Easter Term
[2014] UKSC 28
On appeal from: [2012] EWCA Civ 1362

JUDGMENT

R (on the application of Fitzroy George) (Respondent) *v* The Secretary of State for the Home Department (Appellant)

before

Lord Neuberger, President
Lord Clarke
Lord Carnwath
Lord Hughes
Lord Toulson

JUDGMENT GIVEN ON

14 May 2014

Heard on 4 March 2014

Appellant	*Respondent*
Robin Tam QC	Stephen Knafler QC
Jonathan Moffett	Gordon Lee
(Instructed by Treasury Solicitors)	(Instructed by Sutovic and Hartigan Solicitors)

LORD HUGHES (with whom Lord Neuberger, Lord Clarke, Lord Carnwath, and Lord Toulson agree)

1. If a criminal who previously had leave to remain in this country is liable to deportation because of his offences, but cannot actually be deported because to remove him would infringe his rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms, with the result that the deportation order is revoked, what is the status of his previous leave to remain? It is common ground that the making of a deportation order renders his leave to remain invalid. The question in this appeal is whether, if the deportation order is revoked, his leave revives or whether the Secretary of State is at that stage free to consider afresh what leave to grant to him.

2. Mr George was born in Grenada in 1984 and came to this country when 11 in 1995. As at March 2000 he had been granted indefinite leave to remain here. Since then, however, he has been convicted on seven different occasions of offences, some relatively minor but some not. The convictions include five counts of supplying cocaine in January 2002, for which he was sentenced to three years detention in a Young Offenders' Institution, driving whilst disqualified and without insurance in December 2003, which resulted in a sentence of eight weeks' detention, and, on 7 April 2005, two counts of possession of, respectively, heroin and cocaine, with intent to supply, occasioning four years' imprisonment.

3. On the basis of these convictions, the Secretary of State judged that his deportation would be conducive to the public good. In January 2007 notice was duly served on him that a deportation order was to be made. There ensued a series of unsuccessful attempts to challenge that decision, in the Asylum and Immigration Tribunal and the High Court, which lasted until April 2008. When those rights of appeal were exhausted, the Secretary of State was able actually to make the deportation order of which advance notice had been given, and that order was made on 24 April 2008. Mr George, however, made further application to the Secretary of State contending that to deport him would infringe his article 8 rights to respect for his private and family life. He has a partner whom he has known since he was at school, and although they do not and have not lived together, they have a daughter born in 2005 who sees her father reasonably often and stays with him on occasion. The Secretary of State took the view that, balancing this level of family life against Mr George's convictions, his deportation would not amount to a breach of article 8, and she refused to revoke the deportation order. However, after a number of intermediate stages of legal process, Mr George's immigration appeal against that last decision was allowed by the immigration judge in a ruling promulgated on 31 March 2009. She held that, although the case was a "borderline" one, the balance

between the conviction history and the family life had been struck wrongly by the Secretary of State. It is common ground that the effect of this decision was to revoke the deportation order on the grounds that to implement it would infringe Mr George's article 8 rights to family life.

4. Subsequently, Mr George's solicitors called on the Secretary of State to confirm that he had indefinite leave to remain, but she refused to do so. Instead she granted him six months' discretionary leave on 2 August 2013. This court was told that since that expired it has been replaced with a grant of three years' discretionary leave. It appears that the Secretary of State is treating him as she treats a number of other immigrants, and is implementing what may turn out to be a pattern of successive grants of discretionary leave to remain and which may result, if all goes well, in that leave becoming indefinite, but not until something of the order of 10 years have passed. His case, however, is that his original *indefinite* leave to remain has revived when the deportation order was revoked. He advanced this case by way of application for judicial review of the Secretary of State's decision not to reinstate indefinite leave to remain but instead to make grants of time-limited leave. He failed before the judge but before the Court of Appeal succeeded by a majority. This is the appeal of the Secretary of State from the latter decision: [2013] 1 WLR 1319.

The statutory provisions for deportation

5. The statutory trail begins with the Immigration Act 1971 ("the 1971 Act"). Although it has been amended subsequently, the relevant provisions date from its enactment and have stood (save for immaterial adjustments) for 40 years. By section 3 it requires that those with no specific right of entry to the United Kingdom need leave to enter, which leave may be indefinite or time-limited and may be subject to conditions. Section 3(5) and (6), together with section 5, contain the provisions for deportation. First, subsections 3(5) and (6) deal with when a person is "liable to deportation". They say:

> (5) A person who is not a British citizen is liable to deportation from the United Kingdom if—
>
> (a) the Secretary of State deems his deportation to be conducive to the public good; or
>
> (b) another person to whose family he belongs is or has been ordered to be deported.

