IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 1629

CASE NO 202100848/B4

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 15 October 2021

LADY JUSTICE SIMLER DBE
MR JUSTICE SPENCER
THE RECORDER OF LIVERPOOL
HIS HONOUR JUDGE MENARY QC
(Sitting as a Judge of the CACD)

REGINA
V
ABDIWAHID ABDIRAHMAN ABDULAHI

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Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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MR B NEWTON appeared on behalf of the Applicant

MR A JOHNSON appeared on behalf of the Crown

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J U D G M E N T

1. MR JUSTICE SPENCER: This is an application for a very lengthy extension of time, some 11 years and eight months, in which to apply for leave to appeal against conviction. The application has been referred to the full court by the Registrar.
2. As long ago as 26 June 2009 the applicant, then aged 21, now aged 33, pleaded guilty in the Crown Court at Lewes to a count of possession of false identity documents with intent, contrary to section 25(1)(2) and (6) of the Identity Cards Act 2006. He was sentenced the same day to 12 months' imprisonment. Automatic deportation provisions applied pursuant to section 32 of the UK Borders Act 2007.
3. It is contended on the applicant's behalf that the conviction is unsafe because, having claimed asylum, which was subsequently granted, the applicant had a defence pursuant to section 31 of the Immigration and Asylum Act 1999 which would in all likelihood have succeeded, but of which he was unaware. It is submitted that the applicant will continue to suffer substantial prejudice if this conviction is not overturned.
4. The applicant seeks leave under section 23 of the Criminal Appeal Act 1968 to introduce fresh evidence from a number of sources, including the statement of reasons by the Criminal Cases Review Commission ("CCRC") in declining to refer his case to this court, extracts from a Home Office subject access request, evidence of employment and qualifications, and a determination of his application for leave to remain.
5. We are greatly indebted to counsel for their very clear and detailed written submissions, Mr Newton on behalf of the applicant and Mr Johnson on behalf of the respondent.
6. We should explain at the outset that the respondent does not oppose the contention that the applicant's conviction is unsafe, for the reasons set out in the grounds of appeal. However, that remains a matter for the court to determine. There is then the issue of whether the very lengthy extension of time should be granted. Again, the respondent raises no objection to such course but it remains a matter for this court to determine.
7. We adopt the summary of the factual background in the application for leave.
   Events leading to conviction
8. The applicant was born on 15 March 1988 in Mogadishu, Somalia. He was a member of the Reer Hamar clan, a minority clan in Somalia. His brother and his father were killed in 2006 and 2008 because of their membership.
9. In March 2009 the applicant was abducted by members of Al Shabab, a militant organisation. He was able to escape after approximately two months. In May 2009, however, members of Al Shabab came to his family home and forced their way in, shooting dead one of his brothers. He and one of his other brothers managed to escape and he took refuge in a mosque. With the assistance of an uncle in Australia he managed to obtain the services of an Asian facilitator to escape from Somalia.
10. He left Mogadishu on 10 June 2009, travelling through an Arab country which he was unable to identify. He then travelled on to Finland but spent only a few hours in Helsinki airport before boarding a flight, at the direction of the agent, to London Gatwick. The booking confirmation for the Helsinki to London flight confirms that it was booked by another individual and then forwarded to the applicant. He has consistently stated that he was acting under the direction of an agent throughout his journey.
11. On 11 June 2009 the applicant entered the UK using a false British passport. He was stopped by an immigration officer and later that day gave his full name and claimed asylum. He was taken into police custody. On 12 June 2009 he was charged with an offence of possession of a false identity document with intent, contrary to section 25 of

the Identity Cards Act 2006 (now superseded by section 4 of the Identity Documents Act 2010).

12. The attendance notes from the firm of solicitors who attended the police station and represented him throughout his criminal proceedings make no reference to any discussion of a potential defence under s.31 of the Immigration and Asylum Act 1999. The applicant's instructions to his solicitors were:

    (a) he had been travelling since leaving Mogadishu on 10th June 2009;

    (b) he was with an agent who did not tell him everything;

    (c) he had only spent two hours in Helsinki;

    (d) he was separated from the agent before he got to Gatwick;

    (e) it was not his photo in the false passport;

    (f) he did not have a Somalian passport;

    (g) he wished to seek political asylum in the UK.

