Neutral Citation Number: [2026] EWHC 735 (Admin)

Case No: AC-2026-LON-001364

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26th March 2026

Before :

THE HONOURABLE MR JUSTICE KIMBLIN

- -

Between :

R (oao) KP	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendants**
- and -	
(2) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS	

- -
- -

Helen Law KC and Eleanor Mitchell (instructed by **Duncan Lewis**) for the **Claimant**
Edward Brown KC and John Bethell (instructed by **GLD**) for the **Defendants**

Hearing dates: 25th and 26th March 2026

- -

Approved Judgment

This judgment was given ex tempore on Thursday 26th March 2026 and by circulation to the parties or their representatives by e-mail, after which it was approved and released to the National Archives.

MR JUSTICE KIMBLIN

Mr Justice Kimblin:

[A] Introduction

1. The Claimant is a Sri Lankan national who was tortured, sexually assaulted and abused by Sri Lankan military personnel. After fleeing to India, he then left by boat with others, intending to reach Canada. He arrived in Diego Garcia (which, if I may, I shall abbreviate to 'DG', without disrespect) on 3rd October 2021 because the boat encountered difficulty and was escorted by the Royal Navy to safety.

2. The Chagos Archipelago is located centrally in the Indian Ocean, part of an ocean ridge which extends south from the Indian sub-continent. DG is an island within that Archipelago. It is part of the British Indian Ocean Territory ('the BIOT'). Its centrality in the Indian Ocean has made it significant for many reasons and for different peoples. Amongst those is the use of DG by the United States Air Force as a base for its operations.

3. On 1st March 2026 the Prime Minister announced that the United States would be permitted to use DG in operations against Iran. The next day, the Commissioner of the BIOT took the decision to draw down non-essential staff because there was uncertainty as to the security threat from Iran. The Commissioner was seeking a charter flight to remove non-essential personnel. The Commissioner recommended that the Claimant should join the charter flight.

4. The Claimant seeks urgent interim relief in the form an order to compel the Defendant Secretary of State to permit the Claimant to board the charter flight and to be admitted to the UK on its arrival.

5. The application was adjourned into court by the order of Chamberlain J., made on the evening of Tuesday 24th March, listed for 2pm on Wednesday 25th March.

6. At the hearing Ms Law KC, who appeared for the Claimant, informed me that discussions had taken place just before the hearing commenced. Mr Brown KC, who appeared for both defendants had information that the charter flight from DG, which is the catalyst for this urgent hearing, was now to depart at 0730 on Friday 27th March ('the charter flight'). This is later than had been anticipated, being previously understood to be around midday on Thursday 26th March.

7. As a result, Mr Brown asked that the hearing be adjourned because there was a prospect of a legal solution to the issues in the case. I heard argument and adjourned until 1000 on Thursday 26th March, giving my main reasons as: (1) the change of flight arrangements made it feasible to adjourn and still provide for an orderly determination of the application, and; (2) if there was a prospect of a decision and resolution being made by the responsible decision-maker in accordance with her policies and practices, that was preferable to a decision made by the court, and very much in the public interest.

8. This morning, Mr Brown asked for some further time to enable the work which had been going on overnight to be advanced. I adjourned for 45 minutes to allow that to happen.

9. Mr Brown submitted a Note this morning which indicated that the Second Defendant does not have a role as a decision maker on the issues in this case. I have not taken any action in respect of the named parties on the strength of that, but record the position as I understand it.

10. After Ms Law had completed her submissions, Mr Brown provided an oral update. He read from an email, the essence of which was that the Maldives had offered to receive KP for a period of 30 days via a flight some twelve hours after the departure of the charter flight. He undertook to supply a copy of the email, exhibited to a witness statement. This was done at 1230 and I give permission to rely on this evidence. Ms Law asked for half an hour, which I then extended, to take instructions from KP, which the court facilitated via use of the court room and CVP. I address the Maldives option at section [G] below, from paragraph 61.

11. Before turning to the background, I record that the Commissioner of the British Indian Ocean Territories and the Ministry of Defence were included as interested parties on the claim form. Neither has participated and I was informed that neither of the active parties considered that they ought to continue as interested parties to the claim.

[B] Background

12. The litigation history involves four cases. The relevant background can be collated from the judgments in:

    [1&2] *R (oao) VT (Sri Lanka) and others v The Commissioner of the British Indian Ocean Territory* which is a judgment of the Supreme Court of BIOT (BIOT SC 15 and 16 2023) given by Margaret Obi, as she then was, sitting as an Acting Judge of the Supreme Court, upheld on appeal [2025] BIOT CA (Civ) 1.

    [3] *BAA v Commissioner of the British Indian Ocean Territory* [2023] EWHC 767 (KB) in which a divisional court (Whipple LJ and Chamberlain J) refused applications for injunctive relief to prevent the return of migrants from Rwanda to BIOT after their evacuation to Rwanda for medical treatment.

    [4] *R (KP) v Secretary of State for Foreign, Commonwealth and Development Affairs and Secretary of State for the Home Department* [2025] EWHC 370 (Admin) per Chamberlain J, judgment in which was handed down on 12th February 2025. I shall call this case KP(1).

13. Access to and arrangements on DG require explanation.

14. On 30th December 1966, the UK and the US governments signed an agreement ('the 1966 Exchange of Notes') to make the BIOT available for defence purposes. A supplementary agreement was signed in 1976 ('the 1976 Exchange of Notes') which states that:

> "Access to Diego Garcia shall in general be restricted to members of the Forces of the [UK] and of the [US], the Commissioner and public officers in the service of the [BIOT], representatives of the Governments of the [UK] and of the [US]

> and, subject to normal immigration requirements, contractor personnel."

15. DG has since served as a key strategic location for military operations in the Indian Ocean region.

16. BIOT is administered from London by the Commissioner who carries out the functions of both government and legislature. The Territory is uninhabited, save for a transient population on DG made up of service personnel, public officers of the BIOT Administration ('BIOTA'), support staff for the defence facilities, and independent contractors. There are approximately 2,500 non-military personnel on DG. All military postings and civilian contractors serve without their families and/or dependents.

17. They either work directly for the UK Ministry of Defence, the US Department of Defence or for companies that provide operations and maintenance services. The companies are required to ensure that their staff are subject to appropriate checks and have the relevant permits. There are no commercial flights nor boats to or from the Territory.

18. At the time of the BIOT Supreme Court judgment, there had been 349 arrivals of migrant Tamil Sri Lankan nationals, many of whom left voluntarily. 64 remained between DG and Rwanda. Those remaining in DG were accommodated in a camp. Its facilities are basic and comprise tents.

19. KP was one of the remaining migrants. He faced substantial challenges. His medical records mention suicidal ideation, anxiety and depression from September 2022. In January 2023 there were four allegations of sexual assault on a woman. In April 2023, he self-harmed by swallowing a fishing hook and razor blade. In May 2023, he attempted to drown himself. In June 2023, he set fire to a tent while inside it. In July 2023, he removed his clothing, cut his neck and wrists with a razor blade and began striking himself with a chair. In July 2023 he harmed himself and was then kept under 24-hour observation in a building, for his own safety. Initially he was with another migrant, but later alone.

20. The UNHCR was deeply concerned by the conditions in which he was being kept.

21. On 3rd June 2024, he was sentenced to 20 months' imprisonment, suspended for 12 months in respect of the sexual assaults and for setting fire to the tent (arson). He completed his sentence on 2nd April 2025.

22. The same psychiatric and psychological evidence as was before Chamberlain J in KP (1) has been served in this application. The most recent evidence at that stage was from 7th February 2025. A significant suicide attempt had been made in August 2024. KP remained at significant suicide risk.

