



Neutral Citation Number: [2019] EWHC 3213 (Admin)

Case No: CO/223/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
In the matter of an appeal under s.26 of the
Extradition Act 2003

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 November 2019

Before :

THE HONOURABLE MR JUSTICE SUPPERSTONE

Between :

AC
- and -
A SWEDISH JUDICIAL AUTHORITY

Applicant
Respondent

Saoirse Townshend (instructed by **National Legal Service**) for the **Applicant**
Amanda Bostock (instructed by **CPS**) for the **Respondent**

Hearing date: 7 November 2019

Approved Judgment

Mr Justice Supperstone :

Introduction

1. AC, the Applicant, applies for permission to appeal against the decision of District Judge Brennan (“the DJ”), made on 14 January 2019 (“the Decision”), to order her extradition to Sweden pursuant to an accusation European Arrest Warrant (“EAW”) issued on 12 January 2018 and certified by the NCA on 29 January 2018.
2. The Applicant is a 41-year-old female Swedish citizen and single mother of her two children: a son, M, aged 16-years-old (DoB 12.01.2003), and a daughter, A, who is 14-years-old (DoB 08.01.2005).
3. The extradition of the Applicant is sought for her prosecution in relation to two offences. First, that on 1 July 2013 she unlawfully signed the signature of her partner, ZA, on a passport application and created a forged document; second, that in July 2013, having joint custody of two children under 15 years of age, “abducted the children and after that date she has been retaining the children abroad”. The first allegation is no longer being pursued, as the time limit for prosecution has expired.
4. The single ground of appeal is that the DJ ought to have concluded that it would not be a proportionate interference with the Applicant’s Article 8 ECHR rights and those of her children to order her extradition.
5. On 8 July 2019 Sir Wyn Williams ordered the application for permission to appeal to be listed in court as a “rolled-up hearing”.

The Decision of the DJ

6. At paragraphs 11 and 12 of the Decision the DJ stated:

“11. On arrest, in the light of DC Demetriou’s statement, I find that the [Applicant] was visibly upset at the prospect of returning to Sweden due to her former partner and father of the children having, to use the officer’s own words, ‘been consistently physically violent towards her’, controlling her and the children and that is why she escaped.

12. As will become clear from the following paragraphs, I find that what she said and how she behaved before the officer is entirely consistent with her own and other family members’ experience of her relationship with the children’s father.”

7. At paragraphs 13-20 of the Decision the DJ summarises the essential parts of the Applicant’s evidence. She was born in Mongolia and brought up as a Buddhist, her father having been a Buddhist monk. She was educated to degree standard and left Mongolia for Sweden to improve herself further, aged 22. In 2002 she started a relationship with ZA, an Iraqi Muslim. She, herself had begun to practice Christianity. They married in an Islamic ceremony in 2002. Although she was initially happy, that soon changed. Her husband became controlling and coercive. He insisted she convert to Islam, kept her isolated and generally mistreated her. ZA had

her son's name changed at court without her knowledge, to a name more consistent with Islam than Christianity. There were false promises of change by ZA. However, the DJ records at paragraph 15 of the Decision:

“The relationship... continued to deteriorate, with the controlling behaviour now developing into physical and sexual abuse. She alleges both anal and vaginal rape on a regular basis, as well as more general physical abuse, exacerbated by cultural differences and attitudes towards child-rearing. Assaults were witnessed by her mother, sister and the children.”

8. In or about 2010, ZA moved out, apparently (re)marrying an Iraqi woman. He continued to see their children but they were unhappy seeing him. She instituted court proceedings in Sweden to have sole custody of the children. The court's decision was to direct joint custody. The children would live with her but stay with their father on alternate weekends, and both would have to remain living in the same town or city (Boras, in this case).
9. At paragraph 18 of the Decision the DJ records her evidence that “The children remained unhappy seeing [their father], with nightmares for M, and a sense of dislike felt by A from her father by favouring her brother”. The Applicant had no passport, as ZA had taken it in 2008, and the children's in 2009. She did have a Swedish identity card. Her evidence is that notwithstanding the court order on joint custody, she forged his signature on the application form to enable passports to be issued to the children and she came with them to the UK on 7 July 2013.
10. The Applicant's evidence is that since being in the UK, she has lived an open life with the children. The children are happy. She remains single and is currently in the second year of a three-year degree at the University of Hertfordshire, studying Fashion and Business with a view to becoming a designer. She has converted to Christianity (as have the children and her sister, who came to the UK in September 2013) and she attends an Evangelical Church daily. The Applicant states (at para 20) that “There has been no contact from the father in the five years they have been here, notwithstanding he has her e-mail address and phone number”.
11. The DJ states at paragraph 21 of the Decision:

