

SPECIAL IMMIGRATION APPEALS COMMISSION

APPEAL NUMBER: SN/79/2019

DATE OF HEARING: 27 July 2020

DATE OF JUDGMENT: 27 August 2020

BEFORE:

**THE HONOURABLE MRS JUSTICE STEYN
UPPER TRIBUNAL JUDGE COKER
MR R GOLLAND**

BETWEEN:

AB

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

The Applicant appeared in Person

**MRS HELEN MALCOLM QC (instructed by the Special Advocates' Support Office)
appeared as Special Advocate.**

**MR EDWARD PLEETH (instructed by the Government Legal Department) appeared
on behalf of the Respondent.**

OPEN JUDGMENT

A. Introduction

1. The Applicant seeks to challenge the Respondent's decision dated 15 February 2019 refusing his application for naturalisation as a British citizen under section 6 of the British Nationality Act 1981 ("the 1981 Act").
2. The decision letter informed the Applicant that the "Home Secretary has refused your application for citizenship on the grounds that you do not meet the requirement of good character". The letter also informed the Applicant that the Secretary of State has certified the decision pursuant to section 2D of the Special Immigration Appeals Commission Act 1997 ("the 1997 Act").
3. In the refusal letter of 15 February 2019, no further explanation for the decision was provided. However, by two letters from the Government Legal Department, dated 29 March 2019 and 19 June 2020, the Applicant was informed that his application was refused because he has "been linked to the proscribed organisation Lashkar-e-Tayyaba/Jama'at' ud Da'wa". Lashkar-e-Tayyaba ("LeT") is a "proscribed terrorist organisation" pursuant to Schedule 2 of the Terrorism Act 2000, having been added to Schedule 2 of that Act on 29 March 2001: see Article 2 of the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2001. The Government laid an Order in March 2009 which provides that Jama'at' ud Da'wa ("JuD") "should be treated as another name for the organisation which is already proscribed as Lashkar e Tayyaba".
4. The OPEN grounds of review, relied on by the Applicant, are:
 - a. Was it unlawful for the Respondent to refuse the Applicant's application for naturalisation on the grounds that the Applicant does not meet the statutory requirement to be of good character? In short, the Applicant contends that the Respondent must be mistaken in her understanding of any CLOSED material.
 - b. Is the decision *Wednesbury* unreasonable because it does not take into account the factors the Applicant has raised in his favour?
 - c. The Applicant also relied on the delay in making the decision. However, he made clear that he does not suggest that the decision is rendered unlawful by delay. Rather, his submission was that the excessive delay in determining that he was not a person of good character is indicative of the lack of credible evidence to support such a conclusion.
5. The Applicant submitted an OPEN appeal bundle, including a witness statement of the Applicant dated 28 June 2020, a chronology of events, a list of absences from the UK from 28 December 2008 to 16 January 2019, and supporting evidence. Until shortly before the hearing, the Applicant was represented. At the hearing, he represented himself. He relied on the skeleton argument and grounds which had been prepared for him by his former representative. And he made submissions with the benefit of an Urdu interpreter, Ms Nabila Rahman. We are grateful to Ms Rahman for her assistance, as well as to the Applicant, the Special Advocate, Mrs Malcolm QC, and Counsel for the Respondent, Mr Pleeth, for their helpful written and oral submissions.

