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Our ref: RACHAELL/N062460001/D1618
Your ref: E1420789
Date: 27 August 2017

VERY URGENT: REQUEST TO CANCEL REMOVAL DIRECTIONS
CLIENT DUE TO REMOVED AT 4.22PM TODAY

NAME OF CLIENT : D1618
DOB : DPA
NATIONALITY : Afghanistan
HO REF : E1420789

We write in respect of the above named client for whom we are already on record. We understand he is currently heading to the airport and is due to be removed at **4.22PM today**.

To confirm, we began representing this client on 16 August 2017, as he attended an immigration surgery.

We do not have his full immigration file as this has not been provided by his previous solicitors. We only received some documents on Thursday 24 August 2017. We have been able to meet with the client on one occasion since we began representing the client.

The Respondent previously attempted to remove the client on 29 July 2017 but this removal was suspended after the client was physically assaulted by the Tascor Officials utilised to assist his removal. This attempted removal was reported by our client in the form of a complaint once he was returned to IRC Brook House. We understand that he was scheduled to have an interview to discuss this incident on 30 August 2017.

The client has been given absolutely no notice of this latest removal attempt and only notified us of this removal attempt approximately 60 minutes ago.

These submissions are therefore drafted with extreme urgency. We reserve the right to amend these submissions.

SUBMISSIONS:

ASYLUM:

We would ask that the client's removal directions set for 4.22PM today are cancelled as a matter of urgency to enable us to properly consider the client's case and to obtain the relevant documents in his file in order to ascertain the merits in making further submissions in support of the client's matter. It should be noted that we only took initial instructions from him on Friday 25 April 2017.

We submit that on the balance of convenience, it is clear that the client's removal should be stayed in order to properly investigate his right to reside in the UK. The client was returned to the UK from Austria under the Dublin III convention in order to be reunited with his father, a British citizen.

We note that the Respondent accepts that those who are deemed to be high profile as well as those deemed to be 'westernised' or to have links with western interests could be at real risk of persecution from non-state actors if returned to Afghanistan. The guidance also acknowledges that the security services are so weak that they cannot protect those who are targeted by Armed

Opposition Groups.

The client claimed asylum on the basis that he was kidnapped in 2014. He comes from a wealthy family in Kabul and his father and uncles' had a very lucrative emerald trading business. It is noted that the Respondent accepted that the client's account as did the immigration judge in his asylum appeal. It is submitted that the client will still be at risk on return to Kabul. Not only did the kidnapping not happen that long ago, the client will also be seen as having links with the west as his father is a British citizen.

We refer to the Respondent's CIG Security Afghanistan (August 2017). The report acknowledges the growth in violence and attacks in Kabul.

> *Kabul*
>
> *According to UNAMA data, during 2016, Kabul province recorded 1,758 civilian casualties (376 deaths and 1,382 injured), the most of any province in Afghanistan in 201658 . In the first half of 2017 UNAMA recorded that 'Kabul province continued to record the highest number of civilian casualties, mainly in Kabul city. Of the 1,048 civilian casualties (219 deaths and 829 injured) documented in Kabul province, 94 per cent resulted from suicide and complex attacks carried out by Anti-Government Elements in Kabul city (209 deaths and 777 injured). After Kabul, the highest numbers of civilian casualties occurred in Helmand, Kandahar, Nangarhar, Uruzgan, Faryab, Herat, Laghman, Kunduz and Farah provinces.'*

It is submitted that the growth in violence in Kabul demonstrates the state's inability to cope with anti-government entities and protect civilians. The client would not be able to avail himself of the protection of the state, both in relation to the individual threat of kidnapping and in relation to the general threat of violence to civilians.

The deterioration in the country situation and the increasing weakness of the security service are a

relevant factor that was not considered by the IJ previously in considering his asylum appeal and would have a realistic prospect of success; particular in the light of the credibility findings made in the client's favor.

ARTICLE 8

The client was initially brought to the UK to be reunited with his father under Dublin III. The client's father was awarded British citizenship in 2007 having held refugee status in the country since 1997. The client left Afghanistan following the kidnapping attempt in order to join his father where his family believed they he would be safer.

Since arriving in 2015, the client has always resided with his father in his house in Worthing, Sussex. The client's father has supported him financially and sent him to college where he was learning English as a foreign language.

It is submitted that by removing the client, the Respondent will have breached his rights under Article 8 by separating him from his father. The test under Article 8 calls for proportionality. It is submitted that it would be wholly disproportionate and irrational, to take the client away from his father, a british citizen residing in the UK where the client is safe from harm and violence and remove him to Kabul. Though it is recognized that the client has family in Kabul, he is at risk form potential kidnappings and more general violence to civilians.

PROCEDURAL UNFAIRNESS: CHAPTER 60

There is currently an ongoing challenge into the lawfulness of Chapter 60 Notice of Removals. We were informed that our client was going to be removed four and half hours before his flight whilst he was on the way to the airport. We had received not other notice before this, this is despite our attempts to contact Command and Control and NRC to verify if there were any removal directions in place.

We have no notice in which to properly prepare the client's case. The client is currently being

removed on a Sunday of a bank holiday weekend. It is submitted that this is an unlawful action on the basis of procedural unfairness as it has severely damaged our abilities in representing our client.

CIVIL CLAIM AGAINST THE RESPONDENT/TASCOR:

As previously indicated the client has claimed that he was having being physically assaulted by escorts during a previous botched attempt to remove the client from the United Kingdom. We believe prima facie, he has a civil claim against Tascor and the Respondent in order to seek damages for the ill-treatment that he has experienced.

As stated above, the client has already imitated the necessary steps for filing a complaint against Tascor. His first interview was due to be on Wednesday 30 August 2017.

We submit that it would be against the rules of procedural fairness for the client to be removed before this complaint and this litigation can be appropriately and fairly brought.

We submit that by removing the Client before this interview can take place denies his access to justice

We seek to rely upon the case of *R v Chief Immigration Officer ex parte Quaquah* which established that in cases in which there is an on-going civil action, such as that of the Claimant, the Claimant is entitled to 'equality of arms' based on Article 6 ECHR and this limits the SSHD's discretion when setting removal directions. Mr Justice Turner stated,

> *'Under both the CPR and Article 6(3)(b) of the ECHR the principle of "equality of arms" is firmly established. While the Secretary of State has made passing reference to his desire not to gain any advantage by removing the applicant from the United Kingdom, this is a long way removed from the need to recognise that the applicant should not be placed at a disadvantage when compared with the position of the Secretary of State in the conduct of the proceedings. No more, in my judgment did the Secretary of State take into account the*

need to find justification (per Lord Bingham C.J. in ex p. Smith) or compelling justification (per Lord Woolf M.R. in Lord Saville). Justification for interference with the human right involved here could in theory be found in the need to maintain a credible immigration policy and, less plausibly, the fact that the applicant would be dependent on State benefits during the period which would elapse before his action reaches trial.'

He went on to explain that any consideration of a request for Exceptional Leave to Remain whilst pursuing a civil claim against the Defendant:

'It may very well be that the circumstances of an individual applicant may present the Secretary of State with a novel situation which is not only not directly or, but also, not indirectly provided for within the extensive range of situations covered by the rules. This is clearly such a case. Merely because there is a situation which the rules have not contemplated cannot sensibly provide the basis for a presumption against the grant of such leave. The presumption must be that the Secretary of State will consider the case on its intrinsic merits without embarrassment of any preconception leading him to oppose the grant of such leave. There can be no proper objection to the proposition that the onus of proving that the individual case is one in which leave should be granted outside the rules lies on the applicant. It is quite another thing to start with a presumption against the grant of leave. I cannot, however, regard this as a question of semantics since the point was being made as one of substance on the behalf of the Secretary of State. The point is, indeed, one of substance and the Secretary of State is obliged to consider each such application objectively without any presumption against the grant of leave. The submission has to be rejected. If and insofar as the Secretary of State approached the question of the exercise of his discretion on the basis that there was a presumption against its exercise on the facts of any particular case, that was an illegal approach.'

Mr Justice Turner stated that the unlawfulness of the decision to remove Quaquah whilst his civil action was on-going was also unlawful because of the appearance of bias. When she decides to

remove claimants who have outstanding civil actions against her, the Defendant is taking advantage of her position as both defendant in the civil claim and minister in charge of admission and removal from the United Kingdom. Even if the decision to remove the Claimant is maintained in good faith, it remains the case that it generates the appearance of bias, which undermines the lawfulness of the decision.

> *'The second aspect was that it was demonstrable that the Secretary of State was, albeit unintentionally, putting difficulties in the way of the applicant being able to get his case together for the purpose of a trial. It was this which could give rise to an appearance of bias in the decision to refuse exceptional leave to remain.'*

The judgment also clearly states that it is not open to the Defendant to rely upon the requirement to maintain a credible immigration policy when making decisions in which the reason to remain is unique or nearly unique.

> *"In all, or certainly the great majority of, immigration cases the argument for the refusal of leave is that in the circumstances of an individual case, the grant of leave would be inconsistent with the maintenance of a credible and fair immigration policy. It could be that it is inherent in the refusal of the grant of leave to enter that to do so would be inimical to the maintenance of an ordered policy. That is understandable. But where, as here, the individual applicant has a reason for entry which is unique, or nearly so, the grant of leave neither obviously nor would immediately threaten the maintenance of such a policy. It is, theoretically, possible that it would do so, but it requires explanation that will withstand "careful scrutiny". Consequently, if this ground were to be relied upon, it would be essential that there should be evidence to explain why such an unexpected result would follow. There was none."*

It is submitted that there is clearly a novel point here. The client has potentially been a victim of assault by the Respondent's agents. He is the key witness to a potential civil claim. He has made a

complaint yet has been subjected to a removal attempt before

It should be noted that on 4 July 2017, Mr Justice Turner granted a stay on removal on another case where the Claimant sought to make a civil claim against TASCOR/the SSHD in relation to an assault during the course of removal. Mr Justice Turner concluded that the Applicant has a prima facie arguable Quaquah point in relation to his proposed civil claim and hence there was no need to determine all the points raised by OPSCU at this stage. He granted a stay of removal on the basis that arguably the response of the SSHD fell short of satisfying the relevant criteria relating to the points raised as to the infringement of the Applicant's human rights raised by his civil claim.

This is a case with almost identical facts; including the complete lack of notice of removal given to the client in this case.

ACTION REQUESTED:

We request urgent confirmation by 2.30PM that the client's removal directions have been stayed, aside we will bring judicial review proceedings with no further notice.

If you have any queries, please contact Rachael Lenney by telephone on DPA or by mobile DPA.

Please ensure that you quote our reference number in all correspondence and communications with this office.

Yours faithfully

Duncan Lewis

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Yours faithfully

Signature

Duncan Lewis