13. He was interviewed at the police station on 12 June 2009 in the presence of a legal representative and an interpreter. In the interview he stated as follows:

    (a) he had left Mogadishu on 10 June 2009 and travelled through an Arab country and then another country;

    (b) he had spent only a few hours in the second country (presumed to be Finland) and had not been aware what country he was in and so had not claimed asylum there;

    (c) he had been given the passport by an agent on the last leg of his journey;

    (d) it was his intention to come to the UK to claim asylum.

14. The evidence against the applicant included statements from a police officer and an immigration officer, neither of which made any reference to the fact that the applicant was claiming asylum.
15. At his first appearance at Crawley Magistrates' Court on Saturday 13 June 2009 (only two days after entering the UK) his case was sent to Lewes Crown Court for trial. A junior member of the Bar dealt with the hearing that day at the magistrates' court and lodged an application for legal aid for the solicitors. The applicant was remanded in custody.
16. We have seen counsel's attendance note of that hearing. It is clear that counsel would only have been given the papers at court. There had been no time to prepare beforehand. He had a short conference with the applicant through an interpreter. His total attendance time with the applicant in conference was 20 minutes or so, but this would have included

the time taken to fill in the legal aid form and also the post-hearing visit to see the applicant in custody. Counsel was at court for less than an hour from start to finish. The attendance note does not indicate that the applicant was advised on the possibility of any defence but does record that the applicant had informed counsel that he was an asylum seeker.

17. The applicant duly appeared at Lewes Crown Court on 26 June 2009. He was represented by an experienced solicitor advocate. There is a very limited record of advice given at court by his solicitor advocate, but it does not appear that the applicant was advised of any possible s.31 defence. He was advised to enter a guilty plea. The letter subsequently sent to the applicant by his solicitor advocate stated:

> "Prior to the hearing I advised of the credit given for an early plea of guilty and in light of the evidence against you and your instructions a plea of guilty would be in order."

18. It is now clear from enquiries made of the solicitor concerned by the CCRC that he had not been able to visit the applicant in custody before the hearing, as the solicitor had not been told where the applicant was being detained. The solicitor understandably could not recall now with any certainty what advice he would have given but accepted that he advised the applicant to plead guilty and "can only surmise that the advice given took into account that he appeared to have stopped into other countries one of which by all accounts appears to have been Finland".
19. The applicant entered his guilty plea on 26 June 2009 and was sentenced the same day by His Honour Judge Tain to 12 months' imprisonment.

Events following conviction

20. The applicant was released from that sentence on 21 December 2009 but was then held in immigration detention at Dover Immigration Removal Centre. On 21 January 2010 he was released on immigration bail but was remanded back into immigration detention between 12 April 2010 and 13 May 2010. Thereafter he remained on an electronically monitored curfew from 14 May 2010 to around 14 October 2010. On release from curfew, he remained subject to requirements to report to Beckett House Enforcement Office on a fortnightly basis until June 2015.
21. The applicant's asylum application was refused on 28 April 2011 and an order for his deportation was issued on 20 August 2013. There followed protracted appeal proceedings, culminating on 30 October 2014 with the decision by the First- tier Tribunal Judge Malone who allowed the applicant's appeal on asylum and human rights grounds, finding that the applicant was entitled to refugee status. Judge Malone, whose judgment we have read carefully, also made the following pertinent observations in relation to the applicant's conviction:

> "I should record the fact that I am troubled by the appellant's conviction. I have found he was a genuine asylum seeker when he arrived at London Gatwick. He had been furnished with a false British passport by the agent engaged. In those circumstances it is highly unusual for such an individual to be charged with possession of a false ID document. The appellant pleaded guilty to

> the offence charged. Had he had the benefit of legal advice and pleaded not guilty, I venture to suggest he would have been acquitted. Be that as it may, at the time of writing, the appellant was lawfully convicted and sentenced to a period of 12 months imprisonment. The risk of his re-offending is infinitesimal."

