

The Honourable Mr Justice Silber :

I Introduction

1. The two issues finally raised at the hearing this application concern the approach that should be adopted by the Secretary of State for the Home Department (“the Secretary of State”) to the Council Regulation (EC) No343/2003 (“The Dublin Regulations II”). The first issue concerns the steps that should be taken by the Secretary of State to inform the asylum seeker that his or her claim is being considered under the Dublin Regulations II. The second issue relates to the obligations of the Secretary of State to pass on to a foreign government information supplied by the asylum-seeker to the Secretary of State only after that foreign government had pursuant to its obligations under the Dublin Regulation II accepted responsibility for an asylum seeker present in the United Kingdom

2. Before members of the European Community made the Dublin Regulations II and its predecessor treaty, there were untold problems in the United Kingdom about which country should be responsible for handling the asylum claims of a person who had been refused asylum previously in another European country before applying for asylum in the United Kingdom. The objectives of the Dublin Regulations II and its predecessor treaty were to remedy this disturbing state of affairs and this is shown in the full title of the Dublin Regulations II which explains that its purpose is of

“establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national”.

3. Miss Geraldine Peterson counsel for Yong Qing Chen (“the claimant”), who is a Chinese national, makes two submissions. First it is contended that the Secretary of State should not have made a formal request to France on 19 July 2006 to take responsibility for the claimant pursuant to the Dublin Regulations II without having previously notified the claimant of this fact. Second, it is contended that when after France had on 28 July 2006 accepted responsibility for the claimant under the Dublin Regulations II and certified the claimant’s asylum claim under the *Asylum and Immigration (Treatment of Claimants etc) Act 2004*, then in the light of information which subsequently became available relating to the claimant’s stay in China in 2005 and 2006, steps ought to have been taken by the Secretary of State; such steps which the claimant contends should have been taken including ensuring that the United Kingdom accepted responsibility for determining the claimant’s claim for asylum and notifying the French authorities of the claimant’s stay in China. Lloyd Jones J gave permission to the claimant to bring this claim.

4. It is common ground that the outcome of these applications depends on an interpretation of the Dublin Regulations II and the thrust of the claimant’s case is that the decision of the Secretary of State to remove the

claimant to France constituted a breach of the obligations of the United Kingdom under the Dublin Regulations II.

II The facts

5. The claimant claimed asylum in France in 2003. Her claim for asylum was refused by the French authorities by a letter dated 27 April 2004. Her subsequent appeal against that decision was dismissed on the 2 February 2005.

6. There is a serious dispute as to where the claimant was in the subsequent period until 3 July 2006 when she claimed asylum in the United Kingdom. The claimant contends that she went to China from May 2005 to April 2006, but the defendant disputes this allegation. This is an important, if not a crucial, dispute because article 16 (3) of the Dublin Regulations II provides that, subject to an exception which is inapplicable in the present case, the obligations of France to take back a person in the claimant's position:

“shall cease where the third-country national [i.e. the claimant] has left the territory of the Member States for at least three months”

7. The claimant's case is based on the contention that as she went to China, which is not a “Member State” for a period of more than three months after she had applied for asylum in France, the machinery envisaged in the Dublin Regulations II does not apply to her. Thus the claimant contends that the Secretary of State could not invoke the Dublin Regulations II with the consequence that the claimant cannot lawfully be removed to France. I will return to consider whether the claimant did go to China for at least three months after she left France in paragraphs 16 to 22 below

8. Returning to the chronology, the claimant had no documents when she was interviewed in Liverpool in July 2006 when she claimed to have arrived in the United Kingdom on 2 May 2006 on a false passport. She provided no evidence in support of her travel route. Little or no explanation has been given as to why she did not claim asylum on arrival in the United Kingdom or until 3 July 2006.

9. During her subsequent interviews in the United Kingdom, the claimant falsely denied having previously claimed asylum or having had her fingerprints taken despite being expressly warned that any failure to answer questions truthfully might damage the credibility. Subsequent investigations disclosed the previous French application by the claimant for asylum to which I have already referred in paragraph 5 above and it also transpired that she had had her fingerprints taken in France.

