IAC-AH-PC-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00166/2013

THE IMMIGRATION ACTS

Heard at FIELD HOUSE	**Determination Promulgated**
On 16th September 2014	**On 26th November 2014**

Before

UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

H B
ANONYMITY ORDER MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Nathan (instructed by Lawrence Lupin)
For the Respondent: Mr C Avery (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is a resumed hearing following a decision made on 1st October 2013 that there was a procedural irregularity amounting to an error of law by the First-tier Tribunal (FTT). The issue for us is whether or not there is evidence that Article 1F (UN Convention on the Status of Refugees 1951) applies so as to exclude the Appellant from refugee status. The First-tier Tribunal allowed his appeal under Article 3 ECHR

and the Respondent accepts that the same findings would make the Appellant a refugee if he is not found to be excluded from the Refugee Convention.

2. The Appellant whose date of birth is 25.6.1979 is a citizen of Tunisia.

3. The facts as preserved are set out in the First-tier determination at paragraphs 33 - 41. In summary the Appellant was found to be credible as a member and an informer for the governing Regroupment Constitute Democracy ("RCD") in Tunisia. His role at a local level from May 2003 to December 2007 was to give information to the police and party officials about local criminals and political opponents of the regime. Before the First-tier Tribunal he established that he faced a real risk of persecution in Tunisia following a change in the regime because of these activities, which had led to people being arrested and imprisoned, some of whom may have been interrogated and tortured. The First-tier Tribunal found that he was a target for revenge by those imprisoned during the regime.

Preliminary issue

4. We rejected Mr Avery's application to admit further country evidence on Tunisia. The Secretary of State had ample opportunity to apply for further evidence to be adduced for the hearing, and to do so at such a late stage, on the day of the hearing, was not procedurally correct, additionally so in the context of the number of adjournments there have been in this matter. Mr Avery conceded that the new materials added little and we declined to accept them.

Key issues

5. The relevant evidence relied on by the Respondent is set out in a skeleton argument dated 23rd October 2013 [6-9]. The Respondent argues that Article 1F(a) is engaged on the grounds that the RCD carried out crimes against humanity, specifically torture, of which the Appellant was aware when pursuing his informant activities. Reliance was placed on three sources of evidence; the Appellant's own account and admissions as established in the preserved findings, the reports of the expert country witness, Professor Seddon, and a letter dated 7th January 2013 from an official from the RCD in Sousse (the RCD letter).

6. In his witness statement dated 9th January 2013 the Appellant confirmed that he informed on criminal and political dissidents over a period from May 2003 to December 2007, and that they were aware of his activities. He was at risk from revenge following the Jasmine revolution. The Appellant had been found credible as an informer.

7. Professor Seddon at 4.11 relied on the letter from the former head of the RCD, which he found to be genuine and which confirmed that the Appellant provided daily reports about the movements and work of criminals and opponents to the regime. Professor Seddon's further report dated 11.4.13 at 2.10, states "it could be argued … with some degree of justification – that he was probably aware even at the time of

what might happen to those on whom he informed. Certainly the regime was considered by some to be oppressive."

8. The RCD letter confirmed that the Appellant was an informer and that "he was providing daily reports on some fanatic religious cells and networks who were working on destabilising the regime, not to mention that he was stalking and tracking using all available vehicles and funds whenever the need arises in order to facilitate his mission in this purpose." It further stated that the Appellant was at risk because his informant activities had led to "the arrest of some criminals and opponents to the regime, and led them to interrogation, torture and infringement of their personal affairs…".

9. The Respondent argues that the Appellant falls within the category of an accessory in the commission of crimes under Article 7(1) of the Rome Statute of the International Criminal Court (the ICC Statute). The weight of the evidence from the Appellant, the preserved findings from the Tribunal and Professor Seddon's report meet the "serious grounds" test required in **JS(Sri Lanka) v SSHD (2010) UKSC 15.**

10. We received a skeleton argument dated 2nd September 2014 from the Appellant in response. The Appellant's expert witness, Professor Seddon, did not in the event attend to give evidence before us but we have taken into account his two reports. The supplementary report dated 11th April 2013 specifically deals with the issues pertinent to Article 1F and sets out Professor Seddon's view that the private media was highly constrained and that most of the Tunisian population went about its business without any deep seated fear and anxiety. The country was regarded as an ideal holiday destination and there was little concern about the repressive regime. Mr Nathan relied on **JS(Sri Lanka) v SSHD (2010) UKSC 15, AA(Art 1F(a) complicity-Arts 7 and 25 ICC Statute) Iran [2011] UKUT 00339, MT(Zimbabwe (Article 1F(a) aiding and abetting)[2012] UKUT 00015.** The Appellant admits to informing at a local level but denies that he knew or was aware that those arrested would be tortured.

