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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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Chen's (Rong) Application [2014] NIQB 72

IN THE MATTER OF AN APPLICATION BY RONG CHEN FOR JUDICIAL REVIEW

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TREACY J

[1] I will read this judgement into the record and if the parties wish to have the transcript then they can so indicate to me at the conclusion and I will request that it be transcribed.

[2] The applicant has made application for judicial review and a writ of habeas corpus in respect of her immigration detention and notice of deportation. The challenges are very elaborately pleaded but in essence the applicant maintains that the detention orders issued in respect of her are unlawful and/or that her detention is unlawful. The applicant has not herself filed any affidavit evidence and the applications are grounded on affidavits from her solicitor.

[3] The applicant is currently detained at Yarl's Wood Immigration Removal Centre, having been removed from this jurisdiction on 12 December 2013 following the completion of her prison sentence. She is being detained under Schedule 3 of the Immigration Act 1971 as a subject of a deportation order requiring her to leave the UK and is being detained pending her removal or departure from the UK. The reasons for her deportation arise from the fact that on 6 July 2012 following an earlier plea of guilty she was convicted at Laganside Crown Court by Mr Justice Stephens of two counts of controlling prostitutes for gain, two counts of entering into an agreement to acquire criminal property and two counts of trafficking within the UK for the purpose of sexual exploitation. She was sentenced to four years imprisonment for the prostitution and criminal gain offences and seven years for the trafficking offences made up of 3½ years' imprisonment and 3½ years on licence.

[4] The applicant's brief immigration history is as follows. On 29 December 2004 she applied for a marriage visa whilst in China. This was granted from January 2005

until July 2005. She entered the United Kingdom on 1 February 2005. On 27 June 2005 she applied for further leave to remain as the spouse of a British National after marrying David Alexander Thornton. Leave was granted until 18 July 2007. On 13 June 2006 correspondence was received from her husband stating that she had left him after she had gained leave to remain and that the marriage was no longer subsisting. She remained in the United Kingdom in breach of her visa conditions until 18 July 2007 when she returned to China. On 27 August 2007 she applied for a visa as a spouse of a British citizen on the basis of her marriage to Jason Owen Hinton. This application was refused on 27 September 2007 but was overturned on appeal on 7 November 2007. A visa was issued which was valid until 7 November 2009. She entered the United Kingdom on 30 November 2007. On 21 October 2009 she submitted a settlement application based on her marriage to Mr Hinton and a decision on that application according to the monthly progress report has been deferred due to her conviction and deportation action. On 6 July as I have already indicated she was convicted at Laganside Courthouse and sentenced as I have mentioned. On 11 July 2012 she was notified of her liability to deportation. On 31 July 2013 she was notified of the decision to deport and a deportation order was served. This deportation order was withdrawn on appeal on 10 October 2013. On 12 November 2013 the decision to deport was withdrawn and the court was notified of the withdrawal and on 18 November 2013 she was again notified of the decision to deport and a deportation order was served on her. She has appealed that decision and as I understand it the appeal, at least at the time of the hearing, had not yet been heard and the only current barrier to her removal from this jurisdiction to her home jurisdiction is that she has an outstanding appeal in respect of the deportation decision. The monthly progress reports to which I have referred confirms that her case has been regularly reviewed and she remains in detention in order to effect her removal from the UK and she is being detained because the authorities consider that she is likely to abscond if given temporary admission or release and that her release carries a high risk of public harm.

[5] The reasons for her detention were stated to be on the basis of the following factors.

(1) That she had previously failed or refused to leave the UK when required to do so, remaining in the UK for a period of over a year in breach of her visa conditions between June 2006 and July 2007.

(2) That she had previously failed to comply with the conditions of her stay, temporary admission or release when she remained in breach of her visa conditions for over a year.

(3) That she did not have enough close ties to make it likely that she would stay.

(4) That she had shown a lack of respect for United Kingdom law as evidenced by her convictions for serious crimes namely, offences under the Sex Offenders Act and trafficking.

(5) That she was assessed as posing a serious risk of harm to the public because had committed the offences which I outlined earlier.

(6) That she had committed an offence and that there was a significant risk that she would re-offend.

(7) Finally her unacceptable character, conduct or associations.

[6] The progress report goes on to indicate that consideration had been given to factors in favour of her release, but that due to the seriousness of the offences it was considered that her detention for the purposes of deportation was reasonable. It was indicated that her detention would continue to be reviewed as it has been on a regular basis and that any significant material changes to her case would be considered against this decision.

[7] The applicant challenges the legality of her detention. The grounds for this challenge are said to be that the deportation order of 15 November 2013 was invalid and consequently any detention flowing from it was therefore unlawful. Two deportation orders had been issued in this case as was apparent from the short chronology of her immigration history which I recited earlier. The first was on 31 July 2013. Following representations that deportation order was withdrawn and this can be seen in the letter from the Home Office to the applicant's solicitor dated 12 November 2013. On 18 November the Home Office wrote to the Governor of Hydebank, where the applicant was then an inmate, stating:

> "I am writing about the immigration status of Mrs Rong Chen, who is the subject of deportation proceedings, under Section 32(5) of the UK Borders Act 2007. Please inform her of the decision to make a deportation order in accordance with Section 32(5) of said Act. The prisoner has a right of appeal against this decision under Section 82(3)(a) and 92(4)(a) from within the United Kingdom. Please find enclosed with this correspondence a decision notice together with a deportation order which should be served on the prisoner as soon as possible. Please ensure that she receives it."

