CO/3118/2006

Neutral Citation Number: [2009] EWHC 2404 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 21st August 2009
(Hearing date 15th July 2009)

B e f o r e:

MR JUSTICE PLENDER

- - - - - - - - - - - - - -

Between:
THE QUEEN ON THE APPLICATION OF
JEEVAVATHINAM MICHEL
MANJULA MICHEL
JEMOMI MICHEL
ESMY MICHEL
CHRISTI MICHEL

Claimants

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

- - - - - - - - - - - - - -

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

- - - - - - - - - - - - - -

Mr Manjit Singh Gill QC (instructed by HSR Solicitors) appeared on behalf of the **Claimant**
Mr Parishil Patel (instructed by the Treasury Solicitor) appeared on behalf of the **Defendant**

- - - - - - - - - - - - - -

J U D G M E N T

1. MR JUSTICE WYN WILLIAMS: In this case Mr Justice Plender heard the application for judicial review. He has prepared the following judgment, which I now deliver on his behalf.

2. By permission of Goldring J, the five claimants in this case apply for judicial review of the "decision and action of the Secretary of State dated 10th January 2006 whereby he removed the Claimants from the UK to Germany in breach of concession policies applicable to the applicants". They seek an order of *certiorari* to quash that decision; an order of *mandamus* compelling the Secretary of State to take the necessary steps to enable the Claimants to return to the United Kingdom as soon as possible; an extension of time; and an award of costs. Although Goldring J gave permission to apply for judicial review on the ground that the Claimants' removal contravened a concession, Mr Gill QC presented the Claimants' case on different grounds. He submitted that in this case "there was deliberate obstruction of access to legal advice" warranting exemplary damages.

The Facts

3. The Applicants are a family of Sri Lankan nationals comprising Mr Jeevathinam Michel, his wife and their three children, born on 11th January 1988, 10th December 1992 and 21st February 1997 respectively. Mr and Mrs Michel and their children Esmy and Christi were born in Sri Lanka. Jemomi was born in Germany.

4. On 28th June 1995 Mr and Mrs Michel, Esmy and Christi arrived in Germany from Rome and applied for asylum. From then until March 1999 the four of them lived in Nordenham in the Wesermarsch district of Lower Saxony. Jemomi lived with them there from the date of his birth.

5. On 5th February 1999, their family's German lawyers told them that arrangements had been made for their imminent removal from Germany. The family then left Germany for England. On 8th March 1999 they arrived at Dover. Two days later they claimed asylum in the United Kingdom. They were granted temporary admission and provided with accommodation at a nearby bed and breakfast hotel. There they encountered difficulties due, according to Mr Michel, to the behaviour of another asylum applicant at that address. So they contacted a Pentecostal church which arranged for one of its members to provide temporary accommodation for the Michel family in Edgeware. The family moved to London on 17th March 2006.

6. With help from members of the church, they applied to the London Borough of Hounslow to be supplied with housing. Initially the Council supplied the family with bed and breakfast accommodation but in due course they were granted the tenancy of a house in Edgeware in which they lived from July 1999 until their removal from the United Kingdom in the circumstances giving rise to the present proceedings.

7. The Claimants instructed a firm of solicitors, Sri and Co, to represent them in their claim for asylum. Initially the family received legal aid for this purpose; but later Mr Michel paid privately.

8. On 21st May 1999 the Claimants were told that the Secretary of State had requested the German authorities to accept a transfer of the Claimants' asylum application to, Germany pursuant to the Dublin Convention on the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities. OJ C254 19.08.1997. The German authorities accepted liability to readmit the Claimants and to determine their asylum claim. The Secretary of State informed the Claimants of the German authorities' decision and issued a certificate pursuant to section 2(2) of the Asylum and Immigration Act 1996, which is headed *Removal etc of asylum claimants to safe third countries*. The Secretary of State then issued to the Claimants a notice of refusal of leave to remain and set removal directions for 26th July 1999.

9. The Claimants, represented by Sri and Co, then applied for permission to seek judicial review of the Secretary of State's decision to return them to Germany. The application was held in abeyance pending the decision of the House of Lords in *Secretary of State v Adan and Aitseguer* [1999] 1 AC 293, following which the Secretary of State wrote to Sri and Co (on 17 November 2001) explaining why he took the view that the Claimants could not properly rely on the case of *Adan*. In about February 2002 the application for permission to seek judicial review was withdrawn.

