EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

2020 CSIH 69
P64/20

Lord Glennie
Lord Woolman
Lord Doherty

OPINION OF LORD GLENNIE

in the Appeal

by

GK

Petitioner and Appellant

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Petitioner and Appellant: Caskie; MBS Solicitors
Respondent: McKinlay; Office of the Advocate General

24 November 2020

Introduction

[1] This is an appeal by the petitioner against the refusal of the Outer House judge to grant permission for her petition for judicial review to proceed. Permission is required in terms of section 27B of the Court of Session Act 1988 ("the 1988 Act").

[2] The petitioner is an Indian national. She lives in India. She has been widowed for some time and lives with her brother and his family. Her two daughters live in the UK. So do their children. In September 2019 the petitioner applied for Entry Clearance to permit

her to visit her daughters and their children in the UK. One of her daughters sponsored her application. The intended duration of her visit was for one month. Her visitor (or visit) visa application was accompanied by representations and about 180 pages of further material. The covering letter explained her domestic and living arrangements with her brother and that she was supported by him. It gave an account of her brother's source of income from buying and selling garments in his village, and explained why there was no documentary evidence relating to that business income. Her application was refused. The decision of the Entry Clearance Officer ("ECO") was dated 22 October 2019.

[3] In the decision letter, the ECO explained that he had refused her application for a visit visa because he was not satisfied that she met the requirements of paragraph V4.2 of Appendix V of the Immigration Rules (Appendix V contains the "Immigration Rules for Visitors").

The relevant immigration rules

[4] Before considering the explanation given by the ECO I should set out the terms of the relevant paragraph of the Immigration Rules for Visitors. This provides as follows:

> "**PART V4. ELIGIBILITY REQUIREMENTS FOR VISITORS (STANDARD)**
> V 4.1 The *decision maker* must be satisfied that the applicant meets all of the eligibility requirements in paragraphs V 4.2 – V 4.10. The *decision maker* must be satisfied that the applicant meets any additional eligibility requirements … [No additional eligibility requirements are relevant here]
>
> …
>
> **Genuine intention to visit**
> V 4.2 The applicant must satisfy the *decision maker* that they are a genuine visitor. This means that the applicant:
> **(a) will leave the UK at the end of their visit**; and
> (b) will not live in the UK for extended periods through frequent or successive visits, or make the UK their main home; and

> **(c) is genuinely seeking entry for a purpose that is permitted by the visitor routes (these are listed in Appendices 3, 4 and 5);** and
> (d) will not undertake any prohibited activities set out in V 4.5 – V 4.10; and
> (e) must have sufficient funds to cover all reasonable costs in relation to their visit without working or accessing *public funds*. This includes the cost of the return or onward journey, any costs relating to dependants, and the cost of planned activities such as *private medical treatment*."
>
> [Emphasis added to indicate the paragraphs relied on by the ECO in coming to his decision.]

References in para (c) to Appendices 3, 4 and 6 are references to Appendices to the Immigration Rules for Visitors. Appendix 3, headed "Permitted Activities for All Visitors", lists 25 such permitted activities, including Activity 3 (visiting friends and family and/or coming to the UK for a holiday). That appears to be the only relevant activity here. Appendices 4 and 5 deal with matters which are not in issue in this case, viz. Permitted Paid Engagements and Permit Free Festivals. It is unnecessary to set these out at length since the ECO's refusal letter identifies sufficiently the points about which he was concerned.

[5] It is worth noting that Part V4 of Appendix V sets out all the standard "Eligibility Requirements". It is placed after Part V3, which sets out "Suitability Requirements", and before Parts V5 onwards, which set out specific Eligibility Requirements for those falling into particular categories. None of those additional eligibility requirements apply to this case. Within Part V4 there are other paragraphs (V4.3 and V4.4) setting out certain rules applicable when funds, maintenance and/or accommodation are to be provided by a third party; and paragraphs identifying intended activities which are prohibited to a person entering the UK on a visit visa. No reliance was placed by the ECO on any of these provisions and it is therefore not necessary to set out their terms.

