



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/16047/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 21 September 2021

Decision & Reasons Promulgated
On 4 November 2021

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE SILLS

Between

MOHAMMED SAMEER JALAL DIN
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

The Appellant in person.

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

Both members of the Panel have contributed to this decision.

Background

1. The Appellant, a British Overseas Territories Citizen (BOTC) born on 28 December 1953, appeals a decision by the Secretary of State to refuse his

application for leave to remain in the United Kingdom on the basis of his private life, dated 6 September 2019.

2. The Appellant's appeal was dismissed by a judge of the First-tier Tribunal whose decision was promulgated on 4 March 2020, but which was set aside by the Upper Tribunal in a decision promulgated on 14 August 2020. The FTT determination was set aside on the basis that the FTT Judge had failed to resolve key aspects of the Appellant's contention that he was permitted to reside in the UK by virtue of his BOTC status.

3. Within the Upper Tribunal decision at [7] is a summary of the Appellant's immigration history, which is not disputed, and which is in the following terms:

22.3.06 *Certificate of naturalisation as a BOTC*

8.9.06 *A issued with a BOTC passport expiry date of 8.9.16*

18.10.11 *A enters the UK using his BOTC passport*

2.7.14 *A goes to Pakistan and returns to the UK on 28.9.14*

8.5.15 *A goes to Pakistan and returns to the UK on 28.7.15*

7.1.16 *A goes to Pakistan and returns to UK on 30.3.16*

3.7.16 *BOTC passport renewed in the UK*

20.6.18 *Pakistan passport renewed when A in Pakistan (1.5.18-20.6.18)*

28.9.18 *A applies for British citizenship*

21.11.18 *SSHD refuses citizenship for 2 reasons: (1). They did not meet the requirement concerning breaches of immigration laws in the requisite five year period, and (2) in the final 12 month period he was not subject to any restriction on how long he could stay.*

26.11.18 *MP makes representations on A's behalf*

4.1.19 *Email response to MP. This explains:*

- *A required entry clearance as a BOTC in 2011 if he was seeking to enter for more than six months but there is no record of this.*
- *Acquisition of BOTC status by virtue of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia is rare; and it is even rarer to acquire such status by naturalisation (which evidence previously submitted shows was the case); in the circumstances the SSHD is unable to verify what type of passport he was given and if it contained endorsements.*
- *The 21. 9.18 refusal was wrong to rely upon reason (2) above, and that it is withdrawn: A has never been subject to any time restrictions.*
- *But A has been in the UK in breach of immigration laws and his residence since 2011 is regarded as unlawful.*
- *A needs to regularise his position by making an application and paying the requisite fee (£1206).*

11.2.19 *A's human rights application - this explains in detail that A believes that he was treated as unlawful UK resident from 2011 and this, together with his BOTC entitles him to full citizenship under s4 of the British Nationality Act 1981.*

18.2.19 *A goes to Pakistan and returns to the UK on 8.6.19*

6.9.19 *SSHD refuses human rights claim. This rejects A's claim that he was never informed that his BOTC did not entitle him to remain in the UK and relies upon (i) the endorsement in the passport issued in 2006 to the effect that BOTCs do not have a right of abode and (ii) A would have been admitted without enquiry because BOTC entitled him to enter the 6 months without prior entry clearance.*

4. It is accepted that between 1981 until 2011 the Appellant worked in a restaurant established by his father within the Sovereign Base Area in Cyprus where he claims he served members of the Armed Forces for 30 years. The Appellant acquired his BOTC as a result of these links with the Sovereign Base Area in Cyprus. In his recent witness statement of 14 September 2021, the Appellant writes:

4. On 22 March 2006 I was issued with a certificate of naturalisation as a British Overseas Territories Citizen and on 8 September 2006 I was issued with a BOTC passport. I want to explain how this came about - I was approached, not the other way around. The Fiscal Officer came for food and asked me how long I had been in Cyprus. I told him and he asked me to come to his office. I did and I was interviewed. He asked me about myself and my work. The officer explained that there was a criteria for BOTC; they don't just give it to anyone. He noted I had served the UK armed forces for so long in a managerial post and he was of the view that I should be recommended for BOTC. He conveyed this to the Commander of the British Forces, Lieutenant General Peter Pearson. He approved my being granted BOTC. I had to go to the British court on the base in Cyprus, take an oath and I was naturalised. This happened on 22 March 2006, subsequently, I was issued with a BOTC passport on 8 September 2006 that expired on 8 September 2016.

5. The Appellant continued to work on the base in Cyprus until October 2011 when he decided to come to the UK rather than go to live in Pakistan. The Appellant states in his witness statement that on arrival he went to an Immigration Officer in the booth at the airport and showed him his BOTC passport. The Appellant states the officer commented that he had come from Cyprus and that there was no discussion regarding his being granted leave to enter or remain.

6. In 2012 because he could not obtain a job the Appellant applied for welfare benefits by way of Job Seekers Allowance. The Appellant claims that he was asked to present his passport. Following his having done so he was awarded benefits without restriction.

7. The Appellant claims he used the passport issued in 2006 to travel from the UK to Pakistan in 2014, 2015 and 2016 without difficulty either on exit or entry to the UK and that his BOTC passport was never stamped.
8. The Appellant renewed the BOTC passport in 2016. A new passport was issued on 3 July 2016 to expire on 3 October 2026. Although the Appellant did not notice it at the time the new passport, in the official observations section, now contained an official stamp that stated he was subject to control under the Immigration Act 1971, which he states was not on the original 2006 passport. The lack of such a stamp in the earlier document is not disputed by Mr Bates and is clearly supported by the copy of that document provided by the Appellant.
9. The Appellant claims that despite the stamp he was able to freely exit and enter the UK without issue when he visited Pakistan in 2018 and June 2019. The Appellant claims an issue did arise when he returned from Pakistan to the UK in 2018, following his being told by an adviser at the Job Centre that as he had left the UK he needed to apply for Universal Credit. The Appellant made the application but was refused as it was said he was not entitled as he was subject to immigration control. The Appellant sought the advice of the local MP who corresponded with the Home Office on his behalf, as a result of which the Appellant was advised he did not have a right of abode in the UK and should apply for British citizenship.
10. The Appellant applied for British citizenship on 28 September 2018 but on 21 November 2018 the application was refused. The Appellant then applied for leave to remain on 11 February 2019. This was refused on 6 September 2019.
11. The Appellant's feelings are expressed at [16] of his latest witness statement in which he writes:

