



Public Law Project

UK Visas and Immigration

BY EMAIL to UKVIPAP@homeoffice.gsi.gov.uk

Your Ref: [REDACTED]

Our Ref: [REDACTED]

Date: 4 May 2016

SUPPLEMENTARY LETTER BEFORE CLAIM

A RESPONSE IS REQUESTED BY 4PM ON 6 MAY 2016

Dear Sirs

Proposed claim for judicial review

We write further to our letter before claim dated 18 February 2016 and your response dated 25 February 2016. Our client, the proposed claimant, has complied with the pre-action protocol for judicial review and is entitled to issue a claim. However, in view of further developments in this case we are sending a supplementary letter before claim.

The claimant

The claimant is [REDACTED]. We will refer to her as B in this letter and will seek an anonymity order in any subsequent proceedings, due to her age and particular vulnerability. We request that her identity is kept confidential.

The defendant

The defendant is the Secretary of State for the Home Department. The Home Office reference is [REDACTED]. The Home Office caseworker who has been allocated her case is [REDACTED], Immigration Enforcement, Op Nexus High Harm Team, 1st Floor Capital Building, Blue Zone, New Hall Place, Liverpool, L3 0BP. He has been copied into this email.

The details of the legal advisers dealing with this claim

B is represented by the Public Law Project. The solicitor with conduct of this case is Rakesh Singh. Our address and contact details are in this letter. Please send all correspondence by email where possible.

Public Law Project | Casework | Consultancy | Training | Policy | Research

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Registered in England, registered offices as above

The details of the matter being challenged

The matters under challenge are:

1. the SSHD's decision dated 11 February 2016 to certify the claimant's protection and human rights claims and maintaining the decision of 29 October 2015 to refuse and certify the claimant's protection and human rights claims;
2. the lawfulness of the deportation order of 23 October 2015;
3. the lawfulness of the claimant's detention by the defendant

The details of any interested parties

The London Borough of Croydon

The issue

The date of the decision or act under challenge is 11 February 2016.

Background

The background has been set out in our previous letters before claim and in the social services documents already in your possession which you have so far disclosed to us. We summarise below the key documents.

We have obtained further expert evidence which is entirely consistent with the above reports that were prepared by those who were responsible for care and supervision. We enclose a report from a forensic psychologist, [REDACTED], and an expert country report from the Centre of Cosmopolitan Studies, St Andrews University.

[REDACTED]'s psychological report contains the following findings:

The country expert report from the Centre of Cosmopolitan Studies contains the following findings:

Legal principles

Section 94(1) NIAA 2002

B's protection claim (Article 3 ECHR) has been certified under S94(1) of the Nationality Immigration and Asylum Act 2002 on the grounds that it is clearly unfounded. Certification under s94(1) means that B cannot appeal the decision whilst in the UK.

Section 94B of the 2002 Act

94B. Appeal from within the United Kingdom: certification of human rights claims made by persons liable to deportation

(1) This section applies where a human rights claim has been made by a person ('P') who is liable to deportation under –
 (a) section 3(5)(a) of the Immigration Act 1971 (Secretary of State deeming deportation conducive to public good) ...

...

(2) The Secretary of State may certify the claim if the Secretary of State considers that, despite the appeals process not having been begun or not having been exhausted, removal of P to the country or territory to which P is proposed to be removed, pending the outcome of an appeal in relation to P's claim, would not be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

(3) The grounds upon which the Secretary of State may certify a claim under subsection (2) include (in particular) that P would not, before the appeals process is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which P is proposed to be removed."

Section 79 NIAA 2002

Under Section 79 of the 2002 Act:

"79(1) A deportation order may not be made in respect of a person while an appeal under section 82

(1) that may be brought or continued from with the United Kingdom relating to the decision to make the order—

(a) could be brought ... or

(b) is pending."

Hence a deportation order could only be made following certification.

Section 79 goes on to deal with the situation of those liable to automatic deportation as a result of their criminal activity as adults:

"79(3) this section does not apply to a deportation order which states that it is made in accordance with Section 32(5) of the UK Borders Act 2007.

(4) but a deportation order made in reliance on subsection (3) does not invalidate leave to enter or remain, in accordance with section 5(1) of the Immigration Act 1971, if and for so long as section 78 above applies."

The SSHD's policy guidance on s94B certification of non-EEA deportation cases

'2.4 Human rights claims which fall for refusal and can be certified under section 94 of the Nationality, Immigration and Asylum Act 2002 either on the basis that the person is entitled to reside in a designated state and the SSHD is not satisfied that the claim is not clearly unfounded, or on the basis that the person is not entitled to reside in a designated state but the claim is clearly unfounded, should be certified under section 94 rather than section 94B. For section 94 guidance see section 3 of this guidance and Section 94 of the Nationality, Immigration and Asylum Act 2002.'

'2.5 Human rights claims (initial claims or further submissions accepted as fresh claims under paragraph 353) made on the basis of Article 2 and/or Article 3 of the European Convention on Human Rights (the "ECHR"), including medical claims, should not be certified under section 94B. This is because if the claim has not been certified under section 94, the claim is not clearly unfounded and therefore removal is likely to give rise to a real risk of serious irreversible harm such that deportation pending the outcome of an appeal may breach human rights.'

Power to detain

The power to detain pending deportation is contained in schedule 3, paragraph 2 of the Immigration Act 1971.

The SSHD's powers to administratively detain under the Immigration Acts must be construed consistently with the implied limits on the statutory power derived from the Hardial Singh principles. In R(I) v Secretary of State for the Home Department [2002] EWCA Civ 888, [2003] INLR 196 Dyson LJ (as he then was) summarised the effect of Hardial Singh principles at [46]-[48]:

- i) The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;
- ii) The deportee may only be detained for a period that is reasonable in all the circumstances;
- iii) If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention;
- iv) The Secretary of State should act with the reasonable diligence and expedition to effect removal.

Why the matters under challenge are wrong

(1) S94(1) certification

It is clear on the basis of all the evidence referred to above that .B has a strong claim for protection under Article 3 ECHR on the following grounds:

Therefore the certification of the protection claim as clearly unfounded is unlawful and should be withdrawn.

(2) S94B certification

The SSHD's own policy provides [paragraph 2.4-2.5] that s94B certification should not be used either for claims which have been certified under s94(1) or for uncertified Article 2 or 3 human rights claims.

The claim should therefore not have been certified under s94B as it has been certified (unlawfully) under s94(1).

Further, the effect of withdrawing the s94(1) certification of the article 3 claim would mean that the s94B certificate must also be withdrawn under paragraph 2.5 of the SSHD's policy on s94B certification, since the underlying claim is clearly one which raises Articles 2 and 3 ECHR.

Further, it is clear from the evidence before the SSHD that there would be a breach of B's ECHR rights if she were to be removed pending her appeal.

In view of the foregoing it is plain that B's deportation, even for a temporary period, would be disproportionate given the serious harm that is likely to befall her in Guyana.

Furthermore the psychologist has indicated that in view of B's psychological profile and vulnerabilities she would not be able to effectively pursue her appeal from Guyana. Therefore to compel her to do so would breach the procedural fairness aspect of article 8 ECHR. It is understood that that issue, amongst others relevant to s94B certification, is to be considered by the Supreme Court in the cases of *Kiarie* and *Byndloss* on appeal from the Court of Appeal.

(3) Lawfulness of the deportation order

Since the certification of the decision to deport B is unlawful for the reasons given above, the SSHD would have had no power to sign the deportation order against her on 23 October 2015 because s79(1) of the 2002 Act means that a deportation order could not have been made during the period that B's in-country right of appeal under s82 of the 2002 Act could be brought.

As a consequence the deportation order is unlawful and must be quashed absent withdrawal of the order by the Secretary of State.

In a similar case in *R(Cyrus) v SSHD* [2016] EWHC 918 (Admin), Irwin J quashed a deportation order made pursuant to an unlawful decision to certify under s94B.

(4) Restoration of ILR

We seek restoration of B's ILR pending appeal proceedings, in line with the relief granted by the Administrative Court in *Cyrus*, as the deportation order in this case was not and could not have been lawfully made.

If the SSHD will not reinstate it then we will seek interim relief. Irwin J in *Cyrus* (above) granted an application for interim relief in similar circumstances.

(5) Unlawful detention

We contend that on the basis that our client's certification and deportation order were unlawful and that our client's detention was unlawful as a consequence. On the information so far available to us we also consider there may be further grounds for unlawful detention in particular that our client ought not to have been detained as she was a person that was not suitable for immigration detention given her vulnerabilities and the lack of care and supervision in immigration detention as compared to the support she received when at the Secure Training Centre serving her Detention Training Order. It is for the SSHD to justify the lawfulness of B's detention. We will require full disclosure of our client's detention records to be able to consider and plead those grounds in full.

The details of the action the defendant is expected to take

The defendant must do the following:

1. Withdraw the certification of the protection and human rights claims under both s94(1) and s94B NIAA 2002;
2. Reconsider the substantive human rights and protection claims in light of this letter before claim and all the available evidence
3. Withdraw the deportation order signed on 23 October 2015
4. As an interim remedy restore the claimant's ILR pending the above and pending any subsequent appeal that is pursued.

ADR proposals

We consider that the case is not suitable for ADR, but we will carefully consider any suitable and effective ADR proposals put forward by the SSHD.