The refusal letter

[6] The ECO's decision letter of 22 October 2019 refusing the application was, so far as is material, in the following terms:

> "I have refused your application for a family visit visa because I am not satisfied that you meet the requirements of paragraph(s) V4.2 of Appendix V: Immigration Rules for Visitors because:
>
> You have applied for leave to enter the United Kingdom (UK) for 1 month to visit your daughter [Ms K]. You have provided documents from your sponsor and I take note of these as well as their ability to support your visit for the period requested. I am however not satisfied that your own circumstances are as stated and that you have demonstrated ties that will necessitate your departure from the UK at the end of your proposed visit for the following reasons:
>
> - You state that you are unemployed and in support of your application, you have provided a cover letter from your solicitor in UK. I take note of all that is mentioned in the cover letter, however, I have to consider your circumstances as well as that of any person(s) sponsoring your visit. It is therefore your responsibility to satisfy me that, they are such that if granted leave to enter, you will abide by all of the conditions attached to any such leave and that you will leave the UK on completion of the proposed visit.
>
> - You have also provided a personal joint bank statement along with your brother [Mr S] from the State Bank of India […] with a closing balance on 31/07/19 of INR230748.66 (£2514.18). The supporting information you have provided does not show the origin of the recent funds credited in this account, also they do not show the source of the funds held in the opening balance of this account. I note that your brother has indicated that you have his consent to access all of the funds in the joint account. The documents you have provided with your application do not demonstrate your [brother's] employment and family circumstances, for example what other family members he may support. As his economic circumstances are not clear I am therefore not satisfied that your income and economic circumstance are as stated by you.
>
> - I take note of the remittance receipts provided for money you have received from UK from your daughter [Ms K]. The documents you have provided demonstrate that you are also somewhat financially supported by your daughter in the UK. Conversely, it is evident that you have two daughters and at least one grandchild in the UK. The documents you have provided demonstrate that you are partially financially dependent on your daughter in the UK. Given that the majority of the members of your family you mention in your application reside in the UK and you are reliant on them financially, I am not satisfied that you have demonstrated strong family, social or economic ties outside the UK to demonstrate that you intend to leave the United Kingdom on completion of a short visit.

- I have taken into account the documents dating from 12/06/2018 regarding the police advice that your sponsor (daughter-Ms [K]) should not wish to travel at that time if you perceive a risk to your safety. There is no indication that any further advice was given after this document. Whilst I acknowledge the police advice dated June 2018, however, the documents provided do not demonstrate the present circumstances or whether that police advice from last year is still valid or not.

- I have assessed this application on its own merits based on the information contained in your visa application form and supporting documents provided. I also note your previous visa application and the concerns raised in the refusal notice.

In light of all of the above, I have refused your application for a visit visa. This is because, I am not satisfied that you meet all the requirements of paragraph V4.2 of Appendix V: Immigration Rules for Visitors and that - (a) you will leave the UK at the end of your visit or (b) that you are genuinely seeking entry for a purpose that is permitted by the visitor routes."

[7] As appears from the last bullet point, the petitioner had made an earlier application for a visit visa. That was in 2016. That application had also been refused.

[8] The essence of the ECO's reasons, distilled from the refusal letter and from the letter of 8 January 2020 sent on behalf of the Secretary of State in response to the petitioner's pre-action letter, is fairly clear: it was not clear to the ECO that the petitioner's brother in India had sufficient funds to be able to support her if she returned to India (bearing in mind the other family commitments he might have); and that, combined with a substantial part of the petitioner's family, social and economic ties being within the UK, meant that the ECO was not satisfied that the petitioner intended to leave the UK on completion of her visit. The relevance of the police advice to the sponsoring daughter that she should not travel to India (out of concerns for the safety of herself and her son if they were to travel there) was that this would explain why, so far as that daughter and her child were concerned, they had to meet in the UK rather than India; but that police advice was over a year old by the time the ECO came to make his decision and the ECO was uncertain whether it was still valid.

The petition and answers – and oral argument

[9] The petition seeks reduction of the decision of 22 October 2019 refusing the visa application. The grounds on which the decision is challenged run to many separate paragraphs in the petition. Some grounds focus on specific points. For example, in Stat 9 attention is drawn to the use by the ECO of the word "necessitates" in saying that he was not satisfied "that you have demonstrated ties that will **necessitate** your departure from the UK at the end of your proposed visit" [emphasis added]. It is said that this shows that he applied the wrong test. More generally, criticism is made of the manner in which the ECO dealt with the petitioner's submissions and evidence about her means of subsistence both in India and in the UK. It is said, in short, that the petitioner answered the questions set out in the relevant application form. She gave all the information she was required to give and more. Yet the ECO went beyond that and refused permission on grounds which were not foreshadowed in the application form. For example, he said that he was not satisfied about the economic, financial and family circumstances of the petitioner's brother with whom she lived in India. The documents provided did not demonstrate his employment and family circumstances, "for example what other family members he may support". Information about such matters was not requested in the application form. Had it been requested, it could have been provided. The nub of the complaint is set out in Stat 14 of the petition:

