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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Sangodele's Application [2008] NIQB 152

AN APPLICATION BY
AMOS SANGODELE FOR JUDICIAL REVIEW

WEATHERUP J

The application.

[1] This is an application for judicial review of the decisions of the immigration authorities of 3 August 2007 that the applicant was a person liable to removal from the United Kingdom and of 18 September 2007 issuing removal directions for the applicant from the United Kingdom and of 29 September 2007 affirming the earlier decisions. Ms Higgins QC and Mr Flanagan appeared for the applicant and Mr Coll appeared for the respondent.

The background.

[2] The applicant is a Nigerian national who arrived in the United Kingdom on 3 June 2007 with a visitor's visa valid for six months. It was a condition of the applicant's visa that he should not work in the United Kingdom. On 3 August 2007 the applicant was arrested by an Immigration Officer at 31 Castlereagh Road, Belfast for the offence of working in breach of his visitor's visa. On that date the applicant was issued with a 'Notice to a Person Liable to Removal' by an Immigration Officer who was satisfied that the applicant was a person in respect of whom removal directions may be given in accordance with section 10 of the Immigration and Asylum Act 1999 (administrative removal) as a person who had failed to observe a condition of leave to enter or remain. The Notice informed the applicant that he was a person liable to be detained under paragraph 16(2) of Schedule 2 to the

Immigration Act 1971 pending a decision whether or not to give removal directions and where relevant his removal in pursuance of such directions.

[3] Further, the applicant was served with a 'Notice of Immigration Decision' also dated 3 August 2007 stating that a decision had been taken to remove him from the United Kingdom and advising of the right of appeal. In addition, on 3 August 2007 the applicant was also served with a 'Notice to Detainee - Reasons for Detention and Bail Rights' by which an Immigration Officer ordered his detention because his removal from the United Kingdom was imminent. The decision to detain the applicant was stated to be based on the factors that he did not have enough close ties to make it likely that he would stay in one place and he had previously failed to comply with conditions of his temporary admission.

[4] On 18 September 2007 the applicant was issued with 'Removal Directions' stating that the applicant would be removed to Nigeria on 22 September 2007. This removal was later deferred and the decisions in relation to the applicant reviewed by a Senior Immigration Officer who, by letter dated 29 September 2007, confirmed the previous decisions. On the applicant's application for judicial review of the decisions of the immigration authorities, the removal of the applicant from the United Kingdom was stayed. The applicant was released on bail on 10 October 2007.

The grounds for judicial review.

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

(a) The decisions to detain and remove the applicant are ultra vires and Wednesbury unreasonable.

(b) The decision to declare the applicant a person who was working in breach of his landing conditions was arbitrary and irrational in that the respondent had failed to conduct an independent and impartial investigation into the alleged circumstances.

(c) The respondent cannot demonstrate to the require standard of proof that the applicant was in breach of landing conditions as required in Khawaja and it is for the Court to appraise the quality of the evidence.

(d) The respondent failed to consider the use of the inherent discretion in deciding whether to declare the applicant a person working in breach of his landing rights, contrary to Chapter 7 of the Enforcement Manual.

(e) The respondent failed to consider Chapter 10 of the Enforcement Manual in deciding whether the applicant was working in breach of his landing rights.

(f) The respondent acted contrary to Chapter 10 of the Enforcement Manual in deciding to detain the applicant and failed to demonstrate that the applicant was in breach of condition.

(g) The review decision of 29 September 2007 failed to comply with Chapter 10 of the Enforcement Manual.

(h) The arrest and detention of the applicant was contrary to Article 6 of the European Convention on Human Rights in failing to afford an independent assessment of the facts by an impartial body.

(i) The arrest and detention of the applicant was contrary to Article 6.3 of the European Convention in failing to allow the applicant a fair trial.

The evidence.

[6] The applicant was detected further to a joint operation by immigration officers from the Border and Immigration Agency and police officers from the Police Service of Northern Ireland. Detective Sergeant Paul McNally is attached to the Borders and Immigration Agency and on 3 August 2007 was engaged in a joint BIA-PSNI operation together with local police at 31 Castlereagh Road, Belfast. At approximately 0930 hours DS McNally's attention was directed to an internet café at 32 Castlereagh Road, Belfast. DS McNally stated on affidavit that he entered the premises and observed the applicant alone in the premises sitting at a desk. The applicant asked DS McNally if he wished to hire a computer for internet access and on being asked what the rental would be the applicant provided an answer. DS McNally declined the hire of a computer and left the premises.