The details of any information sought

Please confirm the basis on which the claimant was granted ILR. Please also see our requests for disclosure below. We require the information requested and the disclosure below as it is related to identifiable issues in dispute so as to enable the parties to resolve or reduce those issues.

The details of any documents that are considered relevant and necessary

The documents that are relevant and necessary are the decisions under challenge, the pre-action correspondence and supporting evidence, any and all relevant material considered by the defendant in reaching the decisions under challenge. We have enclosed the following documents with this letter:

1. Death certificate of [REDACTED] (B's maternal grandfather) – 14 April 2016
2. Psychological report of B by [REDACTED] – 30 April 2016
3. Guyana country conditions report by Centre of Cosmopolitan Studies – 4 May 2016

We consider that have been provided with incomplete disclosure of all relevant material held by the SSHD. The claimant has repeatedly sought full disclosure of her records by submitting subject access requests to the SSHD. B's previous immigration solicitors made a request on 2 July 2015 and we have made requests on 18 February 2016, 31 March 2016 and 25 April 2016. We are concerned that we do not appear to have a full set of papers for the claimant so that we can ensure that we have considered all relevant material before issuing a claim.

We seek a full copy of all case records relating to our client, including all records, reviews and decisions relating to our client's detention, all records from social services, the police, probation and that relate to our client's criminal case.

Would you please ensure that a copy of the stage 1 deportation decision (taken on 12 November 2014) is provided to us as we do not appear to have a copy of that.

Please also disclose the warrant for B's detention.

The address for reply and service of court documents


Please reply by email to r.singh@publiclawproject.org.uk. As an alternative our details are set out in our headed notepaper, however please communicate by email wherever possible to avoid delay and to ensure that any response directly reaches the solicitor with conduct of this case.

Proposed reply date

In view of B having to issue a claim within 3 months of the decision of 11 February 2016 (the decision under challenge) we must issue our claim by that time to protect our client's position. We will not start preparing the case for issue until after 4pm on 6 May 2016 and we would ask you to respond by then. If it is not possible for you to provide a substantive response by 4pm on 6 May 2016 then we will prepare to issue our claim in order to protect our client's position, but we will make an urgent application for a stay on proceedings until 18 May 2016 to enable the SSHD to provide a substantive response and for time for filing the Acknowledgment of Service to run from that date rather than from the date of issue of the claim.

We look forward to hearing from you.

Yours faithfully



Rakesh Singh
Solicitor
Public Law Project

Direct line: 020 7843 1265

Email: r.singh@publiclawproject.org.uk

CO/ /2016

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION
FOR PERMISSION FOR JUDICIAL REVIEW

BETWEEN:

THE QUEEN ON THE APPLICATION OF

[REDACTED]

Claimant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

LONDON BOROUGH OF CROYDON

Interested Party

JUDICIAL REVIEW BUNDLE

[ESSENTIAL READING IN BOLD AND ITALICS]

ITEM	DATE	PAGE
TAB A – APPLICATION FOR URGENT CONSIDERATION, CLAIM FORM & GROUNDS		
<i>N463 - Application for Urgent Consideration</i>	10/05/16	1
<i>Draft Order</i>	10/05/16	4
<i>N461 – Claim form</i>	10/05/16	5
<i>Statement of facts, grounds, remedies</i>	10/05/16	11
TAB B - PRE-ACTION CORRESPONDENCE		
<i>Claimant's 1st Letter Before Claim</i>	30/11/15	1
Statement of Kamla Adiseshiah (Claimant's solicitor)	10/12/15	6
<i>Claimant's Letter to Home Office</i>	2/12/15	8
<i>Claimant's Letter to Home Office</i>	10/12/15	9
<i>Home Office Response to 1st Letter Before Claim</i>	14/12/15	11
<i>Claimant's 2nd Letter Before Claim</i>	18/02/16	13
<i>Home Office Response to 2nd Letter Before Claim</i>	25/2/16	19
<i>Claimant's 3rd (Supplementary) Letter Before Claim</i>	04/05/16	21

Death certificate for [REDACTED] (Claimant's maternal grandfather)	14/04/16	33
Psychological report for Claimant by [REDACTED] – Forensic Psychologist	30/04/16	34
Expert report on Guyana for Claimant by Centre of Cosmopolitan Studies, St Andrew's University	04/05/16	71
Home Office letter to Claimant	05/05/16	131
Claimant's letter to Home Office	05/05/16	132
Home Office letter to Claimant	06/05/16	134
Claimant's letter to Home Office	06/05/16	136
Claimant's letter to Home Office	09/05/16	136A
Addendum (correction) to Psychologist's Report	09/05/16	136B
TAB C – WITNESS STATEMENTS		
Statement of [REDACTED]	3/3/16	137
Statement of [REDACTED]	8/12/15	144
Statement of [REDACTED]	7/12/15	150
TAB D – PROTECTION & HUMAN RIGHTS CLAIMS: HOME OFFICE DOCUMENTS		
Asylum Screening Interview	19/5/2015	154
Asylum Interview (substantive)	31/7/15	171
<u>TAB E - DECISION UNDER CHALLENGE:</u>	<u>23/10/15</u>	<u>188</u>
<u>DEPORTATION ORDER</u>		
Home Office Decision To Refuse The Claimant's Protection And Human Rights Claim	29/10/15	189
<u>TAB F - DECISION UNDER CHALLENGE:</u>	<u>11/2/16</u>	<u>209</u>
<u>HOME OFFICE DECISION TO REFUSE THE CLAIMANT'S PROTECTION AND HUMAN RIGHTS CLAIM</u>		
TAB G – PROTECTION & HUMAN RIGHTS CLAIM: CLAIMANT'S EVIDENCE SUBMITTED TO DEFENDANT		
Pre-Sentencing Report by Croydon Youth Offending Service	20/9/13	216
Notification of Release Date	23/1/14	228
Asset: Core Profile report for Claimant (Youth Justice Board)	10/11/14	229
Asset: Risk of Serious Harm Form (page 2 missing)	10/11/14	258

Vulnerability Management Plan	31/10/14	264
Risk Management Plan	10/11/14	270
Panel report (incomplete – disclosed to Claimant's solicitor by Home Office)	undated	276
Statement of [REDACTED], Unit Manager, Children's Services, London Borough of Croydon.	11/11/14	278
Case Chronology	UNDATED	282
Letter from Claimant	13/12/14	284
Letter from Claimant to Home Office	25/3/15	292
Letter from Croydon 18 Plus After Care Team	6/10/15	295
Letter from CAYSH	11/11/15	296
Letter from Claimant	UNDATED	297
Letter from [REDACTED]	UNDATED	298
[REDACTED]'s Personal Statement, Qualification Certificates and College Letters	VARIOUS	300
TAB H – OTHER DOCUMENTS		
Indictment		333
Translation of Death certificate for [REDACTED] (Claimant's father)	08/07/02	335
Translators certificate	21/10/10	336
LB Croydon's Pathway Plan for B	24/03/15	337
LB Croydon's Pathway Plan for B	01/10/15	347
LB Croydon's Pathway Plan Questions	18/02/16	353
Home Office letter to Claimant authorising detention	19/03/15	360
Home Office IS91RA – Risk Factors	19/03/15	363
Home Office letter to Claimant refusing release	16/06/15	365
First-tier Tribunal's grant of bail to Claimant	29/02/16	366
Claimant's civil legal aid certificate	29/03/16	368

Judicial Review Claim Form

In the High Court of Justice
Administrative Court

Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.

For Court use only	
Administrative Court Reference No.	C01 / 2016
Date filed	10/05/2016

Seal



SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

name	
[REDACTED]	
address	
[REDACTED]	
Telephone no.	Fax no.
E-mail address	

Claimant's or claimant's solicitors' address to which documents should be sent.

name	
PUBLIC LAW PROJECT	
address	
150 CALEDONIAN ROAD LONDON N1 9RD	
Telephone no.	
020 7843 1265	
Fax no.	
020 7837 7048	
E-mail address	
r.singh@publiclawproject.org.uk	

Claimant's Counsel's details

name	
LEONIE HIRST	
address	
GARDEN COURT CHAMBERS 57-60 Lincoln's Inn Fields, London WC2A 3LJ	
Telephone no.	
020 7993 7600	
Fax no.	
020 7993 7700	
E-mail address	
leonieh@gclaw.co.uk	

1st Defendant

name	
SECRETARY OF STATE FOR THE HOME DEPT	
Defendant's or (where known) Defendant's solicitors' address to which documents should be sent.	
name	
GOVERNMENT LEGAL SERVICE	
address	
1 KEMBLE STREET LONDON WC2B 4TS	
Telephone no.	Fax no.
020 7210 3000	020 7210 3433
E-mail address	

2nd Defendant

name	
address	
Telephone no.	
Fax no.	
E-mail address	

Defendant's or (where known) Defendant's solicitors' address to which documents should be sent.

SECTION 2 Details of other interested parties

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name LONDON BOROUGH OF CROYDON		name 	
address Legal and Democratic Services Division Bernard Wetherill House 8, Mint Walk Croydon CRO 1EA		address 	
Telephone no. 	Fax no. 020 8407 1322	Telephone no. 	Fax no.
E-mail address 		E-mail address 	

SECTION 3 Details of the decision to be judicially reviewed

Decision:
 (1) CERTIFICATION DECISION OF 11/02/16 - SEE TAB F, P.209 OF BUNDLE; (2) DEPORTATION ORDER OF 23/10/15 - SEE TAB E, P.188 OF BUNDLE; (3) LAWFULNESS OF DETENTION

Date of decision:
 (1) 11/02/16; (2) 23/10/15; (3) PERIOD OF DETENTION IS 20/03/15 TO 29/02/16.

