STATELESSNESS
Case Law Database

United Kingdom - R (on the application of AM) v. Secretary of State for the Home Department

The case concerns a Belarusian individual who had entered the UK in 1998, whose asylum applications were refused and who spent the subsequent eighteen years in immigration bail as his identity could not be confirmed and he could not be deported to Belarus. He complained that the state of “limbo” in which he was as a result of his immigration bail constituted an infringement of his right to private life. He also alleged that he had become stateless as result of losing his Belarusian nationality. The court found that there was a violation of Article 8 of the ECHR. On the statelessness question, it was held he could not be considered a stateless person.

Case name (in original language) : R (on the application of AM) v. Secretary of State for the Home Department
Case status: Decided
Case number: [2021]UKUT62(IAC)
Citation: [2021]UKUT62(IAC)
Date of decision: 17/03/2021
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 residence: United Kingdom
Legal instruments: European Convention on Human Rights (ECHR)
Key aspects: Access to social and economic rights, Determination/confirmation of nationality, Establishing identity, Establishing identity, Respect for private and family life, Statelessness and asylum, Statelessness determination
Relevant Legislative Provisions:

European Convention on Human Rights, Article 8

Human Rights Act 1998 (c.42) s.3

Immigration Act 1971 (c.77) s.3C; s.11; Sch.2 para.12; Sch.2 para.16; Sch.2 para.21; Sch.3 para.2; Sch.4A para.21; Sch.5 para.8; Sch.5 para.16

Immigration Act 2014 (c.22)

Immigration Act 2016 (c.19); Sch.2; Sch.10 para.1; Sch.11 para.21

Immigration Act 2016 (c.19)

Immigration and Asylum Act 1999 (c.33) s.4

Mental Health Act 1983 (c.20) s.17; s.20

Nationality, Immigration and Asylum Act 2002 (c.41) s.67; s.117A; s.117B; s.117C; Sch.7 para.16; Sch.7 para.21

Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) r.14

Facts

The applicant is a national of Belarus who entered in the UK in 1998 in order to claim asylum on the grounds of being a sympathiser of the Belarusian Popular Front. His application was subsequently refused and he was deported to Belarus in 2001. However, the Belarusian authorities refused him entry and returned him to the UK, where he was advised to make a fresh asylum claim, which he made under his patronymic rather than his surname and put forward forged documents. The British authorities realised his deception and detained him. During detention the applicant attempted suicide. His second appeal was dismissed for a lack of credibility. In 2003, the British authorities revealed inconsistencies in his original asylum application in 1998. During this time the applicant was still in detention. In November 2003 the Belarusian embassy confirmed that the applicant had left the country in 1991, when the country obtained independence from the Soviet Union, and that therefore the applicant may have lost his right to Belarusian nationality. The applicant was then released on bail after over 1000 days of detention. The applicant later made two further asylum claims on the basis that the first two claims he made would be sufficient ground for persecution. Both were unsuccessful due to his lack of credibility and his appeal was refused in 2014. In 2008, the applicant was arrested and detained for having a false document, which he argued was necessary as he had no means to support himself. The applicant was also arrested and detained for possession of an offensive weapon in 2018. Additionally, the applicant made several

applications to the Belarusian embassy to obtain travel documents, which were always unsuccessful. In 2017, the applicant applied for a residence permit as a stateless person, which was refused on the grounds that, *inter alia*, he held a seemingly valid passport and none of his claims in relation to his residence in Belarus could be corroborated. In 2018, he began judicial review proceedings.

Legal arguments by the applicant

The applicant argued that the continued insistence that he should remain on immigration bail for most parts of two decades had infringed his right to private life under Article 8 ECHR. He suffered from hepatitis, psoriasis and a possible brain injury. He was also misusing drugs. Excluding the times in which he was detained or working illegally, he was continuously destitute.

Legal arguments by the opposing party

The respondent argued that there had been too many discrepancies in the applicant’s account during his asylum applications. During his second asylum application, which the applicant himself had admitted being a “complete fabrication”, the applicant had convinced the Belarusian authorities that he had not resided there since 1986, hereby depriving him of his nationality. However, there was no indication this was factually true. The applicant also held a copy of what seemed to be a valid Belarusian passport in which he was identified as AM. However, the respondent had been unable to corroborate any of the applicant’s claim as to his education or employment in Belarus, further casting doubt as to the validity of his passport. Consequently, his application could be found inadmissible under paragraph 403(c) of the Immigration Rules. Furthermore, his application lacked weight of evidence and the applicant had been arrested for possession of an offensive weapon, rendering his application inadmissible under paragraphs 403(d) and 322(5) of the Immigration Rules respectively.

Decision & Reasoning

The court first considered the principles of immigration bail. A person could be made subject to immigration bail under the Immigration Act 2016 Sch.10 if they were liable to detention. While the court accepted that there had to be some limit to the power, nothing short of impossibility would suffice. The court then considered the state of "limbo", referring to a person who the Secretary of State wished to deport but there was a limited prospect of ever doing so. The court considered the test

defined under RA (Iraq) v Secretary of State for the Home Department [2019] EWCA Civ 850, [2019] 4 W.L.R. 132, [2019] 5 WLUK 288 in order to determine whether the state of limbo constituted a disproportionate interference with their right to private and family life under Article 8 ECHR, a four-stage analysis applied. The first stage consisted of determining whether the limbo was prospective or actual. Prospective limbo was likely to weigh less heavily in the balance in the interests of the individual than the latter state of actual limbo, but each case would depend on its own facts and the periods involved. The court then moved on to the second stage of the test, i.e., determining whether the prospect of effecting deportation was remote. The applicant had to show serious and potentially long-lasting difficulties in the Secretary of State's ability to have the individual removed. The third stage consisted of a fact-specific examination of the case typically comprising both a retrospective and prospective analysis, including: (i) an assessment of the time already spent by the individual in the UK, his status, immigration history and family circumstances; (ii) the nature and seriousness of any offences of which he had been convicted; (iii) an assessment of the time elapsed since the decision or order to deport; (iv) an assessment of the prospects of deportation ever being achieved; and (v) whether the impossibility of achieving deportation was due in part to his conduct. Lastly, the fourth stage of the test was a balancing exercise between (a) the public interest in maintaining an effective system of immigration control, and in deporting those who ought not to be in the UK and (b) an individual's Article 8 ECHR and other Convention rights.

The court then applied the test to the facts of the present case. It first noted that the claimant had not been candid in the past about sufficient aspects of his personal information as to enable the Secretary of State to affect his return if the Belarusian authorities cooperated. He had failed to show that the Secretary of State could not lawfully continue to exercise the power to keep him on conditions of immigration bail. The court then applied the four-stage test as outlined in RA (Iraq). As to the first stage, the claimant had been in actual limbo for over twenty years. Within the second limb of the test, the prospects of his removal to Belarus were found to be remote. The court then moved to the third stage and considered that the claimant had no family in the UK, but had minimal private life through friendships. It added, *inter alia*, that he had committed serious criminal offending and was subject to a deportation order. As per the fourth stage, having considered all the relevant factors, the court found that the claimant’s case was exceptional. Due to his exceptional personal history, objectively, it could not be concluded that the claimant had gained any real benefit from being in the UK for two decades. This means that

even if he was granted a residence permit, it would be unlikely to lead to other people following his example, and so overall it would not weaken the immigration system. Furthermore, the fact that the claimant had lived continuously in the UK for twenty years was a factor material to Article 8. If he was not granted a residence permit, he would likely be prevented from making positive changes in his life. In addition to this, there would be no measurable benefit to the public interest. Overall, the public interest in effective immigration control could be outweighed by the very compelling circumstances of the claimant's Article 8 case. It was held that continuing to refuse to grant a residence permit would be a disproportionate interference with his Article 8 rights. Lastly, the court considered the applicant's claim for protection as a stateless person. It found that the applicant had failed to show on balance that the Belarusian authorities knew his identity but were nevertheless refusing to acknowledge him as a Belarusian national. Nor was the applicant able to show that the Belarusian authorities had no intention of cooperating with the UK government in order to recognise him, even if he was to chance his stance and provide the UK Government with wholly true information about his identity.

Decision documents

AM v SSHD PDF .pdf

Outcome

1) The continuing refusal to grant a residence permit to the claimant constitutes a violation of Article 8 of the ECHR.

2) The claimant cannot be considered a stateless person.

Caselaw cited

RA (Iraq) v Secretary of State for the Home Department [2019] EWCA Civ 850 - 17 May 2019

R. (on the application of Khadir) v Secretary of State for the Home Department [2005] UKHL 39 - 16 June 2005