The world of Home Office Presenting Officers

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Abstract

In the adversarial context of litigation conducted in the Immigration and Asylum Tribunal, HOPO's are elusive: they are only seen when they enter a Tribunal hearing room to defend a decision taken by a Home Office official to refuse asylum, bail or a criminal deportation. While HOPOs limit their interaction with barristers/advocates to avoid being put into a position to set out their case in advance of the hearing, their actions reflect their structurally weak position in adversarial proceedings. This chapter draws on extended fieldwork in the British asylum system, on observations and interviews with HOPOs and an extended analysis of two asylum appeals to understand how they perform their work. I also draw on the views of Immigration Judges about HOPOs.

Introduction

While conducting fieldwork on the British asylum system between 2007 and 2009 I was given permission by the Home Office to 'shadow'[1] and interview five Home Office Presenting Officers (HOPOs) who were attached to a London Asylum & Immigration Tribunal (AIT). This presented a rare opportunity to understand the work of an important unit of the Home Office. HOPOs were eager to talk about their work, their insights into the cases they worked on and about their training and careers. Section (i) provides a brief overview of the role of HOPOs and their work. In section (ii) I look at a first tier asylum appeal and a second stage reconsideration appeal to illustrate how HOPOs represent the Home Secretary. Section (iii) briefly examines the views of Immigration Judges about the work of HOPOs. Finally I pull together the different strands of my argument to show how the adversarial nature of asylum appeals and the structural position of HOPOs in the appeal process helps to explain why they are so elusive in the Tribunal and what their work involves.

The role and work of HOPOs

HOPO's are junior-level civil servants who have either been recruited directly into the civil service to work as HOPOs or they have worked elsewhere in the civil service and have applied to become a HOPO. HOPOs are assigned to a 'Presenting Officers Unit' (POU) that

[1] I had permission from a London Presenting Officers Unit to follow five HOPOs through a normal work day and to question them about their background, training etc. This was but one part of my fieldwork which involved extensive fieldwork in the Tribunal and the Court of Appeal.

is attached to one of thirteen Tribunals located around the United Kingdom; their task is to represent the Secretary of State for the Home Department (hereafter the SSHD) in all appeals heard by the Tribunal. The number of court/hearing rooms in a Tribunal determines the number of HOPOs assigned to a POU. At the time of my fieldwork there were two POUs in London – Islington and Feltham – which were staffed by 116 and 70 officers respectively (they were supported by 105 and 45 administrative staff, respectively).[2]

The entry requirements for a HOPO depend upon how individuals are recruited: existing civil servants need to arrange a transfer, however new recruits must possess a BA and must pass the civil service examination (all the individuals I interviewed had bachelor degrees, a few had MAs). None of the HOPOs I met had formal legal training. Salary varied with respect to their level of experience: in 2007 salaries ranged from £24-£29,000 p.a. At that time the job was sufficiently interesting and the pay sufficiently good that staff turnover was not a problem.[3] The vast majority of HOPOs are in their mid- 20s or early 30s. There is a preponderance of female staff; most HOPOs have a university degree and have worked as a HOPO for 3-5 years (a small number have worked in the Home Office for much longer). HOPOs are drawn from a wide range of ethnic groups.

New HOPOs are eased into their jobs. They first undergo an initial ten day classroom induction course where they are introduced to the main areas of immigration and asylum law, legislation (several major pieces of legislation relating to asylum and immigration law came into force prior to and during the period covered by this fieldwork), case law, Home Office policies (see Table 1, below) and basic advocacy skills. Training focuses on the principal types of cases which HOPOs handle: asylum and immigration appeals, bail, deportation, settlement applications and human rights appeals. Training is supposed to provide HOPOs with the basic practical skills needed to carry out their work such as cross examination, 'submission techniques' and general court etiquette. HOPOs are not tested about their

[2] Information about staffing, training and POUs is taken from replies to my FOI requests dated 26 February 2007 and 23 March 2007.

[3] At various times the Home Office has not maintained staffing levels with the result that workloads have increased dramatically and an increasing number of appeals have been adjourned because IJs are reluctant to hear an appeal without a HOPO present (they are concerned that their decisions will be reconsidered).

knowledge at the end of the course[4], though their performance is said to be monitored by their team manager and is reviewed after six months on the job.