10. On 10 July 2006 the claimant was served with a notice stating that she was liable to be removed from the United Kingdom as an illegal immigrant. On 17 July 2006 she lodged a claim pursuant to articles 2 and 3 the European Convention on Human Rights. This was later refused and certified as clearly unfounded on 15th August 2006 and that decision is not subject to any form of challenge in these proceedings

11. On 19 July 2006 a letter from the Third Country Unit at the Home Office (“TCU”) informed the claimant that her claim was being considered in accordance with the Dublin Regulations II. As it is being claimed very belatedly that the claimant did not receive this letter, I will have to consider if the claimant received it in paragraphs 26 and 27 below. As I have explained, the defendant made a formal request of France to take responsibility for the claimant pursuant to the Dublin Regulation. On 28 July 2006 the French government agreed to “take back” the claimant under article 16 (1) (e) of the Dublin Regulations II.

III. The Dublin Regulations II.

12. The Dublin Regulations II are directly applicable in Member States and I have already set out their objectives in paragraph 2.

13. The preamble to the Dublin Regulations II refers to the need to establish a common European asylum system and a workable method for determining which State would be responsible for the examination of an asylum application. The method for determining the state responsible must according to recital (4) of the Dublin Regulations II (with my emphasis added):

“...be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for determining refugee status and not to compromise the objective of the rapid processing of asylum applications”

14. The Dublin Regulation II set out a regime for dealing with claims for asylum and explain which member state shall be responsible for determining the refugee status of a person who claims asylum in more than one country. The basic principle applicable to member states is that if a person has unsuccessfully claimed asylum in one country but then makes a claim for asylum in a second member state, then that person would as a general rule have their claim refused in the second state and be returned to the first country where his or her asylum application would be considered. This procedure is exceptionally not to apply and the obligations of the first country in which asylum was claimed (which in the present case is France) would cease where as I explained in paragraph 6 above *“the third-country national (i.e. the claimant) has left the territory of Member States for at least three months”* (article 16(3) of the Dublin Regulations II).

IV The Issues

15. The issues raised on this application are:-

(a) whether the claimant was in China for more than three months between leaving France and arriving in the United Kingdom in 2006 with the result that

the Secretary of State was not entitled or obliged to request France to accept the return of the claimant ;

(b)whether the Secretary of State had an obligation to notify the claimant before a certification was made under the Dublin Regulations II and if so, whether such an obligation has been complied with; and

© what obligation (if any) did the Secretary of State have after France had accepted responsibility for the claimant under the Dublin Regulations II in July 2006 in relation to information communicated on behalf of the claimant to the Secretary of State in November 2006 that she had been in China for a period of more than 3 months in 2005 and 2006.

VI Was the claimant in China for more than three months between leaving France and arriving in the United Kingdom in 2006 with the result that the Secretary of State was not entitled or obliged to request France to accept the return of the claimant?

16. The case for the claimant is that she was in China between May 2005 and April 2006 as she explains in a witness statement. She has not adduced any official documentation such as her passport, her flight ticket or any other document which indicates when she arrived or left China. This is surprising.

17. The only evidence she adduces are medical records, a bank book and some information about a mobile telephone. The medical records merely show that somebody with the claimant's name had been treated in China on 20 October 2005 but the claimant has not confirmed in a witness statement that she is the person referred to in those records. Nevertheless even if that the records related to the claimant, they do not show when she arrived in China or when she left that country. The bank book shows withdrawals from an account in a Chinese bank were made between 17 July 2005 and 17 August 2005.

18. It is clear that those hospital documents, the bank documents and the telephone bill do not in themselves show that the claimant was in China but the claimant places reliance on a report by Mr Richard Edmonds. He explains that his report is based upon "*a mixture of personal knowledge, unpublished sources as well as professional contacts*". He says that "*after consulting with several experts based upon documentation given, it appears that it would be difficult to open a bank account from overseas*".

19. In my view the information in the report does not assist the claimant. First, Mr Edmonds does not give the sources of his information. Second, he does not exclude the possibility of opening a bank account from overseas but he merely says that it would be "difficult" to do so. Third, even if a bank account could only be opened in China there is no cogent evidence as to when the claimant opened it. Fourth, there is no evidence or even an assertion that the withdrawals shown on the bank record could only been made from China or indeed that the claimant made them. Fifth, even if the withdrawals from the bank account were made in China by the claimant, they do not show that the claimant was there for three months as they do not span that period. Finally there is no witness

statement or other evidence from the claimant stating that she personally withdrew this money in China.

