Neutral Citation Number: [2022] EWHC 2730 (Admin)

Case No: CO/17/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 October 2022

Before:

Margaret Obi
(sitting as a Deputy High Court Judge)

- -

Between:

Mr Luiz Henrique De Aquino — **Claimant**

- and -

Secretary of State for the Home Department — **Defendant**

- -

Mr Jay Gajjar (instructed by **Ashton Ross Law)** for the **Claimant**
Mr Richard Evans (instructed by the **Government Legal Department**) for the **Defendant**

Hearing date: 13 September 2022

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Approved Judgment

This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10.00 AM on Monday 31st October 2022.

Margaret Obi:

Introduction

1. This is a claim for judicial review. Mr De Aquino ('the Claimant') challenges the Secretary of State for the Home Department's ('the Defendant's) decision:

    i. to refuse to grant the Claimant permission to enter the UK as a visitor on 29 December 2021; and

    ii. to detain the Claimant from 29 December 2021 to 6 January 2022.

2. The Claimant asserts that the Defendant's conclusion that he was not a '*genuine*' visitor was procedurally unfair due to the nature of the interview that took place and irrational. As a consequence, the Claimant further asserts that the decision to detain him was unlawful.

3. The Claimant invites the Court to quash the decision of 29 December 2021, declare that he was unlawfully detained and order the Defendant to pay damages and his costs.

Background

4. The background to this claim including the procedural history can be summarised as follows.

5. The Claimant is a Brazilian national. He sought to gain entry to the UK as a visitor on 29 December 2021 having arrived on a flight which landed at Heathrow Airport. The Claimant had previously entered the UK as a visitor on 29 January 2015. On that occasion, he was granted leave to enter the UK for 6 months which was endorsed with a stamp in his passport. On 7 February 2017, the Claimant was encountered leaving the UK by immigration enforcement officers. He was served with a notice of liability to removal as he was deemed to be an overstayer in the UK with no valid leave. The Claimant voluntarily left the UK on 7 February 2017; he was not detained or removed by the Defendant.

6. The Claimant, following arrival at Heathrow Airport on 29 December 2021, was served with Form IS81 which gave immigration officers the authority to detain him pending further inquiries. The Claimant was interviewed. During the interview, the Claimant stated that he had travelled to the UK with the intention of visiting his brother and his sister in law until 12 January 2022. He admitted that he had visited the UK in 2015 and overstayed until 2017. He also admitted that during that period he had worked illegally in the UK for 8 months.

7. The Claimant was refused permission to enter the UK. The immigration officer, authorised to make such decisions on behalf of the Defendant, was not satisfied that the Claimant was a '*genuine*' visitor to the UK. The refusal notice states:

> "*You have sought permission to enter as a tourist for fifteen days to visit your brother, Paulo Henrique De Antonio and his wife Milena in the United Kingdom.*
>
> *During the further interview you have stated that you have a barber company from the last 8-19 years in Brazil with an income of 5000-7000 BRL (£650-910) per/month. Again, there is no supporting documentary evidence of this income*
>
> *You also stated that you have funds 1600 EURO with you and your brother will support you during your stay in the UK. You have paid for the return ticket approximately 5000 BRL (£650) and you have been planning this trip for the last nine months*
>
> *During the further interview you admitted that you arrived in the UK as a tourist in 2015 and you had overstayed in the UK for around two years until 2017. You further admitted that you had worked in the UK around eight months during the last stay in the UK.*
>
> *In summary, taking account of the above, I am, therefore, not satisfied that you are a genuine visitor as required by paragraph V 4.2. of Appendix V: Immigration Rules for visitors. You are therefore refused entry to the UK.*"

8. The detention notice states that the Claimant was detained on the grounds that there was insufficient reliable information to decide whether to grant him immigration bail and that he had failed to give satisfactory or reliable answers to an immigration officer's enquiries. Directions for the Claimant's removal were set for 1 January 2022.

9. On 30 December 2022, removal directions were reset for 5 January 2022 to allow time for the Claimant to take a Covid-19 test prior to departure. This was later cancelled.

10. On 1 January 2022, a pre-action letter was served on the Defendant challenging the decisions and seeking disclosure. On 2 January 2022, the Defendant provided handwritten notes of the interview and responded to the pre-action letter by maintaining the refusal decision. On 3 January 2022, the Defendant provided a negative response to the pre-action letter. On 5 January 2022, the claim for judicial review was filed.

