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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **14/07/2023**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY FILIPPO SANGERMANO FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE SECRETARY OF STATE FOR THE HOME DEPARTMENT REFUSING TO REVOKE THE APPLICANT'S APPLICATION TO REVOKE AS DEPORTATION ORDER

AND IN THE MATTER OF REGULATION 37(1) OF THE IMMIGRATION (EEA) REGULATION 2016

AND IN THE MATTER OF S19(1) OF THE ADOPTION ACT 1958

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Appearances

The applicant is a litigant in person.
Mr Philip Henry (instructed by the Crown Solicitors Office) appeared on behalf of the proposed respondent.

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COLTON J

Introduction

[1] The applicant was born on 17 February 1967 in Genoa Italy. He spent approximately 30 months in an orphanage there before being moved to Turin Childrens Institute in Corso.

[2] On 7 April 1976 he was adopted by an Italian national, Luciano Sangermano, and his British wife Pamela. After he was adopted, the family moved to the United States of America for 1 year where he lived in St Pauls, Minnesota.

[3] He arrived in the United Kingdom in either 1977 or 1978 (different accounts have been given). In his Order 53 statement it was said that the applicant attended Norbury Middle School in Harrow, Middlesex from April 1977 until July 1979. He then moved to Whitmore School in Harrow from September 1979 until March 1980.

[4] On 14 April 1982 he was the subject matter of a Care Order and went into the full-time care of Harrow Social Services.

[5] Between May of 1984 and February of 1991 he attended various training schemes, was employed in various jobs and had periods of time claiming benefits.

[6] He first came to adverse attention of authorities in the United Kingdom on 19 May 1987 when he was convicted for allowing himself to be carried in a vehicle without authority for which he received a conditional discharge for 18 months.

[7] It is common case that between May 1987 and 6 April 2017 the applicant has been convicted of a series of criminal offences. Between those dates he was convicted 32 times for 71 offences in the UK, namely, 23 theft and kindred offences, 10 fraud and kindred offences, 10 offences against property, eight public disorder offences, seven offences against the person, six offences relating to police/courts/prison, six miscellaneous offences and one drug offence. He received various sentences for those convictions including orders to pay costs, fines, victim surcharges, criminal courts charge and compensation, conditional discharges, various community orders and terms of imprisonment varying from seven days to 96 months.

[8] The more recent offending included the following:

- On 20 December 2001 at Canterbury Crown Court, he was convicted of importing controlled drugs (class A) for which he received a sentence of 96 months imprisonment.

- On 19 November 2015 at Central London Magistrates Court, he was convicted of battery, two counts of damage to property, racially/religiously aggravated intentional harassment and assault on a constable. He received a total of 18 weeks imprisonment, a fine of £180 and an order to pay compensation totalling £479.06.

- On 4 March 2016 at East London Magistrates Court, he was convicted of assaulting a constable and using threatening, abusive, insulting words and disorderly behaviour likely to cause harassment, alarm or distress. He received a sentence of 8 weeks imprisonment and a victim surcharge order of £80.

- On 6 April 2016 at East London Magistrates Court, he was convicted of the offence of battery. He received 8 weeks imprisonment and a victