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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2022] EWHC 2174 (Admin)



CO/2022/2022

Royal Courts of Justice

Wednesday, 29 June 2022

Before:

MR JUSTICE LANE

B E T W E E N :

THE QUEEN
on the application of
A

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

ANONYMISATION APPLIES

MR G O'CEALLAIGH (instructed by Leigh Day) appeared on behalf of the claimant.

MISS M BAYOUMI (instructed by the Government Legal Department) appeared on behalf of the defendant.

J U D G M E N T

MR JUSTICE LANE:

- 1 This is a renewed application for interim relief, the purpose of which is to compel the defendant to provide the claimant with accommodation, pursuant to the power the defendant has by reason of Schedule 10 to the Immigration Act 2016. Interim relief was refused on the papers by Wall J on 8 June 2022.
- 2 The claimant has a long immigration history in the United Kingdom, and indeed elsewhere. I shall not go into that history in detail. It is, in my view, sufficiently set out at paras.11 to 61 of the claimant's statement of facts and grounds in the current proceedings.
- 3 If one can summarise, however, it appears that the claimant was first encountered by the defendant in 2006 in the United Kingdom. He claimed asylum, but he has never been granted refugee status. Indeed, his position remains that he is in the United Kingdom without leave. During this period, he has committed many and various criminal offences, some of which have resulted in imprisonment. He has also seen considerable periods of immigration detention. Some of those periods have been found to be unlawful and, as a result of those findings, the claimant has been awarded some £60,000 in damages against the defendant. That matter is of considerable significance.
- 4 The claimant was relatively recently released from immigration detention. Mr O'Ceallaigh, who appears for him, draws my attention to the detention reviews in respect of that last period of detention, where it is manifest that at that time, at least, the defendant's officers were of the view that suitable accommodation for the defendant was necessary before he could be released on bail.
- 5 In the event, however, a decision was made to refuse the claimant accommodation because it was said that at that time that the claimant did not have a residence condition attached to his grant of immigration bail. Interestingly, and indeed significantly, according to Mr O'Ceallaigh the grant of bail post- dated that decision. All of that is, at least arguably, grist to the claimant's mill in contending, as he does, that the decision not to invoke the provisions of Schedule 10, in order to provide accommodation for the claimant, was reached unlawfully, in that the defendant had fettered her discretion to impose a residence condition, which would then at least possibly have led to the provision of accommodation.
- 6 I say "possibly" for the following important reason. As has been pointed out by Miss Bayoumi, an aspect of the application before me this afternoon concerns the question whether the claimant is, or may imminently become, destitute. If he is not destitute and has access to some at least of the sum of £60,000 to which I have made reference, then, notwithstanding any illegality in respect of the decision taken in April this year, section 31(2A) of the Senior Courts Act 1981 may well preclude the grant of final relief on the basis that, if the claimant cannot satisfy the court in due course that he is destitute, the decision would have been bound to have been the same, absent any illegality. That is because there is an exceptionality requirement built into Schedule 10, which is manifestly capable of covering issues such as whether a claimant is destitute.
- 7 The evidence on destitution has developed at pace in these proceedings. The claimant has very recently produced, on 27 June, a detailed statement that engages with the question of what happened to the £60,000 and why it is that, notwithstanding this damages award, the claimant is, as he contends, destitute. It is said he is at present living under a tree in a park in Plymouth.

