

A **R v Secretary of State for the Home Department  
ex p Zakrocki**

Queen's Bench Division  
Carnwath J

B 29 March 1996

.....  
*It was Wednesbury unreasonable of the Secretary of State for the Home Department to refuse to grant leave to remain outside the immigration rules to carers of a disabled United Kingdom citizen when:*

- C
- a) *the view of the social services authority was that this care arrangement was the only suitable arrangement having regard to the government's community care policies;*
  - b) *the Secretary of State for the Home Department rejected that view apparently on the basis of no enquiries and no evidence; and*
- D
- c) *the Secretary of State for the Home Department had not weighed against the need for a firm and fair immigration control the disabled person's right to remain in the United Kingdom and to be looked after in accordance with the policies and duties applicable to United Kingdom citizens.*
- .....

E **Facts**

Mr and Mrs Zakrocki were Polish citizens who entered the United Kingdom in 1990, with six months' leave to enter as visitors. That leave was extended to permit Mr and Mrs Zakrocki to look after their mother, who was resident in England, and who died in July 1991. Mr and Mrs Zakrocki then started to look after Mrs Zakrocki's

- F
- brother, Mr Knapp, a British citizen of Polish origin, who was 60 years of age, had learning difficulties, spoke no English and suffered from epilepsy and other disabilities which meant that he required constant care. Mr Knapp was totally dependent on Mr and Mrs Zakrocki for the activities of daily living such as washing and cooking. Hackney LBC supported Mr and Mrs Zakrocki's applications to the
- G
- Secretary of State for the Home Department for further extensions of their leave to remain, on the ground that if they were forced to leave the United Kingdom Mr Knapp would be forced to accompany them or go into an expensive care home. Mr Knapp was vehemently opposed to either course of action. Hackney LBC expressed the opinion that, having regard to the government's community care
- H
- policies, the most appropriate care for Mr Knapp was that provided by Mr and Mrs Zakrocki at home. The Secretary of State for the Home Department refused to grant Mr and Mrs Zakrocki leave to remain in the United Kingdom outside the immigration rules on the basis of compassionate circumstances, stating, *inter alia*, that:

- I
- a) *the government's community care policies did not require immigration control to be overridden so as to meet the preferences of those requiring assistance; and*
  - b) *adequate arrangements could be made for Mr Knapp's care in the United Kingdom after the applicants returned to Poland.*

J **Held:**

- 1 The decision of the Secretary of State for the Home Department not to extend Mr and Mrs Zakrocki's leave to remain in the United Kingdom was *Wednesbury* unreasonable and would be quashed, for the following reasons.
- K
- 2 Mr Knapp was a British citizen, entitled to remain in the United Kingdom and to be looked after in accordance with the policies and duties that apply to United

Kingdom citizens. The Secretary of State for the Home Department had given no weight to those relevant considerations and had failed to weigh them against immigration considerations.

- 3 In considering whether compassionate circumstances existed for the grant of leave to remain in the United Kingdom outside the immigration rules, Mr Knapp's position was relevant and therefore had to be taken into account by the Secretary of State for the Home Department. There was no evidential basis to support the assertion that adequate arrangements could be made for the care of Mr Knapp in the United Kingdom after Mr and Mrs Zakrocki left. Furthermore, the Secretary of State had not consulted with Hackney LBC, the authority primarily responsible for the provision of community care services to Mr Knapp, which had expressed the opinion that residential care was costly and inappropriate and that it would not be reasonable to expect Mr Knapp to return unwillingly to Poland, in order to continue to be looked after by Mr and Mrs Zakrocki. Further, the Secretary of State had not indicated any substantial reason for not accepting the views of Hackney LBC that no other adequate arrangements could be made.

**Cases referred to in judgment:**

*Associated Provincial Picture Houses v Wednesbury Corp* [1948] 1 KB 223; [1947] 2 All ER 680; 45 LGR 635, CA.

*R v Secretary of State for the Home Department ex p Ajayi* (12 May 1994, unreported).

**Legislation/guidance referred to in judgment:**

National Health Service and Community Care Act 1990.

**This case also reported at:**

(1996) 32 BMLR 108; [1996] COD 304; (1996) 93(16) LS Gaz 31; (1996)140 SJLB 110; (1996) *Times*, 3 April.

**Representation**

R Singh (instructed by Hackney Law Centre) appeared on behalf of the applicant. S Kovats (instructed by the Treasury Solicitors) appeared on behalf of the respondents.

**Judgment**

**MR JUSTICE CARNWATH:** I take a relatively simple view of this case. It is unnecessary to seek assistance from the European Convention or indeed the International Convention on Economic, Social and Cultural Rights, however important they may be in other contexts.

This case concerns a husband and wife who are Polish. They came here initially in 1990 to see their aging mother and indeed to look after her. They are both in their sixties. They said that they retain their roots in Poland; they have property there and children. They were initially given leave to enter for six months as visitors. That was extended at their mother's request in order to help her because her days were numbered. She died in July 1991. There then arose the problem of looking after the wife's brother, Mr Knapp, who is a British citizen and also of Polish origin. He is now 60 but he has lived in this country since 1962. His parents came here as refugees after the war and they acquired British nationality soon after. He is suffering from epilepsy, has learning difficulties and speaks no

A English. He also has disabilities resulting from illnesses suffered when he was younger and requires constant care. According to the Hackney Borough Council officer, he is totally dependent at the present time on the applicants for the activities of daily living such as washing, cooking and so on.

B The applicants sought extension of time to help look after him. In the early days they indicated that they were hoping to stay here temporarily; indeed they indicated they would, if given an extension, return thereafter to Poland because of their connections there. However, they were having to look after Mr Knapp, and they were assisted by the Hackney Law Centre who wrote in April 1992 asking for further extensions. They were also supported by a letter from a social worker at C the London Borough of Hackney dated 6 April 1992 which explained that the alternative to going to a home would be unsatisfactory and very costly. It was said that it would be an unsatisfactory care package and very expensive to operate. The Secretary of State granted a further extension for six months in September 1992 on the basis that there was an outstanding appeal and therefore it was D academic. In March 1993 a further extension was granted until 21 August 1993. It was at that time indicated that that was likely to be the last extension. It was explained in evidence before me that that was done because it had not been made clear previously that there were to be no further extensions.

E The applicants again applied for leave to remain. That was refused in September 1993 because it did not meet with the requirements of the six-month rule, and the Secretary of State could not find any compassionate circumstances justifying leave. A further report was submitted from the Hackney Borough Council on 20 December 1993. This again emphasised the problems of Mr Knapp and the view of the social services authority that residential care would be extremely F costly, but that 'it is not acceptable to Mr Knapp since he does not wish to enter residential accommodation'. They also said that he did not wish to return to Poland. They went on to assess his care and to say that there were no other more appropriate carers for Mr Knapp than his sister and brother-in-law. They said that applying the policy of the Government known as 'Care in the Community', that G was the most appropriate treatment for him. The legislation relating to care in the community had come into effect in April 1993. The guidance under the National Health Service and Community Care Act 1990 explains that one of the key objectives is 'to promote the development of domiciliary, day and respite services to enable people to live in their own homes wherever feasible and sensible'.

H Further representations were made but they were rejected by the Secretary of State. The representations put through the Member of Parliament were also rejected. The reasoning of the Secretary of State appears from both a letter of 26 October and an affirmation of the officer responsible, Mr Harrington. The letter of 26 October states as follows:

I *Despite their assertion in April 1991 that they would make alternative care arrangements for Mr Knapp, they have made no attempt to do so and did not appear to have any intention of leaving the United Kingdom voluntarily. Furthermore, Mr Knapp has a brother and sister-in-law in London and therefore Mr and Mrs Zakrocki are not the only contacts of Polish culture.*

J (The Secretary of State had a statement from the brother saying that he is not in a position to provide the care needed.) The letter of the Secretary of State went on to say that no evidence had been submitted to show that they had endeavoured to make arrangements for Mr Knapp, nor had it been demonstrated why Mr Knapp K said his brother could not serve as his contact in the United Kingdom.

