



OUTER HOUSE, COURT OF SESSION

[2023] CSOH 13

P864/20

OPINION OF LADY CARMICHAEL

in Petition of

MOHAMMED CAMARA

Petitioner

for

Judicial Review

Petitioner: Caskie, Drummond Miller (for McGlashan MacKay)

Respondent: Pirie KC, OAG

14 February 2023

Introduction

[1] Mr Camara is a citizen of Guinea. He is 23 years old. He has been trying since 2018 to obtain a visa to allow him to enter the United Kingdom in order to undergo trials with professional football teams in Scotland. Mr John McKnight, who is Mr Camara's sponsor, is also his football agent. The Secretary of State has refused Mr Camara's application on a number of occasions. Mr Camara raised judicial review proceedings on an earlier occasion in relation to a decision taken on 14 July 2019. The Secretary of State withdrew that decision. A new decision followed on 10 January 2020. The Secretary of State withdrew that decision on receipt of a pre-action letter.

[2] The present petition was originally directed at a decision dated 30 July 2020. The Secretary of State withdrew that decision. There followed a decision of 20 May 2021. Mr Camara challenged it in an amendment to the petition. That decision also was withdrawn. The Secretary of State again refused Mr Camara's application on 27 January 2022, and Mr Camara again amended this petition to challenge that decision. There was no dispute between the parties that the challenge to that decision was properly before the court and that I ought to determine it. The basis of the challenge appears at statement of fact 25 in the amended and adjusted petition. In addition to reduction, Mr Camara seeks an order at common law to require the decision maker to issue a decision not vitiated by error in law or to grant his application.

The immigration rules

[3] The conditions for entry clearance as a visitor are in the following paragraphs of Appendix V: Visitor to the Immigration Rules.

"Eligibility requirements for visitors

V 4.1 The decision maker must be satisfied that the applicant...meets all of the eligibility requirements in V 4.2 to V 4.6 ...

Genuine visitor requirement

V 4.2 The applicant must satisfy the decision maker that they are a genuine visitor, which means the applicant:

(a) will leave the UK at the end of their visit; and

....

(c) is genuinely seeking entry... for a purpose that is permitted under the Visitor route as set out in Appendix Visitor: Permitted Activities...; and

...

(e) must have sufficient funds to cover all reasonable costs in relation to their visit without working or accessing public funds...

Decision

V 16.1 If the decision maker is satisfied... that the relevant eligibility requirements for a Visitor are met, the application will be granted, otherwise the application will be refused"

The application

[4] Mr Camara submitted various items in support of his application. Those included three affidavits from Mr McKnight. In his affidavit of 10 November 2018 he deponed that he had an arrangement to act as Mr Camara's agent, and that he had had preliminary discussions with several named professional football clubs in Scotland. He said that all the clubs had stated that they were happy to see Mr Camara for an unpaid closed-door trial. He had shown the clubs videos of Mr Camara playing football. In an affidavit dated 22 March 2019 he said that he had spoken to people connected to a number of football clubs in England. He identified a scout for a well-known club (potentially confusingly, in the context of this petition, Mo Camara) and said that the scout had indicated he would like to see Mr Camara playing. In his third affidavit he adhered to what he said in the first two, and emphasised that Mr Camara understood that it would not be in his interests, as a person who wished to have a career in football, to breach immigration rules by overstaying or in any other way.

[5] He also submitted a letter dated 6 November 2018, from a journalist and documentary maker, William McBain. The letter narrates that Mr McBain became acquainted with Mr Camara in 2018 when he travelled to The Gambia. He explained that he was in the editing phase of a documentary he had directed focusing on exceptional young African footballers, and that Mr Camara was the main protagonist. He wrote that European

and African scouts had drawn Mr Camara to his attention, and that those scouts, and also coaches and managers in The Gambia expected Mr Camara to go on to play at the highest level. He enclosed stills from the documentary.

