Neutral Citation Number: [2020] EWHC 604 (Admin)

Case No: CO/3031/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/02/2020

Before:

LORD JUSTICE LEGGATT
MR JUSTICE JAY

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Between:

JEREMY EASON	**Applicant**
- and -	
GOVERNMENT OF THE UNITED STATES OF AMERICA	**Respondent**

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Mr M Hawkes (instructed by **Lansbury Worthington**) for the **Applicant**
Mr A Watkins (instructed by **the CPS**) for the **Respondent**

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Approved Judgment

Lord Justice Leggatt:

1. This is an appeal from the decision of District Judge Ezzat, sitting in the Westminster Magistrates' Court, on 24 May 2019 to send the case of the appellant, Jeremy Eason, to the Secretary of State to order his extradition to the United States of America. Permission to appeal was granted by Supperstone J following an oral hearing. The grounds of appeal are that the district judge ought to have decided that Mr Eason's extradition is barred under s.79(1)(c) and s.82 of the Extradition Act 2003 by reason of the passage of time and/or that his extradition is incompatible with rights to private and family life protected by article 8 of the Human Rights Convention, and that the district judge should accordingly have ordered Mr Eason's discharge under s.79(3) or s.87(2) of the Act.

2. Mr Eason is the subject of an extradition request issued by the United States Government on 26 March 2018. The affidavit in support of the request accuses him of conspiracy to commit bank fraud by providing banks with false information in connection with purchases of residential properties in the Myrtle Beach area of South Carolina. More specifically, it is alleged that, during the period between July and September 2008, Mr Eason and his co-conspirators arranged for the sale of at least seven properties in the Myrtle Beach area for approximately US$5,000,000. It is said that they submitted to banks loan packages containing false information about the buyers' creditworthiness, false HUD-1 settlement statements and inflated appraisals. An HUD-1 settlement statement is described as a standard form used to itemise services and fees charged to the borrower by the lender or broker when applying for a loan for the purpose of purchasing or refinancing real estate.

3. The affidavit states that, in reliance on such false information, the banks approved the loan applications and distributed the funds to finance the sale of the properties. It is alleged that Mr Eason and his co-conspirators also falsified closing documents which made it appear to the banks that the assets of the loan were distributed primarily for the purchase of the property when, in fact, much of the money listed as being used to purchase the property was fraudulently divided among Mr Eason and his confederates.

4. The affidavit further states that these charges follow an investigation by the Federal Bureau of Investigation ("FBI") which began in October 2008, when the Royal Bank of Canada in Myrtle Beach, South Carolina, noticed that an unusual number of loans, ranging from around October 2007 to November 2008, obtained to fund the purchase of residential real estate, went into default. It is said that "approximately" five of Mr Eason's co-conspirators were charged separately and pleaded guilty.

5. Mr Eason is a UK citizen born in January 1975. He denies that he was involved in any criminal conduct.

6. At the extradition hearing, he gave evidence that he moved to the United States at the age of 18 when he was offered a soccer scholarship by a university in South Carolina. After graduating, he worked in a variety of jobs. He married his wife, Richelle, who is a US citizen, in 1998, and they have one child: a son born in October 1999. Mr Eason gave evidence that he was working as a mortgage broker at the time when the alleged frauds were committed but left that job before the end of 2008. He accepts that he worked with or knew at least some of the other alleged conspirators.

7. In December 2009 his wife was diagnosed with cervical cancer and was very ill. Mr Eason said that, from around September 2009, they were planning to move to the UK and ultimately decided that they would make the move at the end of their son's school year in May 2011.

8. On 29 April 2011, Mr Eason was contacted by the FBI and asked to attend an interview. This was arranged for a date in late May. A letter from the US attorney, in answer to a request for information made in connection with these proceedings, states that the date of the interview was "on or about 31 May 2011". Apart from the apparent inability to specify the exact date which does not instil confidence in the state of the FBI's records of the interview, this information is – as the district judge observed – most unlikely to be correct, as a document produced by Mr Eason shows that he flew back to the UK on 29 May 2011, and it therefore seems probable that the interview took place a few days before that, as he maintains.

