



WILSON & Co. Solicitors

7th September 2001

Statement to the Press & Media

Maged Osman Saadi and Osman v Secretary of State for the Home Office

The judgement in the Oakington Detention case is a landmark ruling and one which the Claimants strongly welcome. The right to liberty of the subject is fundamental and enshrined under the European Convention of Human Rights. The judgement firmly upholds such principles for asylum seekers.

The Claimants are all Kurdish asylum seekers from Iraq. The judgement holds that it is unlawful for the Home Office to have detained them solely to achieve speedy decisions in their cases in the interests of general administration. Immigration did not assess any of the 4 as likely to abscond.

Article 5(1)(f) ECHR (copy attached) prevents immigration detention unless the person is either an **absconding risk**, OR is someone **facing removal** having failed to establish a legal basis to remain in the country. The judge found that detention at Oakington was not based on either of these categories. In the alternative, the judge found that if Oakington detention was permissible in principle under article 5(1)(f), he nevertheless held that detention of persons not thought likely to abscond was not proportionate to the objective of speedy decision making and was thus unlawful for this reason as well. Such objective could be achieved by using other untried alternatives, including the use of a genuine reception centre where asylum seekers are required to reside and to attend interview and to be available when needed and for which there are new statutory powers available.

These Claimants had done nothing wrong and were not in any way abusing the asylum system in this country. Indeed one of the Claimants had been released on three separate occasions from Heathrow returning each time when required before being finally detained at Oakington. All the Claimants were trying to do in coming to the UK was to seek safety and protection from persecution. Although each Claimant was refused asylum by the Home Office, each was then released and appealed. Three of the Claimants were found by the adjudicator on appeal to be refugees with a genuine well founded fear of persecution. The appeal of the fourth remains outstanding.

This case will obviously have wide impact. What is different about the Oakington detention regime is that it is based on an initial view that the asylum seeker being detained there is not an absconding risk. Indeed, if the asylum seeker is thought likely to run away then s/he will be unsuitable to be detained at Oakington. The case does not affect general immigration powers of detention at all, which remain available to the Home Office for those thought likely to abscond.

This case is a powerful legal reminder to the Government and the community at large that the human rights of asylum seekers in this country must be respected. Asylum seekers are not criminals yet they are routinely stigmatised as such by imprisonment. Far too often Home Office decision making is motivated by a desire to deter asylum applications and to make conditions as inhospitable as possible for anyone coming to the UK for safety. All concerned - especially the asylum seekers - welcome speedy decision making. But as already stated, the Home Office has powers to operate Reception Centres in which there can be speedy decision making. What the Home Office can not do is to turn the Reception Centres into places of imprisonment.

The Home Office have a very complacent attitude to detention. Generally speaking it is very difficult to work out why a particular asylum seeker is detained and another is not. A feature of this case was the prevalence of incomplete and missing forms relating to the reasons for detention. It took the Home Office over 11 months to design a form which gives the true

reason for being detained in Oakington (namely that a speedy decision can be taken). The judge describes that delay as a "**disgrace** "

The Government will have to review fundamentally its flag-ship Oakington detention project. It will have to ensure that any future Oakington-style facilities introduced to achieve speedy decision making do not do so at the expense of a person's liberty when such person is not thought likely to abscond.

Michael Hanley

Partner with conduct of the Claims