Neutral Citation Number: [2009] EWHC 1771 (Admin)

Case No. CO/11937/2008

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

Royal Courts of Justice
Strand
London WC2A 2LL

Date: Monday, 15th June 2009

B e f o r e:

MR JUSTICE BLAIR

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Between:
THE QUEEN ON THE APPLICATION OF ABDULLAH
Claimant

v

(1) SECRETARY OF STATE FOR THE HOME DEPARTMENT

(2) ASYLUM AND IMMIGRATION TRIBUNAL
Defendants

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Ms R Chapman (instructed by Immigration Advisory Service) appeared on behalf of the **Claimant**
Mr T Eicke [with Ms A Sander attending for judgment] (instructed by the Treasury Solicitor) appeared on behalf of the **First Defendant**

The **Second Defendant** did not attend and was not represented

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J U D G M E N T

1. MR JUSTICE BLAIR: This is a claim for judicial review, permission having been granted by Nicol J on 23rd April 2009. The claimant is an Iraqi Kurd who was removed from the UK to Iraq on 10th February 2009. The issue is whether such removal was lawful and, if not, whether the first defendant, who is the Secretary of State for the Home Department, should be ordered to bring him back to the United Kingdom.

2. The issues were valuably narrowed in oral argument and the central issue has been whether the right of appeal given to someone who is refused a residence card based on a durable relationship with an EEA national, in this case a Polish national, has the effect of suspending removal directions. The claimant argues that it does and that, since there was a right of appeal in this case, the removal was unlawful. The first defendant says that it does not and the removal was lawful. The first defendant also argues that the facts of this case would not in any event warrant requiring him to bring the claimant back for the appeal hearing which he submits can take place in the claimant's absence. The claimant argues that he should be brought back so as to be able properly to exercise his in-country right of appeal.

The Facts

3. The facts are as follows. The claimant is an Iraqi national who was born on 1st January 1987. He arrived in the United Kingdom on 25th February 2004 and claimed asylum. By a decision dated 1st April 2004, his application for asylum was refused, but he was granted discretionary leave to remain until his 18th birthday. On 1st December 2004 the claimant made an application for further leave to remain, but this was refused by a decision dated 15th September 2005. The claimant's appeal against this decision was dismissed by a determination promulgated on 7th November 2005. An application to the High Court for reconsideration was refused on 16th January 2006 and the claimant had exhausted his appeal rights against the decision by 27th January 2006. As from that date, he had no legal basis to remain in the United Kingdom.

4. According to the claimant, in late 2006 he met a girl of about his own age called Beata Jadwiga Jasinska, a national of Poland exercising treaty rights in the United Kingdom. They began a relationship. In 2007 they began co-habiting at Ms Jasinska's mother's house, and they subsequently moved together to a rented flat in Gravesend, Kent, where they lived together until the claimant was detained on 25th November 2008. For the purposes of this hearing only, the defendant does not challenge the accuracy of those facts.

5. Following his detention, removal directions for the claimant were set on 27th November 2008. By a letter dated 5th December 2008 entitled "Further Representations", the claimant's representatives wrote to the Borders and Immigration Agency as follows:

> "1. We have been instructed by our client, Mr Abdullah, to act on his behalf with regard to his application as a non-EEA extended family member of a qualified EEA National residing in the UK.

2. Mr Abdullah is making an application for a residence card in the UK, as the non-EEA extended family member of an EEA National residing in the UK . . . We are currently awaiting the necessary documents required by the form; we expect to be in a position to send the document to UKBA European Applications EEA2 in the coming week. We are unable to obtain these documents any sooner as our client is currently detained at Oakington Removal Centre. Some of the documentation needs to be provided by his partner and part of the form needs to be completed by her employer.

3. We would request that all removal directions issued to our client be suspended without further delay, in view of his legitimate right to apply for a Residence Card in the UK under the Immigration (European Economic Area) Regulations 2006."

6. By a letter dated 8th December 2008, the first defendant refused the application for a residence card and confirmed that the claimant would be removed from the United Kingdom to Iraq. The reasons were, in summary, that apart from letters of support from Ms Jasinska and her family, there was no documentary evidence to prove that the claimant and Ms Jasinska were in a relationship, nor any evidence of a durable relationship for two years or more. Further, it was said that there was no evidence to confirm that Ms Jasinska was in fact exercising treaty rights in the UK. The letter further stated that this decision was not subject to a right of appeal.

