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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **04/06/2025**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY JR332
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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Steven McQuitty KC & Robert McTernaghan (instructed by NA & Co) for the Applicant
Tony McGleenan KC & Philip McAteer (instructed by the Crown Solicitor's Office) for the Proposed Respondent

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HUMPHREYS J

Introduction

[1] The applicant is a Syrian national, living in Northern Ireland, who is an asylum seeker. By this application, he seeks leave to challenge a decision of the proposed respondent, the Secretary of State for the Home Department ('SSHD'), dated 9 December 2024 by which all asylum claims brought by Syrian nationals were stayed or 'paused.'

[2] The applicant's evidence reveals that he arrived in the United Kingdom by train into Belfast on 19 December 2023 and claimed asylum immediately. He was screened on 4 November 2024 and a substantive interview took place on 12 December 2024.

[3] The applicant says that he has been left in limbo, along with other Syrian asylum seekers, and that this has had a negative impact on his mental health. He is currently on medication for sleep problems and is on a waiting list for counselling sessions. He is a single man with no children and says that he has been unable to progress his life and career unless and until his asylum application is processed.

The position in Syria

[4] Between 1963 and 2024 Syria was under the one party rule of the Ba'ath Party which was controlled by the Assad family. Bashar al-Assad was President of Syria

from 2000 until December 2024 when opposition forces captured Damascus. This was the conclusion of a brutal civil war in which saw hundreds of thousands killed and almost 14 million people displaced.

[5] The country is now under the leadership of Ahmed al-Sharaa, a former member of al-Qaeda. In the applicant's own words:

> "the future of Syria is at best uncertain"

[6] On 9 December 2024 the United Kingdom Government took the decision to temporarily pause all asylum claims made by Syrian nationals. On 8 January 2025 the then Minister of State for Border Security and Asylum stated, in response to a written Parliamentary question:

> "Following the fall of the Assad regime in Syria, the Home Office has withdrawn the Country Policy Information Notes and Guidance relating to Syria. Consequently, as the Home Office continues to assess the current situation in Syria, the Home Office has temporarily paused decisions on Syrian asylum claims."

[7] In the House of Lords, the Minister of State (Home Office) stated on 29 January 2025 that the pause affected some 5,500 applications made by Syrian nationals. He made it clear that there was nothing to stop Syrians applying for asylum but no decision would be made until the pause was lifted. It was explained that there was a need to review the situation in Syria and ascertain the long term position. The Minister further referred to the fact that this was not a unilateral course of action taken by the UK but was similarly adopted by Austria, Belgium, France and other countries.

[8] The pause does not impact upon the rights of asylum seekers under the Asylum Seekers (Reception Conditions) Regulations 2005 and the Immigration and Asylum Act 1999 to accommodation and subsistence.

The position of UNHCR

[9] The United Nations High Commissioner for Refugees ('UNHCR') made a statement on 10 December 2024:

> "...anyone seeking international protection must be able to access asylum procedures and have their application examined fully and individually on its merits, in accordance with appropriate, procedural safeguards.
>
> UNHCR takes note of the decision by a number of States who have suspended asylum decision-making on Syrian claims for international protection, until such time as the

> situation in the country has stabilized and reliable information about the security and human rights situation is available to assess the international protection needs of individual applicants.
>
> In light of the uncertain and highly fluid situation the suspension of processing of asylum applications from Syrians is acceptable as long as people can apply for asylum and are able to lodge asylum applications.
>
> Once conditions in Syria are clearer, UNHCR will also provide guidance to States on the international protection needs of relevant profiles of Syrians at risk.
>
> Syrian asylum-seekers who are waiting for a resumption of decision-making on their claims should continue to be granted the same rights as all other asylum-seekers, including in terms of reception conditions. No asylum-seeker should be forcibly returned, as this would violate the non-refoulement obligation on States."

The test for leave

[10] The applicant must show, at this stage, that he enjoys an arguable case, with realistic prospects of success, which is not subject to any discretionary bar such as delay or alternative remedy.

The grounds for judicial review

[11] The applicant seeks to impugn the decision of the UK Government on the following grounds:

(i) Ultra vires - the SSHD had no legal power to pause or stay all Syrian asylum claims;

(ii) Error of law - the decision is unlawful as being in breach of the relevant provisions of the Windsor Framework ('WF') and the European Union (Withdrawal) Act 2018;

(iii) Human rights - the decision amounts to a disproportionate interference with the applicant's right to respect for private life under article 8 ECHR, contrary to section 6 of the Human Rights Act 1998; and

(iv) Irrationality - the decision is otherwise irrational.

