



THE COURT ORDERED THAT:

- 1. The CONFIDENTIAL witness statement of Daniel Furner dated 30 August 2019 and its exhibits shall remain confidential to the parties and the court and, subject to further order of the court, shall not be available for inspection.**
- 2. The witness relied on by Ms Begum, witness B, be granted anonymity in relation to the conduct of these proceedings and be identified only as “Witness B” and nothing may be published which, directly or indirectly, identifies Witness B as a witness in these proceedings.**
- 3. The steps taken on behalf of the Secretary of State and Her Majesty’s Government to facilitate Ms Begum’s involvement in the deprivation appeal, as described in the Witness Statements of Lauren Cooper dated 12 October 2020 and 5 November 2020, shall be confidential and no party or other person shall publish or disclose the same.**

26 February 2021

PRESS SUMMARY

R (on the application of Begum) (Appellant) v Special Immigration Appeals Commission (Respondent)

R (on the application of Begum) (Respondent) v Secretary of State for the Home Department (Appellant)

Begum (Respondent) v Secretary of State for the Home Department (Appellant)

[2021] UKSC 7

On appeal from [2020] EWCA Civ 918

JUSTICES: Lord Reed (President), Lord Hodge (Deputy President), Lady Black, Lord Lloyd-Jones, Lord Sales

BACKGROUND TO THE APPEAL

On 19 February 2019, the Secretary of State for the Home Department notified Ms Shamima Begum that he intended to deprive her of her British citizenship (“**the deprivation decision**”). The stated reason for the decision was that Ms Begum is “a British/Bangladeshi dual national who it is assessed has previously travelled to Syria and aligned with ISIL”, and that “[i]t is assessed that [her] return to the UK would present a risk to the national security of the [UK].” The Secretary of State certified that his decision had been taken partly in reliance on information which, in his opinion, should not be made public in the interests of national security and in the public interest.

Ms Begum was at that time, and still is, being held at a camp in Syria by the Syrian Democratic Forces. On 3 May 2019, she made an application for leave to enter the UK, in order to be able to pursue an appeal against the deprivation decision, and to avoid the risk of mistreatment. On 13 June 2019, the Secretary of State refused that application (“**the LTE decision**”). The Secretary of State certified that this decision had also been taken partly in reliance on information which, in his opinion, should not be made public in the interests of national security and in the public interest.

Appeals in three separate sets of proceedings brought by Ms Begum have reached the Supreme Court.

The first set of proceedings arose from Ms Begum’s appeal to the Special Immigration Appeals Commission (“**SIAC**”) against the deprivation decision. As preliminary issues in that appeal, SIAC determined that the Secretary of State did not depart from his extraterritorial human rights policy when he made the deprivation decision (“**the policy issue**”) and that, although Ms Begum could not have an effective appeal against that decision in her current circumstances, it did not follow that her appeal should succeed (“**the fair and effective appeal issue**”).

Her appeal against the deprivation decision not having been finally determined, Ms Begum did not have a statutory right of appeal to the Court of Appeal. Instead, she challenged SIAC’s determination of the policy and fair and effective appeal issues by means of an application for judicial review. On that application, the Divisional Court found in Ms Begum’s favour on the policy issue, but not the fair and effective appeal issue. The Secretary of State appeals to the Supreme Court on the basis that the Divisional Court was wrong to conclude that SIAC had erred in determining the policy issue by applying principles of administrative law. Ms Begum cross-appeals on the basis that the Divisional Court was wrong to reject her argument that her appeal against the deprivation decision should automatically be allowed if it could not be fairly and effectively pursued as a consequence of the refusal of her application for leave to enter the UK.

The second set of proceedings relate to the LTE decision. Ms Begum had a statutory right of appeal against that decision only so far as she claimed that the decision was unlawful under the Human Rights Act 1998. She made such an appeal, but it was refused by SIAC at first instance. Ms Begum then successfully appealed to the Court of Appeal. The Secretary of State appeals to the Supreme Court, on the ground that the Court of Appeal was wrong to conclude that leave to enter must be granted to Ms Begum because she could not otherwise have a fair and effective hearing of her appeal against the deprivation decision.

