

**IN THE UPPER TRIBUNAL
EXTEMPORE JUDGMENT GIVEN**

JR/11513/2014

Field House,
Breams Buildings
London
EC4A 1WR

03 January 2019

**THE QUEEN
ON THE APPLICATION OF
HUSSEIN IBRAHIM HASSAN**

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

BEFORE

UPPER TRIBUNAL JUDGE O'CONNOR

- - - - -

UPON HEARING FROM

The Applicant in person (with the assistance of a Court approved interpreter)

Mr W Hansen, instructed by the Government Legal Department appeared on behalf of the Respondent.

- - - - -

ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT

- - - - -

JUDGE O'CONNOR:

Introduction

1. The Applicant, a national of Syria, brings challenge by way of judicial review to the respondent's decision of the 5 September 2014 refusing his application for asylum and certifying the claim pursuant to Schedule 3, Part 2, paragraph 3(2) of the Asylum and Immigration (Treatment of Claimants) etc Act 2004 i.e. certifying that the applicant is not a national of Bulgaria and that it is safe to return the applicant to Bulgaria, a country which is in the EU and in which the applicant previously resided. Challenge is also brought to the consequential decision of 11 September 2014, setting directions for the applicant's removal to Bulgaria.
2. These decisions were made pursuant to the framework set out in EU regulation No 604/2013 - known as "Dublin III". Broadly speaking, Dublin III regulates as between EU Member States which state has the obligation to determine an applicant's protection claim. It has nothing to do with the merits of the underline asylum application, but simply which state must decide that application.
3. On 18 September 2014, the applicant's representatives made a human rights claim on the applicant's behalf. This claim was refused in a decision of 22 September 2014 and certified as clearly unfounded. Removal was deferred whilst this application was considered.

Applicant's immigration history

4. The applicant arrived in the UK on or around the 18 August 2014 and made an asylum application at this time. The respondent subsequently undertook a screening interview and a EURODAC search (a fingerprint database held by European states), which revealed that the applicant had been in

Bulgaria on the 21 August 2013. As a consequence, the respondent sent a request to Bulgaria requesting that it determine the applicant's asylum claim.

5. The Bulgarian authorities failed to respond to this request, the consequence of which - under Dublin III - is the deemed acceptance of responsibility by Bulgaria for consideration of the applicant's asylum application.

Application for Judicial Review

6. The basis of the pleaded challenge brought by the applicant was threefold:

- (1) The fact that the applicant has sought asylum in the UK puts him at risk of persecution in Syria. Consequently, he is entitled to a residence card in the UK pursuant to Art 24 of the Qualification Directive. It is, therefore, unlawful to remove him to Bulgaria. Permission was correctly refused on this ground, so I say no more about it.
- (2) The detention conditions and conditions generally in Bulgaria for asylum applicants are such that they breach Article 3 of the European Convention of Human Rights and/or Article 4 of the Charter of Fundamental Rights; and,
- (3) The applicant would be unlawfully detained in Bulgaria, in breach of Article 5 of the European Convention of Human Rights and/or Article 6 of the Charter of Fundamental Rights.

7. In a decision of 23 September 2015, Upper Tribunal Judge Allen found Grounds 2 and 3 to be arguable.

Discussion

8. As is clear from the chronology set out previously, some three years and four months have passed since the grant of permission. I have not been told of any further applications made by the applicant to the Secretary of State during that time. Of course, it is entirely a matter for the applicant whether he seeks to make such an application in the future.
9. I am today hearing challenges to the original decisions from 2014 which, whilst of some vintage, nevertheless remain the operative decisions for the purpose of this application for judicial review. As Mr Hansen properly stated during the course of his submissions, any further points the applicant wishes to take and further matters he wishes to raise as a consequence of the four or so years that he has spent in the United Kingdom since the 2014 decisions, need to be taken up with the Secretary of State by way of representations. He can make such representations at any point in time and the Secretary of State will consider them.
10. The delay in the Upper Tribunal deciding this case is a consequence of ongoing litigation of similar issues elsewhere. This claim was initially stayed by consent to await a decision of the High Court in a case called Khaled & Others v The Secretary for the Home Department [2016] EWHC 857. In Khaled the High Court gave consideration, on the basis of up-to-date evidence, to the circumstances prevailing for asylum seekers was in Bulgaria. The High Court's judgment was issued on 18 April 2016, the claimants' claims being dismissed.
11. It is prudent at this stage to summarise the reasoning and conclusions in Khaled:

