



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30673/04  
by Royland MCCALLA  
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on  
31 May 2005 as a Chamber composed of:

Mr J. CASADEVALL, *President*,

Sir Nicolas BRATZA,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr J. BORREGO BORREGO,

Mr J. ŠIKUTA, *judges*,

and Ms F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 25 August 2004,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Royland McCalla, is a Jamaican national who was born in 1972 and lives in Nottingham. He is represented before the Court by Mr F.Vaz, a lawyer practising in Edgware.

### A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant arrived in the United Kingdom in December 1999 and was granted leave to enter as a visitor until 17 January 2000. He applied for an extension which was granted until 20 June 2000. On 5 June 2000, he applied for a further extension as the husband of S., a British citizen whom he had married on 12 May 2000. Leave was granted for twelve months, expiring on 6 December 2001.

S. had a daughter J. (born in 1998), by a previous relationship, who had regular contact with her natural father.

Meanwhile in March 2001, the applicant was arrested for drugs offences. Following a plea of guilty to four counts of supplying crack cocaine and two counts of offering to supply, the applicant was sentenced on 4 June 2001 to five years' imprisonment. The judge did not make any recommendation for deportation.

On 16 December 2001, S. gave birth to the applicant's son, R.

On completion of one half of his sentence, the applicant was released on parole.

On 10 July 2003, the Home Secretary gave notice of his decision to make a deportation order against the applicant, referring to his conviction in view of which he deemed it conducive to the public good to make such an order.

The same day, the applicant appealed.

Following a hearing, by a decision of 16 January 2004, the Adjudicator rejected his appeal. He gave weight to the applicant's good record in prison and his family circumstances. He noted that S. had relatives, including her parents, in Jamaica and had visited there on holiday, although she had lived all her life in the United Kingdom. Having regard however to the fact that the wife had a house and job in Nottingham, that R. had uncertain medical problems and J. had regular access with her natural father, he did not consider that it would be reasonable to expect the wife to emigrate to Jamaica, in particular as it would sever J.'s links with her natural father. Nonetheless, weighing these factors together with the seriousness of his offences, the short period in which the applicant had lived in the United

Kingdom and the fact that the applicant and S. had married knowing that he was not a British citizen and did not have indefinite leave to remain, he found that the measure was not unjustified.

On 15 April 2004, the Immigration Appeal Tribunal refused permission to appeal, finding no error in the Adjudicator's balancing of the relative factors.

On 24 May 2004, the High Court refused an application for statutory review.

## COMPLAINT

The applicant complains under Article 8 of the Convention that the deportation order is unreasonable and disproportionate, particularly as his wife and J. are United Kingdom citizens, J. has regular contact with her father in the United Kingdom and they cannot be expected to accompany him to Jamaica.

## THE LAW

The applicant complains that the deportation order infringes Article 8 of the Convention which provides as relevant:

- “1. Everyone has the right to respect for his ... family life ...
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, for the protection of health or morals, ...”

The applicant submitted that, since his wife and his stepdaughter J. were United Kingdom nationals and J. had regular contact with her natural father in the United Kingdom, it was unreasonable to expel him or expect the family to travel with him to Jamaica.

The Court finds that the expulsion of the applicant constituted an interference with his right to respect for their family life, as guaranteed by Article 8 § 1 of the Convention. There is no reason to doubt, in the circumstances, that it did not have a proper legal basis or pursue a legitimate aim, namely the prevention of disorder or crime and the protection of health and morals, within the meaning of Article 8 § 2.

It remains to be determined whether the interference was “necessary in a democratic society”.

The Court recalls that the Convention does not guarantee, as such, a right for an alien to enter or to reside in a particular country. Nevertheless, the expulsion of a person from a country where close members of his family are

living may amount to an infringement of the right to respect for family life guaranteed by Article 8 of the Convention (see, among other authorities, *Moustaquim v. Belgium*, judgment of 18 February 1991, Series A no. 193, p. 18, § 36).

It is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens. To that end they have the power to deport aliens convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Dalia v. France*, judgment of 19 February 1998, *Reports* 1998-I, p. 91, § 52; *Boultif v. Switzerland*, judgment of 2 November 2001, *Reports* 2001-IX, p. 130, § 46; *Jakupovic v. Austria*, no. 36757/97, § 25, 6 February 2003, unreported).

Accordingly, the Court's task consists in ascertaining whether in the circumstances the expulsion order struck a fair balance between the relevant interests, namely the applicant's right to respect for family life, on the one hand, and the prevention of disorder or crime and the protection of health and morals, on the other.

The Court notes that the applicant, a Jamaican citizen, came to visit the United Kingdom on limited leave to remain. He and S. married, aware of the fact that he had no permanent leave to reside in the United Kingdom. His immigration status was equally precarious at the time of their son's birth, when he was in prison. The interest of the applicant remaining with S., J. and R. in the United Kingdom has to be balanced against the public order interests on account of the nature and the seriousness of the crimes of which the first applicant was convicted, namely six offences concerning the supply of crack cocaine. In view of the devastating effects drugs have on people's lives, the Court understands why the authorities show great firmness to those who actively contribute to the spread of this scourge (see, among other authorities, *Dalia v. France*, cited above, p. 92, § 54, and *Amrollahi v. Denmark*, no. 56811/00, § 37, 11 July 2002). The five year prison sentence imposed on the applicant shows the serious nature and gravity of the crime. It follows that the expulsion must be considered to have been justified by weighty public order interests.

While it is true that S. and J. have strong ties in the United Kingdom, as acknowledged by the Adjudicator who considered that they could not reasonably be expected to emigrate to Jamaica, the Court would note that at the time of the marriage, when the applicant could not claim to have established any reasonable expectation of remaining permanently in the United Kingdom, he and S. must be regarded as aware of the potential difficulties that would arise for S., and in particular for J. if he proved

unable to gain permanent resident status. It was, in other words, a risk that they took.

Having regard therefore to the strong public interest in this case, the Court finds that in the circumstances it cannot be considered to have been disproportionate to the legitimate aims of preventing disorder or crime, and protecting health and morals, to issue a deportation order against the applicant (see, *Hussain and C. v. Norway*, (dec.) no. 36844/97, 4 May 2000, unreported, *Najafi v. Sweden*, (dec.) no. 28570/03, 6 July 2004, unreported and *Hussain Mossi and Others v. Sweden*, (dec.) 15017/03, 8 March 2005, unreported).

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

Françoise ELEN-PASSOS  
Deputy Registrar

Josep CASADEVALL  
President