20. Mr. Edmonds' evidence in relation to the mobile phone account is even less helpful to the claimant's case because he explains that all that is needed to get a mobile phone agreement is to "show a National ID or a passport". Significantly, there is nothing in his statement which shows that it must be opened personally by a party to the contract and the claimant does not explain how and when she opened the account..

21. I stress that it is striking that

- i. the claimant has not referred to the matter of the bank account, the medical visits or the mobile telephone account in her witness statement;
- ii. she only raised the claim that she had been in China more than four months after she had arrived and indeed only on the day before her planned removal to France;
- iii. When the claimant was interviewed on arrival in the United Kingdom, she failed to mention that she had returned to China and that she had stayed there for 11 months;
- iv. The claimant lied when she denied in her screening interview that she had claimed asylum elsewhere as she had not merely claimed it in France but that she had also appealed the decision to refuse her application; and
- v. The claimant told a further lie when she was interviewed in the United Kingdom when she said that her fingerprints had not been taken elsewhere as they had been taken in France when she had sought asylum there.

22. For those reasons, I would have no hesitation in rejecting the claim that the claimant can invoke article 16(3) of the Dublin Regulations II. Indeed, in my opinion it would have been **Wednesbury** unreasonable to reject the defendant's contention to the contrary. A further difficulty for the claimant is that in order to assist in the interpretation of the Dublin Regulations II, there are further regulations which are Council Regulation (EC) 1560/2003 ("the Implementation Regulations"). In article 4 of the Interpretation Regulations, it is provided that in relation to among other things that the obligation specified in article 6 (3) of the Dublin Regulations II (namely the Dublin Regulations II ceasing to have effect when a person leaves a member state for more than 3 month):

"the fact that the obligations have ceased on the basis of [that provision] may be relied on only on the basis of material evidence or substantiated and verifiable statements by the asylum seeker"(my emphasis)

23. For all those reasons, the application must fail but as I heard further submissions, I will deal with the other points raised on the application.

VI Did the Secretary of State have an obligation to notify the claimant before a certification was made under the Dublin Regulations II and if so, has such an obligation has been complied with?

24. Miss Peterson on behalf of the claimant contends that there was an obligation on the part of the Secretary of State to notify the claimant in advance that it was proposing to invoke the Dublin Regulations II. She points out that in article 3 of the Dublin Regulations II, it is stated that

“asylum seeker shall be informed in writing in a language that he or she may reasonably expected to understand regarding the application of this regulation, it’s time limits and it’s affects”.

25. She relies on other provisions to support her contention that before the Secretary of State invokes the Dublin Regulations II, the asylum seeker concerned should be informed. It is unnecessary to decide whether that provision imposes an obligation to notify the asylum seeker in advance that the Dublin Regulations II are to be invoked because there is clear evidence that by a letter dated 18th July 2006, the TCU of the Home Office had informed the claimant that her claim was being considered in accordance with the Dublin Regulations II. For the purpose of completeness, I should add that my provisional view is that the asylum seeker does not have the right to be informed that the Dublin Regulations II are to be invoked against them but even if the asylum seeker does have that right, the claimant was indeed notified.

26. The claimant’s counsel does not dispute that this letter of 19 July 2006 would constitute adequate notification if it had been received by the claimant but Miss Peterson contends that it was not received by the claimant because she had moved from the address to which that notification ha been sent. The claimant’s erstwhile legal adviser the Immigration Advisory Service had in a letter dated 25 July 2006 informed the Secretary of State’s representative that the claimant *“has moved address”*.

27. That letter does not state that the claimant had moved at a time when she would have received a letter of 19 July 2006. Significantly there is cogent evidence from the Home Office that the letter of 19 July 2006 was actually sent on that day and that it has not been returned by the postal authorities. The claimant has not made a witness statement in which she has stated that she had not received this letter or even mentioned this fact in the witness statement which she did make. In those circumstances, I have no doubt in finding that advanced notification of a decision under the Dublin Regulations II had been made to the claimant by the letter of 19 July 2006 which substantially preceded the Third Country certification made on the 15th August 2006.