“I have given considerable space to the evidence of the [Applicant]. I also received written evidence from her sister, her children and mother. All of that corroborates the evidence of the [Applicant] concerning both the timeline and history of abuse at the hands of her former partner. I do not, therefore, set out what they say in detail as that is unnecessary, save to say that the children are settled, attend school regularly and are in good health. The only difference is that the [Applicant] maintains that it is only now that she has been confident enough to fully set out how she suffered and was undermined by the children's father, not even being able to do that with her lawyers in Sweden in 2010/11. In contrast, her sister's

evidence says that the [Applicant] began confiding in her, in detail, from 2005 onwards.”

12. The DJ adds that “both children aver that neither wishes to see their father again” (para 22). The Section 7 report of the social worker Ms Indira Mawuenyega, employed by the London Borough of Lambeth, dated 16 November 2018 (“the report”) equally confirms what the Applicant has said about her relationship. Further, the report records that the children are clearly healthy, mentally and physically, love each other and their mother. The author of the report is concerned that separation from her mother due to extradition would cause A psychological distress and separation from M would cause him emotional distress.
13. The DJ records (at para 23) that the Applicant’s sister, (referred to as “ANC”), stated she is prepared to give up her own flat in Hackney and move in with the children to look after them. So far as the social worker is concerned this would be an appropriate care plan in the event of extradition. The children have a good relationship with their Aunt, but, of course, it is not going to be the same as the love and care their mother so evidently provides. ANC did indicate concerns over their mother’s health. She lives alone in Mongolia since her husband died in May 2018 and she has a long-term problem with gastroenteritis.
14. At paragraph 24 of the Decision the DJ stated:

“I find that I can accept the [Applicant’s] evidence so far as it affects the issues herein, save as follows. I make no finding that she was abused, coerced and generally controlled by her former partner. I could not do so, as I have heard no evidence from him. I do find that she genuinely believes that his attitude towards her made her feel worthless and ultimately, in spite of the court ordering joint custody and to live in the same city as him, for her sake and that of the children, she had to leave Sweden. ... I do not accept her evidence that she was unable to communicate her troubles to her lawyers in Sweden in 2010; she had already confided in her sister, I find. ... I also find that she could have, but did not report her partner’s behaviour to the police.” (See also para 25(b) of the Decision).
15. The DJ found that it would not be disproportionate to order the Applicant’s extradition considering the factors in s.21A(3) of the Extradition Act 2003 (“EA 2003”), and he was satisfied that her extradition would be compatible with her Convention rights.
16. On the Article 8 issue the DJ conducted the balancing exercise required by the authorities, having regard to the factors favouring extradition and factors against extradition. As a factor favouring extradition the DJ noted (at para 27(e)) that the Applicant’s sister “with a close connection with the children, is able and willing to look after the children at their flat, and with the agreement of Lambeth Social Services if the [Applicant] is extradited”. Weighing the factors for and against extradition the DJ concluded (at para 28):

“Extradition of a single parent of two school-age children will obviously be very distressing for both mother and children. That distress, and the impact on the children identified by the social worker will, in my judgment, be mitigated and ameliorated by their maternal aunt, known to them since birth, and for almost the whole of the time in the UK, coming to live with them. It is with the blessing of social services. It will mean continuation of accommodation and routine. It will mean stability. The interference with their right to a family life with their mother, and vice versa, will not be ‘exceptionally severe’. Their Article 8 rights do not diminish the weighty and persistent public interest factors in honouring our Treaty requirements to the extent that the [Applicant’s] extradition would not be compatible with that qualified right. The availability of the aunt to provide substitute care and love counterbalances the detrimental effect of extradition. Social Services are also aware and able to assist if necessary.”