[7] Graham McBriar, an Immigration Officer with the BIA, entered the internet café at 32 Castlereagh Road at 1005 hours on 3 August 2007. He described on affidavit the applicant as working behind the cash till serving a customer and that he had in his possession a key ring containing both the keys to his home and the front door of the shop. Mr McBriar described the applicant as displaying a working knowledge of the operation of the till, that he was sitting at the desk with the till, that he accessed the till by using several buttons, that he appeared to fidget with the contents of the till and then closed the till again. Mr McBriar advised the applicant that he considered that the applicant was working in the café in breach of his visitor's

visa but the applicant denied that he was working and stated that he was simply helping out. It was Mr McBriar who arrested the applicant.

[8] Sergeant Boyd is attached to the BIA and he entered the internet café as part of the joint BIA-PSNI operation. He described on affidavit the applicant sitting behind a desk with the till open dealing with a transaction with a male customer with a child. Sergeant Boyd observed the bunch of keys sitting on the desk beside the till in front of the applicant and asked the applicant who owned the keys and was told that the keys were for the applicant's home at 9 Langtree Court and for the internet café premises.

[9] Constable Crawford of Willowfield PSNI accompanied the joint operation to Castlereagh Road. At 1010 hours he accompanied Sergeant Boyd into the internet café. He described on affidavit the applicant sitting behind a desk inside the front door and beside the till. PC Crawford heard the applicant say that he was looking after the premises for a friend who was the tenant and was out of the country.

[10] The applicant on affidavit denied that he was working in the internet café. He stated that the shop was owned by his brother-in-law who had returned to Nigeria on business. During the applicant's stay in Belfast he had attended the shop regularly and used the internet facilities and socialised with his brother-in-law and other customers whom he knew. He agreed that on occasions his brother-in-law or the employees had asked the applicant to assist them in simple tasks but he stated that he had received no payment. The applicant stated that on 3 August 2008 there was an employee working in the café but the employee had left the shop a short time prior to the arrival of the immigration officers in order to do some errands and that the applicant had agreed to keep an eye on the shop until the employee returned. The applicant denied that he was sitting behind the cash till but agreed that he was sitting near the cash till and his seat was facing away from the till and he was reading a newspaper and had been engaged in conversation with another customer. He denied that he opened the cash till during his time in the shop. The applicant denied that his house keys and the shop keys were on the same bunch of keys. The keys in the shop belonged to the employee. The applicant referred to language difficulties and implied that differences between his evidence and that of the officers in the joint operation could be accounted for by language difficulties. The applicant denied accessing the till but agreed that on occasions he had opened the till to extract money for his brother-in-law and stated that that would have been for the purpose of errands for his brother-in-law in the local shops.

The Operations Enforcement Manual.

[11] I am satisfied to a high degree of probability that the applicant was working in the internet café. He admitted that he was "minding the shop" but I am satisfied that this was more than a short term temporary arrangement while an employee left the premises to complete a message. The applicant knew the working of the till, the working of the computer equipment, the rates for internet access, the presence of food stuffs in the fridges, he was in possession of the keys to the premises and no employee was identified as the person the applicant contended had actually been in charge of the premises. Further I am satisfied to a high degree of probability that the bunch of keys in the premises contained both the keys to the premises and the applicant's house keys. Sergeant Boyd used the keys to lock the internet café and when the applicant was taken to Musgrave Street custody suite the keys were handed over to police by Mr McBriar. The Custody Record logged the applicant's property, timed at 1320 hours, as a black leather belt, a wrist watch and a Unitel card. At 1337 hours it was recorded that a set of keys belonging to the applicant had been retained by Graham McBriar of Immigration Services. At 1350 hours it was recorded that the keys have been returned to the applicant's property. The Custody Record recorded the applicant as having transferred from the custody suite at 1107 hours on 7 August 2007. There was obviously a check on the applicant's property at the time of his transfer from the custody suite and at 1055 hours on that date the Custody Record refers to a bunch of six keys. No other keys are recorded as having been in the possession of the applicant. There is no evidence that his house keys were elsewhere. All of the above would not have been sufficient to establish the guilt of the applicant beyond reasonable doubt had he been charged with a criminal offence but I am satisfied to a high degree of probability, for the purposes of administrative removal, that the applicant was in breach of the condition of his visa.

