CO/2652/2006

Neutral Citation Number: [2008] EWHC 3351 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 22nd July 2008

B e f o r e:

MR JUSTICE SILBER

Between:
THE QUEEN ON THE APPLICATION OF GOKHAM TOSUN
Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Defendant

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(Official Shorthand Writers to the Court)

Xenia Manassi (instructed by Stuart Karatas) appeared on behalf of the **Claimant**
Parishil Patel (instructed by the Treasury Solicitor) appeared on behalf of the **Defendant**

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

1. MR JUSTICE SILBER: Gokhan Tosun is a Turkish citizen of Kurdish ethnicity who makes three claims in these proceedings which he brings with leave of Mr Andrew Nicol QC, who was sitting as a deputy judge of the High Court.

2. The first claim is that the decision of the Secretary of State to detain the claimant at 7.00 pm on 22nd March 2006 until his removal directions were lifted shortly afterwards "was misleading and amounted to... trickery to effect removal without consideration of the Claimant[']s asylum claim".

3. The second claim relates to the decision to detain the claimant, after the removal directions had been lifted, until he was released on bail on 5th April 2006.

4. The third claim is based on the decision of the Secretary of State contained in a letter dated 23rd March 2006 to refuse to treat submissions made in a letter dated 10th February 2006 from the claimant's solicitors as a "fresh asylum or human rights claim" was a flawed decision.

5. The background to this case is that the claimant entered the United Kingdom on 16th November 2004 illegally. He claimed asylum on 20th December 2004. On 21st December 2004 he was served with a notice that he was an illegal entrant and he was detained. On 3rd January 2005 the Secretary of State refused the asylum claim. On 6th January 2005 the claimant was granted temporary admission. On 12th January 2005 the claimant lodged an appeal against the Secretary of State's refusal of his asylum claim. That appeal was dismissed on 14th April 2005. Accordingly, on 22nd April 2005 the claimant's appeal rights were exhausted.

6. On 10th July 2005 the claimant made further submissions which, by a letter dated 25th July 2005, the Secretary of State refused to treat as constituting a fresh claim. On 26th July 2005 the claimant had submitted fresh submissions, which were rejected by the Secretary of State on 28th July 2005.

7. Removal directions were set for 10th August 2005, but on 9th August 2005 the claimant issued an application for permission to apply for judicial review. This led to a cancellation of the removal directions, which had been set for 10th August 2005. The application for permission for judicial review was refused on 3rd October 2005, but because of the existence of the judicial review application, a second removal directions set for 3rd November 2005 was cancelled, probably because by that time the claimant still had not exhausted his right to make a renewed application. On 16th January 2006 the claimant withdrew the application for judicial review and the proceedings were dismissed.

8. By a letter dated 10th February 2006 from his solicitors, Stuart Karatas, the claimant made further submissions, which it was contended amounted to a "fresh claim". These are the subject of the third claim made by the applicant in these proceedings.

9. On 6th March 2006 the claimant was detained for the purpose of his removal, which had been set for 11.45 am on 23rd March 2006. The claimant was given an IS91R,

which was a "reason for detention" form. It stated first that the claimant's removal was imminent, second that he was now likely to abscond because he did not have enough close ties in the United Kingdom and third that he had failed or refused to leave the United Kingdom when required to do so. In other words, the stance of the immigration authorities was that the claimant had no incentive to remain in touch with the immigration authorities.

10. On 16th March 2006, the Asylum and Immigration Tribunal granted the claimant bail on the basis that he was awaiting a response to the further submissions made in the letter dated 10th February 2006 and that removal should not be effected until a response had been made. The Asylum and Immigration Tribunal granted the claimant bail with weekly reporting conditions and on the basis of two sureties. Another condition was that the claimant appeared at Communications House, which are premises used by the Immigration Service on 22nd March 2006.

11. On 22nd March 2006 the claimant duly attended Communications House in accordance with his reporting conditions and the removal directions which were then in force.

12. Immigration Officer Kuti was assigned by Duty Chief Immigration Officer Flatts to conduct what is the mitigating circumstances interview with the claimant. These interviews are conducted to ascertain whether there are special practical considerations in relation to the removal. During the course of his interview with Immigration Officer Kuti, the claimant stated that he was single, that he was fit and well and that he had no children or family ties in the United Kingdom. He also stated that his family all lived in Turkey and that he was not taking any medication.