16. In 2011 I came to the UK because I felt I had a connection with British people. I had worked for the British for 30 years and felt more comfortable coming here than returning to Pakistan. Had I known in 2011 of the lack of value in the BOTC passport that the HO now asserts, I may have made a different decision. However, all of the actions of the UK were that the BOTC passport had a value. I was treated as a British citizen. I had freedom to travel with no restrictions and had the ability to claim benefits. Nothing at all in the way the UK acted alerted me to what they now says the position or that I was subject to restrictions. I feel I have the right to remain in the UK. I serve the UK for 30 years. I believed – and the UK acted at all times and to 2018 – I had the right to live here without restrictions. If the position is, as the HO now say it is, that I am not allowed to stay, they have should have said so at the beginning. I am old now. I cannot imagine trying to restart my life again elsewhere. I haven't lived in Pakistan since 1981. Whatever life I have left, I want to live it out here.

To be honest, I feel degraded. I am left in a situation where I'm having to ask people to accommodate me and help me out financially. I feel an injustice. If I could

not come to the UK and live freely, why did they give me the passport and allow me to live as a British citizen for so many years?

I am sure there are not many cases like mine. I asked the judge to look at my case as an exception.

12. In her determination promulgated on 23 July 2020 Upper Tribunal Judge Plimmer wrote:

11. *In determining the appeal on Article 8 grounds, it was important for the FTT to resolve the lawfulness of the appellant's residence from 2011. The chronology above makes it clear that this was the pivotal factor relied upon by the SSHD in order to maintain the position that he was not entitled to full citizenship under s.4 of the British Nationality Act 1981. By contrast, the appellant has repeatedly asserted that he was lawfully resident in the UK from 2011. There was material available to the FTT that called into question the SSHD's contention that the appellant had been unlawfully resident:*

- (i) *As set out in the SSHD's email dated 4 January 2019, acquisition of BOTC status by virtue of a connection with the Sovereign Base Area of Akrotiri and Dhekelia is rare and it is even rarer to acquire such status by naturalisation; in the circumstances, the SSHD was unable to verify the exact nature of the appellant's 2006 passport, and what it entitled the appellant to.*
- (ii) *The appellant appears to have used his BOTC passport to leave and re-enter the UK on three occasions between 2014 and 2016 without any question being raised as to why they did not have entry clearance or why he had been able to remain in the UK on numerous occasions in excess of 6 months.*
- (iii) *As set out in the SSHD's email dated 4 January 2019, the appellant had never been subject to any time restrictions.*
- (iv) *In any event, it is unclear whether the SSHD has ever directed herself to the discretionary provisions of s.4 of the British Nationality, 1981 – see in particular ss.(4) to (6).*

12. *These matters were not addressed by the FTT. Rather, the FTT appears to have assumed that the SSHD's was correct. The FTT indicated that, if not in the UK unlawfully his immigration status was precarious. This is unreasoned.*

13. *The relevant law concerning the residency rights of naturalised BOTCs and their entitlement to citizenship is not straightforward. This needs to be resolved in the case. I entirely accept that this is a human rights appeal and jurisdiction is limited. However, in order to properly and fully determine whether it would breach Article 8 of the ECHR to remove this particular appellant, it was and remains necessary to fully resolve his immigration status and entitlements. Indeed, the appellant's own application to remain in the UK on human rights grounds, which resulted in the decision under appeal, relied principally on his claimed entitlements in connection with being a BOTC.*

13. Judge Plimmer made a specific direction that within 21 days of the date of her decision being sent the Secretary of State was the file and serve a position statement which addressed in particular the matters set out at paragraph 11 above.
14. That document prepared by Peter Deller on behalf of the Secretary of State is dated September 2020 and reads:

RESPONDENT'S POSITIONAL STATEMENT

Background

1. *This case returns to the Tribunal to remake the decision on Mr Din's human rights appeal, originally dismissed by the First-tier Tribunal in a decision which Judge Plimmer set aside by decision of 23 July. At issue is whether factors in his case constitute circumstances warranting a grant of leave to remain despite no claim being identified under Appendix FM or paragraph 276 ADE of the Rules. Judge Plimmer identified as possibly relevant. The fact that Mr Din had apparently entered the United Kingdom on a number of occasions without his stay being restricted given the refusal of his application for registration as a British citizen, and further that some discretionary provisions in the British Nationality Act 1981 were overlooked in refusing his application for registration.*
2. *A directed, the Secretary of State sets out her position below. The provisions in law referred to are set out in full in the Appendix.*

British Overseas Territories Citizens (BOTC)

3. *Mr Din acquired BOTC by way of his links with the Sovereign Base Areas of Akrotiri and Dhekelia, working in a restaurant established by his father. He has held two passports bearing this status and entered the UK on the first one in 2011. Aside from short trips abroad he has remained here since. It is his case, apparently supported by the lack of entry stamps, that his admissions were never made subject to any conditions or time limit on his stay. Whereas his second passport, issued in 2016, was endorsed that he was subject to control under the Immigration Act 1971, his first was not.*

The right of abode under section 2 of the Immigration Act 1971 and those subject to control under that Act

4. *Under section 1 of the British Nationality Act, persons without the right of abode as defined in section 2 required leave to enter or remain. Mr Din is neither a British citizen nor a qualifying Commonwealth citizen. He was, therefore, and remains, subject to immigration control and required leave to enter on each arrival. He would have been eligible as a BOTC to enter the UK for six months as a visitor without entry clearance but there are no UK stamps at all in his passport. There is no obvious way in which he was otherwise not subject to control.*

Deemed leave to enter

5. *Under paragraph 6 (1) of schedule 2 to the Immigration Act 1971 a person subject to control who is not provided with written notice of leave to enter or*

refusal of leave to enter is deemed to have been admitted for six months with a prohibition on taking employment. That paragraph also requires that written notice be given by an Immigration Officer as soon as may be, but it does not appear that this happened. And there is no suggestion, however, that the deemed leave did not therefore take effect.