23. On 7th February 2026, a mental health assessment was produced. Its summary was that considerable improvement in cognitive, behavioural, and psychosocial balance over the past 9 months. He has developed the capacity for emotional control, behavioural management, self-restraint, and thoughtful judgment. He has acquired skills in weighing options that are attuned to an awareness of right and wrong, as well as a

recognition that actions have consequences, not only on himself but on others around him.

24. The summary continued to explain that these realizations and self-discoveries effectively curb any impulsive tendencies that have the potential to lead to harmful decision-making. Above all, he has learned mental health tools that enable him to counter and correct maladjusted interpretations of life's experiences, such as disappointment, impatience, and notions of helplessness. In addition, when in doubt, he does not hesitate to seek help and talk to the mental health practitioner and medical care givers. This willingness to be guided and accompanied, combined with grateful recognition of the services he is rendered, is another milestone in his mental health journey.

25. KP is now the only migrant remaining on DG. Steps have been taken to find a third country to which the Claimant could be transferred, which I turn to shortly.

26. The Government accepts responsibility for KP and also accepts that there are only two options which are to find a third country which will accept transfer of KP or to admit him to the UK. This application is to compel the second option.

27. As to the former, this was the conclusion reached in February 2025 in KP (1) at [90-91]:

> The defendant's own documents showed that they themselves judged that the identification of such a country would be "challenging" and "difficult". Further submissions were made in private that the documents subject to the confidentiality ring showed that the search was very likely to be in vain.
>
> …
>
> The documents do indeed disclose judgments by FCDO officials that there are likely to be considerable difficulties in finding a state willing to accept the claimant. This is hardly surprising. The states in question are ones with which the claimant has even less connection than he has with the UK. It is likely to be contrary to their public policy, as it is contrary to ours, to accept an individual with his criminal convictions.

28. At that stage, it was rational to conclude that there was a realistic prospect of a third country receiving KP.

[C] Evidence

29. I see the evidence in support of the present application in these categories: (1) updates in Mr Robinson's witness statement as to KP's current position and condition on DG; (2) the situation in respect of third countries; (3) the security situation; (4) the civilian draw-down.

30. Mr Robinson's evidence is that KP's daily life continues to be facilitated, and his mental and physical health continue to be supported, by a team of private contractors engaged

by the Commissioner and is reliant on this support for the key aspects of his daily life, including meals. He receives substantial mental health support.

31. Since the deterioration in the security situation on BIOT, his mental health has been assessed and reported in this way:

> "[He] reported feeling significantly unsettled by the move to a higher security context. He shared that he had been told there is currently no confirmed plan for his movement or evacuation from the island should the threat escalate again.
>
> This is a source of real and active distress. For someone who has spent over four years here with severely restricted autonomy and an unresolved legal situation, the absence of a contingency plan is not abstract. It reinforces, concretely, the experience of having no reliable exit from danger. Trauma-informed assessment would understand this not as a new isolated stressor but as another layer added to an already chronic and cumulative load"

32. The search for a third country for KP's transfer was acknowledged to be a difficult prospect at the time that KP(1) was decided. Twenty-three countries have now been involved to some extent in that search. It suffices to say that there remain options to be explored further including the best prospect in respect of which discussions are at an advanced stage and which is to present an offer of resettlement. However, I was informed this morning that the prospects of that offer have now receded. The position at the start of the hearing this morning remained that no country had come forward. Work continued in that regard and the position changed later in the morning with the emergence of the Maldives option to which I have already referred.

33. Hostilities involving the US, Israel, Iran and involving some Middle East states commenced 28th February 2026. On 2nd March, the Commissioner wrote to the Claimant's solicitors:

> The BIOT Administration (BIOTA) this morning considered the position in relation to contingency planning. Whilst there is no specific threat we have identified, BIOTA's view is that there is a level of uncertainty regarding security risks to people on Diego Garcia. BIOTA has therefore taken the decision to draw down non-essential staff. We have consistently considered your client equally as part of our planning. As you will be aware, however, he currently does not have a 3rd country who has agreed to take him. We are in parallel exploring the possibility of charter flights to take personnel off the Territory.

34. The situation developed. On 6th March 2026, the Commissioner wrote again:

> Following developments, the Commissioner convened a contingency planning meeting on 2 March to consider a variety of issues and factors including the PM's decision for use of UK bases, the likelihood of Iranian action against UK bases including at short notice, routes off Diego Garcia and the

> presence of non-essential personnel. The Commissioner reiterated that your client be treated equally to others.
>
> After discussion, conclusions included that non-essential staff including the Migrant Liaison Officer would be drawn down; FCDO be notified urgently to find a potential destination for your client (this could be facilitated via air charter); and G4S, Palladium and Response Med be informed and their views invited on drawing down their staff (subsequently all three groups confirmed that they were content to remain on Diego Garcia and continue providing safety, health and welfare services in support of your client).
>
> At present, no decisions have been taken in relation to the drawing down of your client. The BIOTA Contingency Planning Group will continue to meet regularly and as often as necessary to discuss contingency planning triggers for draw downs. Any steps for your client's draw down from Diego Garcia would be made in discussion with the FCDO.

35. Air raid sirens sounded on 19th and 20th March. Over the weekend of 21/22 March it was widely reported in the media that Iran had fired missiles towards DG. Mr Robinson reports that G4S staff supported KP during these incidents. His medical records demonstrate anxiety as a result.

36. On 20th March, the Commissioner's view was expressed in this way:

> In response to security threats to Diego Garcia, the Commissioner has today made the decision that it is not safe for your client, or the contractor team supporting him, to remain on the island.
>
> We have informed the UK Government of our intention to charter a flight from Diego Garcia to the UK as soon as possible and have requested permission for your client to travel on board that flight. It will be for the Home Office to decide whether that permission is granted.

37. Communications between the Claimant's solicitor and the Government Legal Department did not produce a substantive response as to what the plan was to address the Claimant's situation. However, the Commissioner did respond on 23rd March:

> In the event that permission was not granted for your client to enter the UK, the BIOT Administration would formally request that, under their overseas assistance scheme, MoD provide assistance to your client in his daily routine including, for example, his usual meals at the STHF, facilitating some of your client's ROMO activities and his weekly allowance.
>
> BIOTA would put in place virtual arrangements to support your client (e.g. sessions with mental health experts and access to a

> Tamil language interpreter). If primary medical care was required, we would request the use of US medical facilities on island, as has happened occasionally in the past, including for your client. However, US assistance would not be in the gift of either BIOTA nor indeed the UK Government and so could not be guaranteed.
>
> For any serious issues requiring emergency medical treatment, we would rely on the FCDO to liaise with 3rd countries to see if he could be accepted for treatment as we have in the past, including for your client, but again this could not be guaranteed. Previous locations which we have used for medical treatment may no longer be a realistic possibility, including because of events in the Middle East.
>
> The BIOT Administration would continue to treat your client's safety as a top priority should permission not be granted to allow him to enter the UK. However, it would be the case that the support available to maintain his wellbeing would necessarily be much reduced given the security risks present to the Territory and the decision to draw down personnel under the care of the BIOT Administration and who are non-essential to the operation of the military facility, including those contractors who presently support him.

38. Ms Law submitted that there was no evidence of any practical plan being in place. I agree with her that the Safeguarding Report of 24th March 2026 is short on the detail of the 'how' and 'who' would deal with KP's clinical needs. The result would also inevitably lead to KP being in contact only with those in uniform, which presents a particular trigger for him, having regard to his experience in Sri Lanka. Moreover, the MoD's priorities may be elsewhere at a time of conflict in the Middle East.

39. There was a brief exchange of protocol correspondence, and the claim form was issued on 24th March.

40. The situation which presents itself is that KP is on an island in the middle of the Indian Ocean, with no means to depart. DG has a strategic military function and there will be no other facilities to enable KP to live there, save for that provided by the MoD. The few elements of the non-military infrastructure will be removed from DG because it is unsafe, being considered to be at risk of missile attack.

