



Neutral Citation Number: [2020] EWHC 74 (Admin)

Case No: CO/2854/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/02/2020

Before :

MRS JUSTICE ELISABETH LAING

Between :

SHAMIMA BEGUM
- and -
**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Claimant

Defendant

MR T HICKMAN QC AND MS JONES
(instructed by **BIRNBERG PEIRCE SOLICITORS**) for the **Claimant**
MR J GLASSON QC AND MR BLUNDELL
(instructed by **THE GOVERNMENT LEGAL DEPARTMENT**) for the **Defendant**
MR A McCULLOUGH QC AND MR STRAW
(instructed by **THE SPECIAL ADVOCATES' SUPPORT OFFICE**) as **Special Advocates**
on behalf of the Claimant

Hearing dates: 22, 23, 24 & 25 October 2020

Approved Judgment

MRS JUSTICE ELISABETH LAING :

Introduction

1. This is my judgment after a ‘rolled-up’ hearing of the Claimant’s application for permission to apply for judicial review, and, if I grant the application for permission, of her application for judicial review. She applied for judicial review of the decision of the Secretary of State on 14 June 2019 to refuse her application for entry clearance (‘Decision 2’).
2. Sitting as a judge of the Administrative Court I heard the arguments in the judicial review claim at the same time as, sitting with a panel as Chairman of the Special Immigration Appeals Commission (‘the Commission’), I and the panel heard the parties’ arguments about the preliminary issues in the Claimant’s appeals to the Commission against a decision to deprive the Claimant of her citizenship made on 19 February 2019 (‘Decision 1’), and against Decision 2.
3. This judgment should be read with the OPEN judgment of the Commission on the preliminary issues in the appeal to the Commission. That judgment sets out the relevant facts, and the reasons why the Commission decided the preliminary issues as it did. Sitting as a judge in the Administrative Court, I adopt paragraphs 140-191 of that judgment.
4. At an earlier stage of the proceedings, the Secretary of State, as a precaution, made a written application under section 6 of the Justice and Security Act 2013 to rely on CLOSED material in the judicial review claim. I gave her permission to do so. She did not, in the event, rely on any CLOSED material. I have not, therefore, produced a CLOSED judgment.
5. The Claimant explains (skeleton argument, paragraph 3) that her statutory right of appeal against Decision 2 is on Convention rights grounds only. She cannot therefore rely, in the statutory appeal, on the arguments I describe below. That explains the application for judicial review. The application for judicial review has been made to protect her position, and to ensure that ‘the Claimant is not left without remedy if [the Commission] finds that she cannot have a fair and effective appeal from Decision 1’ (Claimant’s judicial review skeleton argument, paragraph 8).
6. The parties were represented as they were on the preliminary issues in the appeal to the Commission. I thank all members of the legal and support teams for the help which they have given me.

The issues

7. There are five steps in the Claimant’s argument.
 - i) She has a constitutional right of access to the court.
 - ii) Decision 2 interferes with that. It should go no further than is reasonably necessary to achieve a legitimate objective.
 - iii) Parliament has given the Claimant a statutory right of appeal under section 2B of the 1997 Act, and must have intended that right to be effective.

- iv) The appeal will not be effective unless the Claimant can take part in it.
 - v) If she cannot take part in her appeal, either her deprivation appeal should succeed, or her appeal against Decision 2.
8. The Claimant's skeleton argument in essence repeats the arguments which the Claimant relied on in the appeal to the Commission in support of her case that if she could not have a fair and effective appeal, then the Commission should either allow the appeal against Decision 1, and/or allow the appeal against Decision 2; so that, either, the deprivation order should be quashed, or she should be allowed to enter the United Kingdom to take part in her appeal. There is a significant gap between those two outcomes. The first would give the Claimant the remedy she seeks in the appeal against Decision 1. The second would oblige the Secretary of State to grant entry clearance to the Claimant, but it would not guarantee that she would be able to take part in the appeal (as she is now detained by the SDF in Syria) still less would it give her the remedy she seeks.

Discussion

9. The Claimant's argument assumes (see the last sentence of paragraph 5, above, and see paragraph 19 of her skeleton argument) that if she cannot have a fair and effective appeal, either her deprivation appeal must be allowed, or the Secretary of State must grant her entry clearance. For the reasons given by the Commission in the preliminary issues judgment, that assumption is not correct. That disposes of this application for judicial review.
10. That conclusion means that I do not need to decide whether or not the Secretary of State was irrational in insisting that the Claimant provide biometric data before he would consider the application for entry clearance.

Conclusion

11. I grant permission to apply for judicial review but I dismiss the application for judicial review.