

# Immigration Team Legal Bulletin

April 2010



## Minors

*In this Bulletin Bryony Poynor, who recently joined the team from Garden Court in London, focuses on recent decisions, policies and legislation relating to minors.*

### Section 55 of the Borders, Citizenship and Immigration Act 2009

This section came into force on 2 November 2009 and places a duty on the Home Secretary to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children. The duty does not give the UK Border Agency any new functions or override its existing ones, but does require them to consider the needs of children as children and to take them into account in their work. Statutory guidance to accompany this duty was issued entitled "Every Child Matters, Change for Children". Practitioners can refer to the Home Office's obligations under this guidance for Article 8 cases involving children, and it is particularly relevant to cases involving unaccompanied asylum seeking minors where there has been involvement with social services.

### Age assessment of asylum seekers who are unaccompanied minors

[R\(A\) v Croydon London Borough Council; R\(M\) v Lambeth London Borough Council \[2009\] UKSC 8; \[2009\] WLR \(D\) 342 \(26 November 2009\)](#)

One of the first decisions of the new Supreme Court, this case deals with the scenario of an unaccompanied minor being assessed as over 18 by a Local Authority and subsequently missing out on the appropriate provision of services. If a child is under 18 and in need, there are statutory obligations under the Children Act 1989 with regards to maintenance and accommodation. The claimants, supported by the Children's Commissioner for England, said that in cases of age dispute the court had to decide whether a person was a child on the balance of probabilities. The local authorities, supported by the Home Secretary, said that the authority had to decide the matter, subject only to judicial review on the usual principles of fairness and rationality. Previously it was only possible to

challenge such a decision by way of Wednesbury reasonableness, however following this unanimous decision of the Supreme Court, this issue can now be resolved by the courts. This will allow a decision to be made on the fact of the age of the minor rather than it simply being remitted back to the Local Authority to carry out a further assessment. Although judicial review proceedings are the only remedy and are not well suited to determining issues of fact, the Supreme Court held that they can be adapted to do so. The decision has wider implications given the current Home Office policy where unaccompanied minors whose asylum claim has been rejected are not removed for three years or until they reach 17 and a half years of age, or to detain them under immigration powers save in exceptional circumstances.

### Deportation or administrative removal where the Appellant has spent most of their childhood in the UK

[JO \(Uganda\) and JT \(Ivory Coast\) v Secretary of State for the Home Department \[2010\] EWCA Civ 10 \(22 January 2010\)](#)

These Court of Appeal cases look specifically at deportation cases where the Appellant has spent most of their childhood in the UK. The decision gives a very useful summary of the recent Strasbourg caselaw and the principles to be applied in arguing that a deportation would amount to a disproportionate interference with Article 8. This summary provides a good reference point for all practitioners dealing with an Article 8 removal case. Lord Justice Richards gives his analysis of the principles and rules, stating that the same legal framework for Article 8 applies not only to deportation cases but also to ordinary administrative removals of persons unlawfully present in the UK. Although in his view the legitimate aim for removal in deportation cases should be accorded more weight than the aim of administrative removal, essentially the caselaw applies to both. Equally, in considering whether there should be a different approach if the Appellant spent most of their childhood in the UK unlawfully as opposed to lawfully, this was also only an issue of weight. JO's appeal was dismissed and JT's was allowed. The decision is also useful on the application of Article 8 principles to private life where an appellant has no family.

## Same day removal policy for minors

[T \(R on the application of\) v Secretary of State for the Home Department \[2010\] EWHC 435 \(Admin\) \(18 February 2010\)](#)

This case considered two unaccompanied minors whom the Home Office attempted to remove (and succeeded in relation to one) under Dublin II. In a permission hearing Collins J found that it was difficult to think that there is any argument that could support the same day removal process that is at present being applied by the Home Office Third Country Unit. He stated the sooner it is reconsidered and hopefully abolished, the better (para 5). The case could be of wider implication in third country cases as Collins J also considered it arguable that the Dublin Regulations do not apply to unaccompanied minors as a matter of construction of Articles 5 and 6. Collins J referred to the guidelines issued by the Secretary of State under section 55 of the 2009 Act, as described above, namely that the welfare of a child is an important consideration and must be taken into account.

## Policy on Children and Deportation

In response to a Freedom of Information request, a policy entitled Criminal Casework Directorate, Children and Family Cases Process Instruction was disclosed on 19 March 2010. This Process Instruction covers the procedures that should be followed by Criminal Casework Directorate (CCD) staff when dealing with Foreign National Prisoners' close family members and dependant children. It covers the Childrens' Champion, deportation of family members, splitting families for the purpose of detention and deportation, the detention of children, child foreign national prisoners at the end of their custodial sentence, granting children leave and residence orders of children.

Bryony Poynor  
April 2010

### Garden Court North

#### Full Day Immigration Update Seminar

13<sup>th</sup> May 2010; Manchester City Centre  
6 CPD points

Aimed at immigration practitioners at all levels of experience, this seminar will update delegates on the latest developments in immigration and asylum law including:

- The Immigration and Asylum Chambers of the First Tier Tribunal and Upper Tribunal
- Trafficking
- Maintenance issues under Points Based Scheme & Third Party Support/Joint Sponsorship following Ahmed Mahad and others [2009] UKSC 16
- Permission to work
- Resisting automatic deportation
- Rule 39 - using Strasbourg to Prevent Removal

Delegates will have the opportunity to consider the implications of new developments and how they may

#### Speakers:

Ian Macdonald QC (Chair), Rory O'Ryan, Kerry Smith, Vijay Jagadesham, Sarah Daley, Bryony Poynor and Camille Warren.

#### Booking information:

Delegate places for this seminar are charged at £80.00 + VAT (£94.00 inc VAT @ 17.5%).

For voluntary organisations we offer a reduced rate of £60.00 + VAT (£70.50 inc VAT @ 17.5%).

Places are limited so book early to avoid disappointment.

For more information or to book a place please contact Paula Morris or Chris Knowles on 0161 236 1840.