

Neutral Citation Number: [2013] EWHC 2980 (Admin)

CO/8758/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 19 July 2013

B e f o r e:

MR JUSTICE JEREMY BAKER

Between:

THE QUEEN ON THE APPLICATION OF DRAMMEH_

Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT_

Defendant

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(Official Shorthand Writers to the Court)

Ms S Harrison QC (instructed by Bhatt Murphy) appeared on behalf of the **Claimant**
The Defendant did not attend and was not represented

J U D G M E N T
(As Approved by the Court)

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1. MR JUSTICE JEREMY BAKER: This is an application for interim relief in judicial review proceedings made on behalf of the claimant, Ousman Drammeh. The history of this matter, to the extent that it needs to be set out in this judgment, is as follows. The claimant apparently came into the United Kingdom in 2007. He had the benefit of a visa between 18 September 2007 and 18 December 2007. Thereafter he remained in this country at an illegal overstayer. On 21 May 2013 he was arrested by the police, gave a false name and basis for stay in the United Kingdom at that time. On 9 August 2012 he was convicted of being knowingly involved in the supply and production of controlled drugs and sentenced to 12 months in custody. In the meantime he had made an asylum claim on the basis of his sexuality, he being allegedly bisexual, and on the basis that in the Gambia he would receive violent treatment if he returned there. He asserted at that time that he had already received a severe beating with a metal bar by members of his family and others as a result of them appreciating his sexuality. There was at that stage no objective corroborative evidence.
2. On 6 November 2012 that asylum claim was refused and a deportation order was made. The claimant subsequently appealed. On 24 November 2012 the claimant was transferred from one of Her Majesty's prisons to Harmondsworth detention centre. At the date of his discharge he was diagnosed as suffering from a schizoaffective mental disorder. On 21 May 2013 the First-tier tribunal dismissed his appeal. It is also of note that at that stage he was refusing to co-operate with the removal process by failing to provide information for his travel documentation. By 3 June 2013 his appeal rights became exhausted. Thereafter it appears that he began to cease eating food, and indeed, certainly by 1 July 2013, he had ceased to accept fluid intake. Between 1 and 8 July 2013 there were a series of medical assessments made of the claimant by those within Harmondsworth detention centre, noting that he had either moderate to severe signs of dehydration, he was refusing water, his ability to walk was impeded, he was not seen to have been urinating, and overall an assessment was made that he was not fit for detention.
3. It was on that basis that on 8 July 2013 an application on behalf of the claimant was made for a judicial review seeking his release from detention on the basis that his condition was life threatening. That was the interim relief sought. The underlying basis for his claim for judicial review was, at the heart of it, a claim that his detention was incompatible with the Secretary of State for the Home Department's policy on detention, that being, as set out at paragraph 19 of the detailed statement of grounds, Chapter 55.10 of the policy, being as follows:

"Certain persons are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated immigration accommodation or prisons. Others are unsuitable for immigration detention accommodation because their detention requires particular security, care and control.

...

The following are normally considered suitable for detention in only very

exceptional circumstances, whether in dedicated immigration detention accommodation or prisons:

...

- Those suffering from serious medical conditions which cannot be satisfactorily managed within detention.
- Those suffering serious mental illness which cannot be satisfactorily managed within detention.

... "

