Judiciary of England and Wales

8 October 2025

R (DM) v. THE SECRETARY OF STATE

FOR THE HOME DEPARTMENT

Appeal No: CA-2024-001818
Neutral Citation Number: [2025] EWCA Civ 1273

PRESS SUMMARY

Important note for press and public: this summary forms no part of the court's decision. It is provided so as to assist the press and the public to understand what the court decided. The full judgment of the Court of Appeal is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk, https://caselaw.nationalarchives.gov.uk

Paragraph references in the summary are to the judgment of Lord Justice Underhill, with which Lord Justice Newey and Lord Justice Lewis agree.

1. This case is about the Government's policy governing whether children under the age of 18 who came to the UK on their own and have been granted asylum can bring their parents and/or siblings to join them – so-called "family reunion". The policy at the time that the case was heard was that child refugees could only be joined by their parents or siblings if refusal would have "unjustifiably harsh consequences" (see paras. 39-45). That was different from, and more restrictive than, the policy applied to adult refugees wishing to be joined by their partner or minor children, who could be granted family

reunion in most cases "automatically" (see paras. 20-23). The policy is made by Ministers and not contained in any Act of Parliament or statutory instrument. It has been in place since 2000.

2. On 4 September 2025, since the hearing of this appeal, the Government announced that it was reviewing its family reunion policy generally and suspending it for new applicants (para. 12). This judgment is concerned with the pre-suspension position.

3. Although the challenge is brought in the name of an individual refugee, his own claim for family reunion was allowed following the start of the case and the challenge is only to the policy generally (paras. 4-5).

4. The challenge, which was supported by the United Nations Commissioner for Human Rights, was that the policy was unlawful on three distinct grounds:

(1) *The section 55 ground.* The Government is said to be in breach of its duty to have regard to the best interests of children in the UK when (among other things) making immigration policy. That duty is imposed by in section 55 of the Borders, Citizenship and Immigration Act 2009.

(2) *The discrimination ground.* It is said that the policy discriminates against child refugees, because without good reason they were treated less favourably than adult refugees. Discrimination by public authorities as regards family life is contrary to article 14 (read with article 8) of the European Convention on Human Rights and is therefore prohibited by section 6 of the Human Rights Act 1998.

(3) *The irrationality ground*. The impact of the policy on child refugees, for whom it creates real difficulties in achieving family reunion (see paras. 48-50), is said to be such that it was "irrational" (which is a term of art in public law) to maintain it.

5. As regards grounds (2) and (3), the Government's principal answer to the challenge was that if its policy were that if family reunion were automatically available to child refugees there would be an incentive for families to send unaccompanied children on extremely hazardous journeys to the UK as so-called "anchor children" – that is, with the purpose of them then being able to bring the rest of their families (para. 59). It is the case of the Claimant and UNHCR that there is no such risk or that, even if there is, it is not such as to justify the harm caused to child refugees who are in the UK by the difficulties that the policy causes to them in achieving family reunion.

6. In the High Court the Judge dismissed all three grounds of challenge.

7. The Court of Appeal has allowed the appeal only on ground (1). This is because, when the section 55 duty was first introduced in 2009, the Government gave guidance to caseworkers to take into account the best interests of children when making individual decisions but did not carry out the exercise of considering whether its overall policy was in the best interests of children in the UK and, if not, whether those interests were outweighed by other legitimate concerns; and it had conducted no such exercise since (paras. 128-130).

8. The result of the decision on ground (1) is not necessarily that the Government will have to change its policy but it will have to review it in accordance with the requirement of

section 55 to have regard to the best interests of children in the UK. The Court has not at this stage decided what particular order will be appropriate to give effect to that decision: the Government's announced review of family reunion policy may or may not be relevant in this context (para. 133).

9. As regards ground (2), the Court (disagreeing with the Judge below) held that it was legitimate to treat the positions of child refugees and adult refugees, both seeking family reunion, as comparable (paras. 146-150). That meant that the Government was required to justify the fact that they were treated differently: the Judge below did not consider that issue because he had found that there was no differential treatment. The Court of Appeal has declined to decide it for itself, for the reasons given at paras. 160-167, which include the facts (a) that the policy will have to be reviewed in any event because of its decision on ground (1) and (b) that the evidence before it was unsatisfactory and is now over three years old. It has not at this stage decided whether the result is that the discrimination claim should be dismissed altogether or that it should be remitted for consideration by the High Court (para. 166).

10. The Claimant's appeal against the Judge's dismissal on ground (3) was dismissed. The Court held that striking a balance between the benefit of discouraging the use of anchor children and the extent of problems caused to child refugees by denying them automatic family reunion involves questions of judgment and policy which are quintessentially a matter for the Government and that the threshold for showing that the balance represented by the current policy was one which could not rationally be arrived at was very high (paras. 176-177). The evidence adduced by the Claimant and UNHCR did not meet that threshold.