoffmann dissenting) was to consider whether it was shown on the balance of probabilities by such inquiries as were practicable that the information relied on was obtained by torture. [HM]

AA (Somalia): AA (Somalia) v Secretary of State for the Home Department: AH (Iran) v Secretary of State for the Home Department [2007] EWCA Civ 1040 (25th October 2007; Ward LJ, Carnwath LJ, Hooper LJ)
Deciding whether the principles set out in *Devaseelan v Secretary of State for the Home Department* [2002] UKIAT 702 applied as between appeals brought by two different parties: where there was a *"material overlap of evidence"* between two appeals brought by different parties, upon consideration of the second appeal, the proper weight to be attached to the findings of an adjudicator in rejecting the first appeal were to be determined in accordance with those principles. [HM]

AA (Turkey): AA (Turkey) v Secretary of State for the Home Department [2007] EWCA Civ 1536 (6th November 2007; Ward LJ, Buxton LJ, Laws LJ)
Where it was found that an asylum seeker's true motive for leaving Turkey was a desire to avoid military service, on an appeal against a decision to remove him it was still necessary to go on to consider properly his claim that he would be persecuted on his return. Appeal allowed. [HM]

AA (Uganda): AA (Uganda) v Secretary of State for the Home Department [2008] EWCA Civ 579, [2008] INLR 307 (22nd May 2008; Buxton LJ, Carnwath LJ, Lloyd LJ)
The applicant's appeal against removal, on the basis of Arts. 3 and 8 ECHR, would be allowed. (1) The AIT's findings that the applicant could turn to the church in Uganda for support, in circumstances where an expert stated she would be *"especially vulnerable"* and would only find employment as a sex worker in the slums, were perverse and there was no evidence before the AIT from which it could properly conclude that the church would make a difference to the applicant's life in Kampala; (2) the AIT had failed to address whether it would be unduly harsh to return unaccompanied women to Kampala generally; and (2) the AIT approached the applicant's vulnerability on the wrong legal basis as she was manifestly less able than most to bear conditions in Kampala. [SP]

AB (DRC): AB (Democratic Republic of Congo) v Secretary of State for the Home Department [2007] EWCA Civ 1422 (31st October 2007; Judge LJ, Carnwath LJ, Toulson LJ)
Deciding the proper approach to be taken to a claim based on the Art. 8 ECHR right of the applicant to a family life with his wife, who was also from the DRC but had been granted refugee status: the starting point of the analysis was to assume that the wife as a refugee could not reasonably be expected to return unless there was some good reason to suppose otherwise. Appeal allowed. [HM]

AB (Jamaica): AB (Jamaica) v Secretary of State for the Home Department [2007] EWCA Civ 1302 (6th December 2007; Sedley LJ, Thomas LJ, Sir Peter Gibson)
Deciding that where an overstayer had married a British citizen and been joined by her daughters in the UK, her removal to Jamaica, in circumstances where her husband could not reasonably expected to settle in Jamaica, would not be justified under Art. 8(2) ECHR by reason of her breach of immigration control as it would result in disproportionate interference with the family's life. Appeal allowed. [HM]

AB (Jamaica): AB (Jamaica) v Secretary of State for the Home Department [2008] EWCA Civ 784 (2nd April 2008; Sedley LJ, Carnwath LJ, Lloyd LJ)
Considering, in relation to the finding that it would not be unreasonable or unduly harsh to expect AB to relocate within Jamaica, whether (1) the AIT had been wrong to find that the IJ had erred in law in deciding the first appeal in the applicant's favour; and (2) the AIT misdirected itself in law by failing to ask whether she could lead a relatively normal life in the area to which she would have to relocate, when judged by the standards prevailing in Jamaica generally, but going straight to a consideration of particular respects in which it was said that life on relocation would be such as to make it unreasonable and unduly harsh. The Court of Appeal dismissed the appeal: (1) The AIT was correct to find that the first IJ had erred in law by (i) relying as a precedent a determination relating to the certification of a claim as clearly unfounded when determining whether a decision was substantively justified; and (ii) failing to refer to the content of the latest objective evidence; and (2) the AIT did not err in law as the test that decision makers needed to address was in relation to the facts of a particular case, and accordingly, by reference to those aspects of the facts which are said to be relevant to the issue or unreasonableness and undue harshness. [SP]

AB (Turkey): AB (Turkey) v Secretary of State for the Home Department [2007] EWCA Civ 1535 (5th November 2007; Ward LJ, Buxton LJ, Laws LJ)
Deciding the proper approach to be taken to assessing evidence on a claim for asylum: an adjudicator who had indicated that there were serious defects in the account presented in the applicant's witness statement, which stood as his evidence in chief, should not have refused to allow the applicant to explain the inconsistencies in his evidence. Appeal allowed. [HM]

AG (Eritrea): AG (Eritrea) v Secretary of State for the Home Department [2007] EWCA Civ 801 (31st July 2007; Sedley LJ, Maurice Kay LJ, Lawrence Collins LJ)
On whether the AIT had applied the correct test in assessing proportionality under Art. 8(2) ECHR in relation in overturning the adjudicator's decision that the removal of the applicant would result in a violation of his rights under Art. 8 ECHR: the AIT had erred proceeding on the basis of a threshold requirement of exceptionality, as the House of Lords in *Huang v Secretary of State for the Home Department* [2007] 2 AC 167 had now established that there was no such requirement to be met in assessing the proportionality of removal under Art. 8(2) ECHR. Appeal allowed. [HM]

AG (India): AG (India) v Secretary of State for the Home Department [2007] EWCA Civ 1534 (5th December 2007; Law LJ, Rix LJ, Lloyd LJ)
On an appeal challenging the AIT's upholding of a refusal of an application for indefinite leave to remain based on domestic violence committed by a British spouse: the AIT had erred in law in failing to give adequate reasons for why it apparently rejected the appellant's evidence that there had been domestic violence. Appeal allowed. [HM]

AH (Iran): AH (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 985 (6th August 2008; Richards LJ, Stanley Burnton LJ)
Deciding whether to grant a stay of removal, the Secretary of State having certified the applicants for removal to Greece and their application for judicial review having been refused, on the basis (1) removal to Greece involved the risk of defective examination of the applicants' asylum claims, which itself was relevant to the question whether an asylum seeker's return would give rise to a breach of rights under Art. 3 ECHR, and (2) the Court of Appeal had granted a stay of removal in a similar case, *Nasseri*, pending determination by the House of Lords: refusing the application, (1) the prospect of a defective examination of an asylum claim was only relevant if there was a real risk of return contrary to Art. 3; given that Greece was not returning people to Iran or Iraq, there was no such risk; (2) the instant cases were distinguishable from *Nasseri*, in which the Secretary of State had agreed to a stay of removal pursuant to a specific policy to do so when there was a petition for leave to appeal pending before the House of Lords. [JB]

AH (Sudan): AH (Sudan) and others v Secretary of State for the Home Department [2007] UKHL 49; [2008] 1 AC 678; [2007] 3 WLR 832 (14th November 2007; Lord Bingham, Lord Hoffmann, Lord Hope, Baroness Hale and Lord Brown)
Allowing the Secretary of State's appeal against the grant of asylum, it would not be unreasonable or unduly harsh for the applicant to be returned to Sudan and relocated to Khartoum as in cases of prospective internal relocation, the correct test was whether, taking account of all relevant circumstances pertaining to the claimant and his country of

origin, it was reasonably to expect the claimant to relocate, or whether it would be unduly harsh to expect him to do so. This test was not assimilable to the question whether internal relocation would infringe an applicant's rights under Art. 3 ECHR, or whether he had a well-founded fear of persecution in the place of relocation. In determining whether relocation would be unduly harsh, the decision-maker was entitled to take into consideration a large range of things, including such things as age, gender, experience, health, skills and family ties. Very little was excluded from consideration, other than the standard of rights protection available in the country of refuge. [JB]

AK (Iran): AK(Iran) v Secretary of State for the Home Department [2008] EWCA Civ 941 (8th July 2008; Waller LJ (V-P), Sedley LJ, Dyson LJ)
An appeal against an IJ's decision to proceed with a reconsideration hearing, in circumstances where the applicant's legal representatives informed him on the day before the hearing that they would be unable to represent him, would be allowed. The IJ should have adjourned the reconsideration hearing in order to give the applicant a fair chance to secure representation for the hearing of an appeal which was of critical importance to him. [SP]

AL (Serbia): AL (Serbia) v Secretary of State for the Home Department [2008] UKHL 42; [2008] 1 WLR 1434 (25th June 2008; Lord Bingham, Lord Hope, Lord Scott, Baroness Hale Lord Brown)
Dismissing the applicants' appeals against the refusal of a human rights claim and a grant of judicial review raising human rights grounds respectively, (1) the Home Office's Family Indefinite Leave to Remain exercise has a legitimate aim, namely to promote greater efficiency in the system of immigration control by releasing from it a ground constituted by families and children which posed particular financial and administration problems, (2) the exclusion of the claimants, as children who had entered the country as unaccompanied minors, did not violate Art. 14 ECHR, taken together with Art. 8 ECHR as this ground was not targeted for unfavourable treatment it was just that they did not present the problems which the policy was designed to meet and the policy was a proportionate response to the particular problems it addressed and the difference in treatment to which the claimants were subject could be justified [NP]

AM (Cameroon): R (on the application of AM (Cameroon)) v Asylum and Immigration Tribunal [2008] EWCA Civ 100; [2008] 1 WLR 2062; [2008] 4 All ER 1159 (20 February 2008; Waller LJ (V-P); Rix LJ, Hooper LJ)
Deciding whether, the High Court having dismissed the appellant's application to appeal under section 103A of the NIAA 2002, but having, in error, failed to list the appellant's judicial review proceedings for an oral hearing prior to making a decision under section 103A, the Court of Appeal could entertain the complaints to which the 103A application had related, and, if it could, whether judicial review was the appropriate form in which to do so given the availability of the s. 103A mechanism: allowing the appeal, and remitting the matter for reconsideration by a different immigration judge (1) the mistake of not listing the applicant's application for judicial review for an oral hearing before any decision was taken under s. 103A was of the kind that could give rise to very serious consequences; the applicant was entitled to have the clock stopped at the moment when there was no s. 103A decision; this could be achieved by application of the principle that in

exceptional circumstances, a final judgment could be withdrawn by the court which had made it; (2) if the judicial review application had been listed for an oral hearing, it would have been impossible to hold that there was nothing arguable in the allegations made by the applicant (which related to the fairness of her appeal hearing and alleged breaches of natural justice), and she would have established that judicial review was appropriate, notwithstanding the availability of the s. 103A procedure. [JB]

AM (Jamaica): AM (Jamaica) v Secretary of State for the Home Department [2008] EWCA Civ 1408 (26 November 2008; Tuckey LJ, Jacob LJ, Sir William Aldous)
Deciding, in a case where the applicant had served a term in prison following a guilty plea, whether the AIT had been entitled to dismiss the applicant's appeal on Art. 8 ECHR grounds in the absence of any evidence concerning his time in prison: in the absence of any such evidence, the AIT had been unable to carry out the weighing exercise between Art. 8 and the Immigration Rules to determined the risk of the applicant's reoffending. In addition, the AIT had failed to bring into the balance the Art. 8 rights of his partner and children. Accordingly, the matter needed to be remitted. [JB]

AM (Pakistan): AM (Pakistan) v Secretary of State for the Home Department [2008] EWCA Civ 1064 (17th June 2008; Pill LJ, Hooper LJ, Moses LJ)
The applicant had applied to the High Court for reconsideration on different grounds to those that hat formed the basis of his initial application for reconsideration to a Senior IJ. A reconsideration was ordered, but ultimately determined and dismissed only with recourse to the original reconsideration grounds. His appeal against that determination would be dismissed, as there was no limitation on the grounds that could be put before a Senior IJ on a reconsideration, but no complaint could be raised if the appellant's counsel failed to make sure she argued those grounds she thought would best advance her case. In the circumstances there was no procedural error leading to an error of law, and on the facts, there was ample evidence for the Senior IJ to endorse the IJ's finding that safe relocation was possible. [SP]

AM (Somalia): R (on the application of AM (Somalia)) v Secretary of State for the Home Department [2009] EWCA Civ 114 (25th February 2009; Sedley LJ, Jacob LJ, Lloyd LJ)
Considering whether (1) the appellant's in-country appeal had been brought by his giving notice of appeal under section 82 of the NIAA 2002, (2) it was possible to certify that his claim was clearly unfounded on the accepted facts of the case, and (3) whether issue of a new safe third country certificate in place of a void original certificate operated to stifle the applicant's appeal against the original certificate. (1) the bringing of an appeal under the 2002 Act was a single event, and not a process, so the appeal had been brought on the giving of notice of appeal; (2) on the accepted facts, M's human rights claim was not unfounded; (3) since M's in-country appeal against the original certificate had already been brought, it could not be stifled. Appeal allowed. [JB]

AQ (Kenya): AQ (Kenya) v Entry Clearance Officer [2007] EWCA Civ 1279 (5th December 2007; Hooper LJ, Wilson LJ, Richards LJ)
On the lawfulness of the AIT's decision upholding a decision to refuse the applicant entry clearance to join his sponsor: the AIT had erred in law for failing to give sufficient reasons and for making findings of fact that were irrational. Appeal allowed. [HM]

AS (Somalia): AS (Somalia) v Entry Clearance Officer (Addis Ababa) [2008] EWCA Civ 149, (29th February 2008, Waller LJ, Sedley LJ, Moore-Bick LJ)
Deciding whether on an appeal against the refusal of entry clearance under section 82(1) of the NIAA 2002, the IJ could take into account matters that had arisen subsequent to the refusal of entry clearance, in consequence of the appellant's rights under Art. 8 ECHR or otherwise: (1) sub-sections 82(4) and (5) of the Act expressly prohibited taking such matters into account and (2) since those provisions were unequivocal it was not possible to read them down pursuant to s.3 of the Human Rights Act 1998 so as to give effect to the appellant's rights under Art. 8 ECHR. The matter would, however, be remitted to the AIT to consider the appellant's claim under Art. 8 as at the date of the refusal of entry clearance. Appeal allowed in part. [HM]

AS (Pakistan): AS (Pakistan) v Secretary of State for the Home Department [2008] EWCA Civ 1118 (15th October 2008; Moore-Bick LJ, Rimer LJ)
Deciding whether the AIT had erred in treating its assessment of the conditions a prospective deportee and his wife could expect to encounter in Pakistan as relevant primarily to the question of interference with private and family life, as protected by Art. 8 ECHR, rather than to the question of the proportionality of such interference: allowing the appeal and remitting the matter to a differently constituted tribunal, the threshold for establishing that Art. 8 was engaged was not high; the very fact of removal to Pakistan would constitute an interference in private and family life sufficient to engage art. 8 and it was not open to the AIT to find otherwise; the error was not fatal since the tribunal did go on to consider proportionality; however, the tribunal's decision contained inadequate analysis and weighing up of competing factors, and the tribunal had failed to give adequate consideration to the effect of S's deportation on his wife's private and family rights. [JB]

AS (Sri Lanka): R (on the application of AS (Sri Lanka)) v Secretary of State for the Home Department [2008] EWCA Civ 717 (5th June 2008; Rix LJ, Toulson LJ, Stanley Burnton LJ)
The claimant's appeal against the refusal to judicially review a certification decision pursuant to section 94(2) of the NIAA would be dismissed. Looking at all the various factors raised by the claimant in relation to her return to Sri Lanka, cumulatively as well as individually, there was no basis for an IJ finding that she had a well-founded fear of persecution for a Convention reason, or of abuse of her human rights so as to warrant a successful appeal on that ground. Her claim was clearly unfounded. [SP]

Adan: R v Secretary of State for the Home Department, Ex parte Adan [2001] 2 AC 477; [2001] 2 WLR 143 (19th December 2000; Lord Slynn of Hadley, Lord Steyn, Lord Hutton, Lord Hobhouse and Lord Scott)
Dismissing the Secretary of State's appeal against the judicial review of his certification decisions under section 2 of the AIA 1996, authorizing return to Germany in the knowledge that Germany applied a more restrictive interpretation to Art. 1A(2) of the Refugee Convention, such that refugee status would be denied to an asylum seeker who feared persecution by non-state agents in his country of origin, the concept of persecution was not to be limited to conduct attributable to a state (following *Adan v SSHD* [1999] 1 AC 293 HL); a common autonomous meaning of Art. 1A(2) had to be adopted by all

contracting states. In the circumstances, the Secretary of State had been wrong to certify that the conditions of section 2 of the AIA had been satisfied. [JB]

Al-Ameri: Al-Ameri v Kensington and Chelsea Royal London Borough Council Osmani v Harrow London Borough Council [2004] UKHL 4; [2004] 2 AC 159; 2 WLR 354 (5th February 2004; Lord Bingham, Lord Hope, Lord Scott and Lord Walker)
Dismissing the housing authorities' appeals against decisions as to local connection, since the Secretary of State was specifically enjoined under section 97(2)(a) of the IAA 1999 and NASS to disregard any preference of an asylum seeker as to locality, he could not be said to have taken up residence in the district where he was housed by his *"own choice"* for the purposes of section 199(1)(a) of the Housing Act 1996. Since the applicants had been directed to the only place where they were to be offered accommodation and subsistence, their residence there was not of their own choice and founded no local connection within section 199(1)(a) of the 1996 Act. [JB]

Al-Sirri: Yasser Al-Sirri v Secretary of State for the Home Department (UNHCR Intervening) [2009] EWCA Civ 222 (18th March 2009; Sedley LJ, Arden LJ, Longmore LJ)
Considering the AIT's dismissal of the applicant's appeal against the refusal of asylum on the basis of Art. 1F(c) of the Refugee Convention as there were serious reasons for considering that S had been guilty of acts contrary to the purposes and principles of the United Nations. Allowing the appeal, (1) there was a presumption of innocence in Art. 1F proceedings and so until the Secretary of State produced evidence capable of amounting to serious reasons for considering that an individual came within one of the Art. 1F categories, there could be no foundation for denying an individual such protection as the Convention would otherwise afford. (2) Terrorism was clearly contrary to the principles and purposes of the United Nations. (3) The words *"serious reasons for considering"* in Art. 1F did not import a criminal standard of proof and the word "guilty" meant no more than *"responsible for"*. A private individual could call within Art. 1F, *KK v Secretary of State for the Home Department* [2004] UKIAT 101, [2004] Imm AR 284 applied. (4) The AIT should have disregarded the Egyptian convictions on which the Secretary of State's decision was based. Because of the probability of torture, *A v Secretary of State for the Home Department* [2005] UKHL 71, [2006] 2 AC 221 followed, as well as the US indictment, which was unsupported by any evidence. (5) There was a realistic possibility that a tribunal of fact, confining itself to the admissible evidence, might have rejected the submission that there were serious reasons for considering that S had been guilty of promoting or assisting international terrorism and so the appeal would be remitted to the AIT for redetermination [NP].

