

CO/5194/2014

**Neutral Citation Number: [2015] EWHC 2717 (Admin)**  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**THE ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand  
London WC2A 2LL

Wednesday, 3 June 2015

**B e f o r e:**

**MR JUSTICE CRANSTON**

**Between:**

**THE QUEEN ON THE APPLICATION OF AZ\_**

**Claimant**

v

**SECRETARY OF STATE FOR THE HOME DEPARTMENT\_**

**Defendant**

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(Official Shorthand Writers to the Court)

**Mr H Southey QC and Mr Grieves** appeared on behalf of the **Claimant**

**Mr Blake** appeared on behalf of the **Defendant**

**Mr McCullough QC and Mr Goudie** appeared as special advocates

J U D G M E N T  
(Approved)

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1. MR JUSTICE CRANSTON: This is an application for an order in relation to travel by the claimant to Jordan.
2. The main judicial review is to be heard in July and it concerns a decision of the Secretary of State about the right of the claimant to travel. There are various grounds advanced in relation to that main claim concerned with the disclosure of the Secretary of State's reasons, the provision of a fair hearing and the claimant's right to effective review.
3. The background to the present application is that the claimant's father has died in Sweden and the claimant wishes to travel there and to take the body to Jordan for burial. The claimant comes from Syria. He was granted refugee status here. The decision of 11 December 2013, which is challenged in the main proceedings, refused him a travel document.
4. The claimant's mother and brother are in Jordan. They fled there in September 2012. The claimant's wife is in Syria. They have applied to the Secretary of State for entry clearance and the matter was heard by the First-tier Tribunal in February of this year. The decision was then promulgated on 10 March favourable to the mother, brother and wife in their application to come to this country. That matter went to the Upper Tribunal and Mr Southey has informed me that it has refused the Secretary of State's application to appeal that decision.
5. I am told that there was a break down in the relationship between the father on the one hand and the claimant, his mother and his brother on the other hand. I shall return to the situation between the claimant and the father in a moment, but it appears that the father on the one hand and the mother and brother on the other hand were not reconciled before his death. The father, it seems, went to Sweden to seek asylum.
6. There is a letter of 14 January this year which, as I understand it, reiterates the earlier position of the Secretary of State. There the Secretary of State stated as the reasons for the refusal of a travel document as follows:

"It is assessed that granting a travel document would increase the risk to UK national security. You are assessed as holding Islamist extremist views and have expressed a desire to travel to Syria to engage in fighting."
7. At that time the Secretary of State invited the claimant to make further submissions. That was done on 20 March this year. It was at this point that the Secretary of State learned for the first time that the claimant's father was in Sweden and suffering from cancer. Medical evidence confirming that was received by the Secretary of State on 9 April.
8. There was then an application on 22 April that the Secretary of State urgently issue a travel document so that the claimant could travel to Sweden to visit his terminally ill father. I should have noted that the claimant's solicitor a fortnight earlier had provided a statement where she set out that the claimant had attempted to speak to his father in

Sweden to effect a reconciliation, but at that point the father refused to speak to him. She herself had then contacted the father, who had sounded extremely frail and was unable to give the name of the hospital or where it was located. However, the father had begged her to let him see his son.

9. On 1 May the claimant's solicitors had written to the Government Legal Department, as it is now called, about the restrictions on the travel document which the claimant was prepared to accept in relation to the journey to Sweden. The Secretary of State on 8 May granted the application and a travel document was issued valid for travel to Sweden only. Tragically, that came too late in that the father had died that very day. It was that day that the solicitors acting for the claimant informed the Secretary of State that the father had died and that the claimant would wish to repatriate the body to Jordan. Subsequently, an application was made for a travel document to enable this.
10. The claimant's solicitors have, over a period, engaged the services of one Abu Tooma, who acts as an interpreter and translator and who has got to know the claimant well. He repeats in his statement the request from the solicitors that, according to the claimant, his father wished to be buried in Jordan in a Muslim country. That is where the mother and brother were.
11. Mr Abu Tooma explains in detail the obligations which an eldest Muslim son is obliged to perform for cultural and religious reasons. There is no need to spell these out in detail, but it is obvious from the statement at the least that the eldest son is expected to be there. Mr Tooma underlines the need for that in this case when the claimant was not by his father's side when he died.
12. Mr Tooma states that he had spoken to the father on the telephone and also to the claimant about his wishes to visit his father. He was aware that, according to the claimant, his father had not been reconciled and that it was important to the claimant to visit his bedside. As I have said, that did not occur.
13. The claimant issued an application for further interim relief on 14 May 2015 to the effect that the Secretary of State do urgently issue a travel document for the claimant to travel to Jordan for his father's funeral. The claimant had in fact travelled to Sweden on 15 May and had returned some six days later.
14. In submissions on behalf of the claimant, Mr Southey QC advanced the case as an application for interim relief, an application, in other words, attendant on the main proceedings. Given that this is in effect a decision to order the issue of a travel document, in other words a mandatory order, it seems to me that that might not be the most appropriate way to characterise the application. However, it does not seem to me that, at the end of the day, the characterisation is determinative because the same factors would feed into a court's decision in either case.
15. As far as the application for interim relief is concerned, the factors which are relevant to the balance of convenience are described in my judgment in *R (Medical Justice) v. Secretary of State for the Home Department* [2010] EWHC 1425 (Admin). There I