Attempted registration as a British citizen

6. *The applicable provision for the registration as a British citizen of a BOTC is set out at section 4 (2) of the BNA 1981. It includes the provisions at 4 (2) (c) and (d) of which Mr Din's application fell foul; that the last twelve months have been spent free of restrictions and that there have been no periods in breach of the immigration laws. Neither was met if, as is apparently the case, he had leave only for the first six months of each stay.*
7. *The reasons for refusal included the suggestion that Mr Din had been in breach of immigration law since his entry on 28 October 2011, which on the "deemed leave" analysis above is not the case. The letter also makes no reference to discretionary provisions of section 4 (4) and 4(5)/(6) which refer to a discretion to waive the requirements in 4 (2) (c) and (d) in general or to do so where there has been service as a member of any body established by law in a British overseas territory members of which are appointed by or on behalf of the Crown. It is not apparent that Mr Din undertook any eligible service in the latter category.*
8. *The decision under appeal here is not the refusal of registration as a British citizen and so any omissions in that decision cannot be directly impugned, although their significance in the Article 8 equation can potentially be measurable.*
9. *For completeness, there is a separate provision at section 4A for the discretionary registration of a BOTC, but this specifically excludes those who are such a citizen by virtue only of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia.*

Requirements for leave to remain on human rights grounds

10. *It does not appear to be disputed that Mr Din does not meet any requirements of Appendix FM or paragraph 276 ADE. He therefore needs to demonstrate circumstances which compel a decision in his favour under the wider discretion available under the exceptionality provisions of the rules and Part 5A of the 2002 Act. Whilst he has not been best served by the lack of any proper endorsement in respect of his status here in his refusal of citizenship, the Secretary of State maintains that this does not aggregate to a claim which can succeed in an Article 8 appeal.*

Conclusion

11. *What has happened in fact to Mr Din of various admissions to the United Kingdom appears not to be in accordance with what the law says should have happened. The question is whether this provides any basis which entitles him to succeed on Article 8 grounds, when the substantive requirements of paragraphs 276 ADE in Appendix FM are not met. The Secretary of State's*

view is that it does not. If Mr Din maintains that he was wronged by the refusal of citizenship that can be challenged in the relevant forum or a fresh application made, but he has not been so wronged that a breach of article 8 is disclosed in the circumstances.

Peter Deller

for the Secretary of State

September 2020

APPENDIX: STATUTORY FRAMEWORK

Immigration act 1971 (as amended)

General principles

1. (1). *All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go into and from, the United Kingdom without to let or hindrance except such as may be required under and in accordance with this Act to enable their rights to be established or as may be otherwise lawfully imposed on any person.*

(2). *Those not having that right may live, work and settle in the United Kingdom by permission and subject to such regulation and control of their entry into, stay in and departure from the United Kingdom as imposed by this Act; and indefinite leave to enter or remain in the United Kingdom shall, by virtue of this provision, be treated as having been given under this Act by those in the United Kingdom at its coming into force, if they are then settled there (and not exempt under this Act from the provisions relating to leave to enter or remain).*

Statement of right of abode in the United Kingdom

(1) *A person is under this Act to have a right of abode in the United Kingdom if –*

(a) he is a British citizen; or

(b) he is a Commonwealth citizen who –

(i) immediately before the commencement of the British Nationality Act 1981 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2 (1) (d) or section 2 (2) of this Act as then in force; and

(ii) has not ceased to be a Commonwealth citizen in the meantime.

(2) *In relation to Commonwealth citizens who have the right of abode in the United Kingdom by virtue of subsection (1) (b) above, this Act, except this section and section 5 (2) shall apply if they were British citizens; and in this Act (except as aforesaid) “British citizen” shall be construed accordingly.*

SCHEDULE 2 Administrative Provisions as to Control on Entry etc.

Part I General provisions

2(1) *An immigration officer may examine any persons who have arrived in the United Kingdom by ship or aircraft (including transit passengers, members of the crew and others not seeking to enter the United Kingdom) for the purpose of determining –*

- (a) Whether any of them is or is not a British citizen; and*
- (b) whether, if he is not, he may or may not enter the United Kingdom without leave; and*
- (c) whether, if he may not –*
 - (i) if he had been given leave which is still in force,*
 - (ii) he should be given leave and for what period or on what conditions (if any), or*
 - (iii) he should be refused leave; and*
- (d) Whether, if he has been given leave, which is still in force, his leave should be curtailed.*

6(1) *subject to subparagraph (3) below where a person examined by an immigration officer under paragraph 2 above, is to be given a limited leave to enter the United Kingdom or is to be refused leave, the notice giving or refusing leave shall be given not later than twenty-four hours after the conclusion of his examination (including any further examination) in pursuance of that paragraph; and if notice giving or refusing leave is not given him before the end of those twenty-four hours, he shall (if not a British citizen) be deemed to have been given leave to enter the United Kingdom for a period of six months subject to a condition prohibiting his taking employment and immigration officer shall as soon as may be give him written notice of that leave.*

British Nationality Act 1981 (as amended)

