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CO/8187/2006

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

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 15th July 2008

B e f o r e:

MR JUSTICE BLAKE

Between:
THE QUEEN ON THE APPLICATION OF NATACHA NGIRINCUTI
Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Defendant

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(Official Shorthand Writers to the Court)

Mr Alex Goodman (instructed by Messrs Sutovic & Hartigan solicitors) appeared on behalf of the **Claimant**
Mr Parishil Patel and Mr A Deakin (instructed by the Treasury Solicitor) appeared on behalf of the **Defendant**

J U D G M E N T
(As Approved by the Court)

1. MR JUSTICE BLAKE: This is an application for judicial review of decisions taken on 28th September and 19th October 2006 by or on behalf of the Secretary of State to the effect that material enclosed and fresh representations made by the claimant did not amend to a fresh claim to asylum within the meaning of the immigration rules. There is also a challenge to the historic detention of the claimant in Yarls Wood Immigration Detention Centre from 5th January 2006 to December 2006, when she was granted bail. It is said that she should either never have been detained at all once it was clear that she had made a complaint of rape or alternatively that the particular history of frustrated removals, documentation problems and events after the dismissal of her asylum appeal meant that she should have been released.

2. Permission to challenge both decisions was granted on renewal of the application for permission by Collins J on 7th March 2007. The defendant had served acknowledgment of service and summary grounds on 2nd November 2006 but thereafter did not respond to the grant of permission until very shortly before the hearing of this case.

3. As a result of the claimant's complaints that very late service of witness statements and fresh documents relating to the decision to detain and review the necessity for detention and also fresh legal arguments contained for the first time in the defendant's skeleton argument, served, I believe, on 11th July on the Friday before this case was due to be heard on the Monday, I have, after some hesitation, acceded to a request by the claimant for an adjournment of the detention issue and shall at the conclusion of this judgment give directions for future determination of this claim on its merits.

4. I have, however, concluded that the claimant is not prejudiced by the late service of the skeleton argument in respect of the principal issue in this case that I shall call the fresh claim point and, accordingly, that claim will proceed to judgment and I shall accordingly proceed on the assumption, although without deciding the issue, that the claimant was lawfully detained in Yarls Wood Detention Centre throughout the period in question.

5. It is now necessary to go into a little more detail into the chronology of this case. The claimant is a young woman from Burundi in Africa. She claimed political asylum at the Croydon screening unit on 16th December 2005 and, as a result of information then available to the Home Office, was treated as an illegal entrant. On 5th January 2006, it was decided that she should be detained at the Yarls Wood Immigration Reception Centre and that her claim to asylum would proceed under the fast track procedure whilst she was in detention. In accordance with the scheme established in the detention centre, she went through a screening medical assessment by a nurse upon her arrival at Yarls Wood and, on the pro forma completed by the nurse, it is recorded that she has not had a serious illness but she has had a serious injury: "yes", "rape", and gives the dates, July 2005. She records that she has had some recent gynaecological problems but also it was recorded that she has never been pregnant or had reason to believe she had been pregnant and little else of significance was recorded on that occasion in the pro forma.

6. On the following day, 6th January 2006, there was a medical examination by Dr Kahn, although the details of that examination appear to be very scanty, certainly on the papers before me, and there appears to have been no physical examination of the whole body of the claimant and no investigation of her sexual health consequent upon the allegation that she had made to the nurse of rape.

7. On 9th January she had her asylum interview, a record of which has been provided to the court, and it is apparent that her essential claim was of sexual violence on two occasions in May and July of 2005 at the hands of government soldiers in Burundi and that is said to be connected with the political sympathies of her family, particularly her father, in the context of ethnic and political divisions in that country between the Hutu and Tutsi ethnicities. It is pointed out that in the course of that interview she was asked the question whether she had any scars. She pointed merely to a scar on her foot and indicated that that was not caused to her whilst in detention on those two occasions and in answer to the question "when you left detention did you receive any medical treatment?" she said "I used to take painkillers only". She also indicated that her family had later been killed. It was her case that she was ill treated in detention by being sexually assaulted and by being beaten, although particulars of the beating were not elicited.

