

F v M and A and Sec of State (2017)

[2017] EWHC 949 (Fam)

26/04/2017

Barristers

Henry Setright QC
Brian Jubb
Private: David Williams QC
Jacqueline Renton

Court

Family Division

Practice Areas

International Children Law

Judgment confirming that the grant of refugee status to a child by the Secretary of State for the Home Department is an absolute bar to any order by the Family Court seeking to effect the return of a child to an alternative jurisdiction; consideration of how the grant of refugee status could be challenged when an asylum claim is based on disputed allegations of violence.

The father (F) and mother (M) were both born in Pakistan and are Pakistan nationals. Their child (A) was born in 2006 in Pakistan. In August 2014 A and M arrived in this jurisdiction for a visit which had been arranged with F's consent. Ultimately, M did not return to Pakistan as had been agreed, and M and A have remained in this jurisdiction since.

On 15 September 2014 M sought asylum in the UK. On 10 March 2015 proceedings commenced in the High Court seeking the summary return of A to Pakistan. A was made a ward of court. On 26 June 2015 A applied for asylum in the UK.

On 8 July 2015, the final hearing took place in respect of F's application for "summary return". The parents entered into a consent order which provided for A's return to Pakistan and both parents gave undertakings to the Court. M's included an undertaking to withdraw her asylum application and that of A.

In the event M did not withdraw either asylum application and A did not travel to Pakistan. M subsequently sought to set aside the order of 8 July 2015 claiming she had not validly consented to it. On 23 September 2015 the Home Office informed M's solicitors that the Secretary of State for the Home Department (SSHD) was not agreeable to disclosing the details of M's asylum application (F had sought it) as she had made allegations against F within it.

On 27 October 2015 M and A were granted, separately, "refugee status" in the UK by the SSHD.

The proceedings continued and culminated in an order for A's return to Pakistan which was subsequently successfully appealed to the Court of Appeal by M and A.

The proceedings were remitted to a High Court judge for fresh consideration, in particular for consideration of the interplay between the wardship and immigration jurisdictions in light of the fact that M and A had both been granted asylum by SSHD.

The judgment of Hayden J addressed some preliminary legal issues identified by Black LJ.

The SSHD on her application was granted 'interested party' status and the Joint Council for the Welfare of Immigrants were granted permission to intervene and make representations.

The first question identified by the Court of Appeal was whether A's refugee status was an absolute bar to the family court ordering his return to Pakistan.

Following a careful analysis of the legal principles, Hayden J considered that it seemed clear that the grant of refugee status to a child by the SSHD is an absolute bar to any order by the Family Court seeking to effect the return of a child to an alternative jurisdiction [44].

As to the question by what process F could challenge the refugee status given he denied the allegations of violence made by M and upon which the asylum claims of M and A were based, SSHD is actively obliged, pursuant to the Immigration Rules, to revoke the grant of asylum where she is satisfied that the evidence establishes that "the person's misrepresentation or omission of facts, including the use of false documents, were decisive for the grant of refugee status". SSHD must ensure that her decisions and the procedures that underpin them comply with the tenets of Administrative Law.

At the contemplated hearing F would be in a position to advance any allegations he wished to make in relation to M's representations to the SSHD. Hayden J would in due course deliver a judgment which would be released to SSHD. Hypothetically were he to be satisfied that misrepresentations had been made, to the extent that they cast doubt on the legitimacy of the grant of asylum, SSHD would be bound both by the Immigration Rules and by Public Law principles to have regard to them. [63]

As to disclosure of documentation by the SSHD, following a number of politely phrased requests prefacing orders, disclosure was forthcoming in this case but that was not the route the SSHD proposed should be followed in future. An application for asylum had an entirely different complexion from passport and visa applications. It would invariably involve material of a highly distressing and personal nature. Hayden J was not prepared to agree with the submission that "only where an exceptional case is established by an application, will disclosure be necessary". It may be that the balancing of the competing rights may lead to disclosure in only a very limited number of cases but effectively to create a presumption that disclosure should be "exceptional" is corrosive of the integrity of the balancing exercise itself [61]. SSHD will frequently be better placed than the court to conduct the balancing exercise when identifying whether or to what extent disclosure should take place.

Permission

 Family Law Week