STATELESSNESS
Case Law Database

United Kingdom – R (on the application of Semeda) v Secretary of State for the Home Department

The case is a judicial review of the decision by the Secretary of State to reject the applicant's application for limited leave to remain in the United Kingdom as a stateless person under paragraph 403 of the Immigration Rules. The Upper Tribunal found that the Secretary of State's decision was unsustainable as the Secretary of State failed to comply with a duty to give effect to the terms of its own published policy, and the public law duty of enquiry, requiring it to proactively participate in the collection of information relevant to the decision being made. Furthermore, the Upper Tribunal held that the Secretary of State's decision was vitiated by an error of law, as the language of Article 1(1) of the 1954 Convention requires a decision-maker to ask itself if an applicant is a national of any State at the time of the determination.

Case name (in original language) : R (on the application of Semeda) v Secretary of State for the Home Department IJR [2015] UKUT 00658 (IAC)
Case number: IJR [2015] UKUT 00658 (IAC)
Citation: R (on the application of Semeda) v Secretary of State for the Home Department [2015] UKUT 00658 (IAC)
Date of decision: 21/10/2015
State: United Kingdom
Court / UN Treaty Body: Upper Tribunal, Immigration and Asylum Chamber
Language(s) the decision is available in: English
Applicant's country of birth: Kuwait
Applicant's country of residence: United Kingdom
Legal instruments: 1954 Statelessness Convention
Key aspects: Stateless status and documentation, Statelessness determination
Relevant Legislative Provisions:

1954 Convention Relating to the Status of Stateless Persons, 1954

The Immigration Rules, paragraphs 401-403

Facts

The applicant is a Kuwaiti Bidoon, born in Kuwait from a Libyan mother, and who resided in Libya for a period of time (under 10 years). The Secretary of State for the Home Department rejected the applicant's application for limited leave to remain as a stateless person under paragraph 403 of the Immigration Rules on the grounds that the applicant failed to prove that (i) he was not entitled to some form of Libyan nationality or residence based on his mother's Libyan nationality; and (ii) to substantiate the claim that he was an undocumented Kuwaiti Bidoon. The applicant sought judicial review of the Secretary of State's decision.

Legal arguments by the applicant

A judicial review of the Secretary of State's decision was requested on the following grounds:

1. The Secretary of State failed to give proper effect to the terms of its own published policy requiring it to conduct independent research and make enquiries of other national authorities where the applicant has been unable to obtain relevant information.
2. Further, or alternatively, the Secretary of State's decision was vitiated by irrationality as it failed to take into account a manifest error in law on the assessment of Libyan law.
3. The Secretary of State's decision is vitiated by an error of law because the Secretary of State failed to focus on the question of whether the applicant was stateless by focusing instead of the question of whether the applicant was a documented or undocumented Kuwaiti Bidoon. This ground was initially refused but the applicant requested permission to re-open it.

Legal arguments by the opposing party

In judicial review cases, the opposing party (i.e. the Secretary of State) does not bring legal arguments. The decision by the Secretary of State to reject the applicant's application for limited leave to remain as a stateless person is scrutinised

by the court and the original reasons given by the Secretary of State are assessed.

Decision & Reasoning

The Upper Tribunal noted that Article 1(1) of the 1954 Convention requires the decision-maker to determine whether a person is "*considered as... a national... by any state... under the operation of its law*". The Upper Tribunal held that the language of Article 1(1), as well as the domestic Immigration Rules and associated guidance, require the determination to be made in the present, i.e. the decision-maker should ask itself whether a person is a national of any country *at the time when the decision is made*. Having a potential claim to a country's nationality is not sufficient. In this case, the Secretary of State misdirected itself in law when it refused the applicant's application on the basis that he was considered to have a claim to Libyan nationality.

The Upper Tribunal further held – in line with previous public law judgments – that the policies of public authorities are not merely material considerations to be taken into account by the decision maker. Rather, they trigger a duty to give effect to their terms, absent good reason for departure from such terms. In this case, the Secretary of State failed to give effect to the terms of its own published policy requiring it to conduct independent research and make enquiries of other national authorities where the applicant had been unable to obtain relevant information regarding his nationality. The Secretary of State also appeared to have made a further error of law by disregarding the effect of Libyan nationality laws (which, when applied to the applicant, unequivocally yielded the result that he was not a Libyan national).

Decision documents

R (on the application of Semeda) v Secretary of State for the Home Department

Outcome

The decision by the Secretary of State was quashed.

Caselaw cited

Pham v Secretary of State for the Home Department [2015] UKSC 19

Secretary of State for Education and Science v Metropolitan Borough Council of Tameside [1977] AC 1014

British Oxygen v Minister of Technology [1971] AC 610

Lumba (WL) v Secretary of State for the Home Department [2011] UKSC 12

Mandalia v Secretary of State for the Home Department [2015] UKSC 59

R (Nadarajah) v Secretary of State for the Home Department [2005] EWCA Civ 163

SN v Secretary of State for the Home Department IJR [2015] UKUT 227 (IAC)

Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223