> "It was said [in the refusal letter] the Petitioner had shown she was partially financially dependent on her UK relatives and had not demonstrated she had "*strong family, social or economic ties outside the UK to demonstrate that you intend to leave the UK on completion of a short visit*". The Petitioner is a 53 year old widow who, as is a social norm on the sub-continent, lives with her brother. Whilst she has income deriving from the UK she also has all of her expenditure in India as demonstrated by her holding savings. The ECO again relied upon the absence of evidence in respect of matters the Petitioner had not been asked about. The ECO reached a distorted view of the evidence by only considering matters against the Petitioner and not those in

> her favour and that she had not been asked about. Procedural fairness required the ECO to provide an opportunity for the Petitioner to address the ECO's previously unnotified concerns. In failing to proceed with procedural fairness, the ECO erred in law."

That passage concerned the conclusions drawn by the ECO about the petitioner's income and expenditure in India and the UK. But a similar complaint is made about the way in which the ECO treated the evidence in the police advice letter of June 2018. Had the ECO made it clear to the petitioner that he was uncertain as to the present status of that police advice the petitioner could easily have set his mind at rest, as was demonstrated by the lodging of a further email from the police dated 28 October 2019 produced in answer to a request made to them in light of the ECO's concerns. In his oral submissions Mr Caskie, for the petitioner, drew attention to this police email not as further material which should have been considered by the respondent – he accepted that the respondent was not bound to consider further evidence after a decision had been made – but rather to illustrate the point that had the ECO raised the matter with the petitioner before reaching his decision the petitioner would readily have been able to provide him with a satisfactory answer. The same applied, he submitted, to the other (mainly economic and financial) matters on which the ECO had expressed uncertainty and on the basis of that uncertainty to conclude that he was not satisfied that the petitioner would return to India. The substantial complaint throughout was of a lack of procedural fairness. As to the meaning of and requirement for procedural fairness, reference was made to *Balajigari* v *Secretary of State for the Home Department* [2019] 1 WLR 4647 at paras 55-61 and *YHY (China)* [2014] CSOH 11 at paras [20]-[21], applying *Oke, Petr* [2012] CSOH 50.

[10] The respondent's response is set out fully in the Answers to the Petition. It is not necessary to go through them point by point. In essence what the respondent says is that

the petitioner knew what she had to establish and knew that she would have to satisfy the ECO, amongst other things, that she would have adequate resources to support herself if she returned to India and therefore that she would be willing to return there at the end of her visit. The relationship between the petitioner's finances and those of her brother was obvious from the basis upon which the application was presented by the petitioner. The petitioner was aware that her brother's financial position was relevant. The petitioner's application was presented on the basis that she was financially supported by her brother. The covering letter which submitted the petitioner's application contained extensive comments regarding the support which the petitioner received from her brother. It was for the petitioner to provide such information as she considered relevant. There was no procedural unfairness. The respondent was under no obligation to enter into an exchange of correspondence in relation to visa applications or to invite the submission of further evidence before making a decision. The same was true of the point about the police advice, though this did not form an essential point in the ECO's reasoning. The petitioner's argument amounted to no more than a disagreement with the ECO's decision. If the petitioner considered that further relevant information could be provided, her remedy was to make a fresh application for a visa. Judicial review was not available if there were no practical consequences arising from success: *Conway* v *Secretary of State for Scotland* 1996 SLT 689 at 690F, *JM* v *SSHD* [2011] CSOH 174 at paragraph [18], *Marco's Leisure Ltd* v *WL District Licencing Board* 1994 SLT 129. Reduction of the refusal letter would not serve any practical purpose here. It would not result in the petitioner being granted a visit visa. It would simply result in her application being reconsidered. The petitioner was already in a position to submit a fresh application for a visit visa and could lodge such further documentation in support of her application as she thought necessary in light of the grounds for refusal.