4. Acquisition by registration: [British Overseas Territories citizens] etc.

- (1) This section applies to any person who is a British Overseas Territories citizen, ...*
- (2) A person to whom this section applies shall be entitled, on an application for his registration as a British citizen, to be registered as such a citizen if the following requirements are satisfied in the case of that person, namely –*
 - (a) Subject to subsection (3), that he was in the United Kingdom at the beginning of the period of five years ending with the date of the application and that the number of days on which he was absent from the United Kingdom in that period does not exceed 450; and*
 - (b) that the number of days on which he was absent from the United Kingdom in the period of twelve months so ending does not exceed 90; and*

- (c) *that he was not at any time in the period of twelve months so ending subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom; and*
 - (d) *that he was not at any time in the period of five years so ending in the United Kingdom in breach of the immigration rules.*
 - (3) *So much of subsection (2) (a) as requires the person in connection to have been in the United Kingdom at the beginning of the period they mentioned shall not apply in relation to a person who was settled in the United Kingdom immediately before commencement.*
 - (4) *If in the special circumstances of any particular case, the Secretary of State thinks fit, he may, for the purposes of subsection (2) do all or any of the following things, namely –*
 - (a) *Treat the person to whom the application relates as fulfilling the requirement specified in subsection (2) (a) or subsection (2) (b), or both, although the number of days on which he was absent from the United Kingdom in the period they mentioned exceeds the number they mentioned;*
 - (b) *disregard any such restriction as is mentioned in subsection (2) (c), not being a restriction to which that person was subject on the date of the application;*
 - (c) *treat that person as fulfilling the requirement specified in subsection (2) (d) although he was in the United Kingdom in breach of the immigration laws in that period there mentioned.*
 - (5) *If, on an application for registration as a British citizen, made by a person to whom this section applies, the Secretary of State is satisfied that the applicant has at any time served in service to which this subsection applies, he may, if he thinks fit in the special circumstances of the applicant's case, as such, a citizen.*
 - (6) *Subsection (5) applies to –*
 - (a) *Crown service under the government of a British overseas territory; and*
 - (b) *paid or unpaid service (not falling within paragraph (a)). As a member of any body established by law in a British overseas territory members of which are appointed by or on behalf of the Crown*

4A Acquisition by registration: further provision for British Overseas Territories citizens

- (1) *if an application is made to register as a British citizen, a person who is a British Overseas Territories Citizen, the Secretary of State may, if he thinks fit, because the person to be so registered.*
- (2) *Subsection (1) does not apply in the case of a British Overseas Territories citizen who –*

(a) is such a citizen by virtue only of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia; ...

15. The Upper Tribunal is grateful to Kerry Smith, a barrister at Garden Court Chambers based in Manchester, for agreeing to take this case on pro bono to assist Mr Din. The assistance Ms Smith has rendered to date has been of great benefit to Mr Din in his understanding of the relevant legal issues. Mr Din relied on Ms Smith's written submissions which are in the following terms:

WRITTEN SUBMISSIONS FOR THE APPELLANT

Introduction

1. *The Appellant appeals against the decision of the Respondent dated 6 September 2019 to refuse his human rights claim.*
2. *In a decision promulgated on 14 August 2020, Upper Tribunal Judge Plimmer decided that the earlier decision of FTT Judge Siddiqi sent on 4 March 2020 contained an error of law and set it aside. The appeal is before the Upper Tribunal for the decision to be remade.*
3. *The Appellant is a citizen of Pakistan and a British Overseas Territories Citizen (BOTC). The factual background and chronology to his case is set out at length in the decision of UT Judge Plimmer and not repeated. The tribunal are further directed to the Witness Statement of the Appellant signed on 14 September 2021.*

Appellant's status and entitlement

4. *The Appellant acquired BOTC status due to his connection with the Sovereign Base Areas of Akrotiri and Dhekelia. He served the UK armed forces since 1981 (as his father had done before him) and in 2006 was approached by an officer who recommended him for BOTC and this recommendation was conveyed to the Commander of the British Forces. The Appellant was naturalised as a BOTC on 22 March 2006. His first BOTC passport was issued on 8 September 2006.*
5. *The Appellant believed that he was a British Citizen entitled to enter and remain in the UK without restriction, i.e. not subject to immigration control.*
6. *The Appellant's position is supported by the following:*
 - a. *Acquisition of BOTC status by virtue of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia is rare and it is even rarer to acquire such status by naturalisation. Notably, the Respondent was unable to verify the exact nature of the Appellant's 2006 passport and what that entitled him to. See email dated 4 January 2019.*
 - b. *The Appellant's 2006 passport, on the observation page, has a stamp endorsement that reads:*

"The holder is a British, British Overseas Territories Citizen Sovereign Base Areas Akrotiri and Dhekelia."

Two matters are of note. (1) The Appellant is described as “a British”, BOTC. (2) The endorsement does not state he is subject to control under the Immigration Act 1971. If, as a BOTC, the Appellant was subject to immigration control, at the time of issue it is reasonable to expect that a stamp would have been endorsed in the passport to reflect this. The fact that it is not is strong evidence that he was not subject to immigration control.

- c. On entry to the UK in October 2011, the Appellant did not need, nor was he granted leave to enter or remain. He was free to enter the UK without issue and without a written notice being issued, at the time or thereafter, limiting his leave to six months.
 - d. The Appellant further departed and entered the UK in 2014, 2015, 2016, 2018 and 2019 again without issue, without a written notice being issued, at the time or thereafter, limiting his leave and without any question being raised as to why he did not have entry clearance or why he had remained in the UK in excess of six months.
 - e. Significantly, the Respondent herself confirmed that the Appellant has never been subject to any time restrictions. See email dated 4 January 2019. This undermines the Respondent’s position in these proceedings that the Appellant’s leave to enter was at all times restricted to six months.
 - f. In the UK, the Appellant was treated as someone who was not subject to immigration control, with full access to welfare benefits (which he would not have been entitled to had he been subject to immigration control). In applying for these benefits the Appellant recalls showing his 2006 BOTC passport.
 - g. When the Appellant’s passport was renewed in 2016 a stamp was placed on the observation page in his passport that, without reason, differs from that which was endorsed on his original 2006 passport. This stamp does not describe the Appellant as “a British” BOTC and states he is subject to immigration control. This endorsement does not properly transfer or reflect the status and entitlement of the Appellant as conferred by his original passport. There is no suggestion that in 2016 there was a change in the Appellant’s status or circumstance or the law that would justify this. Even on the passport issued in 2016, the Appellant was free to depart and enter the UK without issue, without restrictions being placed on his leave and without questions being raised.
 - h. Until 2018, the Appellant was entitled to enter and remain in the UK with no restrictions.
7. The Respondent’s position now is that the Appellant was and remains subject to immigration control, and required leave to enter or remain on each arrival to the UK (PS, §4). However, she accepts that this didn’t happen. In the absence of leave to enter having been granted, the