- 8 That statement was, in my view, undoubtedly generated by the fact that the claimant has recently made an application to the defendant for support under s.4 of the Immigration and Asylum Act 1999, rather than under Schedule 10.
- 9 On 16 June 2022, the defendant refused the s.4 application. The appellant has appealed against that refusal to the Asylum Support Tribunal. On 22 June 2022, Judge Sally Verity Smith of that Tribunal made directions, including that the claimant file, not later than 28 June, evidence of his destitution, in the light of the £60,000 received by him in April 2019. In those directions, which I respectfully regard as entirely sensible and appropriate, Judge Smith also seeks a detailed explanation from Mr Sean Murray, a person associated or formerly associated with the claimant, whom the claimant alleges has received a significant part of the £60,000.
- 10 Mr O'Ceallaigh pursues the application this afternoon in the light of the s.4 proceedings. The Asylum Support Tribunal is due to hear the claimant's appeal next week, on 5 July 2022. Mr O'Ceallaigh tells me that he is currently instructed to appear for the claimant in that case.
- 11 Miss Bayoumi has very recently produced a statement of summary grounds, accompanying the defendant's acknowledgement of service. I pay tribute to the detail of those grounds, given the short time she has had to prepare them.
- 12 I have had careful regard to the grounds. The only matter which I consider calls for specific consideration is the submission by Miss Bayoumi that there is a suitable alternative remedy available now to the claimant, in the shape of the s.4 appeal before the Asylum Support Tribunal. I do not find, with respect, that the other bases upon which she seeks to resist interim relief are good. This is because I agree with Mr O'Ceallaigh that there is, so far as those other grounds are concerned, a real prospect of success as matters stand, subject to the point I made about s.31(2A). So it all comes down, in my view, to the issue of destitution.
- 13 Mr O'Ceallaigh points to a medical report prepared by a psychiatrist on the appellant, which follows a relatively recent examination undertaken by the doctor of the claimant, via video link. The report is to the effect that the claimant is suffering from serious mental health issues. Those problems are, it is said, being exacerbated by the fact that, whether or not he has access to funds, it appears that the claimant is living rough in a park in Plymouth.
- 14 As matters stand, this seems to me to be a sufficient evidential basis upon which this court should grant interim relief. There is an arguable case, which will be determined by a fact-finding tribunal next week, that the claimant is, despite the money awarded to him, destitute; that he has lost that money; and that he has no other way of supporting himself other than through the intervention of the defendant.
- 15 Mr O'Ceallaigh indicated during the course of his oral submissions that, if interim relief were granted, then the Tribunal hearing next week would no longer be necessary. I emphatically reject that submission. Indeed, in subsequent exchanges with the court, Mr O'Ceallaigh appears to have resiled from it, on the basis that he accepts there is, as Miss Bayoumi indicates, a very clear need for those Tribunal proceedings to continue. The Asylum Support Tribunal is a fact-finding body. It is a specialist Tribunal, charged with determining, amongst other things, issues of destitution facing failed asylum seekers. All of this is in contrast to the position of this court, which is undertaking a judicial review where findings of fact generally play a far lesser role and where, as a result, the court may well be assisted by the findings of the Asylum Support Tribunal.

- 16 Drawing these threads together, the position is as follows. There is, in *American Cyanamid* terms, a case for making an interim injunction, even for the few days between today and next week's hearing, during which time there is a real risk of violation of Article 3 ECHR, both to the claimant and perhaps to others with whom he may interact. Accordingly, the balance of convenience lies in favour of granting interim relief. However, in view of the impending Asylum Support Tribunal proceedings, I shall grant relief on the claimant's undertaking to pursue the appeal before that Tribunal.
- 17 Once that Tribunal has reached a decision, then both parties can consider whether and to what extent that decision may affect the grant of interim relief. I shall, accordingly, grant liberty to apply to both parties. Without wishing to be too prescriptive, if the Asylum Support Tribunal finds as a fact that, despite the evidence before this court, the claimant is not destitute; and in particular he has access to funds and/or to people who he may be willing to accommodate him, then it would be possible for the defendant to return to this court and seek to discharge the order that I am about to make. On the other hand, if the Asylum Support Tribunal concludes that the claimant is destitute and is entitled to s.4 relief, then either the claimant or the defendant may need to return to this court to seek some adjustment of the interim relief.
- 18 Accordingly, therefore, with gratitude to counsel, and particularly Miss Bayoumi, who has only very recently been instructed, I shall grant interim relief in the terms that I have indicated, such that the defendant is to use forthwith all reasonable endeavours to secure accommodation for the claimant.
- 19 I invite Mr O'Ceallaigh to prepare the necessary order, which I shall be grateful if he would show to Miss Bayoumi in order for the defendant's observations on its drafting to be taken into account.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge