IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 20th January 2004
Date Determination notified:
.....27th January 2004.....

Before:

The Honourable Mr Justice Ouseley (President)
Miss K Eshun
Mr A A Lloyd JP

Between:

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

For the Appellant: Mr A Morgan, instructed by Attridge Solicitors
For the Respondent: Mr S Ouseley, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision of an Adjudicator, Dr R Kekić, promulgated on 9th January 2004. The Appellant is a citizen of the Côte d'Ivoire born on 8th January 1968. He arrived in the United Kingdom as a visitor on 27th July 2001. Although he claimed to have gone to the Home Office in Croydon to seek an extension, there is no record of that. In September 2003, he was arrested on suspicion of being an overstayer and during the interview conducted by an Immigration Officer he claimed asylum. He was prosecuted as an overstayer. He was found guilty and on 8th October 2003, was sentenced to four month's imprisonment. He was released from Brixton Prison on 21st November 2003, whereupon he was transferred to immigration detention. On 2nd December 2003, he was transferred to Harmondsworth, where he entered the fast track process. The Secretary of State refused his asylum claim and gave directions for his removal in a decision dated 16th December 2003. A bail application was refused by an Adjudicator on 30th December

2003. The appeal to the Adjudicator under the fast track system was heard over the course of two days on 7th and 8th January 2004.

2. The basis of the Appellant's asylum claim, as described by the Adjudicator, was that he was a well-known singer in the Côte d'Ivoire. His music, and in particular an album or single or musical called *El Mutino*, on which he sang and which he had been involved in producing, was appreciated by General Guei who assumed power following a coup in December 1999. *El Mutino* lauded those events. The Appellant was believed by many in Côte d'Ivoire to be a supporter of General Guei. There had been a student meeting in April 2000 at which the Appellant sang and at which the General had been criticised, which led to a raid by police on the campus and students had been arrested. General Guei had lost elections in October 2000, which had led to his music no longer being played on the radio. General Guei had subsequently been killed in September 2002 in the course of an uprising against the new President. Mr Yace, who had helped produce *El Mutino* and was the keyboard player with the Appellant, had also been killed in October 2002. The Appellant believed that he would be at risk of being killed, as someone believed through his music to be a supporter of General Guei.

3. The Appellant said that he was married in a traditional marriage in 1995 to Elisabeth Ehouman, who was now in the United Kingdom and that they had had two children born in the UK. He said that she had arrived in the United Kingdom in May 2000 and had claimed asylum. Although he said that he did not know her current status, it was apparent that she had been refused asylum and her appeal had been dismissed on 3rd April 2001 by an Adjudicator. This was apparent from the bundle produced by the Home Office for this Appellant's appeal to the Adjudicator.

4. The Adjudicator said that the main issues in the appeal were:

> "Whether the Appellant experienced the problems he described, whether these were due to his actual or perceived support for general Guei made apparent through his music, and whether he would be at risk for the same reason were he now to return to the Côte d'Ivoire."

She accepted that the Appellant was a musician and that some of his songs had a political overtone. These were facts accepted by the Secretary of State and supported by objective evidence. *El Mutino* was written in support of General Guei. The Adjudicator accepted that Mr Yace had had a role to play in its production and that Mr Yace had died of unnatural causes. The Adjudicator, however, concluded that none of those facts meant that the Appellant would be killed were he to be returned to the Côte d'Ivoire. There was, she said, no evidence to suggest that those associated with Mr Yace were all at risk. She concluded

that there was no evidence that the Appellant's fear was objectively well-founded.

5. She rejected the reliability of the evidence of witnesses who gave evidence at the hearing in relation to circumstances in Côte d'Ivoire because they had no first-hand knowledge of Mr Yace's death or of any problems which the Appellant might have had; they had obtained their information only through the media. She said that there was no evidence to suggest that all supporters of the late General were targeted or persecuted in the manner suggested by the Appellant, nor that they ever were, even after he had lost the election in October 2000. The Appellant had only referred, despite repeated requests, to country information which dealt with general unrest, the threat of a possible war and random abuses committed by the security forces during the period of unrest. The Amnesty International Report of May 2003, upon which the Appellant had put weight, showed that, in September 2002, during the course of an uprising, General Guei and some high profile members of the Government closely associated with him were persecuted and killed by the security forces and that in the ensuing chaos many innocent people lost their lives. But she said that it did not follow from this that the Appellant would be targeted and killed on his return: there was no evidence to that effect. She pointed out that although the General's son was detained following the death of his father, no attempt to kill him had been made and there was no reason to suppose that the Appellant would be pursued or pursued in the same way in which the General's son had been.

6. The Adjudicator concluded that reference to the volatile situation in the western part of the country, massacres along the Liberian border and to the rebel areas in the north were of no assistance to the Appellant's claim because he would not be returning to any of those areas. The general instability of the position in Côte d'Ivoire did not suffice for his claim. She concluded that it could not be argued that the Appellant would face a real risk of breaches of his Article 2 and 3 rights as a result of the general conflict were he to be removed from the United Kingdom. The number of deaths was in fact very small.

7. The Adjudicator also concluded that the Appellant had exaggerated in his claim to have a personal relationship with General Guei and said that it was clear that he was not specifically regarded as a spokesman for General Guei. A musical partner of his, Mr Alan Bill, had not faced any problems. She was also very critical of the evidence given by the Appellant's wife which, she concluded, was untrue in a number of respects. She pointed to a considerable number of contradictions between what the wife said and what the Appellant had said in his evidence. She also took the view that the Appellant's

immigration history was damaging to his credibility. She pointed out that the Appellant did not seek to rely on Article 8 and given the fact that the wife had no right to be in the United Kingdom and could return with the Appellant and their children to the Côte d'Ivoire, there would have been no merit in pursuing such a claim.