13. Immigration Officer Kuti also consequently discovered that the claimant's further submissions of 10th February 2006 remained outstanding. He inquired of the Operational Support and Certification Unit when the claimant's further submissions were going to be dealt with. Immigration Officer Kuti was informed that they would be addressed either later that evening, on 22nd March 2006, or first thing on the following morning, which is 23rd March 2006. Immigration Officer Kuti referred details of the case to Chief Immigration Officer Flatts, who provided Immigration Officer Kuti with authority to detain the claimant pending his removal. She also told Immigration Officer Kuti to refer the outstanding submissions to the Operational Support and Certification Unit.

14. Immigration Officer Kuti then served the claimant with authority to detain him, the removal directions and an acknowledgment of travel arrangements notification, ISE 303. It seems to be common ground that the detention of the claimant took effect from about 7.07 pm.

15. A witness statement has been filed on behalf of the claimant by Mr Jamil Trawally, who said that he, Mr Trawally, was only informed at 4.30 pm on 22nd March that the claimant would be removed the next day, which is 23rd March 2006, at 11.45 am.

16. Immigration Officer Kuti has confirmed, in a statement, that he did not speak to the claimant's legal representatives on 22nd March 2006. It is quite clear that the claimant

knew full well about the removal directions from the 6th March 2006 and that his solicitors had been acting for him for some time. They had sent the letter of 10th February 2006 setting out the basis for having a fresh claim heard. Therefore, I have concluded that any suggestion that either the claimant or his solicitors did not know about the date of removal until 22nd March 2006 is incorrect. It is noteworthy that the claimant has not put in any witness statement or evidence himself to suggest that he did not know of removal instructions until 22nd March 2006.

17. Later on 22nd March 2006 a decision was taken by Officer Murgai at the Operational Support and Certification Unit to defer the removal the next morning so that they could consider the further outstanding applications. It was said that these submissions would be dealt with "shortly" and, as a consequence of that decision, an instruction was given to cancel the removal directions.

18. It is clear that sometime before 11.45 am on 23nd March 2006 the removal directions were deferred. I can be certain of this because, first, this was before the time when the claimant would have been transported to Heathrow Airport, had the directions not been cancelled, and, second, there is no record that he was taken to the airport on that day. In addition, the decision to defer the removal instructions was communicated in a letter to the claimant's solicitors recorded as being sent by facsimile at 11.59 am.

19. In the meantime, on 23rd March 2006 (or possibly on 22nd March 2006, the date is uncertain) the claimant's representatives sought and obtained a without notice injunction from Beatson J sitting in this court, staying the removal directions, with the claimant's counsel undertaking to issue judicial proceedings by 4.00 pm on 24th March 2006 in relation to the decision to maintain removal, notwithstanding the "fresh claim".

20. A stay of the removal directions was ordered by Beatson J pending the determination of the application in such judicial review proceedings or further order. It is uncertain as to what material was provided to Beatson J, or what oral submissions were made to him. Normally a party who makes such an application is obliged to put in a witness statement explaining what was said to the judge. In any event, the injunction was received at Communications House on behalf of the Secretary of State at 11.44 am.

21. By a facsimile dated 10.36 am on 24th March 2006 the Secretary of State sent to the claimant's solicitors a letter dated 23rd March 2006 refusing to treat the further submissions as a fresh claim or a human rights claim. On 24th March 2006 the claimant then issued the present proceedings. On 27th March 2006 further removal directions were set for 5th April 2006 at 7.05 am. On 30th March 2006 the claimant's grounds for permission to apply for judicial review were received by the Secretary of State. In consequence, on 31st March 2006 the removal directions were cancelled.

22. On 30th March 2006 the Asylum and Immigration Tribunal considered an application for bail because the previous order for bail had in fact terminated by this time. The claimant was granted bail but it only took effect from 5th April 2006 because it appears that inquiries were being made in respect of the sureties. On 5th April 2006 the claimant was duly released.

23. As I have explained, after the application for permission was refused on paper, it was granted at an oral hearing on 29th September 2006.

24. The basis of the first claim is that the detention from 7.07 am on 22nd March 2006 until the removal directions were lifted was wrongful. One of the points that has been taken by Miss Manassi is that some undertaking had been given at the bail hearing of 16th March 2006 by the Secretary of State that the claimant would not be removed until after consideration of the claimant's submissions. I am unable to accept that such an undertaking was given for two reasons: firstly, there is no record of it in the bail summary document produced by the Tribunal; second, there is no witness statement on behalf of this claimant to support that allegation.

25. The main contention made on behalf of the claimant is the fact that the claimant was detained in circumstances when he would and should have been able to obtain legal advice. It is submitted that the Secretary of State was:

> "... obliged to allow a reasonable time between detention and removal, for the solicitors to be able to respond to the decision appropriately. Even where legal advice was eventually obtained, and even where it is not shown that the Secretary of State was acting deliberately so as to deny the individual the opportunity to obtain and act upon such advice, the mere fact of the tightness of time is sufficient to render the detention unlawful."

26. In support of that contention Miss Manassi relies on the case of **Karas and Miladinovic v Secretary of State for the Home Department** [2006] EWHC 747 (Admin). In that case the claimants had been detained at their home at approximately 8.30 pm on 11th October 2004 as he was to be removed the next day to Croatia at 7.40 am. The Secretary of State refused further submissions made on their behalf in a letter which was sent by facsimile at 4.16 pm to their solicitors, namely 4 hours before the claimants were detained. The claim contended, among other things, that their detention and intended removal was undertaken in order to deny them access to legal advice and access to the court. Munby J explained that:

> "73... The complaint is founded on the fact that the claimants were detained after close of business one day with a view to their being removed before the opening of business the following morning – that being done, so it is said, in order to deny them access to legal advice and access to the court."

27. In that case the Secretary of State had not provided any explanation for the timing of the detention and the proposed removal. In consequence, Munby J explained that:

> "57. The Secretary of State cannot complain if, in the circumstances, I draw adverse inferences."

28. The judge concluded:

> "84. Absent any challenge to the [claimant]'s evidence, and absent also any explanation from the Secretary of State, I am driven to conclude that

> the claimants' detention was deliberately planned with a view to what in my judgment was a collateral and improper purpose – the spiriting away of the claimants from the jurisdiction before there was likely to be time for them to obtain and act upon legal advice or apply to the court. That purpose was improper. It was unlawful. And in my judgment it renders the detention itself unlawful."

29. This case is very substantially different from that case:

30. First, evidence by the Secretary of State has been adduced, unlike in the **Karas** case, to explain why the claimant was detained.

31. Second, in the present case, the claimant had been well aware since 6th March 2006 of the fact that he was liable for removal and he had been able to receive advice. Furthermore, he has clearly obtained it, as is shown by the fact that his solicitors were instructed.

32. Third, there has been no witness statement from the claimant and no suggestion has been put in that he has wished to obtain legal advice in this period of detention, or that he was in any way deprived of obtaining legal advice.

33. Fourth, it is not suggested that he requested to be able to obtain legal advice and that that such request was refused.

34. Finally, as we know, the removal directions were lifted. So there was no difficulty caused for him, and after all that was what he was seeking to achieve.

35. The claimant also relies on the decision of Black J, in the case of **R (E) v Secretary of State for the Home Department** [2006] EWHC 3208 (Admin). In that case the claimants had been first told on Good Friday, 14th April 2006, that they were to be removed on Easter Sunday, 16th April 2006. Black J was very troubled by this and she said that:

> "59... In my judgment, given that the timing of the detention in this case was inevitably and obviously going to lead to difficulties in the family obtaining proper legal advice, it does not matter that it was not attended by any malign intent or deliberately improper purpose on the part of the defendant; the detention itself was rendered unlawful by timing it in a way that prevented legal advice being obtained when there was absolutely nothing in the circumstances of the case which required such an urgent procedure."

36. This case is very different because as I have explained on 6th March 2006 the claimant knew of his removal directions, which were to take effect 17 days later. It is also, as I have previously explained, not been suggested by the claimant that he had wished to obtain legal advice or that he was in any way precluded from doing so. He had ample opportunity for taking legal advice and, as we know, solicitors had been instructed and were acting on his behalf. Thus, I do not find that the claimant's case is assisted in any way by what has been said by Black J. I should also add that even if I were wrong in

this, I would agree with Mr Patel that there are strong arguments to suggest that the comments made by Black J were obiter. Thus, the arguments put forward by the claimant in respect of the first period have to be rejected.

37. In my view, the Secretary of State was quite entitled to detain the claimant, notwithstanding the bail conditions at 7.07 am on 22nd March 2006. The position is that under paragraph 8(1) of Schedule 2 to the Immigration Act 1971 an immigration officer has power to issue directions for the removal of people who arrived in this country but have been refused leave to enter. Paragraph 9 of Schedule 2 to the same Act provides that:

> "9. Where an illegal entrant is not given leave to enter or remain in the United Kingdom, an immigration officer may give any such directions in respect of him as... are authorised by paragraph 8(1)."