11. On 16 March 2022, permission was granted by Deputy Chamber President Tudur, sitting as a Deputy High Court Judge.

12. The Claimant, having been released from detention on 6 January 2022, did not leave the UK until 9 September 2022.

Key Legal Principles

Genuine visitors

13. The Immigration Rules ('the rules') regulate the entry and stay of people who are subject to immigration control. In accordance with the rules, a person applying to stay in the UK as a visitor must be a '*genuine*' visitor. Insofar as is relevant, the rules state:

> "*Genuine visitor requirement*
>
> *V4.2 The applicant must satisfy the decision maker that they are a genuine visitor, which means the applicant:*
>
> *(a) will leave the UK at the end of their visit; and*
>
> *(b) will not live in the UK for extended periods through frequent or successive visits, or make the UK their main home; and*
>
> *(c) is genuinely seeking entry or stay for a purpose that is permitted under the Visitor route as set out in Appendix Visitor: Permitted Activities and at V 13.3; and*
>
> *(d) will not undertake any of the prohibited activities set out in V 4.4. to V 4.6; and*
>
> *(e) must have sufficient funds to cover all reasonable costs in relation to their visit without working or accessing public funds, including the cost of the return or onward journey, any costs relating to their dependants, and the cost of planned activities such as private medical treatment. The applicant must show that any funds they rely upon are held in a financial institution permitted under FIN 2.1 in Appendix Finance."*

Procedural fairness and interviews

14. It has been held that the basic principles of procedural fairness apply to certain decision making contexts within the fields of immigration and asylum: see *Miah* [2014] UKUT 515 (IAC). In *Regina (Mushtaq) v. Entry Clearance Officer of Islamabad, Pakistan* [2015] UKUT 224 (IAC), the judicial headnote refers to the following principle:

> "*[Entry Clearance Officer] interviews serve the basic twofold purpose of enabling applications to be probed and investigated and, simultaneously, giving the applicant a fair opportunity to respond to potentially adverse matters. The ensuing decision must accord with the principles of procedural fairness*."

15. In *Regina (Anjum) v. Entry Clearance Officer, Islamabad* [2017] UKUT 406 (IAC), the Upper Tribunal examined the requirements of procedural fairness in relation to immigration interviews. The judicial headnote states as follows:

> "*An immigration interview may be unfair, thereby rendering the resulting decision unlawful, where inflexible structural adherence to prepared questions*

excludes the spontaneity necessary to repeat or clarify obscure questions and/or to probe or elucidate answers given."

Section 31 of the Senior Courts Act 1981

16. Section 31 of the Senior Courts Act 1981 states:

> *"(2A) The High Court—*
>
> *(a) must refuse to grant relief on an application for judicial review, and*
>
> *(b) may not make an award under subsection (4) on such an application, if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.*
>
> *(2B) The court may disregard the requirements in subsection (2A)(a) and (b) if it considers that it is appropriate to do so for reasons of exceptional public interest.*
>
> *(2C) If the court grants relief or makes an award in reliance on subsection (2B), the court must certify that the condition in subsection (2B) is satisfied*."

17. The proper approach to this test has been considered in a number of authorities (see for example: *Cava Bien Ltd v Milton Keynes Council* [2021] EWHC 3003 Admin where Kate Grange QC (as she then was) sitting as a Deputy High Court Judge summarised the principles).

Grounds and Submissions

18. The Defendant's primary submission is that the Claimant's grounds for review are academic as his subsequent actions, in choosing to remain in the UK beyond 12 January 2022, demonstrates that the Defendant was not only entitled to conclude that he was not a '*genuine'* visitor, but that this conclusion was entirely justified. In response it is submitted, by the Claimant, that his subsequent actions are wholly immaterial to the lawfulness of the decisions made on 29 December 2021.