8. The Adjudicator finally concluded, in paragraph 124, as follows:

> "The Article 3 claim relies on the same facts as the asylum claim and therefore my findings apply equally to both. The appellant is clearly a talented musician however the evidence does not support his claim that he would be at risk on return because of the political content of his songs. Based on all the evidence before me I find that there is no reasonable degree of likelihood that the appellant would face persecution or breaches of his human rights were he to return to Côte d'Ivoire."

8. Before the Tribunal, Mr Morgan, who appeared on behalf of the Appellant, took four points. He contended that the Adjudicator had wrongly refused an application for an adjournment in order that particular evidence be examined. He submitted that the Adjudicator had intervened excessively, both in the course of the giving of evidence and in the course of the submissions of Mr Bobb, who was appearing then for the Appellant. His final point raised a series of criticisms of the conclusions which the Adjudicator had drawn. He highlighted two points in particular: the way in which, he said, the Adjudicator had unfairly allowed her view of the wife's credibility, who had acknowledged that she had given untruthful evidence to the Adjudicator, to affect her view of the Appellant's credibility and the failure of the Adjudicator to appreciate the simple point that there was no reason for the Appellant, a successful Côte d'Ivoire musician to leave his country unless he were at risk of persecution.

<u>Removal from the Fast Track</u>

9. Mr Morgan, however, made a preliminary application for the removal of this case from the fast track procedure. He complained that this was not a normal fast track case. It did not come from one of the top 35 asylum-seeker countries, nor was it a white-list country. The claim was not on its face unbelievable. The Appellant had been in the United Kingdom for some time and others were involved in his case. He had been in ordinary immigration detention for a number of days before he was transferred to Harmondsworth, a transfer which was a necessary pre-condition to the operation of the fast track. Mr Morgan submitted that the effect of the inappropriate inclusion of this case within the fast track was that corners were cut. The Adjudicator had refused an adjournment when it should have been granted because of a problem created by the late return by the Home Office of a video which Mr Bobb had sought to

introduce. The hearing had led to antagonism between him and the Adjudicator because of the time pressures which fast track procedures impose. He had also been taken by surprise by discovering that the Appellant's wife was not telling the truth in her statement or would not be telling the truth in her evidence because of the shortness of time which he had had to read the Home Office bundle which showed, contrary to what the Appellant and his wife said, that she had already been refused asylum and had made a number of contradictory statements.

10. We rejected this application. Rule 23(1)(b) of the Immigration and Asylum Appeals (fast track Procedure) Rules 2003 provides that the fast track should cease to apply to an appeal "*in exceptional circumstances, if the Adjudicator or the Tribunal is satisfied by evidence filed or given by or on behalf of a party that the appeal cannot otherwise be justly determined; …*". There had been no formal application to the Adjudicator for the case to be removed from the fast track and the bail application was not as such the same. It was not suggested that before us this appeal could not properly be dealt with within the fast track. In any event, the Appellant did not really put his case within the confines of Rule 23, whether or not saying that the Adjudicator should have removed the case from the fast track. We deal separately with the question of whether the adjournment sought should have been granted, but conclude that there was nothing wrong with the Adjudicator's refusal of it. There was nothing unfair in the Home Office bundle revealing that the wife had had her claim determined. Although the determination letter in the bundle was incompletely copied when initially served in time, it is clear that the fact that there had been an Adjudicator's rejection of the wife's claim, one of the critical points in relation to credibility, was apparent from the bundle itself when served. It is wrong to suppose that the just disposition of an appeal requires it to be removed from the fast track simply because an Appellant receives less forewarning than he might otherwise receive of the untruthfulness of a witness whom he presents as truthful, problematic for his appeal though that may be.

11. This was not a case either, so far as the effect of the involvement of others was concerned, in which in the end an Article 8 point was pursued. Mr Bobb withdrew any reliance upon Article 8. There were no corners cut in the appeal. It was a lengthy hearing over two days. It can only be said that the lunch hour on one occasion was truncated. That does not go anywhere near supporting Mr Morgan's point. Except for the complaint about the adjournment, there is no evidence or submissions which have been referred to which the Appellant was unable to provide. There is nothing in the other facts which show that the appeal, whether to the Adjudicator or to the Tribunal, requires to be removed from the fast track in order for it justly to be

determined, and indeed there are no other circumstances which show that this case should be removed from the fast track.

The adjournment application

12. The appeal had been adjourned on 22nd December 2003 to 7th January 2004 because the Appellant wished to rely upon the contents of two videos which the Home Office had received from him and had not yet returned to him. The videos were not returned until 1pm on 6th January 2004 and no transcripts of their contents in English had been provided by the time the appeal came on for hearing. A written application for an adjournment was refused on 5th January 2004. Mr Morgan pointed out that it was particularly important for the Secretary of State to do promptly what he has to do if he is imposing on an Appellant the very tight timetable inherent in the fast track procedure. That is obviously right. Mr Bobb sought an adjournment from the Adjudicator at the outset of the hearing on 7th January 2004 because he said that he had had insufficient time to prepare his case for a number of reasons. However, it is only the point in relation to the second video which has been pursued before us. Mr Bobb was given some further time to read the papers which he had said he had not fully read.

13. In relation to the second video, the Adjudicator said in the determination that she could not see that the second video would advance the Appellant's case because there was no issue as to the fact that the Appellant was a musician who had been involved in the production of *El Mutino*, had sung at concerts and that his music had political overtones. She said that the Appellant would be able to give evidence as to the contents of the second video and indeed he did so, saying, as recorded in the determination, that it was concerned with the work and death of Mr Yace. The Adjudicator said, in paragraph 100, of the determination:

> "I further accept that Mr Yace died of unnatural causes; this is also accepted by the Secretary of State. The second video is said to be a documentary about Mr Yace's work and his death, although no indication is given as to who was responsible for his killing, and Mr Bobb did not seek to rely on this video at the conclusion of the hearing in spite of his earlier repeated requests for an adjournment to provide a transcript of it."