[D] Law

41. The legal tests to be applied in respect of interim relief in public law cases is very well known and applied daily. However, there are some features of this case which merit rehearsal.

42. On 'serious issue to be tried', this is an application for a mandatory injunction. The applicant is required to show a strong prima facie case in order to cross the first threshold in *American Cyanamid*: *R (RRR Manufacturing Pty Ltd) v British Standards Institution* [2024] EWCA 530 at paragraphs 55, per Laing L.J. and per Nugee L.J. at

112. That case affirmed the approach in *De Falco v Crawley Council* [1980] 2 WLR 664 at 674:

> This is not the same sort of case as American Cyanamid Co. v. Ethicon Ltd. [1975] A.C. 396, because the plaintiffs here cannot give any worthwhile undertaking in damages. No injunction should be granted against the council unless the plaintiffs make out a strong prima facie case that the council's finding of "intentional homelessness" was invalid. I would go further. It should not be granted unless it is a case in which, on an application for judicial review, certiorari would be granted to quash their decision: and mandamus issued to command them to consider the case afresh.

43. But this is a case in which the order sought as interim relief may be effectively and practically a final order. The decided cases use a different term, test or category for the threshold for interim relief in those circumstances. It is that the case is 'particularly strong': *Secretary of State for the Home Department v EK* [2024] EWCA Civ 1601 per Underhill LJ, with whom Singh LJ and Baker LJ agreed at [48]:

> "The starting-point for the consideration of the claim for interim relief is that its effect would be to grant the substance of the final relief sought in the proceedings – that is, the admission of the parents to the UK at least until they have had an opportunity to claim asylum and to have that claim determined. It was common ground before us that the grant of relief would only be justified in such a case if the case that their continued exclusion was unlawful was particularly strong. We were referred to the statement of the applicable approach at paras. 12-14 of the judgment of Saini J, in R (Zalys) v Secretary of State for the Home Department [2020] EWHC 2029 (Admin), to which UTJ Kamara referred. It may be necessary in a future case to examine the relevant principles more fully; but I am content to proceed on that basis."

44. Mr Brown's note draws attention to the approach of the Divisional Court in R *(Detention Action) v Secretary of State for the Home Department* [2020] EWHC 732 (Admin) at [17] to the same effect.

45. In *Zalys*, this was called a more stringent test. It was characterised as the court being satisfied to a high level of confidence that the claimant will ultimately prevail. It may be described as a very strong prima facie case.

46. If there is a serious issue to be tried, I should then go on to consider the balance of convenience.

[E] Serious Issue to be Tried/Particularly Strong Case

47. This question is about departure from DG generally, as opposed to 'departure to where?' I deal with those issues separately.

48. In KP(1) permission was granted at a rolled up hearing, and the claim was dismissed. This application and this claim has, in my judgement, additional factors which are different or have moved on since Feb 25. They relate to KP's wellbeing, the prospect of a third country transfer and the security situation.

49. First of all, I deal with the case on a basis without the security situation. In other words, I am going to start by ignoring the impact of the conflict in the Middle East, for present purposes. Mr Brown's note takes a similar approach at [9-13].

50. The broad picture has improved for KP so far as his mental health is concerned. The facts on which KP(1) was decided were plainly concerning and Dr Agarwal identified significant risk of serious injury or even death. The assessments this year are much more positive and a relief to read (see paragraphs 23 and 24). In my judgment, this is a factor which makes it less likely that a court at a final hearing would provide the relief sought.

51. As to third countries, that narrative has followed what was predicted by the Defendant – it is difficult to find a country to agree to the transfer. In overview, that is a factor which goes the other way in that it makes is more likely that a court at a final hearing would give the relief sought.

52. Without regard to the Maldives option, the evidence is that very active and sophisticated efforts remain underway to find what is essentially a diplomatic solution for a transfer of KP. I do not have the impression that the work undertaken has been anything other than assiduous and proactive. There are several options under active consideration, as I have set out. On this basis, I do not see the claimant's case as strong. It is arguable, but not strong.

