
SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: SN/78/2020
Hearing Date: 19th November 2021
Date of Judgment: 20th December 2021

Before

**THE HONOURABLE MR JUSTICE JAY
UPPER TRIBUNAL JUDGE BLUM
SIR STEWART ELDON KCMG OBE**

Between

SHARIFULLAH SHARIF (SSH)

Appellant

and

**THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

OPEN JUDGMENT

Mr R Ahmed (instructed by **B Assured Law**) appeared on behalf of the Appellant

Mr D Sternberg (instructed by **the Government Legal Department**) appeared on behalf of the Secretary of State

Mr D Lewis (instructed by **Special Advocates' Support Office**) appeared as Special Advocates

1. This is an application for review under s. 2D of the 1997 Act of the SSHD's refusal of the Applicant's application for naturalisation.
2. The Applicant was born in Afghanistan in 1991. He entered the UK and applied for asylum on 17th November 2005. This was refused but the Applicant was then granted discretionary leave on more than one occasion. Before the expiry of that leave, an application for indefinite leave to remain was made on 26th November 2014, and that was granted on 18th May 2015.
3. The Applicant first made an application for British citizenship on 23rd May 2016. He made no relevant declarations in part 3 of the application form, but as has been pointed out that point tends to circularity. That application was refused on 12th December 2018 but, for reasons which cannot be explained in OPEN, that decision was withdrawn on 17th March 2020. The Applicant was invited to make further representations.
4. The terms of the first refusal decision were as follows:

“This is because of your past intentions to travel to Afghanistan to fight jihad and your fundraising on behalf of extremist causes overseas.”
5. The Applicant did not make any further representations. On 13th October 2020 the SSHD refused the application for the second time on the ground that he did not meet the requirement of good character. The key reasoning was identical to that set out under para 4 above.
6. Mr Rashid Ahmed on behalf of the Applicant took a point as to the meaning of the term “jihad”. He submitted that the SSHD needed to be precise about it, and has not been. There was some discussion about this in CLOSED but there is no reason why the position should not be explained to the Applicant in clear terms.
7. The term “jihad” has been used on many occasions in SIAC. We think that it is well understood by people with a general understanding of the issues, and it is certainly understood by those with experience of cases involving alleged Islamic extremism.
8. It is not appropriate, and possibly disrespectful, for SIAC to involve itself in scriptural debate. However, the term “jihad” is used in the Qu’ran to mean “struggle” in the sense of personal or internal struggle. On the other hand, Islamic fundamentalists use the term to mean armed or violent struggle or fight against the infidel. In deploying this term in his two decision letters, the SSHD was referring to the second meaning and not the first.
9. From the material we have seen, it is clear that the Applicant would otherwise have satisfied the good character requirement in s. 6 of the BNA 1981. In his witness statement dated 6th November 2020, the Applicant has supplied information about himself which we have considered. At para 25 of that statement he refers to testimonial evidence from two individuals which was submitted to the SSHD in connection with the first naturalisation application.

10. At para 19b of his statement, the Applicant refers to a meeting he had at Leeds Town Hall “in or about 2012”. His memory of the meeting is that he was asked if he was fundraising for “terrorism like jihad” or if he wanted to go to jihad. He told his interlocutor (he does not in fact say how many there were, or indeed give his understanding of who they were) that he was absolutely not interested in jihad. His explanation for the fundraising was that a friend of his, Navid, who was only 18 at the time was killed in a car accident in Bradford. It is a religious tradition to send money to bereaved families. So it came about that:

“... one man who knew that I was friendly with Navid gave me £300. I think this was all the money that was actually collected. ... The gentleman concerned who gave me this money is a shop owner and I think he is quite comfortable. ... I think it [sic] was only given the money to pass on to someone who I knew was shortly going to Pakistan.”

The Applicant passed this money onto the family and was later thanked by them, although he was “only the transit for it.”

11. Our only comment about para 19b is that the Applicant’s account is somewhat vague, and raises as many questions as it answers. The Appellant has not named the shop owner or the man who took the money to Pakistan, nor has he explained how the money got from there to Navid’s family in Afghanistan. Para 19b does explain that this was the ultimate destination of the coffin. On the assumption that the money was given to the Applicant in cash, the absence of documentation may not be surprising, but he could have chosen to provide more detail if so minded.

