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(subject to editorial corrections)**

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY JR337
FOR JUDICIAL REVIEW

Mr Steven J McQuitty KC with Ms Darcy Rollins (instructed by Phoenix Law Solicitors)
for the Applicant

Mr Philip Henry KC with Ms Emma McIlveen (instructed by Crown Solicitor's Office)
for the Respondent

McALINDEN J

In this judgment the applicant has been anonymised to protect her identity. Nothing must be disclosed or published without the permission of the court which might lead to the identification of the applicant. The initials used are not the real initials.

[1] The applicant, JR337, is a young Nigerian woman who lawfully came to the UK on 24 January 2024 as a dependent child on foot of a temporary visa which had been granted to her in association with a student and worker's visa (skilled worker – health and social care) which had earlier been granted to her mother for a twelve-month period from October 2023. The applicant was 17 when she arrived in the UK and turned 18 in September 2024.

[2] The applicant was born and brought up in Nigeria of Nigerian parents. Her father died in 2019 and her mother subsequently married again. The applicant alleges that her step-father subjected her to regular beatings and her mother did not intervene to prevent this abuse from occurring. In fact, the applicant alleges that her mother also subjected her to beatings. The applicant also alleges that her step-father raped her. She informed her mother about his behaviour but her mother stated that she did not believe her daughter and it was at this stage that the applicant ran away from home to another part of Nigeria. The applicant alleges that it was during this period that she was forced into prostitution. The applicant alleges that one of her former

teachers came upon her by chance in the market of the town where was then residing and persuaded her to return to her former school to sit an examination which would enable her to continue her education. She alleges that when she attended the school, her mother was there by arrangement with the teacher and her mother informed her that she was going to London to work as a nurse and she wanted the applicant to come also as she could attend school there and obtain qualifications.

[3] The applicant's mother left for the UK in October 2023 and the applicant joined her in January 2024. However, when the applicant arrived in the UK, her mother became abusive towards her again and insisted that she should be working and earning money by braiding hair rather than going to school to study. The abuse culminated in the applicant's mother beating her and throwing her out of her house for not agreeing to work. This happened in late February or early March 2024. The applicant was homeless for a number of months and had to beg on the streets in order to survive. She eventually made her way to Belfast and presented to the Home Office in Belfast in early July 2024.

[4] The applicant then came under the protection of the Western Health and Social Care Trust as a child in need and the Trust took steps to ensure that the full panoply of protections, services and supports for the applicant's physical, psychiatric and psychological wellbeing were put in place under the UNOCINI framework. This included the provision of suitable accommodation. The PSNI also became involved and investigated the applicant's complaints re her mother. A detailed statement was obtained from the applicant, and this was then sent to the Metropolitan Police in order that they might take the investigation further. The court has no information in relation to the progress of that investigation. It would seem that the applicant's mother did not seek to renew her 12-month work visa after it expired and the mother's present whereabouts are unknown to the court. Even though the applicant is now over 18, she still continues to receive considerable support from the Trust and this support will continue until she is 21, if she remains in the UK. I should add that the Trust has also arranged for the applicant to receive and avail of independent legal advice and representation in relation to her immigration status and her entitlement to protection as a victim of trafficking/modern slavery.

[5] Days after she had reached the age of majority, the applicant, with the benefit of legal advice, sought to protect her immigration status by availing of one of two schemes operated by the Home Office for migrant victims of domestic abuse; one of which is set out as a formal appendix to the immigration rules "Appendix VDA" (Victims of Domestic Abuse) and the other of which sits outside the rules and is known as "MVDAC" (Migrant Victims of Domestic Abuse Concession). The applicant, through her solicitor, made an application to avail of the MVDAC temporary protections on 13 September 2024.

[6] MVDAC is a concessionary scheme set up by the Home Office outside the immigration rules to provide some migrant victims of domestic abuse with temporary breathing space while they consider their options going forward. If a migrant ("A")

has been admitted to the UK on foot of a permission which is dependent upon a permission to enter granted to another migrant (“B”) in circumstances where A and B are spouses, civil partners etc and if the relationship between A and B breaks down because of domestic violence perpetrated upon A by B, then A can avail of MVDAC in order to seek and be granted independent permission to remain in the UK for three months and this right also extends to any dependent children lawfully present in the UK in the care of A.

[7] The MVDAC scheme adopted a definition of domestic abuse found in statute which restricted it to encompassing acts by one person of 16 years and over inflicted upon another person of 16 years and over (see section 1(2) of the Domestic Abuse Act 2021). This would exclude acts where the victim was under the age of 16 at the relevant time. The MVDAC scheme only envisaged abused spouses, partners, etc applying and the only protection expressly provided to children under MVDAC was that applications could at the same time be made under the scheme on behalf of any dependent child if the abused parent of the applying child was at the same time seeking to avail of the protection offered by the scheme and the child was a dependent of the abused parent.

