



12 May 2010

PRESS SUMMARY

ZN (Afghanistan) (FC) and Others (Appellants) v Entry Clearance Officer (Karachi) (Respondent) and one other action [2010] UKSC 21

JUSTICES: Lord Phillips (President), Lord Rodger, Lord Collins, Lord Kerr, Lord Clarke

BACKGROUND TO THE APPLICATION

This appeal raises the question of which immigration rules apply to family members seeking entry to the United Kingdom, where the sponsor has been granted asylum and consequently obtained British Citizenship.

The Appellants are the wife and children of Israr Naimi ('the Sponsor'). The Sponsor came to the UK from Pakistan in 1999 and in December 2001 was granted refugee status and indefinite leave to remain. On 22 March 2005, the Sponsor was granted British citizenship. On 15 October 2005, the Appellants, who had remained in Pakistan, applied for entry clearance to join the Sponsor in the UK.

The Appellants' applications were considered under the Immigration Rules, House of Commons Paper 395 ('the Rules'). Para 281 of the Rules applies to spouses and civil partners of UK citizens and para 297 to children of UK citizens. Those paragraphs require the family of a UK citizen to meet certain accommodation and maintenance requirements before entry clearance is granted. By contrast, spouses and children of refugees who have been granted asylum in the UK may apply for entry clearance under paras 352A and 352D respectively, which do not require them to meet any accommodation or maintenance conditions.

In making the applications for entry clearance, the Appellants also relied on their rights to respect for family life protected by Article 8 of the European Convention of Human Rights.

The Appellants' applications for entry clearance were refused on the grounds that the family could not meet the accommodation and maintenance requirements imposed by paras 281 and 297 of the Rules. The Appellants' Article 8 arguments were also rejected.

The Appellants appealed the decision, arguing that their cases should be considered under paras 352A and 352D. The Respondent's case is that the exceptions granted to the family members of people granted asylum do not apply to the Appellants as the Sponsor had been granted British citizenship before their applications for entry clearance were made. The Respondent argued that the Appellants' applications fell to be considered under paras 281 and 297 and that they must therefore satisfy the ordinary rules dealing with applications by family members of UK citizens.

The Court of Appeal held that paras 352A and para 352D only applied in cases where the sponsor was currently recognised as a refugee. A refugee who thereafter obtained the citizenship of his host country lost his refugee status. In relation to the Article 8 claim, there was no interference with those rights as the Sponsor was free to return to Pakistan where the family as a whole could continue their family life.

The Article 8 arguments having become academic in the meantime, the essential questions for the Supreme Court to consider were the proper construction of paras 352A and 352D of the Rules and whether those paragraphs apply to family members seeking entry to the UK where their sponsor has been recognised as a refugee but has become a British citizen before the date of the application for entry clearance.

JUDGMENT

The Supreme Court unanimously allows the appeal of the first to the fifth appellants. The Court holds that paragraph 352A applied to the first appellant (the Sponsor's wife) as a spouse of a refugee and paragraph 352D applied to the second to fifth appellants (the Sponsor's children who were under the age of 18 at the relevant time) as children of a refugee. Lord Clarke delivered the judgment of the Court.

REASONS FOR THE JUDGMENT

In construing the Rules, the Court agrees with the Court of Appeal that the sponsor must have been granted asylum in order to be (1) a “refugee” within the meaning of the opening words of para 352A and of para 352E; (2) a “person granted asylum” within sub-paras (i) and (ii) of para 352A and sub-para (iv) of para 352D; and (3) a “person who has been granted asylum” within the opening words of para 352D.

However, the Court does not agree with the Court of Appeal that there is an additional requirement, namely that the “person granted asylum” or the “person who has been granted asylum” must not have become a British citizen before the application for entry clearance is made. The Rules contain no express language to that effect and it is not implicit in the language used. The fact that British citizenship has been granted to the sponsor does not change the fact that the sponsor is a person who has been granted asylum (paras [31]-[33], [36], [37]).

In the light of the decision made at the hearing on the construction of paragraphs 352A and 352D, the Court did not hear oral submissions on any of the other issues raised in the written cases. In particular, the Court did not hear argument on what the position would be if, contrary to the Court's conclusion, paragraphs 352A and 352D would only have applied if they required that the sponsor remain a refugee after being granted British citizenship. The Court expresses no view upon these questions one way or the other (para [40]).

Accordingly, the appeals of the first to fifth appellants are allowed.

NOTE

This summary is provided to assist in understand the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html