SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: SV/01/2024 & SV/02/2024
Hearing Date: 13th May 2025
Date of Judgment: 19 September 2025

Before

THE HONOURABLE MR JUSTICE SAINI
UPPER TRIBUNAL JUDGE BRUCE
MS CHRISTINE MCQUEEN

Between

METIN KAYA

Appellant

and

THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

OPEN JUDGMENT

Mr Alex Papasotiriou (instructed by **Richmond Chambers LLP)** appeared on behalf of the Appellant

Ms Natasha Barnes & Mr Karl Laird (instructed by **the Government Legal Department**) appeared on behalf of the Secretary of State

Mr David Lemer (instructed by **Special Advocates' Support Office**) appeared as the Special Advocate on behalf of the Appellant

Mr Justice Saini: -

Overview

1. On 19 July 2024, the Secretary of State for the Home Department ("the SSHD") refused the Applicant's application for a 5-year visit visa on the basis that his presence in the UK is not conductive to the public good ("the Decision"). The SSHD certified the Decision under section 2F of the Special Immigration Appeals Commission Act 1997 ("the 1997 Act"). The Applicant has applied to the Commission for a review of the Decision.

2. Mr Papasotiriou, Counsel for the Applicant, was in the difficult position of addressing a limited OPEN case but made attractively presented and concise submissions on the basis of the material he had seen. He presented the arguments under four grounds of review which we address in turn below.

3. As to evidence, the Applicant submitted a witness statement dated 4 March 2025 and we received a short OPEN witness statement on behalf of the SSHD dated 15 November 2024. The Applicant's witness statement was not before the SSHD at the time of the Decision and is not admissible in a "judicial review" challenge of the type before us. Although, in our pre-reading, we considered this statement, we must limit ourselves to the material which was or ought to have been before the decision-maker at the time of the Decision under traditional judicial review principles. Counsel for the Applicant indeed did not ultimately press for the admission of the Applicant's witness statement, as we understood his submissions. As to the contrast between true "appeals" before the Commission and "reviews" of the type with which we are concerned, see U3 v SSHD [2025] UKSC 19 ("U3"), per Lord Reed at [43]-[45].

The Facts

4. On 30 March 2022, following the expiration of his previous visa, the Applicant, a national of Turkey born on 28 November 1960, applied for a 10-year visit visa.

5. On 27 June 2021, the Applicant was "port stopped" at Gatwick Airport pursuant to Schedule 7 of the Terrorism Act 2000 ("the Gatwick Stop"). Police officers searched the Applicant's luggage and discovered three smartphones, 13 SIM cards (some of which were taped inside his suitcase) and £10,000.00 in cash. The Applicant was interviewed. When asked about the smartphones and the SIM cards, the Applicant stated that he bought a new SIM card every time the data on the previous one was exhausted and did not dispose of them as they contained details of his contacts.

6. The Applicant withdrew his application for a 10-year visit visa, and, on 11 April 2023, he applied for a 5-year visit visa. In the Decision, the Applicant was informed that his applications had been refused because he did not meet the requirements of paragraph 9.3.1 of Part 9 of the Immigration Rules (see [11] below) as his presence in the UK was deemed not conducive to the public good. The Applicant was also informed that the Decision had been certified under section 2F of the 1997 Act on the basis that it was made in reliance on information which should not be made public.

The Decision

7. The consideration minute records the factors that were taken into account in making the Decision. Reference was made to the operational guidance which applies to the consideration of non-conducive refusals: *Suitability: non-conducive grounds for refusal or cancellation of entry clearance or permission* (Version 3.0, January 2024) ("the Guidance"), which we set out in more detail below at [15]. It was noted that the Guidance makes clear that the decision-maker must consider "what threat" the individual poses to the UK's public, and should balance factors in their favour against negative factors to reach a "reasonable and proportionate decision". In this case, the decision-maker took into account that the Applicant was not known to have circumvented immigration rules or to have engaged in criminal behaviour.