Name and address of the court, tribunal, person or body who made the decision to be reviewed

name SECRETARY OF STATE FOR THE HOME DEPT	address C/O GOVERNMENT LEGAL DEPARTMENT 1 KEMBLE STREET LONDON WC2B 4TS
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SECTION 4 Permission to proceed with a claim for judicial review

I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of Section 18 Practice Direction 54 (Challenging removal)?

☐ Yes ☒ No

Are you making any other applications? If Yes, complete Section 8.

☒ Yes ☐ No

Is the claimant in receipt of a Community Legal Service Fund (CLS F) certificate?

☒ Yes ☐ No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Form N463 and file this with your application.

☒ Yes ☐ No

Have you complied with the pre-action protocol? If No, give reasons for non-compliance in the box below.

☒ Yes ☐ No

Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in this region in the box below). If No, give reasons in the box below.

☒ Yes ☐ No

Does the claim include any issues arising from the Human Rights Act 1998?

If Yes, state the articles which you contend have been breached in the box below.

☒ Yes ☐ No

ARTICLES 3, 8 AND 5 ECHR

SECTION 5 Detailed statement of grounds

☐ set out below ☒ attached

SECTION 6 Aarhus Convention claim

I contend that this claim is an Aarhus Convention claim

☐ Yes ☒ No

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45.43 to apply.

If you have indicated that the claim is an Aarhus claim set out the grounds below

SECTION 7 Details of remedy (including any interim remedy) being sought

ATTACHED

SECTION 8 Other applications

I wish to make an application for:-

- (1) ANONYMITY
- (2) EXTENSION OF TIME TO CHALLENGE THE DEPORTATION ORDER OF 23/10/15
- (3) A STAY ON PROCEEDINGS UNTIL 18 MAY 2016

SECTION 9 Statement of facts relied on

Please refer to attached statement of facts. The statement below relates to the other applications at section 8 of the claim form.

(1) Anonymity

(2) Extension of time to challenge the deportation order of 23/10/15

If the certification decision is unlawful then the lawfulness of the deportation order is in issue. Since the challenge to the deportation order is dependent on a successful challenge to the certification decision, which is brought in-time, and the issues are linked it is respectfully submitted there is good reason to extend the time limit. Furthermore the claimant's solicitor only became aware that there was a legal issue in relation to the deportation order of 23/10/15 following the judgment of Irwin J. in *R(Cyrus) v SSHD* [2016] EWHC 918 (Admin) which was handed down on 26 April 2016. The claimant's solicitor promptly took advice from counsel who acted in Cyrus and it became clear at that point that there was an issue with the lawfulness of the deportation order. It is respectfully submitted that this provides a further good reason to extend the time limit to challenge the deportation order. Please also see paragraph 4 of the claimant's grounds.

(3) Application for a stay until 25 May 2016

The claimant previously served a letter before claim in relation to the certification decision on 18 January 2016. The claimant's case is that at that point it ought to have been clear to the SSHD that certification was unlawful (for the reasons given at para 3.5 of the grounds). However, further to: (1) further expert evidence received on 30/04/16 and 04/05/16 in relation to the challenge to the certification decision; (2) judgment in *Cyrus* (see above) on 26/04/16 which is relevant to the challenge to the deportation order; (3) the linked issue of the lawfulness of detention; (4) the claimant's disclosure requests - the claimant raised those issues with the defendant in a supplementary letter before claim dated 04/05/16. Since the claim had to be issued no later than 3 months after the decision of 11 February 2016, we notified the SSHD that the claimant had to issue a claim to protect our client's position but would apply for a stay on the claim to enable the SSHD to respond within the standard time frame of 14 days i.e. by 18/05/16. The SSHD has confirmed that she will provide a response within 14 days (see tab b, page 131 of the bundle).

We therefore urgently request a short stay on proceedings until 25/05/16 to enable the SSHD to provide a response to the supplementary letter before claim that she has confirmed will be provided by 18/05/16 and for the parties to consider the consequences of the SSHD's response in relation to this claim before time runs for the filing of the AOS. The effect of the stay would be to ensure that the SSHD does not incur any costs of preparing an AOS before she serves her full response to the letter before claim and may clarify or narrow the issues between the parties. Please also see paragraph 47 of the claimant's grounds.

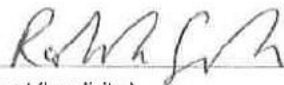
Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name THAKUR RAKESH SINGH

Name of claimant's solicitor's firm PUBLIC LAW PROJECT

Signed



Claimant ('s solicitor)

Position or office held SOLICITOR

(if signing on behalf of firm or company)

SECTION 10 Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect it to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> Statement of grounds | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Application to extend the time limit for filing the claim form | <input checked="" type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> Application for directions | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Any written evidence in support of the claim or application to extend time | | |
| <input type="checkbox"/> Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | |
| <input checked="" type="checkbox"/> A copy of the legal aid or CSLF certificate <i>(if legally represented)</i> | | |
| <input type="checkbox"/> Copies of any relevant statutory material | | |
| <input checked="" type="checkbox"/> A list of essential documents for advance reading by the court <i>(with page references to the passages relied upon)</i> | | |

If Section 18 Practice Direction 54 applies, please tick the relevant box(es) below to indicate which papers you are filing with this claim form:

- | | | |
|--|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> a copy of the removal directions and the decision to which the application relates | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a copy of the documents served with the removal directions including any documents which contains the Immigration and Nationality Directorate's factual summary of the case | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a detailed statement of the grounds | <input type="checkbox"/> included | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Signed

R. Singh

Claimant ('s Solicitor)

T. R. SINGH

Judicial Review

Application for urgent consideration

This form must be completed by the Claimant or the Claimant's advocate if exceptional urgency is being claimed and the application needs to be determined within a certain time scale.

The claimant, or the claimant's solicitors must serve this form on the defendant(s) and any interested parties with the N461 Judicial review claim form.

To the Defendant(s) and Interested Party(ies)
Representations as to the urgency of the claim may be made by defendants or interested parties to the relevant Administrative Court Office by fax or email:-

For cases proceeding in

In the High Court of Justice Administrative Court

Claim No.	C0/ /2016
Claimant(s) <i>(including ref.)</i>	
Defendant(s)	SECRETARY OF STATE FOR THE HOME DEPT.
Interested Party(ies)	LONDON BOROUGH OF CROYDON

London	Fax: 020 7947 6802 email: administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk
Birmingham	Fax: 0121 250 6730 email: administrativecourtoffice.birmingham@hmcts.x.gsi.gov.uk
Cardiff	Fax: 02920 376461 email: administrativecourtoffice.cardiff@hmcts.x.gsi.gov.uk
Leeds	Fax: 0113 306 2581 email: administrativecourtoffice.leeds@hmcts.x.gsi.gov.uk
Manchester	Fax: 0161 240 5315 email: administrativecourtoffice.manchester@hmcts.x.gsi.gov.uk

SECTION 1 Reasons for urgency

PLEASE SEE SECTION 9 OF THE CLAIM FORM. THIS IS AN URGENT APPLICATION FOR A STAY ON PROCEEDINGS UNTIL 25 MAY 2016.

THE DEFENDANT HAS INDICATED IT WILL RESPOND BY 18 MAY 2016 (SEE TAB B, P.131 OF THE BUNDLE) TO THE CLAIMANT'S SUPPLEMENTARY LETTER BEFORE CLAIM DATED 4 MAY 2016 (SEE 3/21 OF THE BUNDLE). HOWEVER THE CLAIMANT MUST PROTECTIVELY ISSUE A CLAIM NOW AGAINST THE CERTIFICATION DECISION DATED 11 FEBRUARY 2016 TO PREVENT IT FROM BEING OUT OF TIME.

AN STAY IS URGENTLY REQUIRED TO PERMIT THE DEFENDANT TIME TO RESPOND BY 18 MAY 2016, TO PREVENT TIME RUNNING FOR THE FILING OF THE ACKNOWLEDGMENT OF SERVICE (AOS), TO AVOID THE NEED FOR THE DEFENDANT TO INCUR COSTS AT THIS STAGE IN PREPARING THE AOS AND TO CLARIFY OR NARROW THE ISSUES BETWEEN THE PARTIES.

PLEASE ALSO SEE PARAGRAPH 47 OF THE CLAIMANT'S GROUNDS.

SECTION 2 Proposed timetable (tick the boxes and complete the following statements that apply)

- a) ☒ Urgency (including abridgement of time for AOS) is sought and should be considered within 24 hours/days
If consideration is sought within 48 hours of issue, **you must complete Section 3 below.**
- b) ☒ Interim relief is sought and the application for such relief should be considered within 24 hours/days
If consideration is sought within 48 hours of issue, **you must complete Section 3 below.**
- c) ☐ The N461 application for permission should be considered within ____ hours / days
If consideration is sought within 48 hours of issue, **you must complete Section 3 below.**
- d) ☐ If permission for judicial review is granted, a substantive hearing is sought by [enter date]

SECTION 3 Justification for request for immediate consideration

Date and time when it was first appreciated that an immediate application might be necessary.