53. In my judgment, it is highly likely that a conclusion would be reached per Chamberlain J at [95] in KP(1):

> In this case, the disbenefits include risks to the safety of the UK public and, relatedly, risks to public confidence in the immigration system. Both of these are real risks. So is the risk that admitting the claimant in these high-profile circumstances would tend to undermine the UK's international commitment to tackling violence against women and girls. The task of evaluating the weight and importance of avoiding these risks falls, in the first instance, to Ministers, not judges. Given the nature of the risks in question, the court should allow a wide margin to the democratically accountable ministers who, together with their officials, performed it. The court's supervisory function is limited to ensuring that the defendants' decisions fall within the wide range of reasonable decisions open to them. In my judgment, they do.

54. The problem with relying on the outcome in KP(1) at this stage of the analysis is that it integrates within it those factors which go to balance of convenience, which I should not take into account when considering the threshold test of 'serious issue to be tried'. The case is unusual in that the same case has already been thoroughly argued and reasoned, subject to changes in KP's mental health and continued search for a third country, and I do know the outcome. However, even putting that out of mind, as I do, I would put the strength of the prima facie case as reasonably arguable, and not strong.

55. So to consider the security situation, the draw down of staff and the impact on KP. This is difficult to evaluate. The course of the conflict is uncertain as anybody who has followed it to date will appreciate. This morning, Mr Brown told me that a new security assessment was in preparation for BIOT. Nobody is able to say, and certainly this court has no view, on what the general trajectory of the conflict will be and what consequence that would have for DG.

56. Ms Law, in her oral submissions focussed on these compelling points:

    i) There is presently no evidence from the First Defendant as to how it has made its decisions in respect of KP. There is plainly a need to assess and understand the impact of withdrawal of his support, leaving him alone as the civilian on a military base, while other civilians are removed from harm's way.

    ii) If there is sensitive material which is available the First Defendant has been silent about it. There are procedures available to ensure confidentiality. They have not been used. This leaves the court in a vacuum.

    iii) In KP(1), Chamberlain J. drew attention to the principles to apply to assessing rationality in the context of a case where there is a risk to life. That is relevant here, because there are two sources of risk to KP's life.

    iv) The first is the continued risk to which he has been exposed by reason of his isolation on DG. Ms Law took me to the medical review in that regard and demonstrated the positive effect of in-person sessions with KP, outdoors.

    v) The second is the risk from hostilities.

    vi) As I have indicated already, there does not appear to be any coherent plan in place to address the circumstances as they would be if KP does not leave DG, at or around the time when other civilians do.

57. However, the combination of factors which relate to KP is highly unusual. There are no connections beyond BIOT and no services save for those provided in association with the military base. Their removal would have obvious and notable impacts on KP. That is the medical evidence and also the opinion of the Commissioner, who has reached the conclusion that DG is not safe for non-essential personnel. In my judgment they make his case substantially stronger and reaches the threshold that I am as sure as one can ever be in contested proceedings that the claimant would succeed, and the relief would be granted. The paucity of evidence as to the decision, and the outcome, both point to a successful rationality ground.

[F] Balance of Convenience

58. Having reached that conclusion, I also conclude that the balance of convenience indicates the grant of relief for similar reasons to those above. Ms Law agreed that the factors are essentially the same as those to be addressed in respect of 'serious issue to be tried'. Nevertheless, I summarise them as follows, which are to be read as overlapping and interacting considerations, rather distinct and separate factors:

    i) The uniqueness of KP's position in a location from which there is no means of leaving because there are no commercial services to and from the island;

    ii) The security assessment, namely that it is unsafe;

    iii) KP's mental and physical wellbeing and the fact that he requires support, having regard to his history;

    iv) The removal of that support, with an inchoate plan for removal and military assistance;

    v) On the other hand, KP has previous convictions, including for sexual offences, which the Home Secretary is entitled to treat as highly material.

    vi) KP does not have, and has never had, any legal right to enter the UK, nor any ECHR or equivalent rights which he can exercise against the UK Government.

    vii) The combination of factors is so out of the ordinary and so unlikely to be repeated that it creates no precedent as against the First Defendant's policies for the control of immigration, which I have alluded to above.