10. In the same month the Secretary of State asked Mr Michel to attend for an interview. Sri and Co responded that Mr Michel could not do so because of the severe ill health of his wife. Mr Michel suffered from a mental illness, caused, according to Mr Michel, by "the uncertainty surrounding our ability to live in the UK, the move from Germany and because she could not forget the deaths of her relatives in Sri Lanka". Mr Michel states that his wife "would demand to be taken back to Sri Lanka to die with her other relatives. Sometimes she wanted to go back to Germany and stay with her mother. Because of our refugee status, neither of these options were possible".

11. I take it that when he stated that these options were not available "because of our refugee status", Mr Michel meant that the family could not return to Sri Lanka or to Germany without prejudicing their claim for refugee status in the United Kingdom: a claim that had not been granted. Mrs Michel appears to have been concerned that his wife might go back to Sri Lanka or to Germany, taking the children with her. In September 2003 he obtained a Prohibited Steps Order from the Willesden County Court restraining his wife from removing the children from his care and control or from England and Wales, until further order.

12. For one year and ten months thereafter, no significant steps were taken by the Secretary of State to return the Claimants to Germany. Counsel for the Secretary of State, Mr Patel, informs me (and I accept) that the Secretary of State refrained from enforcement action in this period in view of the ill health of Mrs Michel, who was detained for substantial periods in the Northwick Park Hospital, to be treated for her mental illness.

13. On 9th May 2005, however, the Secretary of State wrote to Mr Michel following the announcement of the policy of granting indefinite leave to enter or remain to asylum applicants who had made their applications before 2nd October 2000 and at that date, or on 24th October 2003, had at least one dependent aged under 18 in the UK. The

Michel family complied with that part of the conditions to benefit under the new policy. But the Secretary of State's letter stated that in order to be considered under the exercise, applicants were required to complete the enclosed questionnaire. This stated in part:

> "The concession will not apply to a family where the principal applicant or any of the applicants ...
>
> • have a criminal conviction
>
> ...
>
> • should have their asylum claim considered by another country (ie they are the subject of a possible third country removal...
>
> Third country cases
>
> Families will be excluded where they are all subject to possible third country removal."

The Claimants applied for the grant of ILR pursuant to the policy.

14. On 5th October 2005 the Secretary of State wrote to the Claimants stating that they did not qualify under the policy because one of them had an unspent criminal conviction. That was incorrect: none of them has a criminal conviction. On 23rd November 2005 the Secretary of State corrected the error and notified the Claimants that they did not qualify because they were all subject to possible third country removal. He acknowledged that medical reports had been submitted about Mrs Michel's condition and he asked for a current psychiatric report. Mr Michel supplied that information.

15. On 7th December 2005 the Secretary of State acknowledged receiving the medical information supplied by Mr Michel and said that he had considered it in order to determine whether Mrs Michel's removal to Germany would contravene Article 3 of the European Convention on Human Rights. The Secretary of State concluded that it would not. His letter ended: "Arrangements with for and your wife to return to Germany will stay in place".

16. Mr Michel state that he did not receive the Secretary of State's letter of 7th December 2005. I accept that he did not receive it. The letter was sent to Sri and Co but that firm was no longer acting for the Michel family. By letter of 16th March 2005 Mr Michel had been informed that the Law Society had instituted an Intervention into the affairs of Sri and Co. Mr Michel had been invited to be represented by a firm nominated by the Law Society; or otherwise to provide the name and address of a new firm of solicitors to act on his behalf. He had been informed that if he failed to take either of these courses within four weeks, his file would be sent to storage. Mr Michel states "I put aside the letter - knowing that it always took months if not years to get a reply from the Home Office." It appears that he never responded to this communication; and did not notify the Secretary of State that Sri and Co was no longer representing him.