[12] The applicant contends that the evidence relating to the applicant's working in the internet café should not be used against him because of breaches of the Home Office Operations Enforcement Manual. Chapter 46 deals with Enforcement Visits and commences with the words –

> "All enforcement visits constitute immigration work of the most sensitive kind. An undertaking has been given to Parliament that IOs (Immigration Officers) will not carry out speculative immigration visits ("fishing" expeditions). It is essential that before any enforcement visit is made, the name of the possible offender is known (but see chapter 46.4.2 for visits to places of employment) and all checks having been made (see chapter 46.3). In particular the detention of

> persons who are not immigration offenders must be avoided."

Pre-visit procedures are set out which include obtaining authority for visits as provided by chapter 46.3. In relation to visits to places of employment chapter 46.4.2 provides that, before visiting places of work, Immigration Officers should try to establish the names of offenders and undertake pre-visit checks, should try to enlist the co-operation of employers, should only undertake a visit where there is reliable information that immigration offenders will be found and should take particular account of whether there is a history of the premises being used by offenders. Chapter 46.4.7 deals with persons encountered during a visit other than the named offender. It is provided that such persons should only be questioned if there are reasonable grounds to suspect that they are immigration offenders.

[13] Chapter 55 of the Manual deals with 'Prevention of Illegal Working' and refers to the main changes made by the Nationality Immigration and Asylum Act 2002. These include the power to obtain a warrant to enter business premises in order to search for evidence of an offence. Chapter 55.2 refers to the separate power that allows immigration officers and constables to enter and search business premises without a warrant for the purpose of arresting immigration offenders who there are reasonable grounds to believe are on the premises. It is provided that where the power of entry without warrant is used, a letter to the employer authorising the entry should be obtained before the visit takes place, or it should be sent within 48 hours of a visit where oral agreement has been obtained.

[14] This joint operation was directed at premises other than the internet café. When the officers arrived at the targeted premises their attention was directed to the internet café. This occurred first of all through DS McNally who received information about illegal immigrants in the internet café. Secondly it arose through PC Crawford by what he described as suspicious activity at the internet café arising from the presence of uniformed police at the targeted premises. Thirdly it arose because Sergeant Boyd was aware that local police felt that there may be some connection between the target premises and the internet café. Fourthly it arose because Sergeant Boyd was aware that the search of the targeted premises and of the persons found there produced a business card for the internet café. This led Chief Immigration Officer Flaherty, who was present at the joint operation, to request Sergeant Boyd and PC Crawford to visit the internet café.

[15] The Operations Enforcement Manual in general provides guidance, rather than mandatory requirements, and non compliance with the guidance, of itself, does not affect the legality of the action in question. In Okaro's Application [2008] NICA 3 Girvan LJ stated at paragraph 10 –

> "The failure by the decision makers to record their reasoning in the file was clearly a breach of the policy in Chapter 7 in relation to the record keeping procedures called for therein. The recording obligation in Chapter 7 in what is a non- statutory Manual is intended to provide guidance and information for the Immigration Service to ensure best practice. Such a record is clearly intended by the policy-makers to constitute a record for evidential purposes. It is not intended to be a condition precedent to be fulfilled before an effective decision is actually made. There could be good reasons why a decision maker fails to record the decision after the decision is reached (examples being the supervening death or illness of the decision maker before the record is made). The procedural requirement is clearly of a directory nature, breach of which does not invalidate the actual decision though, as Gillen J noted, the absence of a note may make it more difficult for a decision-maker to show that he has properly exercised his discretionary area of judgment. In this instance the decision was validly reached though not properly recorded."

[16] However, while the Manual may in general provide guidance only, undertakings given to Parliament must be given effect. Although the actual terms of the Parliamentary undertaking have not been put in evidence, Chapter 46 of the Manual states the undertaking to be that immigration officers "will not carry out speculative immigration visits" and these are referred to as "fishing expeditions". There will be instances where the targeted visit, which has been planned in a manner which complies with the requirements of Chapter 46 in respect of enforcement visits, will lead the investigators to the need for immediate ancillary enforcement action. The practical requirement for flexibility in the course of immigration investigations is expressed by Mr McBriar in these terms –

> "It is an operational requirement of the Respondent that it enjoys dynamic flexibility that allows it to react quickly and outside the strict confines of the tasking committee."