14. Mr Bobb, in his witness statement for this appeal, said that the Adjudicator had said that she would view one video overnight and he viewed the second one but only saw 30 minutes of it, stopping because he did not understand the African/French, or indeed any French at all. The Adjudicator had said to him that he could use the Court Interpreter, and Mr Ouseley (unrelated to the President) told us that there were video viewing facilities available at Hatton Cross. In his witness statement, Mr Bobb said

that on the second video the names of Guei and Yace were mentioned and a car was shown riddled with bullet holes. At paragraph 11 of his statement, he said that he told the Adjudicator that he would not be relying upon the video because he could not say whose car was shown riddled with bullets or describe how the video related to the appeal. He could only say with certainty that it showed a picture of General Guei dead, a point already accepted by the Secretary of State.

15. We do not consider that there is anything in this ground of appeal. The question of whether an adjournment should be granted is very much one for the judicial discretion of the Adjudicator, a discretion with which the Immigration Appeal Tribunal should only interfere if it has been exercised on an improper basis or unfairly. The shortness of time available before the appeal for the viewing of the videos created by the late return of them to the Appellant by the Secretary of State undoubtedly would have added to the pressure on Mr Bobb. However, the Appellant knew the contents of the second video and could describe them to Mr Bobb. He could explain the significance of their contents for his case. He could and did give evidence about the contents to the Adjudicator. They related to matters which were not in contention. Their main point, according to the Appellant, was to show the death of Mr Yace with whom the Appellant was connected. Neither the death nor the connection were at issue. Mr Bobb said they showed the death of General Guei, which was not at issue either. It was open to Mr Bobb to seek the assistance of the Court Interpreter, there to interpret for the Appellant and other witnesses, in understanding what the video was about through the use, if necessary, of facilities available at the hearing centre. Mr Bobb actively withdrew reliance upon the second video.

16. Crucially, even now with the passage of time since the dismissal of the appeal, there has been no transcript provided or description of the contents of the second video. It is not suggested that there was any point, let alone a point of significance, contained within it which would have advanced the Appellant's case, which the refusal of the adjournment prevented being placed before the Adjudicator. No such point has been identified or evidenced.

17. We should add briefly in relation to the other points upon which Mr Bobb had sought an adjournment, that Mr Bobb's firm knew, on 3rd December 2003, that the case was a fast track case and Mr Bobb was given some further time to read documents which he had said he had not had sufficient time to read, notably the full version of the asylum determination in respect of the Appellant's wife. Mr Bobb did not, and indeed could not, put his application for an adjournment on the basis that the untruthfulness of the

wife's evidence, as was becoming apparent, put him in tactical difficulties which he needed time to resolve.

Conduct of the appeal: evidence and submissions

18. Mr Bobb's first complaint relates to interventions during the Appellant's evidence. There were no interventions during evidence-in-chief, but Mr Bobb refers to 12 interventions which occurred during the course of cross-examination by the Home Office Presenting Officer. However, Mr Bobb took no objection to those questions and in his witness statement says that the questions followed naturally from the questions asked and answers given to the Home Office Presenting Officer. Nonetheless, Mr Bobb says that he thought it was improper for the Adjudicator to put those questions. He clearly had in mind that he thought it was for the Home Office Presenting Officer alone to put those questions. He makes no complaint about two questions asked in the course of his re-examination of the Appellant, but he then asked if he could ask further questions in chief of the Appellant which he had forgotten to put. He was allowed to put them but his chief complaint in relation to the evidence of the Appellant relates to the questions which the Adjudicator put after the conclusion of this second round of questions.

19. He does not and cannot take objection to the fact that, at this stage in the proceedings, the Adjudicator asked questions. He says, however, that he objected twice to the questions which were being asked. This was because he said the Adjudicator asked no fewer than 17 questions. He objected, saying that it was for the Home Office to present its case and that the Tribunal did not allow an Adjudicator to usurp the Home Office's position. The Adjudicator responded to the effect that she was well aware of her duties.

20. Mr Bobb provided a transcript of those questions and answers. They cover some seven or eight topics, although a number of them are related. They deal with such matters as why the Appellant's name and his son's name were not on the son's birth certificate and somebody else's was, with the time that he had spent in the United Kingdom and a number of matters which his wife had said in the course of her appeal, and other matters. The questions are short and neutrally phrased. Mr Bobb complains that they read like a cross-examination rather than clarification.

21. Mr Bobb's second complaint relates to the evidence of Mr Assagou. He had been trying to get Mr Assagou to explain how long someone called Leopold had lived with the Appellant and the Appellant's wife. The witness's memory or willingness to answer was plainly somewhat less than Mr Bobb had hoped.

After a number of questions, Mr Bobb was able to bring the witness to say that the last time he had seen Leopold at the house was around the beginning of 2003. He then turned to ask what the first time he had seen him there was. The witness answered that it was difficult to remember, between 2001 and 2002. He was pressed as to which year, but answered that it was difficult because he had not realised that he would be asked questions about his living there at that time.

22. Mr Bobb complains that the Adjudicator intervened here and asked him to move on with his questioning because the witness clearly could not answer the question. Mr Bobb had hoped that further questioning might achieve some jogging of the memory as to the first time he had seen them in the way that his questions had achieved some jogging of the memory in relation to the last time that he had seen Leopold at the house. The purpose of these questions was to establish that the husband's evidence in relation to this was more reliable than the wife's.