8. Consideration was also given to Article 8 of the European Convention on Human Rights ("Article 8"). It was noted that the Applicant was not in the UK, so no Article 8 rights were engaged. In respect of family life, it was noted that the Applicant's son was studying at a university in the UK. However, any interference with his Article 8 rights was considered to be necessary and proportionate due to the Applicant's ability to continue a relationship with his son outside the UK. Section 55 of the Borders, Citizenship and Immigration Act 2009 was not considered applicable as the Applicant's son was over 18. There was rightly no submission made to us that Article 8 considerations were engaged in this case.

9. The consideration minute stated that the Applicant's presence in the UK posed a risk and the best way to mitigate the risk was to prevent his entry by refusing his visitor visa. It stated:

> "The relevant Home Office team assess that [the Applicant] would pose harm to the United Kingdom if he were to be issued a visit visa, despite the positive factors mentioned above. The relevant Home Office team agree that [the Applicant's] presence in the United Kingdom would be non-conducive to the public good.
>
> The relevant Home Office team assess that it is necessary and proportionate to refuse [the Applicant's] visa application on non-conducive grounds in spite of the positive factors mentioned above. Whilst the relevant Home Office team note there may be some inconvenience caused to [the Applicant] in light of the refusal of his visa, this will not prevent him from meeting his son in Turkey or in a third country of their choice."

10. A Second pair of Eyes Check was conducted which concurred with the original recommendation.

The Legal Framework

11. Paragraph 9.3.1 of the Immigration Rules provides a mandatory ground for refusal of entry clearance, permission to enter and permission to stay where the applicant's presence in the United Kingdom is not conducive to the public good:

> "9.3.1 An application for entry clearance, permission to enter or permission to stay must be refused where the applicant's presence in the UK is not conducive to the public good because of their conduct, character, associations or other reasons (including convictions which do not fall with the criminality grounds)".

12. In conducting a review under s.2F of the 1997 Act, we must apply the principles which would be applied in judicial review proceedings: s.2F(3) of the 1997 Act: U3 at [43].

13. We respectfully adopt the approach in T2 v. SSHD (SN/129/2016) ("T2"). In that case, the Commission recorded the SSHD's submission as to what it meant to apply the principles which would be applied on an application for judicial review:

> "We have to review the closed material with care, bearing in mind the possibility that there may be other, perhaps innocent, explanations to rebut it. We are not required to consider all the material which could have been available to the official who wrote the submission to the Secretary of State which led to the direction, but rather. 'the underlying material on which the [author of the submission to the Secretary of State] actually relied in order to identify facts or reach the conclusion'. That material needs not be exhaustive of all that is known, but must be sufficient to justify the contents of the submission. A review is 'an analysis of the facts and the basis for the facts which led to the recommendation or conclusion, together with the decision and its reasoning'. That material must be sufficient to permit challenge, if appropriate 'to the underlying rationality of any part of' the decision". (§21)

14. At §22 the Commission accepted that submission and observed:

> '...it follows that we are not concerned with whether the allegation made against T2 in open was true, but whether there was evidence before the Secretary of State on which it was open to her reasonably to conclude that the allegation was true. It follows that T2's evidence to us, denying the allegation, is irrelevant.'

The Guidance

15. The operational guidance in force at the time the Decision was made provides, insofar as material, as follows:

> "A person's presence may be non-conducive to the public good for a range of reasons – for example because of reprehensible behaviour falling short of a conviction, or because their identity, travel history or other circumstances means that their presence in the UK poses a threat to UK society. A person does not need to have a criminal conviction to be refused admission on non-conducive grounds.
>
> Many types of offending or reprehensible behaviour can mean that an individual's presence in the UK would not be conducive to the public good, and many factors will weigh into this such as:
>
> - The nature and seriousness of the behaviour
> - The level of difficulty we could experience in the UK as a result of admitting the person with that behaviour
> - The frequency of the behaviour
> - The other relevant circumstances pertaining to the individual
>
> Other examples of situations where a person's presence may be non-conducive to the public good include the following:
>
> - The person is a threat to national security, including involvement in terrorism and membership of proscribed organisations