4. There were subsidiary grounds, namely that the policy was in any event incompatible with the public sector equality duty under section 149 of the Equality Act 2010, that being based upon a contention that that policy did not fulfil that duty in the circumstances of persons suffering from a disability, namely a mental illness. Thirdly, that the policy was incompatible with Article 3, 5 or 8 of the European Convention on Human Rights, and, in any event, fourthly, that there was a breach of the Hardial Singh principles because detention is only lawful for a reasonable period.
5. The application for interim relief initially came before Burnett J on 8 July 2013. He made no order on the application but ordered the Secretary of State for the Home Department to respond on the following day. The matter next came before Lang J on 9 July 2013. She refused the interim relief, very properly noting that the claimant was an illegal overstayer, he had been convicted of serious drugs offences, his appeal rights were exhausted and removal to the Gambia had been delayed by his lack of co-operation. She concluded that the Secretary of State was justified in not granting release for detention and/or temporary admission because of the risk of absconding in view of the past history of absconding and the failure to comply with the conditions of his stay, the provision of a false name by him, his failure to co-operate with his removal, and the assessed serious risk of public harm by reason of his conviction. She also noted that those who were unfit to be detained should not be. However, that is something which as a matter of public policy should not be able to be engineered by an individual, as she found in that case. She noted that at the time the claimant did not lack mental capacity.
6. It is right to say that at that time the medical evidence before the court was limited in its nature. Effectively, it was the letter of Dr Hartree, together with previous reports, that being dated 9 July 2013. Dr Hartree had seen the claimant on 6 July 2013 and she considered that there was evidence of severe dehydration and that there was an imminent risk of kidney failure, which could be fatal, and thiamine deficiency, which could lead to dementia.
7. The matter returns to this court on the basis of the contents of a supplementary judicial review bundle which is now before the court. It was considered briefly by Swift J on 18 July 2013, who ordered that the application for interim relief should be listed for an oral hearing today, 19 July. The position of the defendant is that it is understood that

the supplementary judicial review bundle has been provided to the Secretary of State, a copy of the order of Swift J has also been provided to the defendant and the response from the Secretary of State is in writing, namely on 18 July 2013, to the effect that the matter ought to be delayed until the acknowledgement of service and detailed grounds of opposition has been provided, which is anticipated to be at the latest by 29 July 2013. Apart from that, there is no representation here today from the Secretary of State.

8. In the meantime, there has also been a fresh application claim made on behalf of the claimant on this basis: that Dr Hartree has taken the opportunity of a thorough and full examination of the claimant and in particular the scarring which is apparent on his body. In a report which is dated 12 July 2013 she has reached the conclusion that there are a significant number of scars on the claimant's body which range from being consistent through to typical through to diagnostic of the claimant having suffered a significant assaultive beating. Having read that report, it is clear that Dr Hartree is well qualified and experienced to provide such an opinion, and therefore those instructed by the claimant have pursued that fresh claim application on the basis that there is now objective supportive evidence that when in the Gambia the claimant suffered the type of beating which he had originally described in his asylum application.
9. The significance of that is that the defendant's own country information on Gambia is to the effect that it recognises that there is societal hostility and discrimination against those with a homosexual orientation and, where merited, if those dealing with applications for asylum conclude that an individual is at real risk of persecution in the Gambia because of their sexual orientation, they should be granted asylum. That is the first matter of significance which is relied upon on behalf of the claimant today.
10. However, of more imminent concern is the current state of health in respect of the claimant. I have seen a report from Dr Hartree dated 18 July 2013 and it is apparent from that that the claimant appears to have maintained his refusal to intake food. He has, in fact, taken a modest amount of fluid intake but that does not appear to have rehydrated him to any significant extent, and it is the opinion of Dr Hartree that there has been a significant deterioration in the period since she last saw him. She has not been able to see him personally since 6 July but has not only reviewed the medical notes at Harmondsworth but she herself has talked to the claimant on a number of occasions. A particular concern arises out of an objective matter which is at page 107 of the supplementary bundle. It is the medical notes dated 15 July. Up to that point in time it is right to say that there had been a consistency of view by those who are responsible for the medical care of the claimant, namely that he was unfit for detention because of his state of dehydration. However, it was noted on 15 July that there was not only a complaint of dizziness but on sitting up there was a rapid decrease in his blood pressure. That is set out and explained at paragraph 31 of Dr Hartree's report of 18 July and it leads her to the conclusion, which she explained orally in evidence, that the stage has now been reached that the claimant's health is in a critical state and that, so far as fluid intake is concerned, unless he is rapidly rehydrated he is in imminent risk of fatality. She bases the most likely time period within the period of the next week. So far as his lack of food intake, she notes that in fact that has now reached into the

seventh week. In her view, fatality is likely to result from that in somewhere around the seventh to eighth week. The Department of Health's guidelines is between 6 and 8 weeks.