Mr Harrington's affirmation was submitted late, but I propose to grant leave

since it is helpful to have the up-to-date position. That says that while the respondent supports the government's policy of care in the community, it does not require immigration and control to be overridden so as to meet the 'preferences of those requiring assistance'. It goes on to say that the Secretary of State has taken into account the material and is:

*... satisfied that adequate arrangements can be made for Mr Knapp in the United Kingdom without the applicants – indeed the local authority have a statutory duty to do so. Mr Knapp is free to return to Poland to be cared for by the applicants. His brother Zygmunt is in the United Kingdom and is able to act as a contact between Mr Knapp and Polish culture without assuming primary responsibility for the care of Mr Knapp. It is for the applicants, in consultation with Mr Knapp, to decide where his best interests lie.*

It goes on to say that he is not satisfied that there will be a saving to the public purse, bearing in mind the applicants are in their sixties and are seeking leave to remain in the United Kingdom for 'an indefinite period'. That is really where the matter rests.

It seems to me that the critical issue here is the position of the brother (Mr Knapp) who is a British citizen and entitled to remain here and to be looked after in accordance with the policies and duties that apply to citizens of this country. I have been referred to the decision of Laws J in *R v Secretary of State for the Home Department ex parte Ajayi* (12 May 1994 – unreported) where he referred to the position of a small child with British citizenship and the consequences for her of a decision to deport the parent. He quashed the decision of the Secretary of State because he felt that the Secretary of State had not exercised the appropriate balancing exercise to compare the immigration issues with the rights of a British citizen. I see some parallels with this case because there does not appear to be, in the letter of affirmation from the Secretary of State, any weight given to the fact that Mr Knapp is a British citizen with rights under the laws and policies of this country, nor any attempt to weigh them against the other considerations. But more specifically, although the Secretary of State has asserted that he is satisfied that adequate arrangements can be made, there is no evidential basis to support that. The authority primarily responsible for provision of services to Mr Knapp under the community care policy is the London Borough of Hackney. They have written in terms to say that they do not regard residential care as an appropriate solution. They have also said that it is a very costly solution. That was in December 1993.

There is no evidence that the Secretary of State has done anything to consult them on that, or to see whether they have modified their views or whether some practical arrangements can be made. They also say that they do not think it is reasonable for Mr Knapp to be expected to return unwillingly to Poland. Some support for that comes from the affidavit of Mr Zakrocki, one of the applicants, who says this:

*We have tried to talk to him about what he wants to do should we be deported but he just becomes very upset and says he is neither going into a home or to Poland. If not under stress he has fits 3 or 4 times a week, and there will be 3 or 4 days a month where he has constant epileptic fits. When he is upset it has a very bad effect on his epilepsy and he fits 3 or 4 times a day. This is what happens when we try to have this discussion.*

Admittedly, that is evidence of the brother-in-law not a doctor, but there is nothing to suggest that it is inaccurate. The position therefore is that the Secretary of

- A State rightly recognises that in considering whether there are compassionate circumstances for action outside the rules, the position of the brother is something which has to be taken into account. The important question is whether adequate arrangements could be made for him. All the evidence which one has from the social services authority backed by the doctor is that there are no satisfactory alternative arrangements which could be made and that care by the Zakrockis is by far the best solution. It is also consistent with the government's policy.
- B

The Secretary of State has not indicated any substantial reasons for not accepting that view. Thus this is a case where the decision is unreasonable in the *Wednesbury* sense and should therefore be quashed.

- C Costs from respondents.