38. Paragraph 10(2) of Schedule 2 to the 1971 Act provides the Secretary of State with power to issue directions for the removal of persons to which paragraphs 8 and 9 apply. Paragraph 16(2) of Schedule 2 to the 1971 Act provides that:

> "(2) If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under... paragraphs 8 to 10A... that person may be detained under the authority of an immigration officer pending——
>
> (a) a decision whether... to give such directions;
>
> (b) his removal in pursuance of such directions."

39. In **R (Khadir) v Secretary of State for the Home Department** [2006] 1 AC 207, the House of Lords considered the provisions of paragraph 62 of Schedule 2 to the 1971 Act which I have just read, in particular they were concerned by what is meant by the concept of detention "pending (a) a decision whether to give [removal] directions" in respect of a person refused leave to enter. Lord Brown held in paragraph 32 of his speech that the word "pending" meant no more than "until". So the detention of the claimant was authorised for as long as the Secretary of State remained intent upon removing the person concerned and there was some prospect of achieving this.

40. It is also noteworthy that in the **Khadir** case the Appellate Committee of the House of Lords held that so long as a person was being detained pending removal, the powers of detention existed and the sole question was whether in the circumstances it was proper for the power of detention to be exercised. At the relevant time the Secretary of State's detention policy was contained in chapter 38 of the Operations Enforcement Manual. Paragraph 38.3 stated that:

> "There must be strong grounds for believing that a person will not comply with conditions of temporary admission or temporary release for detention to be justified. All reasonable alternatives to detention must be considered before detention is authorised."

In my view this was a case in which the Secretary of State was well justified in detaining the claimant as, first, he had arrived in this country illegally; second, he had never had any immigration status; third, in spite of attempts to make him do so, he had not left voluntarily; and, fourth, he had made a number of claims, which he said were "fresh claims", which were rejected. There was every reason for the Secretary of State to be concerned that he was taking every conceivable step to avoid being removed from the United Kingdom. For those reasons there can be no criticism at all of the decision to remand him in detention.

41. In her sustained and able submissions Miss Manassi focused on the similarities between this case and the decisions in **Karas** and **E**, to which I have referred, and not on any suggestion that, apart from the factors set out in those cases, the Secretary of State had acted wrongly. So I reject her first ground.

42. I now move on to the next submission, which relates to an allegation of wrongful detention in the period after the removal directions had been renewed until the claimant was released. After the Secretary of State refused to accept the contentions, made in the letter of 10th February 2006 from the claimant's solicitors, that this allegation constituted a "fresh claim", the claimant had no justification for remaining in this country. There continued to be no obstacle to his removal. After all, he was an illegal immigrant who had made three unsuccessful applications for fresh claims and who had exhausted all his appeal rights many years earlier. In my view, the Secretary of State was quite entitled to keep him in detention. There was a delay between the time that he was granted bail by the Asylum and Immigration Tribunal on 30th March 2006 and 5th April 2006 when it took effect. No criticism is to be made of the Secretary of State in respect of that because, as I understand it, it is common ground that this was caused by the need to carry out proper inquiries about securities. Thus, the second claim fails.

43. Having rejected the second claim, I move on to the third claim, which is that the Secretary of State erred when he refused to consider the submissions set out in the letter of 10th February 2006 from the claimant's solicitors as constituting a "fresh claim". The letter of 10th February 2006 states:

> "There is a significant change of circumstances in our client's case. Our client has been sentenced in absentia to 8 and [a] half years imprisonment for being a member of the PKK and inciting others to be members.
>
> As a result an arrest warrant is issued for his arrest and to be sent to prison if found. This evidence has just become available. The information was passed on by the family's solicitor in Turkey."

44. Reference is then made to the appropriate rule, paragraph 353 in the Immigration Rules. The letter later goes on to say:

> "1. Furthermore, an arrest warrant is issued against our client and his brother in Turkey."

45. In a decision letter of 23rd March 2006, the Secretary of State concluded that these matters, when taken with others, did not constitute a fresh claim. Miss Manassi for the

claimant accepts that the only grounds for challenging this decision is on the basis that it was **Wednesbury** unreasonable. She says that the Secretary of State applied the wrong test, and she points out that the Secretary of State said in his letter:

> "Nonetheless, we have considered the arrest warrant in question and has (sic) concluded, for the reasons given below, that we are not prepared to reverse our earlier decision to refuse asylum to your client."