17. Thus the position reached on 8th December 2005 was as follows. The Secretary of State had concluded that the family were not eligible for asylum in the United Kingdom or for indefinite leave to remain. He had also concluded that Mrs Michel's medical condition did not constitute an obstacle to her removal so as to be inconsistent with Article 3 of the European Convention on Human Rights. The German authorities have agreed to take charge of the family's application for asylum pursuant to the Dublin Convention. The Secretary of State had decided that the arrangements for the return of Mr and Mrs Michel to return to Germany would stay in place. Mr Michel had not received notice of the decision that the arrangements for his return to Germany, and that of his wife, would stay in place.

18. On 9th December 2005 a letter on behalf of the Secretary of State was prepared and signed stating that the decision had been made to return Mr Michel to Germany, whose authorities had accepted responsibility for dealing with his asylum request pursuant to Council Regulation 343/2003 of 18th February 2003 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 OJ L50 25.02.2003 ("the Dublin II Regulation).

19. It is not quite correct to say that the German authorities had accepted responsibility pursuant to the Dublin II Regulation; for that Regulation governs "asylum applications lodged as from the first day of the sixth month following its entry into force", ie those made after 17th September 2003. The Claimants' case was a very old one, dating from an application for asylum made in June 1995. It was governed by the Dublin Convention itself rather than the Dublin II Regulation. But the reference in the letter to the Dublin II Regulation is unlikely to have misled the Michel family. What is more to the point is that the letter of 9th December 2005 was not sent to Mr Michel by post. It was served on him personally on 10th January 2006.

20. It was on the morning of 10th January 2006 that the family was removed to Germany. The circumstances of their removal are the subject of a claim for exemplary damages.

The Claim for Exemplary Damages

21. The events of 10th January 2006 are the subject of differing accounts in the statements of the Claimants and the relevant immigration officers. The Claimants say that the immigration officers entered their home by force, without permission and without identifying themselves; the immigration officers say that they were invited to enter, and entered peacefully, after identifying themselves as immigration officers. The Claimants say that they were terrified and were subjected to threats and to force; the immigration officers say that no force was used or threatened. The Claimants say that they were removed from their home in their pyjamas; the immigration officers say that the Claimants were given time and opportunity to change clothes and that they did indeed change into outdoor clothes in which they were photographed (the images were supplied to the court). The Claimants say that while she was in charge of the immigration officers Mrs Michel collapsed and that Mr Michel's request for a doctor was denied; the immigration officers said that the Claimants' removal was entirely

uneventful and that, in accordance with arrangements made in advance, a medically-trained escort was provided.

22. Although Mr Gill QC, for the Claimants, invited me to prefer the Claimants' account on these disputed points, I consider it unsafe to prefer either account of these issues in the course of an application in which no oral examination of witnesses had taken place. I was told that the Claimants asked the Secretary of State to make those who had given written statements available for cross-examination; and that the Secretary of State had asked the Claimants to state the grounds on which they maintained this course should be taken. In the absence of a response, the matter had been taken no further.

23. In any event, I doubt that any conclusion that I might reach about the immigration officers' conduct in the Claimants' home would help in resolving the claim for exemplary damages. If the immigration officers conducted themselves in the manner in which the Claimants allege, while arresting the Claimants on the morning of 10th January 2008, they might well have rendered themselves and the Secretary of State liable to an action for tort; but there is no such claim in these proceedings and the officers' conduct in the Claimants' home that day would shed little light on the claim for "deliberate obstruction of access to legal advice".

24. The allegation that the Secretary of State obstructed the Claimants' access to legal advice is advanced on the basis of evidence which is, for the most part, uncontested.

25. It is common ground that the immigration officers arrived at the Claimants' rented house at about 2.00am: the notes of an immigration officer called Mr Dell put the time at 02.21. It is common ground that the Claimants were removed by flight to Hamburg departing at 07.50. It appears to be common ground that the Claimants were not afforded an opportunity to make a telephone call before the time when they were transferred to the custody of escorts at 05.15 that morning. Mr Dell confirms that the Claimants were told that there were no facilities available in the secure holding room for telephone calls to be made and continues:

> "It was common practice in 'same day' removal cases for telephone calls to be permitted once the transfer into the custody of the escorts had taken place, where a duty mobile telephone would be made available as required. This was primarily done because of security issues and time constraints. Following a review of operational practice, this has ceased to be the case and telephone calls are now permitted."