The Law

11. The terms of Article 1F are reflected in Article 12(2) of the Qualification Directive, the provision under which the appellant seeks to be recognised as a refugee.

12. Article 1F(a) of the Refugee Convention states:

> The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

13. In **JS(Sri Lanka)** Lord Brown said that when considering whether an applicant is disqualified from asylum by virtue of crimes against humanity under Article 1F(a)

the starting point should be the Rome Statute of the International Criminal Court ("the ICC Statute"). The relevant definitions from the ICC Statute are set out below:

"**Article 7 - Crimes against humanity**

1. For the purpose of this Statute 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

   (a) Murder;

   (b) Extermination;

   (c) Enslavement;

   (d) Deportation or forcible transfer of population;

   (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

   (f) Torture;

   (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

   (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, on other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

   (i) Enforced disappearance of persons;

   (j) The crime of apartheid;

   (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

   (a) 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(e) 'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; ...

(g) 'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity ...".

"Article 25

Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute:

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime ...".

14. The case law on Article 1F is set out fully in both skeleton arguments. The leading case is **JS(Sri Lanka)** where at [30-40] Lord Brown sets out the correct approach and interpretation of Article 1F as follows:

    a) Is there evidence of crimes falling within the scope of Article 1F and as defined in Article 7(1) of the **Rome Statute of the International Criminal Court**;

    b) Recognition that criminal responsibility can be engaged by persons other than the person actually committing the crime, by reference to Article 25(3) of the Rome Statute;

    c) The expression of the **Statute of the International Criminal Tribunal** on the former Yugoslavia that such other persons include anyone who *"planned, instigated, ordered, committed or otherwise aided or abetted in the planning, preparation or execution"* of the crime in question;

    d) The key test to establish if an individual as an accessory is excluded is set out at [38]. Whether the evidence establishes that **"there were serious reasons for considering him voluntarily to have contributed in a significant way to the organisation's ability to pursue its purpose of committing war crimes, aware that his assistance would further that purpose".**

15. Lord Brown [30] identified factors to be taken into account when assessing an individual's involvement in an organisation said to be engaged in crimes against humanity such as to show complicity on the part of the individual.

16. In **MT (Article 1F (a)–aiding and abetting) Zimbabwe [2012] UKUT 00015(IAC)** the Tribunal held in the context of exclusion under Article 1F(a) of the 1951 Refugee Convention (Article 12(2)(a) of 2004/83/EC (the Refugee Qualification Directive)) that (i) The requirement set out at Article 7(1) of the ICC Statute that acts be "…committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack" ("the chapeau requirement") is an essential element in the definition of a crime against humanity. (ii) In principle the question of whether acts are "…committed as part of a widespread or systematic attacks directed against any civilian population.." is a matter that could be dealt with in future country guidance cases; although the question of whether there exist acts with such a nexus must ultimately be decided on a case-by-case basis. (iii) Commission of a crime against humanity or other excludable act can take the form of commission as an aider and abettor, as a subsidiary (or non-principal) form of participation. To quote from **MT** at paragraph 119:

> "Aiding and abetting differs from joint criminal responsibility (jce) in that whilst the former generally only requires the knowledge that the assistance contributes to the main crime, participation in jce requires both a common purpose and an intentional contribution of the participant (Triffterer, pp. 756-758) to a group crime. Aiding and abetting encompasses any assistance,

physical or psychological, that has a substantial effect on the commission of the crime. Article 2 para 3(d) of the 1996 Draft Code requires that aiding and abetting should be "direct and substantial", i.e. the contribution should facilitate the commission of a crime in "some significant way". The Trial Chamber in Tadic II, the Trial Chamber in the Prosecutor v Naletilic and Martinovic (IT-98-34) cases and the Appeal Chamber in Prosecutor v Akeyesu (Case No. IT-95-14/l-T), paras 484, 706) interpreted "substantial" to mean that the contribution has an effect on the commission, that is have a causal relationship with the result and it included within the concept "all acts of assistance by words or acts that lend encouragement or support". In Prosecutor v Furundzija (IT-95-17/1-T, 10 December 1998), paras 199, 232, 273-4, the Trial Chamber said that assistance need not be tangible: "moral support and encouragement" can suffice, albeit it must "make a significant difference to the commission of the criminal act by the principal": see also Prosecutor v Brdanin (IT-99-36-A, Appeal Chamber, 3 April 2007) and Prosecutor v Perisic (IT-04-81-T, 6 September 2011). The requisite knowledge may be inferred from all relevant circumstances, i.e. it may be proven by circumstantial evidence (Prosecutor v Tadic, para 689; Prosecutor v Akeyesu para 498)."