(6) Without prejudice to the operation of subsection (5) above, a person who is not a British citizen shall also be liable to deportation from the United Kingdom if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so.

6. Once a person is "liable to deportation" under these rules, one turns to section 5, which provides for the actual making of a deportation order:

5(1) Where a person is under section 3(5) or (6) above liable to deportation, then subject to the following provisions of this Act the Secretary of State may make a deportation order against him, that is to say an order requiring him to leave and prohibiting him from entering the United Kingdom; and a deportation order against a person shall invalidate any leave to enter or remain in the United Kingdom given him before the order is made or while it is in force.

(2) A deportation order against a person may at any time be revoked by a further order of the Secretary of State, and shall cease to have effect if he becomes a British citizen.

The final stage is provided for by section 5(5) and Schedule 3, which permits the Secretary of State to give "directions for … removal" of those against whom a deportation order is in force, which directions may stipulate such matters as the manner of removal and form of travel.

7. These deportation provisions remain in force and are the ones which applied to Mr George. It should, however, be noted that since the passing of the UK Borders Act 2007 ("the 2007 Act"), the commonest source of a decision to deport a convicted person lies in the provisions of section 32 of that Act, styled "automatic deportation". The effect of this section is that (i) a non-British citizen who (inter alia) is sentenced to a term of 12 months imprisonment or more is termed a 'foreign criminal', (ii) as such his deportation is deemed to be conducive to the public good for the purposes of section 3(5)(a) of the 1971 Act so that he is liable to deportation, and (iii) the making of a deportation order is mandatory rather than discretionary, and irrevocable, unless specific exceptions apply, of which one is that removal would entail infringement of Convention rights.

8. It follows that in Mr George's case:

i) once the Secretary of State had decided under section 3(5)(a) of the 1971 Act that his deportation would be conducive to the public good, he became "liable to deportation"; the notice served on him in January 2007 warned him of an impending deportation order in consequence;

(ii) at that stage his indefinite leave to remain continued extant but precarious, as it did throughout the 18 months or so following, during which unsuccessful attempts were made to challenge the decision that he was liable to deportation; this is consistent with the general scheme of the immigration appeals system, under which whilst appeals are pending suitable (if varying) provision is made to preserve the position in the interim;

(iii) when in April 2008 the deportation order was made under section 5(1) of the 1971 Act the consequence was that his indefinite leave to remain was invalidated under the closing words of that subsection;

(iv) the immigration judge's ruling in March 2009 that his article 8 rights would be infringed by deportation was made on his appeal against the refusal by the Secretary of State to revoke the deportation order; the consequence is agreed to be that the deportation order was thereby revoked;

(v) he remains liable to be deported, but an order for his deportation cannot be made in his present circumstances because it would entail an infringement of his Convention rights.

The case for revival of indefinite leave to remain

9. For Mr George, the carefully crafted submissions of Mr Knafler QC that his indefinite leave to remain revived when the deportation order was revoked can conveniently be considered under 2 headings:

(a) it is said that as a matter of construction, section 5(1) and (2) of the 1971 Act mean that upon revocation the position reverts to the status quo ante, viz the indefinite leave revives;

(b) it is said that the position is made clear by considering other statutes in pari materia, in particular section 76 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), section 10 of the Immigration and Asylum Act 1999 ("the 1999 Act"), and the automatic deportation provisions of the 2007 Act (paragraph 7 above).

Section 5(1) & (2) of the 1971 Act

10. Mr Knafler's submission is that section 5(1) prescribes three consequences of a deportation order – a direction to leave, a prohibition on return and the invalidation of any existing leave to remain. Accordingly, he says, revocation under section 5(2) reverses all three consequences. This, however, does little more than assume what it seeks to prove. His three consequences of a deportation order are in any event of differing character; the first two require obedience by action or omission on the part of the individual, whereas the third is a statement of a legal effect. The wording of these two sections does not by itself provide a conclusive answer to the question of whether revocation of a deportation order operates to revive leave to remain which the making of the order invalidated. If anything, the wording tends to suggest that revocation operates as from the moment it occurs, that is to say is prospective rather than retrospective. It is from that moment onwards that the individual is no longer under an obligation to leave, and is free to return. Consistently with that, one might expect that the invalidation of leave which has occurred through the making of the deportation order is not undone.