19. Turning to the Claimant's case he challenges the Defendant's decisions on three grounds:

Ground 1 – Procedural Unfairness

20. The Claimant submits that the interview process was procedurally unfair as there was a failure to probe, investigate or ask appropriate follow-up questions and these failures have undermined the safety of the Defendant's refusal to grant entry to the

UK. In support of his submission Mr Gajjar, on behalf of the Claimant, made the following points:

i. During the interview, the immigration officer failed to depart from a fixed set of questions. It is submitted that this is significant because one of the key reasons for refusing to grant leave to enter the UK was the absence of any evidence of the Claimant's income in Brazil. However, the Claimant expressly offered to provide evidence of his income if he was given access to the internet. Rather than taking the Claimant up on this offer the immigration officer went on to ask the Claimant if he had anything else to add before concluding the interview. It is submitted that it is unacceptable to refuse the Claimant's request to enter the UK on the basis that he had not provided evidence of his income when he had expressly offered to provide such evidence.

ii. The Claimant was asked who had paid for the ticket. He is recorded as saying he paid for it himself by debit card. But also stated "*London to Portugal. Paid by brother*" and that he has a cousin "*there*." The immigration officer went on to ask the Claimant another unrelated question. It is submitted that follow up questions should have been asked to clarify the Claimant's responses and the "*odd*" answer in respect of the cousin.

iii. The interview record appears to be incomplete. The "*odd*" answer indicates that more questions were asked but not included in the written record. Furthermore, the Claimant was asked if he had any proof of his company. In response the Claimant stated that he had provided a company registration certificate "*earlier on*." However, there is no reference to this in the transcript.

21. The Defendant's submissions in response to Ground 1 can be summarised as follows. First, the Defendant submits that the Claimant is required to satisfy the Defendant that he is a '*genuine*' visitor. This includes providing evidence relating to his entry to the UK. Secondly, the Defendant was not working from a script or fixed set of questions as evidenced by the questions relating to the Claimant's personal circumstances. Thirdly, when interviewed, the Claimant *was* unable to provide evidence of his income. Fourthly, even if the Claimant had been provided with the opportunity to access the internet, he would not have been able to demonstrate his earnings because the mini-statements submitted with the reply to the Acknowledgement of Service were obtained from an ATM; these mini-statements do not demonstrate an income of 5,000 to 7,000 Brazilian Reals; and the other bank statements subsequently provided bear no details to demonstrate they relate to the Claimant. Fifthly, the question of who paid the Claimant's ticket to Portugal did not form a material part of the decision. In any event, the Claimant's responses were clear. He stated that he paid for his ticket from Brazil and that his brother paid for his ticket to Portugal where he has a cousin. No further questions were required to clarify the issue. Sixthly, the Defendant has provided the full transcript of the interview.

22. The Defendant submits that in light of the above, the refusal decision was not vitiated by procedural unfairness. Furthermore, even if it had been, it would not have made

any substantial difference to the outcome if the conduct complained of had not occurred.

Ground 2 – Irrationality

23. The Claimant submits that the Defendant's decision was perverse, and *Wednesbury* unreasonable as excessive and undue weight was placed on his immigration history. He further submits that the Defendant failed to consider the application on its own merits. The following points are made in support of this submission:

    i. There is a significant difference between an overstayer who is forcibly removed from the UK at public expense having been apprehended by the authorities and an overstayer who leaves voluntarily at his own expense without specifically being prompt. The Defendant stated in her pre-action reply, dated 2 January 2022, that she was not satisfied that it was "*material*" that the Claimant removed himself from the UK at his own cost. The Claimant submits that the manner in which he left the UK and why he left goes directly to his motive for entering on 29 December 2021 and it cannot sensibly be said that these were not material considerations.

    ii. The Claimant had on his person a return ticket which demonstrates that he had already made plans to return to Brazil.

    iii. The Defendant failed to have due regard to the Claimant's personal circumstances; namely his girlfriend in Brazil and that he used to live with his grandfather who passed away three weeks before his request to enter the UK on 29 December 2021.

24. The Defendant makes the following submissions in respect of Ground 2. First, the Claimant's voluntary departure from the UK is immaterial. The Claimant entered as a tourist but stayed longer than the six months permitted and undertook employment in breach of immigration laws. In addition, the Claimant's conduct demonstrates that the Defendant's conclusion is justified. Secondly, the fact the Claimant had a return ticket is demonstrably immaterial in that he did not return to Brazil on 12 January 2022. The Defendant was entitled to place significant weight on the Claimant's previous conduct in failing to return to Brazil when required. Thirdly, the fact of the Claimant's girlfriend or that his grandfather had passed away three weeks before his arrival in the UK on 29 December 2021 are similarly immaterial considering his previous conduct.

Ground 3 – Unlawful Detention

25. The Claimant submits that succeeding on Ground 1 and/or Ground 2 would render his detention unlawful on the basis that his removal from the UK could not have been imminent, and his detention could not have been justified. The Claimant's detention was outwith the Defendant's policy and deprived him of his Article 5 right to liberty.

26. The Defendant submits that she was entitled to conclude that the Claimant was not a "*genuine*" visitor and was entitled to detain him to effect his removal. Therefore his detention was lawful and justified in accordance with paragraph 16(2) to Schedule 3 of the Immigration Act 1971.

Decision

27. The response to the pre-action letter, dated 3 January 2022, referred to an attempt by the Claimant to engage in deception by stating that his last entry to the UK was for a period of two weeks. Therefore, Mr Gajjar drew to my attention the case of *Balajigari v Secretary of State for the Home Department* [2019] EWCA Civ 673. The *Balajigari* judgment is the application of well-established general principles that where a public authority, exercising an administrative power to grant or refuse an application, proposes to make a decision based on alleged dishonesty (or bad faith) the common law principle of fairness requires the applicant to be given the opportunity to respond prior to a final decision being made.

28. The Defendant accepts that the reference to deception in the response to the pre-action protocol letter was in error. The Defendant concedes that the Claimant did not state that his previous entry to the UK was for only two weeks. The Defendant also concedes that the Claimant confirmed that after the expiry of his permission to stay for six months he had remained in the UK unlawfully.

29. Deception did not feature in the reasons for refusal, and I accept that it was erroneously included in the response to the pre-action letter. Therefore, for the purposes of this judicial review claim, I have disregarded the reference to deception. The issue is whether the reasons for refusal that are relied on by the Defendant were based on a process which was procedurally unfair and irrational.

30. Having regard both to the general legal principles and the specific statutory context, my conclusions in relation to the claim are set out below.

Is the claim academic?

31. The Claimant, when he arrived in the UK on 29 December 2021, sought permission to enter as a tourist for 15 days to visit his brother. He had a return flight booked and stated that he would return to Brazil on 12 January 2022. However, as stated above, he did not leave the UK until 9 September 2022.

32. The Claimant states in his third witness statement, dated 4 April 2022, that the refusal to permit him to enter the UK and the decision to detain him for 8 days "*ruined [his] trip*". He explains that it was '*previously*' his intention to visit Portugal before he returned to Brazil. However, due to the legal fees he incurred in bringing this claim for judicial review he does not believe that he would be able to travel to Portugal from Brazil. My reading of his witness statement is that this was for financial reasons i.e. it

would be cheaper to travel to Portugal from the UK. However, he goes on to state that he informed the Defendant that he would leave the UK within a week if he was provided with a letter stating that the refusal stamp in his passport had been withdrawn. He states that he had sought advice soon after he was released on bail and had been informed that, due to the refusal stamp in his passport, he "*might be refused entry*" if he was to travel on to an EEA country.

33. The Claimant does not suggest that he was required to remain in the UK to pursue his claim. I am satisfied there was no such requirement as these proceedings relate to points of law and he is legally represented. Furthermore, it is unsurprising that the Defendant refused to provide the Claimant with a letter in the terms sought and although the Defendant is critical of the Claimant for not providing evidence that he would be refused entry to Portugal (for example, any enquiries made with the Portuguese Embassy) it seems to me that the legal advice he received was nothing more than a statement of the obvious. In my judgment, the key issue is not what the Claimant did after he was refused entry and detained for 8 days, but whether the refusal decision and subsequent detention of the Claimant was lawful. The Claimant's third witness statement mainly reflects his state of mind *after* he was refused entry to the UK. To the extent that I have been invited to infer that the Claimant's actions following his release from detention demonstrates that he was not a '*genuine*' visitor, I refuse to do so. I am satisfied that the claim is not academic.

34. I turn to the Claimant's grounds.

Ground 1 *– Procedural Unfairness*

35. The Defendant concluded that the Claimant was not a '*genuine*' visitor. The Defendant was entitled to form that view and to conclude that, as a consequence, the request for entry to the UK should be refused. However, the interview must be procedurally fair.

