29 June 2023

AAA and others

v.

The Secretary of State for the Home Department

JUDGMENT SUMMARY

Important note for press and public: This summary is provided to assist in understanding the Court of Appeal's decision. It does not form part of the reasons for the decision. The full judgment of the Court of Appeal is the only authoritative document. The judgment is a public document and is available online at Judgments Archive - Courts and Tribunals Judiciary.

1. The Appellants in these cases are ten individual asylum-seekers and one charity, Asylum Aid. The individual Appellants are from Syria, Iraq, Iran, Vietnam, Sudan and Albania. They arrived in the UK irregularly by crossing the English Channel from France in small boats.

2. In the cases of each of the Appellants the Government made a decision in late May or early June 2022 not to consider their asylum claims but to remove them to Rwanda where their claims would be decided under the Rwandan asylum system. Those decisions were made in accordance with arrangements between the two governments announced on 14 April 2022 and contained in a Memorandum of Understanding and a number of diplomatic "Notes Verbales" ("the Rwanda agreement"). On the basis of the assurances from the Rwandan government contained in the terms of the Rwanda agreement, its terms more broadly, monitoring arrangements in place and other enquiries carried out by the UK Government, Rwanda was treated as a "safe third country" under the relevant provisions of the Immigration Rules. This is the "the Rwanda policy".

3. The Appellants (and other claimants) brought proceedings in the High Court challenging both the lawfulness of the Rwanda policy generally, referred to as the "generic" challenge, and the Government's decisions

specifically to remove each of them to Rwanda. Removals did not go ahead pending the outcome of the proceedings.

4. The central issue before the High Court and before the Court of Appeal was whether the asylum system in Rwanda was capable of delivering reliable outcomes. The Appellants' case is that there are substantial grounds for believing that there is a real risk that any persons sent to Rwanda will be removed to their home country when, in fact, they have a good claim for asylum. Sending them to Rwanda in those circumstances would breach article 3 of the European Convention on Human Rights. In that sense, the appellants submitted that Rwanda is not a "safe third country".

5. The High Court (Lord Justice Lewis and Mr Justice Swift) heard those challenges in September and October 2022. Its decision was handed down on 19 December 2022. In the case of the individual claimants the decisions to remove them were quashed on the basis of procedural unfairness in their particular cases. But the Court dismissed the generic challenges to the Rwanda policy.

6. The appeals to the Court of Appeal are against the High Court's decision on the generic challenges. The Government has not appealed against the quashing of the decisions in the Appellants' individual cases and has not yet made any fresh decisions in those or other cases pending the outcome of the appeals.

7. The appeals were argued before the Court of Appeal over four days between 24 and 27 April 2023. The grounds were numerous and included other legal issues besides the question whether Rwanda was a safe third country in the sense described above. The Court had to consider a great deal of detailed evidence as well as other materials. The United Nations High Commissioner for Refugees was permitted to make submissions as an interested party and evidence filed on behalf of the UNHCR formed the foundation for much of the Appellants' case.

8. By a majority, this Court allows the appeal on the issue of whether Rwanda is a safe third country. It unanimously dismisses the other grounds.

9. There is a subsidiary question about whether there are substantial grounds for believing that persons sent to Rwanda will face a real risk of treatment contrary to article 3 in Rwanda itself. Although the members of the Court do not all take the same view on that subsidiary question, the decision of the High Court is undisturbed on that point.

10. The following is a very brief summary of the Court of Appeal's reasons. To understand the detail, it is necessary to read the judgments which are available online at the link provided above. The judgments are published on a "subject to editorial corrections" basis: if any corrections are necessary, a revised version will in due course be sent to the parties and published on the National Archives website.

11. The decision of the majority – the Master of the Rolls, Sir Geoffrey Vos, and Lord Justice Underhill (the Vice-President of the Court of Appeal (Civil Division)) – is that the deficiencies in the asylum system in Rwanda are such that there are substantial grounds for believing that there is a real risk that persons sent to Rwanda will be returned to their home countries where they faced persecution or other inhumane treatment, when, in fact, they have a good claim for asylum. In that sense Rwanda is not a "safe third country". That conclusion is founded on the evidence which was before the High Court that Rwanda's system for deciding asylum claims was, in the period up to the conclusion of the Rwanda agreement, inadequate. The Court is unanimous in accepting that the assurances given by the Rwandan government were made in good faith and were intended to address any defects in its asylum processes. However, the majority believes that the evidence does not establish that the necessary changes had by then been reliably effected or would have been at the time of the proposed removals. In consequence sending anyone to Rwanda would constitute a breach of article 3 of the European Convention on Human Rights, with which Parliament has required that the Government must comply (Human Rights Act 1998, section 6).

12. In agreement with the High Court, the Lord Chief Justice, the Lord Burnett of Maldon, has reached the opposite conclusion. He agrees that the procedures put in place under the Rwanda agreement and the assurances given by the Rwandan government are sufficient to ensure that there is no real risk that asylum-seekers relocated under the Rwanda policy will be wrongly returned to countries where they face persecution or other inhumane treatment. He has concluded that the chances of failed asylum seekers being returned to their countries of origin are in any event low, not least because Rwanda has no agreements in place with any of the countries in question. In addition, extensive monitoring arrangements, formal and informal, of all those sent to Rwanda and their asylum claims once there provide powerful protection. The arrangements put in place provide sufficient safeguards in a context where both governments will be determined to make the agreement work and be seen to do so.

13. As for the grounds on which the Appellants have been unsuccessful, the Court of Appeal's reasoning as follows.

(1) *Effect of the Refugee Convention.* Article 31 of the Refugee Convention does not in principle prevent the UK from removing asylum-seekers to a safe third country.

(2) *Retained EU law.* EU law only permits asylum-seekers to be removed to a safe third country if they have some connection to that country: none of the Appellants has any connection to Rwanda. However, the Court holds that that requirement has ceased to be part of UK law as a result of provisions in the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, which is part of the legislation dealing with the consequences of the UK's withdrawal from the European Union.

(3) *Designation as safe third country.* Schedule 3 to the Asylum and Immigration (Treatment of Claimants) Act 2004 allows the Government, as long as it obtains Parliamentary approval, to designate particular countries as safe. The Government did not in these cases make use of those procedures. Instead, it proceeded by giving guidance to case-workers for application in individual decisions. The Court holds that it was not unlawful for it to proceed in that way.

(4) *Data protection*. Decisions to remove individuals to Rwanda are not themselves invalidated by any breaches of the data protection legislation which it was alleged would or might occur in the course, or in consequence, of their removal.

(5) *Fairness of procedures*. Asylum Aid submitted that the procedures by which the Government decided whether to relocate individual asylum-seekers to Rwanda were inherently unfair, in particular because of the short timetable applying to representations seeking to resist removal. The Court rejects that submission, but it holds that some aspects of the High Court's reasoning cannot be supported, and that the Government needs to give guidance to caseworkers emphasising the importance of flexibility in granting extensions to the time limits where fairness requires.

14. The result is that the High Court's decision that Rwanda was a safe third country is reversed and that unless and until the deficiencies in its asylum processes are corrected removal of asylum-seekers to Rwanda will be unlawful.

15. Finally, the Court of Appeal makes clear that its decision implies no view whatever about the political merits or otherwise of the Rwanda policy.

Those are entirely a matter for the Government, on which the Court has nothing to say. The Court's concern is only whether the policy complies with the law as laid down by Parliament.

16. A deliberately tight timetable has been set for consequential orders and directions, partly so that any application for permission to appeal to the Supreme Court can be decided promptly.