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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

AN APPLICATION BY NWACHUKWU HENRY ALINTA FOR JUDICIAL REVIEW

WEATHERUP J

The application.

[1] This is an application for judicial review of decisions of an immigration officer made on 18 November 2005 that the applicant was a person liable to be removed from the United Kingdom and a person liable to be detained pending arrangements for removal. Mr Stockman BL appeared for the applicant and Ms Connolly BL appeared for the respondent.

The background.

[2] The applicant is a Nigerian national. On 2 August 2002 the applicant obtained a United Kingdom visitor's visa which expired on 2 August 2004. After that date the applicant remained in the United Kingdom. On the morning of 18 November 2005 the applicant travelled by taxi from Newry in Northern Ireland intending to do business in Dundalk in the Republic of Ireland. On crossing the border the vehicle was stopped by members of the Garda Siochana. The applicant was refused entry to the Republic under its immigration legislation on the ground that he was a non-national who was not in possession of a valid passport or other equivalent document issued by or on behalf of the Government which established his identity and nationality. He was then detained at Dundalk Garda Station and later transferred to Dromad Garda Station. In the meantime, contacts had been made between the immigration authorities in the Republic and the UK immigration authorities and arrangements were made for the applicant to be collected by staff from a private security company and returned to Northern Ireland.

[3] While in the Republic the applicant was given a standard form notice signed by a UK immigration officer that he was liable to removal from the UK and a further notice that he was liable to detention in the UK. The security staff then removed the applicant from the Republic back into Northern Ireland and delivered him to Musgrave Street Police Station in Belfast. He was then interviewed by immigration officers in the presence of his solicitor. The notices that he was liable to removal and that he was to be detained are the subject of this judicial review. The applicant was then detained until 24 November 2005 when he was granted bail.

[4] The applicant first came to the UK on 23 November 1998 on a 6 month visitor's visa. He was involved in the business of selling second-hand clothes and visited such businesses in the UK. In 2000 he obtained a visitor's visa for the Republic of Ireland and over the course of a year was engaged in the business of the purchase and export of clothing to Nigeria. In July 2001 the applicant obtained a 12 month visitor's visa for the UK and became involved with a second-hand clothes business in Newry. Later in July 2001 the applicant bought the Newry business which he registered as a limited company. The applicant was then granted a 2 year UK visitor's visa on 2 August 2002. He developed his business, registered for value added tax, made returns to the Inland Revenue for the purposes of income tax and national insurance contributions, obtained his own national insurance number, invested substantial sums in the Newry business, employed 17 people and purchased a house in Newry. He met a Ms O'Hare and on 25 July 2002 a son Christopher was born and though the applicant and Ms O'Hare have not continued their relationship they remain on good terms and the applicant has contact with his son. The applicant continued his business of purchasing second-hand clothes and exporting to Africa and Asia.

The Grounds for Judicial Review.

[5] The applicant's grounds for judicial review are as follows –

(a) The applicant was outside the UK when the decision was made that he was liable to removal from the UK as an "overstayer". At the time of the decision the applicant was not in the UK and was not an overstayer.

(b) The return of the applicant to the UK with the security firm meant that the applicant was not an "illegal entrant".

(c) The UK immigration officer had no jurisdiction to make a removal or detention decision while the applicant was outside the UK and any enforcement action is unlawful.

(d) The applicant's detention in the Republic by agents of the UK Immigration Service was unlawful.

(e) The applicant's detention in the Republic and rendition to the UK was a violation of Article 5 of the European Convention.

(f) The applicant's status is that of a person awaiting a decision from UK immigration authorities on the grant or refusal of leave to enter the UK.

(g) The applicant is not an overstayer or an illegal entrant and not liable to detention as such.

[6] In essence the respondent regards the applicant as an "overstayer" as he remained in the UK beyond the time limited by his leave to remain, namely after 2 August 2004. As such he is liable to removal from the UK and liable to detention pending the completion of arrangements for his removal. On the other hand the applicant contends that he is not an overstayer because he was not in the UK when he was detained. Further, on being returned to the UK by agents of the immigration authorities he was not an illegal entrant, which the applicant accepts he would have been had he had the opportunity to return voluntarily to the UK. The applicant contents that he is not an overstayer or an illegal entrant but rather that he is an applicant for entry to the UK in respect of whom a decision to grant or refuse leave has not been made, and pending that decision he is not a person liable to removal from the UK.

The Notices issued by the Immigration Officer.