Table 1. Home Office Asylum and Immigration Instructions and Rules (May 2013)

Type of Instruction and number of instructions		Type of Instruction and number	
Asylum Policy Instructions	39	European Casework Instructions	14
Asylum Process Guidance	18	Information Management Guidance	1
Contact Management Information	2	Nationality Instructions	101
Detention Service Orders & related instructions	77	Non-compliance with biometric registration regulations	4
Immigration Directorate Instructions	35	Operating standards for pre-departure accommodation (return of families)	1
Enforcement Guidance & Instructions	6	Statelessness Guidance	1
Entry Clearance guidance	18	Working in the UK casework instructions	3
		TOTAL	320

At the end of the induction course HOPOs observe cases for two days before taking an 'easy' case load for six weeks while they are mentored by a senior HOPO. After four to six months they attend a three day 'consolidation course'. New staff are expected to turn to experienced staff for guidance and advice. Each POU has a library containing relevant legal texts, but more importantly HOPOs have access to a comprehensive online library and information service that provides access to case law, legislation and to HO policies, instructions etc.

The 'instructions', rules etc. summarized in Table 1 are issued by the SSHD to enhance her control over the UK border and prevent claimants from securing status (Campbell 2017: Chaps. 1-2 and 8). However it is clear that the sheer number of Instructions/Rules makes it difficult for Home Office case owners, entry clearance officers and HOPOs to assess asylum applications because they are not allowed to exercise any discretion in the way they interpret and apply the instructions/rules. In this context the provision of ad hoc one-day training events to update HOPOs on changes in the law and legislation are arguably inadequate, particularly since HOPOs are not required to attend or indeed pass training courses.

[4] Unlike caseworkers in immigration law firms who are responsible for taking and filing an asylum applicant's initial claim with the Home Office. These caseworkers are required to undergo formal training and to pass national accredition examinations.

The AIT allocates cases to a court, and one week before the hearing the head of the POU allocates cases to individual Presenting Officers who are assigned to 'run' the cases to be heard by Immigration Judges (IJs). The number of appeals heard by an IJ – his or her 'list' – varies with respect to the number and complexity of the cases listed but averages five appeals a day (lists contain a mix of asylum and other appeals). The Home Office anticipates that a HOPO will prepare for court the day before they are expected to 'assist' an IJ (preparation time varies from about 1 to 1.5 hours for an asylum appeal and perhaps 20-30 minutes for other types of appeal). A HOPO's case load is said to be '11 in 20' or 'eleven lists a month' (one day in court followed by one day of preparation during a calendar month)[5]: they remain with an assigned judge until the 'list' is completed. HOPOs assist IJ's; Senior HOPOs assist 'Designated Senior Immigration Judges' (DIJs) who hear more complex appeals and are responsible for managing the Tribunal.

When HOPOs enter the Tribunal about half an hour before cases are scheduled to be heard, they go to the Presenting Officers Preparation Room where a lot of banter occurs as they chat about their work, lawyers and the judges whose court rooms they are assigned to. The elusiveness of HOPOs in the Tribunal is, I think, directly linked to their sense of belonging to 'a family'. i.e. the POU. On the one hand their constant movement between the POU and the Tribunal means that social interaction is quite limited except just *before* hearings begin and during lunch when interaction is convivial and high-spirited. Individual HOPOs are appointed to liaise with other POUs and the Country of Origin Information Office based at Lunar House (in South London) and they are responsible for monitoring Home Office information and case law on specific countries of asylum, e.g., Somalia, Eritrea, Sri Lanka. At the end of each day HOPOs are expected to record basic details on each case they complete on a special database and to refer any cases of potential fraud or of wider 'intelligence interest' to the POU Intelligence Liason Officer. These reports are also used to

[5] Senior Presenting Officers (SPO's) are required to take cases in court 1 day out of every five. However because they are also expected to 'assist' Designated Immigration Judges on difficult cases they are frequently in court and are expected to: (a) be familiar with COIS reports and policy statements; (b) look at applications and check them against policies; (c) help process cases swiftly by checking bundles/files; (d) write to legal representatives informing them of decisions; (e) deal with any follow-up issues from appeal cases; (f) try to ensure that appeals won't be postponed; and (g) to expedite case hearings, s/he is expected to pick up 'floats' (last minute cases listed for a hearing) and assist IJs to determine these appeals.

inform the Appeals and Litigation Team (in central London) that the SSHD should seek to reconsider an IJ's decision by filing an appeal.