explain that in the public law context, an application for interim relief differs from applications in a private law context since it must take into account the public interest.

16. As far as the criteria for grant of a mandatory injunction are concerned, these are set out succinctly in Lewis J's book, *Judicial Remedies in Public Law*, 5th Edition, at paragraph 6051 to 6055. Mr Southey accepted that the factors relevant establish a high threshold.
17. Mr S's case turns on the interference with the rights of the claimant under Article 8 of the European Convention on Human Rights. In particular, Mr Southey cites the case of *Ploski v. Poland*, application number 27761/95 of 12 November 2002, where a prisoner had been refused permission to attend his parents' funerals, despite support from a prisoner officer. The prison judge had refused the application on the basis that the applicant was a persistent minor offender. The Strasbourg court held that Article 8 was engaged. Article 8 did not guarantee a detained person an unconditional right to attend the funeral of a relative, but in that case there had been a violation because the Polish authorities had not given persuasive reasons for rejecting the application.
18. Mr Southey built on that authority to suggest that there could be no justification under Article 8, and certainly no justification had been advanced, as to why the claimant should not be able to travel to Jordan to attend to the funeral of his father in accordance cultural and religious traditions.
19. He highlighted the particular need in this case because of the absence of the claimant at the father's bedside on his death and because of the late reconciliation between the two. The claimant felt an especially heavy obligation because of what he said was his father's expressed wish to be buried in Jordan, a Muslim country.
20. Mr Southey added that that was where the family was based. As I have said already, however, the mother and the brother do not seem to have been reconciled with the father before his death. Mr Southey has explained that a cousin, who was a senior member of the family, was not in the same position.
21. Mr Southey was also highly critical of the time taken for the Secretary of State to make a decision. The matter has dragged out. If it had not taken so long, we would not be in this position. The matter had been before Collins J on 18 May and although we are now several weeks on, a decision has yet to be made.
22. In my judgment, the delay in the case does not affect either the balance of convenience in terms of interim relief or feed into, in any significant way, any decision if this is treated as an application for a mandatory order.
23. Mr Blake has explained that in complex matters like this, it takes time and that the matter is now at Minister level, although it was expected that no decision would be made until the end of the month.
24. I would simply comment that when a decision comes, that will be separately reviewable, although it would be convenient to handle the review of that decision at the same time as the hearing of the main judicial review.

25. I do not find this an easy case. In the course of the hearing, I asked whether it would be possible for the claimant to bury his father in Sweden or even in this country. Mr Southey could only say that the burial in Jordan was the claimant's father's wish, as retailed by the claimant.
26. The point of my raising the issue was that in terms of Mr Tooma's explanation of the need for the claimant to be at his father's burial, a refusal to issue an order would not affect that because the claimant could still be at a burial either here or in Sweden.
27. Taking the balance of convenience first, there are the very weighty public interest considerations contained in the letter of 14 January 2014. Given the situation which we hear about and read about every day in the media, it is not difficult to appreciate the concerns that the Secretary of State has. To my mind, the very strong public interest outweighs the factors which go in the claimant's favour on the other side of the balance.
28. I can appreciate Mr Southey's point that in a sense the decision on interim relief might be a final decision, although not necessarily. As I have said, it is still possible for the claimant to be present at the father's burial. Denying him interim relief does not preclude that.
29. As far as the mandatory order is concerned, it seems to me that in no way can the claimant's case meet the very high threshold contained in the authorities and reflected in the consideration of them in Lewis J's book.
30. In the circumstances of the case, although I have not found it easy, I refuse the application.
31. MR JUSTICE CRANSTON: Right. Where do we go?
32. MR BLAKE: My Lord, the question now is listing directions.
33. MR JUSTICE CRANSTON: Yes.
34. MR BLAKE: As the court is aware, the matter is now being reconsidered; both the original application for travel and the one that is after.
35. So the disclosure that has so far been made, if that is the substance of the challenge, the claimant is in essence aiming at the wrong target. Matters will have been overtaken --
36. MR JUSTICE CRANSTON: So it will be a challenge to the new decision.
37. MR BLAKE: Certainly the focus --
38. MR JUSTICE CRANSTON: Yes.
39. MR BLAKE: -- in my submission, is likely to be on the new decision rather than the original decision --
40. MR JUSTICE CRANSTON: Yes.