Respondent reasons that he is deemed to have been admitted for six months with a prohibition on taking employment (PS, §5). The provisions relied upon require that written notice be given as soon as may be. Again, the Respondent accepts that this didn't happen.

8. *The difficulty with the Respondent's position is this: (1) The Respondent herself has admitted that she was unable to verify the exact nature of the Appellant's 2006 passport and what that entitled him to. The confidence with which the Respondent now asserts that the Appellant requires leave to enter and remain flies in the face of this. (2) Likewise, the Respondent has previously confirmed in writing that the Appellant has never been subject to any time restrictions. This is incompatible with the Respondent's position now that, when the Appellant entered the UK, he was deemed to have leave for six months. (3) The suggestion the Appellant was subject to a prohibition on taking employment is inconsistent with him being awarded job seekers allowance. (4) It beggars belief that if the Appellant was subject to immigration control, required leave to enter, only admitted for six months with a prohibition on taking employment that the Respondent failed to issue him any written notice on all occasions when he arrived in 2011, 2014, 2015, 2016 and 2018 and gave him access to welfare benefits as a job seeker. On any view, either, the Appellant was not and should not be subject to immigration control (the more likely scenario) or the Respondent is woefully incompetent.*
9. *It is respectfully suggested that the Respondent's analysis in her PS is an attempt ex post facto to square the law with the situation and her stance taken in this appeal.*
10. *Even if the Respondent's position is correct, the actions of the UK at all times from 2011 to 2018, would lead any reasonable person to believe, and led the Appellant to believe, that he was not subject to immigration control or his leave in the UK was in anyway precarious. He was allowed to enter and remain in the UK without restriction, was not informed that there were any time restrictions or other conditions on his leave (despite repeat opportunity) and was awarded welfare benefits as a job seeker.*

Application for registration as a British Citizen

11. *On his return to the UK in 2018, the Appellant applied for Universal Credit and was told he was not entitled as he was subject to immigration control. After correspondence with the Respondent, in an attempt to resolve his situation, on 28 September 2018, the Appellant applied for British Citizenship. He paid the fee of £1206.*
12. *The Respondent refused that application for two reasons: (1) the Appellant did not meet the requirement concerning breaches of immigration laws in the requisite five year period and (2) in the final 12 month period he was not subject to any restriction on how long he could stay.*

13. *The Respondent subsequently accepted that she was wrong to rely on reason 2 and that was withdrawn. The Appellant has never been subject to any time restrictions. However, the Respondent maintained her decision because she considered the Appellant had been in the UK in breach of immigration laws.*
14. *In refusing the Appellant's British Citizenship application and maintaining her decision, the Respondent failed to direct herself to the discretionary provisions of s. 4 of the BNA 1981, in particular ss. (4)-(6). The Respondent should, and failed, to consider exercising her discretion to disregard any time restrictions (ss(4)(b) and to treat the Appellant as not having been in the UK in breach of the immigration laws (ss(4)(c)).*
15. *It is no answer to the Appellant's Article 8 appeal that he should re-apply to be registered as a British Citizen. The Respondent erred in deciding the Appellant's previous application in refusing it under ss. 2(c) and in failing to direct herself to the discretionary provisions in ss.(4). The Appellant is not in a position to pay the high fee for a another application nor, in the circumstances, would it be proportionate to expect him to.*
16. *The Respondent rightly points out in her PS at §8 that this is not an appeal against the refusal of registration as a British Citizen however she accepts that the significance of any omissions in the Article 8 equation can potentially be measurable.*

Article 8 appeal

17. *The tribunal is invited to find that there are exceptional circumstances which would render refusal of leave to remain a breach of Article 8 because it would result in unjustifiably harsh consequences for the Appellant. In sum, the Appellant relies cumulatively on the following relevant considerations:*
 - a. *The Appellant's status and entitlement as a BOTC. The Appellant's situation is a rarity and the Respondent herself has admitted that she was unable to verify the exact nature of the Appellant's 2006 passport and what that entitled him to. It is submitted that the analysis above at §6-8 supports the position that the Appellant's 2006 passport entitled him to leave to enter and remain in the UK without restrictions.*
 - b. *The Respondent has previously accepted that the Appellant was not subject to time restrictions.*
 - c. *Even if, as the Respondent now contends, the Appellant was subject to immigration control, the Respondent repeatedly failed to treat him as such. In these proceedings, the Respondent asserts that on entry to the UK the Appellant should have been issued a written notice limiting his leave to enter to six months. The Respondent and her officials consistently failed to do this in 2011, 2014, 2015, 2016, 2018 and 2019. Further, the Appellant was given access to welfare*

benefits. The failings of the Respondent were such as to understandably lead the Appellant to believe he was not subject to restrictions and his leave was not precarious.