There is little prospect of promotion for HOPOs unless they transfer to a different post, though the individuals I spoke to enjoyed their job as 'pretend barristers' (though some female officers do not enjoy the rough and tumble of court room exchanges). Indeed many HOPOs delay entering the court room until shortly before the hearing begins in order to avoid barristers, some of whom can be quite aggressive and who attempt to corner them in an effort to find out the Home Office position on their client's appeal. Attempts to avoid legal counsel arise, I think, because HOPOs realize that their legal training (and the time they spend preparing a case) is far more limited than what is expected of experienced legal counsel (though legal counsel are *not* always well prepared either). In contrast, some young male HOPOs enjoy adversarial conflict; one told me that the UK Border Agency (UKBA)[6] is obsessed with winning cases and that POU units around the country are engaged in an informal competition to achieve the highest 'win-ratio'(see Gill 2016: chaps. 3-4 on the competitiveness among officers)[7]

HOPOs are expected to meet 'performance targets' which have expanded in recent years. In 2007 HOPOs were supposed to 'maintain' 15% of all asylum and deportation initial decisions and 20 percent of entry clearance initial decisions (this expectation is somewhat at odds with the fact that IJs decide appeals). By 2013 their targets were increased such that they were expected to 'maintain 70% of asylum appeals and 60% of all other appeals'.[8] To achieve these targets they are expected to:[9]

1. 'Ensure each case is fully argued in court' by delivering a persuasive and cohesive argument'.
2. 'Pursue all relevant and appropriate aspects of the appellant's case or claim.'
3. 'In court, robustly defend the decision under appeal but be mindful that you must disclose evidence and material that is relevant to the facts at issue, irrespective of

[6] HOPOs worked in the UKBA at that time of my research. It was re-incorporated into the Home Office in 2013.
[7] In response to an FOI request about this, the Home Office denied knowledge of such a competition. The competition is probably based on comparing monthly performance statistics for each POU which are published by the Home Office.
[8] Source: Home Office FOI request by S. Medley (dated 8 April 2013) Req. FOI 26714.
[9] Source: 'Presenting Officers Professional Standards' provided in FOI request 26714, dated 8 April 2013.

which party to the appeal this assists, in order to achieve a just determination of the case. You must not knowingly mislead the Immigration Judge or permit the Immigration Judge to be misled.'

4. 'Test the evidence …'.
5. 'You should ensure that cases are dealt with as efficiently and quickly as possible and oppose unmeritorious adjournment requests.'

Once we step back from official representations about HOPOs and examine them at work it is possible to discern significant discrepancies between the way their role is publicly defined and how they perform their work. One important observation is that unlike barristers/advocates, IJs and bailiffs, HOPOs are *not* 'officers of the court' who have an obligation to promote justice and the effective operation of the judicial system. Indeed HOPOs are *not* bound by a professional code of conduct which means that regardless of what is stated in Home Office professional standards guidelines, they are not legally required to assist the court to achieve a fair decision. Observation makes it clear that most HOPOs steadfastly see their job as 'defending' the initial Home Office decision regardless of whether that decision was fair. In this regard it is important to note that between 2007 and 2009 Home Office caseworkers refused at least 80 percent of all initial asylum applications they considered; however between 25 and 33 percent of all initial decisions were overturned on appeal in the Tribunal. Their task of defending the SSHD is ensured by the imposition of management targets on HOPOs and because, according to my informants, in 2001 the Home Office withdrew the right of HOPOs to concede a case. Today if a HOPO is allocated to defend a poorly argued decision they will 'redraft' a refusal letter' or they may only make a brief final submission in court.

Litigating appeals

Individuals who have applied to the Home Office for asylum but whose initial application was refused by the Home Office have a right of appeal to the AIT against that decision. The AIT presides over an adversarial legal arena which brings together parties with very different interests in the outcome of an appeal (Campbell 2017). The Tribunal is formally independent from the Home Office; nevertheless the decisions of IJs are increasingly constrained by the SSHD's rules and regulations which, as with HOPOs, limit their discretion in deciding claims. During an appeal Immigration Judges (IJ) use Tribunal Procedural Rules and Practice Directions to control proceedings and process appeals in a speedy and efficient manner. In

the asylum appeals I followed all applicants were represented by legal counsel. More recently, however, it is clear that on average twenty-one percent of applicants were unrepresented in the period 2011-2012 (Burridge & Gill 2017: 30). When applicants are not legally represented this allows greater scope for HOPOs to influence the outcome of the appeal, i.e. more appeals are dismissed.