22. Following unsuccessful attempts by the Secretary of State to appeal that decision, the applicant was granted five years' asylum on 22 June 2015, with limited leave to remain in the UK.
23. Thereafter he was reunited with his wife and children. He has made a life for himself in the UK. He has gained qualifications: BCS Level 2 in IT User skills; OCR Level 2 in adult literacy; Excel Level 3 in English; a BTec in Private Security; and a Cisco Certified Network Associate in routing and switching. Having worked consistently since 2015 he now works as a self-employed delivery driver.
24. On 4 June 2020 the applicant applied for indefinite leave to remain for himself and his dependent wife and their four children. On 15 October 2020 his wife and children were all granted indefinite leave to remain. However, the applicant's own application was refused because of this sole conviction at Lewes Crown Court in 2009. Instead, he was granted a further three years' leave to remain as a refugee. That period expires on 7 October 2023.
25. We observe that the notice of the refusal of his application for indefinite leave to remain pointed out that the bar resulting from his conviction would expire 15 years from the date of the end of his sentence, which would be sometime in 2025.

CCRC

26. In September 2013 shortly after the order for his deportation had been issued and before his asylum appeal had been allowed, the applicant applied to the CCRC who decided on 18 April 2016 that while there was a real possibility that the conviction would not be upheld on appeal, it could not refer his case to the Court of Appeal as he had not appealed against his conviction in the first place. This was the consequence of the decision of this Court in R v YY; R v Nori [2016] 1 Cr.App.R 28.
27. Reliance is nevertheless placed on the following findings by the CCRC, recognising that they are not binding on this court:

> (a) The applicant had a statutory defence available to him under section 31 of the Immigration and Asylum Act 1999 in relation to the charge of possession of a false identity document with intent.
>
> (b) The legal advice provided to the applicant may have deprived him of an available defence and it was probable that the defence would have succeeded for the following reasons:
>
> (i) The applicant can be shown to have come to the UK directly from Somalia notwithstanding stopovers en route. The applicant's account, accepted by the First- tier Tribunal, was that he had been in transit in two countries en route to the UK and was in both countries for a very short period of time. The CCRC's view was that the applicant could not reasonably have been expected to have

claimed asylum in the other countries. Moreover, it was reasonable to conclude that the applicant was reliant on the services of an agent to leave Somalia and travel to the UK.

(ii) The applicant's freedom was threatened in Somalia within the meaning of the Refugee Convention as a result of his political opinions and given his well-founded fear of persecution he had good cause for illegal entry into the UK. This is shown by the fact that the First Tier Tribunal eventually recognised the applicant as a refugee.

(iii) He had presented himself to immigration staff on arrival at Gatwick and made a claim for asylum as soon as queries were raised about his passport, meaning that he had presented himself without delay and had made his claim as soon as reasonably practicable.

The legislative provisions and relevant case law

28. As we have indicated, section 25 of the Identity Cards Act 2006 is no longer in force, being replaced by the Identity Documents Act 2010. However, as in force at the time of the prosecution, section 25 of the 2006 Act provided relevantly as follows:

"25 **Possession of false identity documents etc.**

(1) It is an offence for a person with the requisite intention to have in his possession or under his control—

(a) an identity document that is false and that he knows or believes to be false;

(b) an identity document that was improperly obtained and that he knows or believes to have been improperly obtained; or

(c) an identity document that relates to someone else.

(2) The requisite intention for the purposes of subsection (1) is—

(a) the intention of using the document for establishing registrable facts about himself; or

(b) the intention of allowing or inducing another to use it for establishing, ascertaining or verifying registrable facts about himself or about any other person (with the exception, in the case of a document within paragraph (c) of that subsection, of the individual to whom it relates)."

29. By section 31 of the Immigration Asylum Act 1999 there were defences to this charge based on the Refugee Convention 1991 which provided so far as relevant at the material time as follows:

> "31 **Defences based on Article 31(1) of the Refugee Convention**
>
> (1) It is a defence for a refugee charged with an offence to which this section applies to show that, having come to the United Kingdom directly from a country where his life or freedom was threatened (within the meaning of the Refugee Convention), he—
>
> (a) presented himself to the authorities in the United Kingdom without delay;
>
> (b) showed good cause for his illegal entry or presence; and
>
> (c) made a claim for asylum as soon as was reasonably practicable after his arrival in the United Kingdom.
>
> (2) If, in coming from the country where his life or freedom was threatened, the refugee stopped in another country outside the United Kingdom, subsection (1) applies only if he shows that he could not reasonably have expected to be given protection under the Refugee Convention in that other country."

30. The leading authority on the operation of the statutory defence is the case of R v Mateta and others [2013] EWCA Crim 1372, [2013] 2 Cr.App.R 35 where the judgment was given by Leveson LJ. He said at [21]:

> "To summarise, the main elements of the operation of this defence are as follows:
>
> i) The defendant must provide sufficient evidence in support of his claim to refugee status to raise the issue and thereafter the burden falls on the prosecution to prove to the criminal standard that he is not a refugee (s. 31 Immigration and Asylum At 1999 and *Makuwa* at [26]) unless an application by the defendant for asylum has been refused by the Secretary of State, when the legal burden rests on him to establish on a balance of probabilities that he is a refugee (s. 31(7) of the Asylum and Immigration Act 1999

and *Sadighpour* at[38]-[40]);

if the Crown fails to disprove that the defendant was a refugee (or if the defendant proves on a balance of probabilities he is a refugee following the Secretary of State's refusal of his application for asylum), it then falls to a defendant to prove on the balance of probabilities that

a) he did not stop in any country in transit to the United Kingdom for more than a short stopover (which, on the facts, was explicable, see (iv) below) or, alternatively, that he could not reasonably have expected to be given protection under the Refugee Convention in countries outside the United Kingdom in which he stopped; and, if so:

b) he presented himself to the authorities in the United Kingdom 'without delay', unless (again, depending on the facts) it was explicable that he did not present himself to the authorities in the United Kingdom during a short stopover in this country when travelling through to the nation where he intended to claim asylum;

c) he had good cause for his illegal entry or presence in the United Kingdom; and

d) he made a claim for asylum as soon as was reasonably practicable after his arrival in the United Kingdom, unless (once again, depending on the facts) it was explicable that he did not present himself to the authorities in the United Kingdom during a short stopover in this country when travelling through to the nation where he intended to claim asylum. (s. 31(1); *Sadighpour* at [18] and [38]-[40]; *Jaddi* at [16] and [30]);

ii) the requirement that the claim for asylum must be

made as soon as was reasonably practicable does not necessarily mean at the earliest possible moment (*Asfaw* at[16]; *Mohamed (Abdalla)* at [9]);

it follows that the fact that a refugee stopped in a third country in transit is not necessarily fatal and may be explicable: the refugee has some choice as to where he might properly claim asylum. The main touchstones by which exclusion from protection should be judged are the length of the stay in the intermediate country, the reasons for delaying there and whether or not the refugee sought or found protection de jure or de facto from the persecution from which he or she was seeking to escape (*Asfaw* at [26]; *Mohamed (Abdalla)* at [9]);and

the requirement that the refugee demonstrates "good cause" for his illegal entry or presence in the United Kingdom will be satisfied by him showing he was reasonably travelling on false papers (*Adimi* at 679 H)."

31. The court went on to summarise at [24] the main elements of an accused's entitlement to advice on the section 31 defence:

"i) there is an obligation on those representing defendants charged with an offence of possession of an identity document with improper intention to advise them of the existence of a possible s. 31 defence if the circumstances and instructions generate the possibility of mounting this defence, and they should explain its parameters (*Mohamed (Abdalla)* at [10]);

ii) the advisers should properly note the instructions received and the advice given (*Mohamed (Abdalla)* at (56]);

iii) if an accused's representatives failed to advise him about the availability of this defence, on an appeal to the Court of Appeal Criminal Division the court will assess whether the defence would 'quite probably' have succeeded (*Mohamed (Abdalla)* at [13]); and

iv) it is appropriate for the Court of Appeal to assess the prospects of an asylum defence succeeding by reference to the findings of the First Tier Tribunal (Immigration and Asylum

Chamber), if available (*Sadighpour* at [35])."

32. We also note that in R (Q) v Secretary of State for the Home Department [2004] QB 36 at [40] the Court of Appeal observed that:

> "…it is also clear that some asylum seekers are so much under the influence of the agents who are shepherding them into the country that they cannot be criticised for accepting implicitly what they are told by them."
>
> (as approved by the House of Lords in Kola v Department of Work and Pensions [2007] UKHL 54 at [39])

33. This was echoed by Moses J (as he then was) in K v Croydon Crown Court [2005] 2 Cr.App.R (S) 96 where he observed:

> "... It is well known that those in the unfortunate position of fleeing from their homes and seeking refugee status can often only do so with the assistance of the agent ... Thus, those seeking the aid of an agent are powerfully under their influence."