VII What obligation (if any) did the Secretary of State have after France had accepted responsibility for the claimant under the Dublin Regulations

II in July 2006 in relation to information communicated on behalf of the claimant to the Secretary of State in November 2006 that she had been in China for a period of more than 3 months in 2005 and 2006?

28. Miss Peterson also contends that after the Secretary of State was told that the claimant had been in China for more than 3 months by a letter dated 30 November 2006, the Secretary of State then became under an obligation to take the matter up with France or to assume responsibility for the claimant's asylum claim. This is disputed by Mr. Alan Payne counsel for the Secretary of State.

29. It is common ground between counsel that until the Secretary of State received the letter of 30th November 2006, the Secretary of State did not know and could not have reasonably known that the claimant was even contending that she had been away in China.

30. I am unable to accept the claimant's submission because it runs in the face of the scheme set out in the Dublin Regulations II. I have already explained that the purpose of the Dublin Regulations II as set out in the recital to the Dublin Regulations was "*to determine rapidly the Member States [for examining an asylum application lodged in one of the member states by a third country national]*".

31. Indeed the position is made clear by article 4 of the Implementation Regulations which states

"When a request for taking back is based on data supplied by the Eurodac Central Unit and checked by the requesting member State in accordance with ... the requested Member State shall acknowledge its responsibility unless the checks carried out reveal its obligations have ceased".

32. I attached importance to the mandatory nature of this obligation which is shown by the use of the word "shall" which demonstrates that the obligation is mandatory. There is no provision in either of these regulations or any other regulation which requires or even enables a country to withdraw a request to a member state under the Dublin Regulation in the situation arising in this case. As I have explained, the pre-amble to the Dublin Regulations II explains the need to deal with the asylum applications "rapidly" and that shows that a speedy decision is required rather than a long drawn-out procedure.

33. The matter was considered by Wilson J in **R (G) v The Secretary of State for the Home Department** [2004] EWHC 2848 Admin when he said in relation to determining which member state would be responsible for the substantive examination of an application for asylum (with my emphasis added) :

"..28...the process must be undertaken by reference to the upshot of an enquiry conducted by the member State with which the application for asylum is first lodged and at the time when it is lodged"

34. Subsequently in **AA (Somalia) v Secretary of State for the Home Department** [2006] EWCA Civ 1540, Laws LJ giving the only substantive judgement of the Court of Appeal said of the passage in Wilson J 's judgment which I have just quoted “ [26] ...*I find this reasoning persuasive*”. This shows that the process of determining where the substantive application for asylum is determined in a case such as the present case, the application of the Dublin Regulations II is considered once and for all with the application when it is first lodged and at the time that it is lodged. Therefore it follows that by 30 November 2006 when the Secretary of State was first told of the alleged trip of the claimant to China, it was too late to do anything about the certification under the Dublin Regulations II which had been accepted by France. To reach a different conclusion would undermine the purpose of the Dublin Regulation II which is, as I have explained, to set out a framework which would lead to rapid conclusions.

35. There is a further difficulty for the claimant which would also mean that the case for the claimant is doomed to failure and that is because the allocation of responsibility between member states under the Dublin regulations cannot be challenged by an individual save on human rights grounds and perhaps on the basis of irrationality, neither of which are relevant to the present case. The matter was made clear by Laws LJ who said when giving the only substantive judgment of the Court of Appeal in **R (AA Afghanistan) v Secretary of State for the Home Department** [2006] EWCA Civ1550.

“13...I certainly accept in general terms an asylum claimant cannot challenge (save perhaps on human rights grounds) the allocation of responsibility between states for the determination of the claim that has been affected by the proper application of [the Dublin regulations II]”

36. For the purpose of completeness I should point out that further support for this view can be found in **Mota v Secretary of State for the Home Department** [2006 EWCA Civ1380] because Pill LJ (with whom Moses LJ agreed) refused permission to appeal against a decision to the effect that

“once there had been acceptance of the transfer application the applicant is not entitled to challenge the transfer. The judge found that the regulations confer no rights upon individuals to challenge decisions between states not withstanding that the regulations are directly applicable in the member states”

VIII. Conclusion

37. Notwithstanding the valiant and sustained submissions of Miss Peterson who had very limited or no material to support them, the defendant succeeds on every issue and this claim must be dismissed.