HOPOs 'resist' an appeal by defending the original decision of a Home Office case owner (who does not appear in court). Normally asylum appellants attend appeals. At the start of the hearing the IJ determines the order in which appeals will be heard and, together with legal representatives and the HOPO, s/he sets a nominal time limit for each appeal within which the parties are expected to conclude their arguments. Finally ushers and administrative staff assist the Tribunal to conduct its business.

Case 1. First tier Asylum appeal of HZ

The appellant was a sixty year old national of Eritrea who was given leave to enter the UK as the spouse of a British citizen in May 2005. In 2007 he applied for Indefinite Leave to Remain and was refused. Before his appeal was heard he applied for asylum in September 2007 'because of his political opinion'. The SSHD refused his appeal and issued removal directions to Eritrea. The Home Office 'Refusal Letter' (RFL) argued that the appellant was an 'insufficiently prominent' member of a political opposition party and 'would not be of interest to the authorities' if he were returned to Eritrea.

His appeal was heard in early 2008 at a London Tribunal and concerned a *sur place* claim for asylum. As defined in the UNHCR Handbook (1992) 'A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee 'sur place' (¶94). Expressed slightly differently, UNHCR notes that 'a person becomes a refugee 'sur place' due to circumstances arising in his country of origin during his absence' (¶95). Two case 'bundles' were submitted to the Tribunal prior the hearing which contained all the evidence and country reports which both parties relied upon to argue the claim. The Home Office bundle included a screening interview and 'Statement of Evidence Form' (SEF) with AK and the Home Office RFL. The appellant's bundle contained his counsel's skeleton argument, a new witness statement by the appellant, extensive photographs, witness statements from his solicitor and his witness, a copy of a membership card indicating membership in an opposition political party and a copy of the party's political

programme, two expert reports and eight objective reports addressing the political situation in Eritrea.

The IJ took an unusually active role in the proceedings. As the appellant was called to give evidence, the IJ echoed the statement of HZ's counsel that 'the issues are quite narrow' by stating:

> 'Very narrow! He made his claim when he did; there was no need to claim [earlier] because he was on family reunion. In terms of credibility, his case is to show his political activities to date pre-date his application [for asylum]. There it is, fairly narrow. The case of *Danian*[10] supports the appellant. It doesn't actually matter what his reasons were, this cannot be challenged. Is that about it?'

The appellant's representative led him through his witness statements and asked him whether his 'activities were a ploy to claim asylum? Can you comment on this?' The appellant replied: 'I believe the Home Office is wrong. These are my beliefs and principles.'

The HOPO undertook an extensive cross-examination that questioned the appellant's knowledge of and engagement with Eritrean opposition politics. Fifteen minutes into the cross examination the IJ interrupted the HOPO to clarify a point of law regarding Immigration Rule 395C which allowed him discretion to decide the case,[11] an issue which the Home Office Refusal Letter had failed to raise. When the HOPO confirmed that the issue had not been raised, the IJ stated: 'Yes, it's wrong. Frankly this is a strong asylum case. I am reluctant that it should be kicked into touch'. At this point cross examination resumed and addressed the nature of his activities in the UK, his membership in an opposition political group, his fear of being returned to Eritrea, and his Art. 8 claim under the European Convention on Human Rights regarding his right to a family and private life.

When cross examination concluded the IJ again stepped in by stating that ''There is nothing to re-examine is there?' He asked a few questions of the appellant: 'Your sons are

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[10] The reference is to a case heard by the Court of Appeal, *Danian [1999] INLR 533*, which reaffirmed that a person who had a well-founded fear of persecution on Convention grounds could not be denied the protection of the Convention on the grounds that their activities after arriving in the UK gave rise to a fear of persecution even if they had been carried out in bad-faith. While the appellant's activities would need to be carefully scrutinized, if their action did give rise to the possibility of serious risk on return then they would be entitled to asylum.

[11] See: 'Goodbye Paragraph 395C?' at: https://www.freemovement.org.uk/goodbye-paragraph-395c/.

here. That's a strong link for you. But if suddenly there is an uprising in Eritrea you would go back to help rebuild?'. The appellant answered: 'Yes'.

