STATELESSNESS
Case Law Database

UK - PRCBC & O v Secretary of State for the Home Department

A Nigerian child was unable to apply British citizenship as she could not pay the full fee, fixed at £973 at the time. The UK Supreme Court found that setting high and unaffordable fees for registration as a British citizen is not unlawful, even though it acknowledged that for many young people the current level of fees is unaffordable and that the inability to acquire British citizenship may result in difficulties for young people. However, the Supreme Court found that the UK Parliament had empowered the Secretary of State to set such fees at a level exceeding the cost of processing a citizenship application and therefore setting such high fees was not unlawful.

Case name (in original language) : PRCBC & O v Secretary of State for the Home Department
Case status: Decided
Case number: [2022] UKSC 3
Citation: PRCBC & O v SSHD [2022] UKSC 3
Date of decision: 02/02/2022
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: United Kingdom
Legal instruments: 1961 Statelessness Convention
Key aspects: Acquisition of nationality, Childhood statelessness, Protection
Relevant Legislative Provisions:

1961 Convention on the Reduction of Statelessness: Article 13

British Nationality Act 1981:

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Section 1(4) of the British Nationality Act 1981 provides: “A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1), (1A) or (2) shall be entitled, on an application for his registration as a British citizen made at any time after he has attained the age of ten years, to be registered as such a citizen if, as regards each of the first ten years of that person’s life, the number of days on which he was absent from the United Kingdom in that year does not exceed 90.”

- Section 41(2) of the 1981 Act empowered the Secretary of State, with the consent of the Treasury, to make regulations by statutory instruments, subject to annulment by resolution of either House of Parliament, for the imposition recovery and application of fees in connection with applications for registration as a British citizen. (para 8)
- Section 42(1) provides that “a person shall not be registered under any provision of this Act as a citizen […] unless - (i) any fee payable by virtue of this Act in connection with the registration [...] has been paid”.

Immigration Act 2014 (which repealed the relevant sections of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, the Immigration, Asylum and Nationality Act 2006 and the UK Borders Act 2007,) sections 68-74 (“the 2014 Act”):

These provisions contain the framework for the levying of fees in relation to, among other things, applications to be registered as a British citizen under the British Nationality Act. They provide that “the Secretary of State may provide […] for fees to be charged in respect of the exercise of functions in connection with immigration and nationality” and that “the functions in respect of which fees are to be charged are to be specified by the Secretary of State by order (‘a fees order’).” The 2014 Act also provides for the calculation of fees in a fees order, that where a fees order provides for a fee to be a fixed amount, it must specify a maximum amount and may specify a minimum amount, and lists the matters that the Secretary of State may have regard to in setting the amount of fees, which include not only the cost of processing the application but also the likely benefits accruing from British citizenship, and the cost of exercising any other function in connection with immigration or nationality. These provisions also provide for exceptions and for the reduction, waiver or refund of part or all of a fee. Fees orders are approved by the affirmative resolutions of both Houses of Parliament. These provisions also provide that the Act does not limit any duty regarding the welfare of children imposed on the Secretary of State or any other person under the Borders, Citizenship and Immigration Act 2009 (below).

Immigration and Nationality (Fees) Order 2016 (SI 2016/177):

Provides that the Secretary of State must charge the fee specified in fees regulations, not exceeding the maximum amount of £1,500.

Immigration and Nationality (Fees) Regulations 2017 (SI 2017/515) ("the 2017 Fees Regulations")

Provided for the fees applicable at the time of the applicant's application, which were £973 for a child. The Immigration and Nationality (Fees) Regulations 2018 (SI 2018/330) ("the 2018 Fees Regulations") are the current fees regulations and are materially identical to the 2017 Fees Regulations, except the specified fees are now higher.

Borders, Citizenship and Immigration Act 2009 ("the 2009 Act"), Section 55:

Provides for the duty of the Secretary of State to have regard to the need to safeguard and promote the welfare of children who are in the UK when discharging any functions in relation to immigration, asylum or nationality.