[11] In response to this last point, Mr Caskie accepted that it was open to the petitioner to make a new application and in support of it to submit such further evidence as appeared necessary. But this was already her second application. Her previous refusals would likely count against her. If, as he submitted, the ECO should, as a matter of procedural fairness, raise with the applicant any issues which had not already been flagged up in the application documentation, it was important that that be made clear. Otherwise there was a real danger of the same thing happening over and over again, in this case and in others.

Decision and reasons

[12] This is an appeal in terms of section 27D(2) of the 1988 Act from the decision of the Lord Ordinary refusing an application by the petitioner for permission to proceed with the application (the petition). The Lord Ordinary refused permission on the ground that success by the petitioner would have no practical consequences for her, since she could in any event make a new application and submit further evidence. He did not otherwise consider the substantive grounds for review or the procedural unfairness point. But it is unnecessary for this court to consider whether the Lord Ordinary has erred in law or committed some other error justifying interference with his decision. This court must consider the matter *de novo*. It requires simply to consider whether it should grant permission for the application to proceed: see section 27D(3), *PA* v *Secretary of State for the Home Department* 2020 SLT 889, at para [33]. It may do so only if it is satisfied that "the application has a real prospect of success": section 27B(2). As was explained in *Wightman* v *Advocate General* 2018 SC 388 at para [9], that means that:

> "[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 …."

Assessment of whether that test is met depends to a significant degree on impression informed by experience: *PA* v *Secretary of State for the Home Department, supra,* paragraph [33]. That assessment may differ from judge to judge. That is why there is an unfettered right of appeal from a refusal of permission by the Lord Ordinary, to ensure that no case with a real prospect of success is blocked at the permission stage.

[13] One point should first be mentioned if only to be put to one side. The time limit for lodging the petition for judicial review is three months beginning with the date on which the grounds giving rise to the application first arise or such longer period as the court considers equitable having regard to all the circumstances: section 27A of the 1988 Act. The petition was lodged one day after the expiry of the three month period. The reasons for that error are explained in the petition. The respondent does not argue that the petition should be refused solely on the ground that it was late; nor would the Lord Ordinary have refused permission to proceed on that basis. The matter was not raised before us and we should proceed on this point on the same basis as the Lord Ordinary.

[14] There are two main arguments to consider. First, does the petitioner have a sufficiently arguable case on the merits? Second, would the petition serve any practical purpose, given that the petitioner can always make a further application for a visit visa? On each of these issues the question for the court at this stage is not whether the petitioner will ultimately succeed; it is simply whether what is set out in the petition justifies the conclusion that there is a real prospect of success.

[15] I am satisfied that the petitioner has a real prospect of success on the first point sufficient to justify the grant of permission to proceed. Her contention, put short, is that it was procedurally unfair of the ECO to base his decision on perceived omissions from the

material placed before him without raising those matters with the petitioner and giving her an opportunity to deal with them. The petitioner is able to point to case law (cited above) which suggests that a failure to provide the applicant with the opportunity to comment on matters of concern to the ECO, to see whether there are answers which could readily be given to alleviate such concerns, may amount to procedural unfairness. Against that it can be said that none of those cases concerns the grant of visit visas. These are routine decisions and an applicant can apply again if unsuccessful – there is therefore no need for such procedural constraints and, in any event, it would be unduly burdensome to place such an obligation on an ECO considering the application. Those arguments might well succeed, but it is, in my view, going "too far too fast" (to borrow a phrase from *S* v *Scottish Ministers* [2020] CSIH 64 at para [19]) to say at this stage that they are insurmountable. And if ultimately it is to be decided that the ECO is under no such obligation, better that that decision be made in an Opinion delivered after full argument than in a ruling after relatively brief submissions on an application for permission to proceed.

[16] As to the second point, I consider that it is highly arguable that the petition, if successful, would serve some practical purpose. The burden on this point is on the respondent, and for this purpose it must be assumed that the petitioner is successful on the procedural unfairness point. If the court was persuaded that the ECO was required as a matter of procedural fairness to give the applicant an opportunity of dealing with matters of which she was previously unaware, and of answering questions on matters concerning the ECO of which she had had no prior notice, that in all probability would result in the reduction of this particular refusal; but it would also provide guidance to ECOs in dealing with any further application by the petitioner and others in her position. Again, the point

need not be decided at this stage, but in my view it is much too early to conclude now that the relief sought would serve no practical purpose.