The witnesses were then called to give evidence regarding the appellant and his involvement in opposition politics in the UK and the likelihood that the authorities were aware of his activities. When this concluded and it was time for the HOPO to cross-examine the witnesses, the IJ stated: 'Is there anything left?' The HOPO asked one question regarding how often the witnesses had seen the appellant distributing political material on public occasions.

As the HOPO began her final submissions, which relied upon the Refusal Letter and which did not take issue with the appellant's political activities in the UK, she was constantly interrupted by the IJ who commented that even though the appellant was likely to be subject to a 'low level' risk on return, nevertheless 'He probably would attract attention … From everything we read about Eritrea, it is a matter of concern.' The IJ also commented on 'the vast amount of high quality evidence' before him, including photographic evidence, and he stated that 'The case comes down to the objective evidence; nothing has gotten better in the past four years.'

Agreeing with the HOPO that Home Office COIS reports failed to provide information about the political organization which the appellant had allegedly joined in the UK, nevertheless he concluded that the expert evidence on the political party was undisputable. The IJ then rhetorically stated: 'What tops it?' To which the appellant's representative said: 'His immigration history'.

The IJ stated: 'Yes. When the Home Office see this [i.e. an asylum claim made after entering the UK which alleges involvement in political activities] they are suspicious. But this is a different type of case. I am privileged to hear it.' The IJ then stated: 'I allow the asylum appeal and the human rights appeal'.

Comment. This appeal hinged on the failure of the Home Office to properly consider the application as a *sur place* asylum claim (because the appellant had entered the UK lawfully under a grant of family reunion) rather than as an unfounded claim as defined by Sec. 8 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004*. Furthermore, the IJ invoked *IR 395C* to prevent the Home Office from withdrawing its original decision in order to reconsider the claim. IR 395C allowed the IJ to overturn the Home Office decision

and grant the appeal. The appeal is unusual for a number of reasons. First very few *sur place* claims are made. Second most IJ's do not intervene quite so actively in hearings nor do they overrule HOPO arguments. Finally, it is extremely rare for an IJ to announce the decision at the end of the appeal (normally they 'reserve their decision', write it up afterwards and send it to the applicant and the Home Office within ten to fourteen days of the hearing).

Case 2. Second Stage Reconsideration Appeal of AK

When the Tribunal refuses an appeal against the initial decision of the Secretary of State, the applicant may have a right to appeal against the decision if the IJ made an error of law in deciding the appeal. In such cases the applicant's representative makes an application to the Upper Tribunal setting out why the decision should not be allowed to stand and asking the Tribunal for a reconsideration of the initial appeal.

In October 2006 the first tier of the Tribunal convened to hear an appeal by AK, a 35 year asylum applicant from Eritrea. The IJ dismissed AK's appeal.[12]The applicant's legal representative filed an application for reconsideration to the Upper Tribunal where, upon looking at the papers summarizing the case, a Senior IJ (hereafter, SIJ) concluded that 'the IJ was procedurally unfair in finding that the appellant was no longer working for the Defence Forces until he left Eritrea without giving him the opportunity to deal with that point, when that evidence was accepted in the RFRL', i.e. Home Office Refusal Letter. That decision led to a 'First Stage Reconsideration' where an SIJ concluded that there was 'a material error of law' in the initial determination. The SIJ identified 13 issues in the initial decision that were linked to an 'evidential lacunae' for the period 1999 to 2005 in the appellant's account. A further error of law concerned the need to find 'the true circumstances in which he left Eritrea' (the reference was to *MA (Draft evaders – illegal departures – risk) Eritrea CG [2007] UKAIT 00059*[13] which focused on the issue of 'illegal exit' from Eritrea and whether individuals who had left Eritrea without obtaining an official exit visa and a passport were at risk for a Convention reason if they were 'returned', i.e. deported as a failed asylum seeker, to Eritrea.

The reconsideration appeal was heard in May 2008 by a Designated Immigration Judge (DIJ). The Home Office bundle included the Screening and SEF Interviews, the RFL

[12] I attended the reconsideration appeal and took my own notes of the proceedings. In addition I have the entire case file and an interview with the barrister who represented AK.
[13] See: https://tribunalsdecisions.service.gov.uk/utiac/37868.

and a copy of the first determination of the claim. The Appellant's bundle contained the decision by the SIJ setting out the errors in law of the first determination, copies of all the original submissions made by the appellant, correspondence between the appellant's legal representative and the Home Office and a new witness statement by the appellant. This statement provided further evidence about: his military service; secondment to the Office of the President and his work there; his political activities and his departure from Eritrea. The bundle also contained two expert reports. Just before the appeal began, counsel for the appellant said to the HOPO 'I don't have the Home Office COI report on Eritrea. I don't need one unless you are relying on it. You didn't serve it at the directions hearing and I won't have time to read it.' At this point the HOPO handed her the COI report which he did rely upon.

