IN THE COURT OF APPEAL (CIVIL DIVISION)

IN THE MATTER OF AN APPEAL
FROM THE ADMINISTRATIVE COURT

BETWEEN:

RM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

GROUNDS OF APPEAL

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1. RM relies on the seven grounds of appeal below.

2. Permission to appeal was granted by the Administrative Court in respect of Grounds 1, 2, 3 and 4.

3. RM needs the permission of this Court to pursue Grounds 5, 6 and 7, in respect of which permission was refused by the Administrative Court.

   Ground 1: The Court misdirected itself in concluding that Articles 25 and 27 of the Procedures Directive (2005/85/EU) had ceased to be 'retained EU law' by virtue of s.1 and Schedule 1 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ('ISSCA 2020'); in particular (i) the Court misdirected itself as to the correct interpretation and application of ISSCA 2020 and (ii) its conclusion that the Procedures Directive was no longer retained EU law was contrary to binding Supreme Court authority in *G v G* [2022] AC 544, and the Court's reasons for departing from that authority were not adequate.

   Ground 2: As regards procedural fairness, the Court was wrong:

(i) to find that the process for determining whether an individual should be transferred to Rwanda was procedurally fair, either generally or in RM's specific circumstances;

(ii) in particular, to find that fairness did not require applicants to be provided with the material on the basis of which the Respondent had determined that Rwanda would generally comply with its non-refoulement obligations and/or to have an opportunity to make representations directed to that issue, in circumstances where the Respondent, when deciding whether to certify individual asylum claims and/or human rights claims as clearly unfounded, (a) was herself entitled to take account of general information about Rwanda but (b) was found by the Court to have made no irrebuttable assessment as to the safety of Rwanda;

(iii) alternatively, if it was correct to find it unnecessary for applicants to be given an opportunity to make representations on the general safety of Rwanda, to conclude from that that the process was fair, either generally or in RM's specific circumstances;

(iv) in particular, to find that the process provided RM, at material times, with a fair opportunity to make representations on his individual circumstances, especially as regards (a) why he had not claimed asylum in France, either upon being turned back from the UK border on 9 May 2022 or otherwise, (b) his mental health and/or cognitive difficulties, (c) whether he was potentially or actually a victim of trafficking and/or (d) whether there were aspects of the Rwandan refugee status determination system which meant that it was not a safe country for him personally; and/or

(v) to find that the Respondent's inadmissibility decision in RM's case did not fall to be quashed on the basis of procedural unfairness and/or a failure to take account of the evidence of his vulnerability.

Ground 3: As to whether Rwanda met the conditions in para 345B of the Immigration Rules, the Court was wrong:

(i) to find that it required 'compelling evidence' to go behind the assessment of HM Government that Rwanda would honour its commitments under the MEDP;

(ii) further or alternatively, to find that there was no such compelling evidence;

(iii) in any event, to find that the SSHD's failure to take account of the Israel-Rwanda arrangement and/or the extradition cases was not a material error of law; and/or

(iv) to find, with respect to RM's specific case and/or generally, that the refugee status determination system envisaged in Rwanda by the MOU and Notes Verbales, even if taken at its highest, was adequate to avoid a risk of unlawful onward refoulement, given (a) the deficiencies in the Refugee Status Determination Committee, (b) the Government of Rwanda's misunderstanding of the requirements of the Refugee Convention, (c) the lack of provision for medico-legal expert reports, (d) the lack of access to adequate country information, including relevant expert evidence, (e) the lack of evidence of the availability of suitable interpretation facilities and (f) the lack of evidence on the effectiveness of the right of appeal.

Ground 4: The Court was wrong to find, for the purposes of Article 31 of the Refugee Convention, that the removal of RM, before his asylum claim would have been considered, to a third country with which he has no prior connection, with the avowed aim of deterring them or others from seeking asylum in the UK after arriving by unlawful means, did not constitute a penalty and therefore was consistent with s.2 of the Asylum and Immigration Appeals Act 1993.

Ground 5: The Court was wrong to find that the 'dangerous journey' criterion in the Respondent's Inadmissibility Policy did not have the qualities of an immigration rule and did not require to be laid before Parliament under s.3 of the Immigration Act 1971; in particular, the Court was wrong to find that the existence of an element of discretion meant that the criterion was not a rule for those purposes.

Ground 6: The Court failed to consider adequately or at all:

(i) whether the existence of 'significant vulnerabilities', as set out in (among other things) the SSHD's Standard Operating Procedures, was a criterion for whether a person should be considered ineligible and/or unsuitable for transfer to Rwanda; and/or

(ii) whether the SSHD had lawfully applied that criterion to RM's circumstances when considering whether he should be transferred to Rwanda.

Ground 7: The Court was wrong to conclude that the Respondent had lawfully found, on the facts, that there were no reasonable grounds for considering that RM had been subjected to trafficking or modern slavery; in particular it was wrong to find that RM had in effect genuinely consented to the treatment he underwent during the course of his journey.

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23 January 2023