**14 December 2016**

**PRESS SUMMARY**

**R (on the application of Mirza) (Appellant) v Secretary of State for the Home Department (Respondent) [2016] UKSC 63**
**R (on the application of Iqbal) (Appellant) v Secretary of State for the Home Department (Respondent) [2016] UKSC 63**
**R (on the application of Ehsan) (Appellant) v Secretary of State for the Home Department (Respondent) [2016] UKSC 63**
***On appeal from [2015] EWCA Civ 838***

**JUSTICES**: Lady Hale (Deputy President), Lord Wilson, Lord Carnwath, Lord Hughes, Lord Hodge

## BACKGROUND TO THE APPEALS

Section 3C of the Immigration Act 1971 extends a person's leave to remain pending determination of an application to vary the period of leave, so long as the application is made before the original leave has expired. All three appeals before the Court raise the issue of how section 3C applies where an application is made in time, but for some reason is procedurally defective. Sections 50 and 51 of the Immigration, Nationality and Asylum Act 2006 enable the Secretary of State to lay down in immigration rules procedural requirements for applications, including provision for the payment of a fee and the consequences of failure to comply. Similarly, sections 5 and 7 of the UK Borders Act 2007 provide the power to make regulations regarding the provision of biometric information and the effect of failure to comply with these.

Mr Iqbal was granted entry clearance in January 2007 to come to the UK as a student, later extended to 30 April 2011. On 19 April 2011 he applied for further leave to remain as a student, although unaware that the fee had recently increased, he paid the old, lower fee. His application was rejected as invalid for that reason, and his leave expired. Mr Mirza entered the UK under a student visa which was valid until 31 March 2009. His application to extend leave was rejected for non-payment of the fee when the Secretary of State was unable to take the £295 application fee from his bank. In Ms Ehsan's case she had entry clearance until 28 December 2011. She applied for further leave on 23 December 2011 and was contacted by the Secretary of State, requesting that she make an appointment to provide certain biometric information. She was told by letter dated 26 March 2012 that her application was returned as invalid because of her failure to make and attend an appointment for providing biometric information. A new application made on 3 April 2012 subsequently failed.

All three appellants applied for judicial review of the Secretary of State's decisions, and following refusal of permission to apply for judicial review in the High Court/Upper Tribunal, permission to appeal was granted by the Court of Appeal. The Court of Appeal dismissed their joined appeals on the basis that section 3C did not extend to an application which was not validly made in accordance with the rules.

## JUDGMENT

The Supreme Court unanimously dismisses the appeals. Lord Carnwath gives the judgment, with which the other Justices agree.

## REASONS FOR THE JUDGMENT

The public are entitled to the legislative scheme being underpinned by a coherent view of the meaning of the rules and regulations. The court agrees with the Court of Appeal as to the need for rationalisation and simplification **[30]**.

The approach to the present appeals must be based on the legislation as it stands, since there has been no challenge to the legality or rationality of the rules and regulations. Ordinary principles of statutory interpretation are to be used, starting from the natural meaning of the words in their context. On this basis, the Court of Appeal in respect of Mr Iqbal and Mr Mirza reached the correct conclusion. There is no ambiguity in the words of regulation 37 of the 2011 Regulations: if an application is not accompanied by the specified fee it "is not validly made". An application not validly made can have no substantive effect **[33]**. It does not matter that section 3C was enacted before the provisions of the 2006 Act or the regulations made under it, because the powers given by Parliament in the later Act were made within the same legislative framework as the 2002 Act. This does not equate with permitting the executive to alter the interpretation of primary legislation **[34]**.

The Court of Appeal was also right in rejecting Mr Iqbal's ground of appeal based on alleged unfairness. The comments of the Upper Tribunal in *Basnet* do not lay down a universal rule and although it is unfortunate that he was caught out by a change in fees, there was no failure by the Secretary of State to publicise that change. The problem only arose because the application had been made very close to the expiry of leave **[35]**.

In the case of Ms Ehsan the situation is slightly different. While the obligation to pay fees arises at the time of the application, the requirement to apply for biometric information only arises at a later stage. Thus, while an application without the fee will be invalid from the outset, it is difficult to see why a failure at the biometric information stage should retrospectively invalidate an application from the outset, nullifying any section 3C extension to her leave to remain. There is no reason to read section 7 of the 2007 Act as having retrospective effect. Rather, the natural reading is to give power to invalidate the application from the time of the decision. However this reading would not help Ms Ehsan because even if her leave continued until the date of the Secretary of State's decision on 26 March 2012, it would not assist her in respect of her new application made on 3 April 2012 **[36-7]**.

*References in square brackets are to paragraphs in the judgment*

**<u>NOTE:</u> 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:**
http://supremecourt.uk/decided-cases/index.html