Annex A

R v Le (Van Binh) and Stark (Rudi) [1999] 1 Cr. App. R. (S.) 422

Nb Stat max at the time of sentencing was 7 years

In the instant cases, the sentences of V and S would be reduced to two and a half years' imprisonment and three and a half years' imprisonment respectively.

An offence contrary to s.25(1)(a) would, in relation to all but the most minor of offences, inevitably attract an immediate custodial sentence.

Aggravating features were (1) it was a repeat offence; (2) it was committed for financial gain; (3) the defendant took a prominent role; (4) it involved the facilitation of the entry of strangers rather than family members; (5) it involved a large number of illegal entrants; (6) a high degree of organisation and planning was evident, and (7) the defendant proffered a not guilty plea.

It would often be necessary to impose a deterrent sentence.

Attorney General's Reference (Nos 49 and 50 of 2015) [2015] EWCA Crim 1402

Also known as: R. v Howard (John), R. v Bakht (Kenan)

Nb Stat max at the time of sentencing was 14 years

Sentences of two-and-a-half years' and five years' imprisonment imposed on offenders convicted of conspiracy to facilitate a breach of immigration law were increased to five and eight years respectively, due to their callous disregard for immigration law and the acute impact on innocent victims. [The offenders were convicted after a trial].

For approximately a year, B had recruited non-EU students seeking post-study work visas to attend lectures at the college where he worked or a university with which the college had links; the students paid him course fees and received false certificates for use in their visa applications. Some were deported as a result, including some who genuinely believed they had completed a university or college course. B possessed false university acceptance letters, certificates and visa letters. H, an external examiner at the university, had handed out the fraudulent certificates. In sentencing, the recorder assessed the value of the fraud at around £300,000. She found that B had acted in a leading role, and H's role in providing the required legitimacy was no less important.The offences were designed to circumvent the immigration rules, which was a matter of grave public concern. That was the gravamen of the case, not the profit margin or the fraudulent behaviour.

Attorney General's Reference (No.28 of 2014) [2014] EWCA Crim 1723

Nb Stat max at the time of sentencing was 14 years

A total sentence of four-and-a-half years' imprisonment for conspiracy to facilitate a breach of immigration law and using unlicensed security operatives was unduly lenient where an offender had created false identity documentation, had played a central role in the

conspiracy and had exploited people who were not in a position to bargain. The sentence was increased to eight years' imprisonment [the offender was convicted after trial]. The following considerations were taken into account:

- Whether the offence is isolated or repeated
- The duration of offending
- Whether the offender had previous similar convictions
- Whether the offender's motivation was commercial or humanitarian
- The number of individuals involved in the breach of immigration law
- Whether they were strangers or family
- The degree of organisation involved
- Whether the offender recruited others
- The offender's role
- Whether the offender's conduct involved exploitation of or pressure put upon others

Regina v Junjie Kao; Khaled Mahmud; Tareq Mahmud; Wei Xing [2010] EWCA Crim 2617

Kao, count 1, conspiracy, 7 years' imprisonment and 4 years for the money laundering, concurrent, giving a total sentence of 7 years; Xing received the same sentence in respect of each count; Tareq Mahmud received 4 years' imprisonment following his trial and Khaled Mahmud received 7 years' imprisonment. The application succeeds in respect of Tareq Mahmud. We grant permission and allow the appeal and reduce the sentence from 4 years to 3 years. The other applications fail in respect of the other three applicants

Nb Stat max at the time of sentencing was 14 years

The applicants entered into a conspiracy to assist persons who were already legally within the United Kingdom for limited periods to extend the time they could lawfully remain here. They did this by providing false documentation to the Home Office which led the Home Office to grant visas so that the individuals in respect of whom the visas were granted were ostensibly allowed to remain in the country to pursue education.

At the heart of the conspiracy was a company known as Thames College London Limited, or Thames College London. The guiding light behind that organisation, and the company secretary, was Khalid Mahmud. The college purported to offer genuine courses of education leading to legitimate qualifications for foreign students. In fact they provided no legitimate teaching courses of any kind. They had very small premises and the whole operation was a sham. For substantial payments of money the applicants provided false documentation to overseas national students in order to obtain these visas.

Another company involved in the sham was Virgil Legal Services, the directors of whom were Kao and Xing, and in fact Khaled Mahmud had been involved in a predecessor of this company at an earlier stage. They processed fraudulent visa applications using false details. They would represent to the Home Office, through the fraudulent documentation, that Thames College was providing a minimum of 15 hours of full-time study per week, which

was the minimum requirement needed to secure further leave to remain in the country. The applicants used false identity documents, certificates from non-existent teaching institutions and official looking stamps and stickers. It was clear from the evidence that these conspirators had worked hand in glove, with the Mahmuds producing the false documentation at the request of Kao and Xing for the use of Virgil.

This was a sophisticated and successful operation. It continued, as the judge found, at least for a period of three and a half years and there were at the minimum 574 applications which were fraudulently made by Virgil to the Home Office on behalf of foreign students, almost all of whom were Chinese nationals. It was made clear to the students who applied for these extensions that they would not have to attend courses, and most, if not all, of them came to realise that the Thames College was bogus. They were not in that sense exploited because they realised that these sham representations were taking place.

The turnover, assessed by the judge, of the whole operation was not less than £3 million. £2.7 million had passed through nine bank accounts in the name of or linked to Xing. Over £1 million passed through bank accounts in the name of or linked to Kao, and £1.1 million passed through bank accounts linked to or in the name of Khalid Mahmud.

Tareq Mahmud played a more limited role. He was involved in this conspiracy for just over 6 months towards the end of the conspiracy. He was brought into it by his brother Khaled. He knew that the Thames College was bogus. The judge found that he worked enthusiastically to help his brother, and was more than a foot soldier, but his role was, the judge found, far less significant than that of his brother. He may have received some small sums with respect to his involvement, but it is clear that they were very small beer indeed compared with the amounts received by the other conspirators.

We bear in mind, as did the judge, that this was not a case, as in Saini, where illegal immigrants were brought into the country, and for the reasons we have given it is right to say that the adverse impact on the public in relation to this conspiracy was less than in the two cases which we have mentioned.

However, this was a conspiracy carried out over many years with a massive number of false documents submitted to the Home Office with very, very considerable profits gained by those who were participating, and with a large number of students obtaining these visas illegally. It was a sophisticated operation and indeed it has almost all the aggravating features that were identified by Lord Bingham in the case of Van Binh Le and Stark . We have little doubt that had these students been brought in from abroad then the sentence in a case of this kind would justifiably have been very close to the maximum of 14 years before the discount permissible for guilty pleas.

We see nothing wrong with this approach and thus refuse the application in respect of those three principal conspirators.

R v Olivieira, Oramulu, Cina [2012] EWCA Crim 2279

Nb Stat max at the time of sentencing was 14 years

In the case of Olivieira and Oramulu:3 and a half years after trial reduced to 2 and a half years each on appeal
Both these defendants were convicted after a trial of conspiracy to facilitate the breach of immigration law. The essence of the allegation was that they had entered into a sham

marriage. The woman, Olivieira, had Dutch nationality by virtue of her birth in Curacao in the Antilles. Accordingly, she enjoyed as a citizen of an EU Member State free movement within the Union. The man, Oramulu, was Nigerian. He was present in the United Kingdom. There existed no record of his ever having entered lawfully, although he said that he had come originally on a six month visa of which there was no record. Even if he had, it had long since expired, so he was illegally here.

In the case of Cina: 7 and a half years after trial (appeal dismissed)
This defendant is a Czech man living in Bradford. Over a period of about 15 months he recruited five different Czech women, already as we understand it in this country, and arranged for sham marriages to take place between them and Nigerian men who wanted to evade the immigration controls and to acquire the rights of movement, residence and employment which come with marriage to an EU citizen. Cina charged the men substantial sums. All the indications are that his "going rate" was about £4,000 or £4,500, by way of charge to the men, although of course we recognise that individual cases may have varied. So far as it goes, the evidence suggests that he promised the women something of the order of £2,000. However, although that is what he promised, in the two cases where there was evidence of what he had actually paid, it appears to have been half that or less. He paid one of them £500 and the other £900. In other words, this was a commercial operation for gain and it had the added feature that he cheated the women.

There was also in this case a definite element of exploitation of the women in the manner in which he carried on the business. First of all, he recruited them and induced them to commit quite a serious criminal offence which put them in likelihood of imprisonment. However, there was an additional feature because the evidence showed that if they showed signs of second thoughts, Mr Cina did not balk at persuading them. He visited them and certainly in one case there is reasonably clear evidence that he pressured the woman to stick to her original agreement, saying to her among other things that if she did not she might expect trouble from the Nigerian population who might visit her at home.

The court indicated that the aggravating factors set out in R v Le and Stark (see above) apply to sham marriage cases, to which the following factors should be added:

- The recruitment of others to assist in the crime.
- Any measure of exploitation or pressure.
- A racket providing services to others for money: it will be necessary to look at the role of the defendant within the organisation.
- At the bottom of the range of offences involving sham marriages were cases of single bogus ceremonies entered into in circumstances which could carry a substantial degree of personal mitigation, such as where one party to the ceremony has been morally blackmailed into doing it.
- There is frequently no distinction to be made between a sham marriage case and a case of the provision of forged or falsified documents for the purposes of evasion of immigration control. The purpose of the marriage is, like the purpose of the forged document, to provide a bogus authentication for presence.
- A very large number of the 'own marriage' cases without organisation or facilitation of others may well fall into the very broad bracket around 18 months to three years.

R v Bani [2021] EWCA Crim 1958

Nb Stat max at the time of sentencing was 14 years

A sentence of six years' imprisonment imposed following an asylum seeker's conviction for assisting unlawful immigration to a Member State, after he was intercepted in control of an inflatable boat carrying other adults and a child in the English Channel, was reduced to five years' imprisonment after trial. The offender had made no financial gain and the judge had erred in his assessment of harm and culpability. The court stressed that deterrence remained an important factor in deciding the length of sentence.

Abstract
The appellant, an Iranian national, appealed against a sentence of six years' imprisonment imposed following his conviction for assisting unlawful immigration to a Member State.

The appellant had been in control of an inflatable boat carrying four other men and a nine-year-old child when it was intercepted in the English Channel. The appellant claimed that he was a genuine asylum seeker. The judge concluded that the appellant had bought the boat for the benefit of others and that he was heavily involved in the planning of his own and other expeditions that night. The judge found that the appellant was not going to receive any direct financial reward for what he did. The craft was a rudimentary craft with no safety or navigation equipment and was unsafe to travel across one of the busiest shipping lanes. The judge said that the fact that the appellant was a man of good character and had been planning to seek asylum on arrival, saved him from what otherwise would have been a more serious sentence.

The appellant submitted that the sentencing authorities on which the judge relied were in respect of more serious offending and that greater allowance should have been made for the fact that he would have claimed asylum and that he had not organised the trip for personal profit.

Appeal allowed.

The offence was not committed for financial gain, but to share the costs with fellow Iranian nationals who wanted to make the same trip. However, the offence was planned, organised and sophisticated and the appellant played a prominent part in the whole operation, *R. v Le (Van Binh) [1999] 1 Cr. App. R. (S.) 422, [1998] 10 WLUK 73* applied. The appellant was involved in a dangerous act, but that had to be weighed against the fact that each person in the boat, and whoever was responsible for the welfare of the child, must have realised the dangers they faced. The judge erred in concluding that the offending fell into the highest level of harm and at the very highest level of culpability. The sentence was manifestly excessive and was replaced with one of five years' imprisonment. Deterrence remained an important factor in deciding the length of sentence.

NB Bani subsequently sought permission to appeal against his conviction which was granted and his conviction was in fact quashed.

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