Anufrijeva: R (on the application of Anufrijeva) v Secretary of State for the Home Department and another [2003] UKHL 36; [2004] 1 AC 604; [2003] 3 WLR 252 (26th June 2003; Lord Bingham, Lord Steyn, Lord Hoffmann, Lord Millett and Lord Scott)
Allowing the applicant's appeal against the refusal of judicial review of the decisions to treat her asylum claim as determined before she was notified of it and to withdraw income support, it had not been lawful to withdraw her income support four months before the decision refusing her asylum claim was notified to her, on the basis of an internal communication of the refusal to the Benefits Agency as an asylum seeker was entitled to receive income support until she received proper notification of the determination of her asylum application and it was a fundamental constitutional principle that a decision

would not be considered a determination with legal effect until the individual was in a position to be able to challenge the decision. [JB]

Asfaw: R v Asfaw (UNHCR Intervening) [2008] UKHL 31; [2008] 1 AC 1061; [2008] 2 WLR 1178 (21st May 2008; Lord Bingham, Lord Hope, Lord Rodger, Lord Carswell and Lord Mance)
Allowing the defendant's appeal against conviction for dishonestly attempting to obtain air transportation services by deception contrary to section 1(1) of the Criminal Attempts Act 1981 and quashing the conviction, she could rely on the immunity provided by Article 31 of Refugee Convention despite the fact that the offence charged was not included in the list of offences to which section 31 of the IAA 1999, which gave effect to Article 31, applied since (1) Article 31 of the Convention, which sought to protect refugees from the imposition of criminal penalties for infractions of the law reasonably or necessarily committed in the course of their flight from persecution, was (like the rest of the Convention) to be given a purposive interpretation consistent with its humanitarian aims such that the immunity provided by sub-section (1) from penalties on account of a refugee's "illegal entry or presence" should include offences committed when leaving an intermediate country to seek asylum elsewhere, and (2) since section 31 of the IAA was intended to give effect to Article 31 of the Convention and should be read so as to provide immunity, if the other conditions of the section were satisfied, in the same circumstances, even where there was a short stopover in transit, it was an abuse of process to prosecute the claimant for this offence when she had been acquitted of another factually indistinguishable offence on the basis of immunity arising from section 31 of the IAA. [NP]

BA (Kosovo): BA (Kosovo) v Secretary of State for the home Department, unreported (25 February 2009; Longmore LJ, Stanley Burnton LJ, Elias LJ)
Considering whether the AIT had erred in dismissing B's asylum claim on the basis that B faced no risk of persecution: there was no error. Whilst the ordinary way of life was not easy for a Kosovan Rom, this did not amount to persecution. Appeal dismissed. [JB]

BA (Nigeria); PE (Cameroon): R (on the application of BA (Nigeria)) v Secretary of State for the Home Department; R (on the application of PE (Cameroon)) v Secretary of State for the Home Department, Asylum and Immigration Tribunal [2009] EWCA Civ 119, (26 February 2009; Sedley LJ, Longmore LJ, Lloyd LJ)
Considering whether, in the absence of a fresh claim or human rights claim, the right of appeal against the Secretary of State's refusal to revoke a deportation order is exercisable from within the UK: where an appellant had made an asylum or human rights claim while in the UK, any immigration decision, including a refusal to revoke a deportation order, was appealable in-country by virtue of section 92(4)(a) of the NIAA 2002, absent a certificate under section 94 to the effect that the claim was manifestly ill founded. Claimants' appeals allowed. [JB]

BA (Pakistan): BA (Pakistan v Secretary of State for the Home Department, unreported (6 February 2009; Pill LJ, Keene LJ, Sir Paul Kennedy)
Remitting the case: the IJ's finding that the appellant's harsh treatment did not amount to persecution was perverse in light of his acceptance of the appellant's credibility. The existence or absence of past persecution was a significant factor in the assessment of future

risk; in the case of torture, a single incident might amount to persecution and there was no requirement that the persecution be sustained. [JB]

BE (Iran): BE (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 540 (20th May 2008; Ward LJ, Sedley LJ, Wall LJ)
The applicant was an Iranian soldier who deserted because he refused to continue laying anti-personnel mines in a populated part of Iranian Kurdistan. His appeal against the refusal of asylum would be allowed as (1) a soldier is responsible for the deaths and injuries that may result from a land-mine that he plants in territory from which citizens are not excluded. (2) There was neither a customary international law forbidding the use of anti-personnel weapons nor any simple reading across into peacetime of the restrictions placed on their use in warfare by international humanitarian law; however, the order given to the applicant to plant the weapons in roadways was an order to commit a grave violation of human rights. (3) On the facts his claim should succeed; once it was established that he had deserted rather than commit a sufficiently grave abuse of human rights, whatever punishment or reprisal might face him would establish a well-founded fear of persecution for reasons of political opinion. [SP]

BK (DRC): BK (DRC) v Secretary of State for the Home Department, [2008] EWCA Civ 1322 (3 December 2008; Laws LJ, Longmore LJ, Stanley Burnton LJ)
Deciding whether the AIT had erred in relation to the witness evidence given below: previous findings as to the credibility of failed asylum seekers providing evidence in the context of an application other than their own was not irrelevant; if, in a country guidance case, there was adduced evidence from a witness who, having given evidence in his own case on a previous application or appeal, gave much wider evidence for the purpose of the country guidance case, that evidence, given for the first time, had to be evaluated in accordance with ordinary principles. Appeal dismissed. [JB]

BK (Zimbabwe): BK (Zimbabwe) v Secretary of State for the Home Department [2008] EWCA Civ 510 (10th April 2008; Ward LJ, Dyson LJ, Thomas LJ)
The removal of a Zimbabwean national who had been diagnosed as HIV positive and commenced anti-retroviral treatment while in the UK, as a result of which he suffered impairment to his sight, would not breach Art. 3 or 8 ECHR even though he would be unlikely to receive adequate medical treatment on his return. Whilst it was a tragic case because the applicant faced illness and death upon return to Zimbabwe, his plight was far from unusual and it was not within the class of exceptional and extreme cases that succeed under Art. 3 or Art. 8. The IJ applied the law and did not fail to take into account any relevant factors, appeal dismissed. [SP]

BL (Serbia): BL (Serbia) v Secretary of State for the Home Department [2008] EWCA Civ 855 (22 July 2008; Mummery LJ, Wilson LJ, Stanley Burnton LJ)
Deciding whether the judge, on a rehearing of the appellant's appeal in 2007, had erred in law in failing to follow the decision of the tribunal first hearing the appeal in 2002, which tribunal had found that removal to Serbia would constitute a disproportionate interference with the appellant's right to family life: dismissing the appeal, although there had been no changes in the law relating to Art 8 ECHR since 2002, there had been changes in its application, which acted against the appellant's case; the judge in 2007 had been required

to decide whether, at the date of his decision, interference with the appellant's family life was justified, and he had done so correctly. [JB]

BM (Iraq): BM (Iraq) v Secretary of State for the Home Department [2008] EWCA Civ 899 (1st July 2008; Sir Andrew Morritt, Arden LJ, Dyson LJ)
The applicant appealed against a deportation decision on the basis that he would be at risk of ill-treatment, in particular kidnap, if returned. Dismissing the appeal, the Senior IJ had been entitled to find that the applicant was an incredible witness and to reject the expert evidence based on the applicant's evidence. [SP]

BS (India): BS (India) v Entry Clearance Officer [2007] EWCA Civ 1235 (8th November 2007; Sedley LJ, Maurice Kay LJ, Rimer LJ)
On whether the AIT was correct to refuse permission to amend the appellant's grounds of appeal on the basis of Rule 62.7 of the AIT (Procedure) Rules 2005: Rule 62.7, as now amended, limited a reconsideration to those grounds upon which the Immigration Appeal Tribunal granted permission to appeal unless the AIT directed otherwise so as to permit an amendment, which was a matter within the power of the AIT. Appeal allowed. [HM]

Bagdanavicius: R (on the application of Bagdanavicius) v Secretary of State for the Home Department [2005] UKHL 38; [2005] 2 AC 668; [2005] 2 WLR 1359 (26th May 2005; Lord Nicholls, Lord Hope, Lord Walker, Baroness Hale and Lord Brown)
Dismissing the applicants' appeal against the refusal of judicial review of the certification of their asylum claims under section 115 of the NIAA 2002, in order for an asylum seeker to avoid expulsion by reason of an interference with Art. 3 ECHR where it is alleged that harm will be inflicted by a non-state agent, the asylum seeker must establish (i) that he would be at real risk of suffering serious harm from non-state agents, and (ii) that the receiving country did not provide for those within its territory a reasonable level of protection against such harm. [SP]

Baiai: R (on the application of Baiai and Another) v Secretary of State for the Home Department [2008] UKHL 53; [2008] 3 WLR 549 (30th July 2008; Lord Bingham, Lord Rodger, Baroness Hale of Richmond, Lord Brown and Lord Neuberger)
Dismissing the Secretary of State's appeals against the grant of judicial review of the treatment of the claimants' applications for permission to marry under section 19 of the AITCA 2004 and the Immigration (Procedure for Marriage) Regulations 2005, (1) the right to marry protected by Art. 12 ECHR was to be treated as a strong, unqualified right which might be regulated by national law both as to procedure and substance provided neither impaired its essence; (2) section 19 of AITCA, which required those subject to immigration control to give notice of a proposed marriage, could be operated consistently with Art. 12, enabling the appropriate authorities to investigate whether the marriage would be one of convenience but only to withhold permission where it appeared to be so; and (3) the 2005 Regulations were also unobjectionable save to the extent that the required payment of a fee was fixed at a specified level which might, in cases of impecuniosity, thereby impair the essence of the right to marry; but that (4) the conditions set out in the Secretary of State's policy Instructions, although relevant to immigration status, were irrelevant to the genuineness of a proposed marriage, which was the only relevant criterion for determining whether permission should be given and since their effect, subject to the

discretionary compassionate exception, was to impose a blanket prohibition on exercise of the right to marry by all those within the specified categories irrespective of whether the parties' proposed marriages were ones of convenience, the scheme represented a disproportionate interference with the right to marry and violated Art. 12. [NP]

BAPIO Action: R (BAPIO Action Ltd and another) v Secretary of State for the Home Department and another [2008] UKHL 27; [2008] 1 AC 1003; [2008] 2 WLR 1073 (30th April 2008; Lord Bingham, Lord Scott, Lord Rodger, Lord Carswell and Lord Mance)
Dismissing the Secretary of State's appeal against the grant of judicial review of his guidance to NHS trusts (Lord Scott dissenting), that the guidance, to the effect that trusts should only offer training posts to international medical candidates if there were no suitable candidates in the resident labour market, was unlawful as (per Lord Bingham and Lord Carswell) it affected graduates who had obtained leave to enter or remain in the United Kingdom under the Highly Skilled Migrant Programme which changed the terms of their permission and as such fell within the scope of sections 1 and 3 of the IA 1971 and should have been effected by means of a change to the Immigration Rules, alternatively, (per Lord Rodger and Lord Mance) it nevertheless amounted to an unfair exercise of power by the Secretary of State for Health which was inconsistent with the legitimate expectations generated by the Secretary of State for the Home Department among those international medical graduates who had already obtained Highly Skilled Migrant Programme status that such status would be renewed without difficulty provided the programme's requirements were met. [NP]

Beoku-Betts: Beoku-Betts v Secretary of State for the Home Department [2008] UKHL 39; [2009] 1 AC 115; [2008] 3 WLR 166 (25th June 2008; Lord Bingham, Lord Hope, Lord Scott, Baroness Hale and Lord Brown)
Allowing the applicant's appeal against the refusal of his human rights claim, (1) the correct approach to Art. 8 ECHR appeals under section 65 of the IAA 1999 was to consider complaints with reference to the family unit as a whole and if the proposed removal of the appellant would be a disproportionate interference with that unit then each affected family member was to be regarded as a victim, and (2) the approach of the original adjudicator, who considered that the claimant's family constituted a close knit unit and that his mother relied on him for emotional support, was correct and his decision that removal would breach Art. 8 would be reinstated. [NP]

Bhatti (Pakistan): Bhatti (Pakistan) v Secretary of State for the Home Department, unreported (17 February 2009; Sedley LJ, Longmore LJ, Sir John Chadwick)
An appeal against the AIT's decision that a nine-year delay between claim and decision, during which time B had established a profitable company, did not make removal disproportionate: the case required reconsideration in light of *EB (Kosovo)*, in which the House of Lords had adopted a completely different approach to the question of delay. The Court could not be sure that the AIT's decision would have been the same in light of that decision. [JB]

Bibi: (1) Tohura Bibi (2) Shabana Begum (3) Shaina Begum (4) Akik Miah and (5) Masuk Miah v Entry Clearance Officer, Dhaka [2007] EWCA Civ 740 (18th July 2007; Sir Mark Potter, Sedley LJ, Wilson LJ)
On an appeal challenging the refusal to provide certificates attesting to a right to abode, in dismissing the appeal: where an individual had gained admission to the UK and had acquired UK citizenship by using another person's identity, his family members could not rely upon that purported citizenship to claim a right of abode in the UK. [HM]

CB (USA): CB (USA) v Entry Clearance Officer [2009] EWCA Civ 1539 (13 November 2008; Laws LJ, Carnwath LJ, Richards LJ)
The IJ had erred in holding, when deciding whether the applicant's presence would not be conducive to the public good, that it was for the officer to prove, on the balance of probabilities, whether his entrance would give rise to future public order offences or violent crime. Appeal allowed. [JB]

CH (Jamaica): CH (Jamaica) v Secretary of State for the Home Department [2007] EWCA Civ 792 (26th July 2007; Auld LJ, Rix LJ, Moses LJ)
Deciding the effect of delay in determining an application for leave to remain based on a discretionary marriage policy and a claim under Art. 8 ECHR: (1) on the facts of the case the delay in determining did not mean that the applicant was denied the opportunity of being brought within a discretionary marriage policy such as to require the granting of her application for leave to remain, and (2) the delay did not of itself establish a claim for breach of her rights under Art. 8 ECHR in circumstances where that claim would otherwise have failed at the relevant time. Appeal dismissed. [HM]

CL (Vietnam): CL (Vietnam) v Secretary of State for the Home Department [2008] EWCA Civ 1551 (10 December 2008; Sedley LJ, Keene LJ, Smith LJ)
Deciding whether the IJ had been right to consider the adequacy of facilities in the country of removal when considering how removal would impact on a child applicant's Art. 8 rights, rather than leaving this as a question for the secretary of state: the extent of suitable reception and care facilities in Vietnam was relevant to the question of how removal would affect a child's right to private life, and the immigration judge had been required to consider it. Appeal allowed. [JB]

CM (Cameroon): CM (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 125 (6 February 2008: Pill LJ, Sedley LJ, Longmore LJ)
Deciding whether, in a case where the Secretary of State had conceded that the decision of the Senior IJ, allowing the appeal against the decision of the IJ, had been flawed, the appropriate course was to remit the case for a fresh hearing, or to reinstate the decision of the IJ: allowing the appeal and restoring the decision of the IJ, the Secretary of State's concession had been justly made and the decision of the Senior IJ judge could not stand; the IJ's findings of fact remained unchallenged, so there was no need to order a fresh hearing, nor any legitimate basis on which her conclusion could be interfered with. [JB]

Chikwamba: Chikwamba v Secretary of State for the Home Department [2008] UKHL 40; [2008] 1 WLR 1420 (25th June 2008, Lord Bingham, Lord Hope, Lord Scott, Baroness Hale and Lord Brown)
Allowing the applicant's appeal against the refusal of her human rights claim, (1) while the maintenance and enforcement of immigration control was a legitimate aim of the Secretary of State's policy in relation to Art. 8 ECHR family life claims, an appeal on this ground should not be dismissed routinely on the basis that it would be proportionate and more appropriate for the applicant to apply for leave to enter as a spouse from abroad, and (2) to remove the claimant to Zimbabwe, where conditions were harsh and unpalatable, and disrupt the family life she had developed with her husband and young daughter in the time that removals to Zimbabwe had been suspended would violate her and her family's rights under Art. 8 ECHR and was not justified by the need for effective immigration control. [NP]

DL (DRC); ZN (Afghanistan): DL (DRC) v The Entry Clearance Officer, Pretoria; ZN (Afghanistan) v the Entry Clearance Officer, Karachi [2008] EWCA Civ 1420 (18th December 2008; Laws LJ, Rix LJ, Wilson LJ)
Deciding whether family members seeking entry to the UK to join a person who had been recognised as a refugee in the UK but later acquired British citizenship, fell to be considered under rules 281 and 297 of HC395 (dealing with ordinary applications by family members), or under rules 352A and 352D (dealing with family of refugees): family members of persons who were no longer refugees, having acquired citizenship, fell to be considered under ordinary family member rules, and were therefore subject to those rules' requirements concerning maintenance and accommodation. First appeal allowed; second appeal dismissed. [JB]

DS (Afghanistan): DS (Afghanistan) v Secretary of State for the Home Department [2007] EWCA Civ 774 (25th July 2007; Sir Mark Potter, Sedley LJ, Wilson LJ)
Where the Secretary of State had wrongly but rationally concluded that the applicant was not an Afghan national, and accordingly had lawfully decided not to apply to him a policy of granting time limited leave to remain, on an appeal concerning whether the appellant's rights under Art. 8 ECHR would be violated by his return to Afghanistan, deciding the proper approach to the test under Art. 8(2) ECHR: the adjudicator was to assess proportionality as at the time of the hearing before him and there was no obligation to put the appellant in the position he would have been in had the policy been applied to him. Appeal dismissed. [HM]

DW (Jamaica): DW (Jamaica) v Secretary of State for the Home Department [2008] EWCA Civ 1587 (27 October 2008; Ward LJ, Wall LJ, Hooper LJ)
It was an error of law to hold that the commission of a serious offence precluded a person appealing against removal on asylum and human rights grounds from remaining in the UK. Since it was not inevitable that the AIT would have come to the same decision if properly directed on this point, the matter was remitted for reconsideration. [JB]

EB (Ethiopia): EB (Ethiopia) v Secretary of State for the Home Department [2007] EWCA Civ 809 (31st July 2007; Pill LJ, Longmore LJ, Jacob LJ)
Deciding whether a person who was deprived of documentation by executive action on grounds of her race had a well founded fear of persecution: in the present circumstances the removal of documentation effectively deprived the appellant of her of nationality and citizenship, and since the action was arbitrary, being based on the appellant's race, it constituted persecution for a Convention reason and, absent evidence of a subsequent change of circumstances, this provided the basis for establishing a well-founded fear of persecution on return. Appeal allowed. [HM]

