

R (on the application of AM (Belarus)) (Respondent) v Secretary of State for the Home Department (Appellant)

Case ID: 2022/0113

Case summary

Issue

When will a refusal by the Secretary of State for the Home Department to grant leave to remain to an individual, who cannot be removed to their country of nationality, violate that individual's right to respect for private and family life under article 8 of the European Convention on Human Rights?

Facts

AM is a Belarusian national. He arrived in the UK in 1998 and claimed asylum. His asylum claim was refused on 12 December 2000 and he was deported to Belarus on 29 June 2001. As AM told the Belarusian authorities that he was not a Belarusian citizen, he was refused entry and returned to the UK. Attempts by the Secretary of State to obtain necessary travel authorisations for AM from Belarusian authorities failed and he remains in the UK. Between 1999 and 2018, AM was also convicted of a number of offences and sentenced to several terms of imprisonment.

On 15 September 2010, AM filed an application for judicial review of the Secretary of State's failure to provide him with leave to remain or permission to work in the UK. The High Court of England and Wales granted permission for this judicial review on 7 May 2011. In September 2011, the Secretary of State subsequently agreed to reconsider AM's asylum claim and the High Court stayed the judicial review claim.

The Secretary of State again refused AM's asylum claim. AM appealed this refusal. On 30 March 2012, the First Tier Tribunal dismissed this appeal, finding that Belarus' refusal to admit him was because he had failed to provide accurate information, not his political opposition. AM appealed this judgment to the Upper Tribunal, which dismissed his appeal on 23 April 2013.

Following the failure of further attempts by AM and the Secretary of State to obtain necessary travel authorisations for AM to travel to Belarus, AM applied to the Secretary of State for leave to remain in the UK as a stateless person on 9 February 2017. This too was refused.

On 13 July 2018, AM applied to reinstate the judicial review proceedings which had previously been stayed. He also applied to add a second ground challenging the refusal to grant him leave to remain as a stateless person. On 31 July 2018, both applications were transferred to the Upper Tribunal, which granted permission to reinstate the judicial review proceedings and amend the grounds of challenge on 21 July 2020.

Throughout this process, AM has suffered from ill-health. In early 2018, he was diagnosed with psychotic symptoms. The Upper Tribunal was also presented with evidence that he had attempted suicide whilst in detention and that his mental health had been adversely affected by delays in resolving his case and lack of status.

The Upper Tribunal's judgment was handed down on 11 February 2021. It held that, as the likelihood of removing AM to Belarus was remote, continuing to refuse to grant AM leave to remain would be a violation of his right under article 8 of the European Convention on Human Rights. However, as the refusal of the Belarusian authorities to allow AM to enter Belarus was because of AM's persistent failure to tell the truth as to his identity, he was not stateless.

The Secretary of State appealed the Upper Tribunal's finding regarding article 8 to the Court of Appeal of England and Wales, which dismissed its appeal. The Secretary of State now appeals that judgment to the UK Supreme Court.

Judgment appealed

[\[2022\] EWCA Civ 780](#)

Parties

Appellant(s)

Secretary of State for the Home Department

Respondent(s)

AM

Appeal

Justices

Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lord Stephens, Lady Simler

Hearing start date

6 December 2023

Hearing finish date

7 December 2023

Watch hearing

6 December 2023 [Morning session](#) [Afternoon session](#)

7 December 2023 [Morning session](#)