



Wednesday, 23 November 2011
Public Law Project

- **Court of appeal upholds the judgment of the High Court quashing exceptions to UKBA's policy of giving at least 72 hours notice of removal from the UK**

In an oral judgment read out by Sullivan LJ, sitting with the Master of the Rolls and Maurice Kay LJ, the Court of Appeal yesterday (22 November 2011) dismissed UKBA's appeal against the decision of the High Court to allow a claim for judicial review by the charity, Medical Justice.

The case was a challenge by Medical Justice to the lawfulness of exceptions to UKBA's general policy which requires at least 72 hours' notice^[1] to be given to immigrants of their removal from the UK. Through the exceptions to the policy (until 5 out of 6 of them^[2] were quashed by the High Court in July 2010^[3]), UKBA were able to reduce the amount of notice given to immigrants, so that they would in some cases be detained and removed from the UK within a few hours.

The basis of the High Court's decision, which the Court of Appeal has upheld, was that (1) immigrants – many of whom will not speak English and/or will be in detention - will need legal advice in order to access the court to challenge an unlawful removal; and (2) if less than 72 hours' notice of removal is given, an immigrant has no realistic opportunity to instruct a lawyer to apply to the court to request that the court intervene. In consequence - save in relation to port cases referred to in footnote 2 – the Court of Appeal held that at least 72 hours' notice of removal must continue to be given in order to ensure that immigrants have meaningful right of access to the court. The decision reflects the importance of this common law right, particularly for minorities.

The judgment won't be available for a few weeks while the transcript is being prepared and approved. But it was a very good one from PLP's perspective. The result was only possible because of the support of a wide number of organisations (including the Law Society, Bid, ILPA, Detention Action, the Poppy Project, the Refugee Children's Rights Project, each of which gave evidence in the Court of Appeal proceedings), and people (including all colleagues at PLP, and Sonal Ghelani who conceived the case before she left PLP to found the Migrants Law Project).

Medical Justice was represented by the Public Law Project. Counsel was Dinah Rose QC and Charlotte Kilroy.

For further information contact:

- Ravi Low-Beer on 0845 543 5944 and r.lowbeer@publiclawproject.org.uk; or
- Emma Ginn of Medical Justice on emma.ginn@medicaljustice.org.uk

Notes:

1. To include 2 working days between notice being given and removal, where the last 24 hours must include a working day
2. One of the exceptions, which permits less than 72 hours' notice in cases where a person is refused leave at port and removal takes place within 7 days of the refusal of leave, was not challenged.
3. <http://www.bailii.org/ew/cases/EWHC/Admin/2010/1925.html>