EB (Kosovo): EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41; [2008] 3 WLR 178 (25th June 2008; Lord Bingham, Lord Hope, Lord Scott, Baroness Hale and Lord Brown)
Allowing the applicant's appeal against the refusal of his human rights claim, (1) delay in the decision-making process on an individual's asylum or human rights claim might be relevant to the consideration of that individual's Art. 8 ECHR appeal in that the individual might, during the period of delay, have developed closer personal and social ties and established deeper roots in the community than he could have shown earlier, the sense of the impermanence of the with which relationships might have been imbued might have faded, (2) (Lord Brown dissenting) the weight otherwise to be accorded to the requirements of firm and fair immigration control might be reduced if delay were shown to be the result of a dysfunctional system which yielded unpredictable, inconsistent and unfair outcomes and (3) the adjudicator and tribunal had not adequately assessed the human problem raised by the claimant's appeal, namely the delay of some four and a half years in deciding his claim, which meant he was no longer an unaccompanied minor, likely to be granted exceptional leave to remain at the time of the decision, and moreover had entered a relationship, so (Lord Scott dissenting) his claim would be remitted to the tribunal for a fresh hearing to consider the delay and handling of his claim in the question of the proportionality of removal [NP]

EM (Lebanon): EM (Lebanon) v Secretary of State for the Home Department [2008] UKHL 64; [2008] 3 WLR 931 (22 October 2008; Lord Hope, Lord Bingham, Baroness Hale, Lord Carswell and Lord Brown)
Allowing the applicant's appeal against the refusal of her asylum & human rights claims, (1) there was no pre-determined model of family or family life to which Art. 8 ECHR had to be applied in determining whether the treatment of an alien on return to their state of origin would amount to a flagrant breach of that Article such that their removal would engage that right, but respect must be shown for the right to such family life as was or might be enjoyed by a particular applicant bearing in mind the participation of other members who shared that life, (2) in this case the applicant and her child had constituted a family for the entirety of the child's life and since removal would give custody to the child's father, with whom the child had never had any contact, limiting contact with his mother to occasional supervised visits, Art. 8 precluded removal. [NP]

EO (Turkey): EO (Turkey) v Secretary of State for the Home Department [2008] EWCA Civ 671, [2008] INLR 295 (16th May 2008; Tuckey LJ, Toulson LJ)
The applicant, who had pleaded guilty to two sexual offences and had been sentenced to a two-year conditional discharge, appealed against the treatment of his deportation decision. The AIT had allowed his appeal on the basis that exceptional circumstances were required before a deportation order could be made in the absence of a custodial sentence, but that decision was reversed on reconsideration. The appeal would be dismissed as there was no error in law in the reconsideration decision. [SP]

ES (Tongo): ES (Tongo) v Secretary of State for the Home Department [2008] EWCA Civ 230 (22 February 2008; Pill LJ, May LJ, Sir Peter Gibson)
Deciding, in circumstances in which a deportation order had been made against the appellant, who had then left the country, returned on a false passport, been granted temporary leave to remain, and waited five years for her application for indefinite leave to remain to be processed, whether the long delay in processing the application served impliedly to revoke the deportation order: dismissing the appeal, it was not possible for a deportation order to be revoked by implication; the tribunal had been entitled to conclude that the delay did not have a substantial effect with regard to the appellant's rights under Art. 8 ECHR. [JB]

Entry Clearance Officer: Entry Clearance Officer v NH (India) [2007] EWCA Civ 1330 (13th December 2007; Pill LJ, Sedley LJ, Rimer LJ)
Deciding what factors could properly be taken into account in determining a claim under Art. 8 ECHR: given the particular circumstances of the case, the AIT had been correct to take into account historic discriminatory legislation which had prevented a female Kenyan UK citizen from settling in her own right in the UK at a time when her son would have been a minor and therefore entitled to settle with her, in determining the now adult son's claim that a refusal to grant him entry clearance breached his rights under Art. 8 ECHR. Appeal dismissed. [HM]

ERRC: R (on the application of European Roma Rights Centre) v Immigration Officer at Prague Airport [2004] UKHL 55; [2005] 2 AC 1; [2005] 2 WLR 1 (9th December 2004; Lord Bingham, Lord Steyn, Lord Hope, Baroness Hale and Lord Carswell)
Allowing the applicants' appeal against the refusal of judicial review of a scheme authorising British immigration officers to operate pre-clearance immigration control extraterritorially at Prague Airport, on a proper construction (generous and purposive), the Refugee Convention required an asylum seeker to be outside of the country of his nationality and to have entered, but not yet be resident within, the receiving state. The entry clearance system did not therefore violate the UK's international obligations under the Convention, however, on the facts of the case, the immigration officers discriminated against Roma on racial grounds by treating them less favourably than others who were seeking to travel from Prague Airport, contrary to domestic and customary international law and international treaties to which the UK was a party. [SP]

F (Mongolia): F (Mongolia) v Secretary of State for the Home Department [2007] EWCA Civ 769 (25th July 2007; Sir Anthony Clarke MR, Buxton LJ, Lawrence Collins LJ)
Deciding whether it was permissible to challenge by way of judicial review a decision of a Senior IJ to refuse reconsideration of a case by a panel of the AIT: such decision could only be challenged under the statutory review procedure and not by way of judicial review, *R (on the application of G) v Immigration Appeal Tribunal* [2005] 1 WLR 1445 applied. Appeal dismissed. [HM]

FB (DRC): FB (Democratic Republic of Congo) v Secretary of State for the Home Department [2008] EWCA Civ 457 (6th March 2008; Pill LJ, Keene LJ, Maurice Kay LJ)
On whether, in circumstances where country guidance for the DRC stated that individuals with perceived nationality of a state hostile to DRC were within a category of risk, the AIT's failure to have regard to the appellant's mixed Congolese-Rwandan heritage constituted an error of law and entitled the appellant to be granted asylum: (1) there had been an error of law and the matter would be remitted to the AIT but (2) the appellant was not automatically entitled to asylum as a result of the country guidance as there had to be a proper assessment of the facts of his case and whether there was in fact a well-founded fear of persecution. Appeal allowed. [HM]

FD (Zimbabwe): R (on the application of FD (Zimbabwe) v Secretary of State for the Home Department [2007] EWCA Civ 1220 (29th October 2007; Wall LJ, Richards LJ, Lawrence Collins LJ)
On an appeal against the refusal of the appellant's application for judicial review in relation to a refusal to grant him asylum: there was no error of law in an adjudicator's finding about the appellant's credibility, and in making such finding the adjudicator was not required to take into account a previous failure to claim asylum as this was a matter that was not raised before him, accordingly the IAT had erred in law in finding that the adjudicator had taken the wrong approach to assessing the appellant's credibility, and the IAT's decision ought to have been quashed. Appeal allowed in part. [HM]

FK (Kenya): FK (Kenya) v Secretary of State for the Home Department [2008] EWCA Civ 119 (26 February 2008; Sedley LJ, Rix LJ, Arden LJ)
Deciding whether the AIT had erred by devaluing expert evidence to the effect that that there was nowhere in Kenya that the appellants could safely relocate without being at real risk of persecution by the Mungiki tribe, by whom the appellant's husband had been killed: allowing the appeal and remitting the case to the AIT, the tribunal had failed to deal with the critical issue of whether the appellant's fear of persecution on relocation would be well-founded; if the Mungiki, who had killed the appellant's husband for failing to join them, might learn where the appellant and her daughter were, it would arguably be impossible to exclude the risk of abduction and enforced genital mutilation. [JB]

FK (Congo): FK (Congo) v Secretary of State for the Home Department [2007] EWCA Civ 1545 (14th December 2007; Keene LJ, Wilson LJ, Sir Peter Gibson)
On the approach taken by an IJ to assessing proportionality under Art. 8 ECHR: on the facts the IJ had made no error of law in his approach to determining whether a decision to remove an applicant for leave to remain would constitute a breach of Art. 8 and was entitled, in his discretion, to find that there would be such breach, as this conclusion was

not irrational, although another judge might properly have taken a different view. Appeal allowed. [HM]

FM (Iran): FM (Iran) v Secretary of State for the Home Department [2008] EWCA 1540 (11 November 2008; Laws LJ, Richards LJ, Lawrence Collins LJ)
In the particular circumstances, it was not fair or reasonable to impugn the applicant's credibility for not mentioning some matters given in his statement on subsequent occasions. Appeal allowed. [JB]

GM (Eritrea): GM (Eritrea) v Secretary of State for the Home department [2008] EWCA Civ 833 (17th July 2008; Buxton LJ, Laws LJ, Dyson LJ)
Deciding whether the AIT ought to have found on the material before it that there was a reasonable likelihood that the applicants had left Eritrea illegally and would therefore be considered deserters on return: dismissing the appeal, since none of the appellants had put forward any evidence that they had left Eritrea illegally, it was impossible to say that there was a reasonable likelihood they did not fall within one of the classes of permitted leavers. [JB]

G Omerenma Obed: G Omerenma Obed and others v Secretary of State for the Home Department [2008] EWCA Civ 747 (1st July 2008; Sedley LJ, Longmore LJ, Moses LJ)
The appellants, all of whom had been given leave to enter the UK as students, appealed against decisions of the AIT refusing to renew their leave to enter or remain in the UK on the basis that they had failed to make satisfactory progress on their courses of study within the meaning of Rule 60(v) of the Immigration Rules where they had failed examinations in their course of study or had changed their course of study. Allowing the appeals in part, (1) whilst Rule 60(v) was ambiguous, neither the background of the statutory powers nor the configuration of the entry clearance rules by which they are exercised is suggestive of either a power to limit students to a single course or of a practice purporting to do so. Further, Rule 60(v) could intelligibly mean whichever course of study the student had settled on; (2) a failure to sit or pass relevant examinations was material to the evaluation of satisfactory progress, but the decisiveness of the consideration would depend on the reason, for example illness. If the reason is not inconsistent with satisfactory progress, Rule 60(v) is satisfied. [SP]

GN (Iran): GN (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 112 (14th January 2008; Maurice Kay LJ, Lawrence Collins LJ, Sir Paul Kennedy)
On the finding made by the AIT upon the evidence before it: the AIT had not erred in law in concluding that the appellant gym manager who had been beaten and tortured in Iran by the religious police for allegedly having adulterous affairs with female gym members faced no risk of treatment amounting to a breach of Art. 3 ECHR if he were returned to Iran as it was permissible to conclude on the facts the religious police were only interested in closing the gym. Appeal dismissed. [HM]

GO (Nigeria): GO (Nigeria) v Secretary of State for the Home Department [2007] EWCA Civ 1163 (11th October 2007; Mummery LJ, David Richards J, Sir Paul Kennedy)
Deciding the correct approach to deciding whether to deport a person with criminal convictions and a propensity to re-offend who had been granted indefinite leave to

remain: (1) the proper approach required firstly an assessment of the person's offending, of his immigration history and of his links with the UK, and then a balancing exercise bearing in mind that although deportation would be difficult for the immigrant it was his conduct that had created the possibility of a deportation order; (2) accordingly, it was not sufficient merely to assess whether the seriousness of the original offences that had resulted in convictions justified deportation, and the immigration judge had erred in applying such an approach and the AIT was justified in overturning his decision. Appeal dismissed. [HM]

H: R (on the application of H) (by his Mother & Next Friend OH) v Secretary of State for the Home Department [2008] EWCA Civ 245 (15th January 2008; Laws LJ, May LJ, Moore-Bick LJ)
On whether the fact that an EU Citizen residing in his own Member State could not claim the same rights of residence for himself and his family under municipal law as he could under Directive 2004/38/EC if he were in another EU Member State, constituted discrimination contrary to Art. 14 ECHR in the protection of rights under Art. 8 ECHR: even assuming that Art. 8 was engaged in the present case so as to permit an argument based on Art. 14, there was no discrimination contrary to Art. 14 as the two situations envisaged were not comparable. The residence rights under Directive 2004/38/EC were an adjunct to the exercise of an EU Citizen's free movement rights and these residence rights quite properly had no application in a wholly internal situation where an EU Citizen was not in fact exercising free movement rights. Appeal dismissed. [HM]

HB: HB v Secretary of State for the Home Department [2008] EWCA Civ 806 (11th July 2008; Waller LJ, Buxton LJ, Smith LJ)
The applicant, who had been in the UK for a continuous period of 5 years and had committed a number of offences (including attempted theft, burglary and robbery) appealed against a Senior IJ's decision to uphold the AIT's decision that there were serious grounds of public policy for deporting HB under the Immigration (European Economic Area) Regulations 2006 because HB represented a genuine and sufficiently serious risk to the public: dismissing the appeal, as a matter of EU law, the AIT was entitled to decide that the applicant represented a sufficiently serious threat affecting one of the fundamental interests of society. The reasoning behind Directive 2004/38/EC, which the Regulations transposed, was that it should be, at the least, difficult to expel an EU citizen on the basis of crimes of dishonesty, but crimes of violence were a different matter. Furthermore, Member States had a degree of judgment in deciding whether conduct fulfils the seriousness requirement. [SP]

HH (Iran): HH (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 504 (14th April 2008; Pill LJ, Arden LJ, Longmore LJ)
An IJ's refusal of a request for an adjournment by an unrepresented applicant to allow him to obtain legal representation for the hearing did not disclose an error of law. There was no entitlement to legal representation pursuant to Art. 6 ECHR as the determination of refugee status was not the determination of a civil right; this was not changed by Directive 2004/83/EC, which entitled someone with refugee status to certain domestic law rights but did not change the nature of an application for refugee status. The applicant's substantive case did not disclose complex points of law, only matters of credibility and the

IJ had been entitled to conclude that on the facts of the case no injustice was caused by the absence of representation. [SP]

HI (Uganda): HI (Uganda) & Anor v Secretary of State for the Home Department [2007] EWCA Civ 1564 (26th October 2007; Pill LJ, Gage LJ, Sir Paul Kennedy)
Deciding whether, in relation to an application to be granted entry clearance, the AIT had erred in law in making a finding in relation to whether the respondent could be maintained in accordance with paragraph 297(iv) of the Immigration Rules that was not fully reasoned: there was no error of law as the Secretary of State had failed to show that he had genuinely been substantially prejudiced by any such failure, and in the circumstances this was a pre-requisite to the success of a reasons challenge. Appeal of the Secretary of State dismissed. [HM]

HJ (Iran): HJ (Iran): v Secretary of State for the Home Department [2009] EWCA Civ 172 (10th March 2009; Pill LJ, Keene LJ, Sir Paul Kennedy)
The AIT had been correct to apply the test in *J v Secretary of State for the Home Department* [2006] EWCA Civ 1238, [2007] Imm AR 73 of whether homosexual applicants claiming refugee status could reasonably be expected to tolerate the need for discretion on return to their home country as it complied with the Refugee Convention and was appropriate and workable. [NP]

HK (Turkey): HK (Turkey) v Secretary of State for the Home Department [2007] EWCA Civ 1357 (19th December 2007; Latham LJ, Jacob LJ, Mann J)
In dismissing an appeal challenging the lawfulness of detention, a mere assertion of torture by an asylum seeker would not of itself render the case unsuitable for the fast track procedure and accordingly would not render detention pursuant to that procedure unlawful. [HM]

HS (India): HS (India) v Secretary of State for the Home Department [2008] EWCA Civ 1510 (23rd July 2008; Ward LJ, Laws LJ, Dyson LJ)
Deciding whether, in granting the appellant leave to enter in the capacity of a religious minister without his being in possession of an International English Language Testing Certificate in accordance with rule 174A of the Immigration Rules, the Secretary of State had waived the requirement that the appellant possess such a certificate, such that he could not now insist on strict compliance with the rule: dismissing the appeal, the appellant had been granted leave to remain in the UK despite his lack of entitlement; no legitimate expectation had been raised; the Secretary of State could not be restrained from relying on the whole weight of a rule in refusing the application for an extension of leave. [JB]

HT (Cameroon): HT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 1508 (5 December 2008; Sedley LJ, Keene LJ, Smith LJ)
Deciding whether, for the purposes of section 103 B of the NIAA 2002, *"decided"* meant *"initially decided"* or *"decided on reconsideration"*: the *"decision"* referred to in section 103B was the AIT's determination of an appeal against the Secretary of State's decision, whether this was a determination made on initial appeal, or a determination reached after a reconsideration hearing. Preliminary issue determined in the appellant's favour. [JB]

Horvath: Horvath v Secretary of State for the Home Department [2001] 1 AC 489 (6th July 2000; Lord Hope, Lord Browne-Wilkinson, Lord Lloyd, Lord Clyde, Lord Hobhouse)
Dismissing the applicant's appeal against the refusal of asylum, the relevance of whether or not an asylum seeker had been unable or, through fear of persecution, unwilling to seek protection from the state to an asylum seeker's claim to be at real risk of persecution in his country of origin from non-state agents, was that the question of persecution should be determined by reference not only to the severity of the feared ill treatment, but also to the approach of the state towards that ill treatment and the level of protection provided. Where protection was not adequate, the international community was accessible as an alternative. However, in the instant case the tribunal had found that the Slovak authorities were willing and able to provide protection at a sufficient level, so that the claimant had not established a well founded fear of persecution. [JB]

Hoxha: R (on the application of Hoxha) v Special Adjudicator; R(B) v Immigration Appeal Tribunal [2005] UKHL 19; [2005] 1 WLR 1063 (10th March 2005; Lord Nicholls, Lord Steyn, Lord Hope, Baroness Hale and Lord Brown)
Dismissing the applicants' appeals against the refusal of their asylum claims, the Refugee Convention did not establish an entitlement to refugee status based upon a past fear of persecution and present compelling reasons for non-return to an asylum seeker's country of nationality without a current fear of persecution for a Convention reason. Furthermore, Art. 1C(5) of the Convention was intended to be confined to *"statutory refugees"* under Art. 1A(1) and not to asylum seekers whose Art. 1A(2) claim was yet to be determined in their favour. In the circumstances, the applicants were not entitled to rely on Art. 1C(5), and in the absence of a current well-founded fear of persecution they were not entitled to refugee status under Art. 1A(2). [SP]

