14 May 2014

PRESS SUMMARY

R (on the application of Fitzroy George) v The Secretary of State for the Home Department [2014] UKSC 28
On appeal from the Court of Appeal Civil Division [2012] EWCA Civ 1362

JUSTICES: Lord Neuberger (President), Lord Clarke, Lord Carnwath, Lord Hughes, Lord Toulson

BACKGROUND TO THE APPEAL

Mr George was born in Grenada in 1984 and came to the UK in 1995 at the age of 11. In March 2000 he was granted indefinite leave to remain ("ILR") in the UK. He has a partner whom he has known since school, with whom he has a daughter born in 2005. He and his partner do not live together: his daughter however sees him reasonably often and sometimes stays with him.

Since 2000, Mr George has been convicted of seven different offences, including supply of cocaine and possession with intent to supply heroin and cocaine. The Secretary of State decided that Mr George's deportation would be conducive to the public good. From that point he was, by s. 3(5) Immigration Act 1971 ("the 1971 Act"), "liable to deportation". Notice was served upon him, in January 2007, that a deportation order was to be made against him. He unsuccessfully challenged that decision and, on 24 April 2008, a deportation order was made in respect of him. The effect of that deportation order, by section 5(1) of the 1971 Act, was to invalidate his ILR.

Mr George made a further application to the Secretary of State arguing that his deportation to Grenada would be unlawful under s. 6 Human Rights Act 1998 as it would breach his right to private and family life under Article 8 ECHR. The Secretary of State rejected that application, but an immigration judge allowed his appeal on 31 March 2009. The effect of that judgment was to revoke his deportation order.

The question in this case is Mr George's immigration status following the making and revocation of the deportation order. Did Mr George's ILR, invalidated by the deportation order, revive when the deportation order was itself revoked? Mr George's solicitors considered that it did, and called on the Secretary of State to confirm this. The Secretary of State however considered that it did not, and instead granted six months' discretionary leave to remain ("DLR") on 2 August 2013. On the expiry of that leave the Secretary of State granted a further three years' DLR.

Mr George judicially reviewed the decision not to reinstate ILR. He argued that on the true interpretation of s. 5(1)-(2) Immigration Act 1971, his ILR was reinstated by the revocation of the deportation order. Subsection (1) provides that a deportation order "shall invalidate any leave to remain given [to a person] before the order is made or while it is in force". Subsection (2) provides that a deportation order "may at any time be revoked by a further order of the Secretary of State, and shall cease to have effect if he becomes a British citizen". He further argued that an interpretation of s. 5 by which his ILR was revived was supported by the fact that other immigration statutes, particularly s. 76 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), required that reading of the 1971 Act. Mr George's claim was dismissed in the High Court, but his appeal to the Court of Appeal was allowed. The Secretary of State appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Hughes gives the only reasoned judgment, with which the other members of the court agree. The better reading of section 5 of the 1971 Act is that it does

not revive prior leave on a deportation order's revocation. The other statutory provisions relied upon by Mr George do not support his case.

REASONS FOR THE JUDGMENT

- Mr George's first argument is that on its natural meaning, (i) revocation of a deportation order under s. 5(2) of the 1971 Act must reverse all the consequences of the order listed in s. 5(1), including therefore the invalidation of the leave to remain, and (ii) that the words "shall cease to have effect" in s. 5(2) govern both the citizenship and revocation possibilities in that subsection. However, neither point is compelling. The wording of the subsections does not provide a conclusive answer to the question in the appeal **[10-11]**.

- Importantly, the 1971 Act has consistently been treated as meaning that revocation does not revive prior leave to remain. Draft Immigration Rules which made this clear were prepared (and considered by Parliament) alongside the 1971 Act, and every subsequent version of the Immigration Rules has contained the same statement. Each version has been laid before Parliament. Likewise, successive editions of practitioner textbooks have taken the same position **[12]**. Revival of prior leave to remain is not the natural meaning of s. 5 of the 1971 Act. It is a significant and far-reaching legal concept, and it is likely that if intended, it would have been explicitly provided **[29]**. The treatment of s. 5(2) of the 1971 Act in successive Rules laid before Parliament clearly demonstrates that there was no legislative assumption that the effect of revocation of a deportation order was revival of prior leave to remain **[30]**.

- Mr George's second argument was that other immigration statutes, particularly s. 76 of the 2002 Act, indicate that the proper interpretation of the 1971 Act is that revocation of a deportation order revives leave to remain. S. 76 provides a power for the Secretary of State to revoke ILR if a person is "liable to deportation" but "cannot be deported for legal reasons". Mr George argued that this power would be superfluous if the making of a deportation order irrevocably cancelled ILR **[13-14]**.

- However, this is incorrect. While the legal impediment to Mr George's deportation arose only after his deportation order was made, in other cases the legal impediment would be apparent prior to this point, and so the order would never be made. S. 76 provides a power for the Secretary of State to revoke ILR and instead provide for limited or conditional leave. In any event the only import of this argument goes to Parliament's intention when it passed the 1971 Act: the legislative history set out at **[12]** demonstrates that Parliament intended a deportation order irrevocably to extinguish prior leave to remain **[16-18]**.

- A number of arguments based on other statutes and situations were raised. Where an individual previously possessing ILR had been deported, that individual might need to return to the UK for a brief period. The Secretary of State would need to revoke the deportation order and make a fresh grant of conditional leave. It could not be right that in such a situation the previous ILR would revive, and this provided some limited support for the Secretary of State's position. The Immigration (Leave to Enter and Remain) Order 2000 did not alter this conclusion, since the issue is the construction of the 1971 Act, and the problem existed prior to 2000 **[19-21]**. Mr George had based an argument on an analogy with s. 10 of the Immigration and Asylum Act 1999. However, that issue was not squarely before the court, and it would be wrong to determine its interpretation in the abstract **[25-26]**. The same was true of the UK Borders Act 2007 **[27-28]**. More fundamentally, it is wrong to reason from suggested scenarios under later Acts to the meaning of an earlier Act. Later statutes are not reliable guides to the meaning of earlier ones, particular in areas where there have been fast-moving changes to the legislation **[30]**.

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.shtml