8. On 16th January 2006, shortly before the hearing of her appeal, the solicitors then acting for this claimant commissioned a medical report by Dr Garwood, who is a psychiatrist and who examined the claimant on that day and provided an extremely brief report noting 15 aspects of ill treatment claimed and noting complaints about her state of mind and then a brief conclusion:

> "Evidence was elicited to support the claim to have been violated and psychological[ly] traumatised in the manner described."

9. Her asylum claim having been rejected by the Secretary of State as not being credible in material respects, her appeal was heard on 19th January 2006 by Mr Grant, an Immigration Judge. He dismissed the appeal on 20th January, dismissing her narrative account of sexual assault and other ill treatment as not being credible and concluding that there was no independent medical support for her complaints of rape. I will treat as being read into the record paragraphs 15 and 16 of the immigration judge's conclusions in which he made his reasoning plain:

> "15. The appellant claims to have been taken away on 01 July and she has told Dr Garwood that she was raped every day for a week. I do not believe her. The objective evidence militates against this being true. It allows for armed skirmishes but by July the country was engaged in the election process. Again her father is said to have procured her release by bribery but again there is no evidence that he could have known what had happened to her or where she had been taken. She has written in her statement and told me at the hearing that he had a friend who was a soldier but if the family was being harassed on such a regular basis to include hand-grenades being thrown into their pub, I find it implausible that he could have been sufficiently friendly with a solider that he could

> pay a bribe to obtain the appellant's release but not to stop the harassment of his pub which was his sole means of support.
>
> 16. Rape is a most horrific crime and a genuine victim of this offence deserves the utmost sympathy. Rape is used as an instrument of persecution in Burundi. At the same time I deprecate what I consider to be an attempt to exploit rape for the purposes of making a claim for asylum. The appellant remained in Bujumbura after her release from what she claims is her second detention and then returned home. According to her story this was a fatal move because she was returning to almost certain death. Dr Garwood has not addressed the fact that after each detention during which she was raped and severely beaten the appellant returned to both home and work and contented herself with taking painkillers. She then managed to arrange her departure from Burundi to include spending a month in Rwanda. Now that she has arrived in the UK she is alleged to be suffering from PTSD. I find that the appellant has left Burundi because she wanted to better herself economically and although Dr Garwood is clearly an expert in his field, I find that he has (possibly through shortness of time) taken the appellant's story at face value and I place no weight on his report or its conclusions."

10. Thereafter, an application for reconsideration by the Asylum and Immigration Tribunal was refused. On 7th February it appears that removal to Burundi was frustrated by the claimant's unwillingness to board a flight and thereafter there is a sequence of problems about removals with which this case will no longer be concerned since that goes to the question of the legality of her continued detention. It is important to note, however, that in February she was diagnosed as suffering from HIV and that led to a number of examinations of her sexual health outside the detention centre by Bedford Hospital.

11. The claimant not having been removed, her present solicitors became instructed and, on 30th August 2006, instructed a Dr Arnold to examine her, which he did on that date and reported a little later. The contents of that report will be examined in one moment. The report of Dr Arnold was the basis of an application to the Secretary of State that there were was fresh material requiring fresh determination and, if refused, a fresh appeal on the asylum case. Those representations were first refused on 28th September 2006. It appears that at that stage those determining the claim on behalf of the Secretary of State had not seen Dr Arnold's report, although it was referred to in the representations. There may be an issue as to whether the report was omitted from that letter or that it had got lost in between the first place it was sent to in the Home Office and the determination centre, which this court need not be troubled with. There then followed a letter before action and acknowledgment of judicial review but, on 6th October, a supplementary report from Dr Arnold was sent. Both the second and first report were then sent to and received by the fresh claim determination authority within the Home Office and that led to a fresh negative decision, essentially the decision under challenge in this case, on 19th October 2006.

12. Dr Arnold is a specialist in wound examination and he has extensive training and experience in assessing claimants who allege they have been tortured, having been

trained by the Medical Foundation for the Care of Victims of Torture, and has written some 70 Medico-Legal reports. In his report, he helpfully distinguishes between the account that he obtained from the claimant as to her ill treatment; her complaints of her present medical problems; her previous medical history such as is known, there being no record for Burundi; the clinical notes that he had seen from Yarls Wood, she having in the meantime now been there for some several months; what he observed on his own examination of the claimant; and his overall opinion. It is perfectly true that, in eliciting an account from the claimant, he listed more by way of detail than had previously been placed by the claimant before either the Immigration Judge or the interviewer on her asylum interview, namely that, whilst she was in detention she told Dr Arnold that she was whipped with wires or cords and raped.

13. Dr Arnold noticed on examination four areas of scarring. There were first the two scars to her right foot that had been bought to the attention of the interview officer in the asylum interview; secondly, there was diffuse hyper-pigmentation around her left knee; thirdly, there were two linear scars on her back, the longer of which measures approximately 4cm; fourthly, there was a small 1cm linea scar over her scalp. He also noted that her startle and tendon reflexes are hyperactive and that she was visibly distressed when asked to describe the rapes and her parents' deaths. He was aware of the discovery of the illnesses, which may be or were sexually related, of this claimant and he records his opinion in five paragraphs as follows:

> "O1) The scars on the feet, scalp and back are consistent with being lashed by a wire as described by her.
>
> O2) The hyper-pigmentation around the knee is post inflammatory hyper-pigmentation, seen after the resolution of sever bruising. It is consistent with a severe blow to that site with a blunt object during beatings.
>
> O3) She is HIV positive and has a cervico-vaginal infection, as well as potentially dangerous changes to the cervix indicative of a pre-cancerous state. There is no evidence that any of these conditions were present before the rape. In a woman who describes rape, whatever her other sexual history, the rape(s) must be considered to be a likely cause of sexually transmitted illness. Each of the three illnesses alone - HIV infection, gynaecological infection and pre-malignant cervical changes, could have readily have been caused by rape. **Taken together, it is improbable that such a young woman could have been so harmed by any sexual contact other than rape.** Rape is frequently used as a form or torture in many parts of the worlds.
>
> O4) Her psychological symptoms are consistent with a diagnosis of post-traumatic stress disorder (PTSD) as diagnosed by the criteria of the International Classification of Diseases, 10 edition (ICD 10)...
>
> O5. The palpitations and hyperventilation, overactive startle response and reflexes are consistent with panic attacks. These are frequently observed

in people with PTSD including that found following rape and torture." [emphasis added]

14. After he had prepared his original report, he was then provided with further material, including the report that he had not seen previously of Dr Garwood, the psychiatrist, whose previous conclusions have already been noted. He agreed with Dr Garwood's conclusions in respect of PTSD and added in respect of the sexual illnesses:

> "While this HIV can be contracted through consensual sexual activity or non-sexual means, it is a reasonable likelihood that a person who is HIV positive and states that they have been raped has indeed acquired the infection by this means. I understand that after describing the rapes and torture to clinical staff at Yarl's Wood, she was referred to the chaplain, Mr Larry Wright, for counseling and received tablets for sleep disturbance and depression. (She discontinued these because they did not appear to her a beneficial effect.) Thus, it is probable that Yarl's Wood clinicians have been treated her for the consequences of rape."

He noted the significance of the pre-cancerous legions of the cervix and the abnormal cell activity and indicated that medical research suggested that stress accelerates the development of malignancy in such patients, giving some learned references for that proposition.

15. The Secretary of State, in this case acting through her staff and her predecessor, reached the conclusion on 19th October to which reference has been made. She had a difficult task in this area of administration of the law. On the one hand, she is entitled to examine the fresh material to see whether it leads her to a change of her decision to refuse asylum and to grant asylum. That involves some engagement with the substance of the material. However, on the basis that the Secretary of State was certainly entitled to continue to refuse asylum if she took a particular view of the strength of the fresh evidence that was taken, she is then called upon to make a further decision, namely whether the material is fresh material and whether it is capable of altering the adverse decision on appeal that had been taken in this case. In respect of the latter decision, she has to stand back from reaching merely her own conclusions on the facts of the case but to make an assessment as to what its potential impact may have been on others. This is spelt out in the relevant immigration rule, Rule 353 of HC 395, that reads as follows:

> "When a human rights or asylum claim has been refused and any appeal related to that claim is no longer pending, the decision maker will consider any fresh submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:
>
> (i) had not already been considered, and
>
> (ii) taken together with the previously considered material, created a

realistic prospect of success, notwithstanding it rejection."

16. There is ample learning on the question of the task of the Secretary of State and the court and I have been referred by both parties to the leading cases in the Court of Appeal of WM(DRC) v Secretary of State for the Home Department [2006] EWCA Civ 1495, a judgment of Buxton LJ, at paragraphs 6, 7 and 10, and the case of AK (Afghanistan) v Secretary of State for the Home Department [2007] EWCA Civ 535, a judgment of Toulson LJ, at paragraphs 22 and 23. Summarising for present purposes, the learning shows the following:

17. (i) It is for the Secretary of State to reach a judgment on the capacity of the fresh material to disturb the adverse conclusions made below.

18. (ii) This court's function is limited to review of that decision.

19. (iii) The Secretary of State in reaching the decision has to bear in mind that the test to establish a proposition of fact in asylum claims is whether there is a reasonable degree of likelihood that the event occurred rather than whether it probably did occur.

20. (iv) The question on a fresh application is whether there is a reasonable possibility that the fresh material could lead a possibly self directing immigration judge to a different conclusion on applying that standard of proof.

21. (v) In this part of the decision making process, the Secretary of State is not determining the hypothetical appeal itself but whether the material has the capacity to make a difference. There may be a point where the strengths or weaknesses of the material can only be examined further in the appeal process itself rather than on a summary assessment of the documents.

22. (vi) The court will review the Secretary of State's assessment overall with anxious scrutiny to see whether the factual issue it goes to could make a difference in the appeal and whether the material could make a difference to the factual issue.

    In this case the central issue is whether there is significantly different material on the issue of rape and sexual assault.

23. I have already referred to the central findings of the immigration judge on this question. He noted that there was a claim to PTSD but clearly did not accept it and did not derive any assistance from Dr Garwood's report, which he appeared to conclude had been limited in time in its preparation and seems to have been based entirely upon the complaints made by him to the claimant rather than objective observation. It is, of course, common ground that Dr Arnold's reports had not previously been considered and they add aspects of the medical assessment to the claim that were not before the immigration judge.

24. There are the three interrelated issues: first, the four sites of scarring and injury consistent with a beating; second, the independent assessment made by Dr Arnold of PTSD based upon partly what he was told, partly what he observed and partly what he had assessed had happened to her whilst she was in the detention centre; and, thirdly,

the three distinct but interrelated illnesses that were either sexual or could have been sexual in nature: her HIV positive status, the sexual infection and the abnormal pre-cancerous cell activity.

25. The Secretary of State undoubtedly has a difficult task when confronted with such material, as indeed does the immigration judge on determining asylum appeals on the merits. On the one hand, most people who have experience of obtaining a narrative from asylum seekers from a different language or different culture recognise that time, confidence in the interviewer and the interview process and some patience and some specific direction to pertinent questions is needed to adduce a comprehensive and adequate account. This is particularly the case where sexual assaults are alleged and all kind of cultural and gender sensitive issues may be in play as to why the full picture is not disclosed early on. Equally, the Secretary of State is entitled to make some broad assumptions as to the type of claim and the type of claimant that may well prove unfounded and to give expedited consideration to those cases that experience suggests may well be without merit. In particular, she is entitled to be alert to attempts to pass off a false claim by inserting pieces of data that apply to others and seek to apply them to this claimant in the hope that it will receive sympathetic attraction.

26. Sexual violence may leave no or very view traces. Medical practitioners are, of course, trained to take a history from their patient and to examine the extent to which the history is supported or contradicted by the physical findings of the sort that you would expect in such a case. A statement that there is no medical evidence to contradict the account is likely to be of very little assistance but the more that there is physical observation of the kind that might be expected if the account is true, the more significant that evidence is likely to be.

27. I pay tribute to the clarity and the economy of the submissions of Mr Patel, who appears before me on behalf of the Secretary of State. It is a matter of concern that he is unable to be present at this judgment because I understand he has been injured in a bicycle accident but I hope that that is not the serious problem. He submitted that the question is "was the Secretary of State entitled to conclude that there was no reasonable prospect of the claimant establishing before the immigration judge that she had been the subject of a sexual assault." It is common ground that "established" in this context means no more than to a reasonable degree of likelihood. He further submitted that the acid test of the answer to this question is whether the Secretary of State or her predecessor was entitled to conclude that Dr Arnold had relied principally on the credibility of the narrative account of the claimant for his conclusions.

28. I accept those submissions as accurately identifying the task of the court in this case. It further makes extensive citation from the decision letter and the various debates as to the language used in that letter unnecessary. The Secretary of State could only dismiss these representations as not amounting to a fresh claim if she could realistically exclude the possibility of an immigration judge accepting Dr Arnold's opinion evidence on the question as not being independent of the claimant's narrative account.

29. The defendant points out in support of the Secretary of State's reasoning, first, that it partly relies, at least, on the claimant's account and assumes consistency in that account

when there were differences, for example, in the number of days detained in May and July. Secondly, it puts the scars to the foot into the overall evidential picture when that had been excluded by the claimant as not relating to her detention and she did not point out or make any claims for the other scars that her body bore. Thirdly, in respect of a number of the observations, he does not put the case higher than its being consistent with and consistent with does not normally mean uniquely consistent with without more. Fourthly, in respect of his more emphatic conclusion on the overlay of the triple aspects of the sexual illnesses, it is noted that he makes no reference to any learned articles or other objective material in support of his assessment. Fifthly, it is submitted that on a true analysis of all that Dr Arnold has said, in truth he has very considerably relied upon the complaint from the complainant as to rape, her previous medical history and her subsequent experiences.

30. I acknowledge that these are pertinent observations that the Secretary of State is entitled to make but there is a danger in proving too much. Three observations in my judgment are relevant in this context. First, undoubtedly the claimant has these scars. They were observed by a doctor. They could have been observed by a full independent medical examination and their existence is not a fabrication. Is her failure to mention them in the context of her ill treatment evidence that they are irrelevant to this case or are they evidence on the failure of the process to get the fullest information out of this claimant? Secondly, it is perhaps surprising that an allegation of rape made early on to the nurse in the screening interview on 5th January did not lead to a full clinical observation of the claimant's body and vaginal and gynaecological swabs would have then been taken for analysis. If that had been done, the sexual infection and the possibly sexually transmitted nature of the HIV might have been explored. I note that the immigration judge specifically observed that there had been no sexual examination of this claimant. Thirdly, it is perhaps surprising that she told the nurse in the screening interview that she had never been pregnant when, shortly before in the screening interview given in Croydon, she had apparently made reference to her fiance having a child and a few day later, in the appeal, appears to be claiming that child is hers and that was the account that she gives to Dr Arnold in August. Is this evidence of lies by the claimant on an apparently immaterial subject or is it evidence of the fragility of the process of acquiring data in the fast track procedure?

31. The claimant points out that these matters are significantly different from the evidential picture before the immigration judge, as is conceded is undoubtedly the case. There clearly were other scars on her body not mentioned or previously noticed. Dr Arnold is an expert in wound assessment. PTSD is much more supported by physical observations than appeared to have been the case to the immigration judge and it now means that there are two independent practitioners, one psychiatrist and one an expert in wound assessment, who have reached independent conclusions that this claimant was demonstrating the symptoms of PTSD. Dr Arnold's conclusions on the three aspects of sexual health are expressed in higher terms than mere consistency and that is a view of an expert assessor trained by the Medical Foundation who would undoubtedly be aware of his need to comply with his duty of candour to the court and not to overstate conclusions and to justify any conclusions that he does reach, if they are challenged, by reasoning and explanation.

32. The claimant also submits that the immigration judge may have been unduly influenced by a misunderstanding of the background evidence as to events in Burundi between May and July 2005 and points out that, in the light of some observations relied upon by Mr Patel, there was some doubt as to whether her home region, where she lived and her family had a bar and where some of these events happened, was an area where there was rebel activity and repression of rebel activity or not. In my judgment, those observations do not amount to a separate ground for undermining the Secretary of State's assessment that this was not a fresh claim and, if there is merit in the medical grounds, then the case will have to be reconsidered by the immigration judge and the background can be clarified and applied properly. If not, then the points made simply neutralise each other.

33. I have anxiously considered this case and, as indicated, have every sympathy with the difficult task faced by the Secretary of State. However, I have reached the conclusion that if she had applied the distancing approach on the second limb of this material, ie what difference might it have made, she could not have reached the adverse conclusion on its capacity to enable an immigration judge to reach a different conclusion than she did. It might very well be that, when tested in cross-examination, as Dr Arnold's opinion may need to be, the immigration judge will not be satisfied with Dr Arnold's evidence, but it cannot be said that the opinion of this forensic medical examiner adds nothing to the contentious account of the claimant herself. That would be to seriously undervalue the very real importance of medical evidence in assessments in this class of case. It may frequently play a critical role in this kind of case as women may well be disadvantaged in the societies they are coming come and have little other documentary or other evidence to establish the veracity of their claims.

34. In my judgment, the diagnosis of PTSD is significant both as an aspect of the symptoms you would expect to see in someone who has been a victim of sexual violence and a medical explanation as to why a narrative may be confused, fragmented, delayed or inconsistent. The contrast with the position before the immigration judge is striking now two forensic examiners have independently come to their conclusion on this aspect.

35. The immigration judge also noted the absence of sexual examination and Dr Arnold's conclusions on those issues are matters which will have to be very carefully considered in this case, given the present state of its determination where the asylum claim has been refused. But in my judgment there is fresh evidence which might influence an immigration judge to treat this claim favourably. I accept that the immigration judge has made some strong findings but I doubt that he would have expressed himself in the way that he did if this material had been before him. If the claimant may well have been raped, other bases of doubting her claim would need radical revisiting. For example, if she has been sexually assaulted by soldiers, it may not be surprising that she came to harm before her father did as her specific vulnerabilities may relate to her status as a woman in that community at the time and indeed her mixed raced origin (Tutsi father and Hutu mother) by contrast to the ethnicity of her father.

36. The evidence of who was doing what to whom where and why is confusing and affords no independent basis for allowing this appeal. But if the background evidence did

show a continuing risk to certain sectors of the civilian population in or around the area where the claimant lived at the relevant time, it could not be relied upon as a factor against the credibility of claim as it may have been in the immigration judge's conclusions. If she had been living outside the area where most of the disputes had been taking place, it would not have been possible to approach her claim to have been ill treated subsequently as inconsistent with the contrary evidence.

37. In the result, I would answer therefore the question posed by Mr Patel in the negative: the Secretary of State was not entitled to reach that conclusion as Dr Arnold's evidence appears to be based in significant parts on observations, illness and physical injuries and, whilst disputed, his evidence cannot be said to be incapable of being accepted by a properly self directing immigration judge. On that basis I would therefore allow this claim.