11. Mr Knafler's associated submission is that the words "shall cease to have effect" in section 5(2) govern both revocation and the different trigger of the individual becoming a British citizen. Even if they did, that does not help answer the question what is meant by "cease to have effect", which could bear either a prospective or retrospective meaning, albeit it more strongly suggests the former. But in any event, it is quite clear that these words are associated only with the citizenship trigger and not with revocation. It makes perfectly good sense for the subsection to distinguish between them since the first depends on the act of the Secretary of State (or the Immigration Judge on appeal) whereas the latter is independent of any act of hers.

12. The wording of section 5(2) may by itself be capable of bearing the meaning that revocation reverses the legal effect of the deportation order and thus revives leave to remain, but if that had been the intent, one might have anticipated the statute saying so. What is, however, completely clear is that it has been treated from the outset by relevant persons operating or commenting upon the Act as meaning that revocation did not undo the invalidation of leave to remain which had been achieved by section 5(1). The body of evidence of this is considerable. It includes the following.

> (i) Draft Immigration Rules were prepared contemporaneously with the passage through Parliament of the 1971 Act (Immigration Rules: Control after Entry (Cmnd 4610) as amended by Cmnd 4792); these were considered by both Houses prior to the completion of the Act's legislative progress; the draft rules included paragraph 58 which stated in terms:

> "Revocation of the deportation order does not entitle the person concerned to re-enter the United Kingdom; it renders him eligible to qualify for admission under the immigration rules".

(ii) That provision was then repeated at paragraph 66 of the substantive Statement of Immigration Rules for Control after Entry (HC 510), which was laid before Parliament on 23 October 1972.

(iii) Every subsequent Statement of Changes in Immigration Rules has contained the same proposition in identical terms, including the current one (1994) (HC 395) at paragraph 392; all have been laid before Parliament pursuant to section 3(2) of the 1971 Act, under the negative resolution procedure.

(iv) Successive editions of *Macdonald's Immigration Law and Practice in the United Kingdom* from the first (1983) until the current 8th (2010) record this same proposition without question.

If the wording were incapable of contrary reading, an error in its interpretation in the Rules, however long perpetuated, would not reverse its correct construction. But this wording is not clear. Moreover, the successive assumptions in the Rules about its meaning are very relevant when one comes to consider Mr Knafler's second submission, and in particular the terms of section 76 of the 2002 Act, which is the section which persuaded the majority of the Court of Appeal that he was right.

Section 76 of the 2002 Act

13. Prior to this provision indefinite leave to remain could not be removed except by a deportation order and the operation of section 5(1) of the 1971 Act. Section 76 gave the Secretary of State a new power to revoke a person's indefinite leave to remain, in three defined situations: (1) where a person is liable to deportation but cannot be deported for legal reasons, (2) where leave was obtained by deception such as would make the person liable to removal, but he cannot be removed for legal or practical reasons and (3) where he had, in specified circumstances, ceased to be the refugee which he previously had been. Section 76(1) deals with the first situation:

> The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if the person—

(a) is liable to deportation, but

(b) cannot be deported for legal reasons.

14. The argument which was accepted by the majority of the Court of Appeal was that this enactment, which is part of the same statutory body of immigration law as the 1971 Act, must have been passed on the assumption that it contained the only power by which such a person's leave to remain could be removed. Mr George and others like him are people who are liable to deportation but cannot be deported for legal reasons. That in turn meant, it was held, that the revocation of a deportation order in the case of such a person must have had the effect of reviving any leave to remain which he had. Otherwise, so the argument ran, there would be no need for section 76(1).

15. It is certainly true that the two statutes are part of the same body of immigration law and should be construed consistently with one another so far as possible, although the speed and intensity of legislative change in this field undoubtedly leaves open the real possibility that not every provision is consistent with every other. It is also clear, and conceded by the Secretary of State, that section 76(1) would apply to Mr George. It does not, however, follow that there was no point in enacting section 76(1) unless revocation of a deportation order revived leave to remain.