23. He complains that the intervention was unfair and was compounded by the leeway given to the Home Office Presenting Officer when asking his questions in cross-examination. The Home Office Presenting Officer had been asking about when Mr Assagou had gone back to the Côte d'Ivoire after his arrival in 1994 in the United Kingdom. He had said that he had gone back but did not know when the last time was. Mr Bobb objected as the Home Office Presenting Officer sought to pursue the question, but his objection was overruled. The questioning then continued with a question about whether the witness had been back to the Côte d'Ivoire. The answer was "*What has this got to do with being here this morning?*" The witness was asked by the Adjudicator to answer the question. The question was again put, asking the witness to say when the last time was that he had been back to the Côte d'Ivoire to which the witness again replied that he did not know what this had to do with the case. Mr Bobb says that the Adjudicator should have asked the Home Office Presenting Officer to move on because the witness could not answer questions. He had apparently pursued the line of questioning further.

24. The third point in relation to the evidence is one which Mr Bobb does not press. He recognises that his invitation to another witness to hazard a guess about how long Leopold had been living with the Appellant and his wife was possibly an inappropriate question, but he complained that the Adjudicator told him, in response to that question, that any answer would be worthless. He did not pursue the point.

25. Mr Bobb made two complaints essentially about interventions in the course of summing up. He said that when the Appellant's

wife was giving evidence and had made several statements directly contradicting the evidence of the Appellant, he had established that she had lied to the Appellant's representatives, to the Appellant, to the Respondent and also lied at the present appeal before the Adjudicator. Mr Bobb says that he then sought permission from the Adjudicator to treat the wife as a hostile witness. He said that he had previously taken instructions from the Appellant on this matter and his instructions were to do just that. The Adjudicator asked why she had been called if Mr Bobb wanted to treat her as hostile, to which he replied that it was necessary for him to establish that she was lying before he could treat her as hostile. He says that the Adjudicator then said that he could proceed on that basis, and he did indeed accuse the Appellant's wife of lying.

26. When it came to submissions, and he referred to the fact that the Adjudicator had given him permission to treat her as a hostile witness, the Adjudicator said that there was no provision in the Procedure Rules for treating a witness as a hostile witness. Nonetheless, she continued to let him make his submissions as to the reliability of the wife and as to the effect of her evidence upon the Appellant's credibility.

27. Mr Bobb's more substantial point in relation to the submissions was that there were no interventions during the course of the Home Office Presenting Officer's submissions but that there were many during the course of his, so many that his submissions became disconnected and he felt harried. The Adjudicator, as he described it, was constantly intervening to ask him to refer to the passages in the country evidence which showed that followers of the General were being persecuted. He said that he had tried to make a submission that the country evidence was circumstantial and that a reasonable inference could be drawn from it, but he says he felt that in the end he had to abandon making his submissions. His complaint about the interventions is confined to those two points and not the other areas which he dealt with in his submissions.

28. The statement of Mr Bobb raises a number of matters where it is clear that the impression he gained was that he had irritated and aggravated the Adjudicator on a number of occasions. These included his seeking an adjournment, his seeking of time to examine documents, her interventions and his objections, his asking to cross-examination in chief further the Appellant and the reference in the decision letter to his being late.

29. He said that he could not recollect being late, because if he were he always apologised. He was surprised that comment was made in the determination on that point. He was also concerned that the Adjudicator was then displeased with the fact that

evidence had been served late and with a translation only in part.

30. Mr Beer, the Home Office Presenting Officer, produced a short statement in which he expressed the view that the interventions had not been excessive, that issues had not been prevented from being raised and that in the course of the more than seven hour hearing, Mr Bobb had spent an inordinate amount of time on irrelevant issues and had simply been moved on.

31. It was suggested in submission and in the grounds of appeal that the intervention in the cross-examination and more so the questions asked of the Appellant by the Adjudicator after the conclusion of re-examination, tended to support the lines which the Home Office Presenting Officer was pursuing and that that was a breach of natural justice. It was suggested that the appropriate approach for an Adjudicator was that he should not enter the arena, save to the extent absolutely necessary to ascertain the truth, and must not appear to adopt a hostile attitude to any witness.

32. Mr Morgan referred to Oyono [2002] UKIAT 2034 in which the Deputy President said:

> "When evidence is being taken from a witness and where there is representation on both sides, an Adjudicator's role is of silent listening. It may very occasionally happen that an Adjudicator is so unclear as to what he has heard that he needs to ask for something to be repeated and, of course, there may occasionally be difficulties with interpreters causing the Adjudicator's general control over the proceedings to come into play. But it is for the parties to bring out evidence in the order they think appropriate and it is for the parties to put whatever contradictions in the evidence need to be put to the witness. When the evidence has been finished, in the sense that there has been examination-in-chief and cross-examination and re-examination, it may be that the Adjudicator wishes to put matters arising out of the evidence to the witness: but the time for that is *after re-examination*. If the Adjudicator does ask the witness any questions, he must then always give an opportunity to the parties to ask any further questions which arise from his. An Adjudicator who intervenes during the course of evidence is running the risk that he will be seen to be taking the side of one party or the other."

33. Mr Morgan submitted that the Adjudicator had, through her interventions, usurped the position of the Home Office Presenting Officer. She had confused the role which sometimes has to be adopted where there is no Home Office Presenting Officer with the position where a Home Office Presenting Officer is present. The *Surendran* guidelines had no application in these circumstances. There was no obligation on the Adjudicator to put to the Appellant what was set out in the refusal letter. During submissions, Adjudicators were habitually inactive, taking a record of the submissions only. He said that the pressure brought about by the fast track and, in particular, a long fast

track case, were to blame. Mr Bobb had 3½ years experience appearing before Adjudicators and the Tribunal and had experienced no such similar case. It was unfortunate that the Adjudicator and Mr Bobb got off on the wrong foot, but the upshot had been an unfair hearing.

34. The Adjudicator refers on a number of occasions in the determination to these matters. In paragraph 54 on, the Adjudicator refers to her having "*asked a few questions to clarify matters arising in the appellant's evidence*" after the conclusion of re-examination. She asked whether the Appellant had the originals of the articles he had submitted which he said were with the immigration authorities. She then asked why he thought his name did not appear on his son's birth certificate. Paragraph 56 of the determination continues:

> "I asked why he thought his name did not appear on his son's birth certificate. Before the appellant could give an answer, Mr Bobb interrupted and objected to my question. He maintained this was a matter which should have been put by the Home Office Presenting Officer. I pointed out to Mr Bobb that this was a matter raised in the Reasons for Refusal Letter and that I was affording the appellant an opportunity to try and resolve it. The appellant then replied. He said that he did not know why his wife had done this and that his name did not even appear on Ashley's birth certificate."

35. She then sets out the other questions which she asked in a way which is entirely consistent with the way in which Mr Bobb describes the questions. At paragraph 60, she says this:

> "I asked the appellant when he completed his studies. He said he thought it was 1994 or 1995 but he then said that when he married in January 1995 he had been in his final year. I asked why he had claimed at his screening interview that he had completed his education in 1989. Mr Bobb once again intervened, maintaining that I was intervening in a way prohibited by the Tribunal. I did not agree with Mr Bobb and pointed out that it was far fairer to allow the appellant an opportunity to explain matters that concerned me in his evidence. The appellant said that he had told the interviewing officer something was not right with the information he had provided but the officer had told him they would look at it later on."

36. After one more question, the Adjudicator records, and it is not disputed, that Mr Beer was given the opportunity to ask questions arising but he had none, and that Mr Bobb asked one question out of matters which the Adjudicator had raised.

37. The Adjudicator describes the stages through which the wife's evidence went, that Mr Bobb wished to treat her as hostile and that after the witness had given evidence that she had lied on a number of occasions, had said that he did not rely on anything she said and would not be pursuing any Article 8 case.

38. She points out in paragraph 79 that Mr Bobb had failed to ask the witness Mr Assagou whether he was aware of the contents of his statement, whether it was his signature and whether he was happy to rely on it: a matter which she records. She deals with the intervention by Mr Bobb during the cross-examination of Mr Assagou in paragraph 80. He had been asked again whether he had returned to the Côte d'Ivoire since 1994, which was the first question, and then since 2000, which was the second question. Paragraph 80 continues:

> "Once again the witness replied '*What has this got to do with anything*'. I asked him whether he was able to answer the question or not and Mr Bobb interrupted to object. I asked Mr Bobb to allow Mr Beer to continue his cross-examination and the witness was asked again whether he was able to give an answer to the question put to him. His answer once more was '*What has this got to do with anything*'. It was explained to him that he had given a lot of information about his country in evidence and that it would be helpful to know when he was last there. The witness once more replied that he did not know what that had got to do with his evidence."

39. In paragraph 84, she deals with the evidence of the witness whom Mr Bobb asked to speculate.

> "She stated that she knew the appellant's wife from Abidjan before she came here 11 years ago that they did not know each other well. She stated that whilst in the UK the appellant had lived with his wife however it was their custom to put up many people one of whom was Mr Mandjoba whom she saw once and did not know. She was unable to state how long he had lived there that she did not go there very often. Mr Bobb asked her to hazard a guess at which point I intervened indicating that any answer given to that question would be worthless. The witness said that she knew Mr Mandjoba was now in Paris that she did not know when he had gone back there."

40. In paragraph 85, she refers to the partially translated document and her indication to Mr Bobb that it would have limited weight, but nonetheless she had agreed to accept it. Next, she refers to an inconsistency which Mr Bobb had not noticed between the Appellant's evidence and a music review which he had submitted, an inconsistency that was resolved by Mr Beer noticing an error in translation by the interpreter. In paragraph 91, she says that she asked Mr Bobb whether he wished to rely in any way on the second video which the Appellant had produced, but he replied that he did not.

41. Although Mr Morgan puts his case on the basis that the issue is whether or not the hearing had been fair, we have also considered it appropriate to ask ourselves whether there was any apparent bias in this case. The test for that is whether the circumstances when ascertained would lead to a fair-minded and informed observer concluding that there was a real possibility or real danger that the Adjudicator was biased; Porter v Magill [2002] 2 WLR 37.

42. There is a danger that the comments relied on in Oyono have been misunderstood. An Adjudicator or any judge is of course entitled during evidence-in-chief to seek clarification of an answer, whether because it has not been heard properly or understood or interpreted properly. He is entitled to check that he has recorded the answer correctly. But that is not the limit on his powers or indeed his obligations of intervention during the giving of evidence. An Adjudicator also has obligations in relation to the general control of a case. It is proper for an Adjudicator to intervene during examination-in-chief and cross-examination for the purposes of moving the proceedings along, so long as that is done in a fair manner. It is necessary and proper for an Adjudicator to point out that a line of questioning is irrelevant or valueless or repetitious or is going nowhere. It will, of course, be necessary to consider any response made by a representative to such an approach. But what was said by the Deputy President in Oyono assumes that the questions being put are relevant and are not being pursued at undue length. Even where the parties are both represented, it is still relevant for questions to be put by the Adjudicator to a witness if they raise matters which trouble the Adjudicator if they have not been raised or dealt with by the opposing advocate. This is especially so if the Adjudicator is concerned by the point and it is something which may affect the decision or indeed should affect the decision, but cannot fairly do so without the relevant witness being given the opportunity to deal with it. The comments made in this respect by the Adjudicator in paragraph 60 are entirely right.