[17] Since writing this Opinion I have read in draft the Opinion to be delivered by Lord Doherty. I note that he too would grant permission to proceed with the application for judicial review. While I see the force of what Lord Doherty says about the ambit of the common law rules about procedural fairness, it is in my view premature, at the stage of considering permission to proceed, to rule definitively on the precise scope of that duty in the context of visit visa applications. For my part I would leave such matters to be decided in light of full argument on the hearing of the petition.

[18] In the circumstances, I would allow the appeal, recall the interlocutor of the Lord Ordinary, and grant permission for the petition to proceed.

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OPINION OF LORD WOOLMAN

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24 November 2020

[19] I would have refused permission to proceed.

[20] I conclude that the petitioner's case is no more than stateable. In my view she has failed to demonstrate that it has a real prospect of success. Further it would not serve a practical purpose. She ought to make a fresh application for a visitor's visa.

[21] As your Lordships take a different view and the proceedings are only at the permission stage I shall say no more. The issues for determination are best left to the Lord Ordinary.

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[22] I am grateful to his Lordship in the chair for setting out the background to this case, the relevant parts of the Immigration Rules, the submissions of counsel, and his identification of the issues. I respectfully agree with most of his Lordship's observations on the background, and the issues, but I make additional observations on those matters below. I agree with his Lordship's view on the timebar question. I also agree that permission to proceed should be granted, and with his Lordship's proposed disposal of the appeal, but my reasons do not wholly coincide with his Lordship's reasons.

[23] Part of the context of the 2019 application is that the petitioner had previously applied for a visit visa in 2016 to visit her two daughters and their children in the UK. The 2016 application disclosed that the petitioner resided with her brother and his family, and that she was employed as a domestic help by two other households and earned 10,000 Indian Rupees ("INR") a month. On 26 October 2016 the application was refused for the following reasons. First, letters from the petitioner's employers contained no indication that she had been given time off to visit the UK. The ECO noted:

> "In fact it appears from the wording that you have resigned. It is unclear then what your intention is after 3 or 4 months. I am not satisfied that you have accurately presented your circumstances or intentions in wishing to enter the UK and so your application for a visit visa has been refused under paragraph V4.2(a)."

Second, the ECO was not satisfied that the petitioner had demonstrated that she intended to leave the UK and return to India following her proposed visit. In that regard he noted that the petitioner had not satisfactorily evidenced any property or assets to return to and had not satisfactorily evidenced strong family, social or economic ties to India. Third, he was not satisfied that sufficient funds were available to the petitioner to cover her costs while in the UK without working or accessing public funds so the application was also refused under paragraph V4.2(e).

[24] The application of September 2019 disclosed that the petitioner was now unemployed. The visa application form requested *inter alia* the following information:

> "Total amount of money that you get in a year
>
> Total amount that you spend each month
>
> Money planning to spend on visit to UK"

In response to each of the first two requests the petitioner's agent inserted "1.0 INR". In response to the third request he inserted "£1.0". The application was accompanied by a

covering letter; very brief affidavits from the petitioner, her daughter Ms K, and her brother; a letter from her daughter Ms R; and a number of other documents. The covering letter explained:

> "The application form requires precise details about how much the Applicant intends to spend, how much she spends on a monthly basis etc. The reality is that the answers are not fixed and there is no space in the application form for that to be explained. Nominal amounts have been put into the application form to bypass those parts of the application so they can be explained here."

The information provided was that the petitioner lived rent free with her brother and his family, and that, as well as her accommodation, he provided her with food, healthcare and any money she required; and that her brother carried on business buying and selling garments in the village in which they lived. One of the accompanying documents was a statement of the petitioner's bank account showing transactions during the six months to 26 August 2019. Only the petitioner's modest widow's pension of 750 INR per month (about £8) was paid into that account. The closing balance was 898 INR (about £11). One of the other documents was a statement relating to a joint bank account in the name of the petitioner and her brother. That was also dated 26 August 2019 and it showed debits and credits for the preceding six month period. There had been five deposits, the two largest being a deposit of 44,883 INR on 9 April 2019 and a deposit of 25,000 INR on 11 June 2019. The balance on 27 February 2019 had been 270,646.62 INR, and the balance on 26 August 2019 was 230,748.66 INR (about £2,584). The covering letter explained that the sums in the account came from two sources, the business operated by the petitioner's brother and money remitted by Ms K to assist the petitioner financially. Her brother's business transactions were cash trades, and because of that no "physical evidence" relating to them could be provided, nor could it be vouched that any particular payments into the account were proceeds of the business. The information contained no specification of his earnings,

