Neutral Citation Number: [2020] EWHC 1479 (Admin)

Case No: CO/1956/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 June 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

R (ANDREI DANIEL MERCA)	**Claimant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Greg Ó Ceallaigh (instructed by **Duncan Lewis Solicitors**) for the **Claimant**
Andrew Deakin for the **Defendant**

Hearing date: 8 June 2020
Judgment as delivered in open court at the hearing

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down are deemed to be 8th June 2020 at 12pm.

MR JUSTICE FORDHAM :

1. This is an application for interim relief in judicial review proceedings. It proceeded by Skype conference hearing. It and its start time were published in the cause list, where my clerk's email address was given for anyone who wished to participate in this hearing, as indeed a law reporter and member of the public did. I heard oral submissions just as I would have done had we all been sitting in the court room. I am satisfied of the following: this constituted a hearing in open court; the open justice principle was secured; no party was prejudiced; and insofar as there was any restriction on any right or interest it was necessary and proportionate.

2. The interim relief being sought today was an order for release of the claimant to section 95 accommodation, by this Friday. I have decided that it is appropriate, and indeed necessary, for that order to be made by me today. But I agree with Mr Deakin for the Secretary of State that it is important that an opportunity is provided for his client to be able to update the court and be released from that obligation, by way of variation or discharge, should circumstances arise which truly make it impossible for the envisaged urgent arrangements to have been effected. The order I am making today therefore includes a liberty to apply, which will mean that the court will be updated during Thursday. Provisionally, there will be listed a hearing for Friday morning, should it be needed, so that I can decide whether there is a basis for varying or discharging the order for releasing the claimant by 4pm on Friday.

3. It is my hope, and no doubt the hope of everybody concerned in these proceedings, that there will not need to be an application to vary or discharge. Even if there is some need for variation to be sought, it is my hope that a further oral hearing will not be necessary in this case. But I make clear that I am not making any finding, in any direction, as to what may or may not constitute a good reason for a further extension or other variation of the order relating to release. Specifically, I am not foreclosing today on the possibility that real genuine and pressing difficulties relating to probation and approval could not justify a variation. What is important in this case is that focus and urgency and discipline are brought to bear. The Secretary of State will need to think very carefully before making an application to vary or discharge, and will need to provide an extremely cogent reason for doing so. I will reserve the matter to myself: I am sitting in the Administrative Court this week, I am able to deal with the matter on Friday and I have read the papers. One of the things I will need, should this matter come back before me to be dealt with on Friday, is clear evidence that convincingly shows that all possible steps have been being taken and pursued, including as to all possible alternatives.

4. I will explain a little of the background and the reasons why I am making the order today. The claimant has been in immigration detention since the beginning of December 2019. On 7 April 2020 the First Tier Tribunal granted him bail, provided that suitable arrangements could be made, with probation approval. At that time it was envisaged that a given address in East London would be suitable and would be considered by probation for approval.

5. There followed a series of exchanges by way of pre-action correspondence, arising out of the fact that the claimant had still not been released, in circumstances where he had at that stage made an Immigration and Asylum Act 1999 section 4 application, based on destitution. The upshot was that on 19 May 2020 an identical, but this time section

95, application for destitution assistance and accommodation was made, together with a request for expedition, which the claimant's solicitors then chased on 26 May 2020. On that same day, 26 May 2020, the Secretary of State issued a decision letter refusing section 95 support on grounds of not being satisfied that the claimant was destitute. In those circumstances, urgent judicial review proceedings, including an application for urgent interim relief were filed with the court.

6. On 29 May 2020, several things happened. One was that Cavanagh J made an order that the Secretary of State should have the opportunity by the end of 3 June 2020 to explain the justification for refusing to recognise destitution, also directing that the claimant put in a skeleton argument by 11am on Friday 5 June 2020. On the same day, 29 May 2020, the Secretary of State notified the fact that the section 95 refusal had been reversed, and the Secretary of State now accepted the appropriateness of providing section 95 accommodation. Cavanagh J fixed today's hearing in relation to interim relief, making the directions to which I have referred.

7. On Wednesday 3 June 2020 GLD, in accordance with Cavanagh J's directions, filed by way of a letter its position relating to interim relief. That letter explained the reversal of the section 95 refusal and that steps were now being taken to identify suitable accommodation in order to ensure the claimant's release. The correspondence tells me that having reversed the decision on Friday 29 May 2020, a request to Serco was made on Wednesday 3 June 2020. I have no visibility on what happened on Monday 1 June or Tuesday 2 June. GLD's position was that the Secretary of State's actions obviated the need for interim relief, but the letter of 3 June 2020 expressly stated that the Secretary of State was not seeking to vacate today's hearing. In my judgment it was sensible and realistic for GLD to recognise that it was not sufficient, for the purposes of vacating today's hearing, that it was saying that steps were underway.