17. We also had regard to **Al-Sirri [2012] UKSC 54** which clarified the standard of proof in Article 1F cases as "serious reasons for considering".

Background material

18. The Respondent relied on the US State Department report on Tunisia May 2012 when considering the appellant's claim for asylum. No further background material was specifically relied on in the skeleton argument for this hearing, other than that which highlighted the difficulties faced by RCDists after the Jasmine revolution. We have regard to the Report of the Special Rapporteur on Torture following a visit to Tunisia between 15-22nd May 2011. We set out the relevant extracts below:

1. Endemic practice of torture and ill-treatment

26. The Special Rapporteur received many reports and testimonies indicating that the Ben Ali regime was marked by widely reported cases of torture and ill-treatment. The systematic practice of torture and ill-treatment was deeply entrenched and institutionalized within the security sector, with torture being practiced and abetted by law enforcement officials, the former State Security Department (DSS, also known as the "political police"), Ministry of the Interior personnel and prison staff, with complete impunity.

27. Torture and ill-treatment was pervasive in detention centres, particularly in the DSS. The Special Rapporteur received testimonies and reports indicating that torture was orchestrated by the DSS under the authority of the Ministry of the Interior and practiced by all police forces. Certain victims were reportedly kept in custody and subjected to various forms of torture within the Ministry of the

Interior headquarters itself.

28. In addition, according to various sources, the use of torture intensified after the entry into force of the counter-terrorism legislation of 10 December 2003 (Law No. 2003-75).

29. The Special Rapporteur heard credible testimonies about a pattern of a lack of timely and adequate investigation of torture allegations by prosecutors or investigative judges.

2. Political prisoners

30. The Special Rapporteur received information indicating that the overwhelming majority of persons convicted for politically motivated offenses in Tunisia, some arrested under the 2003 anti-terrorism law, were reportedly sentenced by military courts to life imprisonment after unfair trials marred by allegations of torture and other ill-treatment.

31. The Government announced on 19 February 2011 that all political prisoners had been released and that others had been awarded conditional release or a presidential pardon. The Special Rapporteur is concerned that while some of the detainees of the Ben Ali period may have benefitted from the general amnesty, [1] there is no strategy in place to hold the perpetrators of past violations accountable and to ensure reparation and effective remedy. No programme of remedies, including the means for as full rehabilitation as possible, were contemplated by the interim Government at the time of the visit.

3. Impunity

32. The Special Rapporteur was informed that complaints of torture were rarely investigated under the Ben Ali regime. [2] The judiciary has reportedly been tightly controlled by the executive branch. In the majority of cases, the investigating judge would refuse to register complaints of torture out of fear of reprisals, and complaints lodged by victims to the prosecution were almost always dismissed immediately. [3] The practice of admitting a confession obtained under torture into evidence was widely practiced by judges. In addition, forensic assessments generally were not conducted or, if they were, their credibility was undermined by many deficiencies or falsified conclusions.

33. The Special Rapporteur learned that during the period from 1999 to 2009 (September), 246 police officers were prosecuted for ill-treatment and misconduct. Out of 246 initiated prosecutions, 228 final judgments were handed down during the same period.

Reportedly, only seven criminal convictions for acts of torture and ill-treatment were handed down against law-enforcement and prison officials under article 53 of the statute of the Internal Security Forces.

4. Safeguards

35. The previous regime permitted no independent oversight of places of detention, with the exception of granting ICRC access to prisons as of 2005. After the revolution, the interim Government opened the prisons up to external inspection by international, and some national, human rights organizations.

75. The Special Rapporteur has learned that several hundred cases relating to torture and ill-treatment committed during the Ben Ali regime were filed with the Prosecutor's office. The legacy of the dependence of the judiciary on the executive and the lack of response regarding the status of their complaints have triggered some disgruntlement among the victims. The Special Rapporteur regrets that there is no clear strategy or timeline for addressing the huge backlog of cases and preserving the evidence of torture and abuse subject to adjudication as a matter of transitional justice. Furthermore, no official or institution seems to be in charge of these cases, nor of informing the public about the status of the complaints. The judiciary and the Prosecutor's office currently lack the capacity to process the volume of cases of torture and ill-treatment. Moreover, there does not seem to be a plan to provide legal assistance to victims interested in filing complaints.