[17] Where there is sufficient immediacy and connection between the targeted visit and such ancillary enforcement action this could not be considered to be a speculative visit. In the present case I am satisfied that there was such immediacy and connection between the planned visited and the visit to the internet café. The immediacy is apparent from the timings referred to above. The connection is apparent from the four matters referred

to in paragraph [13] above. I do not accept that in all the circumstances the visit to the internet café premises could be said to constitute a speculative visit or a fishing expedition, such as would be outside the terms of the Manual or contrary to the terms of the undertaking given to Parliament.

[18] Further, Chapter 10 of the Manual deals with 'Persons liable to administrative removal under section 10 of the 1999 Act. Paragraph 10.6.4, dealing with 'Working in breach', provides that the breach must be of "sufficient gravity" to warrant administrative removal. It is provided that there must be firm and recent evidence of working in breach, which evidence should include one of four specified types of such evidence. The specified evidence includes –

> "Sight by the IO, or by a police officer who gives a statement to that effect, of the offender working, preferably on two or more separate occasions, or on one occasion over an extended period, or if wearing the employers uniform. In practice, this should generally be backed up by other evidence."

[19] The present case involves sight by an Immigration Officer and by a police officer who made a statement to the effect that the applicant was working. Mr McBriar made a written report of his sighting and Sergeant Boyd made a written statement of his observations. As set out above I am satisfied that the conclusions of the officers are correct and that the applicant was indeed working in breach of the conditions of his visa. Further I am satisfied that, as the applicant's work was not as a temporary stand-in for an employee who left the premises to complete a message, the breach of condition was of "sufficient gravity" to warrant administrative removal.

The discretion.

[20] The applicant contends that the immigration authorities did not exercise their discretion as to whether the applicant should be subject to administrative removal for breach of a condition of his visa. Further to the judgment of Gage J in Uluyol v. Cakmak CO/1960/00 (unreported 30.11.2000), where he concluded that an immigration officer had a discretion as to whether to treat a person as a illegal entrant, Chapter 7 of the Manual was amended to introduce an additional procedure to that effect, to be followed in all illegal entry cases. The nature of this discretion was described by Girvan LJ in Okaro's Application as follows -

> "[7] The word "discretion" in the judgment of Gage J and in Chapter 7 is apt to confuse. It might suggest that a decision-maker has a wide-ranging

> freedom to discharge an illegal entrant from the normal consequences which flow from the illegality of his status. This is not what Gage J's judgment actually established. Paragraphs 43 and 44 of his judgment demonstrate that relevant decision-makers have a discretionary area of judgment to exercise in deciding the question. That is a discretionary area of judgment which falls to be exercised in the light of the alleged illegal entrant's explanation why he is here and what his intentions are. The decision-maker must, thus, exercise his judgment after giving the entrant an opportunity to explain why he is here and what his intentions are. The policy in Chapter 7 is consistent with such an approach and it makes clear that the discretion is to be exercised in the context of posing the question of whether it is fair and appropriate to treat the person as an illegal entrant in all the circumstances."

[21] The respondent objects that this requirement does not apply to removal for breach of condition and is limited to illegal entry. Assuming that the discretion applied in the present case it would involve the obtaining of an explanation from the applicant and the exercise of judgment as to whether it is fair and appropriate to treat the applicant as a person in breach of a visa condition. The applicant was afforded the opportunity to offer his explanation. Mr McBriar states on affidavit that the circumstances were such and the evidence was sufficient to justify enforcement action against the applicant. I am satisfied that, if the "discretion" applies to cases of removal for breach of condition, it must be a discretion of the same character as described by Girvan LJ in relation to illegal entrants and that such a discretion was exercised in the present case.