41. MR BLAKE: -- even if the original decision plays some part.
42. I do not know if my Lord --
43. MR JUSTICE CRANSTON: Well, I suspect Mr Southey would not want to rule anything out.
44. MR SOUTHEY: Sorry, actually, no. It may be sensible to --
45. MR JUSTICE CRANSTON: Yes.
46. MR SOUTHEY: Sorry.
47. MR JUSTICE CRANSTON: I have not any draft, if that is what you were going to say.
48. MR BLAKE: No. Do you have the original directions of Lang J?
49. MR JUSTICE CRANSTON: I did see them at one point, but --
50. MR BLAKE: I can hand up --
51. MR JUSTICE CRANSTON: Were they in one of the bundles?
52. MR BLAKE: No.
53. MR JUSTICE CRANSTON: Well, okay.
54. MR BLAKE: I, in fact, do not have a draft, but the final order is, I understand it, identical.
55. MR JUSTICE CRANSTON: Yes.
56. Have you discussed these with --
57. MR BLAKE: No, those are --
58. MR JUSTICE CRANSTON: These are the existing directions.
59. MR BLAKE: The directions that have been granted already.
60. MR JUSTICE CRANSTON: Yes. Well, what about variation? Have you discussed them with --
61. MR BLAKE: We have not. Today was listed for a directions hearing. The reason for that is if your Lordship sees paragraph 22 --
62. MR JUSTICE CRANSTON: Yes.
63. MR BLAKE: -- of those directions --

64. MR JUSTICE CRANSTON: Yes.
65. MR BLAKE: -- Lang J expedited the substantive hearing, but then said there would be liberty to apply to vary the order. The parties do have liberty to apply to postpone the hearing on 27 and 28 July to the Michaelmas term of 2015 if the claimant is granted permission to travel to visit his father.
66. At that time, as far as the order was concerned, the application was for travel to Sweden. So if travel to Sweden was granted, it was envisaged that this case, if it was to go ahead at all, would take place in the Michaelmas term rather than at the end of this term.
67. The circumstances, of course, were that the claimant's father was ill in Sweden. The Secretary of State had not yet considered the application for travel to Sweden and the claimant had not been, at that stage, allowed to go to Sweden to visit his ill father.
68. MR JUSTICE CRANSTON: Yes.
69. MR BLAKE: The judicial review as it currently stands, as I say, if travel is granted, it may fall away altogether. If travel is not granted, the challenge will attach --
70. MR JUSTICE CRANSTON: Yes.
71. MR BLAKE: -- significantly to the new decision. So the existing directions on disclosure, for example, are effectively out of date.
72. MR JUSTICE CRANSTON: Yes. Well, Mr Blake, how do you propose to deal with this?
73. MR BLAKE: Well --
74. MR JUSTICE CRANSTON: I should say, as you know, I have had to put this case in this morning.
75. MR BLAKE: Indeed.
76. MR JUSTICE CRANSTON: I have had to put all my other cases back to this afternoon.
77. MR BLAKE: I note the time as well.
78. MR JUSTICE CRANSTON: You can see the time and I still have not read all the papers. I am a little concerned.
79. MR BLAKE: Certainly.
80. MR JUSTICE CRANSTON: I do not want this to go on for too long.
81. Can you put your heads together and come up with --

