



Neutral Citation Number: [2016] EWHC 1770 (Admin)

Case No: CO/4241/2015

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/07/2016

**Before:**

**THE HONOURABLE MR JUSTICE WYN WILLIAMS**

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**Between:**

**BASEL ALSHIRIF**

**Claimant**

**- and -**

**THE SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

**Defendant**

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**Claire Physsas** (instructed by Duncan Lewis) for the **Claimant**  
**Tom Poole** (instructed by Government Legal Services) for the **Defendant**

Hearing dates: 07/04/2016  
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**Approved Judgment**

**Mr Justice Wyn Williams:**

1. The Claimant is a Syrian national who was born on 1 March 1991. On 2 July 2015 he claimed asylum in the UK having entered this country illegally on or about that date. The next day the Claimant's fingerprints were checked against the Eurodac Database and they matched those taken from him in Spain on 8 May 2015 following a claim for asylum made by the Claimant in that country.
2. Following this discovery, as is the norm, the Defendant requested the authorities in Spain to determine the Claimant's asylum application. They invoked the procedures under Council Regulation (EC) No. 604/2013 ("The Dublin III Regulation"). Within days the authorities in Spain accepted that the Claimant's application for asylum should be determined in that country.
3. In a letter dated 17 July 2015 the Defendant notified the Claimant that she proposed to remove him to Spain so that his asylum application could be determined in that country. On 29 July 2015 the Defendant set removal directions for 10 August 2015. On 6 August 2015 the Defendant decided that the Claimant's removal to Spain would infringe his rights under ECHR.
4. By a claim form issued on 6 August 2015 the Claimant sought judicial review of those decisions. In the face of the proceedings the removal directions were deferred.
5. On 22 October 2015 Ouseley J directed that the application for permission to apply for judicial review should be determined at an oral hearing. The hearing was fixed for 16 December 2015.
6. On 10 and 11 December 2015 the Claimant's solicitors submitted further representations to the Defendant as to why he should not be removed to Spain. In summary they contended that such removal would be in breach of the Claimant's rights under Article 3 ECHR and other international obligations. In the face of those representations the Defendant consented to an adjournment of the hearing fixed for 16 December 2015; she also agreed to make a further decision about removal based upon the representations of 10 and 11 December.
7. On or about 18 January 2016 the Defendant issued her decision. She rejected the contention of the Claimant that his removal would breach his human rights or would be unlawful for any reason. She certified that his human rights claim was "clearly unfounded".
8. On 5 February 2016 the Claimant's advisers submitted comprehensive grounds for judicial review. My understanding is that the Claimant seeks to challenge the following decisions:
  - i) The decision of 17 July 2015; this is described as a decision to refuse and certify his asylum claim under Schedule 3, Part 2, paragraphs 2 and 3 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, Spain having accepted responsibility for the Claimant's asylum claim under the Dublin III Regulation.

- ii) The decisions dated 6 August 2015 and 18 January 2016 to certify the Claimant's human rights claims as clearly unfounded under paragraph 5(4) of Part 2 of Schedule 3 of the 2004 Act.
  - iii) The decision to remove the Claimant to Spain.
9. In the grounds for judicial review dated 5 February 2016 the Claimant challenges these decisions on three grounds. They are:-
- i) the Dublin III Regulation should not have been applied to the Claimant because he was previously returned from Spain to Morocco (*refouled*); Spain is not a "safe" country for the Claimant;
  - ii) there is a real risk of a removal from Spain to Morocco should the Claimant now be returned to Spain; this would constitute breaches of Article 3 and 13 of the ECHR and Articles 1, 4, 19 and 47 of the Charter of Fundamental Rights of the European Union; additionally, there is a real risk of a breach of the right to asylum under Article 18 of the same Charter;
  - iii) there is a real risk that the Claimant will be detained in flagrant breach of Article 5 ECHR and Article 6 of the EU Charter in poor reception conditions that breach Article 3 and 13 of the ECHR and Articles 1, 4 and 47 of the EU Charter.
10. I conducted an oral hearing of the application for permission on 7 April 2015. At the hearing counsel for the Claimant informed me that the Claimant no longer relied upon the third ground identified above. At the conclusion of the hearing I took the unusual step of reserving judgment since there was a substantial body of material contained within the application bundles which I had been unable to pre-read. I have now considered all the material which is relevant to the two grounds advanced on behalf of the Claimant.
11. It is common ground that the legality of the Defendant's decisions should be judged upon the assumption that the facts asserted on behalf of the Claimant were made out. The Defendant was obliged to proceed on that basis and I must deal with this application for permission on that basis. There is, in my judgment, however, an exception to this approach. The Claimant does not accept that he claimed asylum in Spain. In my judgment, however, it is wholly artificial to proceed on that basis. The fact that the Claimant was finger printed in Spain on 8 May 2015 and the fact that Spain is willing to accept responsibility for determining the asylum claim justifies the conclusion that the Claimant did, indeed, make an asylum claim during the time that he was in Spain.
12. The facts upon which the Claimant relies which are personal to him and which are pertinent to the grounds which the Claimant seeks to argue are these. The Claimant hails from Manbij which is an area/town/city within Syria under the control of ISIS. Prior to his departure from Syria the Claimant was imprisoned and tortured by members of ISIS. The Claimant left Syria on 28 September 2014. He travelled through Turkey and Algeria to Morocco and then crossed to Melilla, an enclave which is under the control of Spain, with the assistance of agents. Having arrived in Melilla the Claimant was arrested by Spanish police and then returned to Morocco. In that

country he was imprisoned and beaten by state officials. His imprisonment subsisted for five days. Following his release the Claimant again entered Melilla with the assistance of an agent. On this occasion he was arrested by Spanish police detained for four days and then returned to Morocco. In Morocco the police verbally abused the Claimant and informed him that if he was returned to Morocco again he would be imprisoned for five years.