36. According to the handwritten Record of Interview the Claimant was asked 31 questions during the 20 minute interview. The immigration officer may have been working from a script at least in relation to the initial questions. However, having considered the Record of Interview as a whole, the questions related to areas that one would expect, including the purpose and length of the Claimant's visit, his occupation in Brazil, his marital status, his family in the UK and his immigration history. Furthermore, some questions were plainly in reaction to the Claimant's answers. The issue is whether the immigration officer departed from any pre-prepared questions in order to properly '*probe and investigate*' any ambiguities or to give the Claimant the opportunity to expand on his answers.

37. Question 4 was whether the Claimant had a return ticket to Brazil which was answered in the affirmative followed by Question 5: "*Who paid for your ticket? How much?*" The full note of the response is as follows: "*Myself. 500 BRL (Appx). London to Portugal Paid by brother. I have got a cousin there. (sic)*" Question 6 was: "*Have*

you paid for the ticket?". The response to that question was: "*Yes. (I paid with my debit card [)]*." The ordinary and natural interpretation of this exchange is that the Claimant confirmed that he had paid for the ticket to London and his brother had paid for his ticket from London to Portugal where he has a cousin. The immigration officer asked Question 6 to clarify the Claimant's answer and again the Claimant repeated that he had paid for his ticket. I accept the submission made by Mr Evans, on behalf of the Defendant, that no further clarification on this topic was required. In any event, the issue of who paid for the Claimant's ticket to Portugal did not form a material part of the Defendant's decision. I am satisfied that in respect of who paid for the ticket to London the Defendant did not adopt an inflexible approach.

38. Question 28 was: "*Do you have any proof of your company*?" The Claimant replied: "*I have provided company registration earlier on* (sic)." It is unclear what the Claimant meant by this response. However, it does not necessarily follow, as suggested by Mr Gajjar, that this is a reference to an earlier part of the interview which has not been included in the handwritten record. The Defendant asserts that the Record of Interview is complete, and I have not been provided with any significant evidence which suggests otherwise. In any event, the response to this question did not form a material part of the Defendant's decision.

39. What did form a material part of the Defendant's decision was the Claimant's failure to provide evidence of his earnings as a barber in Brazil. Question 7 was: "*What do you do in Brazil?"* The answer was: "*I have got a barbar (sic) shop in Brazil. (I have got a company)*." Question 8 was: "*How much do you earn from this shop?*" The response was: "*5000-7000 BRL per/month.*" There were two more questions relating to how long the Claimant had been running his business (which he said was 5-6 years) and how many people worked in the barber's shop before the immigration officer moved on to ask the Claimant questions about his current and previous visit to the UK. However, later on in the interview the immigration officer returned to the issue of the barber's shop. Question 29 was: "*Do you have any proof that how much you earn? (sic)*" To this question the Claimant replied: "*I could show my bank account if I have got access to internet (sic)*." The Claimant was asked two further unrelated questions before the interview was terminated.

40. Despite offering to provide evidence of his income, the Claimant was not given the opportunity to access the internet. Nor was he given the opportunity to provide this evidence by some alternative means. This is not in dispute. The Claimant is obliged to satisfy the Defendant that he is a "*genuine"* visitor including providing evidence of his earnings. However, in my judgement, fairness required the Defendant to explore with the Claimant what corroborative evidence may be available and ascertain what reasonable steps could be taken to secure access to it. The Claimant was not given a fair opportunity to deal with this issue. Therefore, the Defendant's reliance on the absence of documentary evidence of the Claimant's income to refuse entry to the UK whilst failing to permit reasonable access to such evidence was tainted by procedural unfairness.

41. Having concluded that the interview was procedurally unfair, in respect of the failure to provide the Claimant with the opportunity to access evidence of his income, the

remaining question is whether such access would have made any substantial difference to the outcome. This issue is addressed below but first I turn to Ground 2.

Ground 2 *– Irrationality*

42. The other key reason for refusing the Claimant's request for entry to the UK was his immigration history.

43. In the pre-action reply, dated 2 January 2022, the Defendant states:

> *"An adequate explanation of why your client overstayed and worked in breach on a previous visit for almost two years, fails to satisfy the non-blatant (sic?) disregard for the UK Immigration rules on a previous visit. I am not satisfied that the Home Office's failure to apprehend and remove your client and your client subsequently removing himself at his own cost is material here."*

The above extract could have been written more clearly but in essence the Defendant's position is that when the wider context is taken into account the Claimant's voluntary departure from the UK in 2017 is irrelevant. Mr Evans unambiguously reiterated this during his submissions.

