

**SPECIAL IMMIGRATION APPEALS COMMISSION**

Appeal No: SN/85/2019  
Hearing Date: 1<sup>st</sup> February 2021  
Date of Judgment: 4<sup>th</sup> March 2021

Before

**THE HONOURABLE MR JUSTICE JAY  
UPPER TRIBUNAL JUDGE PERKINS  
MR PETER NELSON**

Between

**ZA**

Appellant

and

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

Respondent

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**OPEN JUDGMENT**

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**Mr James Stansfeld** (instructed by the **Government Legal Department**) appeared on behalf of the Secretary of State

**Mr Bilal Rawat** (instructed by **Special Advocates' Support Office**) appeared as Special Advocate

**Mr David Lemer** (instructed by **Duncan Lewis Solicitors**) appeared on behalf of ZA

### **Introduction**

1. The Applicant was born in Afghanistan on 1<sup>st</sup> January 1992. He converted to the Baha'i faith and was tortured on account of it in 2007. On 29<sup>th</sup> January 2008 the Applicant arrived in the UK and claimed asylum. On 21<sup>st</sup> December 2009 he was granted refugee leave for five years, the Respondent believing the essential elements of his account. On 21<sup>st</sup> April 2015 the Applicant was granted indefinite leave to remain. On 6<sup>th</sup> May 2016 he applied for naturalisation as a British citizen and completed an application form for that purpose. On 22<sup>nd</sup> October 2018 this application was refused by the Respondent and certified under s.2D of the Special Immigration Appeals Commission Act 1997. Later, the Respondent withdrew this decision and invited further representations from the Applicant. He responded to that invitation: submissions were lodged, as well as a witness statement.
2. A further decision to refuse the Applicant's naturalisation application was made on 12<sup>th</sup> December 2019. The Respondent informed him that he did not meet the requirement of good character, and "this is because of your involvement in Islamic extremism". The process which led to that refusal is set out in the witness statement of Ms Christine Hughes dated 28<sup>th</sup> July 2020.
3. The Applicant filed an application to review the Respondent's decision on 24<sup>th</sup> December 2019.
4. At the hearing before the Commission on 1<sup>st</sup> February 2021 the Applicant relied on two witness statements which we have carefully considered. He did not give oral evidence. We received assistance from the submissions of Mr David Lemer (for the Applicant), Mr James Stansfeld (for the Respondent) and Mr Bilal Rawat (Special Advocate).

### **The Legal Framework**

5. There was no issue between the parties as to the legal framework governing this application, and we may be brief. The Commission agrees with the synopsis of the law provided by the Lane J sitting in this jurisdiction in *CV v SSHD* [SN/73/2018], paras 7-15.
6. In oral argument Mr Lemer advanced five propositions which may be summarised. First, Schedule 1 to the BNA 1981 sets out the criteria for naturalisation: we bear those in mind. Secondly, the burden of proof is on the Applicant. Thirdly, it is accepted that the Respondent may set high standards, provided that they are reasonable. We would add that the courts have emphasised that citizenship is in the nature of a privilege, not a right. Fourthly, fairness may require an individual to have an opportunity to address a particular issue. We would add that the rule 38 process is the mechanism for ensuring such a level of fairness that is properly attainable in view of the Respondent's certification. Fifthly, Mr Lemer helpfully reminded us of the judgment of Flaux J, as he was then, in *MSB v SSHD* [SN/41/2015], para 28. In short, when it comes to the facts, the Commission's role is to review the Respondent's findings on traditional public law principles, according her no deference. But when it comes to the Respondent's evaluation of the facts as found for the purposes of her final decision, the Commission must accord her a measure of deference.
7. We would also add that the assessment of good character must be a holistic one which does not cherry-pick just the bad or the good.

### **The Applicant's Evidence**

8. In his witness statement dated 15<sup>th</sup> July 2019, the Applicant stressed the fragility of his mental health when he arrived in the UK. It is clear from the Applicant's witness statement that there is positive evidence of good character in his case. He has worked hard and is a high-achiever academically. He has carried out voluntary work in a number of different ways and capacities. He has explained the tangible contribution he made after the Grenfell fire in June 2017. He is a regular blood donor and a registered organ donor. He pays his taxes and makes a positive contribution in that sense. More recently, and after the 2018 refusal, he joined the Liberal Democrats and Amnesty International, and volunteers for a charity called Freedom from Torture. By way of paraphrase of his evidence, the Applicant contends that he has embraced the liberal, inclusive and tolerant culture of the UK.
9. In his witness statement dated 20<sup>th</sup> December 2020, which we have considered *de bene esse* because not all of it is admissible, the Applicant points out that he has worked in the NHS for seven years, principally as a primary carer and is now studying medicine in Georgia.
10. The medical evidence in this case demonstrates that the Applicant was physically abused as a child and has suffered from PTSD and depression. However, all of this evidence is now over ten years old.

### **The Applicant's Grounds**

11. Three grounds of review have been advanced, namely:
  - (1) The absence of any rational basis to conclude that the Applicant has been involved in Islamic terrorism.
  - (2) An irrational failure to have regard to the Applicant's age, medical condition and the effluxion of time since the 2010 port stop.
  - (3) A disproportionate breach of the Applicant's right to private life under Article 8 of the Convention.

#### **Ground 1**

12. The Respondent has adduced nothing in OPEN to support the conclusion that the Applicant has been involved in Islamic terrorism. This aspect of the case is addressed in CLOSED, but we are able to make three short points.
13. First, we accept the Respondent's contention that the inference cannot be drawn that, because the October 2018 decision made no reference to involvement in Islamic terrorism, the evidence relied against the Applicant post-dates this. That is one possible inference but there may be others.
14. Secondly, we cannot accept Mr Lemer's submission that the Respondent's failure to revoke the Applicant's refugee status is inconsistent with her decision not to grant him naturalisation. It is contended that if the Applicant has indeed been involved in Islamic extremism, that would justify revocation. The short answer to this submission is that the Respondent is entitled to be inconsistent if the Applicant is not prejudiced.
15. Thirdly, we address the 2010 port stop under Ground 2 below.
16. Overall, for the reasons set out in our CLOSED judgment, we reject the Applicant's case that the Respondent's decision lacks a rational basis.

**Ground 2**

17. On 5<sup>th</sup> August 2010 the Applicant returned to Stansted airport from Copenhagen at 2:25am. He was examined by immigration officers and an iPhone was seized. There were various items on the phone including a screen saver image depicting males with shalwar kameez and two Kalashnikov rifles. The Applicant denies that the phone was his. He says that he borrowed it from a college friend.

18. We are not able to address this issue in OPEN. It is dealt with in our CLOSED judgment.

**Ground 3**

19. This is not advanced as a free-standing ground. Mr Lemer accepted that he can only succeed on Ground 3 were he to succeed on Ground 1 and/or 2.

20. In our judgment, Ground 3 adds nothing to the Applicant's case.

**Conclusion**

21. This application for review turns on CLOSED material. This means that there has been very little that we have been able to say in OPEN.

22. For the reasons set out in our CLOSED judgment, this application for review must be dismissed.

**Mr Justice Jay**