

Foreigner's health issues insufficient to halt deportation

'PF', a Nigerian who has been living in the UK since he was 13-years-old, has sickle cell disease (SCD), a genetic blood disorder. It is prevalent in many African countries but Nigeria has the highest rate in the world: about one million people there live with the condition.

Because of PF's serious criminal record over the years he has lived in the UK, the government authorities want to return him to Nigeria. In the struggle over his future, the two key issues that emerged were how his children would be affected by his deportation, and his own health.

Would sending him back to Nigeria effectively condemn him to a painful death within five years? Judge Fiona Lindsley decided that it would, and she allowed his appeal against the deportation order. Subsequently, however, the Court of Appeal has reconsidered her decision, giving its decision a few days ago.

Every year, 150 000 babies suffering from sickle cell disease are born in Nigeria. Their life expectancy is reduced and SCD typically results in infections and attacks of acute pain known as 'sickle cell crises', for which morphine and antibiotics are given. 'It is a terrible disease,' the Appeal Court commented, 'and one can only have sympathy for those who suffer from it'.

But what about PF? How would his SCD status stack up against his long criminal record involving drug and other offences? PF said returning him would contravene the European Convention on Human Rights (ECHR), article 3 of which says that no one shall be subjected to torture, inhuman or degrading treatment or punishment. This comes into play where medical treatment in the receiving state will result in a 'decline in health' of the person who is to be returned. But the UK courts have held that this article may only prevent the removal of someone 'in very exceptional circumstances'. Three appeal judges wrestled with the limits of this definition in PF's matter, aware that a test case on the issue, involving a Zimbabwe deportee, will be heard by the Supreme Court later this year.

The judges also examined the impact of deportation on PF's children, as the ECHR provides that family life must be respected except as is necessary in a democratic society in the interests of crime prevention among others.

Lindsley had found that deportation held a 'real risk' that Article 3 would be breached even though PF 'was not at real risk of death within a short period of time'. However, she said, return held a 'real risk of him rapidly experiencing intense suffering because of his SCD and the paucity of treatment (in Nigeria)'.

She said even in the UK he had to be hospitalised for two or three serious and extremely painful life-threatening crises a year, taking medicine 'which the expert medical evidence before (her) shows would probably not be available to him (in Nigeria)'. She therefore concluded that PF would soon face intense suffering in Nigeria because of lack of treatment there that was available in the UK. She also accepted there was a real risk of his dying within five years, based on the evidence of three doctors. PF's lawyers also referred the Lindsley court to an academic article which described Nigeria's health sector as 'comatose' and 'a shambles' with general life expectancy for males being just 41.

Lindsley found that due to PF's 'appalling criminal history' only medical and family issues could halt his deportation. On the other hand, she said, these two issues were so significant that she would allow his appeal against return.

In the next level appeal, however, the judges have now found that Lindsley erred: she had no real evidence before her that morphine was not available in Nigeria. Similarly, she erred in finding that PF was not likely to live beyond five years after his return.

She should have considered whether return would cause a 'serious, rapid and irreversible' decline in his health. In the view of the appeal judges, while PF's SCD crises might become more frequent and more painful, there was no evidence that his 'underlying condition' would decline.

Nigeria's facilities for treating SCD were not as good as in the UK, but that was not the correct judicial test. It was, rather, whether, if he were deported, the absence or practical unavailability of appropriate treatment in Nigeria, would cause him to suffer 'a serious rapid and irreversible decline in health resulting in intense suffering'. But on the evidence before Lindsley and the Appeal Court, this was not a finding that 'could properly be made'.

Similarly, said the appeal judges, the family issue did not trigger ECHR rights: he had been in jail so often and for so long that it could not be said that the impact of his deportation on his three children (one now an adult, one 12 and the other four-years-old) would meet the test for 'very compelling circumstances'.

The court said it had 'considerable sympathy for (PF) in having to deal with his SCD condition; and every sympathy with his entirely innocent family members'. However, the facts of the case did not meet the standards of 'unduly harsh' let alone 'very compelling' circumstances. He had committed several very serious offences, and in the Appeal Court's view 'the public interest in deporting him as expressed in the statutory provisions and the Immigration Rules overwhelms the rights and interests of (PF) and his family.

[Judgment](#)

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