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### **Background**

I was in practice as a barrister for about 25 years. No immigration experience. That is not uncommon; it is probably usual and has its own obvious consequences.

Appointed 1995 as a part-time Immigration Judge, then called Adjudicators, to deal with immigration appeals against the decision of officials either in the United Kingdom or situated in United Kingdom posts abroad to give entry clearance to the appellant. Then in 1996 I was appointed to determine asylum appeals. (I recall we had a two-day training programme.)

In 2000, I was appointed full-time to sit as an Adjudicator and then in 2002 in the upper level of the Tribunal to hear appeals from the decisions of Adjudicator.

In 2003 there was a substantial change in the system of appeals with the view of removing the second tier of appeals so that the first decision became the final one. As a result of opposition in Parliament and amongst the judges, this was watered down to a jurisdiction where there is a review, which is in the form of a true appeal, but it is known as a reconsideration. Like the old system, the second appeal or reconsideration is on a point of law only. We do not normally hear evidence but make use of the findings of fact made by the judge at first instance. The assessment of risk, based on those findings of fact, is then the decision we are required to consider, provided a material error of law has been found entitling us to re-open the Immigration Judge's decision.

The second-tier of immigration judges – I shall call them the Tribunal - has also developed a distinct function of our jurisdiction in setting down guidelines which are known as country guidance cases. No two cases are ever the same but, unlike many other jurisdictions, there are features of most cases which are seen in many others. For example,

- Christians in Iran
- Women in Pakistan
- Homosexuals in Uganda etc

In relation to such cases, we reach decisions which must be followed unless there are particular circumstances in the case being decided by the judge of first instance that alter the assessment of risk either by increasing or decreasing it. These are known as country guidance cases. They are published and become part of asylum law, until overturned by the Court of Appeal or altered by events in the country to which they relate.

In such cases, the scope of the country information we rely upon is much enlarged and will often include the evidence of country experts called by the appellant.

It is a feature of United Kingdom asylum law that the government never calls specific expert evidence from its own sources – people who know the situation in the countries from which an appellant has travelled. In each case, however, it produces a bundle of material from the Country of Origin Information Service (COIS). This is the successor of the Country Information Policy Unit (CIPU).

I also sit on a panel called the Advisory Panel on Country Information which enquires into the adequacy of country information used by the Secretary of State in his decision making. The country reports – 20 top asylum countries.

I also sit as a member of the Special Commission which enquires into terrorist cases in which the Secretary of State considers they are a threat to national security, notwithstanding they have established they are refugees. This also uses country information in great detail and in such appeals the United Kingdom government calls its own experts – often from the Foreign Office – to give evidence about risk. A decision about conditions in Libya decided by the Commission, I have noticed, has become distributed generally because of what it says about country conditions in Libya.

That is my job and country information is a principal tool in many of the decisions we have to make. It is an essential element in all decisions by judges of first instance.

### **Fair and accurate objective information**

It has never seemed to me that the pursuit of fair and accurate objective information is beyond the reach of a decision maker – whether the official in the Home Office or the Immigration Judge at first instance or me when reviewing his decision. After all, professionals in other walks of life demand accurate information. An auditor to prepare a company's accounts based on accurate information, a doctor using x-ray results to determine the course of treatment, an engineer when deciding if the building under construction is capable of withstanding the loads. All need accuracy in the information they use. But for reasons I hope to develop the task is much harder than it might first appear for decision makers in immigration appeals.

### **The need for country information**

You might be forgiven for saying that the need for country information is obvious but it is useful to remind ourselves that an Immigration Judge is in a unique position as a judge. He knows virtually nothing about the matters on which he is asked to make a decision. I hope I am not revealing my own ignorance too much by saying that, if I were deciding a case from Kyrgyzstan, (a country I could not remember how to spell) I have forgotten the name of the capital city, the name of its leader, the name of the political party he represents and the attitude of the authorities towards political opposition (if there is any). Notwithstanding these limitations, the Home Office official, the Immigration Judge and I is each required to decide whether the appellant will face difficulties on return.