9. Mr Eason instructed a local lawyer to accompany him to the interview, called Mr Russell Long. Mr Long has made a witness statement in these proceedings in which he observes that the interview which Mr Eason attended was a voluntary interview as he was not under arrest and there was no obligation to remain there or to answer questions. Mr Long recalls that Mr Eason:

> "... answered all the questions put to him to the best of his ability and provided as much information as he could; he was very forthcoming. There was no argument about any of the questions and we did not object to any of them. I remember that very few of the questions related directly to him – most of the questions concerned matters about which Mr Eason had no information. I remember that… the interview lasted about three hours."

10. Mr Long says that he does not believe that this interview was recorded by the FBI, although they may have taken notes. He also says in his statement:

> "When we left the meeting, I felt that this would be the end of the matter. I did not expect they would want to talk to Mr Eason again or think that Mr Eason was to be indicted. There were no constraints placed on Mr Eason whatsoever. There was no warning, no sense or expectation that there was anything else to come in the future. He was completely free to go and do what he pleased. He was free to travel and live where he pleased."

11. Mr Long goes on to say:

> "I remember taking voluminous notes, but I have not been able to find them. Here we purge our files of all unnecessary items after 7 years. It is highly likely that these notes were purged from the file in or around May 2018. Obviously, if I had any inkling that Mr Eason was to be indicted, then I would have made sure that these notes were retained. We had no clue that we needed to keep this file active."

12. Mr Long said at the end of his witness statement that he was willing to attend court in person or via video-link to give evidence if necessary. We understand that an arrangement was provisionally made for him to give evidence by video-link, but in the event no request was made to cross-examine him. Whatever may or may not be or have become the practice in extradition proceedings, there is in my view no possible reason to treat extradition proceedings any differently from other court proceedings, whether criminal or civil, in that where a party wishes to challenge evidence given by a witness and contend that that evidence is that either untruthful or inaccurate for reasons that would be within the knowledge of the witness, they are expected to put that case to the witness in cross-examination. If they do not do so, the inference may be drawn that the evidence is accepted as accurate.

13. Mr Eason and his wife both gave evidence at the extradition hearing that they had already decided to move to the UK and made arrangements to do so before Mr Eason was contacted by the FBI. That evidence was supported by documents which showed, in particular, that they had already taken steps to ship household effects to the UK in April before the FBI contacted Mr Eason. Again, that evidence was not challenged at the extradition hearing.

14. On his return to the UK, Mr Eason and his wife initially rented a house in Ipswich. They retained the house which they owned in South Carolina, which was rented out until they sold it in 2014. In 2015, they bought a house with a mortgage in this country, in which they have since lived. Mr Eason has established a business which involves organising the work of some 28 – 30 self-employed drivers who make deliveries for various companies.

15. His wife, Richelle Eason, gave unchallenged evidence describing her ongoing very significant health problems, consequential on her cervical cancer and the surgery undertaken to remove it which involved excising a substantial portion of her intestines. That evidence is further confirmed by a letter from her GP. She is unable to work as a result of her conditions and is entirely reliant on her husband for financial, practical, and emotional support. Mr Eason also provides support for his mother who lives near them.

16. Turning to the history of the criminal and extradition proceedings, Mr Eason was indicted by a grand jury in the US District Court for the District of South Carolina on 24 January 2012. There is no suggestion that this fact was communicated to him at the time. According to the US attorney, the last of the alleged co-conspirators to plead guilty did so on 8 January 2014. Agents of the FBI are said to have been aware that Mr Eason had moved to the UK but did not find his address until 2016. In response to a question as to why no extradition request was then made until 2018, the answer given was:

> "The first step was to be sure that the evidence had been saved and that we had the necessary witnesses to convict Eason. After that, the time was used to complete the administrative tasks of preparing an extradition packet and having that approved by our office in Washington."