16. In the case of Mr George the legal bar to his deportation was only upheld after the deportation order had been made. But there will be many others who cannot be deported for similar legal reasons but in whose case this is apparent from the moment when they became liable to deportation. There may be many convicted persons who would be deported but for obvious Convention rights bars, perhaps because the conditions in the home country would infringe article 3, or because the convict has very long-standing and strong article 8 rights. The legal bar to deportation may be recognised without dispute by the Secretary of State. In such a case, section 76(1) adds the power, which otherwise did not exist, to revoke indefinite leave to remain. The case for the existence of such a power is clear. A human rights claim may well prevent actual deportation, but the individual concerned is, by definition, a person whose presence is no longer conducive to the public good. If a deportation order cannot be made, it may make good sense to alter his status from indefinite leave to remain to limited or, more likely, conditional leave, which may give scope for control of his activities in the public interest.

17. Although the 2007 Act was not in existence when section 76 was enacted, its scheme for automatic deportation provides another example of a case when section 76 would be available without there being any deportation order to be revoked. If

the Secretary of State determines that section 32(5) of the 2007 Act applies to render an individual liable to deportation, it is not the making of a deportation order but the antecedent decision that the provisions of the Act apply which is appealable: see section 82(3A) of the 2002 Act, inserted by section 35(3) of the 2007 Act. So, if challenge were made to that decision, and were upheld on human rights grounds, there would be no deportation order to be revoked, but the individual's indefinite leave to remain could be removed and replaced with a different kind of leave by acting under section 76.

18. A second powerful reason for rejecting the argument based upon section 76, perhaps not fully ventilated before the Court of Appeal, lies in the history set out at paragraph 12 above. The whole basis of the decision of the Court of Appeal was that section 76 demonstrates that Parliament assumed that the effect of section 5 of the 1971 Act was to revive leave to remain if a deportation order was revoked. But the history demonstrates that Parliament cannot have done so; on the contrary, the assumption at the time was the opposite.

19. A third reason was identified by Stanley Burnton LJ, dissenting in the Court of Appeal. Quite apart from the case of the individual who remains in the United Kingdom and cannot be deported for legal reasons, he considered that there may be other situations in which revocation of a deportation order is appropriate. One suggested case is where a person has been successfully deported and applies subsequently for limited leave to make a brief visit, perhaps to relatives, and perhaps in circumstances where it is appropriate to grant the application on compassionate grounds. Such a person could not simply return, because the deportation order under which he was removed would prevent it. The Secretary of State would need to revoke the deportation order and make a fresh grant of limited or conditional leave. She could not use section 76 to do this, because such a person would not be someone who could not be deported for legal reasons. Stanley Burnton LJ reasoned that Parliament could not have intended that in such a situation the revocation of the deportation order would have the effect of reviving an indefinite leave to remain.

20. This scenario gave rise to a complex debate as to whether there exist other powers by which the Secretary of State might achieve the same end, in particular by invoking article 13(7) of the Immigration (Leave to Enter and Remain) Order 2000 (SI 2000/1161) ("the 2000 Order"). This Order first preserved leave which would otherwise have been treated under section 3(4) of the 1971 Act as lapsed by reason of travel outside the common travel area, and then created by article 13(7) a discretionary power to cancel it when it was only in force because thus preserved. It is possible that this power might now be used in the scenario contemplated by Stanley Burnton LJ, although only if paragraph 321A of the Immigration Rules were first amended, for that rule presently restricts the use of article 13(7) to specific situations which do not include this scenario. But what matters is what section 5(2) of the 1971 Act meant when it was enacted. At that time the 2000 Order had not

seen the light of day and there could be no question of applying article 13(7). The law was, under section 3(4) of the same 1971 Act, that:

> A person's leave to enter or remain in the United Kingdom shall lapse on his going to a country or territory outside the common travel area (whether or not he lands there), unless within the period for which he had leave he returns to the United Kingdom in circumstances in which he is not required to obtain leave to enter; but, if he does so return, his previous leave (and any limitation on it or conditions attached to it) shall continue to apply.

This provision cannot be read, in the context of the 1971 Act where it appears, as applying to a person deported under section 5. If it did, there would be no need for section 5(1) to make any provision at all for the deportation order to invalidate the leave to remain. Nor, even if the effect of section 5(2) is to revive a former leave to remain if a deportation order is revoked, could this section bite at removal under the order since the formerly existing leave would at that stage be invalidated by section 5(1) and there would be nothing to lapse.

