



Netherlands - Court of North-Holland, ECLI:NL:RBNHO:2019:1727

The applicant naturalised in the Netherlands, after having derived his legal residence from being a partner of a Dutch resident. His naturalisation was later withdrawn, as it appeared he has concluded a marriage and fathered a child with another person in Egypt while still deriving residence rights from his relationship in the Netherlands. The Court confirmed the legality of withdrawal, despite the applicant becoming stateless as a result.

Case name (in original language) : ECLI:NL:RBNHO:2019:1727

Case status: Decided

Case number: ECLI:NL:RBNHO:2019:1727

Citation:

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBNHO:2019:1727>

Date of decision: 05/03/2019

State: Netherlands

Court / UN Treaty Body: Court of North-Holland

Language(s) the decision is available in: Dutch

Applicant's country of birth: Egypt

Applicant's country of residence: Netherlands

Key aspects: Acquisition of nationality, Deprivation of nationality, Respect for private and family life

Facts

The applicant was born in Egypt in 1970. On 19 April 2002, he applied for a temporary residence permit on the basis of being in a relationship with his partner (person A), which was granted on 18 July 2002, and then extended until 19 August 2008. On 15 December 2006 the applicant applied for naturalisation, and was granted Dutch nationality on 31 May 2007.

On 11 December 2014 the applicant applied for a temporary residence permit for his wife (person B) and their children, for the purpose of which he submitted a marriage certificate dated of 10 November 2007, which states that the applicant and person B got married on 8 November 2005. He also submitted a legalised birth certificate of their son (child C) who was born in 2006.

The authorities revoked the applicant's naturalisation on 6 April 2017 because he did not have a lasting and exclusive relationship with person A on the basis of which the residence permit was issued to him.

Legal arguments by the applicant

The applicant argued that the revocation of his Dutch cannot take place, because he never concealed any relevant facts.

He states that at the time of his naturalisation he was unaware that child C was his son. He argued, moreover, that no marriage was actually concluded on 8 November 2005. At that time he has made a one-off mistake, and made a promise of allegiance to person B. That promise has no legal effect. On 10 November 2007 that promise was confirmed through a marriage with retroactive effect, which is possible under Egyptian law. Therefore, at the time of the naturalisation procedure in the Netherlands he was not married. The applicant submitted an expert report on Egyptian family law confirming the concept of a vow of allegiance which can be validated later in a marriage with retroactive effect. The applicant argued that because the Netherlands, unlike Egypt, does not have the option to perform a marriage with a retroactive effect, the starting date of the marriage being 8 November 2005 must be rejected under Dutch law as contrary to public policy, and the date on the marriage certificate must to be regarded as the date of the start of the marriage.

Furthermore, the authorities should have taken into account that the decision has major consequences for the applicant and his family, especially considering the significant time that has lapsed between his naturalisation and the withdrawal decision. The applicant is stateless as a result of the decision, and because of the loss of his Dutch nationality he may no longer be able to pay off the debts he had to incur to start a business. Furthermore, the applicant's wife and children will encounter numerous difficulties as a result of the contested decision.

Legal arguments by the opposing party

He authorities argued that the applicant got married to person B in Egypt and they had a child while he was still deriving residence rights from his relationship in the Netherlands, which is meant to be long-lasting and exclusive in order to qualify the partner for a partner-permit. The relationship he had in Egypt, which included fathering a child, meant that he no longer complied with the requirements of his visa. If this information had been known to the authorities, his right of residence would have been terminated, and consequently he would not have qualified for naturalisation. Thus not mentioning these circumstances constitutes concealment of a relevant fact.

Decision & Reasoning

The Court reasoned as follows:

“4.2 The Court considers that the concealment of information about fathering a child is a relevant fact, because by its nature this raises doubts about the exclusivity of the relationship from which the applicant derived his residence rights. The applicant’s assertion that he, in his own experience of events, was still in an exclusive and lasting relationship with the person A at the time of naturalisation, and that he has made a one-off mistake with person B that did not involve a marriage, cannot alter the circumstance that the mere birth of the child, objectively speaking, rules out the notion that the relationship with person A was lasting and exclusive. This is not altered by the applicant’s statement that during the naturalisation procedure he knew that person B had a child, but did not know (with certainty) that he child was his. It was the applicant’s responsibility to clarify this uncertainty in a timely manner, among others for the purposes of his naturalisation. The Court thus finds that the authorities rightly concluded that at the time of time of applying and acquiring Dutch nationality there were obstacles to the applicant’s residence rights in the Netherlands within the meaning of Article 8, first paragraph of the Dutch Royal Nationality Law.”

“5.2 [...] Under those circumstances, the long duration of the applicant’s stay in the Netherlands does not outweigh the interest of the Dutch state to grant Dutch nationality on the correct grounds. The decision was taken well within the statutory limitation period of twelve years [from the naturalisations]. The fact that the applicant becomes stateless as a result of the decision, and the (potential) financial consequences of the decision, are the applicant’s own responsibility, since the withdrawal is caused by his own conduct.”

Decision documents

[NorthHolland_5March2019.pdf](#)

Outcome

The Court upheld the administrative decision withdrawing the naturalisation.

The judgment was later challenged and confirmed in the Council of State of 13 November 2019 (ECLI:NL:RVS:2019:3854), accessible here:

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2019:3854>. The Council of State reasoning in this case does not engage with the applicant's statelessness.