26. Taken in combination, the time of the Claimants' arrest, the restrictions placed on the use of telephones by the Claimants and their removal to Germany on the day of their arrest, cannot have failed the effect of making it difficult for them to obtain legal advice before they boarded the flight to Hamburg. The courts have, more than once, expressed their disapproval of dawn raids by immigration officers, the effect of which is to prevent those who are being removed from seeking proper legal advice.

27. In *R (on the application of Fikret Collaku) v Secretary of State* [2005] EWHC 2855 (Admin), Collins J stated at paragraph 14:

> "The Home Office practice involving delay in deciding a claim but then of arresting and serving the refusal at one and the same time with a view to removal within a day or two, often at weekends and frequently early in the morning, is one that is to be deplored. This court has deplored it on many occasions. ... It has the effect of preventing those who are to be removed from seeking proper legal advice to which they may be entitled..."

28. In *R (on the application of E and others) v Secretary of State* [2006] EWHC 3208 (Admin), Black J stated at paragraph 48:

> "The family were detained at the start of the Easter Bank Holiday weekend and removed on the Sunday night. On their behalf it is argued that this allowed them no reasonable prospect of obtaining legal advice. Here, that is particularly unfortunate as, had they been able to contact RLC, it would have been apparent that the outcome of the son's reconsideration application was not yet known and I would certainly hope that the removal would have been postponed so that the situation could be investigated."

29. In *R v the Secretary of State ex parte Leach* (No 2) Steyn LJ (as he then was) said:

> "It is a principle of our law that every citizen has a right of unimpeded access to a court. In Raymond v Honey [1983] 1 AC at 13, Lord Wilberforce described it as a 'basic right'. Even in our unwritten constitution it must rank as a constitutional right."

30. On behalf of the Secretary of State, Mr Patel submitted that the decision to remove the Claimants within one day was not taken with the object of preventing their unimpeded access to the court. The decision had been taken by a senior officer who formed the view that this course was best in view of Mrs Michel's ill health. The arrival of immigration officers in the early hours of the morning was made necessary by the time of the flight to Hamburg and the arrangements made with the German authorities for the Claimants' reception. The restrictions placed on the use of telephones were consistent with a policy applied at the time; but that policy has now been relaxed.

31. If there had been no more than this to be said in defence of the Secretary of State, I doubt that it would have excused her conduct. Even if it was not designed for the purpose of impeding the Claimants' access to the courts, it was entirely foreseeable that a decision to remove them under conditions would have the effect of impeding their access to the courts. Moreover I was told that the officer who formed the view that a 'same day removal' was appropriate to safeguard Mrs Michel's health took no medical advice before reaching that conclusion.

32. But there was one element in the evidence to which I attach importance even though it was not, as I recall, the subject of submissions in court. That is the letter of 7th December 2005 from the Secretary of State. That letter, which stated that arrangements for the return of the Claimants to Germany would stay in place, was sent to Sri and Co,

a firm of solicitors, who had been nominated as the Claimants' representatives. The responsible officer cannot be blamed for being unaware of the fact that Sri and Co were no longer acting for the Claimants. Neither the claimants nor Sri and Co had informed the Secretary of State of the changed situation.

33. Moreover this case was not a case, like *Fikret Collaku*, in which an asylum applicant was to be sent to a country in which he claimed to have a well-founded fear of persecution. The Michel family were send to Germany, whose obligations with respect to the United Nations Convention on the status of Refugees are similar to those of the United Kingdom. Their removal to Germany was not liable to prevent the members of the Michel family from asserting in these courts their claim to remain in the United Kingdom as they have done in these proceedings.

34. The Claimants' alleged, however, that "no papers were served on us in the United Kingdom" and that they were not given the reason for their detention until they arrived in Germany. If that allegation were true, it would disclose a serious irregularity; so I thought it right to make a conclusion on the evidence, even in judicial review proceedings. The material evidence is written.

35. The Claimants allegation that "no papers were served on us in the United Kingdom" was made in Mr Michel's affidavit dated 15th June 2006. It is contradicted by the note taken by the immigration officer present in Mr Michel's house on 10th January 2006, those notes having been written between 05.19 and 06.45 on that morning. The notes contain the statement "At 02.27, I.O McIntosh said to the subject [Mr Michel] 'Your asylum claim in the UK is finished and you have no lawful right to be in the UK'". As those notes were completed only three hours after the events that they describe, and as the writer took care to identify to the second the moment when Mr McIntosh made the statement that the notes record, I am inclined to regard them as more reliable than the recollection of Mr Michel in an affidavit sworn four months later.

36. Attached to the application for judicial review were photocopies of four forms IS9 IR *Notice to Detainee: Reasons for Detention and Bail Rights*. Each of these forms states that directions have been given for the addressees' removal on BA 964 to Hamburg. Each form bears the signature of Mr Dell as having been served by him on 10th January 2006.

37. Mr Gill made the point that it is only in the cases of the notices addressed to Mrs Michel and Christi that there is a tick against the box stating: "Your removal from the United Kingdom is imminent". He invited me to infer that the other members of the Michel family were not told that their removal was imminent. I do not make that inference. On explicit instructions from the Secretary of State, made in response to my question, Mr Patel confirmed that the position is as I would have expected it to be: where members of a family are to be removed together, an immigration officer explains once, in the presence of all members of the family, when and to where they are to be removed. The officer does not repeat the exercise with each member of the family individually. In the present case, I was told, a single explanation was given to all members of the family together. The absence of a tick in the appropriate box on certain

of the forms does not lead me to infer that the necessary information was withheld from the family members to whom those forms related.

38. I therefore dismiss the claim that the Secretary of State engaged in a "deliberate obstruction of access to justice". I do so on the evidence and not only upon the ground (which is undoubtedly a good one) that any such claim should be properly pleaded.

Article 8 of the European Convention on Human Rights

39. Mr Gill submitted that the Claimants were said to be entitled to remain in the United Kingdom by reason of Article 8 of the European Convention on Human Rights. Mr Patel submitted such a claim could be considered only on appeal from a refusal of an application, made from Germany, for leave to enter the United Kingdom. I remained unconvinced. If the Claimants enjoyed a right to remain in the United Kingdom in consequence of Article 8 of the European Convention, their removal to Germany would (or at the lowest might) have been unlawful. That is so irrespective of my finding on the allegation that the Secretary of State had obstructed the Claimants' access to justice. For this reason, and also because it is convenient to deal with this issue at once, now that I have Mr Gill's detailed submissions, I think it right to address his argument in this judgment.

40. As is well-known, Article 8 provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

41. In a series of judgments, the European Court of Human Rights has identified the principles governing the application of Article 8 to cases in which Contracting States seek to remove from their territories aliens who claim the right to respect for private life on the basis of connections formed over a substantial period of unauthorised presence. The case-law shows that the test to be applied is one of proportionality: the removal of the alien must not be disproportionate, having regard to the particular circumstances of the persons involved and the general interest.

42. Factors to be taken into account in this context include the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family lying in the country of origin of one or more of them and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion.

43. Another important consideration will also be whether family life was created at a time when the persons involved were aware that the immigration status of one of them was

such that the persistence of that family life within the whole State would be precarious from the outset. The Court has previously held that where this is the case it is likely only to be in the most exceptional circumstances that the removal of a non-national family member will constitute a violation of Article 8 (see *Rodrigues da Silva and Hoogkamer v the Netherlands*, no 50435.99, paragraph 39, ECHR 2006; and *Konstatinov v the Netherlands*, no 16351/03, paragraph 48, 26th April 2007).

44. Indeed, in *Konstantinov*, the European Court of Human Rights concluded that the applicant's removal to Serbia was not disproportionate although he had been present in the Netherlands for 21 years.

45. I accept of course that regard must be had to the quality of the alien's connections with the country in which he wishes to remain and not only to the length of his presence there. In the present case, however, the connections formed between the Michel family and the United Kingdom do not go beyond those that it can be expected of a normal case in which a family has remained in a certain country for seven years. In *AG (Ethiopia) v Secretary of State* [2007] EWCA 801, Sedley LJ commented on the interpretation placed on Article 8 by the House of Lords in *Huang and Kashmiri v the Secretary of State* [2007] UKHL 11 and concluded:

> "While its practical effect is likely to be that removal is only exceptionally found to be disproportionate, it sets no formal test of exceptionality and raises no hurdles beyond those contained in the Article itself."

I have not found the circumstances of the present Claimants elements such as to bring their claim within the category in which removal is exceptionally found to be disproportionate.

46. One factor which Mr Gill relied was the concession whereby enforcement action is not applied to parents who have accumulated seven years or more of continuous residence in the United Kingdom, DP5/96. In the present case the children had completed six years and ten months' residence immediately before their removal. Mr Gill denied that he was contending for the "near miss" principle whereby cases falling just outside a concession should be treated equally with those coming within it (a proposition inevitably rejected in *Mifail Rudi v Secretary of State* [2007] EWCA 1326 at paragraph 28). He maintained however that the proximity of the family's removal to the date on which they would have been permitted to remain indefinitely illustrates their right to respect for private and family life.

47. I am not persuaded, however, that the existence of the concession makes a decisive difference to the Claimants' assertion of a right protected by Article 8. If the Claimants were aware of the concession and hoped to remain in the United Kingdom for two more months in order to benefit from it, this could not be said to give rise to a right to respect for family life that would otherwise be absent.

48. I do accept that the quality of the Claimants' family life in the United Kingdom might have been affected by the sense of security that they enjoyed in consequence of the

interpretation placed by the courts on the Geneva Convention on the Status of Refugees. Mr Gill pointed out that at the time of the Claimants' application for asylum in Germany, the German authorities placed a different interpretation on the Convention. Very concisely stated, the German position at the time was that a person did not have a well-founded fear of persecution within the meaning of Article 1 of that Convention if he feared ill-treatment by non-State actors. (The German policy was more fully explained to the European Court of Human Rights by Professor Dr Kay Hailbronner in *TI v United Kingdom* [2002] INLR 211 at pp 221-3.) The simple fact remains that the Claimants were not granted asylum in the United Kingdom. They did not enjoy a sense of security in consequence of the interpretation placed by the courts on the Geneva Convention. Their position was at all times precarious.

49. For completeness, I add that there is no longer a basis for fearing that the German authorities will apply to the Claimants an interpretation of the Geneva Convention differing from that applied by the United Kingdom's authorities. In common with other Member States of the European Union, Germany is now the subject to the "Qualification Directive": Council Directive 2004/83/EC of 29th April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ 2003, L304/12.

The Willesden County Court Judgment

50. One further submission remains to be addressed. It is not one to which Mr Gill appeared to attach much weight; and I have the impression that he inherited it from those previously acting from his clients; but Mr Gill did not disavow it. This was the submission that the Claimants' removal contravened the Prohibited Steps Order issued by the Willesden County Court in September 2003. There is nothing in this. The order of the County Court was addressed to Mrs Michel: not to the Secretary of State. The family's removal is not contrary to the spirit of that order, which was designed to ensure that the children should not be taken out of Mr Michel's care. That has not been done.

The Concession

51. In the proceedings before me, Counsel did not develop the case upon which Goldring J gave permission to appeal, namely the return of the Michel family to Germany entailed a breach of concession policies applicable to the Claimants. This appears to be a reference to the concession mentioned above: the concession whereby enforcement action is not applied to parents who have accumulated seven years or more of continuous residence in the United Kingdom: DP5/96. Since the children in the Michel family had not yet completed seven years' continuous residence at the time of their removal, I am unable to ascertain the basis on which it was contended that the family's removal entailed a breach of the concession. If the argument was originally advanced on the ground that account must be taken of a right that would be enjoyed if removal did not take place, the answer would lie in *Mifail Rudi v Secretary of State*.

Conclusion

52. For these reasons these applications for judicial review are refused. I have only to add an expression of my appreciation to the industry of counsel on both sides. I am conscious that I have referred to only a few of the many authorities on which they relied.

53. That is the end of the judgment. I understand that an order has been drawn dated 20th January 2009. I propose to amend that order by adding this provision. After the order that the claim be dismissed I make the following direction: that the costs of the claimant be subject to a detailed Community Legal Service funding assessment.