7. By a letter dated 9th December 2008, the claimant's representatives disputed the requirement to prove a relationship of two years' duration and the refusal to acknowledge an appeal right, and advised that an appeal had been submitted to the Asylum and Immigration Tribunal. It is necessary to set out the grounds of the appeal, which were as follows:

"1. The appellant appeals under Regulation 26 of the Immigration (EEA) Regulations 2006.

The appellant maintains that the stated grounds apply for the following reasons.

2. On 5th December 2008 the appellant made an application for a residence card to an extended family member of an EEA national under Regulation 14(4) of the Immigration (EEA) Regulations 2006. The respondent refused the application on 8th December 2008.

3. The respondent has refused the application on the grounds that the appellant is not in a durable relationship with an EEA national. The appellant contends that he is in a durable relationship with a Polish national and therefore is entitled to a residence card under Regulation 17(4) of the 2006 Regulations.

4. The appellant contends that the respondent's decision errs in its

assessment of the appellant's claim. The decision of the respondent proceeded on an incorrect understanding of facts. The respondent fails to properly consider the evidence and makes errors of fact and law."

8. The first defendant responded by letter dated 9th December 2008 rejecting the argument that the refusal of the EEA application was wrong and that the claimant had an in-country right of appeal. The letter noted that the claimant had been advised that it might be necessary to obtain an injunction preventing his removal from the United Kingdom.

9. As a consequence, by judicial review claim form sealed on 10th December 2008, an application for interim relief was made to Black J, who was the duty judge that day. She made an order that the first defendant was prevented from removing the claimant "until the determination of the judicial review proceedings or further order, whichever shall be sooner". The application was made by Ms Rebecca Chapman, who has represented the claimant at the present hearing. She was unaware of the fact, and so was Black J, that on the same day a decision had been made on the claimant's application to the Asylum and Immigration Tribunal.

10. The Immigration Judge, exercising his jurisdiction under Regulation 9 of the Asylum and Immigration Tribunal (Procedure) Rules 2005, rejected the notice of appeal on the basis that there was no relevant decision. The judge held as follows:

> "1. On 5th December 2008 the appellant who is a non-EEA national made an application for a residence card as the extended family member of an EEA national. On 8th December the respondent issued a decision refusing the application as the decision maker determined that the appellant had failed to prove that he was in a durable relationship with the EEA national as required by Regulation 8(5) of the Immigration (European Economic Area) Regulation 2006. The respondent in her letter of 8th December asserted that the appellant did not have a right of appeal as the relationship with the EEA national had not been proved.
>
> 2. By notice dated 9th December 2008 and lodged with the AIT on the same day, the appellant sought to appeal the respondent's decision. I would note that the appeal relates to the refusal of the residence card and not to a decision made by the respondent to remove the appellant from the United Kingdom.
>
> 3. The appellant's representatives argue that the appellant has a right of appeal pursuant to Regulation 26(3) of the 2006 Regulations on the basis that the appellant has produced proof that he is related to the EEA national as claimed. There is no assertion that the appellant is in a position to produce a Family Permit.
>
> 4. I would observe that there are no papers accompanying the Notice of Appeal which relate to the appellant's relationship with the EEA national. The only papers before me are the notice and grounds of appeal and copy

> letters from the respondent. Accordingly I am not able to identify documents that prove the relationship as required by Regulation 26(3). In any event I consider that Regulation 26(3) has to be read in conjunction with Regulation 8(5) which requires the applicant to prove to *'the decision maker'*, that it is the respondent representative, that he is an extended family member. It is apparent that he has not been able to do so.
>
> Accordingly I find that the appellant fails to satisfy Regulation 26(3) and therefore the appellant has no right of appeal against the decision in issue. I must therefore determine that the Tribunal have no jurisdiction to consider the appeal and on that basis do not propose to take any further action."

11. The application for permission to apply for judicial review was considered by Simon J on the papers. He, of course, <u>did</u> have the Immigration Judge's decision and rightly, in the light of that decision, by an order made on 13th January 2009, ordered that permission to apply for judicial review be refused and any renewal should not act as a bar to removal. On 15th January 2009 the claimant issued an application to renew the application for permission to apply for judicial review. Because the application to renew was not a barrier to removal, the first defendant proceeded to set removal directions in relation to the claimant for 10th February 2009.