[7] The first notice of 18 November 2005 signed by the UK immigration officer is described as a "Notice to a person liable to removal". The standard form notice provides that a person is liable to removal either as an illegal entrant or as a person subject to administrative removal in accordance with section 10 of the Immigration and Asylum Act 1999 on four specified grounds. The notice relies on the applicant being an overstayer as it states that the applicant is a person subject to administrative removal and the relevant ground refers to him as a person who has failed to observe a condition of leave to enter or remain. The notice further states that he is a person who is liable to be detained pending the completion of arrangements for dealing with him under the Immigration Act 1971 and that the immigration officer proposes to give directions for his removal from the United Kingdom in due course and details will be given to him separately.

[8] The second notice signed by the UK immigration officer and dated 18 November 2005 is headed "Reasons for detention and bail rights" and states that the applicant's detention had been ordered because he was likely to abscond if given temporary admission or release and his removal from the UK was imminent. The decision is stated to have been reached on the basis of various factors, namely that the applicant did not have enough close ties to make it likely that he would stay in one place, that he had previously failed to comply with conditions of his stay, temporary admission or release, that he had not produced satisfactory evidence of

his identity, nationality or lawful basis to be in the UK and had previously failed or refused to leave the UK when required to do so.

The legislation.

[9] The general position in relation to applicants for entry, illegal entrants and overstayers is as follows.

- The Immigration Act 1971 at section 3 makes general provision for the regulation and control of immigration whereby entrants to the UK require leave to do so, which leave may be limited and subject to conditions.

- Section 4 of the 1971 Act provides for the administration of control of immigration in that the power to give or refuse leave to enter the UK is exercised by immigration officers and the power to give or vary leave to remain in the UK is exercised by the Secretary of State.

- Schedule 2 of the 1971 Act applies to the exercise of the above powers and paragraph 8 deals with the removal of persons refused leave to enter and also illegal entrants. It provides that where a person arriving in the UK is refused leave to enter, an immigration officer may give the captain of the ship or aircraft in which he arrived or the owners or agents of that ship or aircraft, directions requiring his removal or requiring them to make arrangements for his removal from the UK to a specified country or territory (being where he is a national or citizen, or obtained an identity document, or embarked for the UK, or where he will be admitted).

- Paragraph 8 of Schedule 2 of the 1971 Act is modified in respect of entry to the UK from the Republic of Ireland by the Immigration (Entry otherwise than by Sea or Air) Order 2002 which came into force on 17 July 2002. The substituted paragraph 8 provides –

> "(1) Where a person arriving in the UK is refused leave to enter, an immigration officer or the Secretary of State may give the owners or agents of any train, vehicle, ship or aircraft, directions requiring them to make arrangements for that person's removal from the United Kingdom in any train, vehicle, ship or aircraft specified or indicated in the direction to a country or territory so specified…(as under paragraph 8 above)."

- Paragraph 9 of Schedule 2 provides:

> "Where an illegal entrant is not given leave to enter or remain in the United Kingdom, an immigration officer may give any such directions

in respect of him as in a case within paragraph 8 above as authorised by paragraph 8(1)".

- Paragraph 16(2) of Schedule 2 provides for detention of persons liable to removal –

  "If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8, 10A or 12-14, that person may be detained under the authority of an immigration officer pending –

  (a) a decision whether or not to give such directions;

  (b) his removal in pursuance of such directions".

- Removal of overstayers from the UK is provided for by Section 10 of the Immigration and Asylum Act 1999 as follows –

  "(1) A person who is not a British subject may be removed from the United Kingdom, in accordance with directions given by an immigration officer if –

  (a) having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave.

  (2) Directions may not be given under subsection 1(a) if the person concerned has made an application for leave to remain in accordance with regulations made under section 9."

  [Section 9 provides for a regularisation period for overstayers in which to apply in a prescribed manner for leave to remain in the UK. Regulations for the purposes of section 9 are contained in the Immigration (Regularisation Period for Overstayers) Regulations 2000. The applicant did not avail of this procedure.]

  "(6) Directions under this section –

  (a) may be given only to persons falling within a prescribed class;

  (b) may impose any requirements of a prescribed kind."

  [Regulations for the purposes of Section 10(6) are contained in the Immigration (Removal Directions) Regulations 2000 which came into

force on 2 October 2000. The Regulations include requirements that may be imposed by directions for removal to a place where the person is a national or citizen or where he will be admitted.]

"(7) In relation to any such directions, [certain paragraphs including 16 of] Schedule 2 to the 1971 Act (administrative provisions as to control of entry) apply as they apply in relation to directions given under paragraph 8 of that Schedule."

- The reference in section 10(7) of the 1999 Act to Schedule 2 to the 1971 Act has the effect of applying common arrangements to directions for overstayers and directions to persons refused leave to enter the UK and illegal entrants.

- See paragraph [15] below for statutory regulation of movements between the Republic and Northern Ireland.

Jurisdiction of UK Immigration Officers.