76. A general mood of dissatisfaction with the remedial efforts prevails, coupled with frustration with the lack of public information as to the charges and status of those arrested and subjected to trial. The Special Rapporteur also heard consistent allegations that some representatives of the previous regime and high-ranking officials who have been responsible for perpetrating torture are still at large. The fact that some hold positions of power continues to jeopardize efforts to reform the entire system, and generates public frustration regarding accountability."

The hearing

19. The Appellant gave oral evidence and relied on his witness statements. In his statement dated 16.9.2014 he denied knowledge and awareness that those he informed on were or may be ill-treated or tortured. He stated that he had subsequently seen some of those he had informed on at large and he heard of no allegations of torture made. His role was primarily informing on criminals so as to maintain order. He was not allowed to ask for further information after having given the names and reports to either the police or to party officials. That was the extent of his involvement.

Submissions

20. Mr Avery submitted that the four elements (as above paragraph 14) of **JS(Sri Lanka)** were satisfied. The Appellant's activities fell within the definition of crimes involving "torture" and/or "other inhumane acts intentionally causing great suffering". The Appellant was an "accessory" as he voluntarily contributed in a significant way to the RCD's serious mistreatment of criminal and political detainees.

21. Mr Avery submitted that the Appellant was aware of the consequences of his claimed actions and there was a clear indication in the RCD letter that people were ill-treated following arrest. It was not credible that the Appellant would not have known of the torture and widespread ill treatment if he were involved in monitoring their activities. Mr Avery further submitted that the Appellant's own witness, Professor Seddon, acknowledged the likelihood of the Appellant's awareness of mistreatment of detainees in his report [2.10].

22. Mr Nathan adopted the original position taken by the Respondent before the FTT that she could not justify the **Al-Sirri** standard of proof on the basis of one document (the letter from the RCD) alleging the Appellant's complicity in torture. The Appellant had been found credible in the FTT and by Professor Seddon, and ought to be found credible by the Upper Tribunal.

23. He submitted that the case fails at the outset. There was an absence of objective material that officials from the RCD were prosecuted for their role in torture under their regime. The Respondent failed to adduce sufficient evidence to establish that torture occurred and that the Appellant's localised activities had led to such mistreatment.

24. Secondly, Mr Nathan submitted that it was not openly established at the time that officials of the regime were involved in crimes against humanity. It was more recently that this had been made public. There was a need to consider the situation from the Appellant's perspective at that time. There was no evidence sufficient to show that the Appellant was aware that torture occurred consequent to his activities.

25. Thirdly, Mr Nathan submitted that the "proximity" test was not satisfied; the Appellant could not be categorised as an aider and abetter. In **Perisic IT-04-81-A** at [44] the Appeals Chamber considered the need for "specific direction" to be met in cases involving aiders and abetters; "evidence establishing a direct link between the aid provided by an accused individual and the relevant crimes committed by principle perpetrators." The link ought to be specific rather than "in some way" linked to the relevant crime. A provision of general assistance which could be used for both lawful and unlawful activities will not be sufficient, alone, to prove that this aid was specifically directed to crimes of principal perpetrators.

Discussion and conclusion

26. Our starting point is to consider whether there is evidence of crimes against humanity perpetrated by the RCD. We then go on to consider if there was evidence

of complicity by the Appellant. We follow the approach in **JS(Sri Lanka)** to establish whether there was evidence that the Appellant was an accessory, who had voluntarily contributed in a significant way to an organisation's ability to pursue its purpose of committing war crimes, crimes against humanity or crimes against the peace or whether it could be established that the Appellant was complicit in crimes such that he was aware that his actions would further the purpose. It was common ground that the burden lies on the Respondent to establish that Article 1F applies and that torture is designated a crime against humanity satisfying Article 7 of the ICC Statute.

Crimes against humanity

27. As above, there was only a limited amount of evidence put forward by the Respondent to show that the RCD engaged in acts falling within Article 7 as part of a widespread or systematic attack directed against a civilian population. It was our view, however, that even if it was not so well known at the time, the evidence from the Special Rapporteur above showed that the party carried out torture against prisoners and opponents pursuant to an organisational policy and that there was sufficient independent evidence of the RCD's perpetration of crimes against humanity. We noted that the Special Rapporteur acknowledged that since the Revolution, progress has been slow in the investigation and prosecution of the perpetrators of torture and other violations committed during the regime, but did not find that this indicated that a campaign of mistreatment had not taken place under the former regime. There have been prosecutions of police officers, prison officers and law enforcement officials involved in torture and ill treatment during the regime.

