

Jail sentences and use of forged documents.

The Court of Appeal's Criminal Division recently passed a useful decision in the case of **R v. Pangetti and Anor [2008] EWCA Crim 3120**. This case deals with convictions for the use of false passports and whether this should always attract a jail sentence.

The case involved a Zimbabwean couple who were failed asylum seekers. They had 2 children, the younger of whom was severely disabled, having brain damage. The couple was charged with the use of forged Home Office letters which they used to obtain employment. They also claimed benefits.

They were convicted and sentenced to separate custodial sentences.

It was pointed out that apart from the disabled child, the couple were of good character. They had also promptly admitted their offences. They were believed by the court to be sincere and profound in their remorse. They also looked after a relative who was terminally ill in Zimbabwe, where it was accepted that the health care system is failing.

But the sentencing judge had been dismissive, if not cynical. He adopted the attitude that this was a case where there had to be a custodial sentence for both applicants to deter like-minded offenders. He described the appellants' as having sought to lengthen their stay in the UK by the clever use of lawyer tactics. He referred to them as "freeloading on this country".

The Court of Appeal disagreed. It said that there was no evidence that the couple had abused the asylum processes. The Court also pointed out that they had not been charged with regard to the benefits that they had claimed.

The Court then went on to say that usually cases of this kind required a jail sentence, and that these cases are often sad and often invoke sympathy.

More importantly, the Court said that an immediate custodial sentence is not always required and that a suspended sentence is sometimes justified.

The Court of Appeal agreed to reduce and suspend the sentences and ordered the couple to carry out unpaid community work. This was on the basis of the severe disability of the younger girl. The court noted that the child was entirely dependent on her parents for the most basic functions of living and for any sort of movement and that if they went to jail, there was a danger that both children might be evicted from their home.

The Court noted that this particular case cried out for compassion, and that there was a strong plea for humanity.

Sadly, because of a mandatory statutory requirement, deportation was recommended.

This case must however, be read together with the case of ***R v Kingdom Mvumbi***. In that case, the Court of Appeal agreed that because of the current policy of no returns to Zimbabweans which remains in place, a deportation order would be unlawful.

It is one thing therefore, for a court to recommend deportation, and another thing altogether for deportation proceedings to commence against a Zimbabwean, or generally, a national of a country where the Home office have a policy of no returns.

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.