43. Of course, what is said in Oyono in relation to the timing at which an Adjudicator should put questions for that purpose is right. An Adjudicator ought not to interrupt examination-in-chief or cross-examination except in the circumstances to which we have referred or for other reasons associated with the general control of the case and the court room. If there are inconsistencies between documents and oral evidence or between answers which have been given already, it is nearly always best to wait until after cross-examination and re-examination to see what matters are put. However, it is wholly legitimate for the Adjudicator to ask his or her own questions on issues of inconsistency, points raised in the refusal letter or matters which trouble the Adjudicator whether or not they are raised by the other party. What is important, however, in relation to those matters is that the Adjudicator should not develop a different case from that being presented by the other party or pursue his or her own theory of the case.

44. The manner in which any intervention is undertaken is also important. It should not be done in any hostile manner or in a

manner which suggests that the Adjudicator's mind has been made up. Questions should not be leading questions or ones which conceal the purpose for which they are asked, but instead should be direct and open-ended questions. It is perfectly proper for the Adjudicator to ask, after questions have been put in cross-examination and re-examination has taken place, why a witness has said x when earlier that or another witness has said y, or how document x can be reconciled with document or oral evidence y. An Adjudicator is entitled to follow the logical train of answers to see how they fit with the case if that is regarded as potentially significant for an issue in the case. It is also important, however, that an Adjudicator should keep a sense of proportion about the questions which he or she asks. It is not for the Adjudicator to take over conduct of the case either by the number of questions asked or the development of his or her own theories. The interventions may or may not assist one or other party. They are not unfair merely because one or other party may derive assistance from them.

45. As to submissions, it is quite wrong to suppose that there is an obligation on an Adjudicator merely to keep silent during submissions, noting them down regardless of whether they are words of wisdom or irrelevancies, failing to deal with the points which trouble the Adjudicator. An Adjudicator is entitled also to intervene to ensure that an advocate responds, if he is not otherwise doing so, to points which his opponent has made. There is no reason for the number of questions to be asked of one side to equal the number of questions asked of another. The degree of intervention will depend entirely upon the focus and relevance of the submissions made; their helpfulness and their succinctness. It is perfectly proper for an Adjudicator to move submissions on by indicating that she has understood the point or to prevent the irrelevant in order to try and obtain the relevant answers for the purposes of writing the determination. Much will depend upon the nature of the case and the style of the advocates and Adjudicator. It is important, however, that the Adjudicator does not intervene to such an extent that relevant submissions are disrupted and relevant points are prevented from being made. In that way, the Adjudicator would fail to understand the case and potentially would miss important points being made to her.

46. With those points in mind, we turn to examine the specific complaints made by Mr Morgan. So far as the Appellant's own witness was concerned, the intervention complained of did not take place in the course of evidence-in-chief and no objection was raised in respect of the intervention in cross-examination at the time. It is acknowledged that the questions flowed naturally from the questions and answers given. No detail is provided as to their nature. Accordingly, we regard that part of the complaint

as a minor point which is entirely unevidenced and misconceived in principle.

47. The real complaint in relation to the Appellant's evidence concerns the questions which were asked by the Adjudicator after the conclusion of re-examination. The questions and answers, both in her language as set out in the determination and in Mr Bobb's witness evidence, show nothing in terms of their style to controvert any of the principles which we have set out. They properly raise legitimate questions, some of clarification, some of inconsistency or obvious concern. It would have been arguably remiss for the Adjudicator to reach conclusions in relation to those matters without giving the Appellant an opportunity to deal with the concerns which she had. They were not leading questions, nor did they conceal, in the way in which an advocate legitimately might, the ultimate target to which the questions were working. There has been no suggestion of anything in the tone which indicated hostility or a mind made up. If the questions were of assistance to one side rather than to another, that reflects the weakness of the case and cannot impose an obligation on the Adjudicator not to ask the questions. They were not over-long in number, or disproportionate to the issues; they did not involve the Adjudicator going off on some misguided frolic of her own.

48. It is suggested that there was a wrongful intervention in the questioning of Mr Assagou in chief. From the Adjudicator's determination and from Mr Bobb's list of the questions and answers which were given, it was, in our judgment, a reasonable point for the Adjudicator to intervene and ask Mr Bobb to move on. It was perfectly clear that the witness had no recollection that could be refined more greatly than he had done already. He had been able to refine the timing of the last visit, but had twice said, already having revealed a poor memory, that he was unable to assist on the time when he first went to Côte d'Ivoire beyond referring to the two year period. The Adjudicator had already had the advantage of seeing the way in which the witness gave evidence in relation to time and her intervention was not one which, in our judgment, can properly be criticised.

49. It is then said that the same point ought to have been taken by the Adjudicator against the Home Office Presenting Officer's cross-examination of this witness in relation to when he had gone back to the Côte d'Ivoire. This was a point at which Mr Bobb had intervened to object to the fact that the Home Office Presenting Officer was allowed to continue questioning. It is important for the distinctions between cross-examination and evidence-in-chief to be remembered. In evidence-in-chief, the function of the advocate is to elicit the relevant information upon which he relies. In cross-examination, one task of the advocate is to show

how unreliable a witness is by showing how much he has forgotten and how little able he is to answer questions. The criticism is without sound foundation.

50. The Adjudicator was quite right to point out that there was no point in inviting the next witness to guess at something, as Mr Bobb in effect recognises, and it is proper for the Adjudicator to say that an invitation to guess produces an answer to which no weight can be given.

51. The complaints in relation to the submissions are entirely ill-founded. The Adjudicator is right to point out that there is no procedure for treating a witness as hostile as such, but it is quite clear that she also accepted that Mr Bobb could ask the Appellant's wife questions which sought to establish not the truthfulness of what she had to say, but her unreliability. To our mind, her intervention in the submissions did not alter the substance of the point. She had allowed him to present his case in the way in which he wanted; the Adjudicator was not preventing a submission being made that the wife was an unreliable witness. Indeed, the Adjudicator reaches that very conclusion herself. The Adjudicator was taking what might have been regarded as a precise, perhaps over-precise point, in relation to the rules.

