



Neutral Citation Number [2024] EWHC 3708 (Admin)

AC-2023-LON-3184 and AC-2024-LON-454

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Friday, 4 October 2024

BEFORE

MR JUSTICE SWIFT

BETWEEN

THE KING
on the application of

HAZIZ RAHIM

Claimant

and

(1) SECRETARY OF STATE FOR DEFENCE
(2) SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendants

MR DOMINIC LEWIS (instructed by Special Advocates' Support Office), Special Advocate.
MR JONATHAN KINNEAR KC and MR RICHARD EVANS (instructed by Government
Legal Department) appeared on behalf of the Defendants.

JUDGMENT

This is an OPEN version of a CLOSED judgment handed down in private on 4 October 2024.

Some parts of the original CLOSED judgment have been redacted; some parts have been re-worded. These changes have been agreed by the Special Advocate and leading counsel for the Secretary of State as necessary to safeguard the interests of national security

Mr Justice Swift

1. The CLOSED grounds of challenge in this case are directed to a decision taken by the Secretary of State in a letter dated 24 July 2024. That decision was to the effect that, notwithstanding that the claimant's name appeared in the list that was incorrectly disclosed ("the data breach list"), the Secretary of State had decided not to take further steps to alert the claimant against risks that might arise from his name being on that list and that list coming into the possession of the Taliban.
2. The claimant is already in the United Kingdom. His wife and son are in India. His son is a British national and so has the right to enter the United Kingdom. The claimant's wife is an Indian national. So far as I am aware, there is no suggestion that either the claimant's wife or his son is at any risk of being removed from India. I am also told that the claimant's wife, having previously had a visa to enter the United Kingdom, a visa which has expired, has since then made further visa applications which were refused in May 2024 and that there are appeals against those decisions which either have been unsuccessful or remain on foot.
3. The first ground of challenge is directed to the policy that was applied when the 24 July 2024 decision was taken. For present purposes, I will assume that the policy applied was consistent with a letter written on behalf of the Secretary of State to the court following the court's judgment in the case of *R (on the application of CX1) v Secretary for Defence* [2024] EWHC 892 (Admin). The letter to the court, dated 14 June 2024, reads as follows:

‘In its Order in these proceedings, dated 23 April 2024, the court directed *inter alia* that:

“(5) The Secretary of State for Defence shall reconsider the approach to be taken to identifying those within the highest risk cohort for the purposes of the 25 March policy by 4pm on 14 June 2024.”

The Secretary of State has now undertaken the required reconsideration and consistently with the observations of the Divisional Court in para.58 of its judgment in *CX1* and *MPI*, has decided that the highest risk cohort for the purposes of the 25 March policy comprises high profile individuals who either (i) held one of the roles identified in the MOD's list or (ii) held a different role which puts them at equivalent risk to those in the identified roles.’

4. The focus of the challenge now advanced in ground 1 is the requirement within the policy that the person concerned be a “high profile individual”.
5. I am entirely satisfied that there is nothing inconsistent between a policy containing that requirement as stated in the 14 June 2024 letter and the reasoning of the Divisional Court in *CX1* at paras.57 to 58. The ground of challenge is, therefore, not arguable.
6. I am fortified in my conclusion by the fact that Jay J in the case of *AFa* considered a similar point, as did Saini J in his judgment in *QPI*, although each, in the context of rolled-up hearings, considered the point to be arguable but each then went on to dismiss

that ground of claim on its merits. That being so, there is no reason why I should give permission to apply for judicial review on this same matter in this case.

7. Grounds 2 to 4 of the CLOSED challenge all concern whether the 24 July 2024 decision rests on the proper application of Article 8.
 8. In the circumstances of this case, these grounds do not lead anywhere. The question, as at the time of the July 2024 decision letter, was whether to take further steps to protect the claimant from the consequences of the data breach. By that time, as I have said, the claimant was in the United Kingdom and his wife and son in India. To the extent that those circumstances give rise to any Article 8 argument, that is to say an argument that by reason of Article 8 steps should be taken to facilitate a family reunion, that arises from circumstances that are entirely apart from the data breach or the decision taken in July 2024 in consequence of the data breach.
 9. Mr Lewis, Special Advocate, suggested that some form of restitutionary principle might arise for application in this case. I do not accept that submission. I cannot see that the remedy that is now sought, namely an order to the effect that the Secretary of State should admit the claimant's wife to the United Kingdom, would operate by way of restitution, that is to say in order to restore the position as it stood in consequence of the data breach. The fact that the claimant's wife is now in India seems to me to be entirely independent of that data breach.
 10. For these reasons, I also refuse permission to apply for judicial review on CLOSED grounds 2, 3 and 4.
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