[10] The applicant accepts that he was an overstayer when he remained in the UK upon the expiry of his visitor's visa on 2 August 2004. Thereafter he visited the Republic on a number of occasions and returned to the UK. The applicant contends that on leaving the UK and entering the Republic after the expiry of his UK visitor's visa he ceased to be an overstayer. On his return to the UK from the Republic the applicant contends that his status was then that of an illegal entrant. The applicant accepts that whether as an overstayer or as an illegal entrant he was liable to removal from the UK. However, on 18 November 2005 the applicant contends that he was neither an overstayer (because he had left the UK), nor an illegal entrant on his return (because he was returned by, or with he agreement of, the UK immigration authorities) and was therefore not liable to removal. His status contends the applicant, was that of an applicant for entry in respect of whom a decision was then required to be made by the immigration authorities as to whether to grant or refuse leave to enter and remain.

[11] The applicant contends that the territorial jurisdiction of immigration officers is such that a person subject to a decision must be in the UK at the time of the decision. Reference is made to immigration officers who have powers outside the UK, for example, entry clearance officers who act abroad under the aegis of the Foreign Office, and immigration officers who act in France and Belgium under the Channel Tunnel arrangements. The applicant refers to Macdonald's Immigration Law and Practice (6th Ed.) at pages 50 and 113-116. As specific provision has been made for these powers the applicant contends that similar specific provision must be made to grant jurisdiction to UK immigration officers making decisions in respect of those not in the UK. Similarly, the applicant refers to Regulation 7 of the Immigration (Leave to Enter or Remain) Order 2000 which provides that an immigration officer

"whether or not in the United Kingdom" may give or refuse a person leave to enter the United Kingdom at any time before his departure for, or in the course of his journey to, the United Kingdom.

[12] It is clear that a UK immigration officer will have jurisdiction to exercise powers within the UK subject to any statutory restriction. The examples given by the applicant relate to powers exercised by UK officers while they are not in the UK. Such extra territorial powers require specific provision. While in the United Kingdom the UK immigration officer in the present case was not exercising extra territorial powers but was making a decision in relation to the applicant when he was returned to the jurisdiction of the UK. While the applicant was in the Republic he was subject to the jurisdiction of the authorities in the Republic. Further it was accepted by Counsel for the applicant that while the applicant was being removed from the Republic by the staff of the security firm engaged by the UK immigration authorities, he was deemed to be in the custody of the Garda Siochana until he crossed the border into Northern Ireland, and there is specific statutory provision to that effect in the Republic's legislation. Leaving aside for the moment the argument as to the status of the applicant, I am satisfied that the immigration officer in the present case, while in the UK, had jurisdiction to make a decision in respect of the applicant while the applicant was outside the UK, that the applicant was liable to removal from the UK and liable to be detained pending removal, in the event that he returned to the UK. The UK Immigration Officer did not purport to detain the applicant in the Republic as he was there detained by the authorities in the Republic until he transferred into Northern Ireland. In the event I am satisfied that the decision of the UK immigration officer took effect upon the applicant entering Northern Ireland.

Procedural Fairness.

[13] While in the Republic the applicant was given the standard form notices to a person liable to removal from the UK and reasons for detention and bail rights in the UK. The standard form notice that the applicant was a person liable to removal did not contain directions for removal but was a notice to the applicant that he was liable to removal. This is not a statutory notice but does comply with the requirements of procedural fairness that the applicant has the right to know and to respond to the grounds relied on for his liability to removal from the UK. The immigration officer refers to "formal service" of the notices at Musgrave Street Police Station when explaining the documents to the applicant. The reference to formal service I take to be a notional service as the applicant was already in possession of the forms and the applicant contends, and it is not disputed, that there was no other act of service at the police station. The applicant was legally represented, the forms were in his possession, the forms were explained to him and the opportunity was afforded for representations to be made in respect of the applicant's liability to removal and detention. Representations were made to the effect that the applicant was not liable to removal and detention. Thus the applicant received notice of the proposed actions

of the UK immigration authorities and had the opportunity to respond. I am satisfied there was no procedural impropriety.

Overstayer, Illegal Entrant or Applicant to Enter or Remain?

[14] The applicant was an "overstayer" when he remained in the UK after 2 August 2004. For the purposes of Section 10(1)(a) of the 1999 Act he had only a limited leave to remain and had remained beyond the time limited by the leave. The applicant contends that he ceased to be an overstayer prior to 18 November 2005 when he left the UK to visit the Republic so that when he returned to the UK he was no longer an overstayer.

[15] There is statutory regulation of movements between the Republic and the UK.

- An illegal entrant is defined in section 33(1) of the 1971 Act as a person –

  > "(a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws; or
  >
  > (b) entering or seeking to enter by means which include deception by another person,
  >
  > and includes also a person who has entered as mentioned in paragraph (a) or (b) above."