Application to admit fresh evidence

34. The applicant seeks to rely on the following fresh evidence:

    (a) the CCRC's statement of reasons and appendices, which include the documents obtained by the CCRC in relation to the original criminal proceedings, and the First-tier Tribunal judgment;
    (b) extracts from a Home Office subject access request;
    (c) evidence of employment and qualifications;
    (d) leave to remain determinations, 15 October 2020.

35. We have considered all this documentation and are satisfied that it is appropriate to receive it as fresh evidence under section 23. It is necessary and expedient to do so in the interests of justice. All the evidence in question is clearly capable of belief. Taken cumulatively it affords the applicant the ground of appeal advanced. The evidence is all clearly admissible and would have been admissible at the material time had it then been available. There is a reasonable explanation for the failure to adduce the evidence in the original proceedings in that the applicant was unaware of the statutory defence available to him and therefore unaware of the relevance of the evidence. Much of the evidence was not, of course, in existence at that time anyway.

The applicant's submissions, and analysis

36. It is submitted on behalf of the applicant that the requirements of the statutory defence in section 31, as interpreted in Mateta are made out in that:

    (a) the applicant was a refugee;

    (b) he did not stop in any country in transit to the UK for more than a short stop over;

(c) he presented himself to the authorities in the UK without delay;

(d) he had good cause for his illegal entry;

(e) he made a claim for asylum as soon as practicable.

37. In the grounds of appeal detailed submissions are advanced in support of each of these requirements. In the Respondent's Notice there is a proper acceptance that all the requirements are met.
38. We consider the questions in Mateta at [21] (i-iii) in turn.
39. First, there is evidence to raise the issue whether the applicant is a refugee. It would be for the prosecution to prove to the criminal standard that the applicant was not a refugee. In the light of the judgment in the First-tier Tribunal the respondent concedes that it could not discharge that burden. The applicant was plainly escaping a well-founded fear of persecution in Somalia.
40. Second, because the applicant did stop in other countries en route to the UK he would have to prove that he did not stop for more than a "short stopover", or alternatively that he "could not reasonably have expected to be given protection under the Refugee Convention in the countries outside the UK in which he stopped". On the applicant's account he left Mogadishu on 10 June 2009 and arrived in the UK on the afternoon of the following day, 11 June. His stays in third countries had been extremely short. He found no protection from persecution (*de jure* or *de facto*) as he never left the airport in either country. One was an unknown, unspecified Arab country. The other was Finland. There is no basis to suggest that the applicant could not reasonably expected to have been given protection in Finland, but there is no basis to doubt his account that he spent no longer than a couple of hours there at the airport. The First-tier Tribunal accepted this evidence having heard it tested in cross-examination.
41. Third, we are satisfied that the applicant did present himself to the authorities in the UK without delay. The use of a false document does not undermine this.
42. Fourth, we are satisfied that the applicant had "good cause" for his illegal entry in that we are satisfied that his travelling on false papers was reasonable in the circumstances: see Mateta at [21](v). We accept that if the applicant entered the UK as a result of fleeing the treatment he describes, his use of false papers was reasonable. Again, the applicant's account was tested in oral evidence before the First-tier Tribunal. The Tribunal Judge rejected the Secretary of State's challenges and accepted the accuracy of the applicant's account in its entirety.
43. For all these reasons we are satisfied that the applicant had a strong defence under section 31 on the facts which was likely, indeed almost certain, to succeed. We pay due weight to the conclusion of the Tribunal Judge that if the applicant had had the benefit of legal advice and pleaded not guilty it is likely (or in the language of Mateta, “quite probable”) that he would have been acquitted.
44. There is a further hurdle for the applicant. He must show that he was deprived of the defence available to him under section 31 through no fault of his own. If, for example, he was advised that the defence was available but chose not to rely on it, these applications would fail.

45. We are satisfied that there is no basis for such an inference. The material available, including contemporaneous documents from solicitors and counsel, makes no mention of any section 31 defence, simply that he was advised to plead guilty and took that advice. The applicant had raised the issue of asylum at an early stage. It is inherently unlikely that he would have decided to plead guilty had he been advised that a defence was available. We are satisfied, therefore, that the applicant was not properly advised as to the availability of the section 31 defence. It follows that he was deprived of the defence through no fault of his own.
46. For all these reasons we are satisfied that the applicant's conviction is unsafe.
47. The next question is whether a refusal of leave would cause substantial injustice, or more correctly, significant injustice. We say significant rather than substantial because strictly this is not a change of law case.
48. From the history we have already summarised it is clear that the only bar to the applicant being granted indefinite leave to remain is the presence of this single conviction on his record. The conviction therefore has and continues to have a direct impact on his life. As it was said in R v Ordu [2017] EWCA Crim 4, [2017] 1 Cr.App.R 21 at [20]:

    i. "The continuing impact of a wrongful conviction on an application will be highly material in determining whether its continuation involves a substantial injustice ... "