[22] Further, the issues of "sufficient gravity" and "discretion" are carried forward into the review decision. In the review decision letter of 29 September 2006, Mr Soutter states that the applicant was working in breach of his visa and that he was not a temporary stand-in for someone else. The decision letter states that, had it been believed that the applicant been engaged as a temporary stand-in, his removal from the UK would not have been authorised. However the applicant's explanation was not believed. It is clear that the review decision assessed the gravity of the breach and concluded that it was of "sufficient gravity" to merit enforcement action. In addition it is clear that the review decision took account of the explanation offered by and representations made on behalf of the applicant and exercised a "discretion" to the effect that removal was justified in the circumstances.

The arrest and detention.

[23] The applicant contends that his arrest and detention were unlawful. The statutory basis for arrest and detention of suspected immigration offenders is contained in the Immigration Act 1971 –

> "24(1) A person who is not a British citizen shall be guilty of an offence ……
> (b) if, having only a limited leave to enter or remain in the United Kingdom, he knowingly ….
> (ii) fails to observe a condition of the leave.
>
> 28A(1) An immigration officer may arrest without warrant a person-
> (a) who has committed or attempted to commit an offence under section 24 or 24A; or
> (b) whom he has reasonable grounds for suspecting has committed or attempted to commit such an offence.
>
> Schedule 2 paragraph 16(2) - If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given …. 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."

[24] I am satisfied that there were reasonable grounds for suspecting that the applicant had committed an offence of failing to observe a condition of his leave such as warranted the initial arrest and detention of the applicant of 3 August 2007. Further to his arrest on that date the applicant was served with the three notices referred to above, indicating that he was a person liable to administrative removal for failing to observe a condition and further that a decision had been taken to remove the applicant from the United Kingdom and further that he was to be detained as his removal was imminent.

[25] From the service of the notices that the applicant was to be removed from the United Kingdom and that he was to be detained as his removal was imminent, it is apparent that while the applicant was arrested on reasonable suspicion of having failed to observe the condition of his visa it was decided on the same day to proceed against the applicant by way of administrative removal. The applicant received written notice of the factors that informed the decision that he be detained pending imminent removal, namely that he did not have enough close ties to make it likely that he would stay in one place and he had previously failed to comply with conditions of his temporary admission.

[26] In relation to administrative removal it was stated by Black J in R(E) v. Secretary of State for the Home Department [2006] EWHC 3208 (Admin) –

> "Detention on this basis can only lawfully be exercised where there is a realistic prospect of removal within a reasonable period."

In circumstances where a decision was taken to detain the applicant on the basis that the Secretary of State was considering whether to remove the family, Black J found that this would not have been in accordance with the published policy contained in the Operations Enforcement Manual and would have been unlawful and in breach of Article 5 of the European Convention.

[27] In the present case removal directions were not issued until 18 September 2007 and were then rearranged for various dates up to the issue of judicial review proceedings. Further to the grant of leave to apply for judicial review the applicant was released on bail on 10 October 2007. The applicant contends that detention was unlawful as there was no realistic prospect of removal within a reasonable period.

[28] An explanation for the delay is offered in the affidavit of Mr McBriar. He states that it was initially envisaged that the removal of the applicant would take place within a matter of days using the applicant's own passport. However the applicant would not produce his passport and it became necessary to obtain an Emergency Travel Document from the Nigerian Embassy. When it became clear that the applicant would not produce his passport the application was made to the Nigerian Embassy on 11 August 2007. Mr McBriar states that the production of such an Emergency Travel Document would normally take about 4 weeks. When the Emergency Travel Document was received the removal directions were issued on 18 September 2007 for the removal of the applicant from the United Kingdom on 22 September 2007. However these removal directions were cancelled on 19 September 2007 when the applicant indicated that he would refuse to go to Nigeria on 22 September. The applicant's refusal to co-operate with removal was accompanied by disruptive behaviour in Dungavel Dentention Centre in Scotland. Attempts were then made to rebook transport to Nigeria on 26 and 29 September using escorts, but there was a lack of seat availability. Removal directions were rearranged for 1 October 2007 but were cancelled on 29 September due to the threat of judicial review proceedings.