- The UK and the Republic are part of a "common travel area". Section 1(3) of the 1971 Act provides that arrival in and departure from the UK on a local journey from or to the Republic shall not be subject to control under the 1971 Act, and subject to certain exceptions "nor shall a person require leave to enter the United Kingdom on so arriving…"

- Exceptions arise under the Immigration (Control of Entry through Republic of Ireland) Order 1972. Article 3(1)(b)(iii) extends to a person who will require leave to enter the UK if –

  > "he entered the Republic from a place in the United Kingdom….after entering there unlawfully, [or, if he had a limited leave to enter and remain there, after the expiry of the leave, provided that in either case] he has not subsequently been given leave to enter or remain in the United Kingdom…"

- The original form of article 3(1)(b)(iii) above applied only to illegal entrants to the UK and not to overstayers in the UK. The Immigration (Control of Entry through the Republic of Ireland) (Amendment) Order 1979 added the words

in square brackets above and thus extended the paragraph to overstayers with effect from 1 August 1979.

[16] The effect of the above provisions is that an overstayer in the UK, who undertakes a local journey to the Republic and back, requires leave to re-enter the UK. Similarly an illegal entrant to the UK, who undertakes a local journey to the Republic and back, requires leave to re-enter the UK. Entry to the UK in such circumstances, without leave, is a breach of the UK immigration laws. That person is an illegal entrant under section 33(1)(a) of the 1971 Act. Accordingly, the applicant was an illegal entrant to the UK when he returned from local journeys to the Republic, after his limited leave expired on 2 August 2004.

[17] On 18 November 2005 the applicant intended to make a local journey to the Republic and it is clear that if he had continued to avoid detection by the authorities he would have returned to and continued to remain in the UK as an illegal entrant. The applicant had not made a lawful entry to the Republic and in the technical language of the Republic's notice he was "refused permission to land". There are in place reciprocal arrangements between the UK and the Republic that were invoked to arrange for the return of the applicant to the UK. The applicant contends that his status in the UK on the evening of 18 November 2005 was not that of an illegal entrant because he did not return to the UK unlawfully or by clandestine means.

[18] On leaving the UK for the Republic upon his return to the UK when he was an overstayer in the UK the applicant required leave to enter or remain in the UK and he did not obtain that leave. Thus he was an illegal entrant to the UK upon his return. I am of the opinion that it makes no difference to his status as an illegal entrant in the UK that he was detected by the authorities in the Republic and returned to Northern Ireland before he would have made a voluntary return. Nor does it make any difference to his status as an illegal entrant in the UK that the UK authorities agreed to his return so that he might be dealt with under the relevant immigration legislation. His status in the UK on the morning of 18 November 2005 before he travelled to the Republic was that he was unlawfully in the UK as an illegal entrant. When he crossed the border with the Republic he still required leave to enter or remain in the UK. The circumstances of his return to the UK did not alter his status in the UK, which was that of an illegal entrant. Were the position to be as the applicant contends he would have been an illegal entrant to the UK had he returned to the UK undetected on 18 November 2005, but he would have improved his position by being detected by the authorities in the Republic as he would have ceased to be an illegal entrant to the UK on being returned to the UK. Such an outcome would be contrary to and would undermine the legislative scheme of immigration control introduced to address such movements between the Republic and the UK.

[19] The notice of liability to removal from the UK served on the applicant relied on the applicant's status as an overstayer rather than his status as an illegal entrant. However the applicant accepted that a common removal and detention regime

applied to overstayers and illegal entrants and that no point arose on the manner of completion of the form.

[20] Prior to 18 November 2005 the applicant had not applied to remain in the UK after the expiry of his leave to remain, nor did he do so upon being returned to the UK on that date. The UK immigration authorities did state to the applicant that they would consider withdrawing the notices served on the applicant on 18 November 2005 had he been able to establish that there was an outstanding application to regularise his status in the UK. The applicant made no such application.

Conclusion.

[21] Accordingly, the applicant was an overstayer in the UK from the date of expiry of his limited leave to remain in the UK on 2 August 2004. When he made a local journey to the Republic and returned to the UK he became an illegal entrant to the UK. When he made a local journey to the Republic on 18 November 2005 and was returned to the UK he remained an illegal entrant in the UK. Thus, he was liable to be removed from the UK in accordance with directions given by an immigration officer. Further, as there were reasonable grounds for suspecting that the applicant was a person in respect of whom directions may be given, he was liable to be detained under the authority of an immigration officer.

[22] Lawful decisions were made by the UK immigration officer on 18 November 2005 that the applicant was a person liable to removal and liable to detention. The application for judicial review is dismissed.