

## Home Office applications, deadlines, and bounced cheques.

The case of [R \(on the application of Teisha Forrester\) v SSHD \[2008\] EWHC 2307 \(Admin\)](#), decided by Mr Justice Sullivan is the latest in a string of recent decisions that have pushed the envelope in Article 8 (family life) cases. The claimant, Mrs Teisha Forrester, a Jamaican national, applied for settlement as the spouse of a person settled in the UK. She was married to a person who had been settled in the UK, following a grant of indefinite leave to remain, for over 30 years. Their daughter was a dependant on her application.

Her application to the Home Office for an extension of stay was made at a time when she still had current leave to remain and was lawfully present in the UK. However, her cheque to pay the Home Office fees bounced because of insufficient funds in her account. The Home Office refused the application on that basis. The claimant promptly re-lodged the application after receiving the refusal, this time enclosing the correct payment. However, by this time, her leave to remain in the UK had expired. The Home Office refused the application on the basis that the application for extension was out of time, although they took their payment. Their refusal letter concluded with those infamous words:

**"You have no right to stay in the UK so are liable to be removed. You must leave the UK as soon as possible. If you do not leave voluntarily you may be prosecuted for an offence under the Immigration Act 1971, the penalty for which is a fine of up to £2,500 and or up to 6 months' imprisonment and you will also be liable for removal from the UK."**

An earlier court pointed out for the record that that refusal was in fact a lawful one, based as it was on changes to the law made in 2003, which made the payment of fees for immigration applications mandatory. Indeed since then, the legal position in the UK has been that if the correct fee is not included with a Home Office application, the application is invalid.

The claimant lodged judicial review proceedings, citing the unreasonableness of the reasons of refusal. The matter came before Mr Justice Sullivan in the High Court who, in allowing the claim, rejected the Home Office's over-zealous application of the law. He noted that the only reason why leave had expired was because the earlier application had been refused for the sole reason that the bank had not cleared the cheque. He accepted that the decision to refuse was lawful, but that the Home Office should have exercised their discretion with intelligence, common sense and humanity.

In remarks very similar to those expressed in the now celebrated case of Chikwamba, the Judge asked indignantly;

**“What is the purpose of requiring the claimant and her daughter to return to Jamaica?”**

Readers will remember that Chikwamba is the case in which it was concluded that in family cases involving children, an Article 8 claim should rarely be dismissed on the basis that it would be proportionate and more appropriate for the appellant to apply for leave from abroad.

In the present case, the Judge pointed out the absurdity of the decision by the Home Office, and stated that;

**“One would have thought that anyone standing back and looking at this case would have concluded that such a decision was manifestly disproportionate and unreasonable”.**

Mr Justice Sullivan went on to say:

**“This is a classic example of a thoroughly unreasonable and disproportionate, inflexible, application of a policy, without the slightest regard for the facts of the case, or indeed elementary common sense and humanity. Such an approach diminishes, rather than encourages, respect for the policy in question.”**

The Home Office had strenuously argued that, unlike the position in Chikwamba, there would appear to be no insurmountable reasons why the claimant and her daughter would not be able to go back to Jamaica. In Chikwamba Lord Brown had described the conditions in Zimbabwe as "harsh and unpalatable" which was not the case in Jamaica. The Judge agreed that strictly speaking there was nothing to prevent the claimant's husband from going to Jamaica, but that there was, as a matter of common sense, a lot of substance in his unwillingness to go back since he had all of his family and private life ties in the UK where he had lived for many years.

It was also argued that the claimant's husband married knowing that the claimant's immigration position was not secure. The Judge also dismissed this argument and said that this was not a case where the parties married while the claimant was in this country illegally. They had in fact married while she was in this country legally.

The Judge pointed out that whilst he readily accepted the general need to maintain a fair and firm immigration system and to deter those who do not have entry clearance from coming to the UK, there was however, no question of this claimant jumping the queue as she came to the UK entirely lawfully, and was in the UK country lawfully for a number of years.

The court also said that even if the period of separation would be relatively brief, if the claimant went back to Jamaica to apply for a visa, and interference with family life would not be very great, this did not address the question of the reasonableness and proportionality of requiring even that limited degree of interference.

The Judge pointed out that it is one thing to say that one should have a fair and firm immigration policy, but quite another to say that one should have an immigration policy which is utterly inflexible and rigid and pays not the slightest regard to the particular circumstances of the individual case.

As in Chikwamba, the Home Office was ordered to pay the legal costs of the claimant because they had, in the words of the Judge, maintained a wholly perverse position.

This case has therefore further developed the protection of families under Article 8. In particular, the court made it very clear that interference with family life is not justifiable **even if the interference will only be to a slight degree**. That argument is no longer available to the Home Office to make.

It seems that the ultimate question to be asked in related cases, is whether the decision by the Home Office can be said to be manifestly disproportionate and unreasonable, having regards to the particular circumstances of the individual case.

Anyone who thinks that their immigration status may be affected by this opinion should seek professional legal advice. At Genesis Law Associates, we specialise in all areas of immigration, asylum and nationality law.