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## Immigration Newsletter. Special Bulletin

### AH and others- House of Lords

A special bulletin concerning the case of AH and others in the House of Lords. (Sudan and Internal relocation) The full text of the report can be found on the House of Lords website and EIN.

The report from the House of Lords appeal committee in the case of Ah and Others was delivered on Wednesday 15<sup>th</sup> November. The House considered that the Court of Appeal had wrongly found that there was a material error of law in the Country Guidance cases of the Asylum and Immigration Tribunal (AIT) relating to Sudan and the question of whether the individuals could internally relocate.

The House endorsed its previous exposition of the test in the Judgment in Januzi [2006] 2 AC 426 .

In the Leading Judgment (opinion) Lord Bingham of Cornhill (to which all the Law Lords agreed) stated that (See paragraph 5)

*“The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so . . . There is, as Simon Brown LJ aptly observed in Svazas v Secretary of State for the Home Department, [2002] 1 WLR 1891, para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls. . . . All must depend on a fair assessment of the relevant facts.”*

Lord Bingham stated that the difficulty was not in the expression of the test but in its application. It was considered that the only thing excluded from this exercise was the comparison to the standards of rights protection in the country of refuge.

It is clear from the Judgment that the Lords considered that if the AIT had equated the unduly harsh test with whether the appellant's rights under article 3 would be breached then they were wrong to do so. If the AIT had left out in the consideration of the test the conditions of the particular appellant in the area where he had formally lived, then that too would also be wrong. However although the House criticised the perhaps lack of clarity and sometimes infelicitous drafting, the House concluded that given that this was a



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specialist Tribunal (and eminent Tribunal) the judgment should be respected unless it is quite clear that they had misdirected themselves. In the circumstances although citing some caution about the decision of the AIT they concluded that the AIT did not err in law and hence restored their decision.

The opinion of Baroness Hale of Richmond should be noted for the cautions expressed about the decision of the AIT and approach to cases of this sort. (see paras 23-9)

The opinion of Lord Brown of Eaton-under Heywood should also be noted by its hard and robust approach. In particular at paragraph 43 his Lordship stated

“42. As mentioned, one touchstone of whether relocation would involve undue hardship, identified in the UNHCR guidelines and referred to in the passage already cited from para 47 of Lord Hope's speech in *Januzi*, is whether "in the context of the country concerned" the claimant can live "**a relatively normal life**". The respondents are fiercely critical of the Tribunal's approach to this question in the present case. In particular they criticise the Tribunal's conclusion as to "the subsistence level existence in which people in Sudan generally live". To my mind, however, this criticism is misplaced. It is not necessary to establish that a *majority* of the population live at subsistence level for that to be regarded as a "relatively normal" existence in the country as a whole. **If a significant minority suffer equivalent hardship to that likely to be suffered by a claimant on relocation and if the claimant is as well able to bear it as most, it may well be appropriate to refuse him international protection. Hard-hearted as this may sound, and sympathetic although inevitably one feels towards those who have suffered as have these respondents (and the tens of thousands like them), the Refugee Convention, as I have sought to explain, is really intended only to protect those threatened with specific forms of persecution.** It is not a general humanitarian measure. For these respondents, persecution is no longer a risk. Given that they can now safely be returned home, **only proof that their lives on return would be quite simply intolerable compared even to the problems and deprivations of so many of their fellow countrymen would entitle them to refugee status. Compassion alone cannot justify the grant of asylum.**”

#### Comment

It will now be interesting to see how the AIT will apply the IFA test and whether they will clearly separate the 3 aspects out. The writer of this bulletin is aware that in one case which was appealed to the Court of Appeal the Court expressed its reservation about country guidance cases which sought to set down that IFA was always available in a particular country.



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It should also be noted the reservation expressed by Baroness Hale in paragraph 23. *“They found that, except in certain types of case, the evidence did not support such risks: there were not the specific instances of ill-treatment or disappearances of people returning to Khartoum which they would expect to find if such general risks were real. **These findings may well be controversial; there may now be further evidence which requires the issue to be reconsidered;** but the Tribunal's findings on those issues are not the subject of this appeal. We are concerned with the discrete question of relocation, in which risk is only one factor to be considered.” **If there is such evidence** it may mean that in Sudanese cases fresh claims are submitted.*

**This Immigration newsletter is produced by Iain Burnett a member of 4 King's Bench Walk (4KBW). The summaries and opinions reflect the author's views and not the opinions or views of any other member of 4 KBW. These summaries provide an overview of the case and should not be relied upon to set out the law. Readers are advised to consult the full text judgments and reports.**

*Note- the above provides only a summary of the case and it is important that reliance is not placed upon it as setting out the law. Individuals are advised to consult the report for themselves to determine its scope and application.*