The Parties’ Submissions and Discussion (having regard to the evidence before the DJ)

17. Ms Saoirse Townshend, for the Applicant, submits that the DJ was wrong to conclude that extradition is a proportionate interference with the Applicant and her family’s rights to private and family life (pursuant to s.21A of EA 2003 in conjunction with Article 8 ECHR), and he ought to have decided the relevant question before him differently, for three reasons. First, the DJ’s assessment of the seriousness of the offence was wrong in light of the specific context of this case; second, the DJ failed to consider the highly relevant factor of delay; and third, the DJ placed insufficient weight on the dire psychological consequences of their mother, their sole carer’s, extradition on her two children, even in circumstances where the children would be cared for by their maternal aunt in London.
18. First, in relation to the DJ’s assessment of seriousness of the offence, Ms Townshend submits that the judge’s language is strongly indicative of the fact that he believed her account of the abuse she suffered at the hands of her former husband (see para 7 above). Consequently, the judge was wrong and inconsistent to find that he could not make a finding that she was abused by her husband, since he did not hear evidence from him (see para 14 above). Ms Townshend observes that the judge was not determining Mr ZA’s guilt of an offence at a criminal trial. The burden of proving extradition is disproportionate is on the Applicant to the balance of probabilities. That being so, it would have been entirely appropriate for the DJ to make findings in relation to the abuse she suffered in order to assess the best interests of her children.
19. Second, in relation to the delay, the effect of the delay has been that since 2013 the Applicant and her two children have put down deep roots in the UK and have enjoyed a happy family life here; one that they could not enjoy in Sweden with the children’s father.
20. Third, in relation to the psychological consequences that will be caused by extradition, the DJ failed to take account of the evidence from social services, that extradition would have particularly severe psychological consequences for the

children, in particular, having witnessed physical domestic abuse by their father towards their mother.

21. Ms Amanda Bostock, for the Respondent, in summary, submits that the offending behaviour was correctly categorised by the DJ as “serious” (whatever mitigation the Applicant puts forward in Sweden); the DJ clearly took into account the impact of delay (see Decision, para 27(ii)(b)); and the DJ specifically referred to the psychological distress that their mother’s extradition may have on her children (see Decision, para 27(ii)(d) and para 28).
22. I do not accept the Applicant’s criticisms of the Decision. As for the first, I agree with Ms Townshend that the DJ appears to have believed the Applicant’s account of the history of physical and sexual abuse she suffered at the hands of her husband (which is of relevance when considering the interests of the children), but it cannot be said that the DJ erred in categorising the offences of which she is accused as “serious”. As for the second, the DJ had regard to the impact of the delay. As for the third, the DJ correctly concluded that “the separation from mother for both will have significant impact on their emotional and physical wellbeing” (Decision, para 27(ii)(d)).
23. The Decision was not, in my judgment, on the evidence before him, wrong.

The New Evidence

24. The Applicant now applies to admit a number of documents by way of fresh evidence in support of her contention that there has been a material change of circumstances since the extradition hearing. In short, the Applicant’s sister is not now willing to care for the children. The new evidence focusses on the arrangements that it is proposed can be made for the care of the children in these changed circumstances and the impact of any such proposed arrangements on them.
25. The Respondent does not accept that these further statements of the Applicant and her family and the documents she seeks to admit are admissible as fresh evidence. Ms Bostock submits that what appears to have occurred is that, following the DJ’s finding the provision of care by the Applicant’s sister to be a significant factor in extradition remaining proportionate, the family have changed their mind as to how care of the children would be managed.
26. In order to determine the issue as to whether this “new” evidence is admissible and, if so, its impact on the Article 8 issue, it is necessary to consider the evidence in some detail.
27. On 26 January 2019, ANC relocated to Mongolia to care for her mother, whose health had deteriorated rapidly over the previous few months. Her mother lives alone and has no close relatives to help her. The doctors thought she might have cancer. She was admitted to hospital and underwent a colonoscopy. In her second statement made on 26 February 2019 ANC stated (at para 16):

“If my sister is extradited, the only solution we can think of is for A and M to come and live with me and my mother in

Mongolia. This will mean we will have to end our lives in the UK.”

28. In her third statement dated 15 April 2019, ANC provided (at paras 14-24) an update as of 12 March 2019. The colonoscopy was clear, as was the CT scan, and her mother left hospital on 6 March. The statement continues:

“16. My mum has been feeling much better since she found out the results. She sat me down and told me that she is still my mother and she will now help me and my sister by taking my sister’s children so that I can continue my studies.

17. I have been uncertain about agreeing to this because my mum has been unwell, but there has been a major improvement since she has had me for company and especially since the test results have come through. My mum now feels that she must be strong for the rest of the family. Having watched her closely over the last few months, I think she is now able to look after the children and will even be glad of the company.

18. My mother, sister and I have discussed what we will do if my sister is extradited. My mother says she is responsible for the family and that I should not miss an academic year of study. We have been discussing this a lot over the last few days (especially since the test results).

19. Our plan now is for me to return to the UK before September, when I resume my degree, which I am undertaking at ICMP (The Institute of Contemporary Music Performance) in London.

20. I have some friends who are renting a house in London. I will rent a room in this shared house when I go back to the UK.

21. I am currently living off my savings.

22. If my sister is extradited, the only solution we can think of now is for A and M to go and live with my mother in Mongolia. She has her own flat. I am going to support them financially and with whatever they need as best I can.

23. It is not possible for me to look after M and A because I will only have a small room in a shared house and because I will be a full-time student.

24. Whilst I want to help my family in any way I can, I also want to have my own life. I don’t feel able to look after M and A in my situation.”

29. At paragraphs 25 and 26 of the statement ANC gives an update as of 12 April. She states (at para 26), “I am now in the UK and living with my partner. I am a full-time student”.

30. The Applicant in her addendum proof of evidence dated 15 April 2019 states:

“2. As a family, we have had to change our plan about what will happen if I am extradited to Sweden.

...

9. The original plan was for my children to live with my sister in London if I am extradited to Sweden.

10. My sister said from the start that she would stand by me and help if the worst happens. But now we have had to rethink what we can realistically do if I am sent to Sweden.

11. The reality is that it is just not possible for my sister to look after my children.

12. My sister, ANC, is only 34 years old and has never had any children. She has no experience looking after children.

...

14. ANC is a full-time student and wants to re-start her studies in London in September.

15. ANC’s plan is to rent a room in a shared house.

16. Originally, I thought she could just move into our current address if I was extradited and stay there with the children.

17. But the fact is that the apartment we live in in London was provided to me and my children through our church.

18. I don’t know if the landlord will allow my sister to take over the tenancy as she is not as involved in the church as we are.

...

23. My sister might be able to get a part-time job, but it will not be enough to get a place large enough for her and my children. Prices in London are just too high.

24. My sister wants to lead her own life and start a family of her own one day. The truth is she doesn’t want to have to look after my children.

...

33. My mother decided that my children should go and live with her in Mongolia if I am extradited.

...

39. Whilst it has always been our longer-term plan to return to Mongolia and be with my mother, it will be very disruptive for the children to go there now.

...

43. The children are settled and happy in the UK. They are both doing well at school and have lots of friends at school and at our church.

...

47. The children can speak Mongolian but cannot read or write it. I just hope that they will be able to learn to do so quickly.

...

50. I am the mother of M and A, they are the most important to me. I protected myself and my children from my abusive ex-husband. I did this by bringing them to this country for a better life. I didn't have any choice.

51. My children think about our situation all the time and worry about it constantly. This has affected their concentration at school.

52. My mother is living in a one-bedroom apartment and she is a pensioner. It will be very difficult for my mother to look after them – but it is all we can do.

53. We are so desperate to stay together as a family. Being split up will be devastating.

54. My mother isn't fully able to look after my children and does not have the strength too.

55. Only I can take care of my children.”

31. In his second witness statement dated 11 April 2019, M states:

“4. I have been asked about how I feel about the possibility of going to live in Mongolia with my grandmother.

5. I love and respect my grandmother, but I just want to be with my mother and my sister. Even if my mother is sent to Sweden, I want to be with her. ...

7. I am doing my GCSEs this year and it is very stressful as I keep thinking about the fact that I could be separated from my Mother. ... My Mum has looked after me and my sister by herself for all these years, she's been my Mother and a Father to me at the same time. My Mum is the most special person in my life, I cherish her a lot and I couldn't imagine being separated from her.

..

10. I am also worried because I cannot read or write in Mongolian and will be so far behind the other students if I have to go there. ...”

32. A in her second witness statement dated 11 April 2019 states:

“3. My mum acted as a mum and dad in our lives as she had to be serious for us.

