



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO/1072/2022

In the matter of an application for judicial review

THE QUEEN

on the application of

SQ

Claimant

-and-

**SECRETARY OF STATE FOR THE HOME DEPARTMENT, SECRETARY
OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT
AFFAIRS AND SECRETARY OF STATE FOR DEFENCE**

Defendants

-and-

SE and LE

Interested Parties

**Notification of the Judge's decision on the application for permission to
apply for judicial review (CPR 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the
Acknowledgements of service filed by the Defendants

ORDER by the Honourable Mr Justice Foxton

1. The application for permission to apply for judicial review is granted on all grounds.
2. The application to adduce the Marshall evidence is granted de bene esse with the issue of admissibility to be determined at the hearing.
3. The application to adduce the Stewart evidence is refused with liberty to re-apply as set out below.
4. The application to adduce the Foxley evidence as expert evidence is refused.
5. Case management directions are given as set out below.

Observations

1. The importance of the application to the Claimant and others is obvious, as is the significance of the interests at stake. I have taken this into account in concluding that the relatively low threshold of arguability is met.

2. So far as ground 1 is concerned, while Operating Pitting may well have been a time limited operation, and undertaken in highly challenging conditions, the fact that being “called forward” remains relevant to re-settlement applications now provides an arguable basis for the alleged unlawful inconsistency in treatment. The alleged “unpublished policy” element of ground 1 looks particularly challenging, but I am not persuaded that any real advantage would flow from looking to narrow this ground at this stage given the overlap in content.
3. Ground 2 is agreed to be arguable. The alleged “work around” relied upon by the Defendants in the context of grounds 2 and 3 has already been found to disclose an arguable basis of challenge by Kerr J and Fordham J.
4. Ground 4 has not previously been considered. Given the highly fact-sensitive nature of the enquiry, the presence of family members of the Claimant in this jurisdiction arguably engages Article 14. As to whether any alleged difference in treatment is justified, this requires more than simply the assertion that the Ukrainian resettlement scheme is “sui generis”.

Decision on admissibility of evidence

5. I have reached my decision in relation to the Marshall evidence for the reasons given by Fordham J in **BA v SSHD** [2-21] EWHC 3493 (Admin) [32]-[33]. I give further directions in relation to the evidence below.
6. The application notice does not make it clear how the (post-decision) Stewart evidence adds to the Marshall evidence. However, the Claimant can renew the application by identifying the specific paragraphs of the Stewart application said to contain relevant evidence not already covered by the Marshall evidence (albeit such an application is not encouraged).
7. The contents of the Foxley reports do not contain expert evidence but essentially factual evidence. If the Claimant wishes to adduce this evidence, a factual statement from Mr Foxley must be served.

Case Management Directions

1. There are related claims which are to be heard on 17 and 18 May 2022. Given the urgency of this application, and the distinct features of it, I am not persuaded I should stay the claim pending a decision in those cases. However, I propose for the present to give directions to complete the evidence and then restore the matter to the Administrative Court, by which time the position in relation to the related claims may well be clearer.
2. The Claimant shall, by 4pm on 6 May 2022, file and serve a table outlining the paragraph numbers of the written evidence provided by Mr Raphael Marshall to the House of Commons Foreign Affairs Select Committee (the “Marshall Evidence”) which they seek permission to adduce, together with any renewed application in relation to the Stewart evidence and any witness statement from Mr Foxley.

3. The Defendants and any other person served with the claim form who wishes to contest the claim or support it on additional grounds shall, by 4pm on 31 May 2022, file and serve (a) Detailed Grounds for contesting the claim or supporting it on additional grounds, and (b) any written evidence that is to be relied on. For the avoidance of doubt, a party who has filed and served Summary Grounds pursuant to CPR 54.8 may comply with (a) above by filing and serving a document which states that those Summary Grounds shall stand as the Detailed Grounds required by CPR 54.14.
4. By no later than 4pm on 31 May 2022, the Speaker's Counsel shall (if so advised) file and serve on the parties any written submissions directed to the admissibility of the Marshall Evidence (and, to the extent the application is pursued, the Stewart evidence) pursuant to Article 9 of the Bill of Rights.
5. The Claimants may file and serve any evidence in reply by 4pm on 7 June 2022.
6. By 10 June 2022, the parties shall apply to the Administrative Court for further directions as to the hearing.

Case NOT suitable for hearing by a Deputy High Court Judge*

Criminal case NOT suitable for hearing by a Single Judge*

[*Tick if applicable]

Signed Mr Justice Foxton

The date of service of this order is calculated from the date in the section below

For completion by the Administrative Court Office

Sent / Handed to

either the Claimant, and the Defendant [and the Interested Party]

or the Claimant's, and the Defendant's, [and the Interested Party's] solicitors

Date: 03/05/2022

Solicitors: EVERSLEDs SUTHERLAND (INTERNATIONAL) LLP
Ref No. 350509.000001

Notes for the Claimant

To continue the proceedings a fee is payable.

For details of the current fee please refer to the Administrative Court fees table at <https://www.gov.uk/court-fees-what-they-are>.

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from the Justice website <https://www.gov.uk/get-help-with-court-fees>

You are reminded of your obligation to reconsider the merits of your claim on receipt of the defendant's evidence.