17. After the extradition request was made, further months went by before Mr Eason was arrested on 12 September 2018. As mentioned earlier, the judgment following the extradition hearing was given on 24 May 2019.

18. As I indicated at the outset, Mr Easton has resisted extradition on the grounds that it would be unjust or oppressive to extradite him by reason of the passage of time and also, or in the alternative, that to do so would be incompatible with article 8 of the Human Rights Convention.

19. The district judge rejected these arguments. On the question of injustice, the district judge did not give much weight to submissions that, the due to the passage of time, there would be a risk of prejudice to Mr Eason in the conduct of a trial in the United States. In relation to the fact that Mr Long no longer has the notes that he took of the FBI interview, the district judge said that:

> "… the FBI will have a record of what was said. If the interview was recorded there is likely to be no dispute as to what was said. If the interview was noted, then there is the possibility that the RP may dispute the accuracy of the note, however there is no reason that this could not be dealt with within the trial process, with the court in due course attaching whatever weight they felt appropriate to it."

20. The district judge also saw no merit in the suggestion that the delay has impacted on Mr Eason's access to other potentially relevant materials to such an extent that it would cause prejudice to him. He said that "in the absence of evidence to the contrary, it is proper to assume that the American legal system is well equipped to deal with the issues raised to ensure no prejudice is suffered by the RP."

21. As for oppression, the district judge accepted that the extradition of Mr Eason will have a significant impact practically, emotionally, and financially on his wife and son, and also on his mother; however, he considered that the impact would have been far greater had his extradition been ordered in 2012 – because Mr Eason's son was then in school, whereas he is now at university and Mr Eason has, in the meantime, been able to establish a business which has seen him able to support his family and buy their own home.

22. The district judge concluded that he did not consider the passage of time in this case, although regrettable, to be to the detriment of Mr Eason and his family; in fact, he found the opposite to be the case. The district judge was likewise not persuaded that the interference with private and family life was sufficient to outweigh the public interest in extradition such as to be incompatible with article 8.

23. On Mr Eason's behalf, Mr Hawkes argues that the district judge was wrong to reach those conclusions.

24. For the US Government, Mr Watkins, in his clear and helpful submissions, has emphasised that the district judge had the advantage of hearing live evidence from Mr Eason, whom he did not find to be an entirely credible witness, and that this court should not interfere with the judge's conclusions unless satisfied that, in the words of s.104(3) of the Act, the district judge "<u>ought</u> to have decided a question before him at the

extradition hearing differently" (emphasis added). In that regard, Mr Watkins has reminded us of what was said by the Lord Chief Justice in *Love v Government of the United States of America* [2019] 1 WLR 2889 at paras 23 – 26, as to the correct approach to adopt on an appeal of this kind. I keep those observations well in mind.

25. Taking first what Mr Hawkes has put as his primary ground of appeal, the statutory test as set out in s.82 of the Act of when a person's extradition to a Category 2 territory (which includes the USA) is barred by reason of the passage of time, is whether:

> "… it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have—
>
> a) committed the extradition offence (where he is accused of its commission)..."

26. The classic exposition of the phrase "unjust or oppressive" remains that of Lord Diplock in *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779 at 782-3, where he said:

> "'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' as directed to hardship of the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases where to return him would not be fair."

27. As regards injustice, or that aspect of injustice which relates to a risk of prejudice in the conduct of the criminal proceedings in the foreign state, the following points emerge from subsequent authorities (including *Gomes v Trinidad and Tobago* [2009] UKHL 21; [2009] 1 WLR 1038 at paras 30 – 34, and *United States of America v Tollman & Tollman* [2008] EWHC 184 (Admin) at paras 47 – 48):

    i) If, because of the passage of time, a fair trial is now impossible, it would clearly be unjust to order extradition;

    ii) A court should, however, be very slow to come to such a conclusion where the state making the request is one that is shown to have, or may be presumed to have, appropriate safeguards to protect the defendant against unfairness resulting from the passage of time in the trial process;

    iii) The possibility or otherwise of a fair trial is not the only relevant consideration, as the question is not whether it would be unjust or oppressive to try the accused but whether it would be unjust or oppressive to extradite him.