Date	Time
10 MAY 2016	12 PM

Please provide reasons for any delay in making the application.

THERE IS NO DELAY.

AT THE TIME OF SERVICE OF THIS APPLICATION THE DEFENDANT HAS NOT RESPONDED TO CLAIMANT'S SUPPLEMENTARY LETTER BEFORE CLAIM OF 4 MAY 2016. WE HAVE WRITTEN TO THE DEFENDANT ON 5 MAY, 6 MAY AND 10 MAY 2016 TO INVITE IT TO PROVIDE A RESPONSE (SEE B/132, B/136 AND B/136A). THE DEFENDANT HAS HOWEVER CONFIRMED THAT A RESPONSE WILL BE PROVIDED BY 18 MAY 2016.

AN APPLICATION FOR A STAY WOULD ONLY BE NECESSARY IF THE DEFENDANT DID NOT PROVIDE A RESPONSE TO THE SUPPLEMENTARY LETTER BEFORE CLAIM OF 4 MAY 2016. NO RESPONSE HAS BEEN RECEIVED AND THEREFORE THE APPLICATION IS NOW NECESSARY.

What efforts have been made to put the defendant and any interested party on notice of the application?

WE HAVE NOTIFIED THE DEFENDANT THAT WE WILL APPLY FOR A STAY IN OUR LETTERS OF 4 MAY, 5 MAY, 6 MAY AND 10 MAY 2016 (SEE ABOVE).

WE HAVE NOTIFIED THE INTERESTED PARTY EARLIER TODAY.

SECTION 4 Interim relief (state what interim relief is sought and why in the box below)

A draft order must be attached.

WE SEEK A STAY ON PROCEEDINGS UNTIL 25 MAY 2016 FOR THE REASONS GIVEN AT SECTION 8 OF THE CLAIM FORM AND AT SECTIONS 1 AND 3 OF THIS N463 FORM.

SECTION 5 Service

A copy of this form of application was served on the defendant(s) and interested parties as follows:

Defendant

☒ by fax machine to time sent
 Fax no. 020 7210 3433 time 13:46

☐ by handing it to or leaving it with
 name _____

☒ by e-mail to
 e-mail address UKVIPAP@homeoffice.gsi.gov.uk

Date served

Date 10 MAY 2016

Interested party

☒ by fax machine to time sent
 Fax no. _____ time _____

☐ by handing it to or leaving it with
 name _____

☒ by e-mail to
 e-mail address duty.solicitor@croydon.gov.uk

Date served

Date 10 MAY 2016

I confirm that all relevant facts have been disclosed in this application

Name of claimant's advocate

name THAKUR RAKESH SINGH

Claimant (claimant's advocate)

Signed Rakesh Singh

CO/ /2016

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION
FOR PERMISSION FOR JUDICIAL REVIEW

BETWEEN:

THE QUEEN ON THE APPLICATION OF

[REDACTED]

Claimant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

LONDON BOROUGH OF CROYDON

Interested Party

ORDER

UPON, consideration of the N463 application for urgent consideration, N461 claim form and supporting documents filed by the Claimant

IT IS ORDERED THAT:

1. the claim be stayed until 25 May 2016;
2. the Defendant is to file and serve any acknowledgment of service and summary grounds of resistance within 21 days thereafter;
3. Costs reserved

SIGNED: _____

DATE: _____



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO Ref:

In the matter of an application for Judicial Review

The Queen on the application



Claimant

versus

The Secretary of State for the Home Department

Defendant

London Borough of Croydon

Interested Party

On the application for a stay

Following consideration of the documents lodged by the Claimant

Order by the Honourable Mr Justice Jeremy Baker

Application granted and the claim is stayed until 24th May 2016.

Liberty to apply

Reasons

In order to allow the defendant sufficient time to respond to the Claimant's supplementary letter before claim dated 4th May 2016.

Signed

Mr Justice Jeremy Baker

11/05/2016

The date of service of this order is calculated from the date in the section below

Sent to the claimant's solicitors and to the defendant and the interested party on: 11/05/2016

**Home Office**

Immigration Enforcement
Op Nexus High Harm Team
1st Floor Capital Building
Blue Zone
New Hall Place
Liverpool
L3 0BP

Tel 0300 123 2241

Fax 0151-213-6598

Email

Web www.gov.uk/uk-visas-immigration

The Public Law Project
150 Caledonian Road
London
N1 9RD

Our Ref [REDACTED]

Your Ref [REDACTED]

Case ID [REDACTED]

Date 14 June 2016

Dear Sirs

Response to your Pre Action Protocol Letter

This is a letter of response in accordance with the provisions of the Pre-Action Protocol for Judicial Review. A copy of this can be found at: www.justice.gov.uk.

1. The Claimant

[REDACTED]

2. From

Secretary of State for the Home Department.

3. References

[REDACTED]

[REDACTED]

4. Details of the matter being challenged

You wrote to the Home Office on 5 May 2016 which we received on the same day, alleging that we:

1. Withdraw the certification of the protection and human rights claim under both s94(1) and s94B NIAA 2002;
2. Reconsider the substantive human rights and protection claims in light of the letter before claim and all the available evidence;
3. Withdraw the deportation order signed on 23 October 2015;
4. Restore the claimant's ILR pending the above and pending any subsequent appeal that is pursued.

You have asked for the following relief:

Withdrawal of certification, complete a reconsideration, withdraw the Deportation Order and restore ILR.

5. Response to the matters raised

1. In response to the first matter you have raised, you have claimed the SSHD's own policy provides that s94B certification should not be used either for claims which have been certified under s94(1) or for uncertified Article 2 or 3 human rights claims. The claim should therefore not have been certified under s94B as it has been certified under s94(1)

Our guidance entitled Section 94B certification guidance for Non-European Economic Area deportation cases, which was in force at the time of decision was V4.0 (29 May 2015) and states:

"2.3 Human rights claims which can be certified under section 94 of the Nationality, Immigration and Asylum Act 2002 should not normally be certified under section 94B because section 94 is a stronger power which will usually take precedence, and in any case will have the same effect as sections 94B.

2.4 Human rights claims made on the basis of Articles 2 and/or 3 of the European Convention on Human Rights cannot be certified under section 94B. This is because they must be certified under section 94 if they are clearly unfounded, and if they are not clearly unfounded, then it will be arguable that there is a real risk of serious irreversible harm."

Your client's asylum claim and protection based human rights claim (i.e. Articles 2 and 3 of the ECHR) were certified under section 94 of the Nationality, Immigration and Asylum Act 2002 (NIA Act 2002) as clearly unfounded. Your client's human rights claim made under Article 8 was not certified under section 94 of the NIA Act 2002 as clearly unfounded; because it was considered that it did not reach the required threshold for certification under this section of the Act.

The Secretary of State was then entitled to make an assessment as to whether certification under section 94B of the NIA Act 2002 was appropriate in your client's case and after an assessment of your client's Article 8 claim, it was concluded that certification under section 94B of the NIA Act was appropriate in your client's case. This is in line with the current published Section 94B guidance (version 6, dated 9 May 2016) and is in line with the guidance in place at the time of decision (version 4, dated 29 May 2015) as follows:

'If a protection claim and/or a human rights claim made under Articles 2 and/or 3 is certified under sections 94 or 96, but it is not possible to certify a linked Article 8 claim (or other human rights claim) under either of those powers, then consideration must be given, in line with the factors in this guidance, to certifying the Article 8 claim under section 94B.'

Furthermore, the guidance relating to those cases not suitable for section 94B certification is maintained in the current published Section 94B policy (version 6, dated 9 May 2016). Section 2 of the current published policy states that:

'Human rights claims which fall for refusal and can be certified under section 94 of the Nationality, Immigration and Asylum Act 2002 either on the basis that the person is entitled to reside in a designated state and the SSHD is not satisfied that the claim is not clearly unfounded, or on the basis that the person is not entitled to reside in a designated state but the claim is clearly unfounded, should be certified under section 94 rather than section 94B. For section 94 guidance see section 3 of this guidance and Section 94 of the Nationality, Immigration and Asylum Act 2002.'

2. Consequently the decision to certify is maintained and as above we will not be completing a reconsideration. We will not be withdrawing the Deportation Order and your clients ILR will not be restored.

6. Details of any other interested parties

None cited.

7. Address for service of court documents

In light of the above, the Pre- Action Protocol is now considered to be concluded.

However, if you wish to proceed to Judicial Review, the service address for Judicial Review's issued in the Upper Tribunal is:

Home Office, Status Park 2, 4 Nobel Drive, Harlington, Hayes, Middlesex, UB3 5EY.

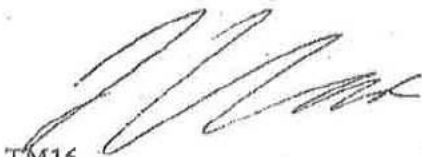
The service address for Judicial Review's issued in the Administrative Court is:

Government Legal Department, One Kemble Street, London WC2B 4TS.

Please note Judicial Reviews issued in the Administrative Court should continue to be served on the Government Legal Department.

The SSHD would like to remind you and your client that an application for Judicial Review should be made promptly and in any event within three months of the date of the action against which the claim is to be made. The service of this Pre -Action Protocol letter does not affect this time limit..

Yours faithfully,



TM16

Op Nexus High Harm Team

Appeals, Litigation and Subject Access Request Directorate

On behalf of the Secretary of State for the Home Department

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

BETWEEN:

R
 (on the application of [REDACTED])
and

Claimant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

and

LONDON BOROUGH OF CROYDON

Interested Party

AMENDED GROUNDS IN SUPPORT OF THE CLAIM

[Bundle references are in square brackets [Tab /page]

[Amended grounds are double underlined. Deletions from the grounds of 10 May 2016 are struck-through]

ISSUES

1. These amended grounds (i) update the court on relevant factual developments in the Claimant's case, and (ii) respond to the matters raised by the Defendant in her response to the letter of claim (received on 14 June 2016).
2. The Claimant sought a stay on this claim until 25 May 2016 to allow the Defendant sufficient time to respond to the Claimant's supplementary letter before claim of 4 May 2016. The Claimant previously served a letter before claim on 18 January 2016, but in order to give the Defendant the opportunity to respond to (i) further expert evidence, (ii) the judgment of this court in *Cyrus*, and (iii) the Claimant's disclosure requests, a supplementary letter before claim was sent. On 11 May 2016 Baker J ordered a stay on the claim to enable the

Defendant to respond. The Defendant provided the substantive response on 14 June 2016, maintaining the decision to certify the Claimant's claims.

3. The Claimant is a 19-year-old national of Guyana who is the subject of deportation proceedings following her conviction for three counts of robbery in 2013. The Claimant is a troubled young woman with a history of childhood physical and sexual abuse who has self-harmed and made suicide attempts [G/221/3.8, G/255, G/278 - G/280]. She has been assessed in custody as a vulnerable individual and at high risk of sexual exploitation [G/264]. She has no family in Guyana nor any accommodation, support network or sources of financial support. The Claimant was a 'Looked After Child' subject to a full care order with the London Borough of Croydon. She continues to be under the care of the London Borough of Croydon [G/295]. In view of her age she is now a 'Former Relevant Child' and has a Pathway Plan [G/347]. The London Borough of Croydon is therefore an interested party in these proceedings.
4. The Claimant's asylum and human rights claims have been certified by the Defendant under sections 94B and 94(1) Nationality, Immigration and Asylum Act 2002, the effect of which is to prevent the Claimant from exercising her right of appeal against deportation from within the UK.
5. In this claim the Claimant challenges:
 - 5.1 The Defendant's decision dated 11 February 2016 [F/209] to certify her protection and human rights claims under ss94B and 94(1) NIAA 2002 and maintaining the certification decision of 29 October 2015 ('the certification decision') [E/189]. The Claimant contends that the certification decision was unlawful and irrational on the facts of the Claimant's case, and was also contrary to the Defendant's published policy;
 - 5.2 The Defendant's ~~failure~~/refusal to reconsider the certification decision in light of further evidence, including expert psychological [B/34] and country evidence;

- 5.3 The Defendant's decision of 23 October 2015 to make a deportation order [E/188], which was made pursuant to the unlawful certification of the Claimant's claim;
- 5.4 The lawfulness of her detention between 20 March 2015 and 29 February 2016.

~~The Claimant seeks a stay on the claim until 25 May 2016 to allow the Defendant sufficient time to respond to the Claimant's supplementary letter before claim of 4 May 2016. The Claimant previously served a letter before claim on 18 January 2016, but in order to give the Defendant the opportunity to respond to (i) further expert evidence, (ii) the judgment of this court in Cyrus, and (iii) the Claimant's disclosure requests, a supplementary letter before claim was sent. The Defendant has indicated that she will provide a response within 14 days. The stay is sought to prevent either party incurring further costs pending the Defendant's consideration of the issues raised in the supplementary letter before claim, which it is hoped may resolve the claim.~~

FACTUAL BACKGROUND

6.

7.

8.

9.

[REDACTED]

10. The Claimant was approved for early release from prison on home detention curfew on 10 November 2014, but because of her immigration status remained in prison until 20 March 2015. She was then detained under immigration powers.
11. On 13 November 2014 the Claimant was served with a 'stage one' deportation decision. She submitted representations in response on 23 December 2014.
12. On 7 April 2015 the Claimant was served with the 'stage two' deportation decision. On 28 April 2015 the Claimant made an asylum and human rights claim.
13. On 29 October 2015 [E/189] the Secretary of State made a decision to certify the Claimant's asylum and human rights claim under s94B Nationality, Immigration and Asylum Act 2002, the effect of which is to prevent the Claimant from appealing her deportation from within the UK. The claim was also certified as 'clearly unfounded' under s94(1) of the Act. A signed deportation order was served at the same time.
14. On 30 November 2015 [B/1] the Claimant's solicitors sent a letter before claim challenging the certification of the Claimant's claim. In a response dated 14 December 2015, the Defendant undertook to review the certification within two months [B/11].

15. The Defendant served a fresh decision on 11 February 2016 [F/209]. -, maintaining the certification of the Claimant's claim under both s94B and s94(1) NIAA 2002. The Defendant maintained the certification of the Claimant's case under both s94B and s94(1), refused to reconsider the certification decisions, refused to withdraw the deportation order and refused to restore the Claimant's ILR.
16. On 29 February 2016 the Claimant was released on bail from immigration detention to an address provided by a family friend.
17. In light of the imminent limitation period the Claimant issued her claim on 10 May 2016, but sought a stay on the claim in order to give the Defendant the opportunity to respond to (i) further expert evidence, (ii) the judgment of this court in *Cyrus*, and (iii) the Claimant's disclosure requests. On 11 May 2016 Baker J ordered a stay on the claim to enable the Defendant to respond. The Defendant provided the substantive response on 14 June 2016, maintaining the decision to certify the Claimant's claims.
- 18.

GROUND

Legal framework

19. By virtue of s5(1) Immigration Act 1971, a deportation order is the mechanism by which an individual can be required to leave the UK and prohibited from re-entering. s5(1) of the 1971 Act provides that a deportation order invalidates any leave to enter or remain given before the order was made and whilst it is in force.

20. There is no right of appeal against a deportation decision. Instead, s82 NIAA 2002 provides a right of appeal only against the refusal of an individual's human rights or protection claim relating to the deportation decision.
21. s79(1) NIAA 2002 as amended provides that a deportation order may not be made while "...an appeal under section 82(1) that may be brought or continued from within the United Kingdom relating to the decision to make the order" could be brought or is pending.
22. s94(1) Nationality, Immigration and Asylum Act 2002 allows the Secretary of State to certify a protection or human rights claim as 'clearly unfounded'. The effect of certification under s94(1) is that an appeal against the refusal of the claim may only be brought from outside the UK.
23. A claim is 'clearly unfounded' if it cannot succeed on any legitimate view of the facts or the law: ZT (Kosovo) v Secretary of State for the Home Department [2009] UKHL 6 at [22], where Lord Phillips referred to guidance he had set out in R (VL and ZL) v SSHD [2003] EWCA Civ 25 at [58]:

"...If on at least one legitimate view of the facts or the law the claim may succeed, the claim will not be clearly unfounded. If that point is reached, the decision-maker cannot conclude otherwise. He or she will by definition be satisfied that the claim is not clearly unfounded."
24. The threshold is an objective one. In VL and ZL the approach to be taken by the decision maker was set out at [57] as follows:
 - 24.1 consider the factual substance and detail of the claim;
 - 24.2 consider how it stands with the known background data;
 - 24.3 consider whether in the round it is capable of belief;
 - 24.4 if not, consider whether some part of it is capable of belief;
 - 24.5 consider whether, if eventually believed in whole or in part, it is capable of coming within the Convention.

It is only if the answers to all of these questions are such that the claim cannot succeed on any legitimate view that it should be certified as clearly unfounded.

25. In *ZT (Kosovo)*, Lord Phillips noted [23] that the test was a ‘black and white one’ capable of only one answer. If the reviewing court “concludes that a claim has a realistic prospect of success when the Secretary of State has reached a contrary view, the court will necessarily conclude that the Secretary of State's view was irrational.”

26. s94B of the 2002 Act applies to human rights claims made by persons facing deportation and provides:

“(1) This section applies where a human rights claim has been made by a person (“P”) who is liable to deportation under—

 - (a) section 3(5)(a) of the Immigration Act 1971 (Secretary of State deeming deportation conducive to public good), or
 - (b) section 3(6) of that Act (court recommending deportation following conviction).

(2) The Secretary of State may certify the claim if the Secretary of State considers that, despite the appeals process not having been begun or not having been exhausted, removal of P to the country or territory to which P is proposed to be removed, pending the outcome of an appeal in relation to P's claim, would not be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

(3) The grounds upon which the Secretary of State may certify a claim under subsection (2) include (in particular) that P would not, before the appeals process is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which P is proposed to be removed.”

27. The effect of certification under s94B is that any appeal against the refusal of a human rights claim is non-suspensive of removal; that is, although an appeal may be brought in country, the appellant may be removed from the UK prior to the appeal hearing.