38. Now, two matters. There was discussion yesterday afternoon as to whether there could be an agreed directions on the detention part of the claim. Did that reach fruition before the accident happened to Mr Patel?

39. MR GOODMAN: No, my Lord, I am afraid it did not because Mr Patel wanted to seek instructions on that. However, I think he indicated that the likely instructions he would receive would be to transfer the case to the County Court and I am amenable to that if that is indeed still the Secretary of State's position.

40. MR JUSTICE BLAKE: Good morning.

41. MR DEAKIN: Good morning, my Lord.

42. MR JUSTICE BLAKE: Mr Deakin, is it? Thank you for stepping into the breach and it sounds like a dramatic morning for Mr Patel. Do you understand what happened about this detention side of the claim?

43. MR DEAKIN: My Lord, I have taken extremely brief instructions now.

44. MR JUSTICE BLAKE: What happened was there was this, as it were, historic claim, because she is not in detention at the moment. As a result of the conclusion I have come to, she is not going to be leaving the jurisdiction immediately, at least, but I have decided that because there was some late disclosure of evidence and argument by your side that I should sever off that detention claim. I understand that that was not eventually to be opposed by your clients yesterday when I asked Mr Patel about it. Therefore, what I have in mind is transferring that aspect of the claim to proceed by ordinary action to the County Court. I think you would probably need to file a formal defence and that -- the absence of which was one of the grounds of complaint but it may well be that the skeleton argument that has now been served on that issue can stand as particulars of claim, although if you refer any particulars of claim, let me know.

45. MR DEAKIN: Yes, my Lord. We are content for that approach to be taken.

46. MR JUSTICE BLAKE: Then I will direct that the damages claim in respect of detention on the two bases that I have briefly indicated should be transferred to the County Court, that the claim formed on that aspect should stand as particulars of claim and that a defence be entered into it. You may need to consider whether you need to tidy up the pleadings if it is going to proceed by action.

47. MR GOODMAN: Yes, we shall.

48. MR JUSTICE BLAKE: Nothing I have said on the subject is to encourage on either aspect of the case but I would certainly recognise it needs further consideration. Well, if that disposes of that -- sorry.

49. MR DEAKIN: Sorry, my Lord, there is just one question, not being on top of it, as it were. There is no question about time limits as far as the defence that we have to put in relating to this claim, is there?

50. MR JUSTICE BLAKE: I think if one transfers it as a ordinary action, then from the moment of transfer -- then by analogy the relevant part of the CPR would apply. Since the complaint was rather vociferously and cogently made that your side had done nothing from November 2006 until July 2008, you might want to motor a little more fully than has been the case in this issue and clearly I imagine it would be in everyone's interests, the Secretary of State's and the claimant's, to resolve this matter as quickly as possible and if the claim is not going anywhere it should be resolved, because I cannot see any merit in you not concluding promptly. Unless I am specifically asked to, I do not think it would be relevant for me to impose a particular date, particularly as we have change of counsel.

51. MR GOODMAN: My Lord, it falls to me to ask for my costs of this claim and for detailed assessment of publicly funded costs.

52. MR JUSTICE BLAKE: Yes, on the costs of the main issue?

53. MR DEAKIN: No, my Lord.

54. MR JUSTICE BLAKE: Well, the defendant to pay the claimant's costs of the fresh claim issue, to be taxed if not agreed, on a detailed assessment of the publicly funded costs and the relief sought will be to quash the decision and this is a case in which I concluded there was only one outcome of the case, so I do not know whether you want me to make a mandatory order or that quashing will be sufficient in this case. When I get the judgment, it is going to have to go back to an immigration judge.

55. MR GOODMAN: My Lord, yes, it may be helpful to clarify that your Lordship is providing a declaration that this is one that attracts an appeal rather than then just simply to go back to the Secretary of State.

56. MR JUSTICE BLAKE: Yes. Thank you very much and I am grateful to the assistance of all counsel and I hope Mr Patel, who assisted in the appeal, makes a speedy recovery. I wish him well.

57. Thank you very much.