FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2020] CSIH 34
P555/19

Lord President
Lord Woolman
Lord Pentland

OPINION OF THE COURT

delivered by LORD CARLOWAY, the LORD PRESIDENT

in the Appeal by

PA

Petitioner and Appellant

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Petitioner and Appellant: Winter; Drummond Miller LLP (for Latta & Co, Glasgow)
Respondents: Maciver; Office of the Advocate General

19 June 2020

[1] This is an appeal in terms of section 27D of the Court of Session Act 1988. It proceeds as a reclaiming motion in terms of RCS 38.8(d) and 58.10. The petitioner challenges the interlocutor of the Lord Ordinary, dated 29 August 2019, which refused to grant the petitioner permission to proceed with a judicial review of the respondent's decision to treat her further submissions in support of her claim for asylum as a fresh claim in terms of

Immigration Rule 353. The petitioner has exhausted her appeal rights in relation to her claim that she would be persecuted in her country of origin on the basis of her sexuality. The respondent and the First Tier Tribunal decided that she was not, as she claimed, a lesbian.

[2] The first issue is procedural. It concerns the role of the first instance court, when determining whether to grant permission to proceed. Is a Lord Ordinary entitled to reach a view on the merits, and thus arguably determine the petition at the permission stage, as distinct from deciding simply whether the petition has a real prospect of success (1988 Act, s 27B(2)(b) or (3)(b))? The second issue concerns the role of the appellate court when reviewing the Lord Ordinary's determination (1988 Act, s 27D). Is it assessing whether the Lord Ordinary erred in law or deciding whether to grant permission *de novo*?

[3] The third issue is one of substance. It is whether the respondent erred in determining that the petitioner's further representations, when taken together with the material already submitted by her in earlier applications, did not create a realistic prospect of success under Immigration Rule 353.

Legislation, and the Immigration Rules

The Court of Session Act 1988

[4] The Court of Session Act 1988, as amended by section 89 of the Courts Reform (Scotland) Act 2014, provides as follows:

> *"27B Requirement for permission*
>
> (1) No proceedings may be taken in respect of an application to the supervisory jurisdiction of the Court unless the Court has granted permission for the application to proceed.

(2) … the Court may grant permission under subsection (1) for an application to proceed only if it is satisfied that—

…

(b) the application has a real prospect of success.

27D Appeals following oral hearings

(1) Subsection (2) applies where, after an oral hearing to determine whether or not to grant permission for an application to the supervisory jurisdiction of the Court to proceed, the Court—

(a) refuses permission for the application to proceed…

(2) The person making the application may… appeal under this section to the Inner House…

(3) In an appeal under subsection (2), the Inner House must consider whether to grant permission for the application to proceed; and subsections (2), (3) and (4) of section 27B apply for that purpose.

…".

Immigration Rules

[5] The Immigration Rules provide:

"353. When a human rights or protection claim has been refused … and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

(i) had not already been considered; and

(ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection…".

Background

The initial applications

[6] The petitioner is a national of Pakistan. She arrived in the United Kingdom in early 2008. On 28 February 2008, she claimed asylum. Her claim was refused by the respondent on 7 May. Her appeal was dismissed on 18 June. Her claim had been based upon an assertion that her brother, having treated her as his servant and killed her husband, posed a danger to her. The Immigration Judge rejected her claim as not credible. The petitioner's appeal rights became exhausted. She made further submissions to the respondent on four occasions between 2008 and 2014. Each was rejected with no right of appeal; the last refusal being on 10 April 2015. The respondent held that her further submissions did not amount to a fresh claim in terms of Immigration Rule 353.

[7] On 26 May 2015, the petitioner was served with notice that she was liable to be removed from the UK. In November 2015, she made yet further submissions to the respondent. This was that she was a lesbian and would be persecuted by the state and her own family, including her brother, were she to return to Pakistan. This would be a breach of Articles 2 and 3 of the European Convention on Human Rights. Her representations were rejected by the respondent in May 2016; this time with a right of appeal.

[8] The First Tier Tribunal dismissed the appeal on 2 November 2016. The FTT considered that the absence of any previous suggestion of involvement with lesbian or gay groups was something which called into question the truth of the petitioner's claim. The Immigration Judge's decision of 2008 had provided an indication of her general lack of credibility, although the FTT accepted that it did not follow that this different claim was untrue. The sexuality claim had followed within months of her last unsuccessful application. It could be seen as another false claim, which was being made in a desperate

attempt to remain. Although the petitioner had claimed that from December 2014 she had been in a relationship with a woman, with whom she had lived from July 2015, she had previously said that she had no partner. There was an absence of documentation to demonstrate cohabitation. The petitioner was unable to say what her supposed partner's occupation was. Neither of them knew the name of their landlord. Photographs of them together were of limited probative value. The claim seemed to be have been constructed by the petitioner and her friends.

[9] Both the FTT and the Upper Tribunal refused permission to appeal to the UT. In September 2017, the petitioner again made further submissions. In January 2018 these were rejected without a right of appeal.

The further submissions

[10] The petitioner again made further submissions to the respondent on 5 February 2019. These relied, first, on a statement from an Uber driver. He stated that he had known the petitioner for five or six years as a customer. He used to pick her up when she was with another woman. He knew that this woman and the petitioner were in a relationship. He would drop them off in Motherwell. They were no longer in a relationship. Secondly, there was a letter from a development worker with LGBT Health and Wellbeing. The petitioner had been attending that organisation's social events for the last few months. The petitioner was passionate about being a lesbian and was enjoying the experience of engaging with LGBT community members in Glasgow. Thirdly, there was a letter from a member of LGBT Unity which stated that the petitioner had also been a member since November 2016. She continued to attend fortnightly meetings and participated by sharing her experiences and identifying openly as a lesbian. Fourthly, there was a letter of support from a Unity Centre

case worker. Unity provided practical support and solidarity to asylum seekers. The petitioner was well known to the Centre and its sister organisation, namely LGBT Unity. She was an established member of the Glasgow LGBT community. Fifthly, there was a letter of support from a member of the Scottish Refugee Council which confirmed that the petitioner participated with the SRC regularly as a member of the refugee community organisation, namely LGBT Unity.

[11] The letters from LGBT Unity and LGBT Health and Wellbeing were said to constitute new evidence which should be considered on its own merits, independently of the previous adverse credibility finding made about the petitioner's sexuality (*TF* v *Secretary of State for the Home Department* 2019 SC 81). The petitioner's own evidence should now be accepted as genuine. The new evidence provided sufficient evidence that the petitioner was a lesbian who was at real risk of persecution if returned to Pakistan. There was now a realistic prospect of success.

The refusal letter

[12] By letter dated 20 March 2019, the respondent refused to treat the further submissions as a fresh claim in terms of Immigration Rule 353. Although they had not previously been considered, they did not create a realistic prospect of success. The starting point was the first adjudicator's determination. This was an authoritative assessment at the time it was made (*Devaseelan* v *Secretary of State for the Home Department* [2003] Imm AR 1 at para 39). If an applicant relied on facts which were not materially different from those previously before the decision-maker, or the new evidence had been available at the time of the previous decision, the issue should be regarded as settled by the first determination. The FTT had previously considered that the petitioner's testimony, regarding her fear of

persecution for her sexuality in Pakistan, was not credible. The FTT determined that she was making up her answers as she went along. The respondent regarded the new material concerning her relationship to be of minimal significance. Neither the petitioner nor her supposed partner were living at the address claimed. The claim had been fabricated by the petitioner and her friends. The statement of the Uber driver demonstrated very little. The petitioner had started attending the LGBT and other groups after the FTT's adverse finding regarding her sexuality. The various letters added little weight.

The petition and the decision on permission

[13] Only the challenges which were contained in Statements of Fact 11 and 12 were insisted upon before the Lord Ordinary who considered the petition initially only on the papers (1988 Act, s 27B(5)). These were, first, that the respondent had failed to give adequate reasons for rejecting the Uber driver's statement and in finding that his statement did not prove the petitioner's sexuality. The respondent had taken a compartmentalised view of the evidence and failed to assess it in the round with the other supporting letters (*TF* v *Secretary of State for the Home Department* (supra) at paras [38]-[39]). Secondly, this error was compounded by the approach taken to the LGBT Unity letter. The respondent had allowed the previous adverse credibility finding to sway the assessment of the new evidence (*ibid* at para [49]). Again, a compartmentalised view had been taken. The respondent had failed to bear in mind that the petitioner's previous credibility may be of little relevance, when the new material did not emanate from the petitioner and could not be said to be automatically suspect because it came from a tainted source (*WM (DRC)* v *Secretary of State for the Home Department* [2007] Imm AR 337 at para 6).

[14] The Lord Ordinary allowed the parties an oral hearing (RCS 58.7.(1)(b)) in order to be addressed on: the relevance of *TF* v *Secretary of State for the Home Department* (*supra*); whether the respondent has applied the wrong test; and the respondent's approach to the statement of the Uber driver and the expert (LGBT) letter. He was addressed on the first and third of these matters.

[15] The Lord Ordinary refused permission to proceed. The core issue was whether the petitioner was a lesbian. The respondent was entitled to reach her view on the Uber driver's statement. Her reasons were that there was no sound basis for his view that the petitioner was in a relationship with a woman, given that his only knowledge of the petitioner was that he had driven her and another woman on a number of occasions and seen the petitioner with that woman and not with men. There was no reference to any behaviour which suggested that the relationship was more than a friendship. Not seeing a woman in the company of men did not give rise to an inference that she was a lesbian.

[16] Although the respondent had considered each new piece of evidence in turn, the whole evidence had been examined in the round. The conclusion was based on a consideration of the evidence as a whole. For the same reasons, there was no merit in the complaint that the respondent failed to bear in mind the guidance in *WM (DRC)* v *Secretary of State for the Home Department* (*supra*). There was no error of law in the approach by the respondent to the letters from LGBT Unity. The letters were based on what the respondent had told their authors (cf *TF* v *Secretary of State for the Home Department* (*supra*) para [39]). In assessing their weight, the respondent was entitled to take account of the previous adverse credibility finding. She was entitled to make a distinction between accepting the letters as vouching the petitioner's attendances at LGBT meetings and rejecting them as support for her sexuality.

[17] The Lord Ordinary concluded:

> "Overall I am clearly of the view that there is no merit in any of the reclaimer's challenges. For the above reasons there are no realistic prospects of success before another immigration judge. The test in terms of section 27B of the Court of Session Act 1988 I believe is clearly not met."

Submissions

Petitioner

Procedure

[18] The petitioner submitted that if, as the respondent contended, the Lord Ordinary determined the petition on its merits, he erred in law. He ought only to have decided whether there was a real prospect of success. The role of the court was that of a traditional appellate court. It was necessary to demonstrate that the Lord Ordinary erred in law when refusing permission (*Wightman* v *Advocate General* 2018 SC 388, at para [32]; *SSMA (Sudan)* v *Secretary of State for the Home Department* [2017] CSIH 63, at paras [22]-[24]). If there was a material error of law, the court should consider whether to grant permission or not (1988 Act s 27D(3)). If permission were granted, the court should remit the matter to the Outer House for further procedure. If not, the petition should be remitted to the Outer House for a reconsideration by a different Lord Ordinary.

Merits

[19] The issue before the Lord Ordinary had been whether there was a real prospect of success because the respondent erred in law when finding that there was no more than a fanciful prospect of success before another Immigration Judge (*Wightman* v *Advocate General* (*supra*), at para [9]; *AK (Sri Lanka)* v *Secretary of State for the Home Department* [2010] 1 WLR 855, at para 34). He erred in deciding that matter in the respondent's favour.

[20] Permission ought to have been granted in respect of the compartmentalisation point. The Lord Ordinary's decision was not adequately supported by the respondent's approach. The respondent stated only that little weight had been placed on each adminicle of evidence. She did not state that the evidence had been looked at as a whole or in the round. If that was to be inferred, only lip service had been paid to the principle. There was no sufficient basis in the refusal letter to show whether the respondent had aggregated the little weight findings and whether there was more than a fanciful prospect of success before another Immigration Judge. For example, the Uber driver's statement was supported by the petitioner's statement about where she and her previous partner had lived together. Her claim to be a lesbian was supported by the letters confirming her involvement with LGBT organisations.

[21] Permission ought to have been granted in respect of the complaint that the respondent erred by taking previous adverse credibility findings into account when assessing the letters from LGBT Unity (*TF* v *Secretary of State for the Home Department* (*supra*), para [49]). The Lord Ordinary's finding was not adequately supported by the evidence, which was that the petitioner had been attending LGBT organisations since 2016. The information produced by these organisations was not simply based on what she had told them but on observations of her attendance. These observations were not reliant on what the petitioner had told them. It was incorrect to say that prolonged observance at LGBT events was of no assistance. There was nothing to indicate that the petitioner's attendance was other than genuine.

[22] Permission ought to have been granted in respect of the complaint that the respondent erred in law by failing to consider that the adverse credibility findings in respect of the petitioner may be of little relevance where the new material did not emanate from her.

The material could not automatically be considered as coming from a tainted source (*WM (DRC)* v *Secretary of State for the Home Department* (*supra*)). It was to be assumed that material emanating from third parties was not tainted.

Respondent

Procedure

[23] The respondent submitted that the Lord Ordinary had gone further than determining whether the petition had a real prospect of success by expressing a conclusion on the substance of the petition. Having been addressed on the merits, within the curtailed scope of the permission hearing, that assessment was within his function (*SA* v *Secretary of State for the Home Department* 2014 SC 1). The permission test was different from that applied at a final disposal of the petition. The Lord Ordinary reached a view that the substance was entirely without merit. That sufficed to answer both tests. Although cast as a reclaiming motion in the rules of court, the court was hearing an appeal in terms of section 27D of the 1988 Act. The court was exercising an appellate function whereby the primary consideration was whether the Lord Ordinary erred in law by refusing permission.

[24] In *Ceesay* v *Secretary of State for the Home Department* [2017] CSIH 26, the language used (at para [11]) when refusing the appeal was that "the Lord Ordinary was right to conclude that there was no 'real prospect of success'". In *Wightman* v *Advocate General* (*supra*), the court (at paras [30] and [32]) equated error with taking a different view on the prospects of success. It was nevertheless clear that its decision rested upon its finding that the Lord Ordinary had erred. The term "must consider" (1988 Act, s 27D(3)) tended to suggest that the court was tasked with a *de novo* assessment by considering the same matters as the Lord Ordinary (1988 Act, ss 27B(2) to (4)). However, the purpose of the permission

stage was to sift out unmeritorious applications by subjecting them to a lower test after a short hearing which did "not exceed 30 minutes" (RCS 58.9(1); Court of Session Practice No. 3 of 2017, at para 12; see *SA* v *Secretary of State for the Home Department* (*supra*); *Eba* v *Advocate General* 2012 SC (UKSC) 1 and *R (Cart)* v *Upper Tribunal* [2012] 1 AC 663). A *de novo* review would serve to repeat the task in a Summar Roll hearing before three judges in the Inner House, not necessarily restricted to 30 minutes, with the consequent significant increase in the resources required. The traditional appellate approach, which required the identification of an error in law, would have the effect of acting as a separate filter. This would be consistent with the general scheme of the 1988 Act. It would also be consistent with the nature of the supervisory jurisdiction, which was concerned with the decision-making process, rather than the content of an assessment undertaken in reaching that decision. If the court considered that it was engaged in a *de novo* review, it may wish to offer guidance on the duration of the Summar Roll hearing.

Merits

[25] The Lord Ordinary had considered whether the petitioner had met the test in section 27B of 1988 Act, namely, whether the petition disclosed a real prospect of success. He was entitled, and correct, to conclude that it did not and accordingly to refuse permission. He gave extensive reasons for his conclusion, namely that: the challenge to the decision depended upon the petitioner's claim to be a lesbian; the respondent considered the statement given by the Uber driver in support of her claim and had been entitled to conclude that it merited little weight; the respondent reached her conclusion after consideration of the evidence in the round; and the respondent had considered the letters from the LGBT and other groups and had properly made a distinction between their

evidential value in relation to matters within the knowledge of the authors and matters where the authors were dependent upon the account given by the petitioner.

[26] The Lord Ordinary was correct that the respondent had examined the evidence in the round. The value of each item of the evidence was assessed on its own terms: the petitioner's credibility had been the subject of negative findings by the previous Immigration Judge; her account of her relationship was found to have been fabricated; the Uber driver's statement did not bear upon the existence of the claimed relationship; the letters from LGBT and other groups were of value in proving attendance at social events, but not in verifying the petitioner's sexuality.

[27] The respondent made an in the round assessment of whether the claim would have a realistic prospect of success before another Immigration Judge, finding the objective parts of the claim, regarding conditions in Pakistan and the petitioner's attendance at LGBT and other groups, but not the subjective parts, to have been made out. This was consistent with *TF* v *Secretary of State for the Home Department* (*supra*, at para [50]). The evidence of attendance at LGBT and other groups was accepted but carried little weight on matters which the relevant witnesses had not observed. The previous Immigration Judge made direct findings that the petitioner had already fabricated her account of her sexuality. The letters from the LGBT and other groups and the church witnesses in *TF* were not equivalent. The petitioner sought to reargue the merits of the claim by arguing that the Uber driver's statement was reinforced by her own account, which in turn was supported by the LGBT and other group letters. That complaint was not made out. The assessment of the merits was one which fell upon the respondent to make. No error of law was disclosed.

[28] The Lord Ordinary had in mind the guidance in *WM (DRC)* v *Secretary of State for the Home Department* (*supra*, at para 6). The principle was that material was to be assessed on its

own terms and a conclusion was to be reached via a consideration in the round. That is what was done. There was no assumption that material was to be taken as unaffected by previous negative findings; in each case it depended on what that material was and the findings.

Decision

[29] The requirement for permission to proceed with a petition for judicial review, which was introduced by section 27B(1)(b) of the Court of Session Act 1988, requires the first instance judge to decide, in terms of section 27B(2), whether "the application has a real prospect of success". As was said in *Wightman* v *Advocate General* 2018 SC 388 (LP (Carloway) at para [9]):

> "The new test is certainly intended to sift out unmeritorious cases, but it is not to be interpreted as creating an unsurmountable barrier which would prevent what might appear to be a weak case from being fully argued in due course. Of course the test must eliminate the fanciful, but it is dropping the bar too low to say that every ground of review which is not fanciful passes the test. It is not enough that the petition is not 'manifestly devoid of merit', since that, in essence, reflects the 'manifestly without substance' test adopted in *EY* [v *Secretary of State for the Home Department* 2011 SC 388]. The applicant has to demonstrate a real prospect, which is undoubtedly less than probable success, but the prospect must be real; it must have substance. Arguability or statability, which might be seen as interchangeable terms, is not enough ([*Scottish Civil Courts Review*], Ch 12, para 53). The substance, or the lack of it, is something which the court has to determine as a preliminary issue and not after a full consideration of elaborate pleadings. It is important therefore that those seeking permission are able to plead their cases accurately and, crucially, succinctly both in relation to the facts and the propositions in law."

As with petitions which are covered by the second appeals test in *Eba* v *Advocate General* 2012 SC (UKSC) 1, the error on the part of the decision maker should be readily identifiable from the averments in the petition. The reasoning behind the first instance decision, if it is one of refusal, should be capable of succinct expression following upon a consideration of

the papers and possibly a short oral hearing (see *SA* v *Secretary of State for the Home Department* 2014 SC 1, LJC (Carloway), delivering the opinion of the court, at para [44]).

[30] The court should not be engaged in an exercise of determining the merits of the petition. In reaching a decision on whether it has a real prospect of success, the Lord Ordinary will inevitably have to make some form of preliminary assessment of the merits. In this case, the Lord Ordinary concluded that there was no merit in any of the petitioner's challenges. He reached that view in the context, as he expressly phrased matters, of whether the test in section 27B of the 1988 Act had been met. That was an entirely legitimate approach to take.

[31] The language used in section 27D(2) is unusual in that it refers to an "appeal" from the "Court" to the "Inner House". The Inner House is a collective term which encompasses the two appellate Divisions. The Inner House does not hear "appeals" from the Lords Ordinary. The unitary structure of the court involves the Lords Ordinary hearing cases at first instance under delegated authority from the whole court. A person aggrieved with a subsequent decision is able to "reclaim" the case to the whole court, or rather, since 1808, to a Division of the court. Although the scope of a reclaiming motion has undergone some apparent narrowing as a result of decisions which deal with the review of fact (eg *McGraddie* v *McGraddie* 2014 SC (UKSC) 12; *Henderson* v *Foxworth Investments* 2014 SC (UKSC) 203), traditionally at least, a reclaiming motion was not an appeal from a lower to a higher court, but a rehearing of the case. The Lord Ordinary's judgment is only "a first indication of opinion, and the true disposal of the case is only when the reclaiming note is heard" (*Clippens Oil Co* v *Edinburgh and District Water Trustees* (1906) 8 F 731, LP (Dunedin) at 750).

[32] An appeal under section 27D of the 1988 Act requires to follow the same procedure as a reclaiming motion (RCS 58.10), but it is not a reclaiming motion. In the express terms of

the section, it is an "appeal". The question then is: what is the scope of that appeal? The parties were agreed that it was restricted to errors of law on the part of the Lord Ordinary. There is no basis for confining the scope of an appeal in this way. The statute does not do so. Judicial review is concerned about the legality of decisions and therefore involves determining whether the decision maker has made a material error in law which goes to the root of the question for decision (*RSPB* v *Scottish Ministers* 2017 SC 552, LP (Carloway), delivering the opinion of the court, at para [203] and citing *Wordie Property Co* v *Secretary of State for Scotland* 1984 SLT 345, LP (Emslie) at 347-348). An appeal from a Lord Ordinary to a Division of the court may involve a complaint that the Lord Ordinary erred in law, but that is not the sole basis for an appeal.

[33] Section 27D(3) of the 1988 Act requires the "Inner House" simply to consider whether to grant permission for the application to proceed. In doing so, subsection 27B(2) applies; ie the court may grant permission "only if it is satisfied that… the application has a real prospect of success". The import of this is that, on appeal, the Division will decide for itself whether it considers that there is such a prospect. Although it will no doubt afford the opinion of the Lord Ordinary due respect, it does not have to find an error, whether of law or fact, in that opinion before allowing an appeal and granting permission to proceed. Since the question is one that depends to a significant degree on impression informed by experience, it will be open to the Division simply to form a different view from the Lord Ordinary on whether the case has a real prospect of success. This interpretation is consistent with the terms of the Scottish Civil Courts Review (Ch 12 para 51) which envisaged that, on an appeal, the court would look at the petition "anew". It may also be seen as providing an additional safeguard for a petitioner, bearing in mind that the question is one that falls to be decided as a preliminary issue.

Merits

[34] The primary question for the respondent was to decide whether the production of the new material, which was proffered in the further submissions, amounted to a fresh claim in that it was significantly different from the material which had previously been considered. This, in turn, required the respondent to decide whether the combination of the old and new material created a "realistic prospect of success". The petitioner had previously been found not to be credible in relation to earlier claims which concerned her brother. In 2016 both the respondent and the First Tier Tribunal had later found her to be incredible in relation to her claim to be a lesbian, partly on the basis that she had not previously made any mention of a connection with lesbian groups and this new ground followed upon a the service of a notice of removal. The petitioner claimed to be in a relationship with a woman. She said that she was living with this woman, but she had previously said that she did not have a partner. She was unable to say what her partner's occupation was or what the name of their landlord was.

[35] The further submissions to the respondent consisted of the Uber driver's statement and the letters from various persons who were involved in the LGBT and other groups. The contention was that this material demonstrated that the petitioner's claim was correct (ie that the earlier credibility finding should be reversed). This was rejected by the respondent on the basis that little weight could be attached to either the Uber driver's evidence, because it was based on minimal contact with the petitioner, or the material from the LGBT groups, because, in so far as it related to the petitioner's sexuality as distinct from her attendance at the group meetings, it was based on what the petitioner had told the authors of letters. In all of this the respondent was engaged in an assessment of fact, and specifically the credibility

of the petitioner, which depended upon the weight to be attached to new material when set against the previous determination.

[36] The criticisms which are levelled at the respondent are, first, that she did not consider the evidence "in the round", but in a compartmentalised manner (cf *TF* v *Secretary of State for the Home Department* 2019 SC 81, Lord Glennie, delivering the opinion of the court, at para [39]). Secondly, the respondent had allowed the previous assessment of the petitioner's credibility to sway her judgment when that assessment had little relevance to the material from third parties (*ibid* para [49]; *WM (DRC)* v *Secretary of State for the Home Department* [2007] Imm AR 337, Buxton LJ at para 6). For the reasons which were given by the Lord Ordinary, there is no real prospect of the petition succeeding on either basis. The fact that a decision maker describes each piece of evidence separately does not mean that he or she does not ultimately look at the evidence as a whole. The process of converting the decision maker's reasoning into text will inevitably involve a consideration of the individual pieces before reaching a judgment on the totality. Although, in some cases, a decision on a petitioner's general credibility, or on her credibility in relation to certain specific matters, may not have much relevance to either her credibility on other matters or the reliability of third parties, in others it can play a significant part. A finding that a petitioner is generally incredible may have a bearing on whether a new, or developing, ground is to be believed. Where the source of third party information is the petitioner, that too may have a bearing on the assessment of the accuracy of that information. It was deemed to be important in this case, although not in relation to the objective evidence of the third parties about the petitioner's attendance at the groups.

[37] There is no identifiable error of law on the part of the respondent in the assessment of the weight to be attached to the new material. On that basis, there is no real prospect of the petition succeeding. The appeal is accordingly refused.

[38] The respondent has requested that the court should express a view on the time to be allocated for the hearing of an appeal against a refusal of permission to proceed, bearing in mind that the Outer House hearings are scheduled to last for a maximum of 30 minutes. The court will allocate appropriate time for such appeals, which will take into account the preliminary nature of the exercise which is being carried out by the court and the court's previous statements (*Wightman* v *Advocate General for Scotland* (*supra*)) that whether there is a real prospect of success is something which should be clear from the facts and the propositions in law contained in the petition itself.