OUTER HOUSE, COURT OF SESSION

[2023] CSOH 38

P968/22

OPINION OF LORD SANDISON

in Petition of

AZIA AMEEN

Petitioner

for

Judicial Review of a decision of the Secretary of State for the Home Department to refuse the petitioner's application for naturalisation as a British Citizen

Petitioner: Forrest; Drummond Miller LLP for McGlashan MacKay, Glasgow
Respondent (Advocate General for Scotland): Middleton; Office of the Advocate General

21 June 2023

Introduction

[1] Azia Ameen is a 37 year old Pakistani national who was granted refugee status in the United Kingdom in 2014, and 5 years later was granted indefinite leave to remain here. On 13 November 2020 she submitted an application to the Secretary of State for the Home Department for naturalisation as a British citizen. That application was rejected on 26 February 2021 on the basis that the Secretary of State was not satisfied that she was of good character, because she had not complied with United Kingdom immigration laws in the 10 year period prior to the date of her application. A request for reconsideration of that decision was rejected on 13 August 2022. In this petition for judicial review, Ms Ameen

seeks reduction of the decision to refuse to reconsider the rejection of her application for naturalisation.

Background

Relevant statutory provisions and guidance

[2] Section 6 of the British Nationality Act 1981 provides:

> "6.— Acquisition by naturalisation.
>
> (1) If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen."

Schedule 1 to the 1981 Act provides, so far as material for present purposes:

> "1.— (1) Subject to paragraph 2, the requirements for naturalisation as a British citizen under section 6(1) are, in the case of any person who applies for it—
>
> …
>
> (b) that he is of good character; …"

[3] The "good character" requirement in Schedule 1 to the 1981 Act is the subject of a policy document entitled "Nationality: good character requirement", published for the use of Home Office staff. The version of that policy document in force at the material times for present purposes was version 2.0, dated 30 September 2020, and which, so far as relevant to the present case, notes:

> "Factors to consider
>
> A person will not normally be considered to be of good character if there is information to suggest that any of the following apply:
>
> …

> Immigration-related matters
>
> If they have breached immigration laws, for example by overstaying, working in breach of conditions or assisting in the evasion of immigration control.
>
> …
>
> Where a person overstayed at some point in the 10 years prior to an application for citizenship, discretion to overlook this breach will normally only be considered if it is the sole adverse factor weighing against the person's good character; and
>
> …
>
> • the period without leave was not the fault of the applicant, for example where it arose from a Home Office decision to refuse which is subsequently withdrawn or quashed or which the courts have required the Home Office to reconsider."

Factual background

[4] So far as one can discern the substantive underlying facts of the case from the somewhat indefinite terms of the petition and answers, the petitioner was granted leave to remain in the United Kingdom from March 2011 until February 2013 for the purpose of study. In May 2011 the Home Office was notified by her college that she had not commenced her studies, and on that basis, her leave to remain was curtailed in March 2012. Notification of that curtailment was sent to the petitioner's college rather than directly to her, and she was in the event not made aware that her leave to remain in the United Kingdom had been so curtailed.

[5] The petitioner appears to maintain that the college which she wished to attend closed down and she spent considerable time and money unsuccessfully looking for an alternative institution which would offer her the opportunity to pursue a course of education and to that end enable her to remain in the United Kingdom. Her parents wanted her to return to Pakistan, but she wished to continue to pursue studies here. By the time her leave to remain in the United Kingdom expired in February 2013, she was living with a man who had

promised to look after her and offered to marry her. By December 2013 she was pregnant. The man left her in February 2014 and she realised that she could not return to Pakistan because of social attitudes there towards unmarried mothers. She made an asylum claim on that basis in May 2014, which was granted in August of that year.

[6] On 26 February 2021 the Home Office refused the petitioner's initial application for naturalisation for the following reasons:

> "One of the requirements for citizenship is that the applicant is of good character. 'Good character' is not defined in the British Nationality Act 1981 but the applicant is expected to have shown due regard for the laws of this country. Where an applicant has not been compliant with UK Immigration laws in the ten year period prior to the date of an application the application will normally be refused. This would include where an applicant has been working in the UK without permission … You were in the United Kingdom without valid leave between 8 March 2012 (Entry Clearance visa was curtailed) and 6 August 2014 when you were granted Asylum. You were not therefore compliant with UK Immigration laws during this period. You have declared on your application form that you have been working in Customer services at House of Fraser Yo Sushi from 25 June 2011 to 1 February 2013 and this clearly shows that you were working without permission. Your application has therefore been refused."