[6] On 13 July 2021 the Secretary of State wrote this to Mr Camara's solicitors:

"Your UK visa application is currently under reconsideration following a legal challenge to your earlier decision. Your previous refusal notice highlighted concerns we had with your application and you have challenged these points. We are carrying out a full reconsideration, in order to ensure we reach a balanced decision on your application we would like to give you the opportunity to directly address the concerns we have previously raised. We would therefore like to ask you to provide some additional information in support of your application. I would be grateful if you could reply to this email with the following supporting evidence, in PDF format:

- You have applied stating that you will be attending closed door trials with a number of UK football clubs. This could only happen with the knowledge and invitation of those clubs. Please could you provide evidence from all of the professional football clubs in the UK that have invited you to pre-arranged trials, as stated by you.
- Evidence that your sponsor, John McKnight, is an active football agent/scout and has any affiliation to any professional football clubs in the UK.
- Your application makes references to your abilities as a footballer. Please could you provide evidence of your footballing career to date, letters from former clubs you have represented such as, international call ups at youth or senior level, goal scoring record, statistics, appearances and team league position from previous seasons.
- Are you currently representing a football club? If so please can you provide evidence of this and the level the club play at. If not please can you provide evidence of the last club you represented and the level this was at.
- You have stated that the well-known ex player Mo Camara has expressed an interest in watching you trial, are you able to provide anything from Mr Camara supporting this statement and his interest in your career.
- Evidence of your current circumstances and how you yourself are supported on a daily basis in The Gambia or Guinea, living situation, bank account, any employment income, familial ties."

[7] Mr Camara's solicitors responded:

“1. In respect of your first bullet point, as noted in previous petitions and the petition currently before the Court of Session, we submit that this request misunderstands the nature of the arrangements by which relatively junior, but talented, footballers are provided with trials by professional football clubs in Scotland. Such arrangements are that individuals will be invited to attend a training session upon recommendation by an appropriate individual. Such arrangements are unlikely to be formal in nature as the Decision Maker seems to assert. However, the position of Mr Camara’s agent is that he has been advised that Mr Camara will be invited to undergo trials with a professional football club once he is in the United Kingdom.

2. In respect of your second bullet point, as noted in previous petitions and the petition currently before the Court of Session, there is no requirement for football agents in the United Kingdom to be registered with FIFA. FIFA abolished its Player’s Agents Regulations and the licensing system for players’ agents in April 2015 and replaced it with Regulations on Working with Intermediaries. Each Football Association is responsible for its own registration process, and the position taken by the Scottish Football Association is that an intermediary must be registered each time he is involved in a transaction. A copy of the Scottish Football Association’s Intermediary Regulations is attached for your information confirming this. As such, Mr Camara’s agent will only have to register as an intermediary when he is involved in a transaction and it would be unreasonable for him to provide further information at this stage.

3. In respect of your third bullet point, we would remind the Decision Maker that Mr Camara is a relatively young individual. Such statistics are not routinely recorded at the level that Mr Camara has played at to date. Mr Camara has currently returned to Guinea due to the Coronavirus pandemic and is therefore unable to produce letters from the football clubs he has played for. However, we would remind the Decision Maker that a letter has been submitted previously by William McBain, an independent individual, who refers to Mr Camara as the main protagonist of a documentary highlighting exceptional African footballers. Mr McBain makes reference to highly regarded individuals within Gambian football believing that Mr Camara will go on to play professional football at the highest level. The Decision Maker therefore has independent information about Mr Camara’s abilities as a footballer which ought to be taken into account. We would remind the Decision Maker that the progress of Mr Camara’s career has been stalled by the refusal to allow him Entry Clearance to the United Kingdom for the purpose of attending sporting trials.

4. In respect of your fourth and sixth bullet points, we can advise that Mr Camara has, at present, returned to Guinea due to the Coronavirus pandemic. We understand from Mr Camara’s agent that he continues to train on a daily basis.”

The Secretary of State's decision

[8] The Secretary of State did not appear to dispute the information from the solicitors to the effect that Mr McKnight did not need to be registered as an intermediary until such time as he became involved in a transaction. There was no dispute that Mr McKnight had provided documents demonstrating his willingness and ability to provide accommodation and financial resources for Mr Camara's proposed visit. Mr Camara would therefore have sufficient funds for his visit without working or accessing public funds.

[9] The reasons for refusing the application related (a) to the absence of information, other than from Mr McKnight and from Mr Camara's solicitors, that Mr Camara has been offered trials by football clubs; (b) the absence of information from other sources about Mr Camara's career to date; (c) the absence of information about how he supported himself financially, or was supported, in The Gambia or Guinea.

[10] The decision letter contains more than one passage relating to the absence of confirmation from any club that it had offered Mr Camara a trial:

"Other than the statements by your solicitor and sponsor, the information you have provided does not show that any such trials have been agreed or any arrangements made ... You have said agreement for these has been made with four different clubs but the information you have provided does not show these clubs have agreed to trials or have had any contact with you or your sponsor. I am not satisfied of this by the affidavits submitted by your sponsor because the information you provided does not demonstrate that your sponsor has any experience as an agent or include anything from the clubs that you say have enquired about trials. Any information can be provided on an affidavit. If incorrect information were to be provided on an affidavit, there would be no consequences or further action taken against the person who submitted the incorrect information. If such trials were agreed, some form of correspondence from the club in question would be readily available.

...

Your solicitor's response [to the request in the email of 13 July 2021] was that arrangements such as an invitation would be informal in nature and that you would be formally invited once actually in the UK. However, I am satisfied that had you been invited to a trial by Scottish Premier League Clubs ... there would be at least

one letter confirming this invitation, or that it would, following our request, have been possible to have obtained confirmation from them of any informal conversations that had taken place.”

[11] The Secretary of State was not satisfied that there would be no record of Mr Camara’s career to date, given the claims made about his ability as a footballer. Mr Camara had not responded to the specific request for information about his current or most recent team. He had never provided vouching of what he said his income was, either at the time of his application or subsequently. She was not satisfied by the explanation given by the solicitors for the absence of evidence about whether Mr Camara was currently playing for a team or about the last team he played for.

Submissions

Mr Camara

[12] In relation to the absence of confirmation from a club or clubs about having offered a trial, Mr Caskie submitted that football clubs would not provide written evidence that they had offered an individual a closed door trial. That was the deliberate and normal practice of football clubs, adopted because of commercial sensitivities. If they confirmed that they had offered someone a trial, that might assist rival clubs in identifying talented, unsigned players. Further, circumstances might alter so that the club were no longer seeking someone to fill a particular role, and they would not wish to have committed to providing a trial.

[13] Counsel was particularly critical of the Secretary of State’s approach to Mr McKnight’s affidavits. Mr Camara had now challenged a number of decisions by way of judicial review. It was clear that the affidavits would be put before the court. They were statements on oath. Dishonest statements in them might come to the attention of the prosecution authorities. Mr McKnight might be prosecuted for perjury.

[14] The Secretary of State had relied on Mr Camara's failure to progress in his career, but that failure resulted from her earlier decisions to refuse his visa application. Mr Camara was Mr McKnight's first client, and every agent must at some stage have a first client. It was irrelevant that Mr McKnight was not a registered or active agent.

[15] Mr Camara had submitted payslips when he made his application. The form he had submitted had a box checked indicating he had done so. It appeared that the Secretary of State had lost them. The absence of vouching was immaterial in any event, as the sponsor could fund the trip. There was no dispute that his pay was low. He was not relying on a substantial income as evidence that he had an incentive to leave the United Kingdom at the end of his visit.

The Secretary of State

[16] The Secretary of State had provided notice in the email of 13 July 2021 as to the information that she was looking for, and Mr Camara had not provided it. The requests for information were not unreasonable. They related to matters about which the Secretary of State required to be satisfied, and she was entitled to take into account the absence of evidence that should be readily available: *TK (Burundi) v Secretary of State for the Home Department* [2009] EWCA Civ 40, paragraphs 1, 16, 20, 21. Mr Camara required to demonstrate a material error of law: *PA v Secretary of State for the Home Department* 2020 SC 515, paragraph 32. Administrative decisions must be read in a realistic and practical way: *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] 1 WLR 413, paragraphs 26 and 46 - 50. The weight to give to a relevant consideration was a matter for the decision maker: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, pages 764F - H and 780E - G.