[29] I am satisfied that upon the detention of the applicant on 3 August 2007 it was reasonably considered that there was a realistic prospect of removal within a reasonable period. The initial delay to 18 September 2007 in issuing removal directions was occasioned by the non co-operation of the applicant in not producing his passport and necessitating an application for an Emergency Travel Document. Thereafter the delay in the issue of removal directions to 1 October

2007 was occasioned by the actions of the applicant in refusing to co-operate with his removal, thus necessitating the cancellation of the first date for removal and the arrangement of escorts to secure the applicant's removal and the obtaining of available seating for the applicant's removal. Finally, under the threat of judicial review proceedings, the respondent quite properly cancelled the proposed removal on 1 October 2007. Leave was granted to apply for judicial review. The issue of bail was left to the applicant and the immigration authorities, with the applicant having a right to apply for bail to an Immigration Judge. This is normal practice where an immigration applicant in detention is granted leave to apply for judicial review, although there have been cases where the Court has intervened to grant bail by way of interim relief before an application has been considered by an Immigration Judge. In the present case, further to the grant of leave to apply for judicial review, the immigration authorities authorised the temporary release of the applicant on 10 October 2007.

[30] I am satisfied that when the applicant was detained pending administrative removal it was on the basis that removal was considered to be imminent and based on the factors identified in the written notice to the applicant. That decision was reasonable in the circumstances. Such delays as occurred in the removal of the applicant were occasioned by the actions of the applicant and in the circumstances the final removal date was fixed within a reasonable period.

[31] The applicant contends that the detention of the applicant was a breach of the right to liberty under Article 5 of the European Convention. Article 5 provides (italics added) –

> "Everyone has the right to liberty and security of person. *No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
>
> c *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence* or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> f *the lawful arrest or detention* of a person to prevent his effecting an unauthorised entry into the country or *of a person against whom action is being taken with a view to deportation* or extradition.

[32] Arrest and detention must be, first of all, for one of the specified reasons and secondly, it must be in accordance with a procedure prescribed by law. In the present case the relevant reasons are reasonable suspicion of an immigration offence and further, action with a view to deportation. I am satisfied that the applicant was arrested and detained initially on reasonable suspicion of an immigration offence. He might then have been released or brought before a Court or become subject to administrative removal. Had he been released his arrest and detention would not have been invalid because he was not brought before a Court, provided that he was arrested and detained on the basis of the requisite suspicion and for the proper purpose. When he became subject to administrative removal on the same day as his arrest and initial detention it was not necessary that he be brought before a Court and the arrest and detention were not invalid, provided that he was arrested on the basis of the requisite suspicion and for the proper purpose, which I am satisfied was the case. The further reason for detention was with a view to deportation, which I am satisfied was the case when it was decided that the applicant would be subject to administrative removal.

[33] The second requirement is that the detention is in accordance with a procedure prescribed by law. In Nassrulloyev v Russia (11 October 2007) the European Court of Human Rights considered Article 5.1(f) -

> "69. The Court notes that it is common ground between the parties that the applicant was detained with a view to his extradition from Russia to Tajikistan. Article 5 § 1 (f) of the Convention is thus applicable in the instant case. This provision does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 112).
>
> 70. The Court reiterates, however, that it falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national

> system. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, § 50).
>
> 71. The Court must therefore ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 § 1 does not merely refer back to domestic law; like the expressions "in accordance with the law" and "prescribed by law" in the second paragraphs of Articles 8 to 11, it also relates to the "quality of the law", requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. "Quality of law" in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see *Khudoyorov v. Russia*, no. 6847/02, § 125, ECHR 2005-... (extracts); *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX; *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III; and *Amuur*, cited above)."

[34] Thus the second requirement of Article 5 that detention be "in accordance with a procedure prescribed by law" reflects the purpose of protecting the individual from arbitrariness. This requires that there should be conformity with the substantive and procedural rules of domestic law and further that the domestic law should be in conformity with the Convention, in particular with legal certainty so that it is sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness. The applicant contends that the respondent is in breach of this requirement as the detention was not in accordance with domestic law and the published policy in the Operational Enforcement Manual. This contention is based on matters that include the alleged failure to establish that the applicant was working in breach of his visa, that there was a trivial factual basis for the detention, that

any breach was not sufficiently severe, that a less severe measure would have been appropriate, that detention was unduly delayed and that there was non compliance with the requirements of the Operations Enforcement Manual. I am satisfied, in the light of the conclusions reached above, that the applicant's contentions in this regard are not well founded and that the arrest and detention of the applicant did not involve arbitrariness and did not involve a breach of Article 5 of the European Convention.

[35] I have not been satisfied on any of the applicant's grounds for judicial review and the application is dismissed.