

Bhatt Murphy Solicitors

PRESS RELEASE

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HIGH COURT RULES HOME OFFICE UNLAWFULLY SEPARATED MOTHER OF TWO FROM HER CHILDREN

MXL was separated from her two young daughters whilst unlawfully detained by the Home Office. The children were forced to rely on private foster care in the community while their mother was detained. In a highly critical judgment Mr Justice Blake found that the Home Office had not properly taken into account the interests of the children when exercising their power to detain.

MXL has indefinite leave to remain in the United Kingdom. Her daughters KXL and ZXL are British Citizens. Having been sentenced to custody for the first time following a series of shoplifting offences, MXL completed her prison term but went on to be detained under immigration powers from April – December 2009. She was served with a deportation order and her appeal against that decision remains outstanding. The Home Office is of the view that her two British children should be returned with her when she is deported.

On 30 September 2010 Mr Justice Blake handed down a damning judgment finding that MXL had been unlawfully detained from 23.11.09 – 21.12.09 – the date she was released by order of the High Court at the outset of these proceedings. He held that the Home Office failed to take into account a number of highly relevant factors, including their obligations to children under international and domestic law underscored by their duty to safeguard and promote the welfare of children. He also held the period of detention was a breach of Article 8, the right to respect for family and private life, for all the three claimants.

Having sought the advice from their own internal ‘advocate’ for children’s rights, the UK Border Agency’s ‘Children’s Champion’ recommended MXL’s release so that she could be reunited with her daughters. The Home Office did not accept this advice and later appeared to forget about it entirely. Mr Justice Blake found: “*the principle that the interests of the child are a primary consideration should be applied by public officials (including immigration judges) when making immigration decisions that have an impact on the welfare of children.*” [84]. This must mean that the interests of children must “*be a consideration of the first importance.*” [84].

Mr Justice Blake made some powerful criticisms about the series of flaws in the decision making process within the Home Office in this case including:

- The Children’s Champion’s advice was a factor he said that “*should have been treated as a very weighty consideration.*” [42].

- Given the Home Office's position that the children should go with MXL when they deport her, "*to maintain the separation seems inexplicable in the absence of compelling contra-indicative factors*" [47].
- Her two young children and her outstanding appeal against deportation were compelling incentives for her to comply with the conditions of release, quite apart from the fact that "*it is very much more difficult to abscond with minor children who need to be in education and have daily care needs*" [41].
- He criticised the Immigration Judge who refused the bail application, commenting that "*I very much doubt that IJ Parkes was entitled to reach the conclusion that he did. In particular the failure to consider the impact of continued detention on the welfare of the children is a serious flaw. [74]...In my judgment, the failure of the decision maker or the IJ to take account of a consideration of the first importance in a case that obviously had serious implications for the welfare of the children is unlawful.*"[85]
- The Home Office had displayed a troubling range of contradictory assessments of the risk MXL posed to the public, which were not informed by any consideration of the rehabilitative effect of a first sentence. They variously decided she ranged from a high to medium to low risk to the public over a 5 month period. The Judge found that the risk was low and that the Home Office's approach had been "*positively misleading*" [69].

As acknowledged by the Court KXL and ZXL missed out not only on the care of their mother but also on proper contact with her because of the location of the detention centre. The children were distressed and confused by their mother's indefinite absence and did not know when they would be reunited and living together again.

Celia Clarke, Director of Bail for Immigration Detainees, the charity that referred the case to Bhatt Murphy, commented:

"We are pleased that the judge has ruled that part of MXL's detention was unlawful. Time and again we see cases of children separated from their parents in the name of immigration control but we also see the devastating harm caused to those children by long periods of separation.

In this case the judge found there to have been no proper consideration of the impact on the children of the mother's detention and lengthy separation from them, despite the government having a statutory duty to safeguard and promote the welfare of children.

We urge the government to bring to an end the deeply damaging practice of separating parents from their children for administrative convenience."

Janet Farrell of Bhatt Murphy solicitors said:

"This is an important case for children and parents who are unnecessarily separated by immigration detention. The UK Border Agency has a duty to treat the best interests of children as a paramount consideration when carrying out their functions, including when exercising their discretion to detain. This is a serious duty that requires them to consider the

impact of their actions on the children involved and to put their interests at the heart of decision making. Mr Justice Blake agreed that there had been a litany of errors not only within the Home Office's approach to MXL's detention but also from the Immigration Judge who dealt with her bail application, and that the interests of her children had not been given the weight they should. MXL and her children are now reunited in the community where they belong."

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