Huang: Huang v Secretary of State for the Home Department; Kashmiri v Secretary of State for the Home Department [2007] UKHL 11; [2007] 2 AC 167; [2007] 2 WLR 581 (21st March 2007; Lord Bingham, Lord Rodger, Baroness Hale, Lord Carswell, Lord Brown)
Allowing the Secretary of State's appeal against the grant of asylum in the first case and allowing the applicant's appeal in the second case, (1) the way in which appellate immigration authorities (including adjudicators, IJs, and the IAT) should approach an appeal on Convention grounds against refusal of leave to enter or remain under section 65 of the IAA 1999 was to decide, on the basis of up-to-date facts, whether the challenged decision was incompatible with a Convention right such as Art. 8 ECHR, and so unlawful, or compatible, and so lawful, and was not a secondary reviewing function dependent on establishing that the primary decision maker misdirected himself, acted irrationally or was guilty of procedural impropriety, and (2) in relation to Art. 8 ECHR, the ultimate question, where family life could not reasonably be expected to be enjoyed elsewhere, was whether the refusal, taking account of all factors in its favour, prejudiced the claimant's family life sufficiently seriously to breach his rights under Art. 8 but there was no additional requirement of exceptionality and therefore both cases would be remitted. [JB]

IA (Pakistan): Secretary of State for the Home Department v IA (Pakistan) [2008] EWCA Civ 580 (22nd May 2008; Ward LJ, Sedley LJ, Wilson LJ)
The Secretary of State appealed against a decision of the AIT allowing two of three conjoined appeals by Pakistani Ahmadis on the ground that they could not find safety in

Rabwah from the religious persecution which they had good reason to fear if returned. The decision had been given country guidance status, which the Secretary of State wanted removed to prevent it undermining almost every internal relocation answer to an Ahmadi asylum claim. The appeal would be dismissed as its effect was not that it was only exceptionally that an Ahmadi who was fleeing persecution could be safe in Rabwah. Further, the country guidance status of the decision would not be removed, in part because (i) the determination was intended to have the effect of undoing earlier country guidance which had a faulty factual basis; and (ii) two subsequent decisions involving Ahmadis had not relied upon the guidance as adopting a wide premise as anticipated by the Secretary of State. [SP]

IA (Syria): IA (Syria) v Secretary of State for the Home Department [2007] EWCA Civ 1390 (13th November 2007; Ward LJ, Lawrence Collins LJ, Toulson LJ)
Deciding the proper approach to be taken to country guidance cases and expert evidence in the context of asylum claims: the AIT had erred in law in failing properly to engage with the evidence relied upon by the appellants to disapply country guidance cases about the risks faced by Kurdish Syrian asylum seekers, such evidence including letters from Amnesty International, which deserved detailed consideration, and certain further expert evidence. Appeal allowed. [HM]

IM (Zambia): IM (Zambia) v Secretary of State for the Home Department [2008] EWCA Civ 944 (17 July 2006; Buxton LJ, Tuckey LJ, Keene LJ)
Deciding that the AIT had properly considered paragraph 364 of the Immigration Rules and was entitled to find that exceptional circumstances existed that outweighed the presumption in favour of deportation of an individual for the public good. Those circumstances were that the appellant had been granted indefinite leave to remain as a child, some 20 years previously, and that to deport him now would breach his rights under Art. 8 ECHR. As the AIT's decision disclosed no error of law, a contrary decision of the AIT reached on a reconsideration fell to be quashed. [JB]

JB (India): JB (India) v Entry Clearance Officer, unreported (11 February 2009; Mummery LJ, Lawrence Collins LJ, Sullivan LJ)
Deciding on the degree of dependency between family members required in order for refusal of entry to breach Art. 8 ECHR: the familial bond between parent and child was insufficient on its own to invoke Art. 8 protection. Limited financial dependence and repeated applications for entry were insufficient to support a finding of "family life". Appeal dismissed. [JB]

JB (Sudan): JB (Sudan) v Secretary of State for the Home Department [2008] EWCA 766 (12th June 2008; Longmore LJ, Moses LJ)
The applicant appealed the Senior IJ's decision that unless and until the case of *HGMO (Relocation to Khartoum) Sudan* [2006] UKAIT 00062 was overturned, the IJ had made no material error of law in the assessment of the objective evidence in relation to his asylum and Art. 3 ECHR claims. The appeal was dismissed as the Senior IJ had been correct: all that was required of the IJ judge was to consider whether the objective evidence as disclosed in the original appeal was any different from that which was described as not

being unduly harsh in HGMO but there was no evidence to distinguish the applicant from the generality of *HGMO*. [SP]

JC (China): JC (China) v Secretary of State for the Home Department [2009] EWCA Civ 81 (19th February 2009; Ward LJ, Scott Baker LJ, Smith LJ)
Considering whether the AIT had erred in its assessment that the level of risk of the appellant's re-prosecution on return to China fell below that level necessary to engage humanitarian protection: there was no error. The level of risk in question was a matter for the AIT's judgment; the decision was not perverse, and there had been no mistaken assessment of the facts. Appeal dismissed. [JB]

JH (Zimbabwe): JH (Zimbabwe) v Secretary of State for the Home Department; R (on the application of JH (Zimbabwe)) v Asylum and Immigration Tribunal [2009] EWCA Civ 78 (19th February 2009; Laws LJ, Wall LJ, Richards LJ)
Considering, where the applicant had mistakenly submitted an application for indefinite leave to remain rather than for leave to remain as the spouse of a person settled in the UK, and her leave to enter as a visitor had expired by the time she submitted the correct form, whether (1) she had a right of appeal to the Court of Appeal against the AIT's decision, (2) her application for indefinite leave to remain was a valid application, triggering the statutory extension of her existing leave to remain to enable appeal, and (3) whether her second application constituted a variation of the first, or served to withdraw it: (1) there was a right to appeal to the Court of Appeal under section 103B of the 2002 Act; (2) the application for indefinite leave to remain was a valid application, triggering an extension of leave, even though it was doomed to failure; and (3) J's second application was a variation of the first even though it was for a different purpose and on a different form, and it could not be inferred that by making the second application she was withdrawing the first. Appeal allowed. [JB]

JK (DRC): JK (Democratic Republic of Congo) v Secretary of State for the Home Department [2007] EWCA Civ 831 (12th July 2007; Pill LJ, Arden LJ, Toulson LJ)
On whether an IJ was required to address every point made against the credibility of the applicant's account in a letter from the Secretary of State refusing the applicant's asylum claim before allowing an appeal against that decision: there had been no error of law by an IJ in allowing the applicant's appeal because the judge had sufficiently addressed the attack on the applicant's credibility upon which the Secretary of State had based the refusal and he was not required to address every point so long as he dealt with the thrust of the case, especially in circumstances in which the applicant had not been cross-examined on every point made in the refusal letter. Appeal allowed. [HM]

JK (Serbia): JK (Serbia) v Secretary of State for the Home Department [2007] EWCA Civ 1321 (30th October 2007; Wall LJ, Richards LJ, Lawrence Collins LJ)
On whether the AIT was entitled to overturn the adjudicator's grant of the appellant asylum claim: the adjudicator had erred in law in failing to give adequate reasons as to why the appellant could not relocate internally in Serbia because of his Kosovan Roma background, and accordingly the AIT had not erred in law in overturning his decision. Appeal dismissed. [HM]

JL (Ghana): JL (Ghana) v Secretary of State for the Home Department [2008] EWCA Civ 1201 (3rd October 2008; Ward LJ, Longmore LJ, Jackson LJ)
Deciding whether the AIT had adopted the correct approach at a rehearing of the applicant's case, following which it had concluded that his deportation to Ghana would involve a disproportionate interference with his Art. 8 ECHR right to private life: allowing the Secretary of State's appeal, the AIT had failed to conduct a complete rehearing as ordered, since it had adopted previous findings of fact and made no findings of its own on crucial matters. The AIT was obliged to consider the facts as they were at the time of the rehearing in considering whether deportation would breach the applicant's rights under the ECHR. A complete rehearing was appropriate, as originally ordered by the AIT. [JB]

JN (DRC): JN (Democratic Republic of Congo) v Secretary of State for the Home Department [2008] EWCA Civ 320 (12th March 2008; Tuckey LJ, Rix LJ, Sir Robin Auld)
Where on a rehearing of the appellant's asylum claim the IJ concluded that the appellant had never been a member of the Bundu Dia Kongo, a Congolese separatist movement, and had never been mistreated by the Congolese authorities, on whether the judge was entitled to re-examine issues of the appellant's credibility: (1) the judge had not been wrong to consider whether the appellant's appeal was credible overall and he was not required to separate out and accept particular legitimate findings on credibility from the first hearing in respect of which there had not been any error of law and (2) even if the judge had been wrong to consider whether the appellant was a member of the BDK on the basis that the Secretary of State had conceded this point, there was no sufficient evidence in this case demonstrating a real risk that members of the BDK were persecuted in the DRC. Appeal dismissed. [HM]

JN (Uganda): JN (Uganda) v Secretary of State for the Home Department [2007] EWCA Civ 802 (31st July 2007; Walker LJ, Maurice-Kay LJ, Wilson LJ)
On whether the AIT had applied the correct test in assessing proportionality under Art. 8(2) ECHR in relation to a removal decision: it was wrong in law to require the circumstances to be "*truly exceptional*" before it would be disproportionate to remove a failed asylum seeker from the UK. Appeal allowed. [HM]

JT (Cameroon): JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 878 (28th July 2008; Pill LJ, Laws LJ, Carnwarth LJ)
Deciding, in a case where the Claimant's credibility had been impugned by application of section 8 of the AITCA 2004, whether, since it left the AIT no choice but to take into account relevant behaviour as damaging a claimant's credibility, that provision constituted arbitrary legislation, and violated the separation of powers and was thus unconstitutional: allowing the appeal, a global assessment of credibility was always required, the section 8(1) factors notwithstanding. While the section 8 factors had to be taken into account in assessing credibility, and were capable of damaging it, the section did not dictate that damage to credibility inevitably resulted; the section did not affect the power and duty of the decision-maker to reach his own conclusion on the credibility of the claimant; in the instant case there was a real risk that the section 8 factors had been given a status of their own rather than being taken into account as part of a global assessment of credibility; the case would be remitted to a differently constituted tribunal. [JB]

JV (Tanzania): JV (Tanzania) v Secretary of State for the Home Department [2007] EWCA Civ 1532 (7th November 2007; Mummery LJ, Laws LJ, Lloyd LJ)
On an appeal challenging a refusal of asylum, deciding when a denial of citizenship might amount to persecution: it would only do so if it was actuated for a reason specified under the Refugee Convention, including political affiliation and any of the other matters stated in Art. 18(2), and, as such, in circumstances where it was found that the appellant had been denied citizenship in Tanzania as a result of a mistake he had not been persecuted. Appeal dismissed. [HM]

Januzi: Januzi v Secretary of State for the Home Department [2006] UKHL 5; [2006] 2 AC 426; [2006] 2 WLR 397 (15th February 2006; Lord Bingham, Lord Nicholls, Lord Hope, Lord Carswell and Lord Mance)
Dismissing the applicant's asylum appeal in the first case and allowing it in the second case, there was no general rule that the test of whether it would be unreasonable or unduly harsh to expect a claimant to relocate internally within the country he or she was fleeing, pursuant to the definition of *"refugee"* in Art. 1A(2) of the Refugee Convention, where (1) the quality of life in the place of relocation did not meet the basic international norms of civil and political, and social and economic human rights or (2) it was the state that sanctioned or was responsible for the fear of persecution. [HM]

K: R (on the application of K) v Secretary of State for the Home Department, unreported (18 March 2009; Sir Anthony Clarke MR, Toulson LJ, Sullivan LJ)
On an appeal against the dismissal of an application for judicial review of a decision of the Secretary of State refusing to treat the applicant's further submissions as a fresh claim for asylum: the Secretary of State had misdirected herself in relation to the country guidance case of *AB (Risk Categories Reviewed: Tutsis Added: DRC CG),* Re [2005] UKIAT 118, interpreting it to mean that no form of Rwandan connection could be sufficient to expose a person to a real risk of ill-treatment if returned to DRC when the nature and strength of the connections had to be considered in relation to whether the applicant would be perceived to be a threat by the DRC because of them. Appeal allowed. [NP]

K: K v Secretary of State for the Home Department; Fornah v Secretary of State for the Home Department [2006] UKHL 46; [2007] 1 AC 412; [2006] 3 WLR 733 (18th October 2006; Lord Bingham, Lord Hope, Lord Rodger, Baroness Hale and Lord Brown)
Allowing the applicants' appeals against the refusal of asylum, that *"a particular social group"* within the meaning of Art. 1A(2) of the Refugee Convention was a group of persons who shared a common characteristic, other than their risk of persecution, which distinguished the group from the remainder of society of which they were part, or who were perceived as a group by society and it did not need to be cohesive and could be recognisable in one country but not another; (2) (in relation to the first appellant) if a person is persecuted for their connection with a family member, they are persecuted for membership of a particular social group, namely, their family. It is not necessary that the family member is himself persecuted for a Refugee Convention reason, nor that all family members should be similarly at risk; (3) (in relation to the second appellant), the groups of 'uninitiated indigenous females in Sierra Leone' (those who had not been subject to female genital mutilation) and of 'Sierra Leonean women' (those who had and who had not been so subject, but all of whom were still socially inferior to men) were both particular social

groups for the purposes of section 1A(2) of the Refugee Convention, since either could be defined as a group independently of the persecution complained of. [JB]

KD (Sri Lanka): KD (Sri Lanka) v Secretary of State for the Home Department [2007] EWCA Civ 1384 (21st December 2007; Sir Mark Potter, Wilson LJ, Moses LJ)
On considering whether the appellant should be entitled, after an error of law committed in disposing of his application, to a second hearing to establish that his removal would constitute a breach of Art. 8 ECHR: on the facts the appellant had no realistic chance of establishing that it would be disproportionate to require the appellant and his family to leave given the false basis on which he had sought to establish himself here and that appellant's family could easily reintegrate in Sri Lanka. Appeal dismissed. [HM]

KG (Sri Lanka): (1) KG (Sri Lanka) (2) AK (Sri Lanka) v Secretary of State for the Home Department [2008] EWCA Civ 13 (25th January 2008; Buxton LJ, Sedley LJ, Hooper LJ)
On the construction of Art. 3(2) of Directive 2004/38/EC, dismissing the appeal: the condition for qualification for free movement rights that other family members be dependants or members of the household of Union citizens "in the country from which they have come" referred only to an EEA state in which the Union citizen was also resident, and accordingly Art. 3(2) was correctly transposed in regulation 8 of the Immigration (European Economic Area) Regulations 2006. [HM]

KG (Sri Lanka): KG (Sri Lanka) v Secretary of State for the Home Department [2008] EWCA Civ 664 (21st May 2008; Richards LJ, Lawrence Collins LJ, Stanley Burnton LJ)
Deciding that the Immigration (European Economic Area) Regulations 2006 could not be read as preserving rights of appeal arising out of the displaced Immigration (European Economic Area) Regulations 2000, nor was it arguable that the material difference between the two sets of Regulations, as regards the preservation of prior rights of appeal, created a lacuna rendering the 2006 Regulations ultra vires. The words of the 2006 Regulations were clear, and therefore they defeated the presumption against retrospectivity. Furthermore, the applicant did not have any real prospect of an exercise of discretion in his favour in the 2000 Regulations and accordingly the 2006 Regulations did not cause any unfairness, let alone such unfairness as to justify a finding that they were ultra vires. The applicant's appeal against the refusal of documents would be refused. [SP]

KH (Sudan): KH Sudan, QA Sudan, BK Sudan, AA Sudan & KA Sudan v Secretary of State for the Home Department [2008] EWCA Civ 887 (30th July 2008; Sedley, Longmore, Moses LJJ)
Deciding whether the IAT had been entitled to find, in relation to five Sudanese applicants, that it would not be unduly harsh to return them to a displaced persons camp in Khartoum: in relation to KH, remitting the case to another tribunal, it could not be said that the only possible conclusion was that he would be at risk if returned to a Khartoum camp; his origin from a village targeted by rebel forces was not determinative; the level of risk was to be assessed by the tribunal; in relation to BK, dismissing the appeal, the IAT had not wrongly substituted its own higher test for internal relocation cases; in relation to QA, remitting the case for reconsideration, the IAT had erred in failing to refer to QA's particular circumstances in assessing undue harshness; in relation to AA, dismissing the appeal, he had failed to establish a real risk that his family would be left without support

in a camp; in relation to KA, dismissing the appeal, ethnicity was not determinative of the issue of risk on return. [JB]

KM (Sudan): KM (Sudan) v Secretary of State for the Home Department [2008] EWCA Civ 204 (13 February 2008: Tuckey LJ, Rix LJ, Jacob LJ)
Deciding whether the Senior IJ had taken the appellant's account of the facts out of context, or had drawn conclusions that were not supported by the evidence: dismissing the appeal, the judge had seen all the objective evidence and heard all of the appellant's evidence; his conclusions on the basis of this evidence were findings of fact and in no way perverse; it was insufficient for the appellant to point out single sentences and paragraphs within the objective evidence that seemed to support her case, since the evidence had to be construed in its entirety. [JB]

KN (Iran): KN (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 1430 (29 October 2008; Pill LJ, Scott Baker LJ, Jacob LJ)
The threshold for a successful claim premised on a breach of Art 3 ECHR could not be determined in the applicant's favour on the basis of a single line in a psychiatrist's report or an allegation that the medical facilities in Iran were inferior to those in the UK. Those considerations were insufficient to meet the high threshold. Appeal dismissed. [JB]

Khadir: R (on the application of Khadir) v Secretary of State for the Home Department [2005] UKHL 39; [2006] 1 AC 207; [2005] 3 WLR 1 (16th June 2005; Lord Bingham, Lord Hope, Lord Rodger, Baroness Hale and Lord Brown)
Dismissing the applicant's appeal against the refusal of judicial review of a failure to grant exceptional leave to enter, (1) paragraph 16(2) of Schedule 2 to the IA 1971 provided for the detention of persons in respect of whom directions might be given under paragraphs 9 and 10 of the Schedule *"pending…removal"* and the word *"pending"* had the same meaning as *"until"* such that the removal of an individual who had been refused leave to enter remained *"pending*" pursuant to paragraph 16 provided that the Secretary of State was intent on removing the individual and that there was some prospect of achieving that object. The individual therefore remained liable to detention under paragraph 16, however, a long delayed removal might make detention unreasonable, (2) the claimant had been liable to detention and therefore lawfully granted temporary admission in lieu of detention under paragraph 21 of Schedule 2 to the Act, which allowed a person *"liable to detention under paragraph 16"* of the Schedule to be temporarily admitted, and this was so without recourse to section 67 of the NIAA 2002 whereby references to persons *"liable to detention"* under a provision of the Immigration Acts were to be taken to include a person if the only reason why he could not be detained under that provision was that practical difficulties were delaying his removal from the UK. [SP]

