4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

Henry Setright QC and Michael Gration appear for successful appellant in the Supreme Court.

19th March 2021

Henry Setright QC and Michael Gration appeared together with Jason Pobjoy and Emmeline Plews of Blackstone Chambers, (instructed by A&N Care Solicitors) before the Supreme Court, in a landmark decision considering the relationship between the 1980 Hague Convention and the Refugee Convention.

The Court of Appeal had held that whilst a child that had made their own asylum application could not be returned under the 1980 Hague Convention until such time as that application had been refused, a child that was named as a dependant on an asylum application made by their parent had no such protection.

The appellant challenged that conclusion on appeal to the Supreme Court. The Supreme Court allowed the appeal, holding that a child who can be understood to be an applicant for asylum cannot be returned to the country from which they have sought protection, until such time as the asylum claim has been finally determined. If the asylum claim is granted, the protection from being returned would continue.

This issue is one that had arisen in 1980 Hague Convention proceedings fairly frequently prior to this decision, but the issue had not been authoritatively settled prior to this case. The UK Supreme Court has also given important guidance on how the Family Division of the High Court can work alongside the Home Office and, if necessary, the Tribunals in order to ensure that 1980 Hague Convention proceedings are not unduly delayed in circumstances where a parent and/or child has made an asylum claim.

To read the Supreme Court Judgment click here.