



Neutral Citation Number: [2021] EWHC 254 (Admin)

Case No: CO/1486/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/02/2021

Before:

CLIVE SHELDON QC
(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

Between:

R on the application of

(1) HELEN NGUYEN

(2) MICHEAL NGUYEN

Claimant

- and -

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

Defendant

Carlo Talacchi (instructed by **Morgan Hall Solicitors**) for the **Claimants**
Ruth Kennedy (instructed by **Government Legal Department**) for the Secretary of State

Hearing date: 4 February 2021

JUDGMENT

Clive Sheldon QC (sitting as a Deputy Judge):

1. This is a renewed application for permission to seek judicial review brought by Helen and Micheal Nguyen against the decision of the Secretary of State for the Home Department to refuse them registration as British citizens under the British Nationality (Hong Kong) Act 1997 (“the Hong Kong Act”). Permission was refused on the papers by Charles Bourne QC (as he then was) sitting as a Deputy High Court Judge.
2. Helen and Micheal are siblings. They were born in Hong Kong on August 10th 1999 and July 22nd 2000 respectively. They came to the United Kingdom on November 24th 2016. They applied for registration as British citizens as minors, but this was refused. Judicial review proceedings were subsequently issued and resolved. On January 23rd 2020, the Defendant reconsidered their applications for registration, but maintained the refusal. Judicial review proceedings were brought on April 24th 2020 (one day outside of the three-month judicial review back-stop time period).
3. The decision letter issued by the Defendant stated as follows:

“I write further to your applications for British Citizenship under the British Nationality (Hong Kong) Act 1997.

One of the requirements for registration under this Act is that a person must be solely British on the relevant date and on the date of application.

Hai Mi Helen Nguyen was born in Hong Kong on 10 August 1999 and Micheal Nguyen was born in Hong Kong on 22 July 2000.

On 01 July 1997 Hong Kong ceased to be a British Dependant Territory therefore when your clients were born Hong Kong was not a British Dependant Territory.

Potential British Nationalities

Your clients were not born in a British Dependent Territory and neither of their parents were British Dependent Territories Citizens so your client’s are not British Dependant Territories Citizens.

Your clients were not registered as British Nationals (Overseas) so they do not hold that status.

To be automatically a British Overseas Citizen through birth in Hong Kong under paragraph 2 of schedule 2 of the British Nationality Act 1981 a person born in a British overseas territory on or after 1 January 1983 who would otherwise have been born stateless, will be a British overseas citizen if at the time of their birth either or both of their parents was a British overseas citizen. Hong Kong was not a British Overseas Territory at the time of your client's birth so this section cannot apply to them.

Under the Hong Kong (British Nationality) Order 1986 article 6(2) states a person born on or after 1 July 1997, who would otherwise have been born stateless, will be a British overseas citizen if, at the time of the birth, either of the parents was a British National (Overseas) or a British Overseas Citizen. Neither of your parents were British National (Overseas) or British Overseas Citizens at the time of their births.

Parents

Your client's father, Hai Ngoc Nguyen, was born in Vietnam on 11 February 1960. He applied for a visa to enter the UK on 21 May 1997 and stated his nationality as Vietnamese. He entered the UK on 07 January and was granted indefinite leave to remain on that date. He applied for naturalisation as a British Citizen on 28 March 2006 and stated his Nationality on his application form as Vietnamese. On the application form your father states he was born in Quang Ninh, Vietnam. He states his father Binh Ngoc Nguyen, born in Quang Ninh, Vietnam in 1931 and gives his nationality as Vietnamese. Hai Ngoc Nguyen states his mother as Thuan This Mail, born Quang Ninh, Vietnam in 1937.

Article 16 of Law No. 07/1998/QH10 on Vietnamese Nationality of 20 May 1998 covers the nationality of children born to parents who are Vietnamese citizens and confirms that 'a child born inside or outside the Vietnamese territory whose parents, at the time of his/her birth, are both Vietnamese citizens has Vietnamese nationality'. This article is applicable to your clients father. There has not been any written confirmation from the Vietnamese Authorities stating that Hai Ngoc Nguyen is not a Vietnamese Citizen.