- d. Upon the Appellant appreciating the Respondent did not regard him as a British Citizen with a right of abode, the Appellant made a paid application to register as a British Citizen. The Respondent erred in deciding that application (as above).*
- e. The tribunal is invited to find, in this case, the failings of the Respondent are egregious and weigh heavily in the Appellant's favour in the balancing exercise.*
- f. The fact that the Respondent consistently failed to inform the Appellant his leave to enter was restricted or raise any issue with him remaining in the UK beyond six months, significantly undermines any argument that the public interest requires his removal.*
- g. The Appellant served the British armed forces from 1981 to 2011. Such was his dedicated service, that he was approached for BOTC. Indeed acquisition of BOTC by virtue of a connection with the Sovereign Base Areas in Cyprus is rare and it is even rarer to acquire such status by naturalisation. It is a testimony to the Appellant's service that he so acquired it.*
- h. The Appellant has since 1981 to date lived either on a British Overseas Territory or in the UK. He has lived in the UK for almost 10 years. He has not lived in Pakistan since 1981. Until 2018, he believed himself to be a British Citizen. He is accustomed and integrated into a British way of life. The Appellant is now 66 years of age and does not feel able to start his life again elsewhere.*

18. The tribunal is requested to allow the Appellant's appeal.

Kerry Smith

Garden Court North Chambers

14 September 2021

The Hearing

16. We kept a detailed note of the hearing in the record of proceedings. We heard evidence from the Appellant and then submissions from Mr Bates and the Appellant. Mr Bates' oral submissions before the Upper Tribunal relied on the statement from Mr Deller, and although accepting that errors had been made, asserted that the weight to be given to the public interest outweighed that to be given to the Appellant, which warranted the appeal being dismissed. The Appellant relied on the written submissions of Ms. Smith.

Legal Framework

17. In human rights appeals it is for an appellant to show an interference with his or her rights. If that is established, and the relevant Article of the Human Rights

Convention permits, it is then for the respondent to establish that any interference with that right is justified.

18. The amended provisions of the Nationality, Immigration and Asylum Act 2002 state:

117A Application of this Part

- (1) *This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –*
- (a) *breaches a person's right to respect for private and family life under Article 8, and*
- (b) *as a result would be unlawful under section 6 of the Human Rights Act 1998.*
- (2) *In considering the public interest question, the court or tribunal must (in particular) have regard –*
- (a) *in all cases, to the considerations listed in section 117B, and*
- (b) *in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.*
- (3) *In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).*

117B Article 8: public interest considerations applicable in all cases

- (1) *The maintenance of effective immigration controls is in the public interest.*
- (2) *It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –*
- (a) *are less of a burden on taxpayers, and (b) are better able to integrate into society.*
- (3) *It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –*
- (a) *are not a burden on taxpayers, and (b) are better able to integrate into society.*
- (4) *Little weight should be given to – (a) a private life, or*
- (b) *a relationship formed with a qualifying partner, ^[11]that is established by a person at a time when the person is in the United Kingdom unlawfully.*
- (5) *Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.*
- (6) *In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –*

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and (b) it would not be reasonable to expect the child to leave the United Kingdom.

19. The provisions concerning the acquisition of British citizenship, and British Overseas Territories citizenship, are set out in the British Nationality Act 1981.

Discussion

20. We will consider the Appellant's case under the Immigration Rules before then assessing whether the decision breaches the Appellant's ECHR Article 8 rights.
21. We consider first whether the Appellant can satisfy any of the requirements of the Immigration Rules. The only family that the Appellant has in the UK is his sister, and he stated in evidence that he had no contact with her. Thus, none of the provisions of Appendix FM apply. We have considered whether the Appellant can satisfy any of the provisions of Rule 276ADE(1). The Appellant has not established that he would face very significant obstacles to integration in Pakistan. The Appellant lived in Pakistan until he was 27. While the Appellant has not lived there for many years, he still has ties there, having visited Pakistan regularly since coming to the UK in 2011. His wife and four daughters still live there. We are not satisfied that the Appellant would face any significant obstacles to integration on return. Hence the Appellant cannot satisfy the requirements of Rule 276ADE(1).
22. We turn to consider the Appellant's human rights appeal outside the Immigration Rules. In assessing the Article 8 appeal we adopt the structured approach recommended in the case of *R (Razgar) v Secretary of State the Home Department* [2004] UKHL 27, with specific reference to [27] where it is written:

"17. In considering whether a challenge to the Secretary of State's decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an adjudicator, as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be answered by an adjudicator. In a case where removal is resisted in reliance on article 8, these questions are likely to be:

- (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?*
- (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?*
- (3) If so, is such interference in accordance with the law?*
- (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?*

(5) *If so, is such interference proportionate to the legitimate public end sought to be achieved?"*

23. We first consider whether there is any interference with the Appellant's Article 8 rights. We find that the Appellant does not have family life in the UK. In his oral evidence before the Upper Tribunal the Appellant confirmed he has a sister in the United Kingdom but cross examination in relation to this issue elicited the following:

MR BATES: *...Mr Din just ask what family do you have in the UK at the moment?*

APPELLANT *Yes. My sister is retired and she lives with her husband in Sheffield who was a doctor before.*

MR BATES: *How often do you see your sister*

APPELLANT: *I don't.*

24. Hence, the Appellant's own account is that he has no contact with his only family in the UK, his sister. We find he does not have family life in the UK. Given that the Appellant has lived in the UK since 2011, we accept that the Appellant has established private life in the UK. We will examine the Appellant's private life in more detail below. We are satisfied that the decision interferes with the Appellant's private life with sufficient gravity to engage Article 8. The interference is in accordance with the law. We accept that the interference is in pursuit of a legitimate aim, namely the maintenance of immigration control which is in the interests of economic well-being of the country.

25. We now consider the issue of proportionality. We have considered the guidance set out by the Court of Appeal in GM (Sri Lanka) v SSHD [2019] EWCA Civ 1630 in which the Court set out from [26] some helpful principles arising out of Agyarko [2017] UKSC 11, Hesham Ali [2016] UKSC 60 and other cases, when assessing the proportionality issue. We address the public interest first. At the core of the Appellant's human rights appeal is his claim that he has been treated unfairly by the Respondent in relation to his citizenship and how he been treated since his arrival in the UK. The following are suggested by the Appellant. The Appellant may actually have been granted British citizenship. He was not subject to immigration control, in breach of immigration rules, or subject to any time limits. He was treated unfairly in refusing to register him as a British citizen. We will consider these matters and the implications for the public interest in the maintenance of immigration control in the Appellant's case.