28. As regards oppression in the form of hardship, it is clear that the test goes beyond mere or ordinary hardship, which is a comparatively common consequence of an order for extradition, and will not easily be satisfied: see *Gomes* at para 31. Where there has been culpable delay on the part of the requesting state, that is a relevant factor and may tip the balance in a case where the requested person is not himself to blame: see *Gomes* at paras 23 –27; and *La Torre v Italy* [2007] EWHC 1370 (Admin) at para 16 (per Laws

LJ). Other relevant factors may include matters such as the seriousness of the offence, and the impact of extradition on other family members. Ultimately, an overall judgment on the merits is required and it is important to stay focused on the words of the statute itself: see *La Torre v Italy* at para 37; and *USA v Tollman & Tollman* at para 49.

29. While every case must depend on its own facts, Mr Hawkes submits that there is a close similarity between the factual circumstances of the present case and those in *Hunt v Court at First Instance, Antwerp, Belgium* [2006] EWHC 165 (Admin). In that case, a request was made for the appellant's extradition to Belgium to face charges of money laundering allegedly committed between 1997 and 1998. In December 1999, the appellant voluntarily attended an interview with the Belgian authorities, answered all questions asked of him, and provided a statement. Nearly five years elapsed before a European Arrest Warrant was issued in October 2004, and there was no explanation given for the delay. The district judge rejected an argument that extradition was barred by passage of time, but the Divisional Court allowed an appeal from that decision. Newman J, with whom Smith LJ agreed, said at para 25:

> "In my judgment, the inaction of the authorities must be seen in the context of the appellant's co-operation by attending for interview and offering a further interview. Where there has been full co-operation and the requesting state has thereafter delayed for years, it can be inferred that the subject may be lulled into a sense of security. That I accept has happened in this instance."

30. In the present case, the time which passed from when Mr Eason allegedly committed the extradition offence in July – September 2008 before he was arrested in September 2018 was no less than 10 years. Included within that period was a delay of over six years from when he was indicted in January 2012 before a request for his extradition was made in March 2018. In considering the significance of this passage of time, the starting point is that the US Government does not contend that Mr Eason is a fugitive, meaning that it is not suggested that he fled from the United States to avoid arrest or trial, or that he did anything to conceal his whereabouts or to evade arrest in the UK. Although the district judge appears to have been sceptical about this, unchallenged evidence – as already mentioned – showed that Mr Eason and his family had already decided to move back to the United Kingdom before any contact with Mr Eason was made by the FBI. He was in any case entitled to move back to the UK when he did. Furthermore, before he left, he voluntarily attended an interview, although he was under no obligation to do so, and answered all the questions asked of him; no restriction was placed on his freedom of movement and he was not asked to remain in contact with investigators.

31. The principal adverse factual finding made by the district judge, and which was the subject of his comment that he did not find Mr Eason an entirely credible witness, was the following finding at para 20 of his judgment:

> "I cannot be sure of the RP's exact knowledge of what, if any investigations or proceedings were ongoing in America since 2011, but I am satisfied on the evidence that I have heard that the RP was at least alive to the possibility that should he return to America that the FBI or another investigatory body would be interested in him. In my view it is highly likely that the RP

> consciously decided not to return to America so as not to leave himself open to potential investigation or prosecution."

32. Although Mr Hawkes sought to submit that the district judge was not entitled on the evidence at the extradition hearing to make that finding, I would reject that submission. There were facts, set out in the judgment, which provided a basis on which it was open to the district judge to draw such an inference; added to which, he had the advantage of having heard and seen Mr Eason give evidence under cross-examination. Accepting that finding, and giving it full weight as I do, it must nevertheless be seen in conjunction with the undisputed fact that Mr Eason has never taken any step to hide his whereabouts: he has lived at the same address in the UK since he purchased a house in his own name in 2015; he is on the electoral roll; he has three companies, and his details must therefore be on the Companies Register; he is a taxpayer; his wife has been an active Facebook user; he and his wife hold driving licences which also show their address; he also has bank accounts, credit cards, and pays utility bills all in his own name.

33. That there was no difficulty in finding where Mr Eason was living is confirmed by the fact that, after his house in Myrtle Beach was sold in 2014, a few months later the new owners tried to sue him for a crack in the swimming pool. Mr Eason said in evidence that that civil lawsuit found its way to him at his home address in the UK without any problem. In addition, enquiry could have been made of Mr Eason's attorney, Mr Long. Although, it was said in answer to the request for information that that is not something that is routinely done where the defendant is not in the jurisdiction, Mr Long in his unchallenged witness statement said that it is the usual course of events: "... the FBI contact me, say that they wish to see a client again and say to me 'can you gather him' and I do, and we proceed from there."

34. No sensible explanation or excuse has been given for the six-year delay that I have mentioned between the grand jury indictment and the making of the extradition request. Mr Watkins, with appropriate realism, did not seek to argue that it was other than culpable. It is clear that it was not necessary to have identified Mr Eason's address in the United Kingdom in order to make an extradition request. In any event, for the reasons I have given, there would have been no difficulty in finding him. Moreover, the US government has many means available to it to seek and obtain information from UK authorities, if desired.

35. Mr Watkin's essential submission on this point was that the culpability of delay is usually only relevant in a case on the margins where it might tip the balance in favour of a person whose extradition is sought. I accept that this is the only way in which culpability is directly relevant, as a factor in itself. But in this case it also goes, in my view, to whether the person whose extradition is sought was entitled to believe that he would not be the subject of a request after a significant period of time had gone by, during which a competent prosecuting authority could naturally have been expected to initiate extradition proceedings if there was considered to be a case for him to answer.

36. In this case, the length of time which passed (of more than seven years) from when Mr Eason voluntarily attended an interview with the FBI in May 2011 until his arrest in 2018, during which time he was not contacted and received no notice that he was under investigation, gave rise to a reasonable expectation that no proceedings would be taken against him arising out of the matters about which he had been interviewed.

37. Mr Watkins took issue with that proposition, relying first of all on a statement made by the US attorney in answer to the request for information that Mr Eason was aware that he was a suspect. The basis for that statement was said by the US attorney to be that, during the interview said to have taken place on or about 31 May 2011, the nature of the topics covered and the documents that Mr Eason was shown were specific to Mr Eason's personal involvement in the broader illicit financial scheme. No source is given for that information and, while I fully accept Mr Watkins' point that evidence given on behalf of a foreign government is entitled to the greatest respect and should ordinarily be taken at face value, it is difficult to have confidence in the reliability of that particular statement for the reasons I have previously indicated, namely that the prosecutor seems not to have been aware even of the actual date of the interview; and there are also a number of other inconsistencies in what is said about it.

38. The suggestion that Mr Eason was aware that he was a suspect is also contradicted by Mr Long's evidence which, as I have emphasised, was unchallenged. But in any event whatever may or may not have been Mr Eason's belief or awareness immediately after he was interviewed at the end of May 2011, he was reasonably entitled to grow in confidence that there was no intention to prosecute him as the years passed.

39. Mr Watkins disputes this on the basis of the finding of the district judge, which I quoted earlier, that Mr Eason chose not to return to the United States, and the inference which the district judge drew that the reason for that was so as not to leave himself open to potential investigation or prosecution. However, it does not follow from the fact that Mr Eason chose not to put himself in a position where he might reawaken interest in him by returning to the United States that he was not increasingly entitled to feel secure from any attempt to extradite him from the United Kingdom. In my view, given the very long passage of time in this case, the fact that he had voluntarily attended for an interview and heard nothing for so many years afterwards reasonably entitled Mr Eason to conduct his life in the belief and understanding that no attempt would be made to extradite him. The district judge did not address this consideration at all in his judgment, although it has been confirmed to us today that the argument was advanced before him. That, in my view, was a material omission. Had the district judge addressed the point, he would in my view have been bound to recognise it as a powerful consideration that tended to show that it would be unjust or oppressive, by reason of the passage of time, to extradite Mr Eason.