*Kola: Kola and another v Secretary of State for Work and Pe*nsions [2007] UKHL 54 (28th November 2007; Lord Bingham, Lord Hope, Baroness Hale, Lord Carswell and Lord Brown)
Allowing the appellants' appeal against the treatment of their claims for income support, where a person could not reasonably have been expected to claim asylum any earlier than he did, having regard to his practical opportunity for doing so and to his state of mind at the time, including the effect on him of anything said by his facilitating agent, there was

no good reason why his claim should not properly be accepted as one made *"on his arrival"* for the purposes of regulation 70(3A) of the Income Support (General) Regulations 1987, notwithstanding that he did not submit his claim at the port of entry. [JB]

Klusova: Elens Klusova v Hounslow London Borough Council [2007] EWCA Civ 1127 (7th November 2007; Mummery LJ, Laws LJ, Moore-Bick LJ)
On an appeal against the EAT's refusal of the appellant's claim for unfair dismissal: the summary dismissal of a Russian immigrant was automatically unfair for failure to comply with the statutory dismissal and disciplinary procedures, even though she had been dismissed for an otherwise fair reason, namely *"some other substantial reason"* because of a genuine belief that her continued employment would constitute a breach of section 8 Asylum and Immigration Act 1996. Appeal allowed in part. [HM]

LF (Turkey): R (on the application of LF (Turkey) v Secretary of State for the Home Department [2007] EWCA Civ 1441 (18th October 2007; Laws LJ, Gage LJ, Rimer LJ)
In upholding the dismissal of the appellant's claim for judicial review, it was found lawful to refuse leave to enter where the very factual basis for the application, on the grounds of an entitlement to entry as a self-employed businessman pursuant to the European Community Association Agreement with Turkey, arose in consequence of the breach of conditions imposed in relation to a previous temporary admission, which conditions specified that the appellant was not permitted to work. [HM]

LG (Italy): LG (Italy) v Secretary of State for the Home Department [2008] EWCA Civ 190 (18th March 2008; Mummery LJ, Arden LJ, Carnwath LJ)
Deciding whether the AIT had been entitled to find that there were *"imperative grounds of public security"*, within the meaning of regulation 21(4) of the Immigration (European Economic Area) Regulations 2006 for removing the appellant, who had five criminal convictions: although it was difficult to say that the AIT had erred in law based on the arguments and material put before it, the matter would be remitted to the AIT as it had not properly considered the meaning of that phrase in light of the equivalent words in Art. 28(3) of Directive 2004/38/EC, and the distinction drawn in that Directive between *"serious grounds of public security"* and *"imperative grounds of public security"*. Appeal allowed. [HM]

LJ (Albania): LJ (Albania) v Secretary of State for the Home Department [2008] EWCA Civ 127 (6th February 2008; Sir Mark Potter (President), Thomas LJ, Hooper, LJ)
Dismissing the applicant's appeal against the IJ's decision to uphold the Secretary of State's refusal of further leave to remain in the UK, (1) the first IJ hearing the appeal had erred in law in failing to deal with many arguments put forward by the Secretary of State suggesting that the applicant's story was a complete fabrication, and the Senior IJ hearing the Secretary of State's appeal against that decision had been right to remit the matter for reconsideration to a Second IJ; (2) the second IJ had found, and been entitled to find, the applicant's evidence implausible such as to damage the his credibility; (3) the second IJ had erred in concluded that claims of killings in Albania in 1991 were contrary to the evidence; however, this error was not material; (4) having concluded that the applicant's story had no credibility, the IJ judge was not required to look at the documentary evidence in detail. [JB]

LK (Serbia): LK (Serbia) v Secretary of State for the Home Department [2008] EWCA Civ 1554 (3rd December 2007; Ward LJ, Moore-Bick LJ, Moses LJ)
In the context of a challenge to a decision to deport, deciding the proper approach to determining a claim under Art. 8 ECHR: in completing the balancing exercise required by Art. 8(2) ECHR, a tribunal ought not to ask whether the case met a standard of exceptionality, but it ought to start from the consideration that there was a need to maintain fair and consistent immigration control and in normal circumstances this would justify interference with family life. Appeal dismissed. [HM]

LM (DRC): LM (Democratic Republic of Congo) v Secretary of State for the Home Department [2008] EWCA Civ 325 (17th March 2008; Ward LJ, Sedley LJ, Lord Neuberger of Abbotsbury)
Where an IJ had found that the appellant's return to the Democratic Republic of the Congo would be disproportionate and a breach of her rights under Art. 8 ECHR, and such finding had purportedly been overturned by the AIT on a first stage reconsideration, (1) the AIT had erred in law because following *JM v Liberia* [2006] EWCA Civ 1402 it was incorrect to find that the Art. 8 claim was not justiciable, and (2) since the IJ's reasoning did not disclose an error of law the appropriate course for the Court of Appeal was to restore the immigration judge's determination rather than to remit the case for fresh reconsideration. Appeal allowed. [HM]

LS (Uzbekistan): LS (Uzbekistan) v Secretary of State for the Home Department [2008] EWCA Civ 909 (30 July 2008; Ward LJ, Moore-Bick LJ)
Deciding whether, the case having been adjourned at first stage reconsideration for a full rehearing on all the issues by a differently constituted AIT, that tribunal had had jurisdiction to re-open matters of fact that had been conceded before the first tribunal: the provision for reconsideration of a decision by a tribunal on appeal under section 103A of the NIAA 2002 did not circumscribe the scope of that reconsideration; in some cases, findings of fact made at a hearing of the original appeal should not be revisited in order to avoid the irrationality of the same tribunal reaching inconsistent decisions on the same evidence; in this case, there was no risk of such irrationality because the first IJ's findings were based on concession rather than analysis of the evidence; however, the appeal was allowed on another basis, the tribunal having given insufficient consideration to the appellant's risk of ill treatment on return to Uzbekistan as a result of having left the country without authority, and remitted for reconsideration on that aspect of the case. [JB]

Lim: R (on the application of Lim & Another) v Secretary of State for the Home Department [2007] EWCA Civ 773 (25th July 2007; Sir Mark Potter, Sedley LJ, Wilson LJ)
On the propriety of using judicial review to challenge the factual basis of a removal direction against which an out-of-country appeal lies to the AIT, in allowing the Secretary of State's appeal: that in principle judicial review was available in an appropriate case but on the facts of this case the High Court judge had not provided sufficient reasons for exercising his discretion in favour of entertaining a claim for judicial review rather than confining the appellants to proceed by way of out-of-country appeals. [HM]

Limbuela: R (on the application of Limbuela and Others) v Secretary of State for the Home Department [2005] UKHL 66; [2006] 1 AC 396; [2005] 3 WLR 1014 (2nd November 2005; Lord Bingham, Lord Hope, Lord Scott of Foscote, Baroness Hale and Lord Brown)
Dismissing the Secretary of State's appeals, the Secretary of State had a power under s.55(5)(a) of the NIAA 2002 (and a correlative duty under s.6 of the HRA 1998) to provide support to asylum seekers who either were, or faced the imminent prospect of, sleeping in the open without shelter and could rely only on charity for basic subsistence, in order to avoid a breach of their rights under Art. 3 ECHR, as (1) a decision by the Secretary of State to withdraw support constituted *"treatment"* for the purposes of Article 3 as the Secretary of State was directly responsible for the consequences for the asylum seeker of such decision given the existing statutory regime that barred asylum seekers from working to support themselves (2) whether such treatment was *"inhuman or degrading"* was to be assessed on the basis of the particular consequences for the asylum seeker in light of all the relevant circumstances (3) ordinarily, where as a result of such a decision an asylum seeker was having to sleep in the open without shelter and without any means of support this would provide strong indication of inhuman and degrading treatment. [HM]

Liu: Liu v Secretary of State for the Home Department: Wang v Secretary of State for the Home Department: Ahmed & Others v Secretary of State for the Home Department: Mouloungui v Secretary of State for the Home Department [2007] EWCA Civ 1275 (25th October 2007; Buxton LJ, Moses LJ, Lawrence Collins LJ)
Deciding the extent of the state's obligations to facilitate the creation of rights of residence for non-EU citizen parents of an EU citizen child under Art. 18 of the Nice Treaty, Art. 1 of Directive 90/34/EC and Art. 7 of Directive 2004/38/EC: there was no obligation on the state to allow for a non-EU citizen parent of an EU citizen child to work and raise income to support his family so as to ensure that the EU citizen child qualified for a right to reside in the UK under EC law, and so as to allow the non-EU citizen parent to thereby derive a contingent right to reside in the UK under EC law. Appeals dismissed. [HM]

MA (Pakistan): MA (Pakistan) v Secretary of State for the Home Department [2008] EWCA Civ 1616 (4 December 2008; Waller LJ, Thomas LJ, Maurice Kay LJ)
Deciding, where the applicant had claimed asylum on the basis that he would be persecuted for his membership of the Ahmadi faith on return to Pakistan, and the special adjudicator had determined that (1) the claimant's claim to have been an active and high profile member of the Ahmadi faith lacked credibility; and (2) the claimant could in any case safely return to Rabwah, a region of Pakistan where he had encountered no problems, the AIT had erred in finding that fresh evidence in relation to (a) the claimant's involvement with the faith, and (b) his expulsion from the police force on account of his faith, made no material difference to the special adjudicator's overall decision to dismiss the claimant's claim: dismissing the appeal, on the evidence as a whole, and accepting the claimant's account as credible, there was nothing wrong with the conclusion that the claimant could safely return to Rabwah. Appeal dismissed. [JB]

MA (Palestinian Territories): MA (Palestinian Territories) v Secretary of State for the Home Department [2008] EWCA Civ 304, [2008] Imm AR 617, 9th April 2008 (Maurice Kay LJ, Lawrence Collins LJ, Sir William Aldous)
Considering whether (1) that the Secretary of State's grounds of appeal to the AIT disclosed an arguable error of law; (2) during the first reconsideration an material or only an arguable error of law had been found; (3) the AIT erred in finding that the inevitable denial of re-entry that would occur if MA tried to return to the West Bank as a stateless person would not amount to persecution. The appeal would be dismissed: (1) a point of law has to be apparent on the face of the grounds, but a stringent process of construing the document was not required and there was an assertion that the adjudicator had made a perverse decision; (2) read as a whole, the AIT found an actual and not just an arguable material error of law upon reconsideration; and (3) the denial of the right of re-entry to a stateless person is not in itself persecutory under the Refugee Convention. [SP]

MA (Somalia): MA (Somalia) v Secretary of State for the Home Department [2009] EWCA Civ 4 (15 January 2009; Laws LJ, Rix LJ, Wilson LJ)
Deciding whether the AIT had been entitled to ignore the question whether a return to Somalia would breach M's human rights, since the Secretary of State had undertaken not to return her to Somalia in light of the fact that she was probably from Kenya: the proposal to remove an applicant to a particular country was separable from the decision to remove her. The AIT was not required to render an academic decision on a matter which was moot, namely whether a return to Somalia would breach M's human rights. Appeal dismissed. [JB]

MA (Yemen): MA (Yemen) v Secretary of State for the Home Department [2008] EWCA Civ 546 (8th April 2008; Tuckey LJ, Jacob LJ, Hughes LJ)
After the applicant had been granted leave to appeal to the Court of Appeal against an unfavourable asylum determination, the Secretary of State conceded that the matter should be remitted. This came in circumstances where the Secretary of State had delayed 4 years in determining the original claim. The applicant argued that the delay was an abuse of process, conspicuously unfair, illogical or immoral and therefore the Court of Appeal should uphold his claim. The Court of Appeal allowed the appeal but remitted the case for reconsideration as the success of the applicant's appeal was fact-specific and was a matter suitable for determination by the specialist tribunal. [SP]

MB (Somalia): MB (Somalia) v Entry Clearance Officer [2008] EWCA Civ 102; [2008] Imm AR 490; [2008] INLR 590 (20 February 2008; Laws LJ, Dyson LJ, Moore-Bick LJ)
Deciding whether paragraph 317(i)(a) of the Immigration Rules included within its scope separated women as well as widows, such that the appellant qualified for entry clearance on the basis of her son's refugee status in the UK; whether, alternatively, the exclusion of separated women was arbitrary and irrational or unjustifiably discriminatory in violation of Art. 14 ECHR : dismissing the appeal, paragraph 317(i)(a) did not include separated mothers, who were provided for under paragraph 317(i)(e); it was not irrational for the Secretary of State to take the view that the range of the class of separated mothers was so wide that it should not be assimilated to that of widows; the discrimination made by the Rules between different classes of dependent relatives was not based on characteristics of those relatives but on the decision of the secretary of state in carrying out the difficult

balancing exercise of which relatives to include and there was therefore no breach of art. 14; although the appellant and her son in the UK enjoyed a family life, the interference with this family life was not disproportionate, in light of the fact that they had been separated for ten years. [JB]

MH (Iraq): MH (Iraq) v Secretary of State for the Home Department [2007] EWCA Civ 852 (5th July 2007; Mummery LJ, Laws LJ, Blackburne J)
Deciding whether an IJ had erred in law in finding that the applicant, who had been a solider in the Iraqi army and had beaten and tortured civilians, could return safely to Iraq if he resettled in Baghdad, despite a fear of reprisal and an acknowledged risk to his safety if he were to settle in the south of Iraq, in dismissing the appeal: the IJ had not erred because the country guidance cases were not consistent and there was no basis upon which to conclude that his finding about the prospect of resettlement in Baghdad was irrational. [HM]

MH (Syria): MH (Syria) v Secretary of State for the Home Department; DS (Afghanistan) v Secretary of State for the Home Department [2009] EWCA Civ 226 (24th March 2009; Ward LJ, Richards LJ, Jackson LJ)
On the proper approach to the application of Art. 1F(c) of the Refugee Convention, (1) while the AIT's findings were based on the applicant's activities as a nurse, and ordinarily such activities even as part of the infrastructure of support for a terrorist organisation would not bring that person within Art. 1F(c), in each case an overall assessment had to be conducted; (2) the question of whether a person was guilty of acts falling within Art. 1F(c) of the Convention was not to be determined by reference to principles of criminal liability and the Secretary of State did not have to show that the applicant had participated in such acts as a principal or secondary party on normal principles of criminal law; (3) a tribunal should follow the guidance in *Gurung v Secretary of State for the Home Department* [2002] UKIAT 4870, [2003] Imm AR 115 and have regard to section 54 of the IAN 2006; and (4) here the conclusion that Art. 1F(c) applied was unreasonable. [NP]

MJ (Iran): MJ (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 564 (23rd April 2008; Buxton LJ, Sedley LJ, Moore-Bick LJ)
During a second reconsideration hearing, an immigration judge dismissed the applicant's asylum claim and in part relied upon findings that were made in respect of his brother's asylum appeal as identifying discrepancies that went towards the assessment of the applicant's credibility. The applicant's appeal would be dismissed: the record of determination relating to the earlier failed claim of his brother was inadmissible, and neither the Secretary of State nor the court were entitled to rely on or refer to that material purely for the purposes of destroying the applicant's claim. However, the error of law was not material as the later determination was capable of standing on its own when shorn of the offending paragraphs. [SP]

MK (Somalia): MK (Somalia) v Entry Clearance Officer [2007] EWCA Civ 1521 (28th November 2007; Pill LJ, Sedley LJ, Rimer LJ)
In allowing an appeal against the decision of the AIT that the applicant could not satisfy the requirement under paragraph 281(v) of the Immigration Rules about whether he could be maintained: in order to establish whether a person seeking entry clearance as a spouse

of a person settled here could be maintained without recourse to public funds, it was permissible to take account of disability living allowance received by that person's spouse as income by which that person would be maintained. [HM]

MK (Somalia): MK (Somalia v Entry Clearance Officer [2008] EWCA Civ 1453 (19 December 2008; Waller LJ, Thomas LJ, Maurice Kay LJ)
Deciding whether children who had been adopted de facto by a person recognised as a refugee by the UK were entitled to entry clearance when they were not so entitled pursuant to the Immigration Rules: there was no obligation of customary international law, nor any free-standing policy operating outside the Rules, which accrued to the advantage of de facto adoptive children. However (remitting the case for further consideration), M's had a case under Art. 8 ECHR that had not received adequate consideration by the tribunal. [JB]

MM (Iran): MM (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 1264 (16th October 2008; Ward LJ, Longmore LJ, Jackson LJ)
Deciding whether to allow an asylum seeker's appeal on the basis of evidence that the appellant had failed to produce to the AIT, having been directed to do so, or whether the appellant should instead make a fresh claim on the basis of this evidence: allowing the appeal, it was in the interest of fairness and justice to admit the new evidence, which made a material difference to the appellant's case. If a fresh claim was made against a background of adverse findings the claim might not be advanced properly, so the proper course was to allow the appeal and remit the matter to a fresh AIT. [JB]

MM (Libya): MM (Libya) v Secretary of State for the Home Department [2008] EWCA Civ 145 (2nd May 2008; Sir Mark Potter (President), Thomas LJ, Hooper LJ)
Considering whether an IJ's decision to uphold the refusal of an asylum seeker's asylum claim based on actual political opinion had been taken objectively and with reference to the relevant in-country guidance, and had been in any way been perverse. The appeal would be dismissed: the IJ had not referred in full to every passage in the relevant report but can considered all matters specifically raised by the applicant and her decision was not perverse. [NP]

MN (India): MN (India) v Secretary of State for the Home Department [2008] EWCA Civ 38; [2008] FLR 87; [2008] Imm AR 474 (5th February 2008: Ward LJ, Keene LJ, Wilson LJ)
Deciding whether it was a breach of the applicant's Art. 8 ECHR rights for the entry clearance officer to refuse to grant her entry to the UK, in circumstances in which she had been adopted in India by a UK-based couple, under a procedure valid in India but not in the UK, and none of the four avenues providing, in the Immigration Rules, for entry to the UK in respect of a child adopted or intended to be adopted were open to the applicant: dismissing the applicant's appeal, there was good evidence that the adoptive parents were serving the applicant's interests well in India; it could not be accepted that the judge had failed to bear this in mind when assessing proportionality; there was no independent evidence that it would be in the applicant's interests for her to make a new life in England; The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993, to which India subscribed, recognized that elaborate professional inquiries were regarded as necessary to an analysis of whether a child's

interests were served by living as an adopted child in the home of others; none such had been undertaken; the AIT had been right to conclude that the judge had made no error of law in her rejection of the applicant's Art. 8 argument. [JB]

MN (Rwanda): MN (Rwanda) v Secretary of State for the Home Department [2007] EWCA Civ 1064 (31st October 2007; Mummery LJ, David Richards J, Sir Paul Kennedy)
Deciding whether an adjudicator had erred in law in concluding that the appellant asylum seeker's acknowledged risk of suicide, if she was removed to Rwanda, due to her post traumatic stress disorder did not in the instant case breach her rights under Art. 3 ECHR, because of the potential supportive contact that the appellant's brother could provide: the adjudicator had correctly applied Art. 3 ECHR and was entitled to reach the conclusion she did on the evidence before her. Appeal dismissed. [HM]

