Upper Tribunal
(Immigration and Asylum Chamber)

R (on the application of P) v Secretary of State for the Home Department IJR
[2014] UKUT 00294 (IAC)

Heard at:	**Field House**
On	**20 May 2014**

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Before

The Honourable Mr. Justice Green, sitting as a Judge of the Upper Tribunal

Upper Tribunal Judge Gill

Between

THE QUEEN ON THE APPLICATION OF **P** **(ANONYMITY ORDER MADE)**	**Applicant**

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

Appearances:

For the Applicant: Mr. C. Buttler, of Counsel, instructed by Duncan Lewis Solicitors.

For the Respondent: Ms. C. Patry, of Counsel, instructed by the Treasury Solicitor.

Anonymity Order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (Upper Tribunal Rules)

We make an order under rule 14(1) of the Upper Tribunal Rules prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Applicant. No report of these proceedings shall directly or indirectly identify the Applicant. This direction applies to both the Applicant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

JUDGMENT

1. The Applicant is a national of Sri Lanka who first arrived in the United Kingdom in April 2010 and claimed asylum in June 2010. It is unnecessary for us to detail the immigration history in this case, except to say as follows. In April 2012, the Applicant brought a challenge to a decision of the Respondent of 15 April 2012. Permission was granted at a renewed oral application. The claim was settled by a consent order signed by the parties on 26 November 2012 and sealed by the Administrative Court on 11 December 2012 (hereafter the Consent Order). The terms upon which the parties agreed to settle that claim, as set out in the Consent Order, are said to have been breached by the Respondent. That is the nub of the instant claim for judicial review, permission having been granted by the Upper Tribunal at a renewed application on 7 April 2014.

2. Under the terms of the Consent Order, the Respondent agreed to withdraw her decision of 15 April 2012 and reconsider the medical evidence that was before her together with any further representations made by the Applicant within two months of the date on which any further submissions were received by the Respondent. The Applicant agreed to withdraw her claim for judicial review and make any such further submissions within two weeks of the date on which the Consent Order was signed. There were other ancillary matters provided for in the Consent Order.

3. The Applicant made further representations in writing dated 12 December 2012. These were posted to Lunar House in Croydon. The Respondent did not consider that these representations had been validly made. She took the view that they should have been made in person, as her policy published on her website makes clear. The Applicant contended that the Consent Order did not make any provision for the manner in which the further representations were to have been made. Secondly, and in any event, it was contended that the said policy was unlawful.

4. As we have said, permission was granted on 7 April 2014. The Tribunal considered the issue of jurisdiction and concluded that it did have jurisdiction because the claim essentially concerned a challenge to a failure to make a decision arising under the Immigration Acts. The Tribunal granted permission stating: “ We are satisfied that there is a properly arguable issue”. The Tribunal went on to say: “ Though we see the force of Ms. Patry’s submissions, and find the arguments finely balanced, we agree with Mr. Buttler that the matters raised in the application are arguable and identify issues of potentially wider importance.”

5. Events have moved on since the grant of permission. On 6 May 2014, the Respondent made a decision. She decided to grant the Applicant refugee status. Accordingly, to the extent that the claim sought the Tribunal to order the Respondent to make a decision in her case within a specified period, the claim has become academic.

6. We were told at the hearing that the Tribunal granted permission not only on the ground that it was arguable that the Respondent's delay in reaching a decision in this particular case was unlawful but also that it was arguable that the Respondent's policy that requires certain applications to be made in person was unlawful. It is said that this was the issue of wider importance mentioned by the Tribunal in its judgment. However, we could see nothing in the transcript of the Tribunal's judgment or the written submissions of the parties that were before the Tribunal at the permission hearing that indicates that the issue of wider importance was the lawfulness of the published policy of the Respondent requiring asylum claims lodged on or after 5 March 2007 to be made in person. Indeed, paragraph 3 of the Claimant’s skeleton argument for the hearing on 20 May 2014 described the “ two issues of general importance ” as follows:

(1) The routine flouting of consent orders by the Respondent.