The third set of proceedings concern the LTE decision, other than in respect of its compliance with the Human Rights Act 1998. Not having a statutory right of appeal to SIAC in that respect, Ms Begum sought to challenge the LTE decision by means of an application for judicial review. Her application was dismissed by the Administrative Court but then granted by the Court of Appeal. The Secretary of State appeals to the Supreme Court. The issue arising in that appeal is, again, whether the Court of Appeal was wrong to conclude that leave to enter must be granted to Ms Begum because she could not otherwise have a fair and effective hearing of her appeal against the deprivation decision.

JUDGMENT

The Supreme Court unanimously allows the Secretary of State’s appeals and dismisses Ms Begum’s cross-appeal. The result is that Ms Begum’s appeal against the LTE decision is dismissed, her application for judicial review of the LTE decision is dismissed, and her application for judicial review of SIAC’s preliminary determination in her appeal against the deprivation decision is dismissed.

Lord Reed gives the sole judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

Lord Reed identifies four principal errors in the judgment of the Court of Appeal [132].

First, the Court of Appeal misunderstood the scope of an appeal against a decision of the Secretary of State to refuse a person leave to enter the UK [133]. Ms Begum’s appeal against the LTE decision could only be brought on the ground that the decision was unlawful under section 6 of the Human Rights Act 1998 [32-37, 100, 107]. As Ms Begum did not advance that argument before the Court of Appeal, her appeal against the LTE decision should have been dismissed [107, 111].

Secondly, the Court of Appeal erred in its approach to the appeal against the dismissal of Ms Begum's application for judicial review of the Secretary of State's refusal of leave to enter the UK [134]. It made its own assessment of the requirements of national security, and preferred it to that of the Secretary of State, despite the absence of any relevant evidence before it, or any relevant findings of fact by the court below [108-109, 134]. In particular, there was no evidence before the Court as to whether the national security concerns about Ms Begum could be addressed and managed by her being arrested and charged upon her arrival in the UK, or by her being made the subject of a Terrorist Prevention and Investigation Measure [109]. The Court of Appeal's approach did not give the Secretary of State's assessment the respect which it should have received, given that it is the Secretary of State who has been charged by Parliament with responsibility for making such assessments, and who is democratically accountable to Parliament for the discharge of that responsibility [134].

Thirdly, the Court of Appeal mistakenly believed that, when an individual's right to have a fair hearing of an appeal came into conflict with the requirements of national security, her right to a fair hearing must prevail [110, 135]. But the right to a fair hearing does not trump all other considerations, such as the safety of the public. If a vital public interest makes it impossible for a case to be fairly heard, then the courts cannot ordinarily hear it [91-94, 135]. The appropriate response to the problem in the present case is for the deprivation appeal to be stayed until Ms Begum is in a position to play an effective part in it without the safety of the public being compromised [135]. That is not a perfect solution, as it is not known how long it may be before that is possible. But there is no perfect solution to a dilemma of the present kind. In those circumstances, Ms Begum's application for judicial review of the LTE decision was properly dismissed by the Administrative Court [111], as should be her cross-appeal in respect of SIAC's preliminary decision in the deprivation appeal [97].

Fourthly, the Court of Appeal mistakenly treated the Secretary of State's extraterritorial human rights policy as if it were a rule of law which he must obey [136], as opposed to something intended to guide the exercise of his statutory discretion [122]. On a deprivation appeal, SIAC is not entitled to re-exercise the Secretary of State's discretion for itself. Rather, unless there is an issue as to whether the Secretary of State has acted in breach of his obligations under the Human Rights Act, SIAC is confined to reviewing the Secretary of State's decision by applying essentially the same principles that apply in administrative law [66-71, 118-119]. In this case, having considered detailed assessments by his officials and by the Security Service, the Secretary of State was not satisfied that depriving Ms Begum of British citizenship would expose her to a real risk of mistreatment within the meaning of his policy. SIAC decided that that conclusion was not an unreasonable one. There was no defect in SIAC's reasoning in that regard [130]. Ms Begum's application for judicial review of SIAC's preliminary decision in the deprivation appeal is therefore dismissed [131].

References in square brackets are to paragraphs in the judgment

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:

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