The reconsideration appeal began with the Senior HOPO reaffirming the reasons set out in the original RFL and rejecting the appellant's account that he had still been in government service when he left Eritrea. The applicant's representative, an experienced barrister, relied on *DK (Serbia) [2006] EWCA Civ 1747*[14] to argue that 'it was not logical that he [the appellant] could be permitted to adduce evidence as to the nature of his work during that time but at the same time be prevented from trying to establish that he worked in the Presidential office'. In short, 'the question of where A was working cannot be said to be unaffected by the IJs error as to what A was doing between 1999 and 2005.' This point was the key focus of the hearing although it was one strand of AK's evidence.

After some initial sparring between the HOPO and counsel for AK, the latter asked the appellant to confirm his written evidence but failed to take him through the details regarding how he left Eritrea. The DIJ immediately stepped in to ask about an untranslated document in the appellant's bundle which was said to confirm that the appellant had completed national service. He asked the court translator to translate the document which appeared to confirm that it was 'a certificate of work participation' issued by the Ministry of Defence to AK confirming his record of military service between 1996 and 1998 and which was intended to help him to 'get a part-time job'. The HOPO cross examined AK about his employment and his residence. The DIJ intervened to question AK about his computer training, but AK was not able to provide precise answers. The HOPO resumed his cross examination of AK and asked why the certificate had not been submitted to the first asylum hearing (he said that his mother had recently sent it to him). The HOPO also reiterated that

[14] See: https://court-appeal.vlex.co.uk/vid/ors-52569444.

AK had completed national service and he sought to clarify the nature of the computer files which had been submitted as part of AKs evidence (i.e. that he was a computer technician who had been assigned to work at Sawa military camp and that later he had been transferred to work at the office of the President of Eritrea).

The DIJ intervened on numerous occasions to ask about: the applicant's family; his job in the military and his computer training; the documents he was now submitting; conscription; the work he reportedly carried out as a computer expert; demobilization cards; the photo's AK submitted showing him in a military uniform; and about whether his mother was detained by the authorities after he left the country. The DIJ also questioned AK's witness – who confirmed that 'no one is allowed to ask for release or demobilization' – about his legal status in the UK. It emerged that neither AK's counsel nor the Home Office (who had been given a copy of his papers) had told the witness to bring verification of his legal status. The IJ asked the witness a number of questions about his knowledge of AK and was told that they had met at Sawa Camp in 1999 when both men were stationed there as conscripts and that AK had transferred to the President's Office in 2001.

At this point both parties made their final submissions to the DIJ. The principle submissions made by the Senior HOPO were:

1. He adopted the reasons set out in the RFL.
2. AK was conscripted in 1994 in the 'first round' of conscription in Eritrea.
3. AK worked at Sawa military camp and at the President's Office from where 'he will never be released'.
4. AK was permitted to look for part-time work.
5. AK received demobilization papers from the military. And
6. AK doesn't fall within the draft evaders [categories as set out in *MA Eritrea 2007*] nor is he a military deserter.
7. AK's appeal should be refused.

His counsel began her summing up by noting that 'the first issue is that the IJ's credibility findings are mixed; there are no challenges to his two years as a conscript or that he worked on IT at Sawa camp. The IJ didn't accept that he was involved in opposition politics while he worked at the Office of the President.' In addition counsel noted that:

1. The expert reports confirmed that after initial military training there is no demoblization for men until the age of 50. The majority of conscripts continue to perform National Service, not military service.
2. There has been no challenge that AK left the country illegally.
3. It has not be suggested that AK obtained an exit visa.
4. There has been no challenge to his witness, he is a refugee and he has status in the UK.
5. AK has attended political demonstrations against the Eritrean government in the UK and has submitted photographic evidence of this.
6. Regarding the gaps in AKs initial evidence for the period 1999 to 2005, if he was in military service in 1999 then, subject to injury, he would still be in military service. Finally
7. 'I accept that there are mixed credibility findings, you asked about other issues but these are not before you as we are limited by the Directions.'

