



**IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS**

Action No. CL 100/21

BETWEEN:

**THE QUEEN ON THE APPLICATION OF
MOIN ALHASHASH**

Applicant

-and-

**1. HONOURABLE ARLINGTON MUSGROVE, MINISTER OF IMMIGRATION
AND BORDER SERVICES (HER MAJESTY'S GOVERNMENT OF THE
TURKS AND CAICOS ISLANDS)**

2. THE ATTORNEY GENERAL OF THE TURKS AND CAICOS ISLANDS

Respondents



JUDGMENT

CORAM:

The Hon. Mr. Justice B. St. Michael Hylton QC (Ag)

Appearances:

**Mr Tim Prudhoe and Ms Andwena Lockhart for the applicant
Ms Clemar Hippolyte for the respondents**

Hearing Date:

22 August 2022

Venue:

Court No. 5, Graceway Plaza, Providenciales

Date Delivered:

29 August 2022

1. The Applicant is a Syrian national who landed in the Turks & Caicos Islands illegally in January, 2021. After some other developments that are not relevant to these proceedings, on 2 April 2021 the Applicant submitted an application for asylum pursuant to section 82(1) of

the Immigration Ordinance CAP 5.01 to the 1st Respondent, the Minister with responsibility for immigration.

2. The 1st Respondent has not made a decision on the application. In October and November 2021 the Applicant wrote to the 1st Respondent asking him to render a decision or provide reasons for the ongoing failure to render a decision. There is no evidence that the Minister replied to the Applicant's letters. Pursuant to an order granting leave to apply for judicial review, the Applicant filed a Notice of Motion seeking:
 - a. an order of *mandamus* compelling the 1st Respondent to render a decision in respect of the Applicant's asylum application;
 - b. alternatively, an order of *mandamus* compelling the 1st Respondent to provide reasons for his delay in deciding the Applicant's asylum application.
3. The 1st Respondent has not filed any evidence in response to the motion, and there is therefore no explanation for the delay, and no indication as to when he is likely to make a decision.
4. The Immigration Ordinance does not specify a time within which the 1st Respondent should make a decision on an asylum application. The Respondents accept that the 1st Respondent must make a decision within a reasonable time, and that what is reasonable will depend on all the circumstances. The Respondents helpfully set out in their written submissions two examples of policies for the granting or withdrawing of refuse status. Firstly, they noted that Article 23 of Council Directive 2005/85/EC of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status ("the Directive") states that:
 - (1) "Member States shall process applications for asylum in an examination procedure in accordance with the basic principles and guarantees of Chapter II,

- (2) Member States shall ensure that such a procedure is **concluded as soon as possible**, without prejudice to an adequate and complete examination. Member states shall ensure that, **where a decision cannot be taken within six months, the applicant concerned shall either:**
- a. **Be informed of the delay; or**
 - b. **Receive upon his/her request, information on the time-frame within which the decision on his/her application is to be expected.** Such information shall not constitute an obligation for the Member State towards the applicant concerned to make a decision within that time-frame.”
5. The Directive is not binding in the Turks and Caicos Islands. However, section 82(1) of the Immigration Ordinance provides that in considering such applications, “the Minister shall have regard to the Refugee Convention...”¹. For members of the European Union the Directive is described as the “minimum standard” for “full and inclusive application of the Refugee Convention”².
6. The Respondents also pointed out that in the United Kingdom, pursuant to Immigration Rule 333A, the Secretary of State must similarly ensure that a decision is made “as soon as possible” and where it cannot be taken within six months from the date of an application the Secretary of State must inform the applicant of the delay or “if the applicant has made a specific written request for it, provide information on the timeframe within which the decision on their application is to be expected”.
7. I note that neither the Directive nor Rule 333A constitutes an obligation on the decision maker to make a decision within a specific timeframe. However, they do suggest that a reasonable timeframe for making a decision is six months from the date of an application.

¹ Refugee Convention 1951.

² The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Refugee Convention. See Preamble (2), of Council Directive 2005/85/EC of 1 December 2005.

8. On the face of it, a delay of more than 16 months requires an explanation, but as indicated earlier, the 1st Respondent has offered none. In their written and oral submissions, the Respondents urged the court to find that while the delay may be “unsatisfactory”, it is not “manifestly unreasonable” and they relied on passages from a number of decided cases. At first blush, those *dicta* seem to strongly support the Respondents’ submissions, but on closer inspection, those cases are easily distinguishable
9. In **Anufrijeva and Another v Southwark Borough Council** [2004] QB 1124 for example, Lord Woolf, CJ’s observation that “the approach of both the Strasbourg court and the commission has been not to find an infringement of article 8 unless substantial prejudice has been caused to the applicant³” was made in the context of a case in which the claimant was seeking damages based on the delay in the handling of his asylum application, and that he had been caused psychiatric injury by the stress of his experience, which had infringed his right to private life under article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. That was obviously a very different case.
10. Another example is **MB (Huang – proportionality – Bulletins) Croatia** [2005] UKIAT 00092, from which the Respondents extracted a passage in which the court said that “...delay in itself would be not so much rarely determinative as rarely ever significant⁴”. This was an appeal against a decision to refuse an asylum application. The appellant put forward the delay in making the decision as one of the bases to set it aside. That was the context in which the appellate court made its observation about delay. The decision and the *dicta* are therefore of no assistance in the present case.
11. The Respondents placed greatest reliance on **R (on the application of FH and others) v Secretary of State for the Home Department** [2007] EWHC 1571. That decision involved 10 cases that were heard together. Despite the fact that there had been delays in dealing with asylum applications that ranged between 2 and 5 years, Collins J dismissed 9 of the claims.

³ [2004] QB 1124 at [46].

⁴ [2005] UKIAT 00092 at [28].

It is important to note however, that the Secretary of State had dismissed the applicants' original asylum applications, and their appeals had been unsuccessful. They had then all made fresh applications, and the Secretary's policy was to give priority to first time applicants. This resulted in greater delays in deciding repeat applications.

12. The court held that this policy was rational and took into account the extensive evidence that the respondents provided. The facts of the instant case are very different, and these Respondents have provided no such evidence.
13. The 1st Respondent has taken more than 16 months to determine the application. The delay is in my view, "manifestly unreasonable" and the failure to provide an explanation for the delay, or a timeframe within which a decision will be delivered is irrational. I therefore grant the primary relief sought in the motion, an order of *mandamus* compelling the 1st Respondent to render a decision in respect of the Applicant's asylum application on or before 5 October 2022.
14. The Respondents will also pay the costs of the action.

B. St. Michael Hylton QC
Acting Judge of the Supreme Court
29 August 2022