(2) Whether there is an implicit obligation on a claimant to submit representations in person where a consent order provides that the Respondent will reconsider the claim for leave to remain and for the claimant to lodge further representations in advance of the reconsideration.

7. Whilst (2) may entail consideration of the Respondent's policy, it is essentially an argument about the terms, express and implied, of the agreement reached between the parties as evidenced by the Consent Order, as opposed to the lawfulness of the Respondent's policy per se .

8. Since parties are free to enter into agreements on such terms as they see fit, we could see little purpose in the Tribunal permitting the claim to proceed to a substantive hearing, save in order to raise awareness amongst applicants and their representatives in general to exercise care in ensuring that the terms of any consent orders that provide for the applicants to make further representations state specifically whether such representations are to be made in writing or in person, a purpose that is just as effectively achieved through the medium of this judgment.

9. Furthermore, Ms. Patry informed us that the Respondent was willing to publish further clarification of her policy, which Mr. Buttler accepted addressed the issue of wider importance. We can see the force in Ms. Patry's submission that, at the time the Respondent agrees to enter into a consent order that provides for further representations to be made, she is unlikely to know whether such further representations will include representations that fall to be considered as an asylum claim and thus fall subject to the policy that the representations be made in person.

10. The Respondent's willingness to clarify her policy and Mr. Buttler’s acceptance that this adequately addressed the issue of wider importance mean that the issue whether the Respondent's policy requiring asylum and Article 3 protection claims to be made in person is lawful has also become academic.

11. For the above reasons, we dismiss this claim to judicial review. The issues raised in this claim for judicial review have become entirely academic.

12. However, in the hope of avoiding public funds being unnecessarily wasted in the future by similar claims, we have decided to make the following observations:

(i) Although entirely a matter for the Respondent, she may well wish to clarify whether her policy requiring asylum and Article 3 protection claims that fall within her policy (i.e. initial applications made on or after 5 March 2007) to be made in person includes claims for humanitarian protection.

(ii) We take the view that the Respondent's policy of requiring such claims to be made in person is a matter of procedure which is not inherently unlawful or unfair and which is essentially a matter for her. It is difficult to see the basis in public law upon which this Tribunal can make a general declaration that a process for handling claims is not one well within the executive’s power. Absent any specific and very compelling reasons in an individual claim that makes the application of the Respondent's procedure for handling such claims so unfair or unreasonable as to be unlawful in the case in question, it would seem to us likely that a general challenge to the lawfulness of the policy will be unsuccessful.

(iii) Indeed, it is very difficult to see why an individual who claims international protection would wish to resist a request to make an application for protection in person. There may well be good reasons, such as, for example, an inability for some very compelling reasons and that cannot be suitably addressed, to travel the distance to make an application in person. However, whilst we have regularly seen challenges to the Respondent's policy of requiring such claims to be made in person, we have yet

to see a single case in which an explanation was offered for the failure to follow what we see as a reasonable process for handling such claims, one aim of which is to be ensure that the identity of the individual claiming protecting is checked.

(iv) The Respondent's policy makes provision for the general rule that such applications be made in person to be disapplied in a particular case upon application. The policy gives examples of the circumstances in which the general policy may be disapplied. Nothing we say in this judgment is intended to make it more or less onerous to secure an exception to the general rule. As we say, the policy and its operation is essentially a matter for the Respondent. The Tribunal will expect any individual who claims that it is unlawful to expect him/her to make an application in person to have made an application to the Respondent to be exempted from the general rule.

(v) Pending the Respondent's clarification of her policy (which we were told may take some time), this judgment should make it clear to applicants and their representatives that they must ensure that any consent order they agree that makes provision for the claimant to make further representations clearly states whether the further representations may be made in writing or whether they should be made in person.

(vi) A failure to observe what we have said in (i) to (v) above may sound in costs in a judicial review claim. In particular, in relation to (ii), we add that it may sound in costs if:

(a) there is a failure to provide such specific and very compelling reasons in any challenge to the lawfulness of the policy; and

(b) the same is true if reasons offered for a professed inability to make such claims in person are not specific or compelling on any reasonable view.

Conclusion

The application for judicial review is dismissed.

Upper Tribunal Judge Gill Date: 4 June 2014