



Neutral Citation Number: [2019] EWHC 424 (Admin)

Case No: CO/2292/2017

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27 February 2019

Before :

**HIS HONOUR JUDGE BLACKETT**  
**(Sitting as a Judge of the High Court)**

Between :

**THE QUEEN**  
**on the application of**  
**PRAVINABEN TUSHARKUMAR PATEL**  
**- and -**  
**SECRETARY OF STATE FOR**  
**THE HOME DEPARTMENT**

**Claimant**

**Defendant**

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**Jacqueline Lean** (instructed by **Connaughts Law**) for the **Claimant**  
**Amanda Jones** (instructed by **Government Legal Dept.**) for the **Defendant**

Hearing date: 5 October 2017  
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**Approved Judgment**

**HHJ Blackett :**

1. This is an application for Judicial Review on the very narrow basis of whether the Defendant's decision to detain the Claimant on 14 March 2017 and then to keep her in detention until 1 June 2017 was lawful.
2. The Complainant is an Indian national who, together with her husband Tusharkuman Rameshbhai Patel, has been an overstayer since September 2015 when their appeal rights were exhausted. Their application for leave to remain on the basis of ECHR Article 8 was refused on 6 May 2016; permission for judicial review of that decision was refused on 29 September 2016. They were detained pending removal during 2016 but released after they lodged an application for renewal with the Court of Appeal on 14 October 2016.
3. On 14 March 2017 the Claimant was detained, family separation having been expressly authorised by a Senior Executive Officer. She was released on 1 June 2017.
4. The Claimant submits that the decision to detain (and remove) her is illegal as it breaches her ECHR Article 8 rights. In particular, the Claimant and her husband have always had visas and applications on the same basis, the Claimant has not been to India for seven and a half years, her husband has TB and removal deprives her of the ability to love, care and support him while he is undergoing medical treatment for TB. On 6 May 2016, the Defendant wrote to the Claimant informing her that her application to remain has been refused and she must leave the United Kingdom. The Claimant asserts that this letter made it clear that she and her husband were being dealt with identically and together as there were references to them being married for five years before coming to the UK and living together throughout their time in the country. Paragraph 43 of that letter accepted that they would be able to support each other on their return to India. It is, in short, unreasonable and disproportionate to separate them.
5. Policy guidance ("the Guidance") for officials determining whether families should be separated prior to removal has been issued by the Defendant (Version 3 dated 6 January 2017). There is no dispute that the Guidance is lawful and the separation was temporary, but the Claimant asserts that the Defendant failed to follow her own guidance and her actions were neither necessary nor proportionate.
6. The Guidance states (page 7 of 28):

"When immigration powers are used to detain or remove a family, the underpinning principle within ECHR Article 8 is that members of the family remain together wherever possible. Separation of individuals from their family unit may sometimes be required, when it is necessary and proportionate to do so, to enable the Home Office to carry out immigration functions effectively. However separating families for detention and removal purposes must always be justified as being necessary and proportionate."

Later the Guidance states (page 9 of 28):

“In all cases, any separation must be for as short a time as possible and you must inform the family why the separation is necessary.”

It continues:

“temporary separations include those where a part of the family is removed from the UK, but it is considered to be within the family’s control to reunite themselves because, for example: it is considered that there are no barriers to family life continuing overseas; it is considered reasonable for the removed family member or members, to obtain the required entry clearance required to rejoin their family group. In temporary separations, you must also inform the family when, where and under what circumstances they can expect to be reunited.”