She then continues by referring to other aspects of the letter to which I will return shortly.

46. She also contends that the Secretary of State did not consider properly the warrant 5th January 2006. I remind myself of the principles that have to be applied in determining whether a fresh claim has been made. In the case of **WM (DRC) v Secretary of State for the Home Department** [2006] EWCA Civ 1495. Buxton LJ, giving the judgment of the Court of Appeal, set out the principles which are to be applicable:

> "6. There was broad agreement as to the Secretary of State's task under rule 353. He has to consider the new material together with the old and make two judgements. First, whether the new material is significantly different from that already submitted, on the basis of which the asylum claim has failed, that to be judged under rule 353(i) according to whether the content of the material has already been considered. If the material is not 'significantly different' the Secretary of State has to go no further. Second, if the material is significantly different, the Secretary of State has to consider whether it, taken together with the material previously considered, creates a realistic prospect of success in a further asylum claim. That second judgement will involve not only judging the reliability of the new material, but also judging the outcome of tribunal proceedings based on that material. To set aside one point that was said to be a matter of some concern, the Secretary of State, in assessing the reliability of new material, can of course have in mind both how the material relates to other material already found by an adjudicator to be reliable, and also have in mind, where that is relevantly probative, any finding as to the honesty or reliability of the applicant that was made by the previous adjudicator. However, he must also bear in mind that the latter may be of little relevance when, as is alleged in both of the particular cases before us, the new material does not emanate from the applicant himself, and thus cannot be said to be automatically suspect because it comes from a tainted source.
>
> 7. The rule only imposes a somewhat modest test that the application has to meet before it becomes a fresh claim. First, the question is whether there is a realistic prospect of success in an application before an adjudicator, but not more than that. Second, as Mr Nicol QC pertinently pointed out, the adjudicator himself does not have to achieve certainty, but only to think that there is a real risk of the applicant being persecuted on return. Third, and importantly, since asylum is in issue the

consideration of all the decision-makers, the Secretary of State, the adjudicator and the court, must be informed by the anxious scrutiny of the material that is axiomatic in decisions that if made incorrectly may lead to the applicant's exposure to persecution. If authority is needed for that proposition, see per Lord Bridge of Harwich in *Bugdaycay v SSHD* [1987] AC 514 at p 531F."

Buxton LJ continued that the approach which should be adopted is that:

"11. First, has the Secretary of State asked himself the correct question? The question is not whether the Secretary of State himself thinks that the new claim is a good one or should succeed, but whether there is a realistic prospect of an adjudicator, applying the rule of anxious scrutiny, thinking that the applicant will be exposed to a real risk of persecution on return: see §7 above. The Secretary of State of course can, and no doubt logically should, treat his own view of the merits as a starting-point for that enquiry; but it is only a starting-point in the consideration of a question that is distinctly different from the exercise of the Secretary of State making up his own mind. Second, in addressing that question, both in respect of the evaluation of the facts and in respect of the legal conclusions to be drawn from those facts, has the Secretary of State satisfied the requirement of anxious scrutiny? If the court cannot be satisfied that the answer to both of those questions is in the affirmative it will have to grant an application for review of the Secretary of State's decision."

47. The matter was revisited by the Court of Appeal in the case of **AK (Afghanistan) v Secretary of State for the Home Department** [2007] EWCA Civ 535, in which Toulson LJ, giving the judgment of the Court of Appeal, explained in paragraphs 22 and 23 the principles to be applied which were that:

"22. Rule 353 is aimed at the mischief of an unsuccessful claimant seeking, after he has exhausted the appellate process, to begin the whole process all over again by making a supposedly fresh claim without sufficient cause. If an unsuccessful applicant is allowed to remain for a long time after the failure of his initial application, that is liable to magnify both the risk of abuse of process by the making of further supposed fresh claims when there is no substantial basis for them, and also the possibility of genuine fresh material of sufficient weight to justify a fresh claim. Rule 353 provides a test for determining what should be regarded as a fresh claim. The mechanism provided is that the Home Secretary determines whether the test is passed. The court has a power and responsibility through judicial review to see that the system is properly applied, but the role of the court is limited to that of review. To allow the same appeal process as applies to the original application would defeat the purpose of the exercise. It follows from the nature and structure of the rule 353 scheme that a decision by a Home Office official whether further representations pass the rule 353 threshold amounting to a fresh claim is a decision of a different nature, and requires a different

mind set, from a decision whether to accept an asylum or human rights claim.