Vires

[12] The general principles are set out by Lord Sumption in *R (New London College) v SSHD* [2013] UKSC 51:

> "If the Secretary of State is entitled (as she plainly is) to prescribe and lay before Parliament rules for the grant of leave to enter or remain in the United Kingdom which depend upon the migrant having a suitable sponsor, then she must also be entitled to take administrative measures for identifying sponsors who are and remain suitable, even if these measures do not themselves fall within section 3(2) of the Act. This right is not of course unlimited. The Secretary of State cannot adopt measures for identifying suitable sponsors which are inconsistent with the Act or the Immigration Rules. Without specific statutory authority, she cannot adopt measures which are coercive; or which infringe the legal rights of others (including their rights under the Human Rights Convention); or which are irrational or unfair or otherwise conflict with the general constraints on administrative action imposed by public law." (para [29])

[13] Rule 333A of the Immigration Rules states:

> "The Secretary of State shall ensure that a decision is taken on each application for asylum as soon as possible, without prejudice to an adequate and complete examination.
>
> Where a decision on an application for asylum has not been taken within:
>
> (a) six months of the date it was recorded; or
>
> (b) within any revised timeframe notified to an applicant during or after the initial six-month period in accordance with this paragraph, and
>
> (c) where the applicant has made a specific written request for an update,
>
> the Secretary of State shall inform the applicant of the delay and provide information on the timeframe within which the decision on their application is to be expected. The provision of such information shall not oblige the Secretary of State to take a decision within the expected timeframe."

[14] This rule was introduced in 2007 to implement Article 23(2) of Council Directive 2005/85/EC of 1 December 2005 laying down minimum standards on procedures in member States for granting and withdrawing refugee status ('the 2005 Procedures Directive'). Article 23 of the 2005 Procedures Directive obliges Member States to ensure applications for asylum are concluded as soon as possible and in the event that a decision cannot be made within six months, the applicant should be informed of the delay and the timeframe for the making of the decision.

[15] The 2005 Procedures Directive also included, at Article 8, the right to have asylum claims examined individually, objectively and impartially. Article 8(2)(b) states:

> "Member States shall ensure that…precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions."

[16] This was transposed into domestic law by Rule 339JA of the Immigration Rules:

> "Reliable and up-to-date information shall be obtained from various sources as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited. Such information shall be made available to the personnel responsible for examining applications and taking decisions and may be provided to them in the form of a consolidated country information report."

[17] Also within this legal framework is the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ("the Qualifications Directive). Article 4(3) provides:

> "The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:
>
> (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the

> country of origin and the manner in which they are applied"

[18] The UK did not opt into the recast Procedures Directive, 2013/32/EU. It made a number of changes to the 2005 regime. Article 31 of the 2013 Procedures Directive substantially amends the obligations under Article 23 of its 2005 predecessor. Article 31(3) prescribes a six month time limit for the examination of asylum claims which may be extended by a further nine months in certain cases. The 2013 Directive also recognises that:

> "Member States may postpone concluding the examination procedure where the determining authority cannot reasonably be expected to decide within the time-limits laid down in paragraph 3 due to an uncertain situation in the country of origin which is expected to be temporary. In such a case, Member States shall:
>
> (a) conduct reviews of the situation in that country of origin at least every six months;
>
> (b) inform the applicants concerned within a reasonable time of the reason for the postponement;
>
> (c) inform the Commission within a reasonable time of the postponement of the procedures for that country of origin."

[19] In any event, Article 31(5) provides a long stop time limit of 21 months for the determination of applications.

[20] Reliance is placed upon Article 31(4) of the 2013 Procedures Directive in that, it is argued, it provides for a specific mechanism to postpone the examination of applications in circumstances where uncertainty has arisen which is expected to be temporary. The applicant says that there is no power enjoyed by the SSHD to postpone or pause the consideration of all such claims.

[21] Article 31(4) must however be read in the context of the six month time limit which is imposed by Article 31(3) and which is not imposed by the 2005 Procedures Directive or the Immigration Rules.

[22] It is apparent that there is no requirement on the SSHD to take any particular asylum decision within six months, or within any given timeframe. The 2005 Procedures Directive mandates that Member States make decisions on the basis of precise and up-to-date information and this translates to decision makers through the mandatory provisions of Rule 339JA. To determine an asylum claim without the benefit of such information would itself be a breach of Immigration Rules.

[23] Article 8(2)(b) of the 2005 Procedures Directive and Rule 339JA of the Immigration Rules are therefore the sources of the power to make the decision under challenge. This position is supported by the UNHCR which has stated that such an approach is acceptable provided asylum claims can still be made and the rights enjoyed by asylum seekers are still afforded. Obtaining precise and up-to-date information is a mandatory obligation in the examination of asylum claims, and this is the exercise currently and temporarily being undertaken by the UK Government.

[24] The claim that the SSHD has acted ultra vires is therefore unarguable and leave is refused on this ground.