After further representations were made to it, on 13 August 2022 the Home Office refused to reopen the petitioner's application for naturalisation for the following reasons:

> "Your client was refused naturalisation on the basis she failed to meet the good character requirement because she had been in the UK in breach of the immigration laws in the immediately preceding ten years and had failed to take reasonable steps to ensure she remained compliant with UK immigration laws on the expiry of her leave on 5 February 2013. I accept that your client was in the UK lawfully until 5 February 2013. It would appear from her written statement and her SEF [Statement of Evidence Form] that before the expiry of her leave she had decided to remain in the UK beyond 5 February 2013 but she did not apply for further leave to remain beyond this date and thus overstayed her leave from 6 February 2013 until she was granted asylum on 6 August 2014. Her written statement explains that the circumstances that led to her claiming asylum did not arise until December 2013. There is discretion to overlook a person's non-compliance with the immigration laws when considering the good character requirement for naturalisation. To make sure this discretion is applied rationally and consistently, an established policy is followed. Our guidance sets out how we would apply discretion when assessing whether a person who has been non-compliant meets the good character requirement. I have reviewed the consideration given to your client's application

> and the decision made to refuse it and conclude that she did not come within the criteria to disregard non-compliance with the immigration laws and nor was there a reason to disregard it exceptionally outside our guidance."

Petitioner's submissions

[7] On behalf of the petitioner, counsel submitted that the Secretary of State had erred in law in rejecting the application for administrative review of her decision to reject the petitioner's application for naturalisation as a British citizen, for two reasons. Firstly, the decision complained of was not consistent with Home Office policy, and secondly, no or at least inadequate reasons had been given for the decision. On either or both grounds, it fell to be reduced.

[8] Dealing with the claimed failure to deal with the application in accordance with policy, the conduct that was relevant in this case to the issue of good character was breach of immigration law, and in particular overstaying. The task of the court was to interpret the meaning of the words used in the policy document, in particular the phrase "…the period without leave was not the fault of the applicant….." and reach a decision as to whether, on a proper construction, the policy had been properly applied to the facts of the case. That task of interpretation required the court to ask itself what a reasonable reader would understand the policy wording to mean when read in context: *Trump International Golf Club Scotland Ltd* v *Scottish Ministers* [2015] UKSC 74, 2016 SC (UKSC) 25 at [33] - [35]. The question of whether overstaying was the fault of the petitioner could involve consideration of a potentially wide range of factors, not limited to the specific examples stated in the policy. The question was whether the petitioner had acted in a way in which no reasonable person would have acted. The petitioner's personal circumstances during her period of overstaying could not be ignored, and might amount to a reason why she was not at fault within the

meaning of the policy. Her explanations in that regard had to be considered objectively and in the context of the policy as a whole. The reasonable reader of the policy wording might well have concluded as a result of such consideration that the petitioner had not been at fault in overstaying, with the consequence that the Secretary of State's discretion to overlook overstaying which was not the petitioner's fault had not been exercised properly. It was accepted that the Secretary of State had not specifically been asked to consider the issue of fault in connection with the petitioner's application.

[9] Turning to the adequacy of the reasons given by the Home Office for rejecting reconsideration of the petitioner's application, it was crucial that the petitioner should have been made aware of why her application had been refused. Although the simple answer to that question would be that she had overstayed, that was not sufficient in circumstances in which the Secretary of State had a policy that in certain circumstances she might overlook overstaying. The Secretary of State had not said why the petitioner's explanations for overstaying did not amount to her not being at fault. An informed reader would have been left in real doubt as to why her application had been refused because of the absence of proper and adequate reasons dealing with the substantial questions in issue in an intelligible way: *Wordie Property Co Ltd* v *Secretary of State for Scotland* 1984 SLT 345 at 347.

[10] Counsel accepted that the petitioner would be free to re-apply for British citizenship and that, were she to do so after August 2024, the 10 year period referred to in the policy document would have expired and her overstaying would no longer represent a basis for holding her not to be of good character in terms thereof. The court was informed that the reason the petitioner did not wish to adopt that course of action was simply that she did not want to have to pay the further fee (of approximately £1,300) which would be required of her in that event.

Respondent's submissions

[11] On behalf of the respondent, counsel submitted that before she might grant an application for naturalisation as a British citizen, the Secretary of State had to be satisfied that the applicant was of good character. Even if she was satisfied that the applicant met all the requirements set out in Schedule 1 to the 1981 Act (including that of good character) it remained a matter for her discretion as to whether or not to grant the application. No one had a right to be granted British citizenship.

[12] Under reference to (*R (on the application of SK)* v *Secretary of State for the Home Department* [2012] EWCA Civ 16, *R (on the application of DA (Iran))* v *Secretary of State for the Home Department* [2014] EWCA Civ 654, and *R (on the application of M)* v *Secretary of State for the Home Office* [2016] EWHC 1588 (Admin), counsel submitted that (1) the Secretary of State enjoyed a significant measure of appreciation in assessing for herself the requisite standard of good character in the factual context of the application under consideration; (2) the onus was upon an applicant to satisfy the Secretary of State that he was of good character; (3) the question for the court on judicial review of the Secretary of State's decision was whether the Secretary of State was entitled not to be satisfied that the applicant was of good character; and (4) the court could intervene with the Secretary of State's decision only on well-known public law grounds of error of law, irrationality, *Wednesbury* unreasonableness or procedural unfairness.

