



17 July 2013

PRESS SUMMARY

R (on the application of New College London Limited) (Appellant) v Secretary of State for the Home Department (Respondent); R (on the application of West London Vocational Training College) (Appellant) v Secretary of State for the Home Department (Respondent) [2013] UKSC 51 *On appeal from: [2012] EWCA Civ 51; [2013] EWHC Civ 31 (Admin)*

JUSTICES: Lord Hope, Lord Clarke, Lord Sumption, Lord Reed, Lord Carnwath

BACKGROUND TO THE APPEAL

These appeals concern the system for licensing educational institutions to sponsor students from outside the European Economic Area under Tier 4 of the current points-based system of immigration control. Tier 4 deals with the grant of leave to enter or remain in the United Kingdom to migrants to the UK from outside the European Economic Area for the purpose of study. The essential requirement of the Tier 4 scheme was that the migrant should have been sponsored by an educational institution holding a sponsor's licence. This requirement was laid down in Part 6A of the Immigration Rules, which dealt with the requirements to be satisfied by migrants applying for leave to enter or remain for the purpose of study. The criteria for licensing sponsors and the duties of sponsors once licensed were not prescribed in the Immigration Rules, but only in the Tier 4 Sponsor Guidance issued by the Secretary of State. Section 3(2) of the Immigration Act 1971 ("the Act") provides that the Secretary of State shall lay before Parliament rules as to the practice to be followed in regulating the entry and stay in the UK of persons required under the Act to have leave to enter. Part 6A of the Immigration Rules was laid before Parliament under section 3(2) of the Act, but the Sponsor Guidance was not.

New College London was a licensed Tier 4 sponsor until December 2009 when its licence was suspended by the Secretary of State on the ground that it was in breach of its duties as sponsor as set out in the Sponsor Guidance. Its licence was subsequently revoked. West London Vocational Training College applied for Highly Trusted Sponsor status in accordance with the Sponsor Guidance and was refused in August 2012. The effect of that refusal under the terms of the then current Sponsor Guidance was that it could not be a licensed Tier 4 sponsor. Both applicants sought to challenge these decisions by way of judicial review. Both failed in the High Court and in the Court of Appeal. Their case was that, so far as the Sponsor Guidance contained mandatory requirements for sponsors, it had to be laid before Parliament, and that in making decisions by reference to it without having done this, the Secretary of State acted unlawfully.

JUDGMENT

The Supreme Court unanimously dismisses the appeals. Lord Sumption (with whom Lords Hope, Clarke and Reed agree) gives the lead judgment. Lord Carnwath adds a concurring judgment agreeing with the result but differing as to some of the reasoning.

REASONS FOR THE JUDGMENT

The criteria for sponsor licensing contained in the Sponsor Guidance were properly to be described as rules, but they were not required to be laid before Parliament under section 3(2) of the Act because that requirement related only to rules regulating the grant of leave to enter or remain in the UK which

have to be satisfied by the migrant. The Guidance is directed only to the licensing of sponsoring institutions [23, 26].

If the provisions of the Act do not apply, it does not follow that there is no power to have such a system at all [23, 27]. The statutory power of the Secretary of State to administer the system of immigration control must necessarily extend to a range of ancillary and incidental administrative powers not expressly spelt out in the Act, including the vetting of sponsors [28]. The Act does not prescribe the method of immigration control to be adopted. It cannot have been Parliament's intention that the Secretary of State should be limited to those methods of immigration control which required no other administrative measures apart from the grant or refusal of leave to enter or remain in the UK. Since the Secretary of State is entitled to prescribe and lay before Parliament rules for grant of leave to enter or remain in the UK which depend upon the migrant having a suitable sponsor, then she must also be entitled to take administrative measure for identifying sponsors who are and remain suitable, even if these measures do not themselves fall within section 3(2) of the Act [29]. This right is not unlimited: the Secretary of State cannot adopt measures which are inconsistent with the Act or Immigration Rules or adopt measures which are coercive, infringe legal rights or contravene the general constraints on administrative action imposed by public law. However, the Tier 4 sponsor system was not coercive but voluntary. The rules contained in the Sponsor Guidance were, in reality, conditions of participation and sponsors seeking the advantages of licences could not complain if they were required to adhere to them. [CA29]

Lord Carnwath agreed with the result, but held that the sponsor licensing scheme was an adjunct, not of the immigrant control system in general, but of the specific function of providing entry under section 1(4) of the Act. This provides for the admission of persons not having the right of abode for the purpose of study subject to "such restrictions as may be provided by the rules." This leads back to section 3(2) of the Act which prescribes the procedure for making the rules [37]. Lord Carnwath differed as to the practical effect of the decision in respect to New College. The decision did not confer a status which they did not have but revoked an existing licensing, and an order setting aside that decision would have left the existing licence in place. No party had sought to challenge the validity of that original licence [44-6].

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html