

Litigation and Employment Group

Treasury Solicitor's Department

One Kemble Street, London WC2B 4TS

DX 123242 Kingsway
Switchboard: (020) 7210 3000 (GTN 210)
Direct Line: (020) 7210 3525
Direct Fax: (020) 7210 3433
Andrea.McMahon@tsol.gsi.gov.uk

Please Quote:

Mr Stuart Pycock
Operations Manager
Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

20th February 2013

Dear Stuart

ENFORCED RETURNS TO NIGERIA AND GHANA BY CHARTER FLIGHT ON MONDAY 25 FEBRUARY 2013 DEPARTING AT 19:30hrs

1. I am writing to inform you that the Home Office intends to return up to 50 Nigerian nationals to Lagos and up to 20 Ghanaian nationals to Accra by charter flight on Monday 25 February 2013. The flight is expected to depart from this country at 19:30hrs. As this is a chartered flight and not a scheduled departure the aircraft may have to close its doors and move away from the stand shortly before the allocated time in order to comply with the departure slot. It is very difficult to say with any certainty as to how long before the allocated time this may happen but it could be up to 30 minutes before.
2. Those Nigerian and Ghanaian nationals who we intend to return are presently detained and removal directions will be served on most of them on or before 22 February informing them that they are to be removed by charter flight on 25 February. These individuals are leaving the United Kingdom on a specially chartered aircraft and not on a normal, scheduled, flight.

Charter flights – rationale

3. The United Kingdom Border Agency (UKBA) of the Home Office is committed to the voluntary return of those who have no legal right to remain in the UK and has a range of schemes to encourage and facilitate a sustainable returns programme. However, where it is necessary to enforce removal, charter flights are an effective method of return. This may be because of a lack of routing to a particular destination or where the availability of scheduled flights is not in line with demand. Additionally, charter flights allow UKBA to effect volume returns to countries where asylum intake is high or where there are a significant number of foreign national prisoners awaiting return. This also makes charter flights a cost effective option.

Country information - Nigeria

4. UKBA closely monitor developments in Nigeria and will take decisions on a case-by-case basis in light of the most current situation. Returns will only be undertaken where we are satisfied the individual has no protection needs. UKBA caseworkers have access to the Home Office Country of Origin Information (COI) Service which closely monitors the human rights situation in each country. Detailed Country of Origin Information Reports are published on the Home Office website with the most recent report on Nigeria being published on 6 January 2012. This can be found at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/nigeria/report-06-112.pdf?view=Binary>

5. UKBA's Country of Origin Information (COI) Service most recent COI Report on Nigeria includes information that :

FAILED ASYLUM SEEKERS

33.02 The British-Danish *Fact-Finding Mission report*, published in October 2008, stated:

"The FFM delegation interviewed Jason Ivory, Head of the Visa Section at the British High Commission in Abuja, about the treatment of returned failed asylum seekers by the Nigerian authorities. He stated that it is not illegal for Nigerians to travel abroad and apply for asylum. Therefore, the Nigerian Immigration Service and the police would have no legal basis to detain and arrest a returned failed asylum seeker. Officials at the British High Commission in Abuja have regular contact with Nigerian NGOs and none of these NGOs have reported to them that returned failed asylum seekers have suffered human rights abuses. He was also not aware of any reports in the Nigerian media to indicate that returned failed asylum seekers have been ill-treated or suffered from any form of persecution from the Nigerian authorities.

"The Head of the Visa Section explained that Nigerian failed asylum seekers return back to Nigeria with temporary travel documents. These documents are checked by immigration officials and the person concerned is then interviewed. The purpose of the interview is to verify the person's identity and nationality and to ascertain why the person arrived back in Nigeria with a temporary travel document. This is simply a formality and part of the standard procedures carried out by immigration officials. Once the immigration officials have verified the person's identity and nationality, he is then let through the immigration control section of the airport and is free to continue his journey." [15] (p45)

Country Information - Ghana

6. UKBA closely monitor developments in Ghana, and will take decisions on a case-by-case basis in light of the most current situation. Returns will only be undertaken where we are satisfied the individual has no protection needs. UKBA caseworkers have access to the Home Office Country of Origin Information (COI) Service which closely monitors the human rights situation in the country. Detailed Country of Origin Information Reports are published on the Home Office website with the most recent report on Ghana being published on 11 May 2012. This can be found at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/ghana/>

7. Country reports are compiled from a wide range of recognised and publicly available sources, including government bodies such as the Foreign and Commonwealth Office, international organisations such as UNHCR, and non-governmental organisations, such as Human Rights Watch and Amnesty International, and the media. The COI Service also provides an information request service to caseworkers and others involved in the asylum determination process, which aims to provide information on specific issues that are not covered in existing COI products, or that have occurred since their publication

UKBA Charter Policy

8. Because of the complexities, practicalities and costs involved in arranging charter flights it is essential that these removals are not disrupted or delayed by large numbers of last minute claims for permission to seek judicial review. To ensure the viability of this latest operation to Nigeria and Ghana and in line with enforcement operational instructions, the Home Office may decide not to defer removal simply on receipt of a last minute threat or application to seek judicial review in cases where removal directions have been set and served at least 5 working days before departure (i.e. 18 February). Where last minute representations are received stating an intention to make an application, or that an application has been made, to seek permission for judicial review, and the UKBA decides that removal should proceed, the claimant or his representatives will be informed in writing that removal will not be deferred.
9. The case details of those Nigerian and Ghanaian nationals it is proposed to remove are attached. At the same time as the removal directions were set, each detainee was also served with a letter advising that, as it is intended to remove them on a charter flight, the UKBA may decide not to defer removal if a threat or application is made to seek permission for judicial review. All passengers are advised that they must seek an injunction if they wish to prevent removal. I attach a copy of the template letter. The Court is asked to note that this should be notified to the UKBA's Operational Support and Certification Unit (OSCU) or the Command and Control Unit (CCU) as per the instructions to Immediates and Duty Judges, by telephone and if possible confirmed by e mail. It would also assist us if the Court could notify UKBA of injunctions which have been refused in the same way.
10. It is respectfully requested that Immediates and Duty Judges take the above information into account when considering any applications made for injunctions to prevent the removal of those due to be returned on the flights on 25 February 2013. The contact email and telephone number is provided in the covering email to this letter and are provided to the Court on a confidential basis and should not be communicated to third parties. Should Immediates and Duty Judges or their clerks require further information or copies of documentation on individual cases they may contact OSCU's Duty Officer between the hours of 07.00 – 21.00 Monday to Friday and 07.00 – 19.00 at weekends. UKBA's Command and Control Unit will be available after these times.
11. It would be helpful if any urgent email communication is followed by a telephone call to the OSCU Duty Officer on the number provided in the covering email to this letter to confirm receipt.

12. I would be grateful if you could make both Immediates and Duty Judges aware of the situation and the reasons for following this course of action.

Yours sincerely

Andrea McMahon
For the Treasury Solicitor