59. Ms Law made submissions on the weight to be given to v) and vi) above. She submitted that the sentencing remarks of the Magistrate, which she handed up to me, showed that the offences were not of the most serious category by reference to the categories of culpability in the Sentencing Guidelines. KP had not re-offended. She made clear that she did not minimise that conduct. I did not find that this point took matters significantly further forward.

60. I was also shown the policy on Leave Outside the Immigration Rules. That too did not assist me greatly.

[G] Maldives

61. As I have indicated, at 1140 this morning, the court was informed of the Maldives option. Mr Brown invited me to refuse interim relief. The basis is set out in Mr Norris's witness statement which states, so far as material:

> Agreement in principle has been reached with Government of the Maldives for KP to be relocated there, for the next 30 days. That relocation would be [e]ffected by air within the next 26-27 hours. That will be around 12 hours after the current scheduled departure time of the BIOT Commissioner's charter flight.

> The UK Government and BIOTA will ensure that adequate medical and subsistence support is provided to KP during this intervening period.
>
> KP would be accompanied on the flight by medical personnel. Additional support would be put in place for his arrival to ensure continuity of care.
>
> The UK Government will remain responsible for KP and his care.
>
> For the avoidance of doubt, the Maldivian authorities have confirmed that they would not return KP to Sri Lanka in light of his protection status.
>
> KP would not be detained on arrival. He will of course however be subject to the law of the Maldives during his stay.

62. This was supported by an assurance from Mr Brown who made clear that the transfer to the Maldives 'is going to happen'.

63. Ms Law submitted that there remains a lacuna, in the event that the Maldives option falls through. Liberty to apply is therefore necessary and also there is to be reasonable notice of any change in arrangements.

64. So far as future jurisdiction is concerned, the parties raised this issue. Mr Brown accepted future responsibility for KP. It seems to me that will suffice and I have no significant concerns in the light of what was said by Mr Brown.

[H] Conclusions

65. As I have indicated, absent the security situation and the drawdown of staff, I would have dismissed this application on the basis that the case was not sufficiently strong to pass the test of there being a serious issue to be tried with particularly strong prospects.

66. One has to be careful to describe situations as unique. However, it seems to me that is so in this case, and it is on that basis that I will make an order which reflects the assurance given by Mr Brown which will facilitate KP's departure on a flight which has been chartered by BIOTA. I will reflect that assurance in my order, within the recitals and I regard that as sufficient, when combined with liberty to apply. Absent that assurance I would have made an order for interim relief.

67. The first remaining question is 'departure on flight to where?'. Having heard submissions on this morning's option of transfer to the Maldives I have concluded that the order should be drafted to give effect to or enable that third country offer. It has been a task which has occupied the Defendants for many months, as I have indicated and immigration control is a matter for the First Defendant, not this court. I can see no legal obstacle to transfer to the Maldives. None was raised with me. That course of action would overcome the risks to which KP would be exposed and to which I have referred.

68. The second remaining question is 'for how long and what next?'. Quite properly, Ms Law raised the question of the future, after expiry of thirty days on the Maldives. I remind myself that the court is only concerned with interim relief. The purpose of the application is directed to keeping in play the final relief sought. In my judgment, the Claimant would be sufficiently protected by the assurance given, recorded in the order, for the transfer of the Claimant to the Maldives, with the undertaking contained in Mr Norris' witness statement, not to return KP to Sri Lanka along with liberty to apply.

69. I ask counsel to make an order accordingly and thank them all for their assistance in a case which presented particular pressures for each of them, in different ways. I will deal with any consequential matters in writing with reasons to be provided on my order.