SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,
Breams Buildings
London

Thursday, 31 July 2014

BEFORE:

THE HONOURABLE MRS JUSTICE NICOLA DAVIES
UPPER TRIBUNAL JUDGE PETER LANE
SIR STEPHEN LANDER CB KCB

BETWEEN:

FM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

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MR D BAZINI (instructed by Broudie Jackson Canter) appeared on behalf of the appellant.

MS C CALLAGHAN and MR J BLAKE (instructed by the Treasury Solicitor) appeared on behalf of the Secretary of State.

MS J FARBEY QC (instructed by the Special Advocates' Support Office) appeared as Special Advocate.

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RULING

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MRS JUSTICE NICOLA DAVIES:

1. This is an application on behalf of the appellant for what are described as disclosure and questions under the Equality Act 2010 and Section 8 of the Human Rights Act 1998. The application is made subsequent to a judgment and directions given by this Commission, specifically by Upper Tribunal Judge Peter Lane, on 18 July 2014, in relation to issues of discrimination pursuant to a number of statutes. The effect of the Commission's ruling on that day is to limit the claim of the appellant to one of race discrimination under the Race Relation Act 1976. The appellant failed upon his submission relating to the advancement of claims pursuant to the Equality Act 2010.

2. However, at paragraph 52 of the ruling the Commission stated:

> "Both FM and AM have raised ECHR Article 8 in their grounds and FM has expressly raised Article 14. Nothing in this ruling is intended to preclude discrimination from being argued in the context of the ECHR that would otherwise be relevant, as to which see paragraphs 20 to 22 of SIAC's judgment on the standard of review."

3. I turn to those paragraphs, and in particular paragraph 22, the judgment of the Commission given by Mr Justice Irwin, where he said,

> "Drawing these threads together in the absence of an arbitrary or discriminatory decision or at the very least some other specific basis in fact, we conclude that refusal of nationalisation will not engage Convention rights. It will be for a given appellant to lay the groundwork for such a claim on the basis of specific fact. We reach no conclusion here as to the individual position of these appellants, the appellants being FM and AM. In the absence of such a claim based on the ECHR, Mr Southey's second ground for a duty to find precedent fact falls away."

4. We make clear today that we observe and follow the ruling of the Commission and we are making no observations whatsoever as to the strength of a claim on the basis of specific fact and that will be for determination on another day. However, it is the case that in the grounds drafted on behalf of the appellant, FM, very clearly Article 14 is relied upon and from that Articles 8, 9 and 10. It is really on the basis of those grounds and the provisions of the Race Relations Act 1976 that disclosure is sought today.

5. Disclosure is sought in respect of a number of matters which are covered in 13 questions which for the purpose of this ruling I have no intention of repeating, save to say that the Secretary of State resists some of them and is willing to provide disclosure on other matters. One ground that appears to be one of real contention between the parties is the spectrum of disclosure in so far as time is concerned. It is a fact that in this case the original decision was made in July 2006 and confirmed in 2007. The Secretary of State is willing to give disclosure of documents in 2006 and up to the decision date in February 2007. However, the appellant seeks to go beyond that and seeks to obtain disclosure for the period 2006 to 2014.

6. In making that application, the appellant relied on a number of facts: first, this is a test case, many others are going to follow, and it would be proportionate now to ensure that documents are disclosed to avoid piecemeal disclosure and other difficulties in other cases in later proceedings.

Secondly, this is an application on behalf of a Muslim. It is stated that there are many such cases, which have been refused by the Secretary of State, and, therefore, that, as a fact, is sufficient to warrant looking at what represents or could represent a pattern of decision making.

7. The Secretary of State today, and I do not say this critically, has been unable to assist as to what percentage of applications derive from those of the Muslim faith, but certainly for refusal on the grounds of national security it does not seem to be denied that a substantial proportion emanates from those of the Muslim faith. However, it is said in this case that the appellant's refusal was on the basis of good character.

8. We bear those arguments in mind. The primary refusal of the Secretary of State is that this is no more than a fishing exercise, its purpose being to establish facts. As to that we bear in mind two matters, first, an appellant in a case such as this has particular difficulties which may not easily be overcome in establishing those facts, which they seek to rely upon. Secondly, and as was noted by Mr Justice Irwin in the judgment which he handed down in this case, we bear closely in mind rule 4(3) where, because of the unusual procedures in SIAC, there is placed a positive duty on SIAC to satisfy itself that the material available to it enables it properly to determine proceedings. We, of course, bear in mind that the test of disclosure is that it is necessary for the fair disposal of this matter. That is, of course, at the forefront of our minds, however, bearing in mind what I have already identified as the particular difficulties of this appellant and appellants in other cases, it is our view that they are entitled to disclosure over a period of years which would span the decision itself to see whether, in fact, there is the pattern which is or could be alleged.

9. In our view, given the date of the original decision, which was 2006, we would allow a period of 2006 to 2009 for disclosure of documents. That is as far as we go for the time being and what we are now going to do is to ask the parties to retire and talk to each other and see, in view of our ruling, whether they can come to a measure of agreement as to what, in fact, is being sought.

That is what I am going to ask you to do, but we are here and we will obviously wait this afternoon. We are not going to go away. Before we rise we want to know if there is anything more that we can say which would better assist the progress between the parties?

Can I say that I have been very properly corrected by both of those with whom I sit? 2009 should be 1 January 2009. The fault is mine. What we were seeking was a three-year period. That is my fault.

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