Facts

The applicant, O, a Nigerian national, was born in the United Kingdom in 2007, where she attended school, and never left the UK. She has lived with her siblings and her single mother who receives state benefits. In 2015, the local authority started supporting the applicant's family because they were destitute. The applicant applied for registration as a British citizen in 2017 pursuant to the British Nationality Act which entitles persons born in the UK who have lived there for 10 years to register as British citizen. The fee for such application was £973. The applicant's mother was only able to raise £386, which would have covered the administrative cost of processing of the application. The Secretary of State refused to process the application on the ground that the full fee was not paid. Since 2018, such fee has been fixed at £1,012.

The applicants, O and the Project for the Registration of Children as British Citizens (PRCBC), brought an action to the High Court to challenge the level of the registration fee charged to children in the 2018 Fees Regulations. The applicants brought two claims. First, the applicants challenged the level of the fee charged to children in the 2018 Fees Regulations as ultra vires the rule making power in the 2014 Act, which provides for the framework for levying the fee. Second, they claimed that the Secretary of State had failed to discharge her duty under the 2009 Act to have regard to the need to safeguard and promote the welfare of children. The High Court dismissed the first claim in a 2019 judgment but granted declarations that the Secretary of State had breached the procedural duty under the 2009 Act in setting high fees, without however granting any substantive relief nor quashing the regulations. The Court of Appeal in a judgment delivered on 18 February 2021, dismissed the applicant's appeal on the first claim. On the second claim, the Court of Appeal dismissed both the Secretary of State's appeal against the declarations and the applicants' cross-appeal on remedy. Applicants appealed to the Supreme Court and the Secretary of State did not appeal against the Court of Appeal's decision on the second claim.

Legal arguments by the applicant

The applicants challenged the level of the fee charged to children in the 2018 Fees Regulations as ultra vires the rule making power in the 2014 Act, arguing that the Secretary of State did not have the power to set the fee at a level which rendered nugatory the underlying statutory right to become a British citizen provided by the 1981 Act (para 20-21). They claim that that right is an important one which gives a person the right to live in the UK and a right to take part in its political life. They argue that many children and young persons cannot afford to pay the fee and therefore cannot exercise their statutory right. Their right to citizenship is rendered nugatory by the high level of the fees set in subordinate legislation by the Secretary of State, and that subordinate legislation is accordingly ultra vires (para 21).

Before the High Court, the applicants also claimed that the Secretary of State had failed to discharge her duty under the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children who are in the UK when discharging any functions in relation to immigration, asylum or nationality.

Decision & Reasoning

The Court, whose lead judgment was delivered by Lord Hodge, with whom Lord Briggs, Lord Stephens and Lady Rose agree, considered whether subordinate legislation was ultra vires because the fee that it set for the exercise by a child or a young person of the right to be registered as a British citizen is at a level which many young applicants cannot afford.

The Court acknowledged that the right to British citizenship is an important right which, once obtained, confers significant rights, such as the right of residence in the UK, the right to acquire a British passport and thereby a right to enter and leave, and the right to participate in political life. It also contributes to a "sense of identity and belonging" (paras 5, 26). The Court also held that "it is not disputed that the right to become a British citizen is an important right as citizenship, once obtained, confers significant rights [...] nor is it disputed that for many young people and their families the current level of fees is unaffordable" (para 5).

The Court held that the rights conferred by British citizenship do not related to an interference with a fundamental or constitutional right, nor to any rights under the Human Rights Act 1998 (paras 33, 43). The question raised by the appeal is only whether Parliament has authorised the imposition of the currently applicable fees (para 27).