28. The Secretary of State’s ~~has published previous~~ guidance on certification under s94B, dated 30 October 2015 ~~This includes included~~ the following guidance on when claims are not suitable for certification:

- 28.1 Human rights claims which fall for refusal and can be certified under section 94 of the Nationality, Immigration and Asylum Act 2002 either on the basis that the person is entitled to reside in a designated state and the SSHD is not satisfied that the claim is not clearly unfounded, or on the basis that the person is not entitled to reside in a designated state but the claim is clearly unfounded, should be certified under section 94 rather than section 94B. [s2.4];
- 28.2 Human rights claims made on the basis of Article 2 and/or Article 3 ECHR should not be certified under section 94B. [s2.5]
29. Further guidance on certification under s94B dated 9 May 2016 was published on 26 May 2016 (following the issue of this claim).
30. In *Kiarie and Byndloss v SSHD* [2015] EWCA Civ 1020, [2015] WLR(D) 41, the Court of Appeal held that the central criterion for the decision maker considering certification under s94B was whether the individual's removal pending appeal would be unlawful under s6 Human Rights Act 1998. The 'serious irreversible harm' test was simply one example of how that criterion may be applied. The Secretary of State's previous guidance, which at that time focused on the 'serious irreversible harm' test, was incomplete and misleading as apt to steer decision-makers towards the wrong test.

Submissions on behalf of the Claimant

31. In this claim the Claimant challenges:
- 31.1 The Defendant's decision dated 11 February 2016 to certify her protection and human rights claims under ss94B and 94(1) NIAA 2002 and maintaining the certification decision of 29 October 2015 ('the certification decision'). The Claimant contends that the certification decision was unlawful and irrational on the facts of the Claimant's case, and was also contrary to the Defendant's published policy;
- 31.2 The Defendant's ~~failure~~/refusal to reconsider the certification decision in light of further evidence, including expert psychological and country evidence;

- 31.3 The Defendant's decision of 23 October 2015 to make a deportation order, which was made pursuant to the unlawful certification of the Claimant's claim;
- 31.4 The lawfulness of her detention between 20 March 2015 and 29 February 2016.

The certification decision: s94(1)

- 32. In summary, the Claimant contends that the certification decision was unlawful because:
 - 32.1 It was irrational: no rational decision maker, applying her mind to the correct objective threshold and exercising anxious scrutiny, could properly conclude that the Claimant's asylum and human rights claim was 'clearly unfounded' under s94(1), i.e. that there was no rational view of the facts or the law on which the Claimant's appeal might succeed before a Tribunal;
 - 32.2 Refusal to reconsider the decision in light of the further psychological and country expert evidence and supplementary letter before claim of 4 May 2016 was unlawful ~~Certification of the Claimant's human rights claim under s94B, when s94(1) had already been applied, was contrary to the Defendant's published guidance;~~
 - 32.3 No rational decision maker could properly conclude that the Claimant's removal to Guyana pending appeal would not breach her ECHR rights.
- 33. A claim can only lawfully be certified under s94(1) NIAA 2002 as 'clearly unfounded' if there is no legitimate view of the facts and the law on which the claim can succeed. The test is objective; the Defendant's decision is to be judged on Wednesbury principles informed by anxious scrutiny. However, as Lord Phillips made clear in ZT (Kosovo), if on an objective view the court concludes that there is a legitimate view of the facts or law on which the claim could succeed, the Defendant's decision to certify will necessarily be irrational.

34. The Claimant's human rights claim is based on Articles 3 and 8 ECHR. Her Article 3 claim rests on (i) the risk of suicide or serious self-harm if removed to Guyana and separated from her family, (ii) the risk of sexual exploitation and trafficking, exploitation by gangs and (iii) the risk that her living conditions, as a destitute and homeless individual without family or state support and with untreated mental health problems, will reach the minimum threshold of severity to breach Article 3. Her Article 8 claim is based on her long residence in the UK and the harsh consequences of removal to a country where she has no family or other ties.
35. At the time of the 11 February 2016 decision, the evidence available to the Defendant [bundle Tabs D and G] included the Claimant's screening and asylum interviews [D/154] , a report from the Claimant's senior social worker, [REDACTED] [G/278], the pre-sentence report, an Asset 'core profile' completed for the Youth Justice Board [G/229] and a Board panel report [G/276].
36. It is trite that the Defendant is under a public law '*Tameside*' duty to make reasonable enquiries and to ensure that she takes all reasonably practicable steps to make a fully-informed decision. The Claimant submits that the material which was before the Defendant at the time of the February 2016 decision was more than sufficient to show that her human rights claim was not 'clearly unfounded'. There was clearly, on any reasonable view, a legitimate view of the facts on which the Claimant's ECHR claims could succeed.
37. Subsequent to the 11 February 2016 decision, the Defendant was served with two further reports adding weight to the Claimant's claim: (i) an expert report on

Guyana by [REDACTED] of the Centre of Cosmopolitan Studies at St Andrew's University [B/71-130], and (ii) an expert psychological report by [REDACTED] [B/34-70]. The Claimant requested the Defendant to reconsider the decision in light of these reports. The Defendant's letter of 14 June however made no reference to the further evidence and simply maintained the certification decisions.

38. The Claimant submits that the Defendant could not rationally either ignore these reports or maintain the 'clearly unfounded' certification decision in the face of them. Both reports gave evidence which was material and relevant to the Claimant's Article 3 and 8 claims; neither could be dismissed without cogent reasons for doing so. The Defendant was obliged, in light of these reports, to reconsider the certification decision, but refused ~~failed~~ to do so. The Claimant submits that the Defendant thereby failed to exercise the anxious scrutiny required for a certification decision, and/or that the certification decision could no longer be regarded as rational in light of the two expert reports.
39. The Claimant therefore submits that the Defendant acted unlawfully and irrationally by (i) certifying the Claimant's claims as clearly unfounded under s94(1) NIAA 2002, and (ii) failing to reconsider or review that certification in light of the two expert reports.

Certification under s94B

40. The Claimant further submits that the decision to certify the Claimant's claim under s94B was wrong in law and irrational.
41. First, the Claimant submits that the Defendant's guidance on s94B certification makes it clear that it must have regard to all known circumstances and consider all relevant information which may be submitted in any context. That would clearly include the supplementary letter before claim of 4 May 2016 and the two expert reports. ~~s94B should not be used to certify a claim (i) which has already been certified under s94(1), and/or (ii) which concerns Article 2 or 3~~

~~ECHR~~. Certification of the Claimant's claim without having regard to the further evidence was therefore clearly contrary to the Defendant's published policy and was unlawful.

42. Second, the Claimant submits that the Defendant's consideration of whether the claim should be certified under s94B [F/213-215] did not focus on the central question of whether the Claimant's interim removal was lawful or proportionate.
43. It is clear from the Defendant's guidance that certification is a decision distinct from deportation, and that decision-makers are required to consider certification on the assumption that the individual will win his or her subsequent appeal against deportation [§3.3]. In the Claimant's case, that required the Defendant to proceed on the assumption that either the Claimant's Article 3 or Article 8 claim (or both) would succeed at a subsequent appeal, and to consider the legality and proportionality of interim removal on that basis.
44. The Claimant submits that no reasonable decision-maker could properly conclude, on the evidence before the Defendant [Tabs D and G] either that the Claimant's interim removal pending a successful appeal would not be contrary to s6 HRA 1998, or that there was no risk of serious irreversible harm to the Claimant if removed pending appeal.
45. Further, the Claimant submits that the refusal letter's repeated use of masculine pronouns to refer to the Claimant suggests strongly that the Defendant did not give sufficient care, let alone anxious scrutiny, to the certification.

Decision to make a deportation order

46. The Defendant served a signed deportation order [E/188] on the Claimant on 29 October 2015 together with the certified refusal of her asylum and human rights claim [E/189]. The effect of the order, by virtue of s5(1) Immigration Act 1971, was to invalidate the Claimant's indefinite leave to remain.

47. It is important to note that in ‘conductive’ deportation cases under s3 of the 1971 Act, the Secretary of State is not obliged to make a deportation order unless and until she effects removal. Further, in a non-certified conductive deportation case, the individual subject to deportation has an in-country right of appeal; in those circumstances s79 NIAA 2002 prevents the making of a deportation order whilst an in-country appeal under s82 is pending or could be brought.
48. The Claimant submits that the purpose of s79, both as enacted and as amended by the 2014 Act, is to protect the individual from the consequences of a deportation decision pending a consideration by the Tribunal of the legality of that decision. There are two aspects to that protection. First, because a deportation order cannot be made whilst an appeal is pending, the individual cannot be removed from the UK prior to the Tribunal’s determination of his appeal (absent lawful certification of his case). Second, s79 acts to prevent invalidation of leave to remain pending a determination of the lawfulness of the deportation decision.
49. In the Claimant’s case, the deportation order was signed on 23 October 2015, before the date of the decision to refuse the Claimant’s human rights and protection claim, but was served with that decision on 29 October 2015. The Claimant submits that the deportation order could only have been made pursuant to the certification of the Claimant’s claim; had the claim not been certified, the Claimant would have had an in-country right of appeal and the Defendant could not have made a deportation order whilst that appeal was pending.
50. The effect of the Defendant’s discretionary decision to make a deportation order, in circumstances where the Claimant has not in fact been removed from the UK, is that the Claimant has lost the indefinite leave to remain which she has had since December 2010 and now has no status in the UK. This in turn prevents the Claimant from working or from accessing a range of social support services and education which have been assessed as protective rehabilitative factors. Key parts of the robust support plan which was developed to take effect following completion of her Detention and Training Order cannot therefore be

implemented. In these circumstances, the invalidation of the Claimant's leave to remain causes her material prejudice.

