

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/07/2009

Before :

SIR CHRISTOPHER SUMNER

Between :

	London Borough of Brent	<u>Petitioner</u>
	- and -	
	S	<u>Defendant</u>

Mr Henry Lamb (instructed by **L.B. Brent Legal**) for the **Petitioner**
Mr John Reddish (instructed by **Vickers & Co.**) for the **Defendant**

Hearing dates: 23rd June 2009

Judgment

This judgment is being handed down in private on 3rd July, 2009 It consists of six pages and has been signed and dated by the judge. The judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Sir Christopher Sumner :

Introduction

1. This is an application by the Applicant local authority of 26 May 2009 relating to a proposed trip by the Defendant S to Pakistan to look for his family. S is a 17-year-old Afghan national, born 1 January 1992. He was accommodated by the local authority on his arrival in the UK in February 2007 as an unaccompanied minor. He has lived in foster placements. He has discretionary leave to remain in the UK until 31 December 2009. It is proposed that he will apply for permanent leave to remain beforehand.
2. In late 2006 S was on a visit to an aunt in Afghanistan where his family lived when the Taliban killed his father. For his safety, family members arranged for his travel to

Pakistan, and then on to the UK. He does not know what has happened to his mother and his 2 younger brothers and sister. Efforts by the local authority to trace them through the Red Cross have proved unsuccessful.

3. S's wishes to travel to Pakistan to trace his family whom he believes are refugees living there. The local authority consider such a trip to be unsafe, and not in S's best interests. When S did not agree with their view and refused to hand over his passport, the present proceedings were started.

Short history

4. Since late 2008 S has planned his trip to Pakistan to look for his family as the local authority were aware. He saved money and bought his ticket. On 6 April 2009 S told the local authority at a review hearing that some of his friends had been able to trace their families. He had the support of his foster mother for his proposed trip. He was intending to leave on 27 May.
5. The local authority took time to consider the matter. On 22 May 2009 the decision of the Assistant Director was received. It was not to allow S to travel, to offer compensation for any loss of money on his cancelled ticket, and to take further steps to help him trace his family. Security conditions in Pakistan were considered to have deteriorated in the last few months. S did not agree. He would not hand over his passport.

The present proceedings

6. On 26 May 2009 the local authority applied without notice and before the issue of proceedings, for leave to make an application under the inherent jurisdiction of the High Court, for a passport order against S, and for an order prohibiting S from leaving the jurisdiction of England and Wales. This was granted by Mr Iain Goldrein QC, sitting as a Deputy High Court Judge.
7. It was served on S early the following morning. The police arrived, demanding his passport. It was with friends. Accordingly S was handcuffed and brought to the High Court. W was represented by an experienced solicitor, Mr David Barnes of Vickers & Co. He agreed to hand over his passport to his solicitor that day, to be held to the order of the court.
8. On 2 June 2009 His Honour Judge Altman, sitting as a Deputy High Court judge, made further directions. He listed the case for a hearing on 23 June.
9. It came before me on that day. The local authority was represented by Mr Henry Lamb. Mr John Reddish appeared for S. I was asked to decide the application on submissions. I announced my decision on the following day. It was to discharge the order prohibiting S from leaving the jurisdiction of England and Wales and to permit his solicitor, Mr Barnes, forthwith to return his passport. I stated that I would give my reasons later. This I now do.

The evidence

10. The reasons influencing the Assistant Director are not known. There are however 2 witness statements from Mr Puplampu, a social worker. He traced S's plans to travel to Pakistan to trace his family from late 2008, including his saving up for the fare. At a

review on 6 April 2009, S and tells them that some of his friends had made similar trips to trace their families and he was very hopeful.

11. The decision to withhold consent was taken on 22 May, 4 days before S intended to go. The local authority say that they “ very much appreciate his reasons to travel to trace his family ... our decision for him not to travel is in his best interests ... we appreciate his current position, that is delay in reaching a decision about his travelling plans, and his burning desire to trace his mother ...”
12. The decision appears to have been made on the basis that there could be possible immigration difficulties in him returning to the UK and the security position in Pakistan. The Foreign Office advised that there is a high threat from terrorism and sectarian violence throughout Pakistan. It was not considered safe for S to travel to there. Nothing was said about when S could travel.
13. In his statement S explained that he had discretionary leave remaining in the UK. It expired on 1 January 2010. He understood that he had to apply for leave to remain. This had to be done before he is 18 which is on that day.
14. A number of his fellow students had made similar journeys to Pakistan, travelling to Peshawar where there is a larger Afghan population. One was successful in tracing his mother. He set out, as is now accepted, that once he applies for leave to remain in the UK he will be unable to travel, as such applications he is informed can take years to determine.
15. This is contrary to what he says he was told at a meeting with social services. On 26 May 2009 he was informed by the social worker that he could guarantee that, within three months of his application, he would be granted permission to remain in the UK. The result would be that he could then travel to Pakistan. Whether this was the same information before the Assistant Director is not known.
16. The effect on S of his position has been significant. The record of the review on 6 April 2009 says that he has been referred for counselling given his mood swings and sleep problems. He has had much difficulty in coming to terms with the loss of his father, his missing mother and family, as well as the experiences through which he has been. It is noted that he misses his family terribly.
17. Finally at short notice advice was obtained from specialist counsel on 15th June dealing with S’s immigration status. Miss Giovannetti noted that S was granted discretionary leave simply on the basis that he was an unaccompanied asylum seeking child and that there was no adequate reception arrangements in place of him if he were returned. If he located his mother or family, there was a risk that he no longer qualified for discretionary leave, on the basis that adequate reception arrangements were now in place for his return. This depends on the facts I am not clear that this would necessarily arise if his family was found in a refugee camp in Pakistan.
18. Thus it appears that there could be difficulties if he found his family in Afghanistan. Mr Reddish made it clear that he does not intend to travel there understanding that this could present difficulties for him.

