

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Bagvilas' (Linus) Application [2015] NIQB 16

IN THE MATTER OF AN APPLICATION BY LINAS BAGVILAS  
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

TREACY J

Introduction

[1] The applicant in this case is a Lithuanian national who is a sentenced prisoner who at the end of the custodial element of his sentence was placed in immigration detention. The Home Office has issued a Deportation Order which is currently under appeal.

[2] The applicant entered Northern Ireland in or around late April 2013 or early June 2013. Some months after his arrival in Northern Ireland it appears that he worked for a short period of in or around six weeks and that employment came to an end in November 2013. However, whilst he was here he was arrested in February 2014 for a number of offences, namely cultivation of cannabis, supplying cannabis and dishonestly extracting electricity. Because of the seriousness of his offending the Crown Court imposed a sentence of two years divided up into 12 months' in custody and 12 months on licence.

[3] The applicant has no family in Northern Ireland and given the fact that he only worked here for six weeks Mr Henry of counsel submitted it is likely that any associations that he has developed are likely to have arisen as a result of drugs offending and/or his lengthy period of time in prison.

[4] The Home Office in this case has issued a decision under Regulation 24AA of the 2006 Regulations seeking to remove the applicant to Lithuania pending his

appeal against his deportation. His challenge in the present case is not in respect of the Deportation Order, which is the subject of an appeal and the merits of which will be examined by the relevant tribunal, but rather this is a case in which he is challenging his removal under Regulation 24AA of the 2006 Regulations.

[5] The grounds upon which relief is claimed are:

- (a) By seeking to remove the applicant pending his appeal, the Home Office, acted contrary to natural justice and its common law obligations to act fairly, is wholly undermining and frustrating the process of his appeal.
- (b) In its attempt to remove the applicant pending his appeal the Home Office was acting contrary to Section 6 of the Human Rights Act 1998 and was acting incompatibly with the applicant's rights under Article 8 of the Convention by failing to respect his right to private and family life.

[6] The applicant's counsel recognised during the course of the hearing that in reality these two grounds ultimately resolved to the same point namely that the removal of the applicant pending the hearing of his deportation appeal would be unfair and would frustrate his exercise of his right of appeal.

[7] So far as the ground based on common law fairness is concerned the applicant submitted that despite having a statutory power to remove the applicant pending his appeal that this did not give the Home Office power to ignore or act contrary to common law fairness. He referred me to Gordon Anthony's "Judicial Review in Northern Ireland" 2<sup>nd</sup> Ed. 2014 at paragraph 7.07 :

"However, even where the decision maker has acted in a manner that is consistent with statutory requirements it does not necessarily follow that a corresponding decision is procedurally sound. This is because the courts have long held that the question whether there has been procedural fairness is a question of law for the courts which may use common law to imply so much and no more by way of additional procedure safeguards as will ensure the attainment of fairness."

[8] No issue is taken with that statement of principle. The applicant submits that the appeal process would be "wholly undermined" if he is removed to Lithuania at this point and that he would face "insurmountable" practical difficulties in attempting to adequately prepare and pursue his appeal. I do not accept that submission. The applicant has instructed lawyers in his case and he can continue to instruct them from Lithuania for the purposes of his appeal. As Mr Henry reminded the court international consultations, including with expert witnesses, are frequently conducted via the internet for free through SKYPE and FaceTime and interfaces of that kind. All that is required is the internet and a smart phone or a computer

Whether an interpreter is required or not such facilities mean that there is in fact little difference between having a client in one's office and having him on the computer screen. It has not been demonstrated to this court how the applicant will be prejudiced in setting up his appeal from Lithuania especially as he has instructed local solicitors and will be able to contact them as and when required by various means. Further, the 2006 Regulations allow the applicant to make an application to return to Northern Ireland or England in order to attend his appeal

[9] For the above reasons I do not consider that there is any merit in the contention that this applicant would face insurmountable practical difficulties. There was an issue raised about legal aid. This applicant has the benefit of legal aid to pursue his appeal against the Deportation Order and it was said in the applicant's skeleton argument that if the applicant were removed then there would be an obligation to inform the Legal Services Commission of the change in circumstances and that potentially he faces the removal of funding and therefore no lawyer in Northern Ireland to pursue his appeal. Now I questioned counsel closely about this surprising contention and gave them an opportunity, if they wished, to put before the court any material which would suggest that his removal would have an adverse effect on legal aid funding to pursue his deportation appeal. He currently has the benefit of legal aid and, as it seems to me, the fact that he is removed to Lithuania should have no bearing on the retention of legal aid provided his financial circumstances remain materially unaffected. In fact there was nothing put before the court from the LSC to support that point.

[10] I therefore do not accept that the applicant would face any insurmountable difficulties in pursuing his appeal. For the same reasons I reject the argument based on Article 8. A further issue arose in this case concerning the effect of removal on the applicant's licence and whether the removal would or might place him in breach of licence conditions. However, having looked at the terms of the licence and the provisions of the Criminal Justice (Sentencing Licence Conditions) (Northern Ireland) Rules 2009 it is plain that his removal under Regulation 24AA of the 2006 Regulations would not put him in breach of his licence conditions. Accordingly, for all those reasons the application for leave is refused and the application is dismissed.