Eight days after the appeal the Tribunal promulgated the DIJ's decision which strongly reflected his reading of the latest Home Office COI report on Eritrea. The DIJ's findings begin with a very clear statement: 'I come to the conclusion that the appellant has told so many lies that it is difficult to know what can be believed and what has been concocted for the claim' (¶82). In the following 37 paragraphs of the decision the DIJ takes exception to every element of AK's claim and finds reason to doubt his credibility on every issue, including evidence that was not open for him to address. This comprehensive rejection of AKs evidence on the grounds that lacked credibility allowed her to cite case law – *AH (Failed asylum seekers – involuntary returns) Eritrea CG [2006] UKAIT 00078*[15] – to refuse the appeal because AK had been found to lack credibility. In subsequent paragraphs she found that AK might have left the country on a scholarship, that his 'post-arrival' political activities were not put forward during the hearing, that the certificates of his educational training were not the originals (and could not be accepted) and that any *sur place* activities were 'opportunistic'.[16] As if her decision wasn't already clear, the DIJ concluded by stating that: 'I consider that the appellant has fabricated his account of his experiences in Eritrea and

[15] See: https://tribunalsdecisions.service.gov.uk/utiac/37945. The conclusion in this country guidance case which the DIJ seized upon was that 'Neither involuntary returnees nor failed asylum seekers are as such at real risk on return to Eritrea'.
[16] Contrast her reading of Danion with that of the IJ in case 1 and see footnote 9.

[I] do not accept that he left there for the reasons claimed or in the circumstances claimed. I am not satisfied that he has a well-founded fear …' (¶128).

Comment. This reconsideration appeal arose out of an error of law by the IJ who decided the first tier appeal without carefully considering all of the appellant's evidence. When an appeal is set out for reconsideration, it is normal for the SIJ who reviewed the application for reconsideration to define the key error(s) in law which need to be revisited and to 'preserve' other findings of fact from being overturned by the Tribunal during the second appeal. It should be clear that the HOPO and counsel for AK created the space for the DIJ to take a very direct role in the appeal. The HOPO was not well prepared for the appeal and at several points failed to interrogate key elements of the evidence and the appellant's witness, which provided an opening for the DIJ to ask her own questions and take control of the proceedings. Similarly counsel for AK seemed blasé if not ill-prepared. First she failed to translate a key document supporting the appellant's case. Second she did not take the court through the objective evidence on Eritrea. Third, she simply asked the appellant and his witness to confirm their written statements without exploring their evidence. The DIJ immediately stepped in to ask her own questions which included finding that the witness had not brought any documents to court to affirm his legal status in the UK. Overall, however, what is remarkable about the appeal and the decision is the extent to which the DIJ intervened during the appeal and the fact that she took exception with every element of AKs evidence in refusing his appeal. Indeed she even found a form of words and reasoning which allowed her to address and overturn findings of fact preserved by the SIJ who ordered that the appeal be reconsidered. Counsel for the appellant filed an appeal against this decision to the Second Tier of the Tribunal which was refused by an SIJ in July 2008 (the SIJ stated: 'I am not satisfied that it is arguable that the judge went beyond the issues identified for reconsideration'). An 'Application on the Papers' to the Court of Appeal was immediately made and initially granted but, one day before the appeal was schedules, it was withdrawn by a Lord Justice because, on reading the papers, he decided that 'the expert report did not resolve questions for negative case law'. AK's clam was comprehensively found to lack credibility and he was now subject to arrest and deportation.[17]

[17] In the spring of 2017 I received an email from AK requesting my assistance to write an expert report for a fresh application for asylum which will be heard by the Tribunal in September 2017. During the past 9 years he has been supported by an Eritrean family in London. His fresh application admitted that he had fabricated certain elements of his claim but he was adamant that he had never been demobilized from the military and that he left

The views of Immigration Judges about HOPOs

For good reasons IJs generally do not comment about the Home Office because they have to work with HOPOs and because their decisions may be challenged by the SSHD who may file an application to reconsider/re-hear their decisions (in the period 2006 and 2009 between 32 percent and 46 percent of applications for reconsideration made by the SSHD were granted; Campbell 2016: chap. 6).

