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UK- The Queen on the application of AA v Secretary of State for the Home Department (interested party: Wolverhampton City Council), 11 May 2016

Country of Decision:

United Kingdom

Country of Applicant:

Sudan

Date of Decision:

20-06-2016

Citation:

[2016] EWHC 1453 (Admin)

Additional Citation:

CO/920/2015

Court Name:

High Court of Justice, Queen's Bench Division, Administrative Court

Keywords:

Child Specific Considerations

Detention

Refugee Status

Unaccompanied minor

Relevant Legislative Provisions:

European Union Law

Headnote:

AA claims he was unlawfully detained from 17 February 2015 to 27 February 2015 because he was detained as an unaccompanied child in a way contrary to paragraph 18B Schedule 2 of the Immigration Act 1971.

The decision turned on whether the word *'child'* in the Immigration Act 1971 was to be

interpreted objectively (i.e. is the individual, in physical fact, under 18) or whether the detention's legality involved the reasonable belief of the immigration officer that the individual is under 18.

Facts:

On 19 July 2014, AA arrived in the UK from Sudan and claimed asylum, saying he was about 17 years old.

On 25 July 2014, Italy accepted that it was the Member State responsible for AA's asylum claim under Dublin II.

On 6 August 2014, the Secretary of State (SSHD) certified AA's asylum claim on safe third country grounds. AA challenged this decision, twice, by way of application for permission for judicial review. These applications were rejected on 4 November 2014 and 12 January 2015 respectively.

On 17 February 2015, Wolverhampton City Council's (WCC) age assessment of AA concluded that AA was *'a child of the approximate age of 16/17 years old'*.

On 17 February 2015, AA was detained by SSHD at Brook House Immigration Removal Centre.

At 10.55am on 23 February 2015, AA's solicitors provided SSHD with a copy of the above WCC age assessment.

On 24 February 2015, SSHD nonetheless decided to maintain AA's detention.

On 27 February 2015, SSHD decided that she would release AA from detention, in light of WCC's age assessment.

On 28 February 2015, AA was moved to Tinsley House Immigration Removal Centre and detained there.

On 1 March 2015, AA was released from detention.

It is now accepted by SSHD that AA was in fact an unaccompanied child for the entire period of his detention, the length and nature of which are not disputed. It was also not disputed that AA was unlawfully detained from 27 February to 1 March.

AA's claim is that he was unlawfully detained for the whole of the 17 February to 1 March period or, in the alternative, from 23 February to 1 March (i.e. not simply 27 February to 1 March as is admitted by SSHD). Paragraphs 16 and 18B of Schedule 2 Immigration Act 1971 make it unlawful to detain an unaccompanied child unless in a short-term holding facility for a maximum of 24 hours. AA argues that the word *'child'* should be interpreted according to the definition at paragraph 18B(7): meaning *'a person who is under the age of 18'*. This provision should, argues AA, be interpreted literally and objectively.

SSHD avers that the word *'child'* should be construed subjectively, meaning that whether or not the detainee is a child is dependent upon the reasonable belief of the immigration officer at the time of the decision to detain. To hold otherwise would be, according to SSHD, *'profoundly troubling for the efficient running of a fair immigration system'*.

Decision & Reasoning:

The Claimant was unlawfully detained from 17 February to 1 March. The correct interpretation of the word *child* in paragraph 18B(7) is a literal and objective one.

Reasoning:

- 1) The courts are reluctant to hold that a provision which interferes with the right to freedom need not be interpreted objectively (relying particularly on *Khawaja* and *Croydon*).
- 2) Paragraph 18B(4) states that one of the conditions for detaining a child in a short-term holding facility is that [emphasis added] *the immigration officer under whose authority the child is being detained reasonably believes that the child will be removed*?. In contrast, paragraph 18B(7) does not state that a child is a person who the immigration officer reasonably believes to be a child. It follows that Parliament's intention was for the word *child* in paragraph 18B(7) to be interpreted literally and objectively.
- 3) The word *child* is defined in the Children Act 1989 in exactly the same terms as in paragraph 18B(7) (i.e. *a person under the age of 18*). In *Croydon*, which raised the Children Act 1989 definition, the unanimous decision of the Supreme Court was that the issue of whether an individual was a *child* was an issue of fact, but one which could not be determined by the mistaken but reasonable belief of the local authority. Following on from this, it is a well-known principle of statutory construction that where an enactment uses a term whose meaning the courts have previously pronounced, it may be presumed that it was intended to have that meaning in subsequent enactments. Paragraph 18B in its entirety was inserted by Section 5 of the Immigration Act 2014.
- 4) The court's task is not to ascertain what would lead to the most efficient running of a fair immigration system, but instead to apply established principles of construction. Interpreting the word *child* objectively will not lead to *injustice, absurdity, anomaly or contradiction* as the SSHD claimed.

Outcome:

Claim successful

Observations/Comments:

The Court confirms the established principles of statutory construction in the context of infringements on the right to freedom whilst dismissing arguments which relate to current immigration policy and, implicitly, the administrative discretion of SSHD's representatives.

This case summary was written by Ben Wild, a trainee solicitor with an MA in International Law from UN University for Peace in Costa Rica.

Attachment(s):



[AA v SSHD 2016 EWHC 1453 \(Admin\) age assessment.pdf\[1\]](#)

Other sources cited:

National / Other Legislative Provisions:

[Borders](#) [2]

[UK - Borders, Citizenship and Immigration Act 2009](#) [3]

[UK - Children Act 1989](#) [4]

[UK - Immigration Act 2014](#) [5]

[UK - Immigration Act 1971](#) [6]

[UK - Immigration and Asylum Act 1999](#) [7]

Links:

[1]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/AA%20v%20SSHD%202016%20EWHC%20>

[2] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/borders>

[3] <https://www.asylumlawdatabase.eu/en/taxonomy/term/743>

[4] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1426>

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/uk-immigration-act-2014>

[6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7857>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/uk-immigration-and-asylum-act-1999>