It may also be necessary for another reason. It may also be required to decide whether the appellant's account of past activity is credible. A man from London will

be expected to know that Buckingham palace is the home of the Queen and if he tells his interviewer that it is the Hofburg, he may not be a Londoner.

There are serious problems about using country information in this way

- The fact that a matter raised by an appellant is not found in the country information is not necessarily an indication that it did not happen, even when you would expect it be mentioned. A president might wish an assassination attempt to be kept secret or the writer of the report might think that it does not advance the overall country information because the circumstances in which it took place were in doubt.
- The country information used to challenge credibility tends to be highly specific – I recall Somali elders in Kenya being asked questions about the languages spoken by clan members in various towns in Somalia. There was a growing body of material to suggest their answers were not accurate – either because things had changed or because they never knew in the first place. Thus, decisions that the appellant did not speak the language that he was supposed to speak and that he was therefore lying were made on a wrong basis.

Nevertheless, a judicial decision maker has to make proper findings of fact and that often requires an assessment of credibility.

### **The problem of bias**

Most judges are able to draw upon their own knowledge to assist in reaching their decision, this is often not the case in asylum appeals. Further, if information is scarce, there is more scope for a range of legitimate debate about what conditions are really like in a country. That permits the Secretary of State to say that conditions are not bad in country X whilst the appellant may legitimately say they would place him at real risk. Contrast that with the position if you were asked, about the country from which you come: are political opponents at risk from the government?

This in-built capacity for bias affects both sides of an asylum appeal. It is likely to be the policy of any government in any country to limit the number of refugees it admits. Thus information tending to diminish the risk has the advantage of supporting the policy of fewer refugees than more refugees. Thus the information itself becomes a political tool and the risk of institutional bias becomes greater. You might say that the system becomes politicised.

Country information as a policy tool of the government decision maker is capable therefore of reducing migration as a result of problems in other parts of the world and may assist

- To secure the borders
- To prevent the economic effects of illegal entry
- To raise the threshold for entry clearance by examining critically all applications for entry clearance.

And, in asylum cases,

- To raise the threshold of risk.

### **The appellant's position**

The appellant is, of course, just as likely to want the country information to reflect a negative view of country conditions and this will be the same whether the claim is genuine or not. Thus, country information produced by an appellant will tend to emphasise the negative conditions with a country of origin.

### **The nature of background information**

As a student of church history in the period of the English reformation, the first task I set myself was to find out the religious denomination of the writer. It was not that the writer was any less an historian if you knew he was Catholic or Protestant. Rather it was a necessary piece of information to know whether he wore the spectacles of one who was sympathetic to the old regime or sympathetic to the new Protestant religion. That bias was a factor that required to be taken into account in the overall assessment of the material he produced.

That bias applies equally with country information. Recent involvement in Libyans. In 2003 Col Qadhafi gave up weapons of mass destruction as the most significant step in seeking a rapprochement with the West. His actions were welcomed by both the US and by Europe. That change in the atmosphere was reflected in the USSD report. For years the regime had been described as a dictatorship. The word 'dictator' is particularly disliked by the freedom-loving west. The report for 2004 or 2005 changed the phraseology. Instead, the regime ceased to be a dictatorship and became an autocratic style of government. The reality of course on the ground had not changed at all – not a single bit - yet the US government wanted to convey a less unwelcome image. The word was toned down not for the purposes of accuracy but for the purposes of diplomacy.

The readers of country information have, therefore, to look out for that bias.