B. Background

6. The background to these proceedings is set out in the OPEN witness statement of Ms Christine Hughes, a Senior Executive Officer in the Office for Security and Counter-Terrorism, within the Home Office, as well as in the Applicant's witness statement.
7. The Applicant was born on 1 January 1969 in Gujrat, Pakistan. He is a national of Pakistan. The Applicant states that he entered the UK on 24 January 2008, having been granted entry clearance on 16 December 2007 and leave to remain until 16 June 2008 as a domestic worker in a private household (namely his then Saudi national employer who was visiting the UK). On 9 May 2008, the Applicant applied for leave to remain in the UK as a domestic worker (having found work with a UK based employer). This application was granted on 2 June 2008. The Applicant submitted an application to renew his leave to remain in the UK on 11 May 2009, which was granted on 5 August 2009. On 21 March 2012, the Applicant submitted an application for indefinite leave to remain in the UK, which was granted on 19 March 2013.
8. The Applicant's wife and four dependant children joined him in the UK on 18 December 2016. On 23 October 2017, the Applicant's fifth child (a British citizen) was born in the UK. On 19 November 2019, the Applicant's wife and older four children were granted leave to remain in the UK until 10 June 2022.
9. The Applicant applied to obtain British citizenship on 25 April 2014. Section 3 of the naturalisation application form addresses the good character requirement. It states (so far as relevant):

“In this section you need to give information which will help the Home Secretary to decide whether he can be satisfied that you are of good character. Checks will be made with the police and possibly other Government Departments, the Security Service and other agencies.”
10. Section 3.16 asked: “Have you ever been a member of, or given support to an organisation which has been concerned in terrorism?” The Applicant answered “No” to this question.
11. Section 3.18 asked: “Have you ever engaged in any other activities which might indicate that you may not be considered a person of good character?” The Applicant answered “No” to this question.
12. Section 6.1 of the application contains a declaration, signed by the Applicant, confirming as follows:

“I, [AB], declare that, to the best of my knowledge and belief, the information given in this application is correct. I know of no reason why I should not be granted British citizenship. I promise to inform the Home Secretary in writing of any change in circumstances which may affect the accuracy of the information given whilst this application is being considered by the Home Office. I understand that information given by me will be treated in confidence but may be submitted for checking against records held by other Government Departments, the Security Service and other agencies, local authorities and the police, where it is necessary for immigration or nationality purposes, or to enable these bodies to carry out their functions.”

13. At section 6.2, the Applicant confirmed that he had read and understood the Guide AN / Booklet AN, specifically, "Section 3: Good Character" of the Guide AN and "9. Good Character" of Booklet AN.
14. On 6 June 2014, the Applicant's application for naturalisation was allocated to a caseworker who completed a Chapter 18 minute sheet.
15. On 15 February 2019, a decision letter was sent to the Applicant stating:

"The Home Secretary has refused your application for citizenship on the grounds that you do not meet the requirement of good character. It would be contrary to the public interest to give reasons in this case."
16. As we have said, in letters dated 29 March 2019 and 19 June 2020, further information as to the reasons for refusal were disclosed to the Applicant. Specifically, the later letter informed the Applicant: "Your application for naturalisation was refused because you have been linked to the proscribed organisation Laskhar-Tayyaba / Jama'at' ud Da'wa", and drew attention to the Order which provided that JuD should be treated as another name for the proscribed organisation LeT. The earlier letter had been in the same terms, save that it had not referred to JuD.

C. The law

17. Section 6(1) of the 1981 Act provides:

"If, on an 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 certification of naturalisation as such a citizen."
18. Paragraph 1(1) of Schedule 1 to the 1981 Act provides:

"Subject to paragraph (2), the requirements for naturalisation as a British citizen under section 6(1) are, in the case of any person who applies for it -
...
(b) that he is of good character; ..."
19. Where the Secretary of State certifies, pursuant to s.2D(1) of the 1997 Act, that her refusal to grant naturalisation under s.6(1) of the 1981 Act was made wholly or partly in reliance on information which in her opinion 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, as is the case here, the Applicant may apply to the Commission to set aside the decision pursuant to s.2D(2) of the 1997 Act.
20. Section 2D(3)-(4) of the 1997 Act provides:

"(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.”

21. In *MSB v Secretary of State for the Home Department* (SN/41/2015), Flaux J drew together the authorities at [25]-[30]. The principles that we apply in reviewing this naturalisation decision are:

- a. An applicant for naturalisation is seeking the grant of a privilege, not a right, and the 1981 Act vests the Secretary of State with considerable discretion to refuse an application.
- b. The burden of proof is on the applicant to satisfy the Secretary of State that the requirements of Schedule 1 to the 1981 Act are satisfied, including that he is of good character.
- c. The standard of proof is the balance of probabilities.
- d. While the Secretary of State must exercise her powers reasonably, the test for disqualification from citizenship is subjective. The Secretary of State may set a high standard for the good character requirement. If she is not satisfied that an applicant is of good character, the Secretary of State must refuse the application if the statutory test is not met. She does not have a discretion to grant it.

22. As Flaux J observed in *MSB* at [28]:

“The proper approach of the Commission to statutory review of refusal of naturalisation was established by the Preliminary Issues Judgment of the Commission in *AHK and others v SSHD* (SN/2/2014, SN3/2014, SN4/2014 and SN5/2014):

(1) The Commission is required to apply a conventional judicial review approach to naturalisation challenges. The Commission’s task is to review the facts and consider whether the findings of fact by the decision-maker are reasonable. In that part of the review there is no place for deference to the Secretary of State: see [14] and [32].

(2) The Commission does not need to determine for itself whether the facts said to justify a naturalisation decision are in fact true. As a matter of common law and ordinary public law, the existence of facts said to justify the denial of nationality does not constitute a condition precedent, and fact-finding is not necessary to determine whether the procedure is fair or rational: see [23]-[24].

(3) Once the facts and inferences of fact have been reviewed, and if the factual or evidential conclusions drawn by the Secretary of State are found to be reasonable, the Commission should proceed to review the judgments made by the Secretary of State based on that factual picture. In that part of the review: “public law principles do support a degree of deference to the Secretary of State for well-established reasons. The

Minister has democratic responsibility and answers to Parliament; the Minister is entitled to formulate and implement policy; the Minister has expert advice to assist her conclusions. Here the task of the Commission is to interfere when and if the Secretary of State has been unreasonable, allowing for due deference paid”: [32].

(4) In the absence of an arbitrary or discriminatory decision, or at the very least some other specific basis in fact, refusal of naturalisation will not engage ECHR rights. The challenge to the decision is open only on grounds of rationality; and even if ECHR rights are engaged, the exercise is still one of proportionality rather than a full merits review by the Commission: [22] and [24]. It would be very rare in this context for there to be a breach of Article 8 rights, in other words that interference with private or family life will be disproportionate, given the level of public interest in enforcing a legitimate immigration policy: [33].”

23. The Home Office document entitled “Nationality: Good Character Requirement” provides case workers with practical instructions as to how to go about deciding whether to be satisfied that an applicant for naturalisation has shown that he is of good character. The application form and the guidance provided in section 3 of the Guide AN and part 9 of the Booklet AN provided the Applicant with assistance as to the sorts of matters which would be of concern to the Secretary of State and afforded him the opportunity to set out, before the decision was taken, his case as to his character and to disclose any matters adverse to his application.

D. Analysis and conclusions

24. For the reasons which we have given in our CLOSED judgment, we have concluded that:
- a. The decision was unlawful because it failed to comply with the *Wednesbury* principles. In particular, in our CLOSED judgment, we have identified material considerations which were not taken into account, irrelevant considerations which were taken into account, and an indisputable error of fact.
 - b. However, the decision was not irrational.
 - c. The Respondent did not fail to take into account evidence put forward by the Applicant.
 - d. As the Applicant accepted, the delay in determining his application does not render the decision unlawful.

E. Relief

25. In some cases the Commission is able to say with complete confidence that the outcome would have been the same, even if the failures in the decision-making which have been found had not occurred. This is not such a case. We are of the clear view that the decision should be quashed and the application should be remitted for reconsideration by the Secretary of State. The effect of this direction, as Counsel for

the Secretary of State has acknowledged, is that the Applicant does not need to make a fresh application for naturalisation (or pay a further fee) because his original application remains extant. Given the length of time that has elapsed since the Applicant made his application, he should be given an opportunity to submit further evidence in support of his application, if he wishes.