12. On 30th January 2009 the claimant's representatives sent a letter to the Asylum and Immigration Tribunal asking it to reconsider the decision of the Immigration Judge. By a faxed letter dated 4th February 2009, the AIT rejected the request on the basis that:

> "The Asylum and Immigration Tribunal (AIT) does not have the legal power to amend its decision, and therefore the procedure set out in the pre-action protocol for judicial review is not applicable. It would also be inappropriate for the AIT to comment upon individual judicial decisions. Immigration Judges of the AIT are independent members of the judiciary who determine each appeal based on their own findings on the facts presented in the case and by applying the law as established to that particular claim."

As a consequence, the claimant issued an application sealed on 9th February 2009 seeking to amend the original claim and to add the Asylum and Immigration Tribunal as a second defendant.

13. On 10th February 2009 Silber J, again rightly on the information before him, refused a further application for a stay of the removal on the papers. The claimant was removed to the Kurdistan region of Iraq by a flight on 10th February 2009. However, following further representations to the AIT, the AIT wrote to the claimant's representatives on 12th February 2009 stating as follows:

> "Following your recent correspondence I have now been able to speak to the Deputy President. He is persuaded that there appears to have been a right of appeal in your case.

The reason for that view, however, is not that stated in any of your letters or grounds. The reason is that Regulation 26 of the Immigration (European Economic Area) Regulations 2006 appears to contain no restrictions applicable to *extended* family members other than relatives of the EEA national. In addition, it is not at all clear where the specific exclusion of the right of appeal by failure to produce independent evidence of two years' relationship is to be found in the Regulations.

In the circumstances the Tribunal is prepared to exercise the power adumbrated in **EA (Ghana)** [2006] UKAIT 00036 and treat the appeal as pending before the Tribunal despite Immigration Judge Bailey's notice, and decide the appeal. Accordingly, the challenge to the Tribunal's decision is now academic and your client will wish to consider his position and remove the AIT as a party to the judicial review proceedings. The Tribunal would not propose to offer any payment as to costs: if the submissions made by yourselves had made reference to the matters set out earlier in this letter the present situation might well not have arisen."

14. The claimant issued a further application on 9th April 2009 seeking permission to amend the application for permission again, and to seek an order that the first defendant use all reasonable endeavours to bring the claimant back to the United Kingdom. On 15th April 2009 Nicol J refused permission on the papers. At the oral permission hearing on 23rd April 2009, however, he granted permission to amend the application and granted permission to apply for judicial review. He made it clear that there was no requirement that the claimant be returned pending the hearing of the substantive judicial review.

The 2006 EEA Regulations

15. Having set out the facts, I come to set out the provisions of the Immigration (European Economic Area) Regulations 2006, upon which much of the argument has turned. These were made to implement Directive 2004/38/EC of the European Parliament and the Council on the rights of citizens of the Union and family members to move and reside freely within the territory of the member states. The Citizens Directive, as it is called, has relevance to the European economic area because it extends to several non-EU countries such as Switzerland and Norway.

16. There are a number of relevant provisions of the 2006 EEA Regulations. The first provision to note defines "EEA decision". This is important, because it conditions appeal rights and the effect of an appeal. By Regulation 2(1), "EEA decision" means:

" . . . a decision under these regulations that concern a person's --

(a) entitlement to be admitted to the United Kingdom;

(b) entitlement to be issued with or have renewed, or not to have revoked, a registration certificate, residence card, document certifying permanent residence or permanent

residence card; or

(c) removal from the United Kingdom."

Regulation 8 defines "extended family member" to include a person who is:

> " . . . the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he is in a durable relationship with the EEA national."

The claimant is not Ms Jasinska's civil partner since he is not married to her. The ultimate issue in the case is whether he can prove that he is in a "durable relationship" with her.

17. Regulation 17 deals with the issue of a residence card which is what the claimant applied for on 5th December 2008. So far as material, it provides that:

> "(4) The Secretary of State may issue a residence card to an extended family member not falling within regulation 7(3) who is not an EEA national on application if --
>
> (a) the relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under Regulation 15; and
>
> (b) in all the circumstances it appears to the Secretary of State appropriate to issue the residence card.
>
> (5) Where the Secretary of State receives an application under paragraph (4) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security."

The claimant relies on this last provision and I shall come back to it.