26. While the precise form of citizenship held by the Appellant may be uncommon, both it, and the entitlements derived from it, are clear. By way of background, the British Overseas Territories Act 2002 is instructive. It was this Act that inserted s4A into the 1981 Act to which Mr Deller referred us. The Explanatory Note explains as follows. The term British Overseas Territories was introduced

to replace the terms dependent territories or colonies. The fourteen British Overseas Territories are: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena and Dependencies, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, and the Turks and Caicos Islands. The Act granted British citizenship to existing British Overseas Territories citizens except for those connected with the Sovereign Base Areas in Cyprus and prescribed how those who acquire British Overseas Territories Citizenship after commencement can register as British Citizens under s4A of the 1981 Act. The registration provision similarly excluded those connected to the Sovereign Base in Cyprus. British Overseas Territories Citizens, other than those associated with Cyprus, can register as British citizens under s4A with the only requirement being that the Respondent 'sees fit'. There is a separate provision under s4 of the 1981 Act which provides that for registration of BOTCs where residence requirements are met. This shows why the BOTC passports are rare. Existing BOTCs became British Citizens when that Act came into force, and those who acquired BOTC status after commencement were also entitled to register as British citizens, except those who were BOTCs by virtue of their connection to the military bases in Cyprus. Hence it is likely to be only, or at least mainly, such people who would be seeking to enter the UK using a BOTC passport, and hence their rarity. Those who acquire BOTC status through their ties to the military bases in Cyprus are clearly and deliberately treated less favourably than other BOTCs under the 2002 Act. It was not argued before us that this different treatment was itself in anyway unfair.

27. We consider the Appellant's claim to be naturalised as a British citizen. Prior to 2006, the Appellant did not have any form of British citizenship and was resident on the military base in Cyprus. The Appellant does not claim to have ever naturalised as a British citizen. We note the Appellant's evidence that he was issued with a certificate of naturalisation as a British Overseas Territories Citizen in 2006. Hence it is clear that the Appellant is not a British citizen.
28. Further, we do not see any basis upon which the Appellant could have been naturalised as a British citizen in 2006 before he had obtained British Overseas Territories Citizen status, having considered s6 of the British Nationality Act 1981. There are United Kingdom residence requirements for such naturalisation that the Appellant could not satisfy, which apply unless someone is serving outside the United Kingdom in Crown service. The Appellant was not in Crown service, Schedule 1 of that Act clearly distinguishing between Crown service, and service in the employment of a company or association established in a territory. So, we are satisfied that in 2006 there was no basis for the Appellant to be naturalised as a British citizen at that time, that he was not naturalised as a British citizen, and that he was thus not entitled to a passport as a British citizen. In contrast, the Appellant clearly did meet the requirements for naturalisation as a BOTC as per s18 of the British Nationality Act 1981 and hence was granted this status.

29. The Appellant relies on two matters to claim he was issued with a passport as a British citizen. First, he relies on the 'official observation' in the 2006 passport that 'The holder is a British, British Overseas Territories Citizen Sovereign Base Areas Akrotiri and Dhekelia'. While there is an extra 'British', it is not clear what this relates to. The suggestion that this additional British confers British citizenship or meant the passport was the passport of a British citizen is undermined by the analysis above which shows that the Appellant had not naturalised as a British citizen, was not entitled to do so prior to 2006, and the first page of the passport, alongside the Appellant's picture, which clearly states that the passport is of a British Overseas Territories Citizen.
30. The other matter relied upon is that in contrast to the 2016 passport, there is no observation that the holder is subject to control under the Immigration Act 1971. However, we are satisfied that the question of whether or not an individual is subject to immigration control is determined by statute, and not the observations in a passport. We thus conclude that the extra word 'British' is simply an unfortunate typographical error. The absence of further observation in the passport is of no significance. We are satisfied that Appellant has naturalised as a BOTC only. The passport is the passport of a BOTC, and not the passport of a British citizen.
31. The Appellant's next contention is that he was not subject to immigration control as a BOTC or in any event. As Mr Deller's position statement makes clear by reference to ss1-2 of Immigration Act 1971, only those with the right of abode are not subject to immigration control, and only British citizens and certain Commonwealth citizens have the right of abode. As a BOTC, the Appellant falls into neither of these categories. He is thus subject to immigration control.
32. We next consider whether the Appellant was in the UK in breach of immigration control and subject to time limits. Schedule 1(6) of the Immigration Act 1971 states as follows:
6. –
- (1) Subject to sub-paragraph (3) below, where a person examined by an immigration officer under paragraph 2 above is to be given a limited leave to enter the United Kingdom or is to be refused leave, the notice giving or refusing leave shall be given not later than [twenty-four hours] after the conclusion of his examination (including any further examination) in pursuance of that paragraph; and if notice giving or refusing leave is not given him before the end of those [twenty-four hours], he shall (if not [a British citizen]) be deemed to have been given [leave to enter the United Kingdom for a period of six months subject to a condition prohibiting his taking employment] and the immigration officer shall as soon as may be give him written notice of that leave.*
33. So, where a person subject to immigration control is not given a notice within 24 hours of entry, the individual is deemed to have been given leave for a period of six months subject to a condition prohibiting his taking employment. Written

notice of leave shall be given 'as soon as may be'. The issue in the Appellant's case is that he was never given notice of leave. The Appellant suggests that this means his leave was not time limited. We do not accept this. 'As soon as may be' is a vague and indeed non-committal term. No time limit is set. In view of this, we do not consider that the failure to give written notice meant that the deemed leave provision did not apply to the Appellant. We thus consider that on each entry, the Appellant lawfully resided for 6 months. Any time spent in the UK after that was not lawful residence.