IJs' views about HOPOs are clearly influenced by the fact that their work is scrutinized by Home Office officials. Nevertheless it is noteworthy that HOPOs are held in low regard by many IJs largely because of their lack of legal training. For instance one IJ told me that HOPOs always attack the credibility of appellants, even if that is not an issue. This occurs because HOPOs rely entirely on the initial Home Office Refusal Letter, because they ask 'irrelevant questions' and because they focus on minor discrepancies in an appellant's account without looking at the core issues or without examining the evidence in the round. The same IJ described HOPO's as 'xenophobic' in the sense of being biased because

> 'they want to win … if they can. I think they're fair, but they can be pedantic … they go into too many discrepancies which are not entirely reasonable, you know, sometimes empty submissions … which don't hold any weight. They just want to be heard … On the other hand, sometimes you get a good sensible one who knows that the case is watertight from the appellant's point of view, and who will simply say: 'Well I make no submissions'."

Another IJ noted that because HOPOs are not well paid and spend relatively little time preparing an appeal, their performance in court varies immensely ranging from a small number of 'fascist-like presenting officers who seem to get a great deal of glee from putting people on the spot' to the majority who 'appear to have a sort of workman mentality – it's a job, its going to get done to the best of my ability'. There were also the occasional HOPOs who, in addition to attacking an applicant's credibility were unable to put their argument in a succinct form by asking appellants straightforward questions. When this occurs the IJ will stop the HOPO and ask him to rephrase his question by breaking it down into as simple a question as possible (this is a particular problem if interpreters are being used). If that request fails, then IJs will rephrase the question and ask it themselves.

Eritrea illegally without obtaining an exit visa (the objective COI material supports this claim today as it did in 2008).

A third IJ told me that he believed that the training of HOPOs had improved in recent years and that the standard of their work was higher. He noted that if there was poor legal representation from either the HOPO or counsel for the appellant, he would 'decide the case on the evidence before me' without worrying about whether either party might seek to appeal his decision. Informally IJs were said to be scathing about the quality of representation by HOPOs *and* legal counsel, though neither type of representative appears to be reprimanded for poor professional conduct.[18]

Conclusion

The adversarial nature of asylum and immigration appeals in the UK results in a tense, and sometimes fractious relationship between the judiciary, the Home Office and the legal profession. While the legal process is supposed to provide equal access to justice, the cases discussed in this chapter strongly suggest that persistent inequality prevails. This occurs because asylum and immigration law is complex and, given cuts to legal aid and the imposition of increased charges for filing claims, asylum applicants and individuals held in detention face insurmountable difficulties when they are unable to afford a lawyer (without whose assistance their appeal will almost certainly fail; Campbell 2014, 2015).

Elsewhere I have argued that in the last decade the balance of power has decisively shifted in favour of the Home Office due to its ability to draft legislation, create secondary legislation and new immigration rules – as illustrated in this paper by changing Paragraph 395C – and its ability to fund extensive litigation against asylum claims which compels asylum applicants and their lawyers to acquiesce with the particular interpretation or rubric of 'law' that the Home Office wishes to enforce (Campbell 2017).

This situation reinforces not only a wariness about the relation between the courts and the Home Office, but also a certain skepticism about the system that is reflected in the views and opinions held by judges, lawyers and government officials. For this reason it is unsurprising that HOPOs hold strong views about the importance of their work, about judges (who are variously seen as 'allowers', 'tough IJs' and 'dismissers'), about lawyers (seen as either 'top class QCs', 'bottom-feeders' or 'rogues') and country experts and appellants (who are viewed with extreme scepticism). In court each type of actor expresses a strong sense of

[18] For instance I was told that Designated Immigration Judge's seldom 'carpeted' IJs for poor judicial decisions during their annual appraisal. It is not clear whether poor quality work by a HOPO attracts any sanction.

identity and solidarity as a member of a profession, be it as a member of the judiciary, a member of the legal profession or as HOPOs from the same POU. The world of the HOPO is an insular one because of the adversarial way in which appeals are heard and decided; because of the limited nature of their 'legal' training; and because they are tasked with defending the SSHD regardless of the evidence before them. In this context legal challenges against decisions by the Secretary of State are viewed as a potential threat to the security of the country which needs to be fought against; appeals which overturn Home Office decisions are experienced as personal defeats. If HOPOs possess an elusive quality, it is because they often have to defend poorly considered decisions by other Home Office officials in a context where, despite the constraints placed on judges and lawyers by the power of the SSHD, judicial decisions often go against them.

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