82. MR SOUTHEY: Well, my Lord, can I just say there is an issue of principle between us --
83. MR JUSTICE CRANSTON: Yes.
84. MR SOUTHEY: -- because my learned friend says we are directing at the wrong target.
85. The primary point that my learned friend makes about that is that the Secretary of State has agreed in January to review the decision. Well, Lang J knew that. She knew that there was an agreement to review the decision.
86. MR JUSTICE CRANSTON: Yes.
87. MR SOUTHEY: She knew that we submitted the March material.
88. MR JUSTICE CRANSTON: Yes.
89. MR SOUTHEY: Our point was and remains that you cannot say that is academic because of the fact that we say that the whole of decision making process that is ongoing is flawed because we do not have sufficient information to make sensible representations. So the claim remains material.
90. It also, in our submission, remains urgent because as things stand, our instructions remain that the body will be transferred to Jordan. The claimant would want potentially to visit his father's funeral and burial site. Also, obviously there are issues within the family because of the fact he potentially is not able to accompany the body.
91. MR JUSTICE CRANSTON: Yes.
92. MR SOUTHEY: So he wants to see family.
93. MR JUSTICE CRANSTON: Mr Blake, what is the situation? What are you saying? You are saying it has to be put back.
94. MR BLAKE: Yes. I do not ask for a significant delay. I have not discussed them with --
95. MR JUSTICE CRANSTON: Well, it will be a significant delay because we have the summer vacation.
96. MR BLAKE: Well, indeed. I would ask for --
97. MR JUSTICE CRANSTON: So, you know, we are talking about October.
98. MR BLAKE: It to be listed at the very beginning of the Michaelmas term as soon as it can.
99. But at the moment, we are going to be focussing on the material which was before the decision maker back in 2013.

100. MR JUSTICE CRANSTON: No, no, no. I think this has to come on. I can appreciate the difficulties, but it has to come on.
101. MR BLAKE: As long as the court is aware that the focus of that hearing at the end of this term will have to be the original decision and not any decision that is made thereafter.
102. MR JUSTICE CRANSTON: Mr Southey?
103. MR SOUTHEY: Well, my Lord, two things. Firstly, if there is a fresh decision, and of course we do not know when the fresh decision will be, we would apply to amend. One would assume the Secretary of State has material available. One would assume that the Secretary of State is in a position to put that before the court.
104. But the second point is that in any event, the key point from the claimant's point of view which was going to be considered in July was the basic principles as to whether or not what is happening in this case is a process compliant with EU law.
105. There is no reason, in our submission, why that cannot take place in July. Even if to some extent it is dealing with the historic situation, that is an important issue of principle because it will determine whether or not the claimant has been given a fair process.
106. The whole timetable was set up essentially in the light of what was known about the position, namely that there had been this sort of further disclosure in January and that there had been representations made. The timetable was set by Lang J to take account of that going on in the background.
107. MR JUSTICE CRANSTON: What if you want to challenge the fresh decision? How are you going to do that?
108. MR SOUTHEY: Well, obviously, if there is a fresh decision, it may depend on what that is.
109. MR JUSTICE CRANSTON: Yes, of course.
110. MR SOUTHEY: If leave is granted, we would not necessarily accept the claim becomes academic, not least because of the Article 8 implications of it, but I would accept at that stage that the urgency falls away.
111. If the travel documents in those circumstances, we would obviously be willing to amend the directions. If the travel document is not granted, one would assume that essentially the reasoning remains the same, the justification.
112. It would seem to us unlikely that the Secretary of State is not in a position to put that material before the court in a way that will allow the court to understand the basic issue that is being raised at the July hearing, which is whether or not sufficient new material has been disclosed to comply with EU law. That is the issue of principle.

113. We cannot see why, if a decision has been taken by the Secretary of State, the court is not in a position to address that basic issue, because the principles will remain the same.
114. It is also hard to see why October will make very much difference in relation to this because, as I say, the Secretary of State is in a position where we know, because it has already been filed, the Secretary of State has already filed the material that is said to justify the decision. The court will be in a position to determine whether or not that material meets the obligations that we say arise under EU law.
115. MR JUSTICE CRANSTON: You are content with these directions as they are.
116. MR SOUTHEY: Yes. In fact, indeed, we served our skeleton argument in accordance with these directions early this week to ensure that there was absolutely no delay --
117. MR JUSTICE CRANSTON: Yes.
118. MR SOUTHEY: -- and that everybody had the maximum time.
119. MR JUSTICE CRANSTON: There is a provision there for liberty to apply. It seems to me that that can accommodate the position, although I think any application should be made as soon as possible after the decision is made -- we think by the end of this month -- and it be dealt with on the papers, unless the parties apply for an oral hearing --
120. MR SOUTHEY: Yes.
121. MR JUSTICE CRANSTON: But it should be by Lang J, myself or Collins J, the three judges --
122. MR SOUTHEY: Certainly.
123. MR JUSTICE CRANSTON: -- who have inside knowledge of the case.
124. MR SOUTHEY: Yes. There may need to be an oral hearing just because of the fact that there may need to be a closed session.
125. MR JUSTICE CRANSTON: Yes. Well, that would be part of the application.
126. MR SOUTHEY: Certainly.
127. MR BLAKE: Yes, I am grateful.
128. MR JUSTICE CRANSTON: Good.