MO (Iraq): MO (Iraq) v Secretary of State for the Home Department [2008] EWCA Civ 995 (24th July 2008; Mummery LJ, Arden LJ, Keene LJ)
Deciding whether the Senior IJ had been right to criticise the IJ's finding that the appellant was a credible witness as being insufficiently reasoned, the appellant having given evidence to the effect that he had been sentenced to 15 years imprisonment for rape in Iraq: allowing the appeal in part and remitting the matter to the AIT for further consideration of the appeal, the 15-year sentence allegedly imposed on the appellant did not accord with evidence in respect of sentencing for rape, and the IJ's inadequate reasoning in that respect amounted to an error of law. [JB]

MQ (Afghanistan): MQ (Afghanistan) v Secretary of State for the Home Department [2009] EWCA Civ 61 (11 February 2009; Sir Andrew Morritt (Chancellor), Longmore LJ, Hooper LJ)
A second immigration judge on reconsideration had erred in (1) failing to take into account material international reports which undermined his conclusion; and (2) summarily dismissing M's account of certain events, given that the case had gone to reconsideration on the basis that M's credibility was accepted. Appeal allowed. [JB]

MS (Palestinian Territories): MS (Palestinian Territories v Secretary of State for the Home Department [2009] EWCA Civ 17 (23 January 2009; Rix LJ, Scott Baker LJ, Jacob LJ)
Deciding whether the appellant could appeal against prospective removal directions under section 82 of the NIAA 2002 on the basis that these were an inherent part of the decision to return: removal directions were not themselves an immigration decision subject to appeal, nor were future removal directions that had not yet been made an inherent part of an immigration decision. Appeal dismissed. [JB]

MT (Afghanistan): MT (Afghanistan) v Secretary of State for the Home Department [2008] EWCA Civ 65 (18th January 2008; Sedley LJ, Hooper LJ, Rimer LJ)
On the adequacy of the AIT's findings on the evidence before it: the AIT had erred in law in finding that there was no risk of persecution of the appellant upon his return to Afghanistan due to his conversion from Islam to the Mormon faith whilst in the UK. Appeal allowed. [HM]

MT (Algeria), RB (Algeria) and U (Algeria) v Secretary of State for the Home Department [2007] EWCA Civ 808 (30th July 2007; Sir Anthony Clarke MR, Buxton LJ, Smith LJ)
On whether the SIAC was entitled to use closed material in reaching its conclusion to reject appeals from the appellants against decisions by the Secretary of State to deport them on grounds of national security, certified under section 97(1)(a) of the NIAA 2002, on the basis that they faced a real risk of torture or inhuman and degrading treatment or punishment contrary to Art. 3 ECHR on their return to Algeria: the SIAC was so entitled because it was not necessary that the appellants be given access to all of the evidence to satisfy the requirement of rigorous scrutiny for Art. 3 claims, and no principle of common law assisted the appellants since Parliament had set up a clear statutory scheme with which the Court would not interfere. Appeal dismissed. [HM]

MT (Palestinian Territories): MT (Palestinian Territories) v Secretary of State for the Home Department [2008] EWCA Civ 1149 (22 October 2008; Ward LJ, Scott Baker LJ, Wall LJ)
Deciding whether a stateless Palestinian who was likely to be refused re-entry to the West Bank by the Israelis had a well founded fear of persecution for reasons under the Refugee Convention: this contention was unsustainable in light of the decision in *MA (Palestinian Territories)* [2008] EWCA Civ 304. Habitual residence was a state of affairs rather than something that conferred rights and refusal of re-entry in the case of a stateless person was refusal of a right that he had never had. Appeal dismissed. [JB]

MT (Turkey): MT (Turkey) v Secretary of State for the Home Department [2007] EWCA Civ 1397 (2nd November 2007; Mummery LJ, Toulson LJ, Lloyd LJ)
On the proper approach to be taken to the appellant Turkish Kurd asylum seeker's evidence that he had been detained and tortured as an alleged PKK sympathizer and his claim that he faced a risk of persecution on his return: the AIT had erred in law in deciding that the appellant would face no risk of persecution if he relocated internally within Turkey by failing to provide proper reasons for its finding and failing properly to engage with the relevant country guidance cases. Appeal allowed. [HM]

MY (Turkey): MY (Turkey) v Secretary of State for the Home Department [2008] EWCA Civ 477 (8th April 2008; Buxton LJ, Carnwath LJ, Lloyd LJ)
In a case where directions had been given that on reconsideration the applicant's positive credibility finding should stand, those directions should have been followed and findings of past persecution made by the first IJ should have stood. Accordingly, the matter would be remitted for reconsideration. [SP]

N: N v Secretary of State for the Home Department (Terrence Higgins Trust intervening) [2005] UKHL 31; [2005] 2 AC 296; [2005] 2 WLR 1124 (5th May 2005; Lord Nicholls, Lord Hope, Lord Walker, Baroness Hale and Lord Brown)
Dismissing the applicant's appeal against the refusal of her human rights claim, Art. 3 ECHR does not impose an obligation on a contracting state to provide asylum seekers indefinitely with medical treatment which is unavailable in their home countries, even if the absence of such treatment will significantly shorten their lives. Art. 3 can be extended to apply to asylum seekers on health grounds only in very exceptional circumstances and the circumstances of the claimant AIDS sufferer, whose present state of heath was not critical and who was fit to travel, were not in that category despite the unavailability or

limited availability of AIDS treatment in her country of origin and the fact that she had been receiving treatment in the UK and withdrawal of that treatment would shorten her life expectancy. [SP]

NA (Iraq): R (on the application of NA (Iraq)) v (1) Secretary of State for Foreign and Commonwealth Affairs, (2) Secretary of State for the Home Department and (3) Entry Clearance Officer, Amman [2007] EWCA Civ 759 (26th July 2007; Dyson LJ, Thomas LJ, Richards LJ)
Deciding whether paragraph 320(3) of the Immigration Rules permitted the Secretary of State to issue guidance stating that particular types of passport did not satisfy the requirements of entry clearance: under paragraph 320(3) it was for an entry clearance officer to decide whether someone applying for entry clearance had produced a valid national passport or other document satisfactorily establishing his identity and nationality, and it was not open to the Secretary of State to issue an instruction to entry clearance officers mandating that a particular type of passport did not satisfy. Appeal allowed. [HM]

NB (Guinea), ZD (Turkey): NB (Guinea) v Secretary of State for the Home Department; ZD (Turkey) v Secretary of State for the Home Department [2008] EWCA Civ 1229 (13 November 2008; Ward LJ, Hooper LJ, Jackson LJ)
Deciding whether (i) rules 23(4) and 23(5) of the AIT (Procedure) Rules 2005 were ultra vires, and (ii) the Secretary of State's failure to comply with rule 23(5)(a)(i) rendered all subsequent proceedings invalid: (i) rules 23(4) and 23(5) were proportionate to the aim of supporting the policy of maintaining contact between the Home Office and asylum seekers and were not ultra vires; (ii) a breach of rule 23(5)(a)(i) did not necessarily, but might, invalidate subsequent proceedings. Appeal allowed and cases remitted for the AIT to consider how to exercise its discretion under rule 59(1) in relation to the breaches here. [JB]

ND (Guinea): ND (Guinea) v Secretary of State for the Home Department [2008] EWCA Civ 458 (3rd April 2008; Sedley LJ, Carnwath LJ, Lloyd LJ)
An appeal in relation to Art. 8 ECHR had been conceded by the Secretary of State, for remittal back to the AIT. The applicant submitted that the remittal should not be limited to Art. 8. The Court of Appeal allowed the appeal but remitted the case only in relation to Art. 8. Rule 51 of the AIT (Procedure) Rules 2005 permits the tribunal to accept new evidence in relation to the Art. 8 matter and if the applicant wished to adduce fresh evidence that changed and improved his claim, the fresh claim route was open to him. [SP]

NF (Ghana): NF (Ghana) v Secretary of State for the Home Department [2008] EWCA Civ 906 (30 July 2008; Latham LJ, Rix LJ, Longmore LJ)
Deciding whether the AIT had erred in refusing the appellant's application for leave to remain, in circumstances in which one of her children, O, had lived in the UK for seven years, and the Secretary of State operated a non-statutory policy whereby, other than in exceptional circumstances, parents without leave to remain in the UK, but whose children had resided there for more than seven years, would be allowed to remain rather than being removed: allowing the appeal and remitting the case for reconsideration, the appeal tribunal had failed to have proper regard to the nature of the discretion under the seven-year concession policy, and had failed to focus sufficiently on O. [JB]

NG (Iran): NG (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 312 (14th March 2008; Buxton LJ, Longmore LJ, Richards LJ)
In relation to a decision to refuse the appellant leave to enter the UK in circumstances where she had previously failed in an application to settle with her mother as a sponsor, deciding whether an IJ on a second stage reconsideration had erred in law in giving weight to the fact of the first failed application when the IJ initially dealing with the matter had given no weight to the fact of that failed application: no, in light of *DK (Serbia) v Secretary of State for the Home Department* [2008] 1 WLR 1246, the weight to be given to a particular finding of fact was a matter for the particular immigration judge dealing with the reconsideration. Appeal dismissed. [HM]

NG (Pakistan): NG (Pakistan) v Secretary of State for the Home Department [2007] EWCA Civ 1543 (4th December 2007; Laws LJ, Lloyd LJ, Hallett LJ)
Deciding that the AIT, in applying the test in *R (Razgar) v Secretary of State for the Home Department (No 2)* [2004] 2 AC 368 had not erred in finding that the applicant's rights under Art. 8 ECHR would not be engaged by her removal to Pakistan in circumstances where her relationship with her British husband had already broken down and her children could accompany her abroad. Appeal dismissed. [HM]

NH (Vietnam): NH (Vietnam) v Secretary of State for the Home Department [2008] EWCA Civ 338 (7th March 2008; Rix LJ, Longmore LJ, Auld LJ)
On whether the AIT had erred in law in dismissing the asylum claim of the appellant, who had been arrested, detained and forced to provide labour by the Vietnamese state for her particular religious beliefs, simply because she had failed to demonstrate a breach of Art. 3 ECHR without having regard to other possible claims under the ECHR: (1) the AIT had erred by not determining whether there would be a breach of Art. 9 ECHR, an issue which was raised before the AIT and accordingly the case ought to be remitted to the AIT and (2) although the appellant's case at least implicitly raised issues with respect to Art. 4(2) ECHR and Art. 5 ECHR, these claims did not fall with the doctrine of "*Robinson obviousness*" set out in *R v Secretary of State for the Home Department, ex parte Robinson* [1998] QB 929, and accordingly any application to widen grounds of appeal against the refusal of asylum to include these new claims ought properly also to be determined by the AIT. Appeal allowed. [HM]

NJ (Iran): NJ (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 77 (22nd January 2008; Carnwath LJ, Thomas LJ, Lawrence Collins LJ)
Deciding whether the AIT was entitled to reconsider issues of credibility determined at the first hearing pursuant to the agreement of the parties: it was open to the parties, subject to the approval of the AIT, to agree to the scope of a reconsideration, which was more a matter of practice than jurisdiction. Appeal dismissed. [HM]

NS (Sudan) NS (Sudan) v Secretary of State for the Home Department [2008] EWCA Civ 318 (12th March 2008; Buxton LJ, Longmore LJ, Richards LJ)
Deciding whether the IJ judge had been entitled to find that the appellant Sudanese asylum seeker did not face a risk of persecution on return: (1) the IJ had proper regard to all the material placed before her and reached a permissible conclusion on the basis of it (2) it was not open to the appellant to argue that she had misconstrued his case as the

appeal had been determined on the basis it was put to the judge by the appellant. Appeal dismissed. [HM]

Nasseri: Secretary of State for the Home Department v Javad Nasseri [2008] EWCA Civ 464, [2008] 3 WLR 1386, [2008] INLR 668 (14th May 2008; Sir Anthony Clark MR, Laws LJ, Carnwath LJ)
The Secretary of State appealed against a determination that the listing system operated pursuant to Sch. 3, para. 3(2)(b) of the AITCA 2004 was incompatible with Art. 3 ECHR. Pursuant to Sch. 3, para. 3(2)(b) all states listed in Sch. 3, para. 2 were to be treated as states from where an asylum seeker would not be sent to another country in breach of his human rights. The applicant had claimed asylum in Greece, a country listed in Sch. 3, para. 2, to where he was to be removed and the court at first instance had held that the system prevented an investigation into the risk of a breach of Art. 3 upon an asylum seekers removal. The Secretary of State appealed. The Court of Appeal allowed the appeal: (1) Sch. 3, para. 2(b) did not preclude an investigation by the Secretary of State or the court into practices on refoulement in any of the listed states; however the list rendered UK's compliance with Art. 3 fragile and therefore it is an important function of the Secretary of State to monitor the list; and (2) there was no free-standing duty to investigate the risk of a breach of Art. 3; however, if a state was to avoid a breach of Art. 3 by removal of an individual to another state where he might be ill-treated or whence he might be sent elsewhere and ill-treated, the authorities must plainly appraise themselves of the relevant law and practice of the place to which removal will be effected. [SP]

OB (Turkey): OB (Turkey) v Secretary of State for the Home Department [2008] EWCA Civ 511 (3rd April 2008; Sedley LJ, Carnwath LJ, Moses LJ)
The applicant was a Turkish national of Kurdish ethnicity who claimed asylum in the UK on the basis of his father's "fervent" support for a proscribed Kurdish organization. The AIT decided that any interest the Turkish authorities might have had in OB ceased upon his father's murder and therefore the applicant was not at risk of persecution on return to Turkey. The applicant's appeal was allowed on the ground that this analysis was too simplistic. Whilst the starting point to a rounded assessment taking into account the various risk factors was the connection of the applicant to his father's activities, this was not determinative; the tribunal had erred by failing to go on to consider other matters including the applicant's background experience and family connections. [SP]

OD (Ivory Coast): OD (Ivory Coast) v Secretary of State for the Home Department [2008] EWCA Civ 1299 (7 November 2008; Rix LJ, Smith LJ, Toulson LJ)
Deciding whether, having found that the applicant was a political activist, the IJ ought also to have found that there was a real risk of persecution on return: whether a person was at real risk of persecution or serious ill-treatment was a matter for the IJ but to label a person a political activist was not the end of the inquiry as it did not necessarily put him at risk on return to his home country. There had been no failure of inquiry here; appeal dismissed. [JB]

OH (Serbia): OH (Serbia) v Secretary of State for the Home Department [2008] EWCA Civ 694 (30th April 2008; Pill LJ, Maurice Kay LJ, Wilson LJ)
The applicant's appeal against a deportation decision would be dismissed. The AIT had originally allowed the appeal, but this decision had been reversed on reconsideration. The applicant argued (1) that the AIT was a specialist tribunal and therefore its decision should be respected unless it is quite clear it has misdirected itself in law; and (2) since the AIT had set out the relevant Immigration Rules it must have had in mind the public interest to be balanced against compassionate circumstances. The Court of Appeal dismissed the appeal: (1) the principle of respecting the decision of a specialist tribunal applied as between non-specialist courts and specialist tribunals; it did not apply as between differently constituted specialist tribunals; and (2) the risk of reoffending was only one facet of the public interest mentioned in paragraph 364 of the Rules, and the AIT had erred by failing to address the important facets of public interest. [SP]

OP (Jamaica): OP (Jamaica) v Secretary of State for the Home Department [2008] EWCA Civ 440 (1st May 2008; May LJ, Wall LJ, Maurice Kay LJ)
The applicant had successfully appealed against a deportation decision, relying upon Rule 364 of the Immigration Rules and Art. 8 ECHR and the fact that his manslaughter conviction evidenced that he did not have a propensity to commit crime, in contrast to in a person who is convicted of murder. On reconsideration, his appeal was dismissed on the basis of an error of law. The reconsideration decision would be upheld: there had been an error of law in the first appeal decision because it did not give due weight to the Secretary of State's policy on deportation under Rule 364 and the decision sought to diminish the seriousness of OP's conviction. [SP]

OT (Ivory Coast): OT (Ivory Coast) v Secretary of State for the Home Department [2008] EWCA Civ 557 (24th April 2008; Pill LJ, Arden LJ, Patten LJ)
Deciding that where an applicant had not put forward a freestanding case on risk of persecution arising from ethnicity, the AIT had not erred in treating ethnicity as relevant only to persecution based on actual or imputed political opinion. The appeal would be dismissed. [SP]

Othman (Jordan): Othman (Jordan) v Secretary of State for the Home Department [2008] EWCA Civ 290, [2008] 3 WLR 798 (9th April 2008; Sir Anthony Clarke MR, Buxton LJ, Smith LJ)
Considering whether the applicant's deportation would constitute a breach of his right to a fair trial pursuant to Art. 6 ECHR because he would face a retrial in relation to conspiracy charges and.(1) in the event of a retrial, the lack of independence of the tribunal he would face in Jordan was conclusive of a complete denial of Art. 6 rights; and (2) the SIAC had not dealt properly deal with the risk that evidence obtained from torture would be used against him. The Court of Appeal allowed the appeal: (1) expulsion could be resisted where the person to be removed risked suffering a flagrant denial of a fair trial in the receiving state and here it had been open to the SIAC to conclude that the retrial would not amount to a complete denial of justice notwithstanding its lack of independence in domestic terms; but (2) the SIAC had understated or misapplied the fundamental nature of the prohibition against the use of evidence obtained by torture. Once the SIAC found as a fact that there was a high probability that evidence that may have been obtained by torture would be admitted at the retrial, the SIAC had to be

satisfied that such evidence would be excluded or not acted upon. Further, the question of evidence obtained by torture raised issues reaching beyond the boundaries of Art. 6. [SP]

PS (Sri Lanka): PS (Sri Lanka) v Secretary of State for the Home Department [2008] EWCA Civ 1213 (6 November 2008; Sedley LJ, Hughes LJ, Hedley J)
The test of whether a fear of persecution was well-founded was whether on the evidence there was a real risk of its occurrence or recurrence. The Senior IJ's decision could not stand; appeal allowed. [JB]

Pajaziti: R (on the application of Rasim and Hylkije Pajaziti) v Lewisham London Borough Council [2007] EWCA Civ 1351 (18th December 2007; Sedley LJ, Maurice Kay LJ, Rimer LJ)
Allowing the appeal challenging the decision of the local authority, it had committed an error of law in deciding that the appellants were not entitled to accommodation and assistance under section 21 of the National Assistance Act 1938 because it had failed properly to answer the question it was required to address under that provision. [HM]