52. The more general point made in relation to the submissions is likewise ill-founded. It was perfectly proper for the Adjudicator to endeavour to focus Mr Bobb on the relevant parts of the background evidence. What the Adjudicator was looking for was material which supported the contention that someone who had the relationship with and support for General Guei, which she found the Appellant had, would be at risk of persecution on return. She was not concerned at that stage with more general points about difficulties in Côte d'Ivoire which would not affect the Appellant, whether because of the location in which those troubles were occurring or for any other reason. It is difficult as well to see that her interventions prevented her getting hold of the points which the Appellant wished to make through Mr Bobb.

53. It is plain that the Adjudicator was right to conclude that there was nothing which showed that the asserted association with General Guei or Mr Yace would put the Appellant at any risk of persecution or ill-treatment on his return. Before us, when we pressed Mr Morgan with the same point, he made it clear that there was no such material. He, like Mr Bobb, was relying upon more general, and as the Adjudicator found in substance, irrelevant material. It is for the purposes of these submissions irrelevant that the Home Office Presenting Officer was not interrupted in the course of his submissions. There would have been little point in doing so if the Home Office Presenting

Officer's submissions directed themselves succinctly to the relevant points. The Adjudicator properly considered all the objective evidence in relation to Côte d'Ivoire and reached proper conclusions in relation to it, conclusions which are consistent with the Tribunal's approach to the problems in that country.

54. We recognise that where allegations of unfairness are made, they have to be looked at as a whole and one cannot exclude from one's consideration of them the sort of incidents which, minor in themselves, may indicate that there was hostility towards an advocate or to a party which precluded a fair hearing being or seeming to be fair. There are a number of comments in the determination, for example about Mr Bobb's late arrival and about the late production of partially translated documents, which suggest that Mr Bobb had irritated the Adjudicator. It is also plain from Mr Bobb's witness statement that the Adjudicator did not take kindly to some of his interventions, thinking, perhaps rightly in the light of the submissions made, that he was telling her that she did not know how to do her job. It is possible that there was some irritation between them at an early stage, arising out of her refusal of an adjournment and her manifest belief that he could cope with the material within the timeframe she allowed. Whether or not a different approach would have been adopted in relation to a non-fast track appeal, it is impossible to say.

55. However, viewing the hearing as a whole, and having regard to the way the questions have been put, the nature of the questions and the circumstances, we do not consider that there is any just criticism which can be made of the Adjudicator. We do not consider that her interventions were of a nature or manner so as to render the hearing unfair. She plainly has understood the points which were being made and she has dealt with them carefully in a considered determination. We do not consider that a fair-minded observer, in possession of all the information, would have concluded that there was a real risk that she was biased. It is important that a fair-minded observer would have been able to distinguish between an Adjudicator firmly in control of a case behaving fairly and properly in order to ascertain how the case related to the available evidence and somebody who is indicating hostility towards a party or predetermination through the timing and manner of intervention. Regrettable occasional irritation between judge and advocate does not suffice for a case of apparent bias.

Errors of fact

56. The grounds of appeal contain a large number of points, in respect of which it is said that the Adjudicator has misunderstood

the evidence or has given inadequate reasons for the conclusions which she has reached or has been in some way or other illogical in her conclusions. Essentially, these are a large number of lesser points which involve taking issue with findings of fact or conclusions of the Adjudicator which have had to be put into the conventional public law framework. Mr Morgan recognised the difficulties which he faced in relation to all of those at the outset of his submissions. Indeed, he volunteered the difficulties. Leave had been given to argue them in view of the more serious allegations which the grounds of appeal raised, so that the whole of that issue could be seen in the context of its possible impact on the case. However, in view of the conclusions which we have reached in relation to the fairness of the hearing, and in view of the lack of any real relationship between those allegations and any conclusion reached on the substance of the appeal, we propose to deal briefly with these points.

57. One theme of a number of those points was that the Adjudicator had allowed her view of the wife's credibility adversely and unfairly to colour her view of the Appellant's credibility on a number of matters. The Adjudicator said, in paragraph 111:

> "The evidence given by the witnesses do not advance the appellant's claim whatsoever indeed his wife's evidence contradicts large parts of what the appellant himself has claimed. I was asked to disregard her as a hostile witness but the fact remains that she was called as a witness by the appellant's representative, her oral and documentary evidence is before me and it is my duty to assess it and to consider it in the context of the appellant's claim."

The Adjudicator said that the wife had made no mention whatsoever of the Appellant's music in her application or appeal which astonished the Adjudicator given that, by the time of her appeal, the Appellant's music had allegedly been banned and he had gone into hiding. She claimed that she had had no information about her husband since she left, whereas he claimed to have been in regular touch with her in 2000 and 2001, which would have meant that she would indeed have been well aware of his problems if he had genuinely had them. The Adjudicator concludes that that clearly suggests that the Appellant has embellished his claim in an attempt to claim asylum in the United Kingdom. There was no reason why, in order to advance her claim, the Appellant's wife should not have referred to those matters, even though her real point in her appeal appears to have been a different one.

58. The Adjudicator specifically concludes that she is prepared to accept that the Appellant is the biological father of the two further children which his wife has had in the United Kingdom, but concluded that Mr Mandjoba had been named as the father on the birth certificate:

> "... in a deliberate attempt to mislead the Home Office and to strengthen the Appellant's wife's application to remain here on the basis of her relationship to a French national. I do not accept that the Appellant was unaware of this and I find that he was a party to this deception. However, as this has no direct bearing on the asylum claim, I take this matter no further. Ms Ehouman's admission that she never had a relationship with Mr Mandjoba and that this was a fabrication solely to facilitate the human rights application is no doubt a matter the Secretary of State will take into account when considering whether or not to remove her."

The Adjudicator then concluded that she did not accept that the wife had been raped or that the Appellant and his wife had been invited to a campus meeting at the university in April 2000. She explains her reasons for that conclusion.

59. The Adjudicator's task was to appraise all the evidence and it was for her to reach a conclusion as to the significance of the wife's evidence, including its lies and contradictions, for the Appellant's case. She was entitled to consider that the calling of a witness to give evidence which then contradicted the Appellant's evidence could not be regarded as a matter which simply went to the credibility of the wife, and upon the wife's evidence being regarded as in part untruthful could simply be disregarded in the assessment of the Appellant's. It was not simply for the Adjudicator to say that the Appellant's wife was a liar in a number of respects and therefore she would focus only on what the husband had said. The Adjudicator was entitled to look at contradictions between the wife's evidence and his, and that she mentioned in her appeal no problems which he might have faced. The Adjudicator was entitled conclude that this suggested that the Appellant had embellished his claim. She was entitled to take into account that he was a party to the deception as to who was the father of his son, in order to assist his wife's claim and the conflicting evidence given by the wife and the Appellant as to where they were living in April 2000. They are all relevant to the reliability of the Appellant.

60. But, in any event, the Adjudicator is perfectly clear that there are many pieces of evidence given by the Appellant which she does not accept for reasons other than conflict between the evidence of the wife and of the Appellant. This is of particular importance for the probability of the Appellant being invited to the campus to sing songs in praise of somebody against whom the students had already turned. His evidence was inconsistent with the CIPU Report which dealt with demonstrations at around that time and did not deal with any at the university in April 2000. His documentary evidence contradicted what he said about his music being banned on the radio from October 2000. He had made no reference to the military raiding his house. The Adjudicator was also entitled to look at the way in which he entered the United Kingdom and allowed his visa to expire without attempting to

regularise his stay.

61. It was also suggested that the Adjudicator had failed to grapple with a simple point which was, why would the Appellant leave Côte d'Ivoire as a successful musician if he were not in fact being persecuted? The Appellant's evidence was that his music had been banned by October 2000, and although the Adjudicator concluded that that was not so because the album *Red Lights* had been produced and released in May 2001, he said it had not been successful. Although the Adjudicator refers to the potential success of that album, she regarded him as attempting to play down its success. It is perfectly obvious that somebody who may make a living as a talented and perhaps successful musician in Côte d'Ivoire might have good economic reasons for seeking to work in the United Kingdom. However, this general point made by Mr Morgan is more a matter of rhetoric, than a point identified in the grounds of appeal or point raised for the Adjudicator as a significant point.

62. Mr Morgan was invited to identify the best of the points which he was taking in relation to the very many criticisms that had been raised. He referred to the conclusion in paragraph 108 to the effect that the Appellant had exaggerated his personal relationship with General Guei in order to enhance his claim. The Appellant had said that he was invited to the General's home in order to be enlisted to controvert what another popular singer was singing about the General. It is said that the Adjudicator had failed to identify how or in what way that had been exaggerated: why would he leave if he was "*presumably prosperous*" as Mr Morgan put it? The Adjudicator was entitled to conclude that he had exaggerated this personal relationship because there was no supporting material for it. The Adjudicator did have a considerable amount of evidence produced by the Appellant which related to his music, reviews of it and the way in which he was regarded in Côte d'Ivoire, but there was nothing in that, which is what the Adjudicator is referring to, to confirm the claim. There was no other evidence orally which confirmed that. The Adjudicator also was aware of the difficulties which she had with the Appellant's own evidence. The Adjudicator's finding was properly open to her considering all the evidence.

63. It is complained that the Adjudicator on a number of occasions, misunderstood the significance of another singer, called Alpha Blondie, remaining in the Côte d'Ivoire without problems regardless of having composed numerous political songs. It is said that that is an error because he was not a supporter of General Guei and so was in a different position to the Appellant. Whether that is so or not, the Adjudicator was entitled to rely on the absence of any suggestion that the Appellant's musical partner, Alan Bill, ever faced any problems. He had been the

main singer on *El Mutino*. It is very far from clear from the various reports which the Appellant produced that the comment that he made that Alpha Blondie was anti-General Guei is a sufficient explanation for the lack of problems which he faced. They both sing politicised songs and it is suggested in a BBC World Service document that Blondie had been singing highly politicised songs for many years before and after the coup in December 1999.

64. There is nothing in the riposte by Mr Bobb to the finding in paragraph 112 that the wife had made no mention whatsoever of his music in her application for appeal, in her statement that she had accompanied her husband to a concert. The real point which the Adjudicator is making is that, as it is said that the Appellant's singing and music writing was central to the way in which he would be viewed were he to be returned, it is astonishing that the case was not put along those lines in the Appellant's wife's appeal. The reference to an error in relation to regularity of contact, if it is an error, is trivial relating as it does simply to the dispute about frequency.

65. At paragraph 113, the Adjudicator's reference to taking the matter no further as it has no direct bearing on the asylum claim is a reference not to the irrelevance of the wife's credibility to the husband's claim, but to the fact that their joint endeavour to deceive the Home Office in relation to the wife's claim had no direct bearing on the validity of the Appellant's claim. The conclusion of the Adjudicator in relation to the CIPU Report is not answered by the Appellant's citation of a reference to a demonstration some six months later than the one which the Adjudicator was concerned with. There is even less in the other points raised.

66. Accordingly, for the reasons which we have given, this appeal is dismissed.

MR JUSTICE OUSELEY
PRESIDENT