18. There follow the provisions dealing with the availability and effect of appeals, of which two are directly relevant. Regulation 26(1) provides that:

> "Subject to the following paragraphs of this regulation, a person may appeal under these Regulations against an EEA decision . . . "

Both counsel submitted, correctly in my view, that there is only one right of appeal and it is this regulation which provides it. There follow a number of sub-clauses that place limits on a right of appeal of which Regulation 26(3) provides as follows:

> "(3) If a person claims to be the family member or relative of an EEA national he may not appeal under these Regulations unless he produces --

(a) an EEA family permit; or

(b) other proof that he is related as claimed to an EEA national."

19. Those being the provisions of the 2006 EEA Regulations, I shall try to draw the threads together and show how they were applied in this case. In a fax dated 8th December 2008, the claimant's representatives asserted that a refusal of his application would attract an in-country right of appeal under Regulation 26(3). It appears to have been this point that was picked up by the Immigration Judge in his decision of 10th December 2008 which I have quoted above. That being the provision apparently relied on, he decided that the claimant had failed to provide the documentation required to be produced by Regulation 26(3) and that accordingly there was no pending appeal.

20. When the matter reached the attention of the Deputy President on 12th February, he considered that this was a mistaken view of the law. The defendant's position on the point is set out by Mr Eicke, counsel for the first defendant, in his written argument as follows:

> "While it is not accepted that Deputy President Ockelton had the power to reconsider the decision of Immigration Judge Bailey and reinstate a notice of appeal which he had rejected, in particular in light of the fact that Regulation 9 of the AIT's procedure rules mandates that the Tribunal 'take no further action', the first defendant accepts that the decision of Immigration Judge Bailey was wrong in law, essentially for the reasons identified by Mr Ockelton."

Counsel then sets out the reasoning which leads to that conclusion. It is not straightforward and I need not repeat it. The conclusion is that Regulation 26(3) as drafted does not apply to partners, and therefore does not act to limit the right of appeal of someone whose application for a residence card is made on the basis of being the partner of an EEA national, or make it subject to the stated pre-conditions. Further, the claimant enjoys a right of appeal under Regulation 26(1). Essentially the same analysis is submitted by Ms Chapman for the claimant. As a matter of fact, however, as the above factual account shows, by the time the letter of 13th February came to be written the claimant had been returned to Iraq.

<u>The effect of the right of appeal</u>

21. In her oral submissions for the claimant, Ms Chapman accepted that if his right of appeal was not suspensive, in the sense that the law precluded his removal while the appeal was pending, removal was not unlawful and there can be no question of bringing the claimant back. In my judgment she was right to adopt that position. I should note that in email submissions sent to the court after the hearing, Ms Chapman drew attention to the guidance on the Border Agency website which deals with appeals under the EEA Regulations 2006. I also have been sent by email responsive submissions from Mr Eicke.

22. The guidance provides as follows:

> "2.5. **When can the right of appeal be exercised in-country**?
>
> The in-country right of appeal under Regulation 26 includes the following decisions --
>
> A free standing refusal of a registration certificate, residence card, certificate certifying permanent residence or permanent residence card . . . "

Consequently, it is submitted by the claimant that given it is not explicit from the wording of Regulation 26 of the Regulations that it was intended that appeals under this regulation were to be in-country or out-of-country, the guidance set out is capable of shedding light and resolving the issue in favour of in-country appeals. This would also be consistent with the fact that Regulation 27 is concerned with out-of-country appeals. Thus it is submitted that:

> "The central issue in this application for judicial review whether the claimant's right of appeal is in-country must be decided in his favour. It follows that his removal by the Secretary of State was unlawful and it now falls to the Secretary of State to use her best endeavours to bring him back to the United Kingdom at the first opportunity."

The guidance does not appear to be dealing with suspensive effect and I do not read these further submissions as resiling from the position as stated by counsel in her earlier argument which, in any event, as I have said, I consider to be correct. The central question remains therefore as to the effect of removal in the present case on the assumption that an appeal against the refusal of the application for a residence card was pending.