### **Not bias but purpose**

Sometimes the purpose for which country information is provided has to be considered. That requires close examination of the words that are used. The UNHCR has a dual function. It is the guardian of the 1951 Geneva Convention (the Refugee Convention) but it also plays an important humanitarian role in areas of deprivation and conflict. As an authoritative voice in whether the situation in a particular area is so difficult that certain classes of persons are rendered into Convention Refugees (giving rise to a well-founded fear for one of the 5 reasons set out in the Convention), its views are a significant element in a decision-makers reasoning. If the UNHCR considers a particular situation has resulted in the creation of Convention Refugees, it will say so in explicit terms. There are however, occasions when its view is that there should be no forced returns. As I recall it did so in relation to the Kosovo conflict after the NATO bombing campaign had stopped Serbian persecution in its tracks. Those returning were no longer Convention refugees but the UNHCR was advising that for humanitarian reasons they should not be returned. It was perfectly proper to do so. But for those whose task it was to decide whether an individual was a Convention refugee, it was somewhat bewildering to reach decisions that the

individual did not succeed, notwithstanding what the UNHCR was saying in terms that there should be no forced returns.

These are just some of the examples of why country information (what is often called objective information) may not be quite as objective as it appears. These are not attacks on the writers of these reports but a reminder that it is probably an illusion to think there can be such a thing as a single objective assessment of the situation in a country which all the parties to an asylum appeal can agree upon.

### **The tension between information and decision makers**

The quality of the background material produced for decision makers within the Home Office was the subject of considerable criticism by those acting on behalf of asylum seekers. In particular, the Immigration Advisory Service, whose aim was (amongst others) to assist asylum seekers in pursuing their appeals against the decision of the Secretary of State to refuse their claims, launched a detailed critique of some of the reports prepared by the Home Office.

In its criticism of the reports produced by CIPU, examples were taken of quite serious failings to summarise the source material supplied. Thus, a sentence from a report relied upon in the country information supplied to Home Office decision makers might say

*There has been a significant improvement in the human rights situation in the last year; however, serious abuses still occur.*

There were examples of where the passage was summarised by saying

*There has been a significant improvement in the human rights situation in the last year.*

By omitting the words

*... however, serious abuses still occur.*

The overall sense was distorted to the extent that it was misleading.

The government was adamant that the provision of country information should not be entrusted to an independent body. This reflected a tension between the provision of objective material and the potential for the government to lose the power of control over asylum seekers. On the other hand, there were some who campaigned vigorously for country information to be free from government.

I think the fear was that an advisory panel might produce reports which could only result in a decision in favour of an appellant and that the government would then be powerless to prevent the recognition to persons identified in the country material refugee status. The decision would, therefore move away from the executive into the hands of the report writers.

This was a solution favoured in the Republic of Ireland. Carol Doyle of the Refugee Documentation Centre in Dublin is here to prove it but it is unique in the world, I think as a solution. A position half-way between government and complete independence.

The result in the United Kingdom was something of a compromise and a panel to find ways of making the country information better.

### **Advisory Panel on Country Information**

This led to the formation of a panel, chaired by an academic from the field of migration studies to advise the Secretary of State.

Membership. Representatives from Refugee Council, Centre for Migration Studies in Vienna.

Interested parties includes ILPA and even those opposed in principle to such a panel.

Changes introduced by the work of the Advisory Panel

- Removal of the preparation of country information from the policy unit to the R&D wing of the Home Office
- Academic control of its products
- Sources always provided.
- Sources quoted directly and not summarised.
- No assessment is made by the report writers. The information merely records what other writers have said. Where appropriate, contrasting passages are placed side-by-side.

### **Results**

Improvement in United Kingdom country information

Home Office wants the country information it produces to be fair and accurate. It was not helpful that it contained any bias because it lost its credibility.

All the reports are available.

### **Disadvantages**

No editorial function

Only 20 top countries

Academic bias tends to focus on academic concerns, such as plagiarism

### **The material that is before a judge in the United Kingdom**

All full-time judges have computers which are linked to the judicial network. The network offers access to:

- The legal and research unit which has a library, country by country, of background material. The information varies but it will obtain the country

reports, usually the state departments reports and often specific reports such as joint fact-finding reports

- It will also provide the Home Office directives, official guidance notes and other material used by Home Office decision makers to make decisions
- Decisions made by the Tribunal in country guidance cases where the Tribunal has assessed in an authoritative way, country conditions.
- Access to all decisions of the higher courts, including the Court of Appeal and the Supreme Court (the House of Lords)
- Access to the Home Office, the BBC, other electronic information providers