[8] The wording of the scheme documentation and explanatory guidance make it abundantly clear that direct victims of child abuse did not fall within the contemplation of those setting up the scheme, especially those dependent children who were present in the UK on foot of a permission which was dependent upon a permission granted to the abusing parent. Obviously, the abusing parent cannot apply under the scheme as the abusing parent is not a victim of domestic abuse. The abused child cannot independently apply under the scheme as any such application must be ancillary to an application by an abused parent and in any event the definition of domestic abuse would rule out any application by a victim under the age of 16.

[9] It is not surprising, therefore, that the applicant’s application under MVDAC was refused, with the refusal being communicated by way of correspondence dated 31 October 2024. This refusal was upheld upon review on 18 November 2024. The applicant then issued judicial review proceedings claiming discrimination in breach of article 14 in combination with article 8 ECHR on 31 January 2025 and leave was granted by me following a contested hearing on 14 May 2025. Following the grant of leave, the respondent, in correspondence dated 16 November 2025, conceded the case made out by the applicant in that it accepted that the MVDAC scheme unlawfully discriminated against the applicant pursuant to article 14 in combination with article 8 ECHR as a result of the applicant being ineligible to be considered for the temporary relief provided through MVDAC. The respondent accepted that the applicant was treated less favourably than her comparator, namely, the partner (or their dependent children) of someone with limited leave to remain in the UK by virtue of a work or study visa who claimed to be the victim of domestic abuse.

[10] The Home Office, in this open correspondence, stated that it was willing to provide the following relief (to be confirmed in a court order) to dispose of the applicant's proceedings in the following terms:

- (a) Declaratory relief that the MVDAC was unlawful insofar as it applied to the applicant as an adult child who claimed to be the victim of domestic abuse by a parent who had temporary leave to remain in the UK by virtue of a work or study visa, and on whom the applicant was dependent. The Home Office went on to indicate in the correspondence that the effect of such a declaration would be that others in the same circumstances as the applicant would benefit from such a declaration unless and until such times as the scheme was amended. The Home Office reiterated its position that it did not accept that the entire scheme was unlawful in that it had provided and continues to provide valuable relief to others in a lawful manner.
- (b) The Home Office stated that it would provide the applicant with six months leave to remain in the UK outside the immigration rules from the date of the court order (double the time allowed under MVDAC) in order to allow her time to regularise her position. The Home Office accepted that during that extended period the applicant would be able to apply for any other form of leave to remain that she considers herself entitled to.
- (c) The Home Office also indicated that the applicant would be given recourse to public funds during that period of leave outside the rules on the same terms as someone who successfully applied for relief through the MVDAC scheme.

The applicant rejected this open offer and the case proceeded to a full hearing over the course of two days in February 2026 on the second aspect of her challenge to which I now turn.

[11] Although the applicant did not actually make an application under Appendix VDA, she challenges the legality of this appendix to the immigration rules again on the basis that it unlawfully discriminates against children who are the victim of abuse at the hands of the parent whose permission to enter the UK constitutes the basis for the child's permission to enter the country.

[12] Without going into too much detail about Appendix VDA, this appendix to the immigration rules provides a route for some migrants who are the victims of domestic abuse to be granted indefinite leave to remain in the UK. In essence, the statutory scheme enables a migrant ("A") who is lawfully present in the UK on the basis of a permission which is contingent/dependent upon the permission given their spouse, partner, etc ("B"), which said permission sets B on a pathway to achieving settled status, to independently assert a right to indefinite leave to remain on the basis that A has suffered domestic abuse at the hands of B or another family member with the result that the relationship between A and B has broken down. A is deemed to be entitled to seek indefinite leave to remain in his/her own right because he/she would

probably have achieved that status by piggy-backing on the entitlement of B, if the relationship had not broken down. The appendix was devised in recognition of the need to ensure that victims of domestic violence were not doubly disadvantaged by escaping from abusive home environments and to provide those abused migrants with the immigration rights that they would otherwise have enjoyed but for the break-up of their relationship due to being on the receiving end of domestic abuse.

[13] Appendix VDA is similarly wedded to the statutory definition of domestic abuse (perpetrator aged 16 or over and victim aged 16 or over). Appendix VDA does allow for dependent children of migrant A to apply for immigration protection under its provisions as long as the abused parent (migrant A) is also applying for protection under the appendix. It can immediately be seen that Appendix VDA suffers from the same flaws as MVDAC as it does not contemplate an abused child being able to make an application in circumstances where the abused child has come to the UK on foot of a permission which is contingent/dependent upon the permission given to the abusing parent, where that abusing parent's permission set that abusing parent on a pathway to achieving settled status. However, a migrant A who successfully applies for protection under the MVDAC can apply under Appendix VDA if, and this is important in the present context, the migrant B upon whom A's permission to come to the UK is contingent/dependent is on a pathway to achieving settled status. Successfully applying for temporary protection under MVDAC does not, by itself, entitle a migrant to apply for enhanced protection under Appendix VDA.