21. It may be uncertain how much Stanley Burnton LJ's scenario was in anyone's mind at the time of the passing of the 1971 Act, so its impact on the construction question which arises in this case is perhaps limited. But the possibility that the Secretary of State might wish to revoke a deportation order of someone, either present in the United Kingdom or not, and to replace it with limited or conditional leave, must have existed then as well as now, irrespective of any question of Convention rights obstructing removal. This part of the reasoning of Stanley Burnton LJ therefore does provide some limited additional support for the argument that section 5(2) should not be read as meaning that on revocation of a deportation order any formerly held leave to remain revives.

22. In the Court of Appeal, Sir Stephen Sedley observed at para 32 that if section 76 was the only route available to the Secretary of State to remove leave to remain in the circumstances of a case such as the present, that would mean that the individual would have a right of appeal (under section 82 of the 2002 Act). Whilst that is correct, it cannot assist on the meaning of section 5(2) as at 1971 since section 76 did not then exist. Nor does the prospect of such a right of appeal fortify the case for such as Mr George. Anyone faced with a deportation order already has ample right of appeal and against an order which will invalidate his leave to remain – as the history of this case illustrates. There is no occasion for a legitimate claim to a further appeal.

23. Sir Stephen also observed at para 32 that if the Secretary of State was right, a person such as Mr George would be left in limbo, being irremovable yet having no leave to remain. That also does not assist. The Secretary of State accepts that some leave must be granted if removal is impossible, and has in fact made such grants to Mr George. In any event, there would equally be a limbo if the powers under section 76 were exercised.

24. For these reasons, the argument from section 76 does not avail Mr George.

Section 10 of the 1999 Act

25. Section 10 gives the Secretary of State power to direct summary removal of specific categories of people where, essentially, their leave to remain is seriously flawed. The two principal categories are those who have failed to observe a condition of their leave (who accordingly are outside the leave granted) and those who obtained it by deception. The other two categories are those whose position is as a dependent family member of someone being removed under this same section and those who have ceased to be refugees within the meaning of section 76(3) of the 2002 Act (supra at paragraph 13). The effect of removal directions is, by section 10(8) (as substituted by section 48 of the Immigration, Asylum and Nationality Act 2006), to invalidate the leave to remain. Thus the language employed mirrors that of section 5(1) of the 1971 Act. Mr Knafler contends that in this section a withdrawal or revocation of the removal directions would clearly revive the leave to remain and that accordingly the same must apply to revocation of a deportation order under section 5 of the 1971 Act.

26. The precise meaning of section 10(8) is not before this court and it would be wrong to attempt to decide it in the absence of facts raising the issue. Much might depend on the circumstances of any withdrawal and what if any alternative step the Secretary of State attempted or purported to take. But it should not be assumed either that the effect of the section is that withdrawal of the removal directions would reinstate the leave to remain, unaltered, or that, if it would, the same was the rule created 28 years earlier by section 5 of the 1971 Act for the different situation of a deportation order made because the presence of the individual is not conducive to the public good. The appeal rights of those affected by section 10 summary removal directions and those facing deportation are quite different. In any event, it is unsafe to reason from a different regime enacted 28 years afterwards to the meaning of the 1971 Act.

Automatic deportation under the 2007 Act

27. Mr Knafler suggests that unless section 5(2) of the 1971 Act involves revival if the deportation order is revoked, a person who successfully appeals automatic deportation will still have his leave to remain invalidated; hence, he submits, section 5(2) must involve revival. The argument runs as follows. (A) In a non-automatic case an appeal against a decision (under section 3(5) of the 1971 Act) that a person's deportation is conducive to the public good, and thus that a deportation order will follow, is appealable under section 82(2)(j) of the 2002 Act and whilst the appeal is pending no deportation order can be made: see section 79(1) of that Act; (B) when the 2007 Act scheme was introduced the decision which was made appealable is not the making of the deportation order but the antecedent decision that the individual is caught by the automatic deportation rules: section 82(3A) of the 2002 Act, as introduced by section 35 of the 2007 Act; (C) at the same time section 79 of the 2002 Act was modified by the introduction of subsections (3) and (4) which provide that the usual prohibition on making a deportation order whilst an appeal is pending does not apply but that during that time there is an exception to the rule under section 5(1) of the 1971 Act that it invalidates the leave to remain; (D) therefore it is possible that the individual could succeed in his appeal, establish that he is not caught by the automatic deportation rules, but yet there may be a deportation order which will have the effect, once the appeal is over and no longer pending, of invalidating his leave to remain.