13. Some time prior to 8 May 2015 the Claimant entered Spain. He was detained for 15 days. However, he was then released and he travelled from Spain to the UK. He says that he was arrested on arrival in the UK on the same day that he arrived.
14. The Claimant's contention that he was returned from Melilla to Morocco on two separate occasions is critical to his grounds for judicial review. As I have said, I proceed on the basis that those returns occurred.
15. There is in being an agreement between Spain and Morocco about the return of persons who are not nationals of those countries and who illegally enter one of those countries directly from the other. The agreement was made in 1992 but came into force only in 2012. In the English translation Article 1 of the Agreement provides:-

“The border authorities of the requested State will re-admit to its territory, at the formal request of the border authorities of the requesting State, the third-country nationals who have illegally entered the territory of latter, from the requested State.”

Article 2 provides:-

“The re-admission will take place if it is proved, by any means, that the foreigner whose re-admission is sought actually comes from the territory of the requested State. A re-admission application must be filed within 10 days after the illegal entry into the territory of the requested State. It shall contain all the data available concerning the identity, personal documentation owned by the foreigner and the conditions of his illegal entry into the territory of the requesting State and any other information that is available. When re-instatement is accepted, documents will be issued by the border authorities of the requested State using a certificate or any other document in which another document is recorded, stating the identity and, where appropriate, the documents possessed by the foreigner in question.”

16. As is obvious from the above, the agreement permits Spain to request Morocco to take back a foreign national who has entered Spain (or an enclave under its control) illegally from Morocco. The process to be undertaken is as set out in Article 2.
17. The Claimant's description of how he was treated in Melilla upon the two occasions described above bears no relation to the process envisaged by the agreement.

18. It is submitted on behalf of the Claimant that the fact that he was returned on two separate occasions from Melilla to Morocco gives rise to a real risk that if the Claimant is returned to Spain from the UK he will be removed to Morocco with the consequent further real risk that his rights under Article 3 of ECHR will be infringed. It is argued, too, that there is a substantial body of evidence that the Claimant's experiences in Melilla and Morocco are by no means unique to him and that "illegal pushbacks" between Spain and Morocco and consequent ill-treatment contrary to Article 3 ECHR are relatively common. Having reflected upon these submissions I do not consider that it is reasonably arguable that the Claimant is at risk of an illegal return from Spain to Morocco should he be returned from the UK to Spain under the Dublin III Regulation. The authorities in Spain have informed the Defendant, unequivocally, that they will be responsible for determining the Claimant's asylum application. There is not a shred of evidence which suggests that the Spanish authorities would renege on this assurance let alone return the Claimant to Morocco illegally and prior to determining his application. If the application for asylum is successful the Claimant will not be removed from Spain. If the application is unsuccessful the Spanish authorities may, no doubt, seek to remove the Claimant but I have no evidence before me which suggests that they would seek to remove the Claimant as a failed asylum seeker in other than a manner which was lawful under Spanish domestic law and in accordance with his rights under ECHR and relevant international treaties/charters. No such evidence exists in the documentation provided by the Claimant and I am not persuaded that there is any current or pending case either in the courts of the UK or in any other court in which there is evidence to suggest that the Spanish authorities would behave as the Claimant would wish to allege. As Mr Poole submits, there is nothing in any of the documents produced to suggest that the Spanish authorities would not fully consider the Claimant's asylum claim upon his return to mainland Spain particularly when one takes account of the strong presumption of compliance upon which I am to proceed – see the decisions of high authority set out in the decision letters of 6 August 2015 and 18 January 2016.
19. I am unpersuaded, equally, that the Claimant has adduced sufficient evidence to establish a real risk that the asylum procedure in Spain will not guarantee protection from refoulement and/or the right to asylum as is alleged in the second ground for judicial review. I accept that the defendant has considered all the relevant evidence submitted by the Claimant on this point and I accept Mr Poole's submissions that the reasoning set out in the decision letters of 6 August 2015 and 18 January 2016 provide cogent reasoning to support the conclusion that there was no sufficient evidence to rebut the "significant evidential presumption" that Spain will comply with its international obligations. I am persuaded by paragraphs 19 – 33 of Mr Poole's skeleton argument that there is no realistic prospect that this ground for judicial review can succeed. No useful purpose would be served by my repeating the substance of those paragraphs in this judgment.
20. I acknowledge that the Claimant's lawyers have produced a substantial amount of material. In itself, however, that cannot justify the grant the permission. In reality this case is fact sensitive and, to repeat, my conclusion is that the evidence adduced on behalf of the Claimant does not substantiate the grounds upon which he wishes to rely.

21. I appreciate that the threshold for granting permission is comparatively low but I have reached the conclusion that the prospects of success in this case are so low that I should refuse permission.
22. I apologise for the length of time which has elapsed since the hearing. For most of the period I have been engaged in writing a very long and complicated judgement in another case.