51. As set out above, the Claimant submits that the certification decision was unlawful and irrational on the facts and evidence available to the Defendant. The deportation order which was contingent on certification was therefore infected by legal error and was itself unlawful. In *R (Cyrus) v SSHD* [2016] EWHC 918 (Admin), a case with similar facts, Irwin J made an order quashing a deportation order which had been "enfranchised by legal error" in the certification decision.
52. The Claimant respectfully asks the court to exercise its discretion and extend time in relation to her challenge to the legality of the deportation order, on the basis that the possibility of a challenge to the timing and legality of the making of the order only became apparent following the judgment of this court in *Cyrus*, as set out in the witness statement of the Claimant's solicitor. The factual and legal issues are clearly inextricably linked to the legality of the certification and the court is therefore seized of the relevant facts.

Detention

53. The Claimant was detained by the Defendant from 20 March 2015 [H/360 & G/293] to 29 February 2016, when she was released on bail by the First Tier Tribunal [G/366].
54. The Claimant contends that her detention was unlawful throughout under the *Hardial Singh* principles because:
 - 54.1 Her detention was pursuant to an unlawful certification of her human rights claim, without which certification her removal was clearly not reasonably in prospect;
 - 54.2 The Defendant failed to give any or any proper consideration to the Claimant's vulnerability and/or the impact that detention would have on her rehabilitation and mental and physical health.

55. The burden is on the Defendant to demonstrate, by reference to “substantial, fact-based justification” that the Claimant’s detention was lawful throughout: *R (Detention Action) v SSHD* [2014] EWCA Civ 1634 at [94].
56. The Claimant has not yet been served with disclosure relating to the decision to detain her, and will seek to expand these submissions when disclosure is received.

REMEDY

57. The Claimant seeks the following remedies:
- 57.1 A declaration that the certification decision of 11 February 2016, maintaining the decision of 29 October 2015, was unlawful;
 - 57.2 An order quashing the decision to certify the Claimant’s claim under s94(1) and 94B NIAA 2002;
 - 57.3 An order quashing the deportation order signed on 23 October 2015 and served on 29 October 2015, and/or restoring the Claimant’s indefinite leave to remain;
 - 57.4 A declaration that the Claimant’s detention was unlawful;
 - 57.5 Damages for unlawful detention, including aggravated damages;
 - 57.6 Costs;
 - 57.7 Such further or other relief as the court sees fit.

Leonie Hirst
Garden Court Chambers
~~10 May 2016~~
23 June 2016

Judicial Review

Acknowledgment of Service

Name and address of person to be served

name
Public Law Project

address
150 Caledonian Road
London
N1 9RD

In the High Court of Justice
Administrative Court

Claim No.

Claimant(s)

Defendant(s)

Secretary of State for the Home
Department

**Interested
Parties**

SECTION A

Tick the appropriate box

- | | | |
|---|-------------------------------------|-----------------------------------|
| 1. I intend to contest all of the claim. | <input checked="" type="checkbox"/> | } complete sections B, C, D and E |
| 2. I intend to contest part of the claim. | <input type="checkbox"/> | |
| 3. I do not intend to contest the claim. | <input type="checkbox"/> | complete section E |
| 4. The defendant (interested party) is a court or tribunal and intends to make a submission. | <input type="checkbox"/> | complete sections B, C and E |
| 5. The defendant (interested party) is a court or tribunal and does not intend to make a submission. | <input type="checkbox"/> | complete sections B and E |

Note: If the application seeks to judicially review the decision of a court or tribunal, the court or tribunal need only provide the Administrative Court with as much evidence as it can about the decision to help the Administrative Court perform its judicial function.

SECTION B

Insert the name and address of any person you consider should be added as an interested party.

name		name	
address		address	
Telephone no.	Fax no.	Telephone no.	Fax no.
E-mail address		E-mail address	

SECTION C

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it. If you are a court or tribunal filing a submission, please indicate that this is the case.

1. Further to the order of Mrs Steyn QC of 04 July (copy attached), the Defendant acknowledges that service of this AOS is late and should have been filed on 12 July 2016. The Defendant apologises to the Court and the Claimant for this. The Defendant was unable to produce her further decision within the time frame ordered.
2. Based upon the further evidence submitted by the Claimant, the Defendant's further decision have not been certified. Accordingly the Claimant now has an in country right of appeal. This, in the Defendant's view, renders this claim entirely academic, (the claimant's unlawful detention claim is meritless and can now be issued in the county court). On this basis the Claimant has been invited to withdraw his JR application and an open letter (copy attached) has been sent to the Claimant's solicitors today. A response is awaited and it is hoped that the parties shall agree a consent order to withdraw the JR application.
3. In the event that a Consent Order is not filed within 28 days of the date of the Acknowledgement of Service, the Defendant's solicitor will provide the Court with an update regarding the settlement of this matter. The Defendant reserves the right to provide further summary grounds in the event that a settlement cannot be reached and the judicial review is to proceed.
4. In the alternative, the Court is requested to refuse the application on the basis of the above.

SECTION D

Give details of any directions you will be asking the court to make, or tick the box to indicate that a separate application notice is attached.

Please see section C above.

SECTION E

*delete as appropriate

The defendant believes that the facts stated in this form are true.
I am duly authorised by the defendant to sign this statement

(if signing on behalf of a firm or company, court or tribunal)

Position or office held

Grade 7 Lawyer

(To be signed by you or by your solicitor or litigation friend)

Signed

Date

14/07/2016

Give an address to which notices about this case can be sent to you.

If you have instructed counsel, please give their name address and contact details below.

name

Address

The Treasury Solicitor
One Kemble Street
London WC2B4TS

Telephone no.

Fax no.

E-mail address

name

address

No5 Chambers
DX 16075
Fountain Court
Birmingham

Telephone no.

Fax no.

E-mail address

Completed forms, together with a copy, should be lodged with the Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL, within 21 days of service of the claim upon you, and further copies should be served on the Claimant(s), any other Defendant(s) and any interested parties within 7 days of lodgement with the Court.

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

CO/____/2016

BETWEEN:

R
(on the application of B)

Claimant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

CLAIMANT'S REPLY TO SUMMARY DEFENCE

1. The Claimant makes this reply to the Defendant's summary grounds of defence dated 19 July 2016, and pursuant to the order made by Karen Steyn QC following the hearing of the Claimant's interim relief application on 28 June 2016. At that hearing the learned Judge granted the Claimant's application to extend time to challenge the deportation order.
2. On 13 July 2016 the Defendant served a further decision on the Claimant, withdrawing the certification of her protection and human rights claim. Following that decision, and having obtained the relief sought in her claim, the Claimant no longer pursues her challenge to the certification of her protection and human rights claims under ss94(1) and 94B of the 2002 Act.
3. The Claimant does maintain her challenge to (i) her detention under immigration powers between 20 March 2015 and 29 February 2016, and (ii) the Defendant's decision to make the deportation order which was served on 29 October 2015.

Decision to make a deportation order

4. The Defendant's position appears to be [SGD §11] that the challenge to the decision to make a deportation order is misconceived, because the deportation order in this case was made on 23 October 2015, prior to the certification decision of 29 October 2015. That somewhat startling submission is contrary to basic principles of public law.
5. First, the deportation order could have no legal effect until it was served on the Claimant: *R (Anufrijeva) v Secretary of State* [2003] 3 All ER 827. It would be obviously unfair if the Defendant could, by making a deportation order but not serving it on the Claimant or notifying her of its existence, exclude the protection conferred by s79 NIAA 2002 and deprive the Claimant of her leave to remain. In this case, the deportation order was not served until 29 October 2015, when it was served together with the appealable decision to refuse the Claimant's protection and human rights claim. The Defendant cannot rely on the date of a decision which was not served in order to justify either the legality of the Claimant's detention or the legality of the order itself.
6. Second, the Claimant submits that the Defendant's approach is contrary to principles of good administration. It is trite that the Defendant must act fairly, which includes both giving the opportunity to an individual to make representations prior to a decision which affects him, and the duty to consider all relevant material before reaching a decision. In this case, the Defendant could not fairly make a deportation order on 23 October, because at that point she had not yet reached a decision on the Claimant's representations against deportation or considered the available and relevant material.
7. Further, the Defendant was or should have been aware, from the Claimant's previous immigration history and from the evidence available to the Defendant, that the Claimant

It was obviously unfair

to make a deportation order prior to an appealable decision on the Claimant's human rights claim, in circumstances where the Defendant was aware that the Claimant had a viable appeal.

8. Third, the Claimant submits that in so far as the deportation order was made prior to the appealable decision of 29 October with the specific purpose of depriving the Claimant of her indefinite leave to remain pending her appeal, the Defendant's action subverted the legislative purpose of s79 NIAA 2002 and was therefore unlawful: *Padfield v Minister of Agriculture* [1968] AC 997. The Defendant cannot act so as to undermine fair procedures without express Parliamentary authority in primary legislation: *Pierson v SSHD* [1997] 3 WLR 492.