[14] The applicant's case is that even though she did not apply under Appendix VDA, she is a victim of unlawful discrimination (article 14 in combination with article 8) because there is no provision for abused children to independently apply under this appendix to the immigration rules and, in essence, she was prevented from applying by the unfair criteria governing applications under Appendix VDA.

[15] Having regard to the post grant of leave concession made by the respondent in relation to the MVDAC, I would regard it as an inevitability that a finding of unlawful discrimination would have been made if, and this is an important qualification, the abusing mother in this case had been given permission to enter the UK and that permission set the abusing mother on a pathway to achieving settled status. Crucially for the applicant in this case, the mother's visa was a 12-month work and student visa and that visa was not renewed.

[16] The whole purpose of the Appendix VDA scheme is to ensure that a victim of domestic abuse is not doubly disadvantaged following the breakdown of the abusive relationship. It is not and never has been the purpose of Appendix VDA to put a migrant in a much better position in relation to his or her immigration status than he or she otherwise would have been in, had he or she not been the subject of domestic abuse. The purpose of the scheme is to place victims of domestic abuse in the same position in terms of immigration status as they would have been had they not suffered domestic abuse. The applicant's claim of unlawful discrimination in relation to the operation of Appendix VDA cannot succeed because the applicant's mother's

permission to enter the UK was strictly time limited for the purpose of working as a nurse and that permission was not extended beyond the 12-month period.

[17] The applicant, in alleging unlawful discrimination, concentrates on her inability to avail of the Appendix VDA scheme because she is the victim of domestic abuse perpetrated by her mother. She emphasises that this was sufficient to force the respondent to concede that she was the victim of unlawful discrimination in the context of her MVDAC application. However, this argument really misses the point in that this approach entirely ignores the limited nature of the permission to enter which was afforded to the applicant's mother and subsequently and contingently to the applicant. The applicant's argument that she is, somehow, a valid comparator to a victim of domestic abuse or the child of a victim of domestic abuse whose permission to enter the UK was contingent/dependent upon the permission given to the perpetrator of the abuse, which said permission put the perpetrator on a pathway to settled status, does not get off the ground because there is a world of difference between the immigration protection provided to a person on such a pathway and the immigration protection provided to a person on a 12-month worker or student visa. There is no valid comparator within the compliment of eligible applicants within the scheme. That is the end of the direct discrimination argument.

[18] The applicant goes on to attempt to mount an indirect discrimination case in alleging that she was unlawfully treated the same as someone who was in a very different position. It is alleged that it is unlawful for the respondent to treat the applicant in the same manner as an abused spouse, partner etc of a person who was present in the UK on foot of a student-worker visa. Children are very different from adults and should be treated differently. Interesting though this argument is, it conveniently ignores the fact that the applicant argued that she was the victim of direct discrimination on the basis that the applicant was not treated in the same manner as an abused spouse, partner etc of a person who was present in the UK on foot of a student-worker visa for the purposes of the MVDAC scheme and now she is arguing that she was the victim of indirect discrimination on the basis that she was treated in the same manner as an abused spouse, partner etc of a person who was present in the UK on foot of a student-worker visa for the purposes of Appendix VDA. The applicant cannot have it both ways. In any event, the crucial and over-riding similarity between the applicant and an abused spouse, partner etc of a person who was present in the UK on foot of a student-worker visa is that neither the applicant nor that abused spouse had any reason to consider that their immigration status was anything other than temporary. That is the end of the indirect discrimination argument.

[19] If I am wrong in my conclusions about comparators and any other aspect of the legal test for discrimination in a Convention context prior to the stage of assessing justification and proportionality in the light of the *SC* decision¹, I am convinced that the applicant's case would still fail. We are in the realms of socio-economic policy.

¹ [2022] AC 223

There is a wide margin of appreciation afforded to the policy maker. It cannot be said that the policy is manifestly without reasonable foundation. There is clearly a legitimate aim of controlling migration. The policy adopted is clearly related to the furtherance of that legitimate aim. It is very difficult if not impossible to envisage a less intrusive impact upon article 8 rights which would facilitate the achievement of the legitimate policy and the overall balancing exercise in my view clearly comes down in favour of the state that has also put in place a temporary form of protection for the victims of domestic abuse and has accepted that the applicant and those in a similar position to the applicant should be able to avail of that temporary protection.