PM (Jamaica): PM (Jamaica) v Secretary of State for the Home Department [2007] EWCA Civ 937 (26th July 2007; Tuckey LJ, Longmore LJ, Sir Paul Kennedy)
In deciding the proper approach to the evidence of the convicted appellant that his removal to Jamaica would not be lawful because he and his family would be killed by people to whom the appellant owed money: in the circumstances, where it had concluded that the adjudicator had erred in law by not given sufficient weight to the public interest in determining whether it was lawful to remove the appellant, the AIT had been entitled to form its own assessment of the evidence given by the appellant on a first stage reconsideration and was not bound by existing findings of fact made at an earlier stage of the proceedings concerning the same matters. Appeal dismissed. [HM]

RA (Sri Lanka): RA (Sri Lanka) v Secretary of State for the Home Department [2008] EWCA Civ 1210 (6 November 2008; Rix LJ, Richards LJ, Lawrence Collins LJ)
Deciding whether there was a material difference, for the purposes of Art. 3 ECHR, between cases of physical illness and cases of mental illness: while there might be factual differences between cases of physical illness and cases of mental illness, the same principles were applicable to both. Appeal dismissed. [JB]

RB (Algeria): RB (Algeria) v Secretary of State for the Home Department [2009] UKHL 10; [2009] 2 WLR 512 (18th February 2009; Lord Phillips, Lord Hoffmann, Lord Hope, Lord Brown and Lord Mance)
Dismissing RB and U's Art. 3 appeals and O's Art. 3, 5 and 6 cross-appeal against SIAC deportation orders, (1) section 7(1) of the SIAA 1997 limited appeals against SIAC's decisions to the Court of Appeal to appeals on grounds of failure to consider some rule of law or other relevant matter, consideration of irrelevant matters or other irrationality or procedural unfairness and this was consistent with the UK's obligations under the ECHR; (2) SIAC's procedures, which included provision for the use of closed material in deportation proceedings for reasons other than national security, struck a fair balance between the public interest and the need to ensure a fair hearing; (3) whether assurances provided a sufficient guarantee that a deportee would be protected against the risk of treatment prohibited by Art. 3 ECHR was a question of fact but there was no principle of

law that such assurances had to eliminate all such risk or that external monitoring was required, before they could be relied on, although these were considerations; (4) the right of a state to expel an alien from its territory was not overridden by the consideration that the alien might be detained for 50 days as this was not a flagrant breach of Art. 5 ECHR; and (5) for deportation proceedings to violate Art. 6 ECHR there had to be substantial grounds for believing that there was a real risk that there would be a fundamental breach of the principles of a fair trial guaranteed by Art. 6 and that that failure would lead to a miscarriage of justice which would itself constitute a flagrant violation of the deportee's fundamental rights, but that what violated Art. 6 in a domestic context did not necessarily amount to a flagrant breach of Art. 6 in a foreign context so as to prevent deportation, nor did the risk of the use of evidence obtained by torture necessarily amount to such a flagrant breach. [NP]

RE (Turkey): RE (Turkey) v Secretary of State for the Home Department [2008] EWCA Civ 249 (22nd January 2008; Laws LJ, Arden LJ, Moore-Bick LJ)
On the lawfulness of the deportation of an appellant after convictions for rape, battery and attempting to intimidate a witness, who was unlawfully present in the UK but had married and had three children, each under the age of 7: deportation was not unlawful in light of the requirement to take into account compassionate factors under paragraph 364 of the Immigration Rules and the balance to be struck under Art. ECHR in particular because of the seriousness of the crime of rape which engaged the public interest, and further because the appellant had married at a time when his immigration status was precarious and that his children were all young enough to adapt to life abroad. Appeal dismissed. [HM]

RJ (Jamaica): RJ (Jamaica) v Secretary of State for the Home Department [2008] EWCA Civ 93 (15th January 2008; Wall LJ, Sir Paul Kennedy, Black J)
On whether a decision by an IJ to uphold a deportation order ought to be set aside, where that decision was made in the absence of the appellant who had been told not to attend the hearing by his legal representative because that representative was unable to attend due to illness and in circumstances where a paper application for adjournment had been made the day before the hearing: although the CA would be slow to interfere in such cases, the decision ought to be set aside for considerations of fairness because given the facts of the case had the appellant attended in person it was *"at least possible and indeed probable"* that an adjournment would have been granted. Appeal allowed. [HM]

RM (Somalia): RM (Somalia) v Secretary of State for the Home Department [2007] EWCA Civ 751 (3rd July 2007; Sir Mark Potter, Sedley LJ, Wilson J)
Where an adjudicator had erred in law by failing to give adequate reasons as to why the applicant's claim for breach of Art. 3 ECHR failed, deciding the proper process by which the AIT could reach the same conclusion: it was necessary for the AIT to consider the matter at a second stage reconsideration, involving assessment of the factual merits of the claim, before upholding the same conclusion and the defects in the adjudicator's reasoning could not be cured at a first stage reconsideration, which was concerned only with identifying whether there was an identifiable error of law. Appeal allowed. [HM]

RO (India): RO (India) v Entry Clearance Officer [2008] EWCA Civ 1525 (29 October 2008; Laws LJ, Sedley LJ, Lawrence Collins LJ)
Deciding whether the Senior IJ had been wrong to find that the IJ had misunderstood and misapplied *Entry Clearance Officer v NH (India)* [2007] EWCA Civ 1330 when allowing the claimants' appeal on Art. 8 ECHR grounds, against the Entry Clearance Officer's refusal to grant them entry to the UK to join their mother: allowing the claimant's appeal the immigration judge's conclusions in relation to the nature of the family ties between the claimants and their mother had not been flawed by any error of law; as there was no error of law, there was no reason to remit the case. [JB]

RP (Zimbabwe): RP (Zimbabwe) v Secretary of State for the Home Department [2008] EWCA Civ 825 (26th June 2008; Ward LJ, Sedley LJ, Longmore LJ)
The applicants appealed against the outcome of second stage reconsideration decisions which resulted in the failure of Art. 8 ECHR claims to resist removal, the Secretary of State having refused their applications for leave to remain in the UK as dependants of individuals with ancestry visas. The appeals would be dismissed. The first stage reconsideration decisions were wrong: there was, in fact, no error of law in the first AIT decisions and therefore no second reconsideration should have ordered. [SP]

RS (Zimbabwe): RS (Zimbabwe) v Secretary of State for the Home Department [2008] EWCA Civ 839 (18th July 2008; Pill LJ, Arden LJ, Longmore LJ)
Deciding, in a case where the appellant, S, an HIV sufferer, had appealed against her removal on the grounds that anti-retroviral therapy could not easily be obtained in Zimbabwe, and that the further factors of poverty and government oppression meant that Art. 3 ECHR was engaged, whether the IAT had erred in refusing S's appeal on the basis that government-induced poverty and oppression in Zimbabwe was merely an aspect of the difficulty in obtaining medical treatment, and that the case could not therefore be distinguished relevantly from *N v UK* (26565/05 ECtHR): allowing the appeal, and remitting the case for fresh consideration on the application of Art. 3, the ECtHR in *N v UK* had recognised that a broader approach might be taken to art. 3 in cases such as the present, though the humanitarian considerations must make the case "very exceptional". In light of that, the IAT's approach could not be justified, since there was material that required analysis, which it had failed to analyse. [JB]

RU (Sri Lanka): RU (Sri Lanka) v Secretary of State for the Home Department [2008] EWCA Civ 753 (2nd July 2008; Pill LJ, Scott Baker LJ, Richards LJ)
The applicant's appeal against the AIT's decision to uphold the Secretary of State's decision not to grant him indefinite leave to remain would be dismissed. The applicant had been in the UK for almost 15 years. Although his initial asylum claim was rejected, in 1997 he made a fresh claim, which was not determined. Meanwhile, the applicant married a failed asylum seeker and they had a daughter. He then requested indefinite leave to remain and appealed against its refusal on the basis of Art. 8 ECHR. (1) The first IJ was wrong to conclude that the applicant had not acquiesced in the delay to his fresh claim. (2) As a matter fact, delay in dealing with an application may increase an asylum seeker's ability to demonstrate a family or private life, but it is a matter of fact and here the second IJ was entitled to find that the interference with private life would be proportionate. [SP]

Razgar: R (on the application of Razgar) v Secretary of State for the Home Department [2004] UKHL 27; [2004] 2 AC 368; [2004] 3 WLR 58 (17th June 2004; Lord Bingham, Lord Steyn, Lord Walker, Baroness Hale and Lord Carswell)
Dismissing the Secretary of State's appeal against the judicial review of the certification of the claimant's claim pursuant to section 72(2)(a) of the IAA 1999, (1) the rights protected by Art. 8 ECHR could be engaged by the foreseeable consequences removal might have on an asylum seeker's health, even where such removal does not violate Art. 3, if the facts relied on by the claimant are sufficiently strong and demonstrate grave interference such as to amount to a flagrant denial of the right; (2) on a judicial review of a certification decision, the reviewing court would exercise careful scrutiny, asking how an appeal would fare before an adjudicator and considering the same questions, namely whether removal would interfere with the applicant's rights under Art. 8(1) to a sufficiently serious extent as potentially to engage that Article and if so, whether, striking a fair balance between his rights and the wider interests of the community, such interference was justified under Art. 8(2); and (3) here, the possibility that removal would violate the claimant's Art. 8 rights could not be ruled out *in limine*, as he could enjoy a measure of autonomy with psychiatric help in the UK that he might not enjoy upon removal and moreover, removal might lead him to take his life. [SP]

Re Bosombi: Re Bosombi [2008] EWCA Civ 475 (11th April 2008; Waller LJ, Wilson LJ, Toulson LJ)
The applicant had applied for habeas corpus on the basis that the original basis for his detention had been a conviction and prison sentence, but that this was altered by a decision to make a deportation order, albeit he was given no proper explanation of this. The application failed as the judge was satisfied the detention was lawful given the applicant's criminal record, his failure to co-operate with the Secretary of State and the risk that he would abscond if not detained. The applicant's appeal failed as the decision was fully in line with the principles as set out in *A v Secretary of State for the Home Department* [2007] EWCA Civ 804 regarding the Secretary of State's power to authorise detention pending the making of a deportation order. [SP]

Re F: Re F (Children) (Abduction: Removal outside Jurisdiction) [2008] EWCA Civ 854; [2008] 2 FLR 1649 (22nd July 2008; Thorpe LJ, Toulson LJ, Rimer LJ)
Deciding whether the judge had been correct to discharge a previous order ordering the summary return of F's children to Mozambique, from where the children's mother, M, had abducted them and brought them to the UK, on the basis that circumstances had changed such that considerations of welfare no longer supported an order for summary return: allowing the appeal and restoring the judge's original order, fresh evidence suggested that M, whose claim for asylum had failed, had no realistic prospect of resisting or much further deferring the family's removal to the DRC; settled future residence for the children in the UK was not a realistic option, the realistic choice being between the DCR and Mozambique; Mozambique was infinitely preferable. [JB]

Re M: Re M (Children) [2007] EWCA Civ 992 (12th September 2007; Thorpe LJ, Longmore LJ, Moore-Bick LJ)
Deciding the proper test to be applied in relation to a Zimbabwean father's application under the Hague Convention on the Civil Aspects of International Child Abduction to

have his children, who had been abducted and removed by their mother to the UK, returned to him in Zimbabwe, in dismissing the mother's appeal: the policy of the Convention was to encourage the return of children wrongfully returned from their state of habitual residence and it was properly only in an exceptional case that this policy ought to give way to other considerations; on the present facts although the children had settled in the UK with the mother, they ought still to be returned in accordance with the policy of the Convention and this was at least in part because of the mother's tenuous immigration status, which was yet to be resolved. [HM]

Rehman: Secretary of State for the Home Department v Rehman [2001] UKHL 47; [2003] 1 AC 153; [2001] 3 WLR 877 (11th October 2001; Lord Slynn, Lord Steyn, Lord Hoffmann, Lord Clyde and Lord Hutton)
Dismissing the individual's appeal against the decision to deport him, the approach to be taken in deciding whether the Secretary of State was entitled to deport a national of another state on the basis of a threat posed to national security was as follows: a threat to the interests of national security could arise from acts taken against other states and was not limited to activities directly targeted against the UK. It was within the discretion of the Secretary of State to decide whether deportation was *"conducive to the public good"* and he was entitled to have regard to all the information available to him relation to actual and potential activities of an individual. No particular standard of proof was required, though it was necessary that there be material upon which he could reasonably and proportionately determine that there was a real possibility that activities which were harmful to national security might occur. [JB]

Rudi: R (on the application of Rudi) v Secretary of State for the Home Department: R (on the application of TI (Kosovo) v Secretary of State for the Home Department [2007] EWCA Civ 1326 (14th December 2007; Carnwath LJ, Wall LJ, Sir Peter Gibson)
On whether certain restrictions on the scope of the Family Indefinite Leave to Remain Exercise concession were consistent with Art. 14 ECHR: the court was bound by *AL (Serbia) v Secretary of State for the Home Department* [2006] EWCA Civ 1619 to hold that they were, and the possible failure of the court in that case to distinguish between two historic forms of the concession did not provide a basis for distinguishing or not following it. Appeal dismissed. [HM]

S, H, Q: R (on the application of S, H, Q) v Secretary of State for the Home Department [2009] EWCA Civ 142 (25 February 2009; Laws LJ, Arden LJ, Goldring LJ)
Considering whether the Secretary of State had acted unlawfully in refusing applications for indefinite leave to remain, in circumstances where the appellants had been denied the benefit of a policy, which was subsequently withdrawn by the Secretary of State, but which, if it had been applied, would have resulted in the appellants being granted indefinite leave to remain: (1) If the secretary of state took a decision after a particular immigration policy had been withdrawn, the policy did not apply unless the case was exceptional; (2) if the benefit of a policy was lawfully withheld, the courts would not intervene; (3) if the benefit of a policy was unlawfully withheld, the courts would only intervene in cases where this gave rise to conspicuous unfairness. Claimant's appeal against the refusal of judicial review dismissed. [JB]

SC (Zimbabwe): SC (Zimbabwe) v Secretary of State for the Home Department [2007] EWCA Civ 1278 (5th December 2007; Tuckey LJ, Maurice Kay LJ, Hooper LJ)
In allowing an appeal challenging the denial of an asylum claim: the true basis of the IJ's decision that the appellant had a well-founded fear of persecution was that as a teacher she would be identified with the opposition party in Zimbabwe, and accordingly the AIT was wrong to conclude that the IJ had erred in law in his finding. [HM]

SD (Turkey): SD (Turkey) v Secretary of State for the Home Department [2007] EWCA Civ 1514 (27th November 2007; Sir Mark Potter, Hooper LJ, Moses LJ)
In allowing an appeal challenging the refusal of an asylum claim: the AIT had erred in law in failing properly to consider and make findings on whether there would be available records on a returning failed asylum seeker, and accordingly assessing the questions he would likely be asked at the airport on his return, since, as such a person could only be expected to give honest answers, the questions he was asked would contribute to the risk of persecution he faced on his return. [HM]

SN (Pakistan): SN (Pakistan) v Secretary of State for the Home Department [2009] EWCA Civ 181 (21 January 2009; Laws LJ, Scott Baker LJ, Goldring LJ)
Deciding whether the Senior IJ's decision had contained an error of law, in that he had failed to deal with the expert evidence: the original decision of the IJ had been inadequately reasoned, since the judge had failed to address the principal points made by the expert, and it was possible that he had erred in approaching the matter through the eyes of someone living in England rather than Pakistan. This had not been rectified by the senior immigration judge. The matter would be remitted for a complete rehearing. [JB]

SH (Palestinian Territories): SH (Palestinian Territories) v Secretary of State for the Home Department [2008] EWCA Civ 1150 (22 October 2008; Scott Baker LJ, Wall LJ, Wilson LJ)
Deciding whether the applicant's refusal of entry to the West Bank by Israeli authorities would constitute persecution on grounds of race: in order to be categorised as persecution within the meaning of regulation 5 of the Qualification Regulations 2006, a violation of a basic human right had to be a severe violation. Mere denial of re-entry to a stateless person to their country of former habitual residence did not of itself give rise to recognition as a refugee under the Refugee Convention. Appeal dismissed. [JB]

SK (Sierra Leone): SK (Sierra Leone) v Secretary of State for the Home Department [2008] EWCA Civ 853 (9th June 2008; Tuckey LJ, Carnwath LJ, Jacob LJ)
The applicant's appeal against deportation on the basis of Art. 8 ECHR and a breach of Rule 364 of the Immigration Rules would be allowed. The first AIT, whose approach had been upheld by the second AIT, had applied a test of *"exceptionality"* which was inappropriate to consideration of compassionate circumstances under Rule 364. Moreover, the first AIT's reasoning was unclear as to whether it was considering Rule 364 or Art. 8 and it had erred by failing to deal with the difficulty of relocation on the applicant's family, rather than families in general. [SP]

SK (Sri Lanka): SK (Sri Lanka) v Secretary of State for the Home Department [2008] EWCA Civ 495 (15th May 2008; Longmore LJ, Lawrence Collins LJ)
The applicant's appeal would be dismissed. The operative decision in the case was the Senior IJ written determination, not his oral pronouncement at the end of the hearing. The dismissal of the appeal following the second reconsideration ordered in the written determination would therefore stand [SP]

SK (Zimbabwe): R (on the application of SK (Zimbabwe)) v Secretary of State for the Home Department [2008] EWCA Civ 1204 (6 November 2008; Laws LJ, Keene LJ, Longmore LJ)
Deciding whether the claimant had been unlawfully detailed by the Secretary of State for various periods: (i) compliance with the letter of the Rules and the OEM was not a sine qua non of a lawful exercise of the power detain under Schedule 3, para 2(3) of the IA 1971, though breach of the Rules might attract another remedy under public law; (ii) the principles of detention were as set out in the decided cases. Secretary of State's appeal against judicial review of detention decision allowed. [JB]

SS (Iran): SS (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 310 (10th April 2008; Ward LJ, Sedley LJ, Lord Neuberger)
The applicant sought asylum on the basis that he feared being tortured or killed by the authorities if he returned to Iran due to his connections to the Komala, a Kurdish political party. The Secretary of State dismissed his claim and on appeal an IJ made a number of adverse findings adverse to the applicant, as well as a finding that there was no evidence that the applicant' involvement in Komala in the UK would be known to the authorities in Iran. The applicant's appeal would be allowed: whilst it was open to the IJ to conclude that the applicant had failed to show that his activities in the UK were known to the Iranian authorities, his credibility findings did not withstand scrutiny. [SP]