23. Regulation 29 expressly deals with the effect of appeals under the EEA Regulations 2006 made to the Asylum and Immigration Tribunal. The two substantive provisions are as follows:

> "(2) If a person in the United Kingdom appeals against an EEA decision to refuse to admit him to the United Kingdom, any directions for his removal from the United Kingdom previously given by virtue of the refusal cease to have effect, except in so far as they have already been carried out, and no directions may be so given while the appeal is pending.
>
> (3) If a person in the United Kingdom appeals against an EEA decision to remove him from the United Kingdom, any directions given under section 10 of the 1999 Act or Schedule 3 to the 1971 Act for his removal from the United Kingdom are to have no effect, except in so far as they have already been carried out, while the appeal is pending."

24. For the defendant, Mr Eicke submits that this provision is clear. While an EEA decision refusing admission or an EEA decision to remove a person ceases to have effect while appeal against such a decision is pending, the same does not apply to an appeal against a decision not to issue someone with a residence card. That was the subject of the claimant's appeal in the present case. There is, he submits, no requirement under the Citizens Directive to provide a suspensory right of appeal in these circumstances, and none should be read in.

25. For the claimant, Ms Chapman submits that it cannot have been intended that an appeal against a decision not to issue someone with a residence card was excluded from the ambit of EEA decisions having a suspensory effect. In substance, she submits, in the present case there amounts either a refusal to admit or a decision to remove. Both of these decisions are suspended by virtue of Regulation 29 on the true construction of the Regulations. In the present case, she further submits, this also follows from the order made on 10th December 2008, the effect of which, she argues, was to quash the original removal order. The subsequent order, she submits, must have been taken as a consequence of an EEA decision.

26. Ms Chapman advances an alternative argument which, as put orally, is as follows. Although she accepts that an EEA decision is not one of those listed in section 82 of the Nationality, Immigration and Asylum Act 2002 and therefore not subject to the general section 78 prohibition on removal while an appeal is pending, she submits that it cannot have been intended that a right of appeal in respect of such a decision would not be suspensory in effect. Following the decision of 8th December 2008 by which the application for a residence card was refused, there was in effect a fresh removal decision taken on 26th January 2009 falling within section 82(1)(g). This, she submits, was subject to the section 78 prohibition.

27. I have come to the conclusion that the defendant's construction of Regulation 29 is the right one. It is to be noted that the definition of "EEA decision" in Article 2(1) of the EEA Regulations 2006 distinguishes between EEA decisions as to (1) entitlement to admission; (2) entitlement to various documents including a residence card; and (3) removal. By its terms, Regulation 29 provides that appeals in respect of the first and third categories are to have suspensory effect. The second category is not included and nothing in the Citizens Directive has been cited to require an alternative interpretation. The EEA decision in the present case was a refusal of the claimant's application for a residence card. There was an appeal against that refusal. But both the EEA decision and the appeal, in my view, fell outside the suspensory provisions in Regulation 29.

28. I also accept the defendant's submissions that the appellate regime under the EEA Regulations 2006 and under the 2002 Act are distinct. The original removal directions of 27th November 2008 followed from the fact that the claimant was an overstayer whose appeal rights in respect of his asylum application had been exhausted. The removal directions do not themselves constitute an appealable decision. The refusal of a residence card could not change the nature of the removal directions. Consequently, there was, in my view, no appeal pending at the time of the claimant's removal on 10th February 2009, the effect of which, under either Regulation 29 or section 78, was to prevent the claimant's removal. In particular, the appeal against the decision refusing to

issue him with a residence card did not have that effect. For that reason, his removal on that date was not unlawful.

29. That conclusion would be sufficient to deal with the substance of the claim but, in the light of the argument, there are a number of other matters I should cover.

The effect of Regulation 17(5)

30. It will be recalled that this provides that:

> "Where the Secretary of State receives an application under paragraph (4) [in other words an application for the issue of a residence card to an extended family member] he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security."

The claimant did apply on 5th December 2008, as I have explained, for a residence card as an extended family member. It is submitted by the claimant that this provision was not complied with in his case. Reliance is placed primarily on the timing of the application and its refusal.

31. One must go to Regulation 8 to see the definition of "extended family member", and by sub-clause (5) the applicant must be the partner of an EEA national who can prove to the decision-maker that he is in a durable relationship with the EEA national. While I have some sympathy for Ms Chapman's point that this creates, as she puts it, something of a chicken and an egg situation, as a matter of construction I consider that the defendant was right to submit that without proof of a durable relationship the Regulation 17(5) duty does not apply. That becomes clear when the Regulations are considered in the light of Article 3(2) of the Citizenship Directive, by which the obligation to undertake an extensive examination applies to a "partner with whom the Union citizen has a durable relationship, duly attested".