[20] In an attempt to scale the insurmountable obstacles set out above, the applicant argues that the condition for entitlement to protection under Appendix VDA, namely that the permission to enter upon which the applicant's permission is contingent/dependent, should be a permission which takes the recipient of that permission on a pathway to achieving settled status is meaningless, arbitrary and vague in that the immigration rules are constantly in a state of flux and as a result nobody can be sure from one day to the next whether any form of permission is taking or will continue to take the recipient of that permission (the "main" visa holder) on a pathway to settled status or, indeed, whether the present concept of settled status will survive in a recognisable form following the implementation of much vaunted reforms to the immigration system. The simple answer is that argument is that the court has to look at the legal framework as it existed at the relevant time and as it exists now and not get distracted by proposals for change in that legal framework.

[21] In relation to the lawfulness or otherwise of the underlying policy behind Appendix VDA, the courts in Scotland and England and Wales have looked at the earlier iterations of this scheme on a number of occasions now and have concluded that some categories of migrants who were previously not permitted to apply for protection should have been afforded that opportunity on the basis that the immigration status of the "main" visa holder was largely on a par with the immigration status of the "main" visa holders already recognised in the scheme². Appendix VDA has, as a result, undergone some amendment to reflect the findings of the courts. However, in these cases, the lawfulness of the underlying purpose and, specifically, the requirement for the "main" visa holder to be on a pathway to achieving settled status has never been challenged and certainly no finding of such unlawfulness has been made. It is a perfectly rational, reasonable and appropriate pre-condition to have at the heart of this scheme and the courts seem to have recognised that.

[22] In a last ditch effort to persuade the court to declare Appendix VDA unlawful, it is argued on behalf of the applicant that the respondent has ignored the requirement of section 55 of the Borders, Citizenship and Immigration Act 2009 which stipulates that the Secretary of State must make arrangements for ensuring that in carrying out or arranging for others to carry out any immigration functions, those functions are

² *R(SWP) SSHD* [2023] EWCA Civ 439 and *A v SSHD* [2016] CSIH 38.

discharged having regard to the need to safeguard and promote the welfare of children who are in the UK. In essence, the applicant argues that in order to fulfil this duty in this case, the respondent should disregard the limited right to remain which was enjoyed by the applicant's mother and should allow the applicant to avail of the protections provided by Appendix VDA simply because the applicant was a child when she suffered the abuse and it would clearly be in the applicant's best interests to be able to avail of the protections provided by Appendix VDA. It is alleged that there is nothing to indicate that the respondent gave any consideration to the need to safeguard and promote the applicant's welfare when exercising immigration functions in respect of the applicant. I consider it somewhat rich for the applicant to argue that there is nothing to indicate that the respondent gave any consideration to the need to safeguard and promote the applicant's welfare when exercising immigration functions in respect of the applicant when the applicant did not actually make an application under Appendix VDA.

[23] The respondent argues that the actions taken by the respondent and the Trust in this case (as highlighted in the UNOCINI documentation) amply and convincingly demonstrate that the Secretary of State has made arrangements for safeguarding and promoting the welfare of children who are in the immigration system and that this duty does not involve scrapping long established and clearly reasonable and rational policies just because a child is involved so that the child is put in a much better immigration position than would otherwise have been the case.

[24] The applicant argues that in failing to allow for child victims of domestic abuse to apply for the protections afforded by Appendix VDA, the respondent has patently failed to made arrangements for safeguarding and promoting the welfare of children who are in the immigration system. That argument could well have some merit if the applicant was otherwise entitled to avail of those protections in the sense of being able to demonstrate that her permission to enter the UK was contingent/dependent upon a permission granted to her mother which put her mother on a pathway to achieving settled status. She cannot do so and, in the circumstances, the section 55 point does not inure to the benefit of this applicant. The applicant's challenge in respect of Appendix VDA is dismissed.

[25] The initiation of proceedings in this case was clearly warranted and the applicant extracted a very important concession from the respondent in respect of the MVDAC scheme following the contested grant of leave. The applicant is entitled to an order for costs against the respondent for all work done up to and including the consideration of the respondent's correspondence issued on 16 November 2025. However, the respondent made an offer to resolve the entire case in that correspondence which involved the applicant being granted six months' leave to remain from the date of the court order with access to financial support during that period, double the period set out in MVDAC. The applicant refused that offer and persisted with her challenge in respect of Appendix VDA of the immigration rules, with the benefit of a legal aid certificate. That challenge was unsuccessful. I, therefore, direct that the parties should bear their own costs in respect of the substantive hearing

which took place before me over two days in February 2026, and I also direct that the applicant's costs be taxed as an assisted person.