34. We have considered the letter of 4 January 2019. We do not consider the Respondent's acceptance in that letter that the Appellant was not subject to any time restrictions assists the Appellant in the light of the fact that the letter also considers that the Appellant was in breach of immigration control at the time. We also note that Mr Deller's position statement takes a different view on whether the Appellant had been subject to any time restrictions. We consider that the correct position in law is that the Appellant was deemed to have been given leave to remain for 6 months on each entry even if he was not given notice of this.
35. The Appellant complains that his application to register as a British citizen was rejected. As noted above, s4A, which provides for a general discretion to register BOTCs as British citizens, explicitly does not apply to BOTCs of Cypress. There is a more general discretion under s4 subject to residence conditions which in our view the Appellant cannot satisfy. S4(4) does however explicitly permit the Respondent to waive the various residence requirements 'in special circumstances'. The Tribunal considers that whether there are such circumstances was, and if any further application is made will be, a matter for the Respondent to consider. It is for the Appellant to either seek to challenge the previous decision out of time by way of judicial review, or to make a further application. It is not for this Tribunal in a statutory appeal on human rights grounds to assume the position of the Respondent in relation to matters (acquisition of British citizenship) for which it has no jurisdiction.
36. So far as the Appellant misunderstood the nature of the citizenship granted in 2006, we consider that this is his responsibility at least until he first entered the UK. Given the particular status of the Cyprus military base we consider it unlikely he would be misled by officials at that base. Where we accept that the Appellant has a legitimate sense of grievance, is that he should have been informed upon each entry that his period of lawful leave was limited to 6 months, but he was not. We understand that the Appellant was not entitled to claim benefits and should have been informed of that on his first application. However, we do not consider that this amounts to an egregious failure by the Respondent as claimed by Ms Smith. The Respondent's failings meant that the Appellant remained in the UK longer than he otherwise would have done assuming he would have abided by the terms of his leave to remain had he been made aware of them. The failings meant that the Appellant received welfare benefits to which he would not have been entitled had his immigration status

been properly understood. So, the Appellant was not denied benefits (both immigration and welfare) that he should have received. He received benefits to which he was not entitled. The Respondent however repeatedly failed to inform the Appellant about the correct legal position and so must share some responsibility for the fact of the Appellant's residence from the period from the Appellant's first entry to the UK until firstly, the 2016 passport was issued, and secondly, the precise limitations with his citizenship were raised with the Appellant in 2018.

37. In our view, these matters have the following implications for the proportionality balancing exercise. The maintenance of immigration control is in the public interest. The Appellant cannot satisfy the requirements of the Immigration Rules. However, the fact that the Respondent has herself failed to take the necessary steps to maintain immigration control in relation to the Appellant reduces the weight that we attach to the public interest. Similarly, the fact that the Appellant remained in the UK beyond his period of deemed leave does not add to the public interest for the obvious reason that the Appellant was not given notice of the time limit to his leave to enter.
38. In relation to the factors set out at s117B of the 2002 Act. We note that the Appellant speaks English fluently, though this is a neutral factor. The Appellant has not shown that he is financially independent which is a factor adding to the public interest. We consider the public interest, while entitled to some weight, is entitled to reduced weight due to the Respondent's failings identified above.
39. We now consider the Appellant's private life in the UK. In view of our analysis in relation to the Appellant's BOTC status and the lawfulness of his residence set out above, we are satisfied that the Appellant's immigration status in the UK has been precarious throughout and so we have regard to the principle that private life established in circumstances should be given little weight. However, notwithstanding this principle, there are good reasons why the Appellant's private should be at least potentially be accorded weight in view of the Respondent's failings identified above. The difficulty for the Appellant is that we do not consider that he has shown that he has established a significant private life in the UK during his period of residence. He does not have any relationship of significance with his sister in the UK. While the Appellant sought work in the UK mistakenly thinking he was entitled work, he has not worked in the UK. His witness statement dated 14 September 2021 gives very little detail about his life in the UK. He says he is having to ask people to accommodate him and help out financially, but the statement does not give details of who these people are. No-one else attended the Tribunal to give evidence in support of his appeal. There is no evidence of any significant ill health. We do not consider the Appellant's period of employment in Cyprus is of particular significance to his life in the UK since 2011. We find that the Appellant has not established that he has any significant ties in the UK. In contrast, as discussed above, his wife and four adult children all continue to live in Pakistan. He has visited Pakistan regularly. His family ties all remain in

Pakistan. Hence we do not consider that requiring the Appellant to return to Pakistan would cause him significant hardship. We are satisfied that he would be able to return and live with his family there. As found above, he faces no significant obstacles to integration. In the circumstances, we do not consider that the Appellant has established private life in the UK that is entitled to significant weight.

40. We find that the public interest in the Appellant's removal outweighs the Appellant's private life. The Appellant's case relies heavily on his claim to have been treated somehow unfairly in relation to his form of British citizenship as a BOTC. On our analysis the unfairness to the Appellant is limited. The rights and entitlements of BOTCs are clear, even if they were misunderstood by the Appellant, and possibly the Respondent too at times. We take into account that the Respondent failed to give the Appellant notice of the time limits of his leave to enter, and he was granted welfare benefits to which he was not entitled. We do not consider that the limited failings of the Respondent amount to compelling or exceptional circumstances in themselves, though they do reduce the weight we attach to the public interest. However, the Appellant has not shown that he established any significant private life during his period of residence in the UK resulting from the Respondent's mistakes. Hence, even though the public interest is reduced in the Appellant's case, it still outweighs the Appellant's private life. We do not find it made out on the facts that there are exceptional circumstances which would render refusal of the application a breach of Article 8 ECHR. We find the conclusion reached, although not the one sought by the Appellant, strikes a fair balance between the competing public and private interests at large in the matter. The decision is proportionate.

Decision

The Appellant's appeal against the refusal of his human rights claim is dismissed.

Anonymity

The First-tier Tribunal made no order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

We make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 4 October 2021