40. The matter does not end there, however. I also consider that the district judge was wrong to reject the submission that there would be a risk of prejudice if Mr Eason were now to be tried for the alleged offence because of the passage of time. In my view, the district judge was wrong to treat the fact that the notes of the FBI interview made by Mr Eason's lawyer were destroyed after seven years, in accordance with ordinary practice, as a matter of little weight. I can see no justification in this case for his assumption that "the FBI will have a record of what was said". There is no evidence that the interview was recorded, and Mr Long says that he does not believe it was. It would generally be reasonable to expect that FBI investigators would have made notes of the interview, but there is no evidence from the Government that they have retained those notes, and the apparent inability even to identify the date of the interview tends to suggest otherwise. Even if notes were made and have been preserved, Mr Eason is now at the unfair disadvantage that he is unable to check or gainsay the accuracy or completeness of such notes.

41. More generally, the sheer length of time since the relevant events took place, and the likelihood of further delay of unspecified length before any trial would take place, itself gives rise to a risk of unfairness to Mr Eason in preparing his defence. No details have been given of the evidence on which the Government intends to rely to seek to prove Mr Eason's involvement in the criminal conspiracy, except that it includes the evidence of a "cooperating witness". The Government has not yet divulged whether, for example, there are documents which are said directly to incriminate Mr Eason or whether the case that he participated in the conspiracy is based on more circumstantial evidence or on recollection of one or more witnesses of oral discussions. The Government is not, of course, under any obligation to demonstrate a *prima facie* case that Mr Eason is guilty of the offence but, on the face of it, and without any knowledge of the evidence relied on to suggest otherwise, it is in my view reasonable to infer that Mr Eason would be at an inevitable disadvantage in circumstances where he would be having to prepare his defence from scratch now. Memories, whether of himself or others, are bound to have faded in the course of what is now a period of approaching 12 years since the relevant events occurred, and we have no information as to what efforts may have been made by investigators to obtain and preserve documents which might be helpful to his defence – certainly, he has had no opportunity to do that.

42. The district judge was on much stronger ground in assuming that the American legal system is well-equipped to deal with the issue of unfairness within the criminal process. No doubt there are procedures by which a judge can rule that a trial should not proceed at all or that the case should not go to the jury if the passage of time means that there cannot now be a fair trial or is such as would make any conviction unsafe. But the question is, as I have indicated earlier, not only one of considering whether in the circumstances it would be unjust or oppressive to try the accused person: the question is whether it would be unjust or oppressive to extradite him. This court is entitled to take notice of the fact that very few prosecutions in the United States go to trial and that the vast majority result in guilty pleas which are the outcome of a process of bargaining between the prosecution and the defence. In striking any such bargain and engaging in that process, Mr Eason would be at a manifest disadvantage by reason of the fact that he would be having to start preparing his defence more than a decade after the relevant events have occurred without even having access to his attorney's notes of what he said when he was interviewed close to the time of the relevant events.

43. Another relevant factor in addressing whether it would be unjust at this stage to extradite the requested person is the seriousness of the extradition offence. I consider that the district judge was entitled to describe, as he did, a conspiracy to defraud banks by making loans to customers to acquire property to the value of the £5,000,000 as a serious offence. However, the extent to which weight can be placed on that factor in assessing the public interest in extradition is, at least to some extent, undermined by the fact that no information has been provided by the US Government about, first of all, the size of the loans made to the relevant customers (in other words, what proportion of the value of the properties they represent); secondly, what loss the banks suffered as a result of the loans; and thirdly, and perhaps most importantly, what gains any of the conspirators – including Mr Eason – are alleged to have made from the fraud.