Accompanying that letter was a notice of decision which was identical to the earlier notice of decision and as well as a copy of what is the second deportation order and which bears the date 15 November 2013.

[8] Under Section 32(5) of the 2007 Act the Secretary of State must make a deportation order in respect of a foreign national who has been convicted in the UK of an offence and who has been sentenced to imprisonment of at least 12 months unless the foreign national falls within one of the exceptions in Section 33. This applicant did not fall within any of those exceptions for the reasons set out in the notice of decision. The applicant is exercising the right of appeal in respect of the decision to deport. Her outstanding appeal, as already mentioned, is the only barrier to her removal.

[9] One of the grounds of attack is that it is said that the first deportation order (31 July 2013) had not been revoked when the second deportation order was issued in November and that this was unlawful and in breach of Section 34(4) of the 2007 Act. It was submitted that Section 34(4) only permits a new Section 32(5) deportation order following the revocation of the earlier order. Revocation it was submitted must be made by formal order pursuant to Section 5(2) of the Immigration Act 1971. There is no substance whatsoever on this point. The letter of 12 November 2013 made it clear that the first deportation order was withdrawn. That in conjunction with the issuance of a new notice of decision and accompanying deportation order constituted in my view a clear revocation. No further steps were required. The new deportation order was issued for and on behalf of the Secretary of State for the Home Department and plainly superseded the earlier order. Section 5(2) which was relied upon by the applicant simply says that a deportation order may be revoked by a further order of the Secretary of State. That is what happened and no further formal steps were required.

[10] Secondly, the applicant submitted that even if the second deportation order was lawful that the notice of detention was unlawful because it allegedly referenced the wrong power. This is a reference to the document from the Home Office to the applicant dated 9 December 2013 and which is Exhibit NM2. Again there is no substance to this point. Once a deportation order has been made in accordance with Section 32(5) of the 2007 Act (which deals with mandatory deportation of foreign criminals such as this applicant) Section 36(2) *requires* the Secretary of State to exercise his or her powers of detention under paragraph 2(3) of Schedule 3 to the 1971 Act, that is to say detention pending removal *unless in the circumstances the Secretary of State thinks it inappropriate.* Plainly in this case the Secretary of State did not think such detention inappropriate. Insofar there may be said to be any infelicity of wording in the notice of detention nothing turns upon it. Her detention was by operation of law resulting from the combined interaction of the mandatory duty imposed on the Secretary of State by Section 36(2) to exercise the powers of detention under paragraph 23 of Schedule 3 of the Immigration Act 1971. She was also made well aware in considerable detail of the substantive reasons for her detention. Accordingly I reject that argument.

[11] Thirdly, the applicant contended that her detention was unlawful as contrary to published Home Office policy, in particular Chapter 55 of the Enforcement Instructions and Guidance known as EIG. Following the failure to perfect her bail

which had been granted subject to stringent conditions on 17 December 2013 the applicant wrote to the Home Office who on 23 December 2013 replied that:

> "There are substantial grounds for believing that your client if released on bail would fail to comply with any bail conditions. It is not considered that the risks to the public which would be posed by her release would be acceptable. This view has only been strengthened by the refusal of your client's sureties to commit themselves to the conditions of bail requested by the Tribunal."

[12] The applicant says that this is irrational and contrary to the sentencing remarks of Mr Justice Stephens. I reject that submission since on the material available it was rationally open to the Home Office to so conclude. In any event it is somewhat academic in that the issue of bail has been looked at again by the First Tier Tribunal Judge Grimes. She gave her decision on the detailed bail application which had been advanced before her on 2 April 2014. She said that:

> " [13] In light of the evidence before me and in the context of Judge Turkington's decision of 17 December 2013 I am not satisfied that the sureties put forward have shown that they were in a position to reduce the risk of the applicant breaching bail conditions and ensuring that the applicant attends when required to do so. I therefore refuse the application for bail."

Conclusion

[13] I therefore reject all of the grounds of challenge save one and I am satisfied that her detention is lawful. The ground of challenge which I am persuaded requires further investigation is the alleged failure or refusal to facilitate the appearance of the applicant in person by video-link for the purposes of a hearing on 18 February 2014. Given the limited basis upon which leave has been granted it seems to me that the applicant will require to significantly change the Order 53 statement which is very diverse at the moment and a fresh Order 53 statement will have to be prepared focusing exclusively on the issue upon which leave has been granted. I think it would also be helpful if there was a fresh affidavit dealing only with the matters relevant to the sole issue upon which leave has been granted. It appears that a substantial body of material currently before the court may not be relevant to the permitted ground of challenge. The court only wants an affidavit and documents which are relevant to the discrete issue upon which leave has been granted.