...

5. I am close to my grandmother, but I cannot imagine life without being with my mum.

6. I have made a lot of friends in the UK, both at school and at the church. I am doing my GCSEs next year.

7. I don't have any friends in Mongolia. When we last lived there, I was only three and my brother was four...

8. I can speak Mongolian but I cannot read or write it. It is a very hard language to learn to read and write. ...

...

14. I am not very close to my aunt, [ANC], and I would not want to live with her if my mother is sent to Sweden – I would rather live in Mongolia with my grandmother. However I see Mongolia as a hard place to study and live without my mum and in general. I am not ready to go [and] live there permanently as I have my education to finish here.”

33. Dr Saima Latif, a psychologist, in his report dated 2 October 2019 in the section headed “Conclusion” expresses the view that the Applicant is currently suffering from “an Adjustment Disorder with Mixed Anxiety and Depressed Mood... (Moderate Severe levels)”. He states “her symptoms are a direct reaction to her present situation, however she may have been left vulnerable as a result of her domestic abuse experiences in the past” (para 9.2). Dr Latif assesses the likely effect of her being extradited and separated from her children (at para 9.4) as follows:

“... [AC] is likely to experience an exacerbation and re-traumatisation of her symptoms given that she would be

returning to the country whereby she experienced domestic violence. She has never returned to Sweden [sic] since she left in 2013 and it is likely to trigger negative memories and an increase in her psychological symptoms, particularly if she has not received any treatment to date.”

34. Dr Latif continues:

“9.3 ... I would opine as the author of the section 7 report has, that any separation from their mother is likely to cause the children great distress. This is worrying given that the children are already experiencing psychological difficulties.

...

It should be noted that if [AC] is extradited to Sweden, then the emotional functioning of M and A are most likely to deteriorate and significantly impact upon their GCSE years and ability to gain good results, either due to the fact that they are unable to concentrate on their academic work or because they have to relocate and live with their grandmother in Mongolia. ...

...

9.16 If M and A are taken into local authority care at this stage in their lives, the experience will be highly distressing for them.

...

...

9.18 M and A have witnessed domestic violence in their parent’s relationship in the past. After leaving Sweden they began to feel safe and secure, and have been provided with a safe, nurturing and loving environment by their mother, which has allowed them to improve their emotional functioning over time. However, since the commencement of the extradition proceedings, M and A’s psychological functioning has been seen to deteriorate and they have both experienced an array of psychological symptomology, which although it has not developed into a formal psychological condition, may do so if they experience continuous stressful life changes and having to relocate to Mongolia can be described as a stressful negative life change, which would be coupled with the loss of their mother, friendships, education and the life they know in the UK. Given their previous exposure to domestic violence their ability to adapt and show resiliency would be compromised and it would not surprise me if their present psychological state deteriorated further. ...”

35. In an addendum s.7 report dated 21 October 2019, Ms Lauren Windas, a social worker, employed by the London Borough of Lambeth (Child Assessment Team 5), states:

“14. ... [A] spoke openly about seeing and hearing violence from her father towards her mother, specifically where she looked through the door and saw her father with his hand around her mother’s neck...

...

27. [AC] has considered the children returning with her to Sweden if extradited. She does not feel that the children returning with her would be in their best interests. She does not know if she would be placed in custody, acknowledging that the offence she is charged with comes with a possible prison sentence. [AC] does not have accommodation or access to an income in Sweden to be able to provide a stable home environment and meet their day to day needs. In addition to this, M and A do not speak Swedish.”

36. Under the heading “Conclusion and Recommendations” Ms Windas writes:

“31. ... They [M and A] are very close to their mother and have always experienced her as their primary care giver. Being separated from her will have a long-term negative impact to the extent that this could cause significant psychological harm, physical harm and trauma.

...

33. Although a complex matter, [AC], her sister and maternal grandmother, have been able to agree that it is in [M and A’s] best interest to remain living in the family. Lambeth Children’s Social Care share this view that [M and A’s] needs are best met by those that know them and that they have a relationship with. Their Aunt, [ANC], has agreed to assume care for M and A for a period, until such time that they have the required documents to travel to Mongolia to stay with their maternal grandmother.

34. Whilst it is positive that the family have planned for the possible extradition of [AC], I respectfully request that the Court consider the negative impact this will have on [M and A] as the now proposed care plan would require them to leave the UK.”

37. In her addendum proof of evidence dated 24 October 2019, the Applicant states:

“2. I want to update the court as to my current situation. I am currently not really seeing or speaking to my sister at the moment.

3. When my sister came back from Mongolia she began a relationship with a man. I have not met him.

4. I last saw her properly in July. She missed [M's] birthday and I don't feel like she wants to be involved in mine and my children's lives. Because of how distant she has been I don't wish for her to be involved in my children's lives."

The Parties' Submissions and Discussion on the fresh evidence

38. In my view all the documents that the Applicant seeks to admit in evidence are properly admissible as fresh evidence. None of the evidence was available at the time of the extradition hearing. The documents directly bear on the issue as to whether there has been a material change in circumstances since the extradition hearing and consideration of the best interests of the children in the changed circumstances. They are plainly relevant to the principal Article 8 issue in this case.

39. Ms Bostock submits that the Aunt's change of heart cannot be trusted. She suggests that the Applicant and her family are now attempting to modify their evidence in order to undermine the decision of the DJ to assist the Applicant in avoiding extradition. I do not accept this is so. I consider the Applicant's sister's change of mind to be reasonable and credible in the circumstances. It has not been suggested that the Applicant and her sister are other than credible witnesses.

40. Even before the Applicant's extradition was ordered, ANC's evidence was that looking after the children could be problematic. In her witness statement dated 14 December 2018 she said:

“51. Me and [AC] have been trying to plan for if she were extradited. I would try and take the children.

52. This would be very difficult for me as I am a full-time student. I don't even know if I would start working – this would mean I wouldn't be able to look after the kids myself, but if I weren't working I'm not sure if I would cope financially.

53. I am also very concerned about my mum. She is very unwell with stomach and thyroid problems.

54. I have plans to see her in January. I am not sure if I am going to have to stay out in Mongolia to look after her as she has no-one. I couldn't take the children as they don't have passports.

55. I couldn't look after her and the children, so it would be very difficult.

56. I am not selfish, but I am young and I still have to complete university. I would struggle to cope with the responsibility of caring for two children full time. I am single so it would just be me.

57. I would miss my sister so very much and I know the children would too. I don't know if I would be able to help them as much as they need."

41. I am satisfied from all the new evidence that the Applicant, her sister and their mother are concerned to provide the best care arrangements for M and A that they can, if the Applicant is to be extradited. They have been working together as a team to that end. This is not a case where a person who was prepared to look after a child or children changes his or her mind after an extradition order is made in order to assist the requested person in avoiding extradition. If that had been this family's objective they would not have proposed arrangements that involved the children moving from the UK to Mongolia to live with their grandmother. I agree with Ms Townshend that if the Applicant is trying to paint the worst picture to avoid extradition she would suggest that her mother was far too ill to look after her children in Mongolia. There is no suggestion in the report of Dr Latif or the addendum s.7 report that the Applicant, her sister and their mother are acting other than genuinely in the best interests of the children in what Dr Latif and Ms Windas accept, on the evidence of the Applicant and her sister, are changed circumstances since the extradition hearing.
42. Ms Bostock suggests that another option is for the Applicant's mother to come to the UK, which would plainly be a less disruptive solution for the children than them moving to Mongolia. Ms Bostock points out that she has previously moved to Sweden to be with her daughters. However, that was some years ago. The Applicant's mother is now aged 71 and she has been in poor health, as the medical evidence makes clear. Ms Bostock suggests that the level of care that the children require, now being 16 and 14 years old, is significantly less than that of a younger child. However, I do not consider it practicable for the Applicant's mother to have to travel to the UK to take full responsibility for the care of M and A at her age and in her condition.
43. Ms Bostock refers to ANC's evidence, noted by the DJ (at para 23) that her mother could move to the UK. However, as the DJ recorded, she said "if it came to it, she would bring her mother to England to care for her and the children". ANC did not say that her mother could come to England and care for the children. I also reject Ms Bostock's suggestion that because the children were left in the sole care of their grandmother in Mongolia for a period of time between 2008-2009, and she stayed with the Applicant's family in 2009 or 2010 that somehow undermines the contention that the Applicant's mother is not capable of travelling to the UK and taking sole care of the children in 2019. She is now ten years' older and her medical condition has deteriorated significantly.
44. Further, if the Applicant's mother was to come to the UK it is not clear what immigration status she would have and how she could pay for medical care, if she required it.
45. I do not accept the suggestion that the option of attending one of the English speaking international schools available in Mongolia requires consideration. Whatever the reason for the delay in not issuing the domestic warrant for the Applicant's arrest until 8 January 2018, the impact of the delay is that the children are now well settled in the UK and at an important stage of their education.