44. Turning finally to the question of oppression in the sense of hardship, the district judge, as I indicated, accepted that extradition would have a significant impact – practically, emotionally, and financially – on Mr Eason's wife and son and, more broadly, on his

mother. Nevertheless, it seems to me that he understated, or did not properly take into account, the extent of the impact that Mr Eason's extradition would have on his wife by reason of her serious medical conditions. The district judge referred to those conditions in his judgment, but he did not address the question of whether they are such as to take this case out of the normal level of hardship that can be expected to result from extradition.

45. In my view, the evidence relating to Mr Eason's wife clearly does take this case out of the normal range. We have been shown the letter from her GP which describes in detail and confirms the extremely debilitating effects of the surgery which she underwent as a result of her cancer – which causes ongoing pain, can leave her bedridden, has resulted in significant mental health problems and makes her very heavily if not wholly dependent on her husband, not merely for care and financial support, but to meet her medical as well as practical day-to-day needs.

46. In considering the impact of Mr Eason's extradition on other people, I also consider that the district judge erred in other respects. He criticised Mr Eason for not having taken steps to mitigate the potential impact of extradition "such as by training up a member of staff or taking on an additional member of staff to assume his duties should his extradition be ordered." That seems an unfair and unrealistic criticism in circumstances where the evidence shows that the nature of Mr Eason's business is a personal one which depends on his own knowledge and personal relationships with the people whose work he arranges, and where the money that he makes from his business, of some £900 a month, is not such as to leave any apparent room – supposing that it were possible to train someone to take over his duties – both to pay that person and leave money to support his family.

47. Another point on which the district judge, in my view, made unrealistic assumptions is in suggesting that Mr Eason may have funds available to him to support his family during any time that he spends in America. There was no evidence of any such savings. The district judge also said that, if he was wrong about that, then Mr Eason could always explore options in relation to his mortgage, such as payment holidays, changing to an interest only product or re-mortgaging – all with a view to managing costs. In my view that was, again, an inappropriate and unrealistic suggestion on the part of the district judge. It is difficult to see – as my Lord, Jay J, pointed out in the course of argument – how Mr Eason could reasonably be expected to re-mortgage or apply for a mortgage holiday on the basis that he is being extradited on a charge of mortgage fraud to the United States.

48. None of those matters is, in itself, an error which undermines the conclusion of the district judge on whether extradition is barred by reason of the passage of time. But these errors do reinforce my view that the district judge has not approached this question in the correct way. Most importantly, he has focused in his judgment on the question of whether or not Mr Eason has been disadvantaged by the delay in seeking his extradition between 2012 and the present time. That is an exceedingly difficult question to evaluate, and I accept that there are respects in which, as the district judge found, Mr Eason can be said to have benefited from the passage of time – although there are others in which, as it seems to me, it is evidently to his disadvantage. But in focusing on that point, as the district judge did, he left out of account the fact that evidence of such serious hardship can be, and in my view is in this case, relevant in another way. Even if it cannot be shown that the passage of time has, in itself, resulted in increased hardship and

oppression if extradition were take place now, evidence of such serious hardship forms an important part of the background against which the question of whether extradition is barred by the passage of time must be judged. It seems to me that, in circumstances where his return to the United States would manifestly cause very serious hardship, in particular to his wife, it requires factors of less weight than might otherwise be the case to demonstrate injustice or oppression resulting from the passage of time.

49. Standing back from the case, as we need to do at the end of the day, and considering the matter as a whole, I am satisfied that the district judge was wrong to reach the conclusion that he did that it would not be unjust or oppressive by reason of the passage of time to return Mr Eason to the United States, and that he ought to have reached the contrary conclusion.

50. In those circumstances, it is unnecessary to address the alternative ground on which extradition is opposed, that is to say, the argument based on article 8.

51. For those reasons, I would allow the appeal and order Mr Eason's discharge.

Mr Justice Jay:

52. I agree.