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FGF v Secretary of State for the Home Department (Naturalisation - Substantive) SN/01/2023

SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: SN/01/2023
Hearing Date: 15th & 16th July 2024
Date of Judgment: 30th September 2024

Before

THE HONOURABLE MR JUSTICE JOHNSON
UPPER TRIBUNAL JUDGE SHERIDAN
MR PHILIP NELSON CMG

Between

FGF

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

OPEN JUDGMENT

Mr Faisal Saifee (instructed by **IHRC Legal)** appeared on behalf of the Appellant FGF

Mr Steven Gray (instructed by **the Government Legal Department)** appeared on behalf of the Secretary of State

Mr Martin Goudie KC & Mr David Lerner (instructed by **Special Advocates' Support Office)** appeared as Special Advocates

MR JUSTICE JOHNSON:

Introduction

1. This is a statutory review of the Secretary of State's refusal of the applicant's application for naturalisation as a British citizen. The Secretary of State refused the application on the ground that the applicant did not satisfy the "good character" requirement for naturalisation. The applicant says that the decision was flawed and should be quashed, and the Secretary of State should reconsider the application. The Secretary of State says that she was entitled to refuse the application and that the review should be dismissed.

The background

2. The applicant was born in 1962. He is now in his 60s. He was a national of a Middle Eastern country. He was a founding member of a prominent national opposition political society in his country. He was elected to the national parliament in the mid-2000s. In the mid-2010s the authorities in his country proscribed the political society he helped found.

3. The applicant entered the UK in late 2012, using a special passport from his home country and a business visa. He said on his visa application that the purpose of his visit was to participate in a professional training course.

4. The applicant says that whilst in the UK he was told by his wife that his citizenship from his home country had been revoked, and that he was therefore stateless.

5. In late 2012, the applicant applied for asylum in the UK. His application was granted about a year later. In early 2019 he was granted indefinite leave to remain in the UK as a refugee.

6. In early 2020 the applicant applied for naturalisation as a British citizen. The application was refused on 16 February 2022 on the ground that he did not meet the "good character" requirement. The applicant commenced a statutory review of that decision. On 2 August 2022, the Secretary of State withdrew the decision (with the result that the statutory review was treated as withdrawn) and invited representations from the applicant with a view to making a fresh decision on the application for naturalisation. On 22 November 2022, the applicant provided a witness statement to the Home Office in support of his application for naturalisation.

7. The Home Office carried out a good character assessment and concluded that the case was marginal but that, on balance, the application for naturalisation should be granted:

> "1. [The applicant's] application has been considered against the applicable Home Office guidance.
>
> 2. HO have considered the Good Character Guidance. In reviewing the Guidance Home Office have considered whether "unacceptable behaviour" applies in this case. However, Home Office have not been sighted on any information to suggest that [the applicant] has demonstrated behaviour that would fall into this category. Conversely, the information available from [the applicant's] own account (in his witness statement) as well as his public profile, shows positive elements of character, including espousing views that are pro-democracy.
>
> 3. The Home Office assess that there is insufficient information to cast doubt on [the applicant's] character and propose that his application falls to be granted. Home Office find

that the case is marginal. Home Office have taken into consideration [the applicant's] own positive representations. Home Office assess that it is not proportionate to refuse [the applicant's] application for British citizenship based on the evidence available."

8. On 28 June 2023, the Foreign, Commonwealth & Development Office sent an information note to Lord Ahmad and asked him to note the case and the Home Office intention to grant citizenship, and to flag if he disagreed with the FCDO's proposed action to not recommend the Foreign Secretary to make formal representations to the Home Secretary. The information note included the following passages:

> "1. The subject (S) was a founding member of the main ... opposition political society in [his home country], and a Member of ... Parliament. S was seen as one of the public leaders of the 2011 protests, resigning from Parliament shortly after in protest of the treatment of protesters. All ... MPs from [the political society he founded] did the same. *Months later he was detained, charged and convicted on several counts, including instigating hatred and illegally organizing meetings. During ... months in custody, he alleges ill-treatment.*
>
> 3. [The political society] was banned in [his home country] in [the mid-2010s] for inciting violence and terrorism in association with the protest movements in 2011; a number of other political societies and their leaders were banned in the same period. [The political society he belonged to] however was seen as a more moderate group at the time and the Government... conducted a long-running political dialogue with the group. The dialogue broke down in late 2014."
>
> [Emphasis added]

9. It is now agreed that the words in italics refer to the applicant's relative, not the applicant, and they were included in this document in error.

10. On 19 July 2023, the Home Office provided a submission to the Secretary of State. That stated:

> "9. ...Home Office assess that [the applicant's] application falls to be granted. After conducting a thorough good character assessment (see full assessment in the Annex) the Home Office find that the information available is insufficient to cast serious doubt on [the applicant's] character.
>
> 10. When taking into account [the applicant's] own representations Home Office assess that there is insufficient information to come to a robust and reliable finding that [FGF] fails to meet the good character requirement.
>
> …
>
> **Recommendation**
>
> 13. **We recommend that you agree that [the applicant] is granted British citizenship,** given Home Office's assessment that [the applicant] meets the statutory requirement to naturalise as a British citizen, including our view that there is not sufficient evidence to

cause us to consider that he fails to meet the 'good character' requirement... **We therefore recommend that you agree to [the applicant's] application for British citizenship being granted. Do you (Home Secretary) agree?**

Alternatives to the recommendation

14. **In the alternative, you (Home Secretary) may disagree with this assessment and conclude that the information available to the Home Office is sufficient to conclude that [the applicant] is not of good character ...**

Public Sector Equality Duty

16. We do not consider that your duties under section 149 Equality Act 2010 require you (Home Secretary) to take account of any additional information.

…"

11. The "Full good character assessment on [the applicant]" and the information note to Lord Ahmad were annexed to the submission.

12. The Secretary of State decided to reject the recommendation made by the Home Office and to refuse the application for naturalisation. That decision was communicated in an email from the Home Secretary's Private Secretary dated 26 July 2023. That email has not been disclosed to the applicant. The following gist of the email has been disclosed to the applicant:

> "The Home Secretary has reviewed and disagrees with the recommendation and has decided to pursue the alternative course of action set out at paragraph 14."

13. The applicant was informed of this decision on 2 August 2023. That letter states:

> "The grant of naturalisation is at the discretion of the Home Secretary and subject to a number of statutory requirements being met; one such requirement is that the applicant be of good character. Whilst good character is not defined in the 1981 British Nationality Act, we take into consideration, amongst other things, the activities of an applicant, both past and present, when assessing whether this requirement has been satisfied.
>
> The Secretary of State will not naturalise a person for whom she. cannot be satisfied that the good character requirement has been met.
>
> The Home Secretary has refused your application for citizenship on the grounds that you do not meet the requirement to be of good character. It would be contrary to the public interest to give reasons in this case."

14. The Secretary of State certified the decision under section 2D of the Special Immigration Appeals Commission Act 1997. This means that the applicant is entitled to apply to the Special Immigration Appeals Commission to set aside the decision.

Statutory framework

15. Section 6(1) of the 1981 Act states:

> "If, on the application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen."

16. Schedule 1 to the 1981 Act sets out the requirements for naturalisation as a British citizen. It includes a requirement that the applicant is "of good character".

17. It follows from section 6(1) of the 1981 Act that the burden of proof is on the applicant to satisfy the Secretary of State that he is of good character. The Secretary of State only has power to grant a certificate of naturalisation if she is satisfied that the applicant fulfils the "good character" requirement (and the other requirements of schedule 1). Otherwise, she must refuse the application: *Secretary of State for the Home Department v SK (Sri Lanka)* [2012] EWCA Civ 16 *per* Stanley Burnton LJ at [31]. The Secretary of State is entitled to set a high standard for the good character requirement: *R v Secretary of State for the Home Department ex parte Fayed (No 2)* [2001] Imm AR 134. Thus, in *R (Khan) v Secretary of State for the Home Department* [2013] EWHC 1294 (Admin) the court upheld the Secretary of State's decision that the good character requirement was not satisfied because the applicant had been convicted of an offence of using a mobile telephone whilst driving.

18. Section 2D of the Special Immigration Appeals Commission Act 1997 states:

> **"Jurisdiction: review of certain naturalisation and citizenship decisions**
>
> (1) Subsection (2) applies in relation to any direction of the Secretary of State which-
>
> (a) is either -
>
> (i) a refusal to issue a certificate of naturalisation under section 6… of the British Nationality Act 1981 to an applicant under that section…
>
> …
>
> and
>
> (b) is certified by the Secretary of State as a decision that was made wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be made public-
>
> (i) in the interests of national security,
>
> (ii) in the interests of the relationship between the United Kingdom and another country, or
>
> (iii) otherwise in the public interest.

(2) The applicant to whom the decision relates may apply to the Special Immigration Appeals Commission to set aside the decision.

(3) In determining whether the decision should be set aside, the Commission must apply the principles which would be applied in judicial review proceedings.

(4) If the Commission decides that the decision should be set aside, it may make any such order, or give any such relief, as may be made or given in judicial review proceedings."

19. On this review application, the Commission must apply the principles that apply in judicial review proceedings: section 2D(3) of the 1997 Act.

20. In exercising its functions, the Commission must secure that information is not disclosed where disclosure is likely to harm the public interest: rule 4 of the SIAC (Procedure) Rules 2003.

Application to amend the grounds of review

21. Shortly before the hearing, the applicant submitted draft amended grounds of review. He sought permission to amend the grounds. This was opposed by the respondent. We indicated that we would reserve our decision on the application to amend, and would consider the parties' arguments on the entirety of the case, including the proposed amended grounds, before reaching a decision. Having done so, we refuse, save in one respect, the application to amend; It was made at a very late stage without any sufficiently good explanation. Procedural rigour, and adherence to the rules, is at least as important in this context as elsewhere. As will become apparent, the applicant is not in any way disadvantaged by the refusal of the application to amend.

22. The exception is a point raised by the applicant in respect of the assertion, in the information note to Lord Ahmad, that the applicant had been "convicted on several counts, including instigating hatred and illegally organizing meetings." It is now accepted that this was inaccurate. The applicant seeks to rely on this as part of his (already pleaded) ground that the decision to refuse naturalisation was irrational. In effect, it is a further particular of an existing ground of challenge which does not require any new evidence or any significant further argument. To this limited extent, it is in the interests of justice that the applicant is permitted to amend his grounds of review.

The grounds of review

23. The applicant advances 7 grounds of review:

(1) The decision was an unjustified interference with the applicant's right to respect for private and family life, and was therefore unlawful: section 6(1) Human Rights Act 1998, read with article 8 of the European Convention on Human Rights.

(2) The decision was an unjustified interference with the applicant's right to freedom of expression and freedom of peaceful assembly: section 6(1) Human Rights Act 1998, read with articles 10 and 11 of the European Convention on Human Rights.

(3) The decision was a breach of the public sector equality duty.

(4) The decision to refuse naturalisation is not sustainable on any proper basis.

(5) The decision to refuse naturalisation was irrational.

(6) It was unfair and unreasonable to refuse naturalisation, given that the applicant's brother had been granted naturalisation.

(7) The respondent failed to give the applicant notice of any adverse material.

Discussion

24. The Home Office recommended that the applicant should be granted naturalisation. The Secretary of State disagreed, and refused the application. The applicant does not know the reasons why the Secretary of State refused the application, save that the Secretary o.f State apparently concluded that the information available to the Home Office was sufficient to conclude that he was not of good character.

25. The information that was available to the Home Office, and a fuller version of the submission of 19 July 2023, has been disclosed to the special advocates. They advanced closed grounds of review. We address these grounds in a CLOSED judgment.

26. There is no statutory duty to provide reasons for refusing an application for naturalisation. There is, however, a constitutional right of access to the court which is accommodated by means of a statutory right of review. That review must be conducted by applying judicial review principles (see paragraph 19 above). Those principles include reviewing whether the Secretary of State has had regard to irrelevant (or erroneous) factors, or has failed to have regard to relevant factors, or has reached a decision that is unreasonable. In order for such a review to be conducted in a meaningful manner, it is necessary for the Secretary of State to provide sufficient reasons to enable those judicial review principles to be applied. In other words, the reasoning must be sufficient to identify the factors that the Secretary of State took into account, the factors that she left out of account, and the reasoning must also be sufficient to enable the reasonableness of the decision to be reviewed: *R (Help Refugees Ltd) v Secretary of State for the Home Department* [2018] EWCA Civ 2098 *per* Hickinbottom LJ at [122(iii)].

27. Further, the extent and quality of reasoning that is required depends on the circumstances of any individual case. Where a Minister accepts a cogently reasoned recommendation contained in a ministerial submission, it may not be necessary for any further reasons to be provided. But where a Minister rejects such a recommendation, and where the reasons for doing so are not otherwise sufficiently clear, and where there is a statutory right of review, it may be necessary for fuller reasons to be given so as not to thwart that statutory right. This has been recognised in the planning context: *Harada v Secretary of State for Communities and Local Government* [2016] EWCA Civ 169 *per* Lewison LJ at [37] - [40].

28. In *R (Ling) (Bridlington) Ltd v East Riding of Yorkshire County Council* [2006] EWHC 1604 (Admin) Sir Michael Harrison considered the adequacy of a summary of reasons for granting planning permission. At [50] he said:

> "the adequacy of reasons for the grant of permission will depend on the circumstances of each case. The officer's report to committee will be a relevant consideration. If the officer's report recommended refusal and the members decided to grant permission, a fuller summary of reasons would be appropriate than would be the case where• members had simply followed the officer's recommendation. In the latter case, a short summary may well be appropriate."