[13] There was no dispute in this case that, within the 10 year period immediately preceding her application, the petitioner had overstayed her leave in breach of United Kingdom immigration laws. Despite having being given an opportunity to do so, she had provided no explanation as to why she had made no timeous application to extend her leave

beyond 5 February 2013. The Secretary of State was entitled not to be satisfied that the petitioner's overstaying was not her fault. The policy document provided that, in such circumstances, an application would normally be refused. The concept of fault involved culpability or blameworthiness, and the examples given in the policy document of when an applicant would not be regarded as being at fault shed light on what was meant. There was no basis to support any inference that the Secretary of State failed to apply, or misapplied, the policy. Such an inference would in any event not readily be drawn - *South Buckinghamshire District Council* v *Porter* (No 2) [2004] UKHL 33, [2004] 1 WLR 1953.

[14] The Secretary of State in any event had given adequate reasons as to why the petitioner had failed to establish that her overstay was not her fault: she had failed to take reasonable steps to extend her leave timeously. The informed reader was left in no real or substantial doubt as to what the reasons for the decision were and what material considerations were taken into account in reaching it: *Wordie Property Co Ltd* at 348.

[15] Counsel specifically eschewed any reliance on the suggestion in the first decision letter, based on information provided by the petitioner, that she had worked unlawfully in the United Kingdom between June 2011 and February 2013. Had that been the case, then her period of overstaying would not have been the sole adverse factor weighing against her good character in terms of the policy document and the issue of fault would not have arisen for determination at all. The reasons for this concession were left opaque.

Decision

[16] Consideration of the ordinary and natural meaning of the concept of "fault" in the context of the relevant policy document results in the conclusion that a period of presence without leave in the United Kingdom will be the fault of an applicant if it is the result of

behaviour on his or her part which falls short of the standards of probity and reasonableness to be expected of an ordinary person in all the circumstances. A decision of the Secretary of State that an applicant was at fault will, moreover, not be susceptible to review if a reasonable person could, on the available factual material, have arrived at the conclusion that the applicant's behaviour fell short of those standards and resulted in his or her overstaying.

[17] In the present case, the Secretary of State initially formed the view that the petitioner had been in the United Kingdom without valid leave between 8 March 2012, when her leave to remain here was curtailed, and 6 August 2014, when she was granted asylum. When it became apparent that the curtailment of the petitioner's leave had not effectively been brought to her attention, the Secretary of State restricted the period during which she regarded the petitioner as having been present without leave to that between 6 February 2013, by which point her leave to remain here would in any event have expired, and the date of her being granted asylum in August 2014. In respect of that period, the Secretary of State considered that the petitioner had deliberately remained in the United Kingdom despite being aware that she did not have leave to do so and without taking any steps to regularise her situation. Counsel for the petitioner did not dispute that that was an accurate understanding of the facts. On that basis, the Secretary of State took the view that the petitioner was at fault in the relevant sense. That was a conclusion that was entirely open to her; indeed, it would have been surprising had she reached any other view.

[18] The petitioner's submissions on the issue of fault involve a confusion between identifying the circumstances in which an applicant will be at fault and the separate question of whether there is, in conjunction with that fault, sufficient by way of mitigation to cause the Secretary of State to consider eliding its normal consequences. As the policy

document hints, and as the decision letter complained of makes clear, the Secretary of State retains a discretion, to be exercised in exceptional cases, to disregard a period of overstaying even though it is the result of an applicant's fault. It was not suggested on behalf of the petitioner that the Secretary of State's refusal to exercise that extraordinary discretion in her case was open to challenge.

[19] In relation to the provision of adequate reasons for the decision complained of, the relevant letter notes that the application was refused because the petitioner failed to meet the statutory good character requirement as a result of having been in the United Kingdom in breach of immigration laws in the immediately preceding 10 years and having failed to take reasonable steps to ensure she remained compliant with those laws on the expiry of her leave on 5 February 2013. It added that it appeared that before the expiry of her leave she had decided to remain but did not apply for further leave to remain beyond that date. It is difficult to see how the reasons provided could have been more clear about the basis of the decision; in any event, they exceed by a very comfortable margin the standard postulated in *Wordie* which counsel agreed was that applicable. Again, it seems that the petitioner's complaint in this regard is founded on a misapprehension as to the nature of "fault" on the one hand and the separate possibility of extenuating circumstances affecting the outcome of a case where fault is present on the other. The decision letter required to deal with the question of whether the petitioner's overstaying was her fault in terms of the policy document, which it adequately did by referring to her deliberate decision to remain in the United Kingdom after the expiry of her leave to do so. It did not require to explain why the circumstances surrounding her decision to remain were not deemed sufficiently weighty to treat her case as falling outwith the general ambit of the policy, not least because no request

for any such exceptional treatment was ever made to the Secretary of State and nothing in those circumstances cried out for any such treatment.

Conclusion

[20] For the reasons stated, I shall sustain the respondent's second plea in law, repel the petitioner's pleas, and dismiss the petition.