49. With greater force that must apply if the test is “significant” rather than “substantial” injustice.
50. Here there is clearly a continuing substantial injustice injustice because the applicant has hanging over him still the risk that he will not be granted indefinite leave to remain when his current leave expires in 2023. True it is that in 2025 there is the prospect of the bar being lifted on the expiration of 15 years from the date of his sentence. But no-one can be certain as to what might happen in 2023, or between 2023 and 2025. In any event, it is the uncertainty of its hanging over his head which creates the very substantial injustice.

Extension of time

51. There remains the question of the long delay requiring an extension of time, 11 years eight months. The relevant principles in a case such as this were explained in the following way in R v O [2019] EWCA Crim 1389 at [45]:

> "The extension of time is very long as we have observed. The principles to be applied in an extension of time case are well known. In R v Hughes [2009] EWCA Crim 841 at [20] it was said that an extension would 'be granted only where there is good reason to give it, and ordinarily where the defendant will otherwise suffer significant injustice'."

52. In R v Thorsby [2015] EWCA Crim 1 it was stated:

> "The principled approach to extensions of time is that the court will grant an extension if it is in the interests of justice to do so."

53. It was also said in that case that:

> "... the public interest embraces also, and in our view critically, the justice of the case and the liberty of the individual."

54. And:

> "... the court will examine the merits of the underlying grounds before the decision is made whether to grant an extension of time."

55. It was also noted that:

> "... a substantial passage of time may put the court in difficulty in resolving whether or not an error has occurred and if so to what extent."

56. There is a very impressive and detailed witness statement from Philippa Southwell of the applicant's solicitors setting out the chronology of the progress of this appeal from the time her firm was instructed in 2020. No possible criticism could be made of any delay during that period. On the contrary, the enquiries essential for the appeal have been progressed with exemplary diligence and tenacity.
57. The delay between 2009 and 2013 was clearly attributable to the applicant's lack of knowledge or understanding of the statutory defence that had been available to him. The same applies to the delay between 2013 and 2016 during which time his application to the CCRC was being dealt with.
58. The Respondent's Notice dated 28 June 2021 justifiably queried the reason for the delay between 2016, when the CCRC rejected his application and advised him to appeal against the conviction, and 2020 when his solicitors were first instructed. The Respondent's Notice invited the applicant to explain this period of delay in a further statement.
59. The applicant has done so. In a witness statement received by the Registrar on 9 August 2021 the applicant described in detail the difficulties he faced in finding a solicitor prepared to take on his case. It makes sad and somewhat pitiful reading and is a reflection of the state of things in that period. We accept that the applicant was doing all he could to find a solicitor to represent him and to pursue this appeal. He contacted several refugee support organisations. He was let down by one firm of solicitors who initially reviewed his immigration papers. His current solicitors contacted that firm who confirmed the applicant's account. The applicant sought advice from his local Law Centre but they were unable to help save to advise him, wrongly, that he would not be entitled to legal aid and would have to pay for a criminal solicitor. He contacted other charities and finally the charity Refugee Action who recommended his present solicitors.
60. Regrettable as this four-year delay may be, for the applicant as much as the court, we are quite satisfied that it has been sufficiently explained. We cannot in any event see that it has caused or added to any prejudice in resolving the issues in this appeal. The overriding question is whether it is in the interests of justice to grant the extension of time. We accept the applicant's submission that the crucial factor of refusal of indefinite leave is a consequence of this conviction. That is the clearest demonstration of injustice that has resulted from his conviction and, for the reasons we have explained, the continuing prejudice he is likely to suffer if the conviction is not quashed.
61. In all the circumstances we are abundantly satisfied that it is in the interests of justice to

extend time. The respondent has raised no objection to that course. On the contrary, now that Mr Johnson has seen the applicant's recent statement he accepts, very properly, that it would be entirely appropriate for the extension to be granted.

62. We therefore grant the extension of time. We grant leave to appeal, and we quash the conviction.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk