Upper Tribunal (IAC) Reported Decisions: March 2020

Immigration Law Update

Adam Pipe

Ammari (EEA appeals - abandonment) Tunisia [2020] UKUT 124 (IAC) (2 March 2020)

i. Under the 2000 and 2006 EEA Regulations there was provision for appeals brought under section 82(1) of the Nationality, Immigration and Asylum Act 2002 to be treated as abandoned where an appellant was issued with documentation confirming a right to reside in the United Kingdom under EU law. Following the changes to the 2002 Act brought about by the Immigration Act 2014 that abandonment provision was revoked and never replaced.

ii. There has never been provision under any of the EEA Regulations for an appeal against an EEA decision brought under those Regulations to be treated as abandoned following a grant of leave to remain or the issuance of specified documentation confirming a right to reside in the United Kingdom under EU law.

iii. It follows that a grant of leave to remain following an application under the EU Settlement Scheme does not result in an appeal against an EEA decision brought under the 2016 EEA Regulations being treated as abandoned.

https://www.bailii.org/uk/cases/UKUT/IAC/2020/124.html

Hysaj (Deprivation of Citizenship:Delay) Albania [2020] UKUT 128 (IAC) (19 March 2020)

1. The starting point in any consideration undertaken by the Secretary of State ("the respondent") as to whether to deprive a person of British citizenship must be made by reference to the rules and policy in force at the time the decision is made. Rule of law values indicate that the respondent is entitled to take advice and act in light of the state of law and the circumstances known to her. The benefit of hindsight, post the Supreme Court judgment in R (Hysaj) v. Secretary of State for the Home Department [2017] UKSC 82, does not lessen the significant public interest in the deprivation of British citizenship acquired through fraud or deception.

2. No legitimate expectation arises that consideration as to whether or not to deprive citizenship is to be undertaken by the application of a historic policy that was in place prior to the judgment of the Supreme Court in Hysaj.

3. No historic injustice is capable of arising in circumstances where the respondent erroneously declared British citizenship to be a nullity, rather than seek to deprive under section 40(3) of the British Nationality Act 1981, as no prejudice arises because it is not possible to establish that a decision to deprive should have been taken under a specific policy within a specific period of time.

4. The respondent's 14-year policy under her deprivation of citizenship policy, which was withdrawn on 20 August 2014, applied a continuous residence requirement that was broken by the imposition of a custodial sentence.

Hysaj (Deprivation of Citizenship:Delay) Albania [2020] UKUT 128 (IAC) (19 March 2020)

5. A refugee is to meet the requirement of article 1A(2) of the 1951 UN Refugee Convention and a person cannot have enjoyed Convention status if recognition was consequent to an entirely false presentation as to a well-founded fear of persecution.

6. Upon deprivation of British citizenship, there is no automatic revival of previously held indefinite leave to remain status.

7. There is a heavy weight to be placed upon the public interest in maintaining the integrity of the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship. Any effect on day-to-day life that may result from a person being deprived of British citizenship is a consequence of the that person's fraud or deception and, without more, cannot tip the proportionality balance, so as to compel the respondent to grant a period of leave, whether short or otherwise.

https://www.bailii.org/uk/cases/UKUT/IAC/2020/128.html

Mansoor, R (on the application of) v The Secretary of State for the Home Department [2020] UKUT 126 (IAC) (11 March 2020)

The process required by the Court of Appeal in Balajigari may be carried out by the Tribunal in effect applying that guidance, such that the Secretary of State's failure to do so is rendered immaterial.

http://www.bailii.org/uk/cases/UKUT/IAC/2020/126.html

MH (review; slip rule; church witnesses) Iran [2020] UKUT 125 (IAC) (11 March 2020)

(i) Part 4 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 contains a 'toolkit' of powers, the proper use of which saves time and expense and furthers the overriding objective.

(ii) A judge of the FtT who is minded to grant permission to appeal on the basis of a seemingly obvious error of law should consider whether, instead, to review the decision under appeal pursuant to rule 35.

(iii) A decision which contains a clerical mistake or other accidental slip or omission may be corrected by the FtT under rule 31 (the 'slip rule'). Where a decision concludes by stating an outcome which is clearly at odds with the intention of the judge, the FtT may correct such an error under rule 31, if necessary by invoking rule 36 so as to treat an application for permission to appeal as an application under rule 31. Insofar as Katsonga [2016] UKUT 228 (IAC) held otherwise, it should no longer be followed.

(iv) Written and oral evidence given by 'church witnesses' is potentially significant in cases of Christian conversion (see TF & MA v SSHD [2018] CSIH 58). Such evidence is not aptly characterised as expert evidence, nor is it necessarily deserving of particular weight, and the weight to be attached to such evidence is for the judicial fact-finder.

http://www.bailii.org/uk/cases/UKUT/IAC/2020/125.html

WA (Role and duties of judge) Egypt [2020] UKUT 127 (IAC) (16 March 2020)

1. During the taking of evidence a judge's role is merely supervisory.

2. If something happens during a hearing that disrupts the normal course of taking evidence it is essential that the judge records what happened and why; who said what; and what decision the judge made and on what basis.

http://www.bailii.org/uk/cases/UKUT/IAC/2020/127.html

Younas (section 117B (6) (b); Chikwamba; Zambrano) Pakistan [2020] UKUT 129 (IAC) (24 March 2020)

(1) An appellant in an Article 8 human rights appeal who argues that there is no public interest in removal because after leaving the UK he or she will be granted entry clearance must, in all cases, address the relevant considerations in Part 5A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") including section 117B(1), which stipulates that "the maintenance of effective immigration controls is in the public interest". Reliance on Chikwamba v SSHD [2008] UKHL 40 does not obviate the need to do this.

(2) Section 117B(6)(b) of the 2002 Act requires a court or tribunal to assume that the child in question will leave the UK: Secretary of State for the Home Department v AB (Jamaica) & Anor [2019] EWCA Civ 661 and JG (s 117B(6): "reasonable to leave" UK) Turkey [2019] UKUT 72 (IAC). However, once that assumption has been made, the court or tribunal must move from the hypothetical to the real: paragraph 19 of KO (Nigeria) & Ors v Secretary of State for the Home Department [2018] UKSC 53. The length of time a child is likely to be outside the UK is part of the real world factual circumstances in which a child will find herself and is relevant to deciding, for the purpose of section 117B(6)(b), whether it would be unreasonable to expect the child to leave the UK.

(3) The assessment of whether a child, as a result of being compelled to leave the territory of the European Union, will be a deprived of his or her genuine enjoyment of the rights conferred by Article 20 TFEU in accordance with Ruiz Zambrano v Office national de l'emploi (Case C-34/09) falls to be assessed by considering the actual facts (including how long a child is likely to be outside the territory of the Union), rather than theoretical possibilities.

http://www.bailii.org/uk/cases/UKUT/IAC/2020/129.html

Adam Pipe No8 Chambers

adampipe.com, http://www.twitter.com/adampipe,
http://uk.linkedin.com/in/pipeadam/