She concluded –

“The journey proposed by S plainly raises a number of significant issues in relation

to his safety and general welfare. In terms of his immigration status in the UK, as explained above, if S returns during the period of his leave and has been unable to trace them, he should, in principle, be able to gain re-entry ... the risk of problems appear to be significantly increased if S was successful in locating his mother/family.”

Submissions

19. Mr Lamb for the local authority highlighted the potential dangers of the travel involved. In June 2009 there had already been 5 bomb incidents with over 60 people killed. Whilst they are sympathetic to S’s wishes, pursuant to their statutory duty, they considered it appropriate first to refuse his plans, and then to apply to court. He pointed to the huge number of displaced persons in Pakistan, said to be some 2 million people, and the incredible difficulty in locating his family.
20. Mr Reddish for S accepted the advice given by the Foreign Office. However that had to be put in perspective. Given the many millions living in Pakistan, the risks though present had to be regarded as small. He produced a balance sheet of positive and negative features with regard to the proposed visit along the lines proposed by Thorpe LJ in *Re A (Male Sterilisation)* (2001) 1 FLR 549. It was formulated in the context of assessing best interests of an adult lacking capacity. I have found it helpful in the context of this case.
21. He listed a series of positive features, part of which could be described as personal. They include his long-held and strongly felt desire to make this journey, his need both as a person and as head of his family to do all he could to find his family, the prospect of alleviating the suffering he already experienced, the fact that a colleague had found his family, his profound emotional needs, and the further anguish caused if he cannot even try to find them. The journey is of the enormous importance to him and he has been deeply upset by the local authority’s decision.
22. On the practical side he accepts the journey will be limited in time and he has ensured that he can fit it in round his studies. He understands the risks and is prepared to take them, risks which earlier it appeared the local authority might themselves accept.

Statutory duty

Under s.17 (1) of the Children Act 1989, it is the “general duty” of every local authority

“(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such child by their families ...”

It is not the same wording as the duty on the court under s.1 of the Act. There the child’s welfare is the court’s paramount consideration. Nevertheless the welfare check list in s.1 (3) provides assistance in highlighting a child’s wishes and any harm he is at risk of suffering, as factors to which the court will have regard. That and his immigration position are the main factors I must have in mind in deciding whether to continue the injunction is in his best interests.

23. I adopt the remarks made by Munby J in *Re K; A Local Authority v N* (2005) EWHC 2956 in the context of a 16 year old girl who had been unlawfully married at the age of 15. Care proceedings had been taken to safeguard her.

“We must be careful to ensure that our understandable concern to protect vulnerable children (or, indeed, vulnerable young adults) does not lead us to interfere inappropriately - and if inappropriately then unjustly - merely because they cleave as this family does to mores, to cultural beliefs, more or less different from what is familiar to those who view life from a purely Euro-centric perspective.”

Conclusions

24. The proposed journey is one which has some risks because of the violence in Pakistan. I estimate them as small. It is understandable that the local authority should be concerned when the violence increased. Such risks can only be justified for S if the journey has potentially greater benefit. S has been in the U.K. for two years. He has no idea whether his mother or siblings are alive or dead. The importance of knowing the truth if it can be discovered, would be profound for any young person. For a young Muslim head of a family the responsibility is even greater, and I bear in mind the remarks I have quoted above.
25. I highlight three considerations. The first is that he might find his family, with the risk that such a discovery could harm his prospects of returning to the UK. I consider the prospects are much reduced if his family are in Pakistan. The irony is not lost on him, but hardly surprisingly that is a risk he is prepared to take.
26. Secondly he is in a particularly difficult position. If he does not take the opportunity at this time and before he is 18, it may be many years before he is free to go again should he not wish to give up any prospect of remaining in the UK. I attach considerable importance to that consideration.
27. Finally, I am concerned about the effect on S if he is unable to go. He is a young man who has had to grow up quickly. He has had to survive harrowing experiences. He now exhibits the physical and mental signs of strain. Even an unsuccessful journey would place him in a better position than not being able to make the journey.
28. Looking at S’s best interests, I am not satisfied they are met by continuing the injunction against him leaving the UK. I have had a series of considerations put before me in reaching my decision additional and I suspect different from those considered by the local authority in late May.
29. I accept the caution that there should be about travel to Pakistan. They are outweighed in this instance because of the powerful personal factors in S’s case. I accept that there are also some risks concerning immigration on his return. But faced with the prospect that he may lose the opportunity to travel again if he wishes to stay here, I do not regard those risks as significant.
30. For those reasons, I gave my decision that I would lift the injunction against him. I directed that his passport be returned to him.

31. I would add a few words about the position of the local authority. They have been sympathetic to S, though the delay in reaching the decision and the manner in which it had to be carried out may not have been helpful. However I fully support them in deciding that, in such a difficult and anxious matter as this, they should seek a decision of the court. It would not have been an easy request to accept, even if the immigration position was not fully known. I hope nothing I have said discourages local authorities, in appropriate cases such as this, seeking the assistance of the court for which they are not to be criticised.

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