

BRIEFING NOTE

MK, IK & HK v Secretary of State for the Home Department

1. In a judgment handed down on 29 April 2016, the Upper Tribunal Immigration and Asylum Chamber (UTIAC) (Mr Justice McCloskey and Upper Tribunal Judge Lane) allowed an application for judicial review brought by two unaccompanied refugee children (IK and HK) living in Calais, France, seeking family reunification with their mother (MK), who has settled status as a refugee in the United Kingdom.
2. IK and HK made a dangerous journey by boat from Turkey to Greece and then across mainland Europe, arriving in the “jungle” camp in Calais in September 2015. They were identified as unaccompanied children by Citizens UK and referred to UK lawyers who in turn referred them to French qualified lawyers. Under the Dublin III Regulation, once it is established that MK is IK and HK’s mother and that it is in IK and HK’s best interests, the UK must accept responsibility for considering their asylum applications and admit them to the UK. Because of the circumstances in which they had fled from their country of origin, IK and HK do not have identity documents or any other official documentation which proves their relationship with MK.
3. Working together, the UK and French lawyers gathered evidence such as photographs and statements from family members to establish the relationship between MK and IK and HK. This evidence was presented to the French authorities who, in the face of legal proceedings, registered IK and HK as asylum seekers in France. Having considered the evidence presented, the French authorities accepted the relationship between MK and IK and HK, submitted “take charge” requests under the Dublin III Regulation for the UK to accept responsibility for deciding IK and HK’s asylum applications and admit them to the UK.
4. The UK Home Office rejected the take charge requests on the basis that the evidence submitted did not establish that MK and IK and HK were related as claimed. The letter stated that unless further evidence of the relationship, “such as a DNA match”, was provided, the requests would be denied.
5. The applicants argued, in correspondence and in the judicial review, that the UK authorities had a duty, in deciding the take charge requests, to act in the best interests of IK and HK as children and that this meant taking positive steps in co-operation with the French authorities to organise DNA testing.

6. The Home Office's position, in its decision making and arguments in the judicial review, was that it was under no positive duty to establish the relationship between the applicants and in particular was under no duty to organise DNA testing. The Home Office's role was essentially passive, the take charge requests were the applicants' applications and its duty was only to consider the evidence presented to it.
7. The Tribunal rejected the Home Office's arguments, holding that UK, EU and international law required it to act in IK and HK's best interests. In the particular circumstances of their case, this required the Home Office to take positive steps, in co-operation with the French authorities, to organise DNA testing.
8. The Tribunal:
 - a. quashed the Home Office's decisions to refuse the take charge requests;
 - b. ordered the Home Secretary to "take all reasonable steps and use her best endeavours to facilitate and secure DNA testing of IK and HK" by 31 May 2016; and
 - c. ordered the Home Office to make a fresh decision on the take charge requests by 14 June 2016.
9. The judgment provides welcome and important clarification that the authorities do not have a merely passive role. When an unaccompanied asylum seeking child arrives in the EU and claims to have family in the UK the authorities are under a duty to expeditiously take reasonable steps to identify those family members and take reasonable investigatory steps to verify the familial relationship. Once verified, they must then without delay reunite the child with his/her family. The judgment will be of help to the significant numbers of unaccompanied refugee children stranded in the camps in Calais and other parts of northern France.

The applicants were represented by counsel Charlotte Kilroy and Michelle Knorr (Doughty Street Chambers) instructed by solicitors Jed Pennington and Jane Ryan (Bhatt Murphy).