



Dbeis and Ors. v. Secretary of State for the Home Department

[2005] All ER (D) 283 (May); [2005] EWCA Civ 584

Country: United Kingdom

Region: Europe

Year: 2005

Court: Court of Appeal, Civil Division

Health Topics: Chronic and noncommunicable diseases, Health care and health services

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to education, Right to family life

Facts

The case was brought by a Lebanese citizen who had come to the UK in order to seek asylum for herself and her two children on the basis of persecution for her religious beliefs. Her claim for asylum on this ground was rejected, but she challenged her removal on the basis that removal would result in a violation of her family's right to private life under article 8 of the European Convention on Human Rights (ECHR). She based this claim on the argument that one of her sons, Tarek, suffered from cerebral palsy and the quality of life, treatment and education that he would receive in the United Kingdom would be much better than in Lebanon, where he would be isolated from mainstream society because of his condition. As such, removal would be a disproportionate interference with her son's right to private life, which included the right to form relationships.

This claim for asylum was dismissed by the Secretary of State, by an Adjudicator, and by the Immigration Appeal Tribunal (IAT), on the grounds that there were adequate medical and education facilities in Lebanon and that the life of the Claimant and her children, albeit better in England, would not come to harm in Lebanon. The Claimant appealed to the House of Lords. She argued that the IAT had made an error of law by construing its powers of review too narrowly, and that the Adjudicator had failed to properly take into account human rights considerations under the ECHR. She also sought to adduce new evidence of her son's condition.

Decision and Reasoning

The appeal was dismissed. The Court emphasized that the ECHR did not grant a right to aliens to reside in or enter a country, and only in exceptional cases would actions taken to further the aim of lawful immigration control be disproportionate interferences with ECHR rights. As such, while the Court found that the IAT had construed it and the Adjudicator's abilities to review the Secretary's decision too narrowly, the Adjudicator's decision itself was correctly made.

In this case, there was nothing that in any way undermined the adjudicator's conclusions or demonstrated an exceptional case. The facts before the Court were the same facts that were before the Adjudicator, and did not undermine the Adjudicator's original decision. While it was a harsh result that Tarek was likely to be deprived of the higher standard of educational support that he could expect in the United Kingdom, his case was not an exceptional one and his removal was not disproportionate to the legitimate end of immigration control.

Decision Excerpts

“As I understand it, the relevant material at that time relating to Tarek's condition was a letter of 12th May 2005 from the Ealing NHS Primary Care Trust, with an attached report of a consultant paediatrician. There is nothing in that which in any way undermines the Adjudicator's conclusions or demonstrates an “exceptional” case within the terms described in Razgar. • Para. 24.

“As to the new evidence, I would add this comment. Undoubtedly the circumstances are distressing, and it is a harsh result that Tarek is likely to be deprived of the higher standard of educational support which he can expect in this country. However, that on the authorities does not constitute an exceptional case, sufficient to override immigration control. While it is not for us to exclude the possibility of a new application to the Home Secretary, the additional material so far submitted on his behalf, although expressed in stronger terms, does not appear materially to alter the picture as presented to the Adjudicator. • Para. 26.