12. The Applicant’s Notice of Appeal advances five grounds:

- (1) The decision to refuse the application was perverse because the Applicant never intended to travel to Afghanistan to fight jihad or been involved in fundraising activities on behalf of extremist causes.
- (2) The SSHD acted unfairly in not identifying areas of concern in advance of making the adverse decision.
- (3) The SSHD’s reasons are inadequate.
- (4) The SSHD failed to disclose the underlying evidential basis for her decision.
- (5) The SSHD failed to interview the Applicant.

13. These grounds are developed in a slightly different way in the Applicant’s skeleton argument. It will be more convenient for present purposes to take the numbering from the Notice of Appeal.

14. The principles governing this application for review are well-established, with the leading authorities being *R (oao Thamby) v SSHD* [2011] EWHC 1763 (Admin) and *AHK v SSHD* [2014] (SN/2/2014). In short:

- (1) The Respondent is entitled to set a high bar for satisfying the good character requirement, and this Commission may intervene only if the standard adopted by her and/or its application to the facts of a particular case is unreasonable.
- (2) The burden is on an applicant to satisfy the Respondent that the good character requirement is met.
- (3) The Commission must apply judicial review principles to the Respondent’s decision-making process, including the decision itself.

(4) The Commission's task is to review the facts with careful or anxious scrutiny and to decide whether the Respondent's factual findings are reasonable. Here, the Commission shows no deference to the Respondent.

(5) If the factual findings are reasonable, the Commission must then decide whether the Respondent's decision – entailing as it does an evaluative assessment – is reasonable in the *Wednesbury* sense. In this context a degree of deference must be shown to the Respondent.

15. Item (4) above merits further elaboration. In *R (oao SSHD) v SIAC* [2015] 1 WLR 4799, the Divisional Court explained that the Respondent was under a duty to disclose to the special advocates in CLOSED not merely the report and any other documents relied on by the decision-maker but also “such material as had been used by the author of any report relied upon by the decision-maker to found or justify the facts and conclusions expressed therein”. This obligation served to attenuate at least to some extent the unfairness inherent in the statutory scheme, namely that an applicant for naturalisation would remain unaware of the decisive material in his case for reasons of national security.
16. Our attention was drawn to the decision of this Commission, Flaux J as he then was presiding, in *NA v SSHD* (SN/56/2015). That case is authority for the proposition that the SSHD is under no duty to identify areas of concern before making an adverse decision. As it happens, the Applicant in the present case was made aware of the matters he needed to address, if so advised, because the first refusal letter set these out.
17. When the case was called on for hearing, Mr Ahmed realistically accepted that his OPEN grounds would struggle and that this application for review would turn on the CLOSED material and the endeavours of the Special Advocate. That was a realistic approach. The Chairman then explained to the Applicant that he was fortunate in having as capable and experienced a Special Advocate as Mr Dominic Lewis.
18. For completeness, though, we should set out our reasons for rejecting the Applicant's five OPEN grounds of appeal. In the circumstances, we may do so quite briefly. It is more logical to follow the sequence set forth below.
19. The answer to the first ground is that the decision to refuse this naturalisation application would not be perverse if there were some evidential basis for it, or some other basis in CLOSED which could found the brief reasons given. It follows that the perversity challenge is only capable of thriving in the CLOSED proceedings.
20. The answer to the fourth ground is that Parliament has permitted the SSHD to withhold material from the Applicant in the public interest. The fact that this material may well contain the real basis of and reasons for the adverse decision is not a ground for saying that the SSHD should not be withholding it. The rule 38 procedure has addressed that issue: if reasons of national security require that the material be withheld, that is the end of the matter.
21. The same reasoning applies to the third ground. If national security demands that relevant material be withheld, the SSHD cannot be required to disclose her reasons for the adverse decision since that would provide a window into the CLOSED material.

22. The second and fifth grounds may be taken together. There are numerous decisions of this Commission to the effect that the SSHD is not required to give advance notice of areas of concern, nor is she required to interview an applicant for naturalisation. We have referred to just one of these. To the extent that the giving of notice etc. would reveal CLOSED material, the statutory scheme precludes the course of action the Applicant is suggesting. To the extent that it does not, the onus is on the Applicant to demonstrate his good character and persuade the SSHD of it. The Applicant's right to seek a review under s. 2D of the 1997 Act provides him with a further layer of protection and procedural recourse.

23. Our principal reasons for refusing this application for review under s. 2D of the 1997 Act are set out in the CLOSED judgment which we are handing down at the same time.