- (a) There is no basis upon which it could properly be concluded that wholesale suspension of the returns of asylum seekers to Bulgaria is required;
- (b) Reception capacity for asylum seekers in Bulgaria has significantly increased and improvements are in hand. A substantial sum of money has been allocated to Bulgaria for this purpose by the European Commission;
- (c) Conditions in reception centres in Bulgaria have significantly improved and medical care, legal assistance and warm food are now provided;
- (d) There have been improvements in the asylum registration process. Asylum seekers are not held in detention for a significant length of time and steps have been taken by the authorities to counter xenophobic incidents. There have been no reports of ill treatment of asylum seekers;
- (e) There are practices in place for the treatment of vulnerable individuals. I observe that three of the applicants in Khaled were vulnerable individuals - having been tortured in their home countries.
- (f) There is no substance in the complaints made about the asylum processing system Bulgaria;
- (g) Interpreters are available for the assistance of asylum seekers in Bulgaria; and,
- (h) The situation in Bulgaria comes nowhere near establishing a breach of the Human Rights Convention and no Tribunal properly directing itself could conclude that the claimants' human rights would be breached by removal to Bulgaria;

12. The claimants in Khaled subsequently appealed to the Court of Appeal. As a consequence, the instant applicant's case was once again stayed by consent, because it was thought that the Court of Appeal's decision would be of some importance to the determination of the instant claim. The Court of Appeal's decision was handed down on 23 November 2017 and is referenced and HK (Iraq) & Others [2017] EWCA Civ 1871 - the appeal being

dismissed with the reasoning of the High Court in Khaled being affirmed.

13. Returning to the instant case, the applicant submits that during his time in Bulgaria in 2013 he was detained and ill-treated by both the authorities and other individuals. He likened the Bulgarian regime to the regime in Syria. The applicant referred to his mental health issues, which are documented in a medical report of the 4 August 2015 and a Rule 35 Report from the detention centre. I have had regard to this evidence. The applicant further asserts that he would not receive protection in Bulgaria.
14. Of course, it is significant that, even if true, the applicant's recollections about the circumstances in Bulgaria relate to 2013. The information the court considered in Khaled was more recent and identified improvements in the situation in Bulgaria which led the court to conclude as it did. I have no additional evidence before me and thus I treat the findings made in Khaled as being of significance in my consideration of the instant claim.
15. In any event, I make the following observations about the information provided by the applicant. In his asylum screening interview, which the applicant has described as unfair, the applicant indicated that he had been arrested at the border in Bulgaria, detained for 22 days and thereafter deported to Turkey. Whilst he asserts therein that Bulgaria does not care about human rights, he makes no allegations therein that he was personally tortured or ill-treated. In addition, on 15 September 2014 the applicant's solicitors wrote to the Helen Bamber Foundation requesting a medical report. In that letter it is said that the applicant was left in Bulgaria with no food and accommodation, and that he had to sleep on the streets and under bridges. There was no mention therein of the

applicant having been detained and deported. A further version of the applicant's claimed circumstances in Bulgaria is to be found in the medical report of Dr Stevens dated 4 August 2015. In that report it is said that the applicant was detained for three weeks in Bulgaria, but there was no mention of the applicant having been ill-treated whilst in detention. It is also said that upon release the applicant stayed with a Syrian man on a farm near the border. There is no mention of applicant having lived on the streets or under a bridge.

16. As I say, the truth of the circumstances that the applicant faced in Bulgaria in the past is of little relevance in my assessment of the circumstances that would prevail if the applicant were to be returned to Bulgaria. This is ostensibly because the situation has improved since 2013 - as to which see Khaled.
17. What remains to be considered is whether there is anything in individual facts of the applicant's case that should lead me to depart from the general findings in Khaled. In my conclusion there is nothing, even when the facts are taken at their highest, which differentiates this case from the claimants' cases in Khaled. In particular, I observe that in Khaled a number of the applicants were vulnerable. Even if it is accepted that the applicant has mental health difficulties (including depression), the court in Khaled observed that there are facilities available in Bulgaria for vulnerable asylum seekers and that the asylum system there is such that it does not breach the Human Rights Convention or the Charter of Fundamental Rights.
18. As such, on the information available to me I come to the same conclusion as the High Court in Khaled and the Court of Appeal in HK, for ostensibly the same reasons as given by those courts. Considering the circumstances of this case at

their most beneficial for the applicant, I find that the applicant does not come close to establishing that his return to Bulgaria would expose him to a breach of Article 3 or 5 of the European Convention of Human Rights or Articles 4 or 6 of the Charter of Fundamental Rights. I further find that there is no prospect of a Tribunal properly directing itself to all the evidence coming to a different conclusion. Consequently, I conclude the certifications in issue in this application are not irrational or otherwise unlawful.

19. There is one further issue relied upon by the applicant for the first time today, that being the fact of his claimed departure from Bulgaria to Turkey and the fact that he remained in Turkey for over 10 months prior to making his way to the UK. This is not a ground pleaded by the applicant previously in this application for judicial review, and the Secretary of State objections to the grounds being amended so as to include this point.
20. I have considered whether it is in the interests of justice to allow the applicant to amend his grounds to incorporate a challenge brought on the aforementioned basis and conclude that it is not.
21. I reach my conclusion for the following reasons. First, the applicant lodged this judicial review as long ago as 2014. He has, since that time, had ample opportunity to raise this ground. He has been represented by experienced immigration solicitors, Duncan Lewis, for the majority of the time he has been in the UK and his grounds of application for judicial review were drafted by experience counsel. Furthermore, the Secretary of State wrote to the applicant in February 2018 inviting him to amend his grounds or withdraw his application in light of the decisions of Khaled and HK & Others. If there was a time to amend the grounds that was it. Duncan Lewis were

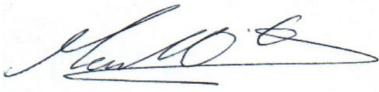
on record at that time. In addition, Upper Tribunal Judge Kopieczek making an order (sealed on the 18 July 2018) providing the applicant with further time to respond to the SSHD's letter i.e. providing the applicant with yet further opportunity to amend his grounds. He did not do so. Furthermore, at an earlier hearing I also gave the applicant an additional seven days within which to amend his grounds. This order was reduced to writing and sent out to the parties on 24 September 2018. There was no response.

22. In my conclusion, given the numerous opportunities the applicant has had to amend his grounds, the fact that he was represented by experienced immigration solicitors for over four years during these proceedings and that his grounds were originally drafted by experienced counsel, and the late hour of the current application leads me to conclude that it is not in the interests of justice to admit the new ground of challenge.
23. For all these reasons, I refuse this application for judicial review. I reiterate once again though that if the applicant has any representations he wishes to make as a consequence of the length of time he has been in the United Kingdom, the appropriate course is to make those representations to the Secretary of State.

ORDER

1. The application for judicial review is dismissed.
2. The application for permission to appeal to the Court of Appeal is refused.
3. The applicant must pay the respondent's costs in a sum to be assessed if not agreed, save that the applicant shall not be liable to those costs accrued by the respondent at a time when he (the applicant) had costs protection pursuant to s26 of LASPO 2012, or otherwise.

4. The applicant's publicly funded costs shall be the subject of detailed assessment.

A handwritten signature in black ink, appearing to read 'M. O'Connor', written over a faint, illegible stamp or background.

Upper Tribunal Judge O'Connor