

United Kingdom - Regina (Begum) v Secretary of State for the Home Department - Supreme Court

The case concerns the deprivation of Ms Begum's British citizenship and whether the subsequent decision of the Home Office not to allow her to enter the United Kingdom in order to appeal the revocation of her citizenship in person was unlawful. Ms Begum had been stripped of her citizenship for reasons of national security after she ran from home as a teenager to marry an ISIL fighter in Syria. She then commenced three sets of proceedings in order to appeal the deprivation decision, which the Court dismissed.

Case name (in original language) : Regina (Begum) v Secretary of State for the Home Department

Case status: Decided

Case number: [2021] UKSC 7

Citation: [2021] UKSC 7 26 Feb 2021

Date of decision: 26/02/2021

State: United Kingdom

Court / UN Treaty Body: UK Supreme Court

Language(s) the decision is available in: English

Applicant's country of birth: United Kingdom

Applicant's country of residence: Syria

Key aspects: Deprivation of nationality

Relevant Legislative Provisions:

Immigration Act 1971, s. 3

British Nationality Act 1981 (c.61) s.40(2)

Special Immigration Appeals Commission Act 1997 (c.68) s.2B, s.7

Human Rights Act 1998 (c.42) s.6

Facts

The claimant was a British and Bangladeshi citizen who, at age 15, travelled to Syria to marry an ISIL fighter. Later, while detained in a camp, she was deprived of her British citizenship by the Home Office pursuant to s. 40(2) of the British Nationality Act 1981 on the ground inter alia that she posed a threat to national security. Other grounds for the decision were not made public. She made an application for a Leave to Enter (LTE) the UK in May 2019, which was refused in June 2019. She then commenced three sets of proceedings before reaching the Supreme Court.

Firstly, Ms Begum made an appeal to the Special Immigration Appeals Commission (SIAC) against the deprivation decision. SIAC determined that the Home Secretary had not departed from his extraterritorial human rights policy when he made the deprivation decision. She challenged SIAC's determination of the policy and fair and effective appeal issues by means of an application for judicial review. On that application, the Divisional Court found in Ms Begum's favour on the policy issue, but not the fair and effective appeal issue.

Secondly, Ms Begum made an application for LTE, in order to be able to pursue an appeal against the deprivation decision. The Secretary of State refused that application ("the LTE decision"), on the basis, among others, of information which, in his opinion, should not be made public in the interests of national security and in the public interest. She appealed the decision on the basis of the Human Rights Act, which was refused by the SIAC, but subsequently granted by the Court of Appeal.

Thirdly, Ms Begum appealed the LTE decision through judicial review. Her appeal was first dismissed by the Administrative Court and subsequently granted by the Court of Appeal, on the basis that without being able to appeal in person her right to fair trial would be infringed.

Legal arguments by the applicant

In relation to the Divisional Court judgement the Secretary of State appeals to the Supreme Court on the basis that the Divisional Court was wrong to conclude that SIAC had erred in determining the policy issue by applying principles of administrative law.

In relation to the LTE issue, the Home Secretary argued that the Court of Appeal was wrong in concluding that Ms Begum's right to fair trial could not otherwise be respected.

Legal arguments by the opposing party

In relation to the Divisional Court Judgement, Ms Begum cross-appeals on the basis that the Divisional Court was wrong to reject her argument that her appeal against the deprivation decision should automatically be allowed if it could not be fairly and effectively pursued as a consequence of the refusal of her application for leave to enter the UK.

Decision & Reasoning

LTE decision: First, the Supreme Court held that the Court of Appeal misunderstood the scope of an appeal against a decision of the Secretary of State to refuse a person leave to enter the UK. Ms Begum's appeal against the LTE decision could only be brought on the ground that the decision was unlawful under section 6 of the Human Rights Act 1998. As Ms Begum did not advance that argument before the Court of Appeal, her appeal against the LTE decision should have been dismissed.

Next, it was held that there was no evidential basis for the Court of Appeal's finding that the national security concerns about the respondent could be addressed and managed by her being arrested and charged with an offence, or being made subject to a terrorist prevention and investigation measure, upon her arrival in the UK.

Thirdly, the right to a fair hearing does not overcome all other considerations, such as the public interest in minimising the risk of terrorism. If a vital public interest makes it impossible for a case to be fairly heard, then the courts cannot ordinarily hear it. The appropriate response to the problem in the present case is for the deprivation appeal to be stayed until Ms Begum is in a position to play an effective part in it without the safety of the public being compromised. In those circumstances, the Supreme Court held that Ms Begum's application for judicial review of the LTE decision was properly dismissed by the Administrative Court, as should be her cross-appeal in respect of SIAC's preliminary decision in the deprivation appeal.

Cross-appeal: The fact that the appeal process safeguarded against unfairness did not mean that a decision which could not be the subject of an effective appeal was unfair. Parliament had not stipulated what an appellate tribunal should do if a person's circumstances were such that they could not effectively exercise their right of appeal. It would be unjust to the respondent if an appeal were to be allowed merely because the appellant found themselves unable to present their appeal effectively. Even though they could not be rendered stateless, a deprivation decision might have serious consequences for a person deprived of British citizenship, especially where their alternative nationality was one with which they had little real connection. Conversely, the setting aside of the decision might have serious consequences for the public interest. In such a case, it would be irresponsible to allow the appeal without any regard to the national security interests which prompted the deprivation decision and it was inconceivable that the law would require it to do so.

The Court of Appeal erred in its approach and made its own assessment of the requirements of national security, and preferred it to that of the Secretary of State. In particular, there was no evidence before the Court as to whether the national security concerns about Ms Begum could be addressed and managed by her being arrested and charged upon her arrival in the UK, or by her being made the subject of a Terrorist Prevention and Investigation Measure. The Court of Appeal's approach did not give the Secretary of State's assessment the respect it should have, given that the Secretary of State has been charged by Parliament with responsibility for making such assessments, and is democratically accountable to Parliament in that respect.

Fourthly, the question was whether the Divisional Court was wrong to conclude that SIAC had erred in determining the policy issue by applying principles of administrative law. The Supreme Court held that the Court of Appeal mistakenly treated the Secretary of State's extraterritorial human rights policy as if it were a rule of law, as opposed to something intended to guide the exercise of his statutory discretion. On a deprivation appeal, SIAC is not entitled to re-exercise the Secretary of State's discretion. Rather, unless there is an issue as to whether the Secretary of State has acted in breach of his obligations under the Human Rights Act, SIAC is confined to reviewing the Secretary of State's decision by applying essentially the same principles that apply in administrative law. The secretary of state had had to assess the degree of risk that the respondent would be exposed to mistreatment as a result of the deprivation of her British citizenship while in Syria, and that any

potential risks in countries outside Syria were not a foreseeable consequence of the deprivation decision. Having considered the evidence before him, the Secretary of State was not satisfied that the deprivation decision would expose her to a real risk of such mistreatment. SIAC decided that that conclusion was not an unreasonable one. There was no defect in SIAC's reasoning in that regard.

Decision documents

[Regina \(Begum\) v Secretary of State for the Home Department - Supreme Court](#)

Outcome

The Supreme Court unanimously allows the Secretary of State's appeals and dismisses Ms Begum's cross-appeal. Ms Begum's appeal against the LTE decision, her application for judicial review of the LTE decision and her application for judicial review of SIAC's preliminary determination in her appeal against the deprivation decision are all dismissed.

Caselaw cited

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5. BA (Deprivation of Citizenship: Appeals) [2018] UKUT 85 (IAC)
6. R. (on the application of W2) v Secretary of State for the Home Department [2017] EWCA Civ 2146
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11. Ali v Secretary of State for the Home Department [2016] UKSC 60
12. R. (on the application of Al-Saadoon) v Secretary of State for Defence [2016] EWCA Civ 811
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33. Saadi v Italy (37201/06) (2009) 49 E.H.R.R.
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35. Banbury Visionplus Ltd v Revenue and Customs Commissioners[2006] EWHC 1024 (Ch)
36. A v Secretary of State for the Home Department [2004] UKHL 56
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39. Tait v Royal College of Veterinary Surgeons [2003] UKPC 34
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