PTA Template 269C1 - First Appeal

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2024-001636**

The King on the application of the Refugee and Migrant Forum of Essex and London and Cecilia Adjei **–v–** **SSHD**

ORDER made by the Rt. Hon. Lady Justice Elisabeth Laing

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal and for a stay

Decision: applications granted

An order granting permission may limit the issues to be heard or be made subject to conditions

Reasons

1. The Secretary of State appeals against an order of Cavanagh J ('the Judge'). The Judge allowed an application for judicial review brought by the claimants (now the Respondents – 'the Rs'). He granted a declaration to the Rs that the Secretary of State had acted unlawfully by failing to provide a digital document 'proving the lawful immigration status and attendant legal rights to *all those* with leave extended under section 3C of the Immigration Act 1971' ('the 1971 Act ') (my emphasis). In other words, this declaration effectively conferred rights on all those with section 3C leave, rather than merely declaring that a refusal or failure to issue such a document in an individual case was unlawful.
2. The Judge gave 2 reasons why that failure was unlawful. It was *Wednesbury* unreasonable and a breach of the duty imposed by section 55(1) of the Borders Citizenship and Immigration Act 2009 to 'make arrangements for ensuring that' the functions listed in section 55(2) are 'discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom'.
3. It is arguable, with a realistic prospect of success, that, in both respects, the Judge erred in law. He does not appear to have identified any express function (that is, a power conferred, or duty imposed, by the immigration and asylum legislation) which, either, the Secretary of State had discharged unreasonably, or with respect to which the Secretary of State was required by section 55 to make an 'arrangement' to issue a digital document. This is not a field which Parliament has chosen to regulate by express legislation. It is not immediately obvious, even, that it is this purely administrative function is something which section 1(4) of the 1971 Act requires to be stated in the immigration rules. It is arguable that the absence of any express legislative express power or duty to issue such a document, and therefore the absence of any express legislative indicators about the scope or limits of such a power, whether or not to issue such documents to all holder of section 3C leave, and if so when and how, is a purely administrative matter for the Secretary of State, not for the courts.

4. I have read the Rs' response to the appeal. The fact that the Secretary of State has voluntarily decided, as a matter of policy, to start a programme of gradually issuing such documents to various cohorts with section 3C leave does not make this appeal academic.
5. There are significant legal and practical differences between such a policy decision and the imposition of a legal duty, which bites from the date of the judgment. For example, in the former case, whether to have or to continue such a programme, and the timing of that programme, together with its implications for the public purse, are entirely within the control of the Secretary of State. In the latter case, they are not: the Secretary of State must immediately comply with the Judge's order. There may be reasons which cannot presently be foreseen why the programme cannot be completed whether on time or at all. Further, the judgment may have implications which go wider than the issue of digital documents to those with section 3C leave.
6. The fact that the Secretary of State accepted that she had what must be an implied power to issue such documents does not make the grounds of appeal unarguable. In any event, I consider that, even if the contentions made by the Rs eventually persuade this court, the constitutional importance of the points raised by this appeal is another compelling reason to give permission.
7. For these reasons, a stay of the Judge's order is also appropriate.

Information for or directions to the parties

If they disagree with my time estimate, the parties must try to agree an alternative time estimate.

They must then inform the List Office, as soon as possible, of their agreed estimate, or, if they have not agreed one, of their rival contentions.

Mediation: Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? No.

Pilot categories:

- All cases involving a litigant in person (other than immigration and family appeals)
- Personal injury and clinical negligence cases;
- All other professional negligence cases;
- Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;
- Boundary disputes;
- Inheritance disputes.
- EAT Appeals
- Residential landlord and tenant appeals

If yes, is there any reason not to refer to CAMS mediation under the pilot? Yes.

If yes, please give reason: Mediation is not appropriate. This appeal raises an important point of public law, as the declaration made by the Judge applies not just to one or more identifiable people but to all holders of section 3C leave.

Non-pilot cases: Do you wish to make a recommendation for mediation? No.

Where permission has been granted, or the application adjourned

a) time estimate (excluding judgment): 1 day.
b) any expedition? Yes, because I have granted a stay, it is desirable that the appeal is heard as soon as is possible consistently with other more pressing listing priorities and with the orderly preparation of the appeal.

Signed: BY THE COURT
Date: 30.8.2024

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –

a) the Court considers that the appeal would have a real prospect of success; or
b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

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