- The person has engaged in extremism or other unacceptable behaviour
- The person has committed serious criminality
- The person is associated with individuals involved in terrorism, extremism, war crimes or criminality
- Admitting the person to the UK could unfavourably affect the conduct of foreign policy between the UK and elsewhere
- There is reliable information that the person has been involved in war crimes or crimes against humanity – it is not necessary for them to have been charged or convicted
- The person is the subject of an international travel ban imposed by the United Nations (UN) Security Council or the European Union (EU), or an immigration designation (travel ban) made under the Sanctions and Anti-Money Laundering Act 2018
- The person has committed immigration offences
- If admitted to the UK the person is likely to incite public disorder

This list is not exhaustive. In all cases you must consider what threat the person poses to the UK pubic. You should balance factors in the individual's favour against negative factors to reach a reasonable and proportionate decision."

16. We turn to the grounds.

Ground 1 : irrationality

17. The first complaint is that the refusal was irrational and/or was based on irrelevant considerations. Based on our reasons in the CLOSED judgment, we dismiss this complaint. In addition, we are satisfied that the SSHD expressly considered all relevant considerations including mitigating factors which favoured the Applicant, such as the fact that the Applicant had not engaged in circumvented immigration control and that he had not engaged in criminal behaviour.

Ground 2: procedural fairness

18. The core argument for the Applicant under this ground was that there was an obligation under the principles of procedural fairness to give him "advance notice of the proposed decision and opportunity to respond" (Skeleton [27]). It was also argued that there was a failure to give adequate reasons for the Decision. In this regard, it was said this duty was breached because all that was given to the Applicant was a reference to the wording of paragraph 9.3.1 of the Immigration Rules.

19. We reject this complaint for a number of reasons but start by underlining that the requirements of procedural fairness are not matters of rationality but for the court to decide applying common law principles within the statutory framework. We turn to our reasons.

20. First, the statutory framework does not require advance notice to be provided or an opportunity to make representations on a proposed refusal in a visa application. This point is however not determinative but a starting point. Second, as a matter of procedural fairness at common law, the fact-situation is not one where some form of

prior right was being denied to the Applicant. In our judgment the obligations of procedural fairness in this context are met by fair warning of the types of matters which might be taken into account by way of the application form and the Guidance. We have set out the Guidance above and we were taken to the application form during submissions. We adopt what was said in R (Thamby) v Home Secretary [2011] EWHC 1763 (Admin) at [68]. In our judgment, the Guidance sufficiently sets out the SSHD's approach to considering whether a person's presence in the UK is conducive to the public good. We also agree with the submission from Ms Barnes for the SSHD that the application form shows the types of matter which are relevant to the consideration of an application. Third, the obligation of advance notice cannot apply where the very information cannot be disclosed in the public interest: see AMA v SSHD (SN/42/2015) at [9]. Fourth and finally, an advance notice obligation would impose an undue administrative burden if a proposed visa refusal would always impose an advance notice obligation.

21. As to the duty to give reasons, we do not in the context of this case consider that the nature of the reasons fell below common law requirements given the public interest in non-disclosure. There has been a Rule 38 process where the issue of gisting, if appropriate, could have been raised.

Ground 3: Tameside

22. The relevant legal principles are not in dispute and both parties referred to the summary in Balajigari v SSHD [2019] EWCA Civ 773 at [70]. As underlined in that case, the court should only intervene if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision.

23. Counsel for the Applicant argued that the OPEN evidence does not disclose that reasonable inquiries were made by the SSHD for instance in relation to seriousness or frequency of the impugned behaviour. Reliance was also placed on the record of the interview following the Gatwick Stop and it was submitted it does not support any suggestion of the Applicant being involved in wrongdoing or criminal behaviour.

24. We reject this for the reasons given in the CLOSED judgment. In our judgment reasonable steps were taken on behalf of the SSHD to inform herself of matters material to the Decision, consistently with the statutory scheme.

Ground 4: Failure to apply the Guidance

25. We reject this complaint. In our judgment, the SSHD specifically and correctly applied the Guidance in her consideration minute.

Conclusion

26. For these reasons, and those given in our CLOSED judgment, the application is dismissed.