7. Finally, the Guidance states (page 22 of 28) that the Decision to separate must be lawful, necessary and proportionate. It continues:

“In the case of temporary separations you must also update Section 2c of the separations form (ICD 5025) with details on: how it is intended to re-unite the family; when the earliest opportunity for re-unification may be; how the family will be informed of these plans.”
8. The Claimant submits that the Defendant did not inform the family when, where and under what circumstances they can expect to be reunited. Further, there is no indication that the Defendant considered the Claimant’s husband’s illness and the necessity for the family unit to be together while he recovered.
9. The Defendant maintains that the decision to detain the Claimant, and to separate her from her husband, was lawful and reasonable. She was an overstayer who had exhausted her rights of appeal and had been served a notice of removal. She was, therefore, due to be removed shortly after she was detained. Her husband could not at that stage be detained because an ETD had not been provided for him. The Defendant considered temporary separation, followed her own guidance and made a rational decision. She acknowledged that ECHR Article 8 was engaged but concluded that separation was necessary and proportionate in the interests of pursuing effective immigration control, not least because it was clear that the Claimant did not wish to return to India and had not accepted assistance for voluntary return. Further it was in her husband’s power and capability to be re-united in India without awaiting his forced removal.
10. The Defendant asserted that when she made the decision to detain the Claimant she was not made aware of the fact that her husband had been diagnosed with TB, although the Claimant said she should have been because it was documented that he had been hospitalised with chest pains when in detention in 2016. The Claimant did inform the Defendant on 14 March 2017 when she was detained that her husband had TB, but continued detention was authorised as is expressly envisaged in the Guidance.

## Decision

11. This Claim is totally without merit. It is clear from close scrutiny of the Form ICD 5025 that the Defendant considered all of the relevant factors very carefully. The Claimant had no lawful basis upon which to remain and she had consistently frustrated the process of returning her to India. It was reasonable and proportionate that as soon as she received ETDs she should be detained and removed. Her husband could not be detained or removed until he received ETDs, but it was reasonable to expect that those would be provided imminently. The Defendant considered ECHR Article 8, the proportionality of separation and plans for reunification in India. It was clear on the evidence before her, that the Claimant had family and cultural ties in India and that her husband could join her voluntarily within weeks. Those ties and her ability to cope were comprehensively considered in the letter dated 6 May, and the paragraph cited by the Claimant suggesting she and her husband should be treated identically did not alter that assessment.
12. The issue of TB has been overstated. Notwithstanding references to the Claimant's husband having chest pains and being transferred to hospital when detained in 2016, she was entitled, in the absence of any medical report, to conclude that there was no medical bar to removal. The letter from London North West Healthcare NHS dated 20 December 2016 demonstrates that the illness is very minor and that treatment was due to cease on 13 March 2017. Having considered that letter shortly after the Claimant was detained, it was reasonable and proportionate for the Defendant to determine that the husband's illness was minor, that the Claimant was not required as a sole carer and it was insufficient to prevent the Claimant's detention and removal separately. The Defendant dealt with this issue in her Response to the pre-Action protocol letter on 23 March 2017.
13. The final issue is whether the Defendant complied with the Guidance to inform the Claimant about re-unification. Form ICD 5025 was completed and it includes details of reunification in box 2c ("they can be re-united through their own actions. This could be as soon as a matter of weeks"). I have asked whether the Form ICD 5025 was served on the Claimant and the Defendant could not be sure. I was told it is not normal practice but the document can be disclosed if requested. I have seen no evidence that the Claimant was informed when, where and under what circumstances they could expect to be reunited (as required under the heading "Temporary or Permanent" in the Guidance at page 9 of 28). In this case, particularly in relation to their long association with the immigration authorities and their knowledge that they were both being removed to India, that does not make the separation, detention or removal of the Claimant unlawful: it must have been within their contemplation that they would be reunited in India as soon as the Claimant's husband received his ETDs or that he could follow her very quickly voluntarily. Nevertheless, it would be good practice in similar circumstances to serve the completed Family Separation Pro-Forma on persons being temporarily separated so there can be no doubt that they know what is happening to them as required by the Guidance.
14. For the reasons stated above, this claim for judicial review is dismissed.
15. I order that the Claimant pays the Defendant's costs. If they cannot be agreed I will make a further order upon receipt of written submissions from both parties.

16. The Claimant received a “Notice of Removal Window” together with a “Notice to Detainee; Reasons for Detention and Bail Rights” on 14 March, when she was detained.