

**SPECIAL IMMIGRATION APPEALS COMMISSION**

Appeal No: SN/02/2023  
Hearing Date: **18 October 2024**  
Date of Judgment: **6<sup>th</sup> January 2025**

Before

**THE HONOURABLE MR JUSTICE HILLIARD  
UPPER TRIBUNAL JUDGE OWENS  
MR ROGER GOLLAND**

Between

**NAHER EBRAHEEM FARROKH**

Appellant

and

**THE SECRETARY OF STATE  
FOR THE HOME DEPARTMENT**

Respondent

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**OPEN JUDGMENT**

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**Mr R McKee** (instructed by **David Tang & Co Solicitors**) appeared on behalf of the Appellant.

**Ms N Parsons** (instructed by **Government Legal Department**) appeared on behalf of the Respondent.

**Mr A Jamieson** (instructed by Special Advocates' Support Office) appeared as Special Advocate.

**Mr Justice Hilliard :**

**Introduction**

1. The Applicant seeks a review of the decision made by the Secretary of State for the Home Department (“SSHD”) on 2 October 2023, refusing his application for naturalisation as a British citizen under s.6 of the British Nationality Act 1981. The application is made pursuant to s.2D(2) of the Special Immigration Appeals Commission Act 1997.

**Background**

2. NEF is a Syrian national, born on 3 January 1983. He arrived in the UK in about June 2008. He made a successful asylum claim in 2011 and was granted refugee status and limited leave to remain on 6 July 2012.
3. On 29 November 2017, the police went to speak to NEF at his home address. He was told that intelligence indicated that an individual based at his address had attempted to access Islamist extremist material during July 2017. He denied any such conduct.
4. On 5 February 2018, the Applicant was granted indefinite leave to remain.
5. On 3 June 2019, the Applicant applied for naturalisation.
6. On 21 June 2020, the police interviewed NEF again. This time he was spoken to at a police station. He was told that an individual at his address had attempted to access Islamist extremist material online multiple times in 2017. He said he had no interest in political things. He said he did not know how to post things on Facebook. He was asked if anyone was given access to his computers or his PIN for the internet. He said that happened for his children’s friends and friends when playing cards. It was pointed out to him that certain posts could be considered offensive and that anything advocating violence could be illegal. He was told that he needed to control access to his computers and be careful when allowing people/guests to use his internet and any devices. He said that he understood the implications.
7. On 3 April 2023, NEF’s application for naturalisation was considered by a Home Office official, Ms McDonald, on behalf of the Home Secretary and recommended for refusal. On 29 September 2023, the decision was reviewed by a Senior Executive Officer at the Home Office, Ms Landy, who agreed with the recommendation.

8. On 2 October 2023, the Respondent refused the Applicant's application. He was told that :

“The Home Secretary has refused your application for citizenship on the grounds that you do not meet the requirement of good character. This is because you have accessed and shared Islamist extremist material online.”

### **The Application Form**

9. Section 3 of the form provided by the SSHD for naturalisation asks specific questions in relation to character. After a series of questions in relation to terrorist activities and support for terrorist groups, question 3.13 is in the following terms:

“Have you ever engaged in other activities which might indicate that you may not be considered a person of good character?”

The Applicant ticked the box “No”.

10. Section 7.1 of the form contained a declaration, signed by the Applicant, confirming that the information in the application was correct and complete to the best of his knowledge and belief.
11. At section 7.5, he confirmed that he had read and understood the Guide AN and the Booklet AN. Guide AN, published by the Home Office in March 2019, states that it “summarises the requirements for applying for naturalisation”. Under the heading “Good Character”, it states:

“To be of good character you should have shown respect for the rights and freedoms of the United Kingdom, observed its laws and fulfilled your duties and obligations as a resident of the United Kingdom. Checks will be carried out to ensure that information you give is correct. [Guide AN page 20 of 32.]

...

#### **What if you haven't been convicted but your character may be in doubt?**

You must say whether you have been involved in anything which might indicate that you are not of good character. You must give information about any of these activities no matter how long ago this was ... If you are in any doubt about whether you have done something or it has been alleged that you have done something which might lead us to think that you are not of good character, you should say so. [Guide AN page 25 of 32.]”

12. The introduction to the Guide states that the way the discretion to naturalise is exercised is further detailed in the Nationality Staff Instructions which can be accessed online.

13. On 14 January 2019, the Home Office had published a document entitled “Nationality: good character requirement”. It states that:

“This guidance tells caseworkers how to consider whether a person applying for British citizenship meets the good character requirement.”

It refers to criminal and to suspected criminal activity. Under the heading “Extremism”, it says that:

“the criteria for exclusion on the grounds of unacceptable behaviour include past or current extremist activity, either in the UK or overseas ... A person who has engaged in unacceptable behaviour will normally be refused British citizenship, unless they have publicly retracted their views and it is clear that they have not re-engaged in such behaviour.”

Unacceptable behaviour is said to include using any means or medium to express views which incite, justify or glorify terrorist violence. The list of unacceptable behaviours is said to be indicative rather than exhaustive.

### **Grounds of Review**

14. Mr McKee, who appeared for the Applicant, advanced two grounds for consideration. First, he asked us to consider whether there was material before the Secretary of State to justify the conclusion that the Applicant had failed to establish that he was of good character. Secondly, he argued that the Applicant’s failure to disclose, in his 2019 application for naturalisation, that he had been interviewed by the police in 2017 had been improperly taken into account when considering whether he had established that he was of good character. He took us to the relevant parts of the assessment as to character.
15. Ms McDonald had said :

#### **“Consideration**

The Home Office has received information that [NEF] accessed and shared Islamist extremist material.