The Court found that Parliament has empowered the Secretary of State to set the fees for applications to obtain British citizenship at a level that exceeds that of the cost of processing the application. The Secretary of State is therefore empowered to have regard to the likely benefits accruing from British citizenship and is empowered to set fees at a level which would subsidise other functions in relation to immigration and nationality, thereby removing part of the financial burden of such functions from the UK taxpayer to the applicants. (paras 17, 49) The Court further held that imposing such a fee was a question of policy which is for political rather than judicial determination (para 51).

Decision documents

UK - Supreme Court - PRCBC & O v SSHD [2022] UKSC 3.pdf

Outcome

The Court dismissed the appeal and found that the UK Parliament has empowered the Secretary of State to set high and unaffordable fees at a level exceeding the cost of processing a citizenship application and therefore that setting such high fees was not unlawful.

The High Court's decision finding that the Secretary of State has failed to discharge her duty to have regard to the need to safeguard and promote the welfare of children by setting high fees remains untouched by this Supreme Court case. The Secretary of State therefore still needs to address that finding.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

Court of Appeal Judgment, 18 February 2021, ([2021] EWCA Civ 193; [2021] 1 WLR 3049), at https://www.bailii.org/ew/cases/EWHC/Admin/2019/3536.html

UK Supreme Court, Press summary, at https://www.supremecourt.uk/press-summary/uksc-2021-0062.html

European Network on Statelessness, UK Supreme Court finds that setting high fees for registration of children as British citizens is not unlawful, 3/02/2022, at https://www.statelessness.eu/updates/news/uk-supreme-court-finds-setting-high-fees-registration-children-british-citizens-not

PRCBC & Amnesty International UK, Press Release, at https://prcbc.files.wordpress.com/2022/02/scj-child-citizenship-fee-pr-final-2-feb-202284.pdf

PRCBC Case note, at https://prcbc.files.wordpress.com/2022/02/casenote2feb2022.pdf

PRCBC website, at https://prcbc.org/

Caselaw cited

R (Williams) v Secretary of State for the Home Department [2017] EWCA Civ 98

R (UNISON) v Lord Chancellor (Nos 1 and 2) [2017] UKSC 51

AXA General Insurance Ltd v HM Advocate [2011] UKSC 46

R (Daly) v Secretary of State for the Home Department [2001] UKHL 26

R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] AC 349

R v Secretary of State for the Home Department, Ex p Simms [2000] 2 AC 115

R v Lord Chancellor, Ex p Lightfoot [2000] QB 597

R v Lord Chancellor, Ex p Witham [1998] QB 575

R v Secretary of State for the Home Department, Ex p Pierson [1998] AC 539

R v Secretary of State for Social Security, Ex p Joint Council for the Welfare of Immigrants [1997] 1 WLR 275

R v Secretary of State for the Home Department, Ex p Doody [1994] 1 AC 531

Pepper v Hart [1993] AC 593

R v Secretary of State for the Home Department, Ex p Brind [1991] 1 AC 696

R v Secretary of State for the Home Department, Ex p Leech [1984] QB 198 (CA)

Raymond v Honey [1983] 1 AC 1

Fothergill v Monarch Airlines Ltd [1981] AC 251

Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591

Attorney General v Prince Ernest Augustus of Hanover [1957] AC 436

Third party interventions

Amnesty International UK intervened in the appeal about the UK's obligations under the 1961 United Nations Convention on the Reduction of Statelessness which were implemented in the 1981 Act, which enables a stateless person under the age of 22 to apply to be registered as a British citizen. They argue that it is unlawful to impose an application fee that exceeds the cost of processing the application and that is not reasonably affordable, that the fees are not compatible with Article 13 of the 1961 Convention, and that the fees frustrate the object and purpose of that convention (para 54)

The Court did not allow these arguments to form part of the appeal as it held that they are new legal arguments unrelated to the subject matter of the appeal. In addition, as the UK adopts a dualist approach to international law, the Court held that a challenge to the validity of primary legislation on the ground of inconsistency with an obligation of the UK in international law is excluded (paras 55-56).