

1 of 1 DOCUMENT: General Case Digest

R (on the application of Collin) v Secretary of State for the Home Department

Citation

[2013] All ER (D) 92 (Jun)

Hearing Date

7 June 2013

Court

Queen's Bench Division, Administrative Court (London)

Judge

Michael Kent QC sitting as a deputy judge of the High Court (judgement delivered extempore)

Representation

Adam Pipe (instructed by BHB Law Ltd) for the claimant. Matthew Gullick (instructed by the Treasury Solicitor) for the Secretary of State.

Abstract

Immigration - Detention. The claimant sought judicial review of the defendant Secretary of State's decision to detain him for one month. The Administrative Court held that the Secretary of State had made a material error of law by failing to obtain an assessment of the claimant's risk of re-offending and causing harm to others. However, that error had had no impact on her decision, given the claimant's high risk of absconding. Accordingly, the claimant was only entitled to nominal damages.

Catchwords

Immigration - Detention - Detention pending deportation - Lawfulness of detention - Claimant being detained by defendant Secretary of State - Claimant seeking judicial review of decision to detain on basis defendant failing to comply with guidance - Whether defendant failing to comply with guidance - Whether material error capable of affecting decision.

Summary

In 1994, the claimant arrived in the United Kingdom. In March 2010, he applied to the Home Office for a European Economic Area residence card for a spouse, relying on a forged French passport. In April 2010, the claimant admitted committing 23 frauds and other offences. In May 2010, he was sentenced to 30 months' imprisonment. In June 2010, the UK Border Agency (the UKBA) sent an email to the claimant's probation officer with a blank form, requesting information on the claimant. The probation service responded that it would complete the form, ticking boxes to provide an assessment on the claimant's risk of re-conviction and harm to others to be used to follow the defendant Secretary of State's enforcement instructions and guidance (the guidance). It subsequently replied that it had completed the form with as much information as possible and would keep the UKBA informed of updates. However, no further communications were received. In January 2011, an assessment of the claimant revealed that the claimant presented a 7% risk of re-offending, his risk of serious harm to others was low and there were no concerns about his escape or absconding (the report). In June 2011, he was entitled to automatic release, having served half of his custodial term. He was served with notice of liability to be deported, which referred to his prior breach of bail and assessed him as a serious risk to the public and of re-offending, as the Secretary of State had not seen the report. The claimant was then detained under immigration powers on release from prison until July 2011, when he was granted bail by the First-tier Tribunal (Immigration and Asylum Chamber). He sought judicial

review of the defendant Secretary of State's decision to detain him. The claimant contended that, if the report had been seen, it would have affected the Secretary of State's decision, as the guidance provided that a person assessed as low or medium risk should not be detained, but considered for conditional release to ensure attendance for deportation. He further contended that he had not previously breached his bail. The Secretary of State accepted that the claimant had not breached his bail, but contended that such assertion was not an error of public law or of material impact.

It fell to be determined: (i) whether the Secretary of State had failed to comply with the requirement to obtain a report under the guidance; and (ii) whether there had been a material error capable of affecting the outcome of the decision.

The application would be allowed.

(1) It was clear that the guidance intended that the Secretary of State would obtain an assessment and if not, use alternative procedures laid down in the guidance. The Secretary of State would then use that material to reach a conclusion on the claimant's risk of serious harm. The only sensible way the guidance applied was to obtain an assessment before the decision to detain. The fact that nothing further had been heard from the probation service could not be relied on. The guidance had made clear that an assessment had to be chased and, therefore, there had been a failure to apply the guidance.

(2) It was settled law that, to be a material error of public law, the error had to be capable of affecting the decision to detain. Further, it did not follow that a low score on the assessment would lead, under the guidance, to a presumption of release, as the risk of absconding had to be considered separately.

The erroneous reference to the claimant's prior breach of bail had had no impact. It was beyond argument that the failure to obtain an assessment of the risk of re-offending or harm to others had been a material error. However, the material error had had no impact, as there had been a clear risk of the claimant absconding, which had to be separately considered. On the facts, it was clear that the Secretary of State was entitled to take the view that there had been a high risk of the claimant absconding. The claimant had used deception to defraud and falsify papers. Further, his true nationality and identity had not been established. There had plainly been a high risk that he would disappear if released. Detention of the claimant for a short time had been open to the Secretary of State.

The claimant would be entitled to nominal damages for the error of law which had had no material effect on the decision to detain him.

R (on the application of Lumba) v Secretary of State for the Home Department; R (on the application of Mighty) v same [2011] 4 All ER 1 applied.

Karina Weller Solicitor (NSW).

Published Date

12/06/2013