The Windsor Framework

[25] The proposed respondent accepts, for the purposes of this leave application, that in light of the decisions in *Re NIHRC & Re JR295* [2024] NIKB 35, there is an arguable case that asylum seekers enjoy the protection of Article 2(1) of the WF and can rely on provisions contained or referred to in the Withdrawal Agreement which meet the conditions for direct effect. However, it is contended that the applicant cannot show, on the facts of this case, that there is any arguable diminution of right.

[26] In order to succeed in an Article 2(1) WF challenge, an applicant must show:

(i) A right (or equality of opportunity protection) included in the relevant part of the Belfast/Good Friday 1998 Agreement is engaged;

(ii) That right was given effect (in whole or in part) in Northern Ireland, on or before 31 December 2020;

(iii) That Northern Ireland law was underpinned by EU law;

(iv) That underpinning has been removed, in whole or in part, following withdrawal from the EU;

(v) This has resulted in a diminution in enjoyment of this right;

(vi) This diminution would not have occurred had the UK remained in the EU.

(para [54] of *Re Spuc Pro-Life's Application* [2023] NICA 35)

[27] The applicant relies on the 2005 Procedures Directive, the 2004 Qualification Directive and the EU Charter of Fundamental Rights and says that the impugned decision has caused a diminution of the rights enjoyed by him under these relevant EU laws.

[28] The relevant comparison is between the legal position on 31 December 2020, prior to the UK leaving the European Union, and that which prevailed thereafter. The applicant enjoyed a right to have his asylum claim examined individually, impartially and objectively, within a reasonable time, but subject always to the Article 8(2) investigative obligation. This same right pertains following the UK's exit from the European Union.

[29] If the SSHD had taken a decision to pause all Syrian national asylum claims prior to Brexit, this applicant could have sought to impugn that as being ultra vires, irrational or as being in breach of the relevant provisions of EU law or the ECHR. Following the EU exit, the same legal rights and remedies remain available to the applicant. There has been no relevant diminution of right, even arguably.

Article 8 ECHR

[30] Article 8 of the ECHR protects individual's right to respect for private and family life, which can only be interfered with:

> "…such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[31] Section 117B of the Nationality, Immigration and Asylum Act 2002 provides that "little weight" should be given to a private life which is established by an individual at a time when his immigration status is precarious.

[32] In *JR247's Application* [2024] NIKB 72 Colton J summarised the relevant principles in relation to article 8 and delay in asylum claims:

> "(i) In certain circumstances delays in making decisions may give rise to a breach of an asylum seeker's article 8 rights.
>
> (ii) The court cannot be prescriptive about what constitutes an unlawful period of delay.
>
> (iii) An important factor will be whether an actual decision has been made. If a decision has been made, then it would only be in exceptional circumstances that a breach of article 8 will be established. If a decision is pending then the court will have to make an individual assessment of the period of delay, the reasons for any delay and

whether a decision is imminent. Any delay must be so excessive as to be regarded as manifestly unreasonable. In a case such as *BAC* it was easy for the court to determine that the relevant delay was inexcusable.

(iv) In order to establish a breach of article 8 in any case, the applicant will need to point to specific evidence-based factors which demonstrate an interference with article 8 rights, above and beyond what one would expect of any person awaiting such an important decision. Any impact on private or family life must be serious. This could include factors pointing to serious deprivation such as homelessness, lack of medical attention required in respect of significant health issues, impact on the welfare of children and significant interference with family or personal relationships." (para [100])

[33] Having regard to these principles, the applicant has not established "specific evidence-based factors" which go beyond what one would normally expect in an asylum decision-making process. It is not suggested, for instance, that there has been any deprivation of medical care or significant impact on relationships or children.

[34] Even if there has been any interference with an article 8 right by reason of delay, the decision to pause the determination of claims is in accordance with the law for the reasons already articulated and is in pursuit of the legitimate aim of immigration control.

[35] The question then arises as to whether any such interference is disproportionate. In a delay claim, the hurdle is a high one and an applicant must show that it is "so excessive" as to be "manifestly unreasonable." I am not satisfied on the facts of this case that the applicant has met this threshold.

[36] No arguable case with a realistic prospect of success has therefore been made out in respect of breach of article 8 ECHR rights. Leave is refused on this ground.

Irrationality

[37] The alleged irrationality in this case is based on the SSHD failing to take into account the relevant state of the law in Northern Ireland when making the UK-wide decision to pause the processing of Syrian asylum claims.

[38] As such, this ground of challenge adds nothing to the illegality claim which I have already found to be ill-conceived. For the same reasons, this ground is also unarguable and leave must be refused.

Conclusion

[39] For the reasons set out, no arguable ground of judicial review with a realistic prospect of success has been made out and leave to apply for judicial review is refused.