



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

This application for judicial review concerns the Secretary of State for the Home Department's decision to refuse the applicant's application for leave to remain in the United Kingdom as a stateless person on the basis that she could have re-entered the Kuwait lawfully through a travel document she had been provided with by the Kuwaiti authorities. The Upper Tribunal addressed the issue of the correct interpretation of 'admissibility' of a person who claims to be stateless to their country of former habitual residence, under paragraph 403(c) of the Immigration Rules. The single ground of judicial review is that the respondent's definition of 'admissible' is unlawful, irrational and/or inconsistent with her own policy. The court found that 'admissible' means the ability to enter and reside lawfully and does not incorporate the concept of 'permanent residence'.

Case name (in original language) : R (on the application of AZ) v The Secretary of State for the Home Department

Case status: Decided

Case number: [2021] UKUT 00284 (IAC)

Citation: R (on the application of AZ) v Secretary of State for the Home Department [2021] UKUT 00284 (IAC), 25 March 2021

Date of decision: 25/03/2021

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 birth: Kuwait

Applicant's country of residence: United Kingdom

Legal instruments: 1954 Statelessness Convention

Key aspects: Statelessness determination

Relevant Legislative Provisions:

1954 Convention relating to the Status of Stateless Persons, Article 1(1)

Paragraph 401(a)-(c) of the Immigration Rules

Paragraph 403(c) of the Immigration Rules

Paragraph 404 of the Immigration Rules

Facts

The applicant was born in Kuwait and is stateless. She entered the UK on a visit visa using an 'Article 17' travel document issued by the Kuwaiti government. On 9 January 2018 she applied for leave to remain in the UK as a stateless person as per paragraph 403 of the Immigration Rules.

This application was made on the basis of evidence that her Kuwaiti nationality had been withdrawn and she had unsuccessfully attempted to obtain it. She submitted that it would be difficult to reside in Kuwait without nationality as this results in the denial of civil rights such as education, healthcare and employment. She does not have any form of civil identity documentation in Kuwait. Each time she travels out of Kuwait, her travel document is retained and she is given a letter which she must use to re-enter Kuwait.

The issue in dispute was the interpretation of paragraph 403(c) of the Immigration Rules, which provides that in order to obtain leave to remain as a stateless person, (amongst other things) the applicant must not be "admissible to their country of former habitual residence or any other country".

In a decision of 24 July 2019, the Secretary of State for the Home Department (hereinafter the SSHD) found that the applicant was admissible to Kuwait. This is because the applicant provided a valid Kuwaiti "Article 17" travel document that expired on 20 March 2020. Additionally, the SSHD did not accept that the applicant was unable to return to Kuwait because she does not have access to other basic rights. This conclusion was reached on the basis of an educational certificate and a document confirming her lack of Kuwaiti nationality provided by the Kuwaiti authorities. Both documents were in her own name.

Following this decision, the applicant applied for permission to appeal for judicial review. Permission was granted on 16 December 2019 in the following terms:

'It is arguable that the respondent's decision unlawfully interprets 'admissible' in paragraph 403(c) of the Immigration Rules as meaning simply 'permitted to enter'

(in this case Kuwait), whereas arguably that interpretation is inconsistent with international instruments dealing with statelessness and with the respondent's own guidance'.

Legal arguments by the applicant

The applicant submitted that the SSHD's failure to adopt the correct interpretation of admissibility under paragraph 403(c) when considering her application renders the decision unlawful. It was argued that the proper interpretation of paragraph 403 of the Immigration Rules is that an individual is admissible to their country of former habitual residence only if they can be admitted for lawful and permanent residence.

The applicant argued that the SSHD intended the word 'admissible' to incorporate the concept of 'permanent residence'. This argument was made with reference to the SSHD's policy guidance (the 'Asylum Policy Instructions: Statelessness and applications for leave to remain, version 2, 18 February 2016' ('API 2016')); the explanatory memorandum to the Immigration Rules; and the UNHCR policy on statelessness.

The applicant further submitted that the SSHD's interpretation was not in accordance with international law. She contended that paragraph 403(c) was intended to give effect to the 1954 Convention relating to the Status of Stateless Persons, the purpose of which is to ensure that individuals without nationality are not deprived of 'core rights'. Reference was made to the API 2016 in which an intention to 'provide a means for the consideration of those who are stateless and who have no other right to remain in the UK but who cannot be removed because they would not be admitted to another country for the purpose of residence' was expressed. She argued that the API makes clear that admissibility is to be regarded as purposive rather than literal. That is, it is insufficient to establish only that an applicant can pass through a border. Rather, the nature and conditions of the applicant's residence upon readmission must be considered.

Legal arguments by the opposing party

The Secretary of State for the Home Department submitted that 'admissible' in the context of paragraph 403(c) of the Immigration Rules means that 'lies within a claimant's power to obtain admission'. The meaning of the word "admissible" has already been settled in the authorities. On the Court of Appeal authorities of *JM (statelessness)*, *JM (Zimbabwe)* and *Teh v Secretary of State*, there is no justification

for reading paragraph 403(c) 'restrictively'. Referring to the case of *Mahmood v SSHD*, she also argued that the Immigration Rules cannot be interpreted by the SSHD's policy.

Decision & Reasoning

When considering the meaning of the word admissible in the Court of Appeal cases of *JM (statelessness)*, *JM (Zimbabwe)* and *Teh v Secretary of State*, the court found that contrary to the SSHD's argument, this issue was not settled. This is because this rule as it applies to the facts of this case can be distinguished from the factual scenarios in the existing authorities.

The court then turned to consider its meaning at paragraph 403(c) of the Immigration Rules. The court recalled that it is settled law that the Immigration Rules are to be construed 'sensibly according to the natural and ordinary meaning of the words used recognising that they are statements of the Secretary of State for the Home Department's policy' (*Mahad v ECO* [2009] UKSC 16 per Lord Brown at [10]). The words used in the rule are what the SSHD must have intended because they are her rules. The court took the view that the word 'admissible' in the context of paragraph 403(c) means the ability to enter lawfully and reside lawfully. It found that the applicant's travel document gave her the right to enter Kuwait lawfully and, by definition, to reside lawfully.

Assessing the applicant's arguments with respect to 'permanent residence', the court found that the word 'admissible' plainly does not incorporate the former. It held that had the SSHD intended the rule to have meant this, the SSHD would have drafted the rule accordingly. However, the court did find there to be a degree of ambiguity in the word 'admissible'. The general rule is that the SSHD's guidance cannot be used to interpret the meaning of the Immigration Rules. Where there is genuine ambiguity, however, it is legitimate to derive assistance from the executive's formally published guidance. After considering the relevant policy and an explanatory memorandum, which referred only to 'residence', the court was not satisfied that the SSHD intended paragraph 403(c) of the Immigration Rules to mean admit for the purpose of 'permanent residence'.

Considering the applicant's international law argument, the court agreed that paragraph 403 of the Immigration Rules must give effect to the 1954 Statelessness

Convention. However, it noted that it establishes minimum standards of treatment for stateless people in respect to a limited number of rights. It does not impose a requirement on States to grant either permanent residence or citizenship and the core rights protected fall short of the full rights of citizenship. The court was therefore not satisfied that the decision is unlawful because paragraph 403(c) is contrary to international law.

The court ultimately found that the SSHD gave proper consideration in the administrative review stage as to whether the applicant would be admitted to Kuwait for the purpose of lawful and permanent residence. In light of the applicant's ability to travel in and out of Kuwait and her length of residence there, the court was satisfied that it was open to the SSHD to form the view that she did in fact have the right to reside lawfully and permanently in Kuwait.

Finally, the court held that even if it was wrong and the word "admissible" did include the right to remain in the territory permanently, it was satisfied that the SSHD had considered and come to a rational conclusion that the applicant did in fact have the right to reside lawfully and permanently in Kuwait.

Decision documents

[R \(on the application of AZ\) v The Secretary of State for the Home Department](#)

Outcome

The decision to refuse leave as a stateless person was maintained and the appeal was not allowed (paragraphs 89-93).

This case is a good indicator that if a decision refusing leave as a stateless person under paragraph 403(c) of the Immigration Rules is made, then the quality and length of leave must be clearly considered in that decision, though it is not necessary for the quality of that leave to be permanent residence.

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

[Explanatory Memorandum to the Statement of Changes in Immigration Rules Presented to Parliament on 7 March 2019 \(HC 1919\)](#), see statements 7.55 and 7.57

[Freemovement.org.uk, The meaning of "admissible" in statelessness cases](#)

Caselaw cited

R (on the application of Sameda) v SSHD (statelessness; Pham [2015] UKSC 10 applied) IJR [2015] UKUT 00658 (IAC)

R (on the application of JM) v Secretary of State for the Home Department (Statelessness; Part 14 of HC 395) IJR [2015] UKUT 00676

JM (Zimbabwe) v SSHD [2018] EWCA Civ 188

Teh v Secretary of State [2018] EWHC 1586)

Mahad v ECO [2009] UKSC 16

Ahmed v SSHD [2019] EWCA Civ 1070

Mahmood v SSHD [2020] UKUT 00376

Pokhriyal v SSHD [2013] EWCA Civ 1568)

R v SSHD ex p Turgut [2000] EWCA Civ 22