23. Precisely because there is no appeal from an adverse decision under rule 353, the decision maker has to decide whether an independent tribunal might realistically come down in favour of the applicant's asylum or human rights claim, on considering the new material together with the material previously considered. Only if the Home Secretary is able to exclude that as a realistic possibility can it safely be said that there is no mischief which will result from the denial of the opportunity of an independent tribunal to consider the material."

I now turn to consider the submissions that the decision of the Secretary of State was **Wednesbury** unreasonable by looking at the Secretary of State's letter of 23rd March 2006. It started by explaining that they had been provided with a copy of the arrest warrant of 5th January 2006, and they noted that it said that the claimant had been sentenced in his absence and therefore his removal would be contrary to Article 3 of the European Convention. The Secretary of State went on to say:

> "However, we note that your client submitted similar documents for consideration in July 2005 when he was being represented by Sheikh & Co. Solicitors. The arrest warrant submitted in July 2005 was supported by expert evidence from Mr Norton who stated that *'...In my opinion both these documents could be genuine but because the official seal cannot be clearly read I do not feel able to state that they definitely are'*."

The Secretary of State then said that they considered the arrest warrant in this case and decided not to reverse their previous decision.

48. It was pointed out in that letter that when the claimant made his application for asylum, he had stated that he was arrested in Turkey and had been taken to court on 1st May 2003, but he was acquitted because of lack of evidence. It was also stated that the Secretary of State noted, first that the claimant had failed to submit the original document so that it could be examined for its authenticity, and second that the document submitted as an arrest warrant did not provide the date of the offence and it would have been expected, at least, to have had the date of the incident on it.

49. The letter goes on to point out that the claimant's solicitor had stated the claimant's brother had also been issued with an arrest warrant, but they did not provide any evidence to support the assertion, nor had they explained how that would have any bearing on the case.

50. The Secretary of State considered that he was not prepared to attach any evidential weight to photocopies of documents submitted, nor does she accept that the claim of the claimant is different from his earlier claims, in which the adjudicator did not find him to be a credible witness, nor did he accept that he had ever been convicted in Turkey for any reason. It was pointed out that the adjudicator concluded in respect of the Turkish arrest:

> "The prosecutor released the Appellant for lack of evidence... This may be a surprisingly light outcome considering he was caught red-handed, handing out magazines."

51. The Secretary of State attached importance to the fact that after the acquittal of the claimant in May 2003, even on his own version, the Turkish authorities did not take any action against him until the alleged incident 14 months later. The adjudicator did not accept that the arrest could have taken place in the way that he submits it did.

52. When considering matters further, the Secretary of State pointed out that the claimant had failed to explain why the authorities issued an arrest warrant without mentioning the date of the incident, and when he had previously been acquitted. For these reasons, the Secretary of State did not accept the documents submitted could be relied on, nor did they accept they added to the client's claim. For those reasons they rejected the claim. In doing so, they set out the rules and they concluded that they were not persuaded that the submissions on behalf of the claimant, taken together with previously considered material, created a realistic prospect of success.

53. Having considered the reasoning and applied the approach advocated by both Buxton LJ and Toulson LJ, I have come to the clear conclusion that the Secretary of State was quite entitled to reach the decision that he did. There was ample evidence to justify that conclusion. For those reasons, this application must be refused, notwithstanding the submissions of Miss Manassi.

54. Thank you very much.

55. MR PATEL: My Lord, in those circumstances I think I would ask for an order that the claim was dismissed and the claimant to pay the Secretary of State's costs, subject to the order.

56. MR JUSTICE SILBER: Are you legally aided?

57. MS MANASSI: No.

58. MR JUSTICE SILBER: You cannot resist that, can you? Thank you very much indeed for your help.

59. MR PATEL: Sorry, my Lord, before you rise, just for the avoidance of doubt, the order on page 20 of the bundle, which was Beatson J's order, could I just have an order saying that paragraph 1 is of no effect because --

60. MR JUSTICE SILBER: Yes, it must be, because it is staying removal directions.

61. MR PATEL: Thank you, my Lord.

62. MR JUSTICE SILBER: Thank you very much indeed.