Saadi: R (on the application of Saadi and others) v Secretary of State for the Home Department [2002] UKHL 41; [2002] 1 WLR 3131 (31 October 2002; Lord Nicholls, Lord Mustill, Lord Slynn, Lord Hutton and Lord Scott)
Dismissing the applicants' appeals against refusal of judicial review of detention decisions, detention for periods of up to ten days at a reception centre pending determination of an asylum application under a fast-track procedure, did not infringe the implied requirement that any detention under the administrative powers conferred by the IA 1971 had to be necessary, nor did it contravene the claimants' right to liberty and security under Art. 5 ECHR as (1) detention for a short period in acceptable conditions was reasonably necessary for the operation of the fast track procedure; and (2) entry into the country by an asylum seeker was unauthorised, and the state had power to detail without contravening Art. 5 until the application had been considered and the entry authorised. The compulsory detention of applicants under a fast track procedure was neither arbitrary nor disproportionate, but struck a balance between depriving asylum seekers of their liberty and the need for speedy decisions to prevent long delays to applicants seeking to enter. [JB]

Saber: Saber v Secretary of State for the Home Department [2007] UKHL 57 (12th December 2007; Lord Bingham, Lord Hope, Lord Rodger, Baroness Hale and Lord Brown)
Dismissing the applicant's appeal, the Court of Session had been entitled to remit the case for rehearing by a new adjudicator on the basis that circumstances in Iraq had changed since the original finding; the current situation in the relevant country would always be relevant to the question whether a person's removal from the United Kingdom would be contrary to its international obligation; a concession by the Secretary of State did not deprive a court of the responsibility to decide on the appropriate way to deal with the case, nor of its discretion to take into account altered circumstances in the country of return; the final decision should be made on the most up to date evidence available. [JB]

Sepet: Sepet and another v Secretary of State for the Home Department [2003] UKHL 15; [2003] 1 WLR 856 (20th March 2003; Lord Bingham, Lord Steyn, Lord Hoffmann, Lord Hutton and Lord Rodger)
Dismissing the claimant's appeal against the refusal of asylum, although the claimant claimed that if he were returned to Turkey, he would be forced to perform compulsory military service on pain of imprisonment, and that such military service would involve participating in atrocities against Kurds, to which he objected on conscientious grounds, there was no internationally recognised right of absolute or partial conscientious objection, transgression of which would establish a good case under the Refugee Convention. In addition, the punishment the claimant would receive on return to Turkey did not amount to persecution for a Convention reason, since any conscientious objector would be treated the same, whatever his personal grounds for refusing to serve. [JB]

Singh: (1) Singh and (2) Kapoor v Secretary of State for the Home Department [2007] EWCA Civ 770 (25th July 2007; Sir Anthony Clarke MR, Buxton LJ, Lawrence Collins LJ)
On the proper approach to be taken in circumstances where an application for judicial review of the decision to deport the applicants could not be determined on grounds of insufficient material being available: The case was remitted for proper consideration of the application for judicial review in light of the further material and the Court of Appeal provided guidance on the procedural principles to be followed in similar such applications in the future so as to allow a proper determination of the merits of the case. [HM]

Sivakumar: R (on the application of Sivakumar) v Secretary of State for the Home Department [2003] UKHL 14; [2003] 1 WLR 840 (20th March 2003; Lord Bingham, Lord Steyn, Lord Hoffmann, Lord Hutton and Lord Rodger)
Dismissing the Secretary of State's appeal against the applicant's asylum claim, an adjudicator had failed to consider whether an asylum seeker who had been tortured by the State authorities by reason of having been wrongly suspected of involvement with a terrorist group (the Tamil Tigers) qualified for protection under the Refugee Convention, on that basis that imputed terrorism necessarily involved imputed political opinion as there was powerful evidence that Tamils who were suspected of involvement with the Tamil Tigers were tortured by the state authorities raised a strong inference that they were persecuted for reasons of imputed political opinion or ethnicity. The case would be remitted to the IAT. [JB]

Szoma: Szoma v Secretary of State for Work and Pensions [2005] UKHL 64; [2006] 1 AC 564; [2005] 3 WLR 955 (27th October 2005; Lord Bingham, Lord Hutton, Lord Rodger, Baroness Hale and Lord Brown)
Allowing the applicant's appeal, a person temporarily admitted to the UK under the written authority of an immigration officer pursuant to paragraph 21 of Schedule 2 to the IA 1971 is "*lawfully present in the United Kingdom"* within the meaning of paragraph 4 of the Schedule to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 as (1) section 11(1) of the IA 1971 which deems a person *"who has not otherwise entered the United Kingdom…not to do so as long as he is…temporarily admitted"* had the purpose of excluding a person temporarily admitted from certain rights given to those granted leave to enter; even assuming that the deeming fiction in section 11(1) was relevant to the construction of paragraph 4 of the Schedule to the 2000 Regulations, it could not be carried beyond its intended purpose; accordingly it did not show that a person temporarily admitted and thereby present was not in fact present at all, and (2) in order to be lawfully present a person did not require his presence to be positively authorised by the grant of leave to enter and temporary admission was sufficient. [HM]

TB (Jamaica): Secretary of State for the Home Department v TB (Jamaica) [2008] EWCA Civ 977 (14th August 2008; Thorpe LJ, Rix LJ, Stanley Burnton LJ)
Deciding whether the court had been right to grant an asylum seeker's application for judicial review, in a case where the Secretary of State had granted merely a discretionary period of leave to remain for six months on the basis of Art. 33(2) of the Refugee Convention, after the AIT had found, at a hearing at which the Secretary of State had taken no point in relation to Art. 33(2), that he qualified for protection under that Convention: dismissing the Secretary of State's appeal, the Secretary of State was not entitled to circumvent a decision of the AIT by an administrative decision. It had been open to the Secretary of State to raise an issue under Art. 33(2) at the AIT hearing, or to appeal against the AIT's judgment on the basis that it had not applied the statutory presumption under section 72 of the NIAA 2002. Having failed to do these things, she was not entitled to raise the point subsequently. [JB]

TC (Kenya): TC (Kenya) v Secretary of State for the Home Department [2008] EWCA Civ 543, [2008] Imm AR 645 (17th April 2008; (Pill LJ, Arden LJ, Longmore LJ)
Considering whether Art. 35 of Directive 2004/38/EC had to be read subject to safeguards contained in Art. 27 and Art. 28: dismissing the appeal, Art. 35 was drafted in plain terms and in the absence of a reference to Art. 27 or Art. 28 the safeguards therein could not be incorporated into Art. 35. Further, on the facts of the case the AIT had been entitled to find that the applicant's marriage was one of convenience and that the Secretary of State's decision to remove TC was a proportionate measure. [SP]

TE (Eritrea) v Secretary of State for the Home Department [2009] EWCA Civ 174 (11th March 2009, Sedley LJ, Jacob LJ, Lloyd LJ)
Considering the applicant's refusal to extend discretionary leave and whether or not the applicant could only rely on paragraph 395 of the Immigration Rules after there had been a refusal to vary leave, any appeal against that decision had been dismissed and the applicant was an overstayer who could be removed under section 10(1)(a) of the IAA 1999, there was no good reason for not dealing with variation and removal together in this case,

allowing the applicant to rely on paragraph 395 to resist removal, which was not to say there could never be such a reason. Appeal adjourned. [NP]

TG (Central African Republic): TG (Central African Republic) v Secretary of State for the Home Department [2008] EWCA Civ 997 (15th July 2008; Buxton LJ, Keene LJ)
Deciding that the appropriate remedy, in a case where the AIT had erred in its approach to proportionality in relation to Art. 8 ECHR, was to remit the matter for reconsideration by the tribunal on the correct basis. *Chikwamba v SSHD* [2008] UKHL 40 was not authority for the proposition that the Court of Appeal could determine the issue of proportionality itself. Appeal allowed and case remitted. [SP]

TK (Burundi): TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40 (4 February 2009; Waller LJ, Thomas LJ, Moore-Bick LJ)
Dismissing the appeal: where evidence to support a party's account was or should be readily available, a judge was plainly entitled to take into account the failure to provide that evidence and any explanations for that failure. [JB]

TR (Sri Lanka): R (on the application of TR (Sri Lanka)) v Secretary of State for the Home Department [2008] EWCA Civ 1549 (16 December 2008; Sedley LJ, Keene LJ, Smith LJ)
Deciding whether the applicant could bring a fresh claim on the basis of, *inter alia*, material that had been before the adjudicator but had not been addressed: to satisfy the test for a fresh claim, submissions had to be significantly different from previously considered material and give rise to a claim with a prospect of success. Appeal against refusal of judicial review dismissed. [JB]

Taskin: R (on the application of Taskin) v Secretary of State for the Home Department [2008] EWCA Civ 1182 (8th October 2008; Thorpe LJ, Keene LJ, Hedley J)
Deciding whether the judge had been right to quash the Secretary of State's decision that the claimant's representations did not amount to a fresh claim, on the basis that new country guidance made a material difference to the claimant's case and it was not rationally open to the Secretary of State to conclude that he had no real prospect of success: allowing the Secretary of State's appeal, the mere fact that a new country guidance case replaced an earlier one did not automatically mean that a fresh claim arose. The issue was whether the Secretary of State could rationally refuse to treat the representations as a fresh claim; the Secretary of State had been entitled to conclude that the representations did not amount to a fresh claim and that there was no realistic prospect of an adjudicator or IJ finding a real risk of persecution on return. [JB]

Tehrani: Tehrani v Secretary of State for the Home Department (Scotland) [2006] UKHL 47; [2007] 1 AC 521; [2006] 3 WLR 699 (18th October 2006; Lord Nicholls, Lord Hope, Lord Scott, Lord Rodger and Lord Carswell)
Allowing the applicant's appeal against the refusal of judicial review, the Court of Session did have supervisory jurisdiction to entertain a petition for judicial review of a determination by the IAT made in England but affecting persons in Scotland, as long as there was some connection with Scotland, and as long as the tribunal in question exercised its functions in Scotland, or was governed by Scots law, and it was obliged to exercise that jurisdiction if called upon to do so. [JB]

US (Nepal): US (Nepal) v Secretary of State for the Home Department, unreported (27 January 2009; Ward LJ, Scott Baker LJ, Smith LJ)
Dismissing the appeal: although the AIT had erred in law in failing to follow the immigration directorates' instructions setting out the most recent version of the policy in relation to abused domestic workers, this was not a material error of law, in light of the applicant's lack of credibility. [JB]

Ullah: R (on the application of Ullah) v Special Adjudicator [2004] UKHL 26; [2004] 2 AC 323; [2004] 3 WLR 23 (17th June 2004; Lord Bingham, Lord Steyn, Lord Walker, Baroness Hale and Lord Carswell)
Dismissing the applicants' human rights appeals, an asylum seeker is not restricted to relying on Art. 3 ECHR. A different article of the ECHR may be engaged in relation to the removal of an individual from the UK even if such treatment does not meet the minimum requirements of Art. 3, in particular Arts. 2, 5, 6 and 8, but reliance on such Articles required demonstrating that the actual or threatened treatment would amount to a flagrant denial or gross violation of the relevant right and the facts relied on by the claimants in relation to their Art. 9 claims fell short of this. [SP]

VN (Uganda): VN (Uganda) v Entry Clearance Officer [2008] EWCA Civ 232, [2008] Imm AR 565, 18th March 2008 (Rix LJ, Longmore LJ, Wilson LJ)
The applicant appealed against refusal of leave to enter on grounds that included Art. 8 ECHR. Her father had been granted indefinite leave to enter the UK, had become a British citizen and lived with his wife and two young children. When she and her brother applied for leave to join their father, only the applicant's brother was granted leave. The applicant appealed to the Court of Appeal on the basis that the AIT had failed to perform the correct balancing exercise in relation to the proportionality of interference given, inter alia, her father's inability to relocate and her brother's dependence on her. The Court of Appeal dismissed the appeal; the state was entitled to confine the number of dependant relatives who were permitted leave to enter the UK and on the facts of the case, it was impossible to say that the interference with the applicant's family life was disproportionate. Whilst the IJ did not make any assessment of the extent to which the applicant's brother's right to a family life would be infringed by separation from the applicant, she did assess the impact of separation on the applicant and in so doing she considered her brother's view of his relationship with his sister, albeit in the context of assessing a breach of the applicant's family life and not the brother's family life. In the circumstance, the immigration judge considered the family unit as a whole and it was evident that if she considered the brother's rights separately, she would not have come to a different conclusion. [SP]

VW (Uganda); AB (Somalia): VW (Uganda) v Secretary of State for the Home Department; AB (Somalia) v Secretary of State for the Home Department [2009] EWCA Civ 5 (16th January 2009; Mummery LJ, Sedley LJ, Wilson LJ)
Deciding whether the application of an "insurmountable obstacles" test of proportionality in the context of applications based on the Art. 8 ECHR right to family life was an error of law: (following *EB (Kosovo))* in assessing the proportionality of a removal which might break up a family unless the family decamped, the material question was not whether there was an insuperable obstacle to the family's relocating, but whether it was reasonable

to expect the family to do so. In some circumstances, the hardship of this dilemma itself had to be recognised and evaluated. For a removal to be disproportionate, what had to be shown was more than mere hardship, difficulty or obstacle; the obstacle must go beyond matters of choice or inconvenience. Appeals allowed in part. [JB]

XY (Iran): XY (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 911 (31st July 2008; Moore-Bick LJ, Stanley Burnton LJ, Lewison J)
Deciding whether the AIT had failed to consider the question whether the appellant asylum seeker, who was homosexual, could reasonably be expected to tolerate the fact that he would have to conduct his sexual life discreetly were he returned to Iran: dismissing the appeal, although the AIT had not expressly addressed itself to the question whether discretion was reasonably tolerable to the applicant, it had found that he had for a number of years carried on an active sexual relationship with another man in Iran, and had left Iran because he feared arrest, not because the clandestine nature of his sexuality was intolerable to him. The applicant had not asserted any facts on the basis of which it could be found that the exercise of discretion would not be reasonably tolerable. [JB]

XZ (Russia): XZ (Russia) & Another v Secretary of State for the Home Department [2008] EWCA Civ 180 (11th March 2008; Pill LJ, Sedley LJ, Longmore LJ)
Where the evidence showed the appellant Chechen asylum seekers had been seriously mistreated in Russia but there was no corroborated evidence that a relative of the appellants had been active in the Chechen Parliament and that this was the cause of their mistreatment, the AIT had not erred in failing to draw an inference about the cause of the mistreatment, given the general disorder in Chechnya, and was entitled to dismiss the asylum claims. Appeal dismissed. [HM]

YB (Eritrea): YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360, (15th April 2008; Tuckey LJ, Sedley LJ, Wilson LJ)
Allowing the applicant's appeal, the AIT had wrongly relied on the overturned decision of *Danian v Secretary of State for the Home Department [1998] Imm AR 462* (overturned by the Court of Appeal, [2000] Imm AR 96). Opportunistic activity sur place was not an automatic bar to asylum; rather, it was necessary to consider (i) whether the activities sur place is likely to be observed by the home state authorities; and (ii) the consequences for the failed asylum seeker of such observation by the home state. Further, the finding that the Eritrean authorities were unlikely to monitor activities of expatriates was a finding which risked losing contact with reality – where the objective evidence paints a bleak picture of the home state it requires little or no evidence to arrive at the possibility that the authorities monitor the activities of their expatriates. [SP]

YH (Iran): YH (Iran) v Secretary of State for the Home Department [2007] EWCA Civ 1299 (15th November 2007; Tuckey LJ, Maurice Kay LJ, Hooper LJ)
Dismissing an appeal against the decision of the AIT to uphold a refusal of an asylum claim: the IJ was entitled to reject the applicant's evidence of involvement with a dissident political group in Iran as inherently unbelievable and had not erred in law by failing to give sufficient reasons for this conclusion. [HM]

Yogathas: R (on the application of Yogathas) v Secretary of State for the Home Department [2002] UKHL 36; [2003] 1 AC 920; [2002] 3 WLR 1276 (17th October 2002; Lord Bingham Cornhill, Lord Hope Craighead, Lord Hutton, Lord Millett and Lord Scott)
Dismissing the applicants' appeals against the certification of (1) Y's claim for asylum under section 2 of the AIA 1996 to allow his removal to Germany, where he had first sought asylum, and (2) T's human rights claim as manifestly unfounded, T's removal to Germany having already been ordered, on the basis that their claims would be considered less favourably in Germany, and that T's removal to Germany would give rise to a breach to his rights under Art. 3 ECHR, the differences between the internal relocation tests applied in Germany and the UK were not so great that there was a real risk that Y would be removed from Germany to Sri Lanka other than in accordance with the Refugee Convention. It should not be readily inferred that a friendly state which was party to the Convention would not carry out its Convention obligations. As to T's appeal, *TI v United Kingdom* [2000] INLR 211 ECHR had found that there was no real risk that German would deport the T to Sri Lanka in breach of Art. 3 ECHR. [JB]

Yousuf: Yousuf v Secretary of State for the Home Department [2008] EWCA Civ 394 (23rd January 2008; Sedley LJ, Arden LJ, Sir Paul Kennedy)
In dismissing the applicant's appeal against a decision to deport him, the AIT had erred in law by failing to take proper account of all factors necessary to the balancing exercise to be performed under paragraph 364 of the Immigration Rules in relation to the public interest and relevant compassionate circumstances. Appeal allowed. [HM]

ZJ (Afghanistan): ZJ (Afghanistan) v Secretary of State for the Home Department [2008] EWCA Civ 799 (10th June 2008; Mummery LJ, Dyson LJ, Maurice Kay LJ)
The applicant's appeal was dismissed as there was no evidence whatsoever that the authorities would have any interest in him whatsoever because he was the child of a former member of Hezb-i-Islami. [SP]

ZT (Kosovo): ZT (Kosovo) v Secretary of State for the Home Department [2008] EWCA Civ 14 (24th January 2008; Buxton LJ, Sedley LJ)
In allowing the appellant's application to seek judicial review of a decision not to treat his representations as a fresh application for asylum, the Court of Appeal provided guidance on the procedure for addressing renewed applications for asylum under paragraph 353 of the Immigration Rules and section 94 of the NIAA Act 2002, and the particular interrelationship of those provisions. [HM]

ZT (Kosovo): ZT (Kosovo) v Secretary of State for the Home Department [2009] UKHL 6; [2009] 1 WLR 348 (4th February 2009; Lord Phillips, Lord Hope, Lord Carswell, Lord Brown and Lord Neuberger)
Allowing the Secretary of State's appeal against the grant of judicial review of a certification decision, (1) further submissions made by an applicant whose previous asylum and human rights claim had been refused and certified as clearly unfounded under section 94(2) of the NIAA 2002 such that no appeal was pending, still had to be considered under paragraph 353 of the Immigration Rules to determine whether they amounted to fresh claims with a realistic prospect of success before the Asylum and Immigration Tribunal and not under section 94(2) of the NIAA; (2) moreover, the test was

whether, giving the Secretary of State's decision anxious scrutiny, it was a rational one. [NP]