Neutral Citation Number: [2024] EWHC 1685 (Admin)

Case No: AC-2020-LON-002769

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 July 2024

Before:

Mr Justice Lavender

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Between:

THE KING
on the application of
DM

Claimant

- and -

SECRETARY OF STATE FOR THE
THE HOME DEPARTMENT

Defendant

UNITED NATIONS HIGH COMMISSIONER
FOR REFUGEES

Intervener

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- -

Raza Husain KC, **Jason Pobjoy** and **Eleanor Mitchell**
(instructed by **Duncan Lewis**) for the **Claimant**
Sonali Naik KC, **Rebecca Chapman** and **Ali Bandegani**
(instructed by **Baker & McKenzie LLP**) for the **Intervener**
Lisa Giovannetti KC and **Jack Anderson** (instructed by the **Government Legal Department**)
for the **Defendant**

Hearing date: 26 April 2024

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JUDGMENT

Mr Justice Lavender:

(1) Introduction

1. These are the reasons for my decision on the claimant's application for permission to appeal against my decision to dismiss his application for judicial review.

2. There were three grounds for seeking judicial review:

   (1) I dismissed grounds 1 and 2 in my judgment of 31 March 2023: [2023] 1 WLR 4109 ("the principal judgment").

   (2) I dismissed ground 3 in my judgment of 26 April 2024: [2024] EWHC 967 (Admin) ("the second judgment").

3. I adjourned the hearing on 26 April 2024 and directed the parties to make written submission on permission to appeal. Having considered those submissions, I have decided to dismiss the claimant's application for permission to appeal for the following reasons.

(2) Ground 1

4. In relation to ground 1, the claimant submits, in effect, that it is arguable that I was wrong not to conclude that the Secretary of State discharged a function for the purposes of section 55 of the Borders, Citizenship and Immigration Act 2009 whenever he decided not to review the relevant part of the Immigration Rules.

5. I do not consider that this is arguable. It is inconsistent with what the Divisional Court said (in relation to the public sector equality duty) in paragraphs 242, 243 and 246 of its judgment in *R (Adiatu) v HM Treasury* [2020] PTSR 2198, which I cited in paragraphs 131 and 132 of the principal judgment. The position advocated for by the claimant would mean that every time the Secretary of State received, from whatever source, a recommendation for changing the Immigration Rules which he decided not to consider, he would be obliged to comply with section 55 in respect of that proposal.

(3) Ground 2

6. In relation to ground 2, the claimant submits, in effect, that it was arguable that I was wrong to conclude that there was no relevant discrimination between child and adult refugees, either:

   (1) because child and adult refugees are similarly situated and are being treated differently; or

   (2) because child and adult refugees are differently situated and are being treated the same.

7. I do not consider that this is arguable, essentially for the reasons which I gave in paragraphs 153 to 156 of the principal judgment:

(1) Child and adult refugees are being treated the same insofar as neither child nor adult refugees are permitted to sponsor applications for leave to enter by their parents or siblings.

(2) Child and adult refugees are not differently situated in that respect: for many young adult refugees, their parents and/or siblings will constitute their nuclear family.

(4) Ground 3

8. In relation to ground 3, the claimant submits, in effect, that it is arguable that I was wrong:

(1) to hold that the decision taken by the Secretary of State in 2000 not to include in the Immigration Rules a route to family reunion for child refugees was not irrational and/or that the relevant Immigration Rules were not irrational; and/or

(2) to hold that it was not irrational for the Secretary of State to decide from time to time not to reconsider the relevant Immigration Rules.

9. The claimant does not advance as a proposed ground of appeal that I was wrong to dismiss (as I did in paragraphs 68 and 69 of the second judgment) the arguments advanced before me in reliance on section 55 in support of ground 3. Instead, the claimant advances (in paragraphs 26 and 27 of his submissions) different arguments based on section 55. If, however, I was right to hold (in relation to ground 1) that section 55 did not apply, then that section was not relevant to the Secretary of State's decisions challenged by ground 3.

10. I do not read the claimant's submissions as containing any substantive challenge to my decision that the decision taken in 2000 was not irrational.

11. As to the decisions taken since then not to review the relevant Immigration Rules, the claimant:

(1) relies on his evidence; and

(2) contends that those decisions did not involve any judgments as to the future.

12. As to those matters:

(1) I dealt with the claimant's evidence in paragraphs 69 to 72 of the principal judgment and in paragraphs 61 to 69 of the second judgment. I also dealt with the claimant's position that there is an absence of evidence to support the Secretary of State's position: see paragraph 54 of the second judgment and the paragraphs of the principal judgment referred to therein.

(2) I noted in paragraph 65(4) of the second judgment that, in relation to his decisions not to reconsider the relevant Immigration Rules, the Secretary of State's position, as I understood it, remained that making the proposed change would create an incentive for children to be encouraged, or even forced, to leave their families and attempt hazardous journeys to the United Kingdom and that would result in children being exposed to the risk of the harms

associated with hazardous journeys and criminal gangs. It follows that that judgment was relevant to those decisions and I held that it was not irrational.

13. If it was appropriate to consider the rationality of the Immigration Rules themselves, then they cannot have been irrational if, as I held:

(1) it was not irrational to introduce them; and

(2) it was not irrational to decide from time to time since their introduction not to reconsider them.

(5) Other Compelling Reason

14. I do not consider that there is a compelling reason for granting permission to appeal. There may be scope in another case for considering the precise ambit of section 55, but the proposed ground of appeal in relation to ground 1 indicates that this would not be a suitable case for that purpose.

15. It is suggested that the practical consequence of my decision will be to render the relevant Immigration Rules immune from scrutiny, but this submission assumes: (a) that the Secretary of State will never decide to reconsider those rules; and (b) that this court will dismiss any future application for judicial review for the same reasons as in the present application. I do not consider that it is appropriate for me to make either assumption.