



Neutral Citation Number: [2023] EWHC 197 (Admin)

Case No: CO/320/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/02/2023

Before :

CLIVE SHELDON KC (SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

Between :

R

Claimant

(on the application of

- (1) RAWLE GANPOT
- (2) PAUL DICKSON
- (3) FAYROSE DICKSON)

- and -

SECRETARY OF STATE FOR THE
HOME DEPARTMENT

Defendant

Alex Schymyck (instructed by Luton Law Centre) for the Claimants
Darryl Balroop (instructed by Government Legal Department) for the Secretary of State

Hearing dates: February 1st 2023

Approved Judgment

This judgment was handed down remotely at 10.15am on 3 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archive.

Clive Sheldon QC (sitting as a Deputy Judge):

Introduction

1. This is an application for interim relief brought by three Claimants: Rawle Ganpot, Paul Dickson, and Fayrose Dickson. Rawle and Fayrose are partners, and Paul is their son. They seek interim relief from the Defendant, the Secretary of State for the Home Department, in the form of a mandatory order requiring the Defendant to provide them with accommodation pending the final hearing of their application for judicial review.
2. I heard full argument on the application on 1 February 2023 and, at the end of the hearing, I notified the parties that the application for interim relief was successful, and that I would provide my reasons at a later date. These are my reasons.

Factual Background

3. All three Claimants came to the United Kingdom from Grenada in the mid-to-late 1990s (Paul in 1996, Rawle and Fayrose in 1997). They lived with Fayrose's daughter until she asked them to leave in September 2021.
4. The Claimants were then accommodated by Luton Borough Council in temporary licenced accommodation for a weekly charge of £193.33. The Claimants were not in a position to make the rental payments and arrears of around £10,000 built up. On 11 January 2023, Luton Borough Council informed the Claimants that they would be evicted from their property on 30 January 2023.
5. In the meantime, the Claimants had applied for leave to remain in the United Kingdom under the 20-year rule operated by the Defendant ("the private life route"). Paul initially applied as a dependent of his mother Fayrose. He has now applied in his own right.
6. The Claimants have stated that they do not have any income, other than a small State pension for Fayrose. They have lived on charitable donations: including the use of soup kitchens and food banks and support from members of the local community. I am told that Rawle is 73 years old, and suffers from hypertension, diabetes and chronic stage 3 kidney disease. I am told that Paul is 49 years old, and suffers from diabetes and asthma, and may have some learning difficulties. I am told that Fayrose is 69 years old and suffers from diabetes.
7. On 6 January 2023, Rawle applied to the Defendant for accommodation and support, using the Defendant's "BAIL 409" form. The form is headed "Application for Immigration Bail Accommodation (Exceptional Circumstances including Article 3 ECHR)". Paul applied on 10 January 2023. Their applications were refused on 13 and 17 January 2023 respectively. On 18 January 2023, Fayrose made her application for accommodation and support.
8. Shortly afterwards, Rawle and Paul issued judicial review proceedings against the Defendant, and applied for interim relief. Linden J. ordered a hearing to take place on the application for interim relief on 30 January 2023. That hearing took place before me. At that hearing, it was explained by Mr. Balroop, Counsel for the Defendant, that

the Defendant would reconsider the applications made by Rawle and Paul. Consideration would also be given to Fayrose's situation. I was also told that Luton Borough Council had agreed to extend accommodation arrangements until 1 February 2023. Accordingly, I adjourned the hearing until 1 February 2023. Fayrose issued judicial review proceedings against the Defendant on 31 January 2023 and applied for interim relief on the same date. I have ordered that her application for interim relief be heard alongside that of Rawle and Paul.

9. The Defendant has reconsidered the applications for immigration bail and accommodation brought by Rawle and Paul, and has considered (for the first time) the application brought by Fayrose. The decisions are stated in identical terms. The applications have been refused. The Defendant has stated that:

“Having carefully considered your application on Form Bail 409, I am not satisfied that you meet the criteria set under paragraph 9 of Schedule 10 of the Immigration Act 2016. To be eligible to receive support under Schedule 10 you must demonstrate you have been granted Immigration Bail, are destitute and refusal of support would breach your human rights.

Although your destitution has been accepted, your application has been refused for the following reasons:

- You have not been granted Immigration Bail.
- It is considered that you have the ability to return to your country of origin, or any other country of willing to accept you as a national.
- It is not considered that there are any barriers to you voluntarily returning to Grenada. The embassy has the power to issue travel documents for individuals who wish to return to Grenada.
- There is no record of you submitting an application for either the Voluntary Returns Service or the Facilitated Return Scheme. It is therefore not considered that you are taking reasonable steps to leave the UK.
- You have submitted no medical evidence that you are unable to leave the UK at the present time
- It is not the opinion of the Secretary of State that there is no viable route to Grenada.

In addition to the above,

On the information available it is not considered that you have an outstanding asylum claim, nor are you a Failed Asylum Seeker. It is therefore not considered that there are any legal or practical obstacles to you returning to your country of origin. As such, the denial of support does not constitute a breach of your human rights”.

The Submissions

10. In summary, the arguments made by Mr. Schymyck, Counsel for the Claimants, are as follows:

(i) The Defendant has the power under the immigration bail provisions of Schedule 10 to the Immigration Act 2016 to grant immigration bail to individuals who are “liable to detention” (paragraph 1(1)(a) and 1(2) of Schedule 10: detention of persons liable to examination or removal). The Defendant has power to impose a condition requiring the individuals to reside at a particular address. Further, the Defendant has power to arrange for the provision of accommodation for individuals at that address where there are exceptional circumstances (paragraph 9(1)-(3) of Schedule 10).

(ii) In order to protect the Convention rights of applicants for immigration bail such as the Claimants (who fall within the legislative scheme because they are liable to be detained as they are overstayers), rather than consider first whether they should be granted immigration bail and whether a residence condition should be applied to them, and only then consider their Convention rights in deciding whether exceptionally accommodation should be provided to them, the Defendant should ask first whether there would be a breach of the Claimants’ Convention rights if she declined to provide them with that accommodation. If so, then to prevent those rights being breached, the Defendant must (1) grant immigration bail; (2) decide to impose a residence condition; and (3) determine that exceptional circumstances justify the exercise of the power to provide accommodation.

(iii) This interpretation is required by section 3 and 6 of the Human Rights Act 1998. It is also supported by the approach taken by Jeremy Johnson J. in *R (Humnyntskiy) v. Secretary of State for the Home Department* [2020] EWHC 1912 (Admin), see in particular [25]-[28], where the learned judge approved the inverting of the flowchart of questions normally applied by the Defendant so as to safeguard the Convention rights of an applicant for immigration bail who was a foreign national offender but was not a high risk of harm.

11. For the Defendant, Mr. Balroop contended that this is not the usual approach that the Defendant would apply, and that normal approach should not be subverted as it was contrary to the purpose and scheme of the legislation. The Defendant would normally ask whether immigration bail was required so as, for instance, to manage her relationship with the applicant and/or to be able to keep track over their whereabouts. Only then, once the Defendant had determined that immigration bail was required would she go on to consider the appropriateness of a residence condition and whether exceptional circumstances existed for the provision of accommodation.
12. Mr. Balroop also contended that there is a risk that the Claimants’ approach to the construction of the Schedule 10 framework has the potential of opening the floodgates. Indeed, he pointed out that in *R (Humnyntskiy)*, the Court observed at [12] that the purpose of having “stringent conditions” for the grant of accommodation under Schedule 10 is that “Otherwise there is a risk that any person who is in the UK unlawfully could demand the provision of accommodation at public expense”.

Discussion

13. I acknowledge the force of Mr. Balroop’s submissions. Nevertheless, it seems to me that there is a strongly arguable case that the Schedule 10 framework needs to be read in the way proposed by Mr. Schymyck in the circumstances presented by the Claimants.