11. In my judgment, therefore, the situation is materially different to that which was considered by Lang J on 9 July 2013. Having said that, I remain of concern in this case because the reality is that if the claimant had agreed to do so, he could have been transferred at any time up to now to a hospital so that treatment could be effected on him for his lack of food and fluid intake but he has chosen not to, and I entirely endorse the sentiments which were expressed in writing by Lang J when she refused interim relief, namely that the courts should stand firm against manipulation of the situation by individuals within the immigration system, because the situation is that apparently the claimant will agree to go to hospital if he is granted bail.
12. As Ms Stephanie Harrison QC acknowledges, it is an unattractive position for the claimant to take and one which ordinarily will not only be viewed with scepticism but refusal by this court. However, she also properly reminds the court that there is in the background of all of this matter, objectively clear evidence that the claimant does suffer from mental illness. He has been diagnosed with a schizoaffective disorder from an early stage. It is likely that that is schizophrenia. He is suffering from auditory and other hallucinations, indeed the description of the symptoms has some parallels with paranoid schizophrenia. He also suffers from depression and it may also be, post traumatic stress disorder. In those circumstances, although he appears to retain capacity, Ms Harrison urges the court to view this case as one of some exceptionality on the basis that his stance, which appears objectionable, should be ameliorated against the background of that mental illness.
13. Perhaps of even more concern is another matter which Dr Hartree has provided an opinion about, namely that those who have over a prolonged period of time refused food and/or water intake can reach a stage, which she considers as likely to be reached in this case, where the very effect of that initial desire to refuse food and water can in itself affect the brain, whereby the individual becomes incapable of reversing that decision, and that is a matter which again ought to be taken into account in this case.
14. The view that I have reached, having heard the most recent medical evidence from Dr Hartree and also considering the evidence medically provided by the detention centre is that the situation has now reached a sufficiently critical point whereby the court must closely scrutinise as to whether it is appropriate for the claimant to remain in detention. In addition, clearly, I do take into account the most recent evidence from Dr Hartree, which, at least on the face of it, although I make no firmer view than that, appears to provide some objective evidence to support the fresh claim for asylum in country. Whether or not in reality it does have that effect will be a decision for another day by the Secretary of State. However, in view of her policy in relation to those who are indeed suffering from serious medical conditions, it seems to me that there are not here sufficiently exceptional circumstances for his continued detention in the detention centre. On that basis, I am exceptionally in this case prepared to grant bail. It will be in the terms of the draft order which I have already discussed with counsel and will provide for his release on bail on conditions, primarily so that he can receive treatment

at hospital and thereafter at an address which is approved by the Secretary of State. It will also provide, lastly, for liberty to apply by either party on 24 hours' written notice so far as the provisions of the order are concerned.

15. Ms Harrison, can I please leave it to either yourself or those instructing you to electronically provide a copy of that order to the court and also, obviously, no doubt an undertaking that that will be electronically supplied to the Secretary of State forthwith.
16. MS HARRISON: We will certainly do that, my Lord. Could I just double check with the practicalities. My Lord, I was just wanting to make sure that there was not going to be delay once the order is made. So we will respond by email and your Lordship will need to approve it and then we can then issue it.
17. MR JUSTICE JEREMY BAKER: I trust that that can be done expediently. I will certainly approve it in the proposed terms and it can be put into effect.
18. MS HARRISON: We will do that as soon as possible.
19. MR JUSTICE JEREMY BAKER: Thank you very much.
20. MS HARRISON: Thank you very much for your Lordship's consideration of this difficult case.
21. MR JUSTICE JEREMY BAKER: Ms Harrison, thank you very much for your assistance in this case.