[NEF] did not notify the Home Office in relation to any good character concerns. However, we are aware that concerns in relation to his good character were put to him previously during two separate police interviews in 2017 and 2020. [NEF] denied accessing any such sites and confirmed that he had no interest in any political groups in Syria such as ISIL or Al Nusra Front.

Whilst we have noted this, it may not have been evident to [NEF] that he should have disclosed this as part of his application for British citizenship. Even if he

had done so, it would not have made a difference to the outcome of the decision as he would still not have been able to meet the requirement to be of good character.

I note that when he was questioned by CT police on 29 November 2017 [NEF] denied accessing any such site and confirmed that he had no interest in any political groups in Syria such as ISIL or Al Nusra Front. On 21 June 2020, when interviewed again, [NEF] again reiterated that he had no interest in political things and denied that he had posted anything on Facebook advocating violence concerning Islam. As such, [NEF] chose not to use this opportunity to disclose anything further about why he accessed this material and shared it.

This behaviour casts doubt on his good character.

### **Summary of Decision**

I have assessed the good character requirement for naturalisation and I feel that there is evidence to support that [NEF] is not of good character.

Taking into consideration the information available, I find that there are grounds to come to a finding that [NEF] is not of good character. The primary concern being that he is assessed to have accessed and shared Islamist extremist material online. I therefore propose to refuse this application.”

16. In agreeing with the recommendation, Ms Landy noted as follows:

“It is for the Applicant to satisfy the SSHD that he is of good character and serious doubts exist regarding [NEF’s] ability to meet this requirement.

[NEF] has not been approached regarding his conduct as it is well-established that there is no minded to refuse policy for applications for British citizenship and therefore no duty to inform [NEF] of any areas of concern before refusing his application. The onus is on the Applicant to demonstrate that he is of good character and I note that the Applicant had access to the relevant published guidance which provided that involvement in extremist activity would cast doubt on an applicant’s ability to meet the good character requirement. I therefore find that the Applicant was given a fair opportunity to address such concerns given that the guidance makes clear that this is a relevant consideration. The Applicant, given the opportunity, did not declare or address any of these considerations on his application form.”

### **Competing Submissions**

17. Mr McKee acknowledged that he did not know the basis for a finding that the applicant had accessed and shared Islamist extremist material online. That necessarily limited what he could say about it. As to his second ground, he argued that the Applicant was not under any obligation to disclose the fact of his interview with the police in 2017 (which would have been the only police interview to have taken place by the time of his naturalisation application). He said that Ms McDonald conceded that he may not have

thought that he needed to disclose it. He was never prosecuted for any offence, his application for indefinite leave to remain was granted after the 2017 interview, and he was entitled to conclude that he was no longer under any suspicion such that he needed to disclose the interview.

18. Ms Parsons for the Respondent helpfully identified a number of general propositions. They included that the Commission's task is to review the facts and consider whether the findings of fact made by the decision maker are reasonable; the Commission does not need to determine for itself whether the facts said to justify a naturalisation decision are in fact true; 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 review the judgments made by the Secretary of State based on that factual picture – *MSB v SSHD* (SN/4/2015) at [28]. The burden of proof is on the Applicant to satisfy the Secretary of State that they are of good character; the question for the Commission is not whether the Secretary of State had established that the Applicant was not of good character but whether she was entitled not to be satisfied that he was of good character – *SSHD v SK* [2012] EWCA Civ 16 at [31] and [35 to 38]. Ms Parsons said that the decision in this case had to be viewed through this prism.
19. Ms Parsons argued that this was clearly a case where the decision was made on the basis that the Applicant had accessed and shared extremist material. She said that this was a sufficient basis for refusal on its own. Although maintaining that the decision was not taken on this additional basis, she also submitted that the Applicant should have disclosed that he had been interviewed by the police about extremist material. She says that he would have known from Guide AN that character could be in doubt even in the absence of a criminal conviction and she referred to the particular criteria for indefinite leave to remain and for naturalisation.

### **Conclusions**

20. We can state our conclusions shortly. We are satisfied that it was open to the SSHD to conclude that the Applicant had accessed and shared extremist material for reasons which cannot be set out in this OPEN judgment. The burden was on the Applicant to establish that he was of good character. It was reasonable to conclude that accessing and sharing extremist material as evidenced on the particular facts here meant that he

had failed to establish his good character. It is plain that it was this conduct which constituted the basis for the conclusion which Ms McDonald and Ms Landy reached and it was the reason given by the Secretary of State for refusal in the letter of 2 October 2023. Although Ms McDonald referred to it as being the primary concern, it was sufficient on its own to justify refusal and both sides agree that she had been prepared to accept that it may not have been evident to the Applicant that he should disclose questioning by the police. ( His denial to the police would of course have been untrue if he had in fact done what was alleged.)

21. Ms Landy dealt with the Applicant's failure to address the concern as part of a paragraph which was focused on the fairness of the procedure which had been adopted in the Applicant's case and not as a freestanding ground of concern. In other words, the police questioning had given the Applicant an opportunity to say anything he wished to about possible accessing of extremist material. No complaint is made by Mr McKee on the ground of procedural unfairness. It is the fact that the Applicant had not sought to address the concern, save by denying it.
22. In all these circumstances, we are satisfied that the Secretary of State was entitled to find that the Applicant had not established that he was of good character and to refuse his application, and that his failure to mention his 2017 police interview was not a material factor in the decision. Accordingly, the application to set aside the challenged decision is refused.
23. The Special Advocate pursued additional grounds to set aside the Secretary of State's decision in CLOSED. For the reasons given in a separate CLOSED judgment those grounds have also been dismissed.