14. The approach adopted by the Defendant presents the Claimants with the choice of (1) enduring “street homelessness”, or (2) returning to Grenada.
15. With respect to (1), if the Claimants did not return to Grenada, the evidence before me is that they will be “street homeless”. They are being evicted by Luton Borough Council on 1 February 2023, and there is no expectation that they will be offered further accommodation by the local authority, or anyone else.
16. I am told that the local authority has refused the Claimants’ request for accommodation under the Care Act 2014, and there is no other power for the local authority to provide accommodation to them: see section 116 of the Immigration and Asylum Act 1999, which precludes a local authority from providing accommodation under the National Assistance Act 1948 to persons like the Claimants who are subject to immigration control.
17. As for other sources of accommodation, the evidence before the Court is that the Claimants’ family member who previously hosted them asked them to leave in September 2021, and they appear to be estranged from her. In addition, an offer of accommodation from a charity, such as the Salvation Army, has not been forthcoming. Further, the Claimants do not have financial resources of their own to pay for accommodation. They are not permitted to have recourse to State benefits as a result of their immigration status, they are not entitled to work and, as the Defendant accepts, they are “destitute”.
18. In the circumstances, unless they returned to Grenada the Claimants would be forced onto the streets. Given the current weather conditions, and the Claimants’ age and/or physical state, this would most probably contravene their article 3 rights: see *R (Limbuella) v. Secretary of State for the Home Department* [2005] UKHL 66.
19. With respect to (2), the material that I have seen indicates that the Claimants have no real connections with Grenada, having left there over 25 years ago. More significantly, however, I was told by Mr. Schymyck, and this was accepted by Mr. Balroop on behalf of the Defendant, that if the Claimants returned to Grenada they would lose their right to apply for leave to remain on the “private life route”. The “private life route” has been specifically provided by the Defendant to give effect to the article 8 rights of applicants who have lived in the United Kingdom for 20 years or more.
20. I cannot say for certain that the Claimants will be successful with their application for leave to remain under the “private life route”, as this is a matter that still needs to be determined by the Defendant. The Defendant will need to decide whether, in fact, the “continuous residence” requirement of 20 years has been satisfied, and that the suitability conditions are met. I can say, however, that the Claimants’ applications are not frivolous or abusive and appear to have some merit: in their applications, the Claimants assert that they have stayed continuously in the United Kingdom for more than 20 years and have received no criminal convictions during that time.
21. It seems to me, therefore, that by making choice (2), there is a very real risk that the Claimants’ article 8 rights will be contravened.
22. In my judgment, therefore, it is strongly arguable that the Defendant has acted unlawfully by exercising her Schedule 10 powers in a way which puts the Claimants to

this choice: either choice involves a real risk of contravening the Claimant's Convention rights: article 3, if they stay in the United Kingdom and become "street homeless"; or article 8, if they have to return to Grenada.

Grant of Interim Relief

23. The test on an application for interim relief is that set out in *American Cyanamid v. Ethicon Ltd.* [1975] AC 396 -- is there a serious question to be tried and, if so, where does the balance of convenience lie -- modified for public law cases.
24. Where an application is made for mandatory relief, there is some dispute in the authorities as to whether the applicant must show that they have a strongly arguable case, or whether the strength of the case goes merely to the balance of convenience. I do not need to decide that question in this case.
25. I consider that there is plainly a serious issue to be tried. If the "strongly arguable" test applies as a threshold question where mandatory relief is sought then that threshold has been met. If it is not a threshold question, then the strength of the Claimant's case weighs heavily in their favour when considering the balance of convenience.
26. As for the balance of convenience more generally, I appreciate that making the mandatory order will put the Defendant to some expense and extra administrative burden, and that this is not immaterial. Nevertheless, I consider that this inconvenience or burden to the Defendant is easily outweighed by the prejudice or harm to the Claimants if they are required to make the choice of (1) or (2).
27. It seems to me, therefore, that a grant of the mandatory order is clearly called for and that the inconvenience or burden to the Defendant can be minimised by expediting the hearing of the Claimants' judicial review.

Conclusion

28. I have ordered the Defendant to make accommodation available to the Claimants pending the final hearing of their judicial review; and have ordered expedition of that hearing.