Was the Appellant knowingly involved in crimes against humanity?

28. We have considered separately and cumulatively each aspect of the three sources of evidence relied on by the Respondent to show that the Appellant was involved in or knew of the mistreatment of those upon whom he informed. Our assessment must include consideration of the subjective and objective evidence.

29. We find that the RCD letter makes no reference to any knowledge of or specific involvement on the part of the Appellant in what happened to persons following their arrest. The letter is generalised in this regard and is not entirely consistent with the evidence given by the Appellant as to the scope of his activities. He denies having funds available to him and there is no reference to any vehicles used by him. What the letter makes clear is that the Appellant's role was limited to giving information for the benefit of the former regime. We acknowledge that the letter was accepted as genuine by Professor Seddon and by the FTT. However, we have some concerns as to the reliability of this evidence, which does not refer to any specific crimes committed during the regime or by the Appellant. The letter in our view is not sufficiently strong, clear or credible evidence to show that the Appellant was involved or knowingly involved in crimes against humanity.

30. The Appellant's account is that not all his reports led to arrests and the information was provided primarily for monitoring purposes. The Appellant has consistently denied any knowledge or awareness of the consequences of his actions.

31. We accept that by the time the truth started to be published about the RCD regime the Appellant had left Tunisia and was living in the UK. We place weight on Professor Seddon's qualified view emphasising the closed nature of the regime and restrictions on the media whilst the RCD was in power. Further, Professor Seddon highlights that the Ben Ali government was an approved member of all the recognised bodies including the United Nations, as was the RCD, and was well regarded by other European countries. In his witness statement the Appellant accepted responsibility for imprisonment of wrong doers and political dissidents but we find that this falls short of having a close role in and knowledge of the crimes committed against those arrested or imprisoned. The evidence is not that he played anything other than an unofficial role as an informant; he had no formal or paid role in the party. There is no evidence that his role extended beyond the provision of information from the street. We found it credible that he had no access to the inside of the police station. We also found credible his further evidence that he had seen at large some of the people that he had informed on and heard of no allegations of torture made. This we find is consistent with the view of Professor Seddon as to the lack of public awareness about the workings of the regime, for example:

> "…official media presented a public face – that of a secular democratic multi-party state, whose president Ben Ali, was consistently re-elected with massive majorities including as recently as October 2009 – both to the Tunisian population and to the outside world that was rarely openly questioned until the uprising of 2011."

32. Professor Seddon's expert report we find to be reliable. As above, there is no direct evidence linking the Appellant's activities with any specific incidents of torture. There is no evidence to indicate that the appellant was a member and informer other than in a voluntary and informal capacity; he was not paid and was not a member of the State Security Department ("DSS"). The fact that he assisted the RCD between 2003–2007 is a significant period of time in which to provide information and suggests that potentially he could have made a significant contribution to the party's purpose. It was our view, however, that Professor Seddon's comment that "it could be argued" that the Appellant was "probably aware" was, in the context of all the evidence before us, insufficient to show the Appellant's knowledge of the programme of mistreatment operated by the RCD such that he could be said to be a knowing and voluntary contributor. This was additionally so where the Appellant was involved at a local level with the police in his area and where the country material focuses on the role and activities of the RCD centrally, in particular the DSS.

33. In short, we accept the submission made by Mr Nathan that the evidence here does not meet the requirements of the "proximity" test. The evidence fails to establish that the Appellant knew that the purpose of the party or regime was to commit crimes against humanity or that his activities amounted to personal and knowing

participation or acquiescence amounting to complicity in the crimes in question. We find that the evidence is not sufficient to meet the restrictive and cautious approach necessary for establishing that the test for "serious grounds considering" is met. What is required is something stronger than suspecting or believing.

34. In conclusion we are not satisfied that Article 1F can be invoked against this Appellant as it has not been shown to the required standard that he knew of the crimes against humanity being carried out by the regime either on a general basis or in relation to the specific individuals on whom he reported.

Decision

35. We substitute in the First-tier determination the following decision.

We allow the appeal on asylum grounds.

Signed Date 25.11.2014

GA Black
Deputy Upper Tribunal Judge

Anonymity

The Appellant is granted anonymity throughout these proceedings, unless and until the court directs otherwise, and be referred to as HB. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to a contempt of court. This order is made in order to avoid the risk of serious harm arising from the subject matter of the Appellant's protection claim.