28. This may or may not be a possible scenario. The import of the 2007 Act needs to be resolved on facts arising from it and not hypothetically on a case to which it has no application. That the legislation is not as a whole entirely cohesive is demonstrated by the fact that in a non-automatic case, the appeal may be against either the decision to make a deportation order or against a refusal to revoke the order itself if matters have advanced that far; the appealable decisions are described in section 82(2)(j) and (k). If the postulated automatic deportation case is a possible scenario, it would not of course apply except where (a) a deportation order was made, as it need not be, and (b) the effect of a successful appeal is to induce its revocation. There are, in any event, very limited grounds on which an appeal against automatic deportation of a foreign criminal can be mounted. The principal ones in practice may well be that Convention rights prevent deportation (exception 1 pursuant to section 33(2) of the 2007 Act). It is not necessarily anomalous or wrong that a foreign criminal who would be deported but for a Convention bar should have his indefinite leave to remain invalidated and that the Secretary of State should be able to regulate his status in this country by means of limited or conditional leave (see below). It is not possible to reason from a single suggested scenario under an Act of 2007 to the true meaning of a statute passed 36 years earlier.

Conclusion

29. The terms of section 5 of the 1971 Act are, as words, capable either of importing revival of leave or of not doing so. Revival is not their natural meaning,

because the natural meaning is that revocation takes effect when it happens and does not undo events occurring during the lifetime of the deportation order. Revival is a significant and far-reaching legal concept, and it is much more likely that it would have been specifically provided for if it had been intended.

30. The reasoning of the Court of Appeal, from section 76 of the 2002 Act, cannot be supported. Whilst statutes in pari materia should be construed consistently if possible, a later statute is not a reliable guide to the meaning of an earlier one, especially in a field such as immigration where social and political pressures have led to fast-moving changes in the legislation. In particular, the history of the treatment of section 5(2) of the 1971 Act in successive rules laid before Parliament both before and ever since the 1971 Act was passed shows very plainly that there cannot have been a legislative assumption that revival was its effect.

31. The contrary construction, involving no question of revival, is entirely consistent with the scheme of the 1971 Act (and indeed subsequent statutes) on the topic of deportation. The position of Mr George is not analogous to someone with a pending appeal. His status as a person liable to deportation has long since been established; his appeal challenging it failed long ago. Persons are liable to be deported, under any of the procedures which may apply, because their presence in the United Kingdom is judged not to be conducive to the public good. That is true of Mr George. If it turns out that there is a legal obstacle to actual removal, for example because of Convention rights which cannot be infringed, that does not alter the fact he is a person whose presence is not conducive to the public good. There is no legal symmetry in indefinite leave to remain co-existing with the status of someone whose presence is not conducive to the public good. It makes perfectly good sense, whilst the legal obstacle remains, for the Secretary of State to be in a position to re-visit the terms of leave to enter. Moreover, the legal obstacle is not necessarily, or even usually, permanent. If it arises from conditions in the individual's home country, those conditions may change or he may come into favour with the authorities when previously he was not. If it arises from his family connections in the United Kingdom, those may easily change. If someone in his position cannot at present be deported because to do so would infringe his article 8 rights, and if indefinite leave to remain were thereupon to revive, he would remain irremovable if he turned his back on his family, or they on him, as may not infrequently occur. Whilst there may be different routes by which the Secretary of State could now achieve a similar result, for example via section 76 of the 2002 Act, it is clear that this was also the coherent result of the 1971 Act, from the time that it was enacted.

32. On its correct construction, section 5(2) of the 1971 Act does not mean that if the deportation order is revoked, the invalidation by section 5(1) of leave to remain is retrospectively undone and the previous leave to remain does not revive. Mr George remains liable to deportation, even though it cannot at present be carried out.

His position in the United Kingdom must be regularised, but that does not entail a recognition of indefinite leave to remain. The Secretary of State's grant to him of successive limited leaves is perfectly proper. Whether or not it may become appropriate after the passage of time to re-grant indefinite leave is a matter for her.

33. For those reasons, the appeal of the Secretary of State should be allowed and the order of the judge dismissing the claim for judicial review should be reinstated.