As Hai Ngoc Nguyen was born in Vietnam to Vietnamese parents he is a Vietnamese Citizen, as he confirmed on both his visa application and his British Citizenship application.

Hai Ngoc Nguyen did not become a British citizen until he attended his British Citizenship ceremony on 21 August 2006 and was therefore Vietnamese at the time of both of your client's births.

Your clients mother is stated as Thi Dung Nguyen born Vietnam on 12 November 1973. The nationality of her parents has not been given/is unknown. Thi Dung Nguyen has stated that she is stateless but holds a Hong Kong SAR identity Document which gives her place of birth as Vietnam. The Chinese authorities appear to be satisfied that your clients mother was born in Vietnam.

Within the Hong Kong SAR ID document there is a certificate of visa exemption for Vietnam dated 12 April 2016. This document does not confirm that Thi Dung Nguyen is not a Vietnamese Citizen but just that she does not need a visa to enter Vietnam.

However, for your clients to be considered stateless then both parents would have to be stateless. Article 17 of Law No. 07/1998/QH10 on Vietnamese Nationality of 20 May 1998 covers the nationality of children to parents one of whom is a Vietnamese citizen, It states:

‘A child born inside or outside the Vietnamese territory either of whose parents is a Vietnamese citizen and the other is a stateless person at the time of his/her birth or whose mother, at the time of his/her birth, is a Vietnamese citizen and whose father is unknown, has Vietnamese nationality.’

Your client’s father was Vietnamese at the time of their birth so regardless of their mothers status your clients are Vietnamese and not stateless.

As previously stated, one of the requirements for registration under this Act is that a person must be solely British on the relevant date and on the date of application. Your clients were not stateless at birth so are not considered to be British Overseas Citizens or hold any form of British Nationality.

As your clients do not hold any form of British Nationality they are not eligible for registration under section 4B of the British Nationality Act 1981.”

4. The Claimants challenge this decision. They essentially make two arguments. First, that the Defendant took into account irrelevant factors and failed to take into account relevant factors, and applied a higher burden of proof than was required. Second, that the Defendant has misdirected herself as to the relevant law: it is sufficient to obtain registration if one of the Claimants’ parents was a British Overseas National.

5. In my judgment, there is no arguable case with respect to either of these matters. The decision of the Defendant is well reasoned, sets out the relevant evidence (including evidence that she holds from the Claimants' father as part of his applications for a visa and then British citizenship), does not place the burden of proof improperly or at too high a threshold, and has not failed to take into account relevant factors. Mr. Talacchi urged on me that the Defendant should have taken into account that the Claimants' father was a refugee from Vietnam – one of the Vietnamese boat people, and that this was ignored by the Defendant. However, it was not explained to me why the status of the Claimants' father as a refugee had any impact on his citizenship.
6. The evidence available to the Defendant was that at the time of the Claimants' births, one of their parents (their father) was Vietnamese, and their mother was either stateless or Vietnamese herself. As a result, and in accordance with the relevant law of Vietnam, both Claimants were Vietnamese citizens at birth. The effect of this was that they did not qualify for British citizenship through the route of Article 6(2) of the Hong Kong (British Nationality) Order 1986.
7. Article 6(2) provides that:

“Where a person born on or after 1st July 1997 would, but for this paragraph, be born stateless, then, if at the time of the birth his father or mother is a British National (Overseas) or a British Overseas citizen by virtue of paragraph (1) above, he shall be a British Overseas citizen”.
8. It is clear from this article that a pre-condition to being a British Overseas citizen is that the applicant must otherwise be ‘stateless’. The Defendant found, and was entitled on the evidence to find, that the Claimants were not stateless at the date of their respective births. Accordingly, Article 6(2) was not available to them. It did not matter, therefore, whether or not one of their parents was a British National (Overseas) at the time of their births.
9. In the circumstances, permission is refused.