

SPECIAL IMMIGRATION APPEALS COMMISSION

Field House,  
Breams Buildings  
London  
EC4A 1WR

Friday, 31<sup>st</sup> January 2014

BEFORE:

THE HONOURABLE MR JUSTICE IRWIN

BETWEEN:

J2

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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MR S GRAY (instructed by the Treasury Solicitor) appeared on behalf of the Secretary of State.

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RULING

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MR JUSTICE IRWIN:

1. In this case, on 2<sup>nd</sup> April 2013, the Secretary of State sent to J2 - by recorded delivery and standard first-class post - to his last known address, correspondence appeal forms and a notice informing him that the Secretary of State intended to make an order to deprive him of British nationality. On 4<sup>th</sup> April 2013, the notice of intention was deemed to have been served on the appellant and an order was made depriving him of British citizenship. On the same day, 4<sup>th</sup> April, Mr Philip Larkin, the relevant official, spoke to the appellant's father and, in a way which has become established practice in such cases, explained to him that an important notice had been served on the appellant's last known address. A copy of all the material was then served on the appellant's father and the covering letter to the father confirmed that the deprivation order had been made.
2. On 30<sup>th</sup> April 2013, a faxed copy of the notice of appeal to SIAC was received by Treasury Solicitors, and was received in the Commission on even date. The notice nominated the appellant's representative as Ms Natalie Garcia of Fountain Solicitors. The solicitors took conduct of the case, but indicated to the Commission, in successive messages, that they were having difficulties in progressing. Funding had not been obtained by 4<sup>th</sup> June. Again, on 17<sup>th</sup> June, Fountain Solicitors indicated that they had not received a decision on funding. On 29<sup>th</sup> July, the Commission enquired of Fountain Solicitors as to whether progress had been made. There was no reply. On 3<sup>rd</sup> September, the Commission emailed all parties with a message noting that there had been no response to the request for information on 29<sup>th</sup> July and pressing for a

response. On 5<sup>th</sup> September 2013, Ms Garcia did respond by email to the Commission, copied to the parties. She entered her apologies for the delay and confirmed that she was without instructions and was unable to progress the matter.

3. On 10<sup>th</sup> September, the Treasury Solicitors, through Guy Richardson, requested that the matter should be struck out and indicated that that would be the application of the Secretary of State.
4. On 27<sup>th</sup> September, the Commission sent a notice to the appellant, to the former solicitors, to the father's address and to the appellant's last known address, those three addresses having been designated by me, as Chairman, as being the appropriate addresses to which notices should be sent. This was a formal notice indicating that there was an application to dismiss the appeal, and setting a period of 14 days in which the appellant could file and serve draft directions and begin to progress his appeal. That period of 14 days, of course, would expire in mid-October.
5. The Commission received no response. On 30<sup>th</sup> October, the Commission directed that the Treasury Solicitors should make a formal written application to strike out the appeal, setting out the grounds for the strike out. That application was issued on 5<sup>th</sup> December 2013, supported by a witness statement from Mr Richardson. That also was served on the designated addresses of the appellant.
6. On 9<sup>th</sup> January 2014, a written notice of today's proposed hearing was served on the designated addresses. There is no appearance today. There has been no contact from J2 or any representative of J2.

7. Mr Gray asks that I should strike out this matter as an abuse of the Commission's process, given the clear pattern of inactivity, and he says that the natural inference is that the appellant does not intend to pursue his appeal.
  
8. Rule 11B of the SIAC Procedural Rules (as amended) provides that the Commission may strike out a notice of appeal if it appears to the Commission that there is an abuse of the Commission's process under Rule 40, which is headed "Failure to Comply with Directions". The relevant rule provides that

"Where a party ... fails to comply with the direction, the Commission may serve on him a notice which states the respect in which he has failed to comply with the direction, a time limit for complying with the direction and notice that the Commission may strike out the notice of appeal".

I have selected from the rule the relevant words to this application.

9. In this case, it seems to me established beyond doubt that the appellant has failed to comply with directions and there is a breach of Rule 40 and the power to strike out arises properly there. It also seems to me correct, as Mr Gray submits, that the degree of inactivity constitutes or is capable of constituting an abuse of the Commission's process.
  
10. Without descending to detailed argument, it seems to me that, since the breach of Rule 40 is unarguable and since there might be arguments if the facts behind the inactivity

were known, I am content to strike out under Rule 40. Without more, an abuse would be established, but there is no need to make such a finding given the established breach giving rise to the power under Rule 40.

11. For those reasons, the appeal is struck out.

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