8. On Friday 5 June 2020, several things happened. One was that the claimant provided the skeleton argument which had been directed by Mr Justice Cavanagh, explaining the basis on which interim relief was pursued. Another was that there was a further update letter from GLD, which referred to chasers to Serco that had taken place the previous day, and had taken place during 5 June itself.

9. This hearing was listed for 11am on Monday, 8 June 2020. No further concrete progress was identified.

10. Mr Deakin accepted, in his oral submissions, that the claimant needs to be released. He accepted, realistically, that his client had been 'undoubtedly slow'. He emphasised that 'active measures' are being taken including, he told me, that the Secretary of State is now looking at 'contingency accommodation', for example at a hotel. He submitted that the Secretary of State needed an 'appropriate time', and that the course of action that was being sought of his client was effectively now being provided. As he put it: the Secretary of State 'is doing what has been asked'. His submission was that it was not necessary to make an order today for interim relief. He was not able to identify, for reasons I understand, a particular timeframe within which release was going to take place. He told me that it is envisaged that probation will need to be involved and approve any address, which can sometimes be done in one day, normally takes a few days and has been known to take a few weeks.

11. I explained during the hearing that I was quite satisfied that it was appropriate in the circumstances to make the order today, for reasons that I would give and am now giving. In my judgment, the time has come where it is both justified and necessary that there be a court order, and that the order should specify a tight time-frame during which all arrangements must now be made to secure the claimant's release. My order is intended to fix a deadline which is intended to be complied with. My intention is that all those concerned with decision-making and relevant arrangements work to that timetable.

12. I have in mind the authorities in this area. They include the recent Court of Appeal decision on 'grace periods' in AC (Algeria) [2020] EWCA Civ 36 where at paragraph 43 the Court of Appeal described 2 weeks as 'ample' in those circumstances. I am conscious that the timeframe of this coming Friday is 2 weeks from both Cavanagh J's order and GLD's withdrawal of the section 95 refusal. We are therefore already in the middle, in effect, of a 14-day period, in which all steps needed to be being urgently taken. I am quite satisfied that, looking at the matter as at today, any period beyond 7 days would be unjustified. I was also shown the case of Qarani [2017] EWHC 507 (Admin) at paragraph 74, where the Court held that 7 days should have been sufficient to cover arrangements, notwithstanding that they involved special notification and residence requirements relating to a sex offender. The present case is a case which has been regarded as one which does not pose a 'high risk' of the kind identified as causing particular difficulties in the earlier case of Sathanatham [2016] 4 WLR 128.

13. I am of course well aware of, and I have seen reference in the correspondence to, the current Covid-19 pandemic, and the special difficulties to which that is giving rise on the ground for many people and many authorities. I have seen the references to the special difficulties that that has presented. However, both viewing the matter looking back to the period of immigration detention and the grant of bail at the beginning of April of this year, but also focusing on the circumstances arising since 26 May 2020 when the section 95 support was refused and 29 May 2020 when that decision was reversed, I am quite satisfied that it is necessary and proportionate and in the interests of justice that I now make the order that provides the timeframe and deadline of 4pm this Friday for release to section 95 accommodation.

14. I repeat that I have made provision for liberty to apply to vary. I am case-managing that by reserving the issue of variation to myself. I therefore do not wish to be misunderstood. I have reached no view, and I have an entirely open mind, on the question of what may be appropriate by way of variation depending on the circumstances that the Secretary of State encounters. What my order does, however, is to recognise what is necessary, on the face of the matter as at today, on the basis of the materials and evidence before the court, and in the light of the timetable and communications to date. I must leave the case with the confidence that the authorities concerned will address and take all possible steps to resolve this matter, and the confidence that the claimant's representatives will deal sensibly with any particular difficulty that is raised by the Secretary of State. Beyond that, I say no more. If an application is necessitated I will deal with variation, as I have said, on Friday.

15. The position taken by GLD in the correspondence – that it was not appropriate to vacate this hearing – was, as I have said, sensible. It was right that I hear submissions from both sides and deal with whether it was appropriate to make the order sought. In the event, I have made the order sought. The claimant's representatives needed to file a

skeleton argument as they did, as directed by Cavanagh J, and they have needed to come before me on this hearing to seek and secure that order. In circumstances where I had announced that I was making that decision Mr Deakin, sensibly and realistically, recognises that he cannot resist an order that the defendant pay the claimant's reasonable costs of today's hearing, to be assessed if not agreed.

8 June 2020