[17] The criticisms about the approach to the affidavits were ill-founded. Mr McKnight would not be liable to prosecution for perjury. That crime required that the statement be made in judicial proceedings and made under an oath that the person who made it was required to take: Gordon, *The Criminal Law of Scotland*, 4th edition, paragraphs 55.03, 55.05 and 55.13. The affidavits were not sworn for the purpose of these proceedings but for a visa application, and there was no requirement for statements to be on oath in that context.

Decision

[18] Mr Camara requires to demonstrate that it is not reasonable, in the *Wednesbury* sense, for the Secretary of State to have refused his application on the basis of the information before her. The question for her was whether she was satisfied that Mr Camara was genuinely seeking entry for the purpose of undergoing closed door trials. She provided clear notice to Mr Camara, in the email of 13 July 2021, of the matters about which she was concerned, and invited him to submit further material to address her concerns.

[19] On a fair reading, the Secretary of State did not refuse the application for entry clearance because Mr McKnight was not a registered football intermediary. Rather, she assessed the information provided to her against the background that he was not. She was not bound to accept the information from Mr Camara, Mr McKnight and Mr McBain, although she might have been entitled to do so. She was entitled to take into account the absence of independent supporting evidence when that would ordinarily be available and there is no credible explanation for its absence: *TK (Burundi)*, passages cited above.

[20] Mr Camara provided no evidence to the Secretary of State that it is normal practice for football clubs not to provide written confirmation of having offered an individual a trial. That point was developed for the first time in the written and oral submissions in this case.

The Secretary of State cannot be criticised for not having taken that matter into account.

That explanation was not before her at all.

[21] It was not unreasonable to ask for confirmation from at least one club of the offer of a trial. On the hypothesis that the explanation for the absence of that is correct, there would be nothing obviously preventing Mr Camara from obtaining a letter from a football club stating that it is their policy neither to confirm nor deny that they have offered a trial and/or that that is normal practice in the industry.

[22] Regardless of whether a representation is in an affidavit or some other form, acting to facilitate a breach of immigration law by a person who is not a UK national is, as Mr Caskie pointed out, an offence: Immigration Act 1971, section 25. A misleading statement by a sponsor might well give rise to a penal consequence. To that extent the Secretary of State was wrong to say in unqualified terms that there would be no consequences for the author of such a statement. That error is not material. First, although a person who swears an affidavit is on oath as to the truth of the content, the content may not in fact be true. The Secretary of State was under no obligation to accept the content of the affidavit as true. Second, it is obvious, looking at the decision letter as a whole, that the decision would have been the same, absent the error: *Holmes-Moorhouse*, paragraph 51. The Secretary of State was concerned about the absence of information from the named football clubs to confirm that they had offered trial.

[23] I am not satisfied that the Secretary of State acted unreasonably in refusing to grant the application on the basis of the information provided to her. None of the documents submitted in support of Mr Camara's application names any team for which he has played. There is no mention of what position or positions he plays in. It is not unreasonable for the

Secretary of State to require vouched detail about matters of that sort where an application is for entry clearance to undergo trials with professional clubs.

[24] The Secretary of State was entitled to regard the explanation for the absence of evidence about Mr Camara's current or last team – that Mr Camara had returned to Guinea due to the Coronavirus pandemic and was therefore unable to produce letters from the football clubs he has played for – as unsatisfactory. It is not obvious from that explanation why he would have no documentary record of having played for particular clubs, or why his presence in Guinea would necessarily prevent him or his solicitors from approaching those clubs for a letter confirming that he had played for them.

[25] There may be some force in counsel's submission about the significance, or lack of it, of the absence of payslips vouching Mr Camara's claim that he received pay as a trainee footballer at a particular rate mentioned in his application (£20.49 per month). He has never suggested that his means in Guinea or The Gambia were an incentive for him to return. That said, however, the fact that Mr Camara did not have a job that provided him with a financial incentive to return was clearly a relevant factor for the decision maker to assess as part of the whole circumstances of the application.

[26] I refuse the petition. Had I considered that the Secretary of State had materially erred in law, I would have confined the remedy to reduction.