9. The Claimant maintains that the Defendant's decision to make a deportation order was unlawful. The Defendant suggests [SGD §18] that certification was only reconsidered in light of the reports from Ms Clarke and Dr Wardle, and that the latest material cannot and does not render the earlier decision to make a deportation order unlawful. The Claimant responds as follows:

9.1 The Defendant has a public law duty (the *Tameside* duty) to take reasonable steps to ensure that she makes a fully informed decision. It is trite that the Defendant is also obliged to act fairly and to consider all relevant material before taking a decision;

9.2 At the time of the decision to make a deportation order on 23 October 2015, the Defendant had received representations from the Claimant. The Defendant was also aware of the Claimant's immigration history and her background

The Defendant

had however not yet considered or reached a decision on that material. The decision to make a deportation order was therefore self-evidently not properly informed as to relevant facts;

9.3 In addition, in October and November 2014 reports were produced by

It is

unclear when the Defendant in fact came into possession of this report, but it is clear that it was drafted in response to the Defendant's 'stage one' deportation decision served on the Claimant on 28 October 2014 as it was titled 'Statement of Reasons', it stated it was in response to the Home Office decision and gave 'reasons why [the Claimant] should not be deported'. The Defendant's stage one decision invited the Claimant to submit a 'Statement of Reasons' within 20 working days and should have been available to the Defendant had proper enquiries been made (we attach the decision of 28 October 2014 – which was recently obtained through a subject access request);

9.4 On the evidence which was available to the Defendant on 23 October 2015, or would have been available had the Defendant taken proper steps to inform her decision, the Claimant's claim was not one which could be lawfully certified as clearly unfounded; nor was the Claimant's case one where the Defendant could properly be satisfied that her removal pending appeal would not breach her Convention rights. The Defendant could not lawfully exercise the power to make a deportation order in those circumstances;

9.5 Further or alternatively, the Defendant could and should have revisited the decision to make a deportation order on receipt of the further material.

10. The Defendant now having withdrawn the decision to certify the Claimant's claims, the Claimant's position is now on all fours with that of the claimant in R (Cyrus) v SSHD [2016] EWHC 918 (Admin), in which this court granted an order quashing the deportation order.

11. Now that the certification has been withdrawn, the Claimant has an in-country right of appeal against the refusal of her protection and human rights claims under s82 NIAA 2002. It is beyond dispute that the Defendant would not now be able to make a deportation order lawfully, because of the operation of s79 NIAA 2002. The Claimant submits that the Defendant should not be able to rely on the lawfulness of a deportation order which was made prior to consideration of relevant material, to justify the legality of a decision which would have been unlawful had it been properly informed. To do so subverts the legislative purpose of s79 NIAA 2002.

Detention

12. It is not in dispute that a power to detain existed in this case. The Claimant's challenge is to the Defendant's decision to exercise the discretionary power to detain. The Claimant maintains her challenge to her detention on Hardial Singh principles because:
 - 12.1 Her detention was pursuant to an unlawful certification of her human rights claim, without which certification her removal was clearly not reasonably in prospect;
 - 12.2 The Defendant failed to give any or any proper consideration to the Claimant's vulnerability and/or the impact that detention would have on her rehabilitation and mental and physical health.
13. The Defendant's summary grounds of defence do not engage with the latter point at all. There was no consideration of the Claimant's young age (just 18), or the evidence of her vulnerability,
14. The Defendant avers that the Claimant posed a risk of absconding because she had previously absconded from [REDACTED] The Claimant submits that:

14.1

There was at most a minimal risk of absconding;

14.2

The Defendant's duty was to ascertain the risk of the Claimant absconding as at the date of her detention;

14.3

14.4 The Defendant did not use detention as a last resort in this case, as set out in her policy.

15. The Defendant has not made any disclosure of documents relevant to the Claimant's detention. Although the Claimant has obtained some documents through a subject access request, she does not have a copy of any decision to detain, any material relied on in assessing the risk of absconding or reoffending or the authority to detain.

16. The Claimant maintains that her claim is properly arguable, for the reasons set out in her grounds and in this reply, and asks the court to grant permission.

Leonie Hirst
Garden Court Chambers
26 July 2016



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO Ref:

CO/ /2016

In the matter of an application for Judicial Review

The Queen on the application

versus

SECRETARY OF STATE FOR THE HOME DEPARTMENT

On the application for

Following consideration of the documents lodged by the parties

Order by the Honourable Mr Justice Green

The application for permission to apply for judicial review is refused

Reasons:

1. The Defendant has issued a further decision dated the 13th July 2016 which confers upon the Claimant an in-country right of appeal. The Claimant therefore has a right to challenge the underlying decision in the Tribunal and the application for judicial review is academic.
2. With regard to the persisted with challenge to the deportation order in view of the Defendant's new decision there is no utility in this being adjudicated upon by the Administrative Court.
3. The Defendant contends that the detention of the Claimant between 20th March 2015 and 29th February 2016 was lawful and the amended grounds disclosed no arguable case to the contrary. I refuse permission in relation to detention but this is without prejudice to the right of the Claimant to commence an action in the County Court. My refusal of permission is, therefore, not an endorsement of the Defendant's submissions that the detention was entirely lawful. This will be a matter for the County Court should the claim be pursued.
4. There is to be no order for costs.

Signed

Sent to the claimant, defendant and any interested party / the claimants, defendants, and any interested party's solicitors on (date): **- 3 AUG 2016**



In the High Court of Justice
Queen's Bench Division
Administrative Court

CO Ref no: CO/ '2016

In the matter of a claim for Judicial Review

The Queen on the application of

B

versus SECRETARY OF STATE FOR THE HOME DEPARTMENT



Notice of RENEWAL of claim for permission to apply for Judicial Review (C P R 54. 12)

1. *This notice must be lodged in the Administrative Court Office, by post or in person and be served upon the defendant (and interested parties who were served with the claim form) within 7 days of the service on the claimant or his solicitor of the notice that the claim for permission has been refused.*
2. *If the claim was issued on or after 7 October 2013, a fee is payable on submission of Form 86B. Failure to pay the fee or lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>*
3. *If this form has not been lodged within 7 days of service (para 1 above) please set out below the reasons for delay:*
4. *Set out below the grounds for seeking reconsideration:*

PLEASE REFER TO ATTACHED GROUNDS

5. *Please supply*

COUNSEL'S NAME: LEONIE HIRST

COUNSEL TELEPHONE NUMBER: 020 7993 7600

Signed

Dated

11/08/16

Claimant's Ref No.



Tel.No.

020 7843 1265

Fax No.

020 7837 7048

To the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL

R(V SSHD – CO/) /2016 – GROUNDS FOR SEEKING RENEWAL

1. The Claimant renews her application for permission for the reasons given in her amended grounds of claim and her reply to the Defendant's summary grounds of defence as the claim is arguable. The learned Judge has not considered the arguability of the claim but instead has refused permission on grounds of utility (in respect of the challenge to the deportation order) and forum (in respect of the claim for unlawful detention). It is respectfully submitted that it was wrong for him to do so and that permission should be granted.

The deportation order challenge

2. The learned Judge has refused permission on the basis that there is no utility in pursuing the claim. However this is incorrect. There is utility in pursuing the claim because:
 - (i) Under the new appeals regime the Claimant does not have a right of appeal against the deportation order itself and the First-tier Tribunal (FTT) cannot adjudicate on its lawfulness. The claimant can only appeal against the refusal of a protection claim or human rights claim. Therefore the in-country appeal to the FTT does not provide the Claimant with an alternative remedy.
 - (ii) The challenge to the deportation order is not rendered academic by the claimant pursuing an appeal to the FTT. The claimant suffers material prejudice as a consequence of the deportation order because it has invalidated her indefinite leave to remain pending her appeal. Whilst the claimant is, for now, being provided with support and accommodation by social services, the invalidation of her leave prevents her from access to employment, training and education which have been assessed as key protective rehabilitative factors.
 - (iii) In the case of R(Cyrus) v SSHD [2016] EWHC 918 (Admin) a case where very similar issues arose, the pursuit of a challenge to a deportation order was not rendered academic or of no utility after the SSHD withdrew certification and granted an in-country right of appeal. In that case the Court ordered the quashing of the deportation order which had been 'enfranchised by legal error' in the certification decision and restored the claimant's ILR.

Unlawful detention claim

3. The learned Judge has refused permission, however this is not a refusal on the merits but on the basis that this Court is no longer the appropriate forum. We submit that this Court remains the appropriate forum for the unlawful detention claim since the claimant is renewing her challenge to the deportation order and continues to seek public law remedies and that challenge is material to the unlawful detention claim. We also maintain for the reasons given in our amended grounds and reply that permission should be granted.

PUBLIC LAW PROJECT

11 August 2016

14 NOV 2016

IN THE HIGH COURT OF JUSTICE
 QUEEN'S BENCH DIVISION
 ADMINISTRATIVE COURT
 BEFORE THE HONOURABLE MR JUSTICE SUPPERSTONE

CO/ 2016

BETWEEN:

THE QUEEN
 (on the application of B)

Claimant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

and

LONDON BOROUGH OF CROYDON

Interested Party

ORDER

UPON hearing counsel for the parties at an oral hearing on 21 October 2016,

IT IS ORDERED THAT:

1. Permission to apply for judicial review is granted on all grounds
2. The Defendant shall file and serve detailed grounds of defence together with any supporting evidence within 28 days of the sealed date of this order
3. The case shall be listed for hearing on the first available date in 2017, with a time estimate of 1½ days. The case is not suitable for hearing by a Deputy High Court Judge.
4. Costs reserved.
5. Liberty to the parties to apply.

Dated: 21 October. 2016

By the Court