32. Proof of a durable relationship was not thought to have been provided in the application of 5th December 2008. Indeed, I think that the claimant accepts that it is only in the light of subsequent material that such proof might be thought capable of subsisting. The question of whether there is or not a durable relationship will fall to be determined on the appeal.

Does the appeal have any real prospect of success?

33. The defendant submitted that even on the information now available, the claimant has no real prospect of establishing a durable relationship with Ms Jasinska. He further submitted that Ms Jasinska is not a qualified person within the meaning of the EEA Regulations 2006. The latter submission is based on the point that while she, as a Polish national, is an EEA national for the purposes of the general definition of that term in the 2006 Regulations, her entitlement to reside and work in the United Kingdom is subject to the transitional regime introduced by the Accession (Immigration and Worker Registration) Regulations 2004. The derogation from the rights otherwise

available to EEA nationals under the EC Treaty provided for by this Regulation was recently upheld by the House of Lords in **Zalewska v Department for Social Development** [2008] 1 WLR 2602.

34. However, I agree with Ms Chapman that it would not be appropriate for this court to express a view on either of these issues. They will fall to be determined on the appeal in due course.

<u>Would this have been a case in which to order return</u>?

35. In view of my conclusion as to the law, this question does not arise. It is right to say, however, that in any event the present facts are far removed from those considered by Sir George Newman in **N v Secretary of State for the Home Department** [2009] EWHC 873 (Admin) in which return was ordered. The appeal is posited on the basis that the claimant has a durable relationship with Ms Jasinska, who can give evidence on the appeal and call witnesses. The claimant is legally, and I may add ably, represented. The fact that the defendant will not be able to cross-examine the claimant on his evidence should not, in the circumstances of this case, affect the weight to be had given to that evidence. But those are matters for the Asylum and Immigration Tribunal in due course. The important point is that the claimant has his right of appeal and the AIT will be able to ensure that he can exercise it fairly given the circumstances. The application is accordingly dismissed and I shall hear counsel as to any consequential orders. Ms Chapman?

36. MS CHAPMAN: My Lord, perhaps I should go first.

37. MR JUSTICE BLAIR: I am aware that Mr Eicke is not present, so I think that would be appreciated by me.

38. MS CHAPMAN: My Lord, a number of issues arise. The first is that I am instructed to request permission to appeal to the Court of Appeal. Given the underlying substantive issue, this is something it may be appropriate for the court to consider, as essentially there is no existing jurisprudence on the issue of the effect of the Regulations on both the appeal right and specifically in relation to durable relationships. That is, in essence, my submission on that point.

39. MR JUSTICE BLAIR: Shall I hear from you, Ms Sander? If you feel unable to say anything, please do not, but I do not know what your instructions are.

40. MS SANDER: I have been told that we are not resisting any application for permission to appeal.

41. MR JUSTICE BLAIR: I think what I shall do is I shall record that, but I shall leave it to the Court of Appeal to decide whether to grant permission or not. That, I think, is the appropriate course in a decision of this kind. I know in your very great experience you, Ms Chapman, I think, would expect that.

42. MS CHAPMAN: Yes, my Lord. In respect of the issue of costs and funding, the claimant, as I am sure your Lordship is aware, even though he is not here he was legally funded and the Legal Services Commission have continued to fund his application.

43. MR JUSTICE BLAIR: That should continue, because part of the premise of the judgment is that he is legally represented.

44. MS CHAPMAN: Indeed, yes. On that basis we would be requesting a detailed assessment of his costs.

45. MR JUSTICE BLAIR: Certainly. Is there anything else I can say to assist on that subject?

46. MS CHAPMAN: That that should continue for the purposes of the AIT appeal. I believe so, my Lord. I am hoping we should not have difficulties with that with the AIT.

47. MR JUSTICE BLAIR: I have refused permission to appeal and ordered the assessment of costs. Ms Chapman, can I ask you kindly to do this. As you see, we do not have an associate given the pressure on the Administrative Court at the moment. Can I ask you kindly to draw up an order. It can be short. If you then copy it to the defendant and copy it to me, I will make sure it is signed.

48. MS CHAPMAN: Yes, my Lord.

49. MR JUSTICE BLAIR: I am most grateful for your assistance, if I may say so.