Neutral Citation No.: [2008] NIQB 93 | *Ref:* **STE7256**

Judgment: approved by the Court for handing down | *Delivered:* **16-9-2008**
*(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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IN THE MATTER OF AN APPLICATION BY RU FOR JUDICIAL REVIEW

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STEPHENS J

[1] This is an application by RU for leave to apply for judicial review challenging decisions made on 20 July 2008 by the Secretary of State for the Home Department. On that date the applicant was arrested at Belfast International Airport coming off a flight from London on suspicion that he was an illegal immigrant in the United Kingdom. He was taken to Antrim police station for a PACE interview. His solicitor, Ho Ling Mo, was present during that interview. The applicant stated that he was a British citizen having been born in Edmonton, London on 9 January 1980 and he produced a birth certificate which purported to confirm this. The birth certificate stated that the applicant's father was born in Ghana whilst his mother was born in London. The applicant's case is that he does not have a British passport as he has never travelled outside the United Kingdom and accordingly he has never needed one. It is contended on his behalf that he is a British citizen having been born in the United Kingdom for which see Section 4 of the British Nationality Act 1948; that his acquisition of British citizenship by birth preceded the amendments introduced by the British Nationality Act 1981 which came into force on 1 January 1983. Section 1 of the British Nationality Act 1981 abolished citizenship by birth in the United Kingdom after the commencement of that Act, see paragraphs 2.32 and 2.45 of *Macdonald's Immigration Law and Practice* 7th edition.

[2] After his arrest on 20 July 2008 the applicant was served on behalf of the respondent with a notice to a person liable to removal (IS151A) and a notice to detainee form (reasons for detention, IS1R). After the applicant's PACE interview he remained in detention. The application for leave to apply for judicial review and for interim relief to secure his release from detention was commenced on Saturday 22 July 2008 as a matter of urgency. These applications came before me on that date. The proposition put forward on behalf of the applicant was straightforward being that he is a British citizen

having been born in Edmonton, London. Independent proof establishing his date and place of birth being his birth certificate. Accordingly he was entitled to be in the United Kingdom. The decision to detain him on suspicion that he was an illegal immigrant was unlawful as was his detention.

[3] The application for leave and for interim relief was brought on an ex parte basis. The respondent was notified of the ex parte application and at very short notice was represented by solicitor and counsel. The ex parte application was grounded on an "unsworn affidavit" of the applicant's solicitor, Ho Ling Mo, based in part on information provided by the applicant. The use of "unsworn affidavits" on ex parte applications has been considered by Treacy J in an application by *Wanderval Oliveira da Silveira* [2008] NIQB 58 and by me in an application by *Emen Bassey* [2008] NIQB 66. The "unsworn affidavit" in this case was not accompanied by:-

> (a) A letter from the applicant's solicitor to the court containing her own undertaking to the court that she would within a specified time period swear and file an affidavit in the same terms as the unsworn affidavit.
>
> (b) A letter from the applicant's solicitor containing the applicant's undertaking to the court that he would swear and file within a specified time period a short affidavit confirming, that in so far as the "unsworn affidavit" was based on information that he had provided, that it was true and that he was aware of and had complied with the obligation to give full and frank disclosure of material facts. See *Re Farrell's Application* [1999] NIJB 143 and *Re City Hotel (Day) Limited* [2004] NIQB 38.

[4] If an application for leave to apply for judicial review has to be commenced urgently and there is insufficient time for affidavits to be sworn then ordinarily I consider that an "unsworn affidavit" should be accompanied by such undertakings. In the event the applicant's solicitor provided an undertaking in the terms of (a) and subsequently swore and filed an affidavit in the same terms as the "unsworn affidavit". The applicant subsequently, on 24 July 2008 swore a short affidavit as envisaged in (b) together with a longer affidavit dealing with various matters raised by the respondent at the hearing on 22 July 2008.

[5] On the hearing of the ex parte application it rapidly emerged that a major issue between the parties was whether the birth certificate was a forgery. For his part the applicant in his solicitor's "unsworn affidavit" had not disclosed any of the respondent's suspicions in relation to the birth certificate. He had not disclosed anything which would give rise to doubt as to whether he was entitled to be in the United Kingdom or not. It subsequently has become

apparent that he would have been aware of those doubts by virtue of the interviews that were conducted with him. Those doubts should have been disclosed in the "unsworn affidavit". As far as the respondents are concerned neither of the forms served on the applicant on 20 July 2008 identified the issue between the parties. For instance the specific statement of reasons in form IS151A obscured rather than defined the issues. The reasons were recorded in that form in the following terms:-

> "You have not produced satisfactory evidence of your identity, nationality or lawful basis to be in the United Kingdom".

[6] At paragraphs [63] to [64] of my judgment in *an Application Fyneface Boma Emmanson* [2008] NIQB 38, delivered on 11 April 2008, I criticised the failure of the respondent to condescend to any particulars in the forms served in that case. The failure has been repeated in this case and is deprecated. The respondent did not contend that I should dismiss the application for leave on the basis that the applicant had not made full disclosure. If the respondent had so contended I would have had considerable reservations as to whether I would have accepted such a contention in circumstances where the respondent had served forms on the applicant which were incomplete and disclosed nothing of substance.

[7] After hearing counsel on behalf of the respondent on 22 July 2008 the application for leave to apply for judicial review and for interim relief was adjourned to 24 July 2008. The birth certificate produced by the applicant purported to be a certified copy of an entry pursuant to the Birth and Deaths Registration Act 1953. The applicant's date of birth was stated to have been 9 January 1980 and the place of birth was given as North Middlesex Hospital, Edmonton. The signature of the registrar at birth was stated to be "P N Stevens". The certified copy purported to be signed on 8 March 1996. The respondent handed into court two letters from Valerie Parsons, the Chief Superintendent Registrar of Enfield Council. Her conclusion was that the birth certificate "was not a genuine document". She based her conclusion on the following:-

(a) An incorrect prefix serial number.
(b) An incorrect positioning of the prefix serial number.
(c) An incorrect incorporation of a National Health Service number.
(d) A check of the records which revealed that no person with a name "P N Stevens" ever worked for the Registration Service in Enfield.
(e) The index records for the North Middlesex Hospital were searched extensively and no record of the applicant's birth existed.
(f) The signature of the person certifying the document to be a true copy of the registrar in his custody was not a signature that

Valerie Parsons recognised as being that of a registrar from Enfield.

(g) The status of the person certifying the document to be a true copy of the registrar was not in accordance with normal practice.

(h) A failure to comply with the then normal practice given that the appellant's mother and father were not married at his purported date of birth.

The respondent also maintained that the applicant had obtained his driving licence by producing the false birth certificate so accordingly no weight could be attached to the driving licence in relation to any issue in this case.

[8] The applicant maintains on oath that he was born, educated and grew up in England. That the information in relation to his birth and indeed his birth certificate was given to him by his father. That if the birth certificate or any information in relation to his birth was false that he is an unwitting victim.

[9] In the light of the letters from Valerie Parsons the applicant applied for the application for leave to apply for judicial review and for interim relief to be adjourned until 5 September 2008. I acceded to that application. A further "unsworn affidavit" was made available by the applicant who also undertook to swear it. There accordingly continues to be a conflict of evidence as to whether the applicant was born in the United Kingdom. To resolve that factual issue at this stage would require a considerable volume of additional material such as school, health and other records. Rather than resolving that factual issue as this stage I grant leave to apply for judicial review. However I decline the application for interim relief in view of the various concerns raised in relation to the birth certificate and the hospital records.

[10] I list the case for further directions.