29. The same point was made in *R (Siraj) v Kirkless Metropolitan Council* [2010] EWCA Civ 1286 *per* Sullivan LJ at [15] - [16] and *R (Telford Trustee No 1 Ltd) v Telford and Wrekin Council* [2011] EWCA Civ 896 *per* Richards LJ at [23]. In *R (Cumbria County Council) v Secretary of State for Transport* [1983] RTR 129 Lord Lane CJ (with whom Ackner and Oliver LJJ agreed) said:

> "The material part of the decision letter was composed mainly, if not entirely, of bald assertions that the Secretary of State was not satisfied upon fact (a) or fact (b) or fact (c), without giving any reason upon which the lack of satisfaction was based. Such decision letters are unfair to the parties. The parties are unable to challenge the reasoning or the reasons, if any, which lay behind the decision. They are particularly reprehensible where the Secretary of State is differing from the commissioners and from the inspector who heard the appeal on matters of fact, as was the case here."

30. Steven Gray, for the respondent, seeks to distinguish this line of authority. He correctly points out that these cases each arise in a planning context where there is a statutory duty to give reasons and where the factual background is very different from the circumstances of the present case. In *Harada,* for example, there was a highly complex background to the impugned decision. The case concerned a high-profile planning dispute relating to the regeneration of the Shepherds Bush area. There had been over 200 objections to a compulsory purchase order. A public inquiry took place over 10 days. The inquiry resulted in a detailed and lengthy report, recommending that the compulsory order should not be confirmed. The Secretary of State disagreed with the conclusion of the public inquiry. It was in that context that the court analysed the quality of reasoning that was required. The context here is very different.

31. In principle, we agree with Mr Gray that care should be taken before transposing observations about the quality of reasoning that is required in a planning case to the very different situation of a naturalisation decision. However, Mr Gray accepted, rightly in our view, that the reasoning must be sufficient to understand the basis of the decision so that it can be reviewed. Where a decision rejects a cogently reasoned recommendation to grant naturalisation, it is unlikely that the reasoning will be sufficient unless it explains (at least implicitly) why that recommendation was rejected.

32. Turning to the present case, the burden was on the applicant to satisfy the respondent that he was of good character. If she was not satisfied that he was of good character then she was required to refuse the application. In the light of the way the submission was constructed (see, in particular, paragraph 14 of the submission, which is to be taken as encapsulating the Secretary of State's decision and reasons), the Secretary of State did not just consider that the applicant had failed to prove his good character. She went further and positively concluded that he is not of good character. It is this decision that must be reviewed. Accordingly, the critical underlying issue for the Secretary of State was whether, in the light of the information available to the Home Office, the applicant was not of good character.

33. Nothing in the submission, and nothing in the' email from the Secretary of State's private secretary, explains why the Secretary of State rejected the analysis of the Home Office, and concluded that the information available to the Home Office was sufficient to conclude that the applicant is not of good character.

34. Such explanation did not need to be elaborate, but it did need to be sufficient to explain why the Secretary of State disagreed with the Home Office analysis. However, no reason at all was given for the Secretary of State's decision on the critical issue. It is not possible to infer what the Secretary of State's reasoning was, or that it was reasonable. There are a number of different possibilities, some of which may have involved a legal error. One of those possibilities is that the Secretary of State may have been influenced by the erroneous information in the FCDO information note as to the applicant being detained, charged and convicted on several counts, including instigating hatred and illegally organizing meetings (see paragraph 8(1) above). That material potentially reflects adversely on the applicant and might be relevant to the weight that the Secretary of State attached to his account. If so, then this was (through no fault of the Secretary of State) an error, because the information was incorrect.

35. Without reasons it is simply not possible to know whether the Secretary of State took account of all relevant factors, disregarded irrelevant factors, and reached a reasonable conclusion. In these circumstances, the reasoning was not sufficient to understand why the Secretary of State rejected the Home Office advice that the information available to the Home Office was insufficient to conclude that the applicant is not of good character.

36. We therefore accept the Special Advocates' contention that the decision is flawed for lack of adequate reasons, that it should be quashed, and that the Secretary of State should consider the matter afresh.

37. It is not necessary separately to consider the applicant's open grounds of review. Nor is it desirable to do so: the inadequacy of the reasons means that it is not possible to carry out a meaningful review of the decision.

Outcome

38. The claim for statutory review of the Secretary of State's decision succeeds. We quash the decision of the Secretary of State to refuse the applicant's application for naturalisation. The Secretary of State must reconsider the application for naturalisation.