44. The Claimant's voluntary departure is a material factor in the sense that an individual who breaches UK immigration laws will ordinarily be subject to a mandatory one year re-entry ban, if they leave at their own expense, whereas individuals that leave voluntarily at public expense or are forcibly removed will usually be banned for significantly longer periods of time. An application for permission to enter the UK after any re-entry ban has expired *may* be refused where the applicant has previously breached immigration laws. It is not automatic. However, the Claimant entered the UK as a tourist in 2015, stayed for 18 months longer than the six months permitted and, during that period, he undertook employment in breach of immigration laws. These factors were clearly relevant to the Defendant's decision, and she was entitled to give them significant weight. It is in this context that the Claimant's voluntary departure was not deemed to be a material consideration. In my judgment the Defendant was perfectly entitled to reach that conclusion. I am satisfied that there would be no proper basis for concluding that this aspect of the Defendant's decision was irrational or perverse.

45. The Defendant was entitled to give the possession of a return ticket as much weight as she deemed appropriate, including giving it no weight. Furthermore, the girlfriend in Brazil (who had not travelled with the Claimant) was a relatively newly formed relationship and in the context of the Claimant's immigration history the Defendant was entitled to conclude that it was irrelevant. The same applies to the fact that the Claimant's grandfather had passed away 3 weeks before his arrival in the UK on 29 December 2021. In consequence, it was rational to conclude that the Claimant had not discharged the burden of establishing that he was a "*genuine*" visitor.

46. For these reasons Ground 2 fails. The Defendant's decision was not irrational.

Would there have been any substantial difference to the outcome if the procedural unfairness had not occurred?

47. Having concluded that the Defendant's entry refusal was tainted by the failure to permit the Claimant to have reasonable access to his documentary evidence the remaining issue is whether the absence of the procedural unfairness would have made any substantial difference to the outcome.

48. The Claimant in his reply to the Defendant's Acknowledgement of Service provided bank statement in the form of mini-statements from an ATM (with his name) and online printouts (without his name). The Claimant in his second witness statement, dated 3 February 2022, stated that when he accesses his bank account from his mobile or his laptop the statements do not reveal his name or his account number. He confirmed that he had contacted his bank in Brazil, and they had only provided him with mini-statements.

49. I accept that the Claimant has no control over what information is included on his printed bank statements. I also accept that if the Claimant had been given access to his mobile phone or a laptop during the interview process, he may well have been able to persuade the immigration officer that the account that he was accessing belonged to him. However, these mini-statements do not demonstrate an income of 5,000 to 7,000 Brazilian Reals and it is not asserted by the Claimant that they do. The other bank statements (leaving aside the absence of any details to demonstrate they relate to the Claimant) are difficult to decipher and I am satisfied that the Claimant would not have been able to persuade the Defendant that these documents confirmed an income of 5,000 to 7,000 Brazilian Reals. It is submitted on behalf of the Claimant that some of his income would be in the form of cash given the nature of his business. That may well be true. Nevertheless, it amounts to an implicit acknowledgement that the documentary evidence available to the Claimant would not corroborate the assertion he made during his interview with regard to his income.

50. I am satisfied that section 31(2A) of the Senior Courts Act 1981 applies in this case and that the exception under subsection (2B) does not apply. In my judgment, for the reasons stated above, it is "*highly likely*" that allowing the Claimant access to a telephone, or a laptop, or any other reasonable means of access to documentary evidence of his income would not have made any substantial difference to the Defendant's decision that "*there was no supporting documentary evidence of [his] income*." In my view there is no element of speculation with regard to this as he has not been able to provide documentary evidence of his income.

51. For these reasons, Ground 1 fails.

Ground 3 – Unlawful Detention

52. As the procedural irregularity would have made no substantial difference to the outcome and as the Defendant's decision was not irrational the Claimant's detention was lawful and justified in accordance with paragraph 16(2) to Schedule 3 of the Immigration Act 1971.

53. For these reasons, Ground 3 fails.

Conclusion

54. The judicial review is dismissed in its entirety.

55. I am grateful to counsel and those instructing them for clear and focussed arguments, both in writing and at the hearing. The parties are invited to draw up an order which reflects the conclusions and agree the terms of any consequential matters including costs.