or of the amounts he spent supporting the petitioner, or of his other outgoings. On the other hand evidence was produced vouching Ms K's money transfers to the petitioner. This showed that between September and December 2018 £520 was remitted to her. That was approximately the same amount as, and the covering letter suggested it was likely to have been the source of, the deposit of 44,883.04 INR in the joint account on 9 April 2019. The petitioner was free to draw on the joint account as and when she required to. The material also confirmed that Ms K would support the petitioner financially during the visit, and that she would not require to call upon public funds. Ms K's financial resources were vouched. That evidence confirmed that Ms K had sufficient resources to support the petitioner financially during her visit and that she was in a position to provide her with accommodation. Finally, the covering letter explained that Ms K had had an acrimonious divorce. She maintained that on 29 April 2018 there had been threats to her safety and the safety of her son by her ex-husband and members of his family if she travelled to India in the future. Vouching of her complaint to the police about these threats was produced. An email from Police Scotland dated 11 June 2018 advised her that she should not travel to India if she perceived that her safety and her son's safety would be at risk there. The police investigated the incident and submitted a report to the procurator fiscal, but on 11 June 2019 the fiscal indicated that there was insufficient evidence to proceed with a prosecution because there was no corroboration of her account.

[25] The 2019 application met one of the concerns which had led to refusal of the 2016 application. The material relating to Ms K's resources showed that sufficient funds would be available to the petitioner to cover her costs while in the UK without working or accessing public funds. The ECO appears to have accepted that.

[26] Following the refusal in 2019 the petitioner obtained additional material, including (i) a further affidavit from her brother dated 16 November 2019 in which he estimated his earnings to be about 15,000-20,000 INR per month (but no details of his outgoings were provided in the affidavit); and (ii) a further email from Police Scotland dated 28 October 2019 which repeated the advice that the petitioner should not travel to India if she perceived there would be a safety risk there. The additional documents have been lodged as productions. However, it is common ground that for present purposes the only relevant documents are those which were before the ECO.

[27] The petition challenges the refusal on a number of grounds of substantive review (including irrationality and the leaving out of account of relevant considerations), and on the ground of procedural unfairness, but at the appeal hearing both parties submissions concentrated on the latter ground. I shall do likewise.

[28] Generally those making administrative decisions ought to have regard to procedural fairness. Persons directly interested and affected by a decision ought to have some opportunity to participate in the decision-making process. What is required by way of procedural fairness in a particular case is an objective matter and a question of law, but the content of the obligation depends very much upon the subject-matter and context of the decision in question (see eg *Lloyd* v *McMahon* [1987] AC 625, Lord Bridge at p 702; *R* v *Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531, Lord Mustill at p 560). Where a decision may impinge upon a directly affected party's rights, what is needed by way of procedural fairness is likely to be greater than where an applicant is seeking the grant of a discretionary right or permission. Similarly, the more serious the consequences of an adverse decision for an affected party, the more that fairness is likely to require by way of their participation in the process.

[29] Here the application was for a visit visa. I am conscious that at this stage the court should not be engaged in an exercise of determining the merits of the petition (*PA* v *Secretary of State for the Home Department* [2020] CSIH, 2020 SLT 889, paragraph [33] of the Opinion of the Court delivered by Lord President Carloway). The issue is whether permission should be granted. If it is, the Lord Ordinary will adjudicate upon the merits, including the complaint that there has been a breach of procedural fairness. That of course will be the correct time to arrive at a definitive view on those matters. However, in deciding whether the petition has a real prospect of success I have found it necessary to make a preliminary assessment of the merits (*PA* v *Secretary of State for the Home Department*, *supra*, paragraph [33]). The following observations should be read in that light.

[30] Foreign nationals are not entitled as of right to be granted a visit visa. Generally, the consequences of a refusal are not particularly serious. The applicant is outside the UK. The refusal to grant the visa does not involve rights being removed from him, or him being removed from the UK, or him becoming subject to the serious consequences associated with becoming an overstayer. I incline to the view that that makes the circumstances of most visit visa applications readily distinguishable from the circumstances in cases such as *Balajigari* v *Secretary of State for the Home Department* [2019] 1 WLR 673, *YHY (China)* v *Secretary of State for the Home Department* [2014] CSOH 11, and the recent decision of the UKSC in *R (Pathan)* v *Secretary of State for the Home Department* [2020] UKSC 41.

[31] It is an applicant's responsibility to provide sufficient information to enable the visa application to be granted. An applicant has available to him the terms of Appendix V of the Immigration Rules which make clear the matters which he has to demonstrate. He participates in the decision-making process by submitting the application with sufficient information to demonstrate all of the relevant matters. In the normal case procedural

fairness does not require that the decision-making process be an iterative one. The ECO is not usually bound to seek supplementary information from an applicant where the material contained in the application is insufficient to satisfy him that the application should be granted. Nor is he normally obliged to inform an applicant of difficulties with an application which make him minded to refuse it. Rather, the application should make the case for entry clearance, and if the ECO is not satisfied by it, ordinarily he is entitled to refuse it without more ado. His reasons for refusal will indicate why it failed. If the applicant is in a position to supply further material which may address the problem or deficiency his remedy is to submit a new application. The limited content of the requirements of procedural fairness in such circumstances reflects the relatively routine nature of the application, what is at stake for the applicant, and cogent considerations of good administration.

[32] However, even with visit visas there may be exceptional cases where procedural fairness may require an applicant to be given an opportunity to address a perceived problem before the application is determined. An example may be where an ECO proposes to refuse an application on the basis of extrinsic information of which he has become aware (cf *R (Pathan)* v *Secretary of State for the Home Department, supra*). Other examples may be where the ECO doubts the applicant's veracity, or the authenticity of documents submitted by him, or he attributes other reprehensible conduct to him; or where the reason for refusal is something which the petitioner could not reasonably have anticipated that he needed to address in order to demonstrate that the requirements of the relevant provisions of Appendix V were satisfied. These are merely examples - they are not intended to represent an exhaustive list of the sort of cases where procedural fairness may require that there be some form of iterative process.

[33] I return to the petitioner's application. If it was clear that it was simply a case of the information which the petitioner provided not being sufficient to satisfy the ECO that the relevant criteria were met I do not think that it would be seriously arguable that procedural fairness required the ECO to alert the petitioner to the insufficiencies before the decision was made. It would just be a case of the application being deficient, and the deficiency would be the petitioner's responsibility. If the sole issue had been insufficient information about her brother's circumstances I do not think that there would have been an argument of substance that the ECO was obliged to alert the petitioner to the deficiency. The fact that the ECO would wish to know about her brother's circumstances should not have been a surprise. It ought to have been clear to the petitioner from the terms of Appendix V (and, indeed, from terms of the 2016 refusal) that the strength of her family, social or economic ties with India were an important consideration; and that her relationship with her brother and his family, and his ability to provide her with support and subsistence, were relevant and material matters. Nor do I think there is an argument of substance that the ECO was obliged to ask the petitioner if the police advice which had been given in June 2018 remained applicable in October 2019. It was for the petitioner to place information before the ECO which was up-to-date. If it was not, it was obvious that she would run the risk that the ECO might take the view of it which she in fact took.

[34] However, in my opinion the matter does not end there. Not without some hesitation, I am persuaded that there may be an argument of sufficient substance that the ECO made a finding about the veracity of the petitioner. The ECO was "not satisfied that [the petitioner's] own circumstances are as stated" and she was "not satisfied that [the petitioner's] income and economic circumstance are as stated by you". In those circumstances in my opinion it is seriously arguable that procedural fairness required that

the ECO raise her veracity concerns so that the petitioner had an opportunity to address them before the decision was made.

[35] I respectfully agree with your Lordship in the chair that it would not be right to conclude at this stage that the availability of the option to submit a further application means that the petition would serve no practical purpose. I agree that there is a serious argument to the contrary. If the petition is permitted to proceed the court will have the opportunity to clarify the content of the requirements of procedural fairness in the circumstances which are admitted or established. No such clarification will be provided if permission is refused. Moreover, in my view the petitioner has advanced an argument of sufficient substance that the 2019 refusal and the 2016 refusal may count against her when any new application comes to be considered. The terms of the 2019 decision suggest that the fact of and reasons for the 2016 refusal were matters which the ECO had regard to, and that those matters tended to count against the petitioner, when the 2019 decision was made. I am not disposed to discount at this juncture the possibility that the refusals of 2016 and 2019 may have some influence on the determination of any further application.