46. Ms Bostock submits that the Decision that extradition is proportionate and cannot be considered wrong. The DJ appropriately made no finding as to whether the father was abusive or not. The finding of the Swedish Court, with the full facts before it, that the father was an appropriate person to have joint and then sole custody of the children, Ms Bostock submits, must be respected. I accept that it is not for this court to go behind that decision. Defying a court order in relation to children is a serious offence, but there are significant mitigating circumstances in the account of the physical domestic abuse suffered by the Applicant which the DJ appeared to believe (see para 6 above).
47. In the light of the new evidence I must conduct the required balancing exercise on the Article 8 issue afresh. Four of the five factors favouring extradition to which the DJ had regard remain relevant (Decision, para 27(i)(a)-(d)). The fifth factor does not (Decision, para 27(i)(e)). The Applicant's sister is no longer "able and willing to look after the children at their flat". The four factors against extradition to which the DJ had regard (Decision, para 27(ii)(a)-(d)) all remain relevant; but the fourth factor (para 27(ii)(d)) is of greater significance, in my view, in the light of the new evidence, in particular, if the children have to go to Mongolia.
48. Ms Townshend submits that had the DJ considered the abundance of fresh evidence in this case, particularly concerning the likely fate of the children, he would have been required to order the Applicant's discharge.
49. I agree with Ms Townshend that the DJ's decision is heavily dependent on the fact that the children will be cared for by their aunt in the UK, in their mother's absence (Decision, para 28, in particular, see para 16 above).
50. I also accept Ms Townshend's submission that the fresh evidence demonstrates that the uprooting of the children from their stable environment in the UK to go and live with their grandmother in Mongolia would be very disruptive and a significant increased interference with their family life. The evidence of Dr Latif and Ms Windas is that it will cause significant psychological and educational harm to the children. I am satisfied that the separation of the children from their mother, together with a move to Mongolia, is likely to have a serious adverse effect on the children.
51. There is no realistic prospect of the Applicant's mother being able to travel to the UK to live with and take care of the children, essentially as sole carer, given her age and medical condition (see paras 42-43 above).
52. Ms Bostock accepts that this is not a case where the children should be put into local authority care, and the local authority does not consider that that would be appropriate (see para 34 above).
53. It is also not suggested, and could not be, that it would be appropriate for the children to accompany the Applicant to Sweden. Unless she is granted bail they will not be able to live with her. They do not wish to have contact with their father (see para 12 above). There is no-one else in Sweden to care for them. Further, a move to Sweden would obviously be disruptive at this stage of their education (see para 35 above).
54. The reports of Dr Latif and Ms Windas both emphasise the great distress and significant psychological harm that is likely to be caused to the children if they are

separated from their mother, in particular, having witnessed domestic abuse. Further, relocation from the UK during their GCSE years is likely to have a significant adverse impact on their education (see paras 34-35 above).

Conclusion on fresh evidence

55. I am entirely satisfied that the fresh evidence demonstrates (1) there are good reasons why the Applicant's sister can no longer care for the children if the Applicant is extradited; (2) this amounts to a fundamental change of circumstance in relation to a highly significant factor that underpinned the DJ's decision; (3) it would be contrary to the interests of the children for them to go to live in Mongolia with their grandmother; (4) there is no realistic prospect of their grandmother coming to the UK to care for them; (5) there is no person, other than their mother, to care for the children in the UK; (6) putting the children into local authority care is not an option; and (7) neither is uprooting them to go and live in Sweden.
56. In these circumstances I have concluded that if this fresh evidence had been before the DJ he would have decided the case differently and would not have ordered the extradition of the Applicant.

Conclusion

57. For the reasons I have given I grant permission to appeal, allow the appeal and quash the order for extradition pursuant to EA 2003, s.27(1) and (5).