SPECIAL IMMIGRATION APPEALS COMMISSION

SHAMIMA BEGUM v SECRETARY OF STATE FOR THE HOME DEPARTMENT

JUDGMENT SUMMARY

1. **On 19 February 2019 the Home Secretary made an order depriving Shamima Begum of her British citizenship under section 40 of the British Nationality Act 1981 because he was satisfied that to do so was conducive to the public good. The letter communicating the decision stated that Ms Begum had travelled to Syria to align with ISIL and was a threat to national security.**

2. **Ms Begum exercised her right of appeal to the Special Immigration Appeals Commission under section 2B of the SIAC Act 1997 against the decision to make the deprivation order.**

3. **Three preliminary issues were litigated: these culminated in the Supreme Court ([2021] UKSC 7; [2021] AC 765). It was decided, first, that the decision would not render Ms Begum stateless, because she had dual Bangladeshi nationality. Second, that the decision would not violate the Secretary of State's policy by exposing her to a risk of death or of inhumane or degrading treatment. Third, the Supreme Court also decided that overarching interests of fairness did not require the Secretary of State to grant Ms Begum an entry clearance to come to this country in order to prosecute her appeal.**

4. **Although not one of the original preliminary issues, the Supreme Court further held that, generally speaking, when deciding appeals under section 2B the Commission applies administrative law principles (see *Begum* paras 66-71): the position is different in relation to alleged violations of human rights when the Commission carries out a full merits appeal (see *Begum* para 64).**

5. **Following a series of further hearings before the Chair of the Commission (Jay J) in 2021, Ms Begum decided to take her appeal to a full hearing notwithstanding that she was outside the United Kingdom and that it was unlikely that she could or would give evidence via an internet platform from Al-Roj camp in North East Syria. However, the Chair gave her permission to advance all the grounds of challenge she sought, including amended grounds which not been previously maintained.**

6. **In the event, Ms Begum has put forward nine grounds of appeal. These were heard by the Commission (Jay J, Upper Tribunal Judge Canavan and Ms Jill Battley) between 21st and 25th November 2022.**

7. The Commission received a mass of evidence in support of Ms Begum's appeal (albeit not a witness statement from her) which the Secretary of State did not seek to challenge by cross examination. The Commission also heard oral evidence from a Home Office witness, and a witness from the Security Service, in both OPEN and CLOSED sessions.

8. In its OPEN and CLOSED judgments that are being handed down today, the Commission has dismissed Ms Begum's appeal on all grounds. References in square brackets are to the OPEN judgment.

9. This purpose of this Summary is not to replace or supplement the Commission's OPEN judgment (the CLOSED judgment remains secret for all purposes). Its purpose is to explain to the public the main reasons why Ms Begum's appeal has failed. Seven out of the nine grounds are somewhat technical, and no attempt will be made to address them: they are detailed in the judgment [297-410]. The real merits of Ms Begum's case, however, are contained within the first two grounds of appeal which are both the strongest and the most important.

10. In summary, by Ground 1 of her appeal, Ms Begum argued that the Secretary of State had failed to take into account a relevant consideration, namely that she may have been trafficked to Syria as a child in 2015. It was also said that he had failed to apply his own policy.

11. By Ground 2, Ms Begum argued that the deprivation decision failed to respect her human rights under Article 4 of the European Convention on Human Rights because there was, at the very least, a credible suspicion that she was the victim of trafficking.

12. Grounds of this sort have not been previously examined by the Commission, or indeed by the Administrative Court in analogous contexts. These raise important and complex points of law which are not free from difficulty or controversy. They were extremely well argued on Ms Begum's behalf by Ms Samantha Knights KC.

13. It is convenient to take Ground 2 first. The Commission reiterates that if human rights are directly in play, it must decide for itself whether the deprivation decision is in violation of the right at issue. In that regard, the Commission does not defer to the opinion of the Secretary of State [59 and 218].

14. In order to succeed on Ground 2, it was necessary for Ms Begum to show, first, that there was a credible suspicion that she had been trafficked to Syria; and, secondly, that the corollary duties that fall onto the State in such circumstances either prevent the making of the deprivation decision or, at the very least, require that the Secretary of State consider and properly address the issue.

15. In its OPEN judgment, the Commission concluded that there was a credible suspicion that Ms Begum had been trafficked to Syria within the meaning of relevant international legal instruments. Essentially, and from the perspective of those responsible for the trafficking, the motive for bringing her to Syria was sexual exploitation to which, as a child, she could not give a valid consent. The Commission also concluded that there were arguable breaches of duty on the part of various State bodies in permitting Ms Begum to leave the country as she did and eventually cross the border from Turkey into Syria: see [219-226].

16. However, for the reasons fully explained in the OPEN judgment, the existence of a credible suspicion that Ms Begum has been trafficked is insufficient for her to succeed on Ground 2. In outline, given that Ms Begum is now in Syria, the State's corollary investigative duty did not compel the Secretary of State to facilitate her return to the United Kingdom, nor did it prevent him from exercising his deprivation powers: [228–237]. Other similar arguments fail for broadly similar reasons [228-247]. In short, the Commission decided that a finding that Ms Begum has been trafficked does not operate as a form of limitation on the Secretary of State's wide powers under section 40.

17. Turning to Ground 1, the Commission concluded that, whereas it was incumbent on the Secretary of State to consider all the circumstances surrounding Ms Begum's departure from this country when she was a child, including whether and to what extent that she acted voluntarily, he was not required to consider in formal terms whether she was or might have been trafficked. Given that Ms Begum failed on Ground 2, this first ground could not be used as a surrogate means of arguing what was in effect the same point: [248-261].

18. However, the Commission has fully recognised the considerable force in the submissions advanced on behalf of Ms Begum that the Secretary of State's conclusion, on expert advice, that Ms Begum travelled voluntarily to Syria is as stark as it is unsympathetic. Further, there is some merit in the argument that those advising the Secretary of State see this as a black and white issue, when many would say that there are shades of grey. This argument receives some further support from paragraphs 4 and 19 of the document that has been disclosed in OPEN, setting out the Secretary of State's policy at the relevant time.

19. Ultimately, however, the Commission has accepted the submission advanced on behalf of the Secretary of State that the conclusion that Ms Begum travelled voluntarily to Syria align with ISIL is an integral part of the overall national security assessment carried out by the Security Service. The Commission must apply administrative law principles to Ground 1 and cannot substitute its own view for that of the Secretary of State. The Supreme Court made this very clear two years ago in its judgment in Ms Begum's case. The Commission's role is confined to an examination of whether there was a proper basis in fact and in law for the Secretary of State's decision, applying well established principles to this exercise.

20. If asked to evaluate all the circumstances of Ms Begum's case, reasonable people with knowledge of all the relevant evidence will differ, in particular in relation to the issue of the extent to which her travel to Syria was voluntary and the weight to be given to that factor in the context of all others. Likewise, reasonable people will differ as to the threat she posed in February 2019 to the national security of the United Kingdom, and as to how that threat should be balanced against all countervailing considerations. However, under our constitutional settlement these sensitive issues are for the Secretary of State to evaluate and not for the Commission. As we have said, the question for the Commission is whether the Secretary of State, on advice, came to a conclusion on Ground 1 which was reasonably open to him in the light of all the available evidence: [283-296].

21. In all the circumstances, and having considered and analysed the voluminous material that has been placed before it in the context of all nine Grounds of Appeal, the Commission has been unable to conclude that the Secretary of State erred in any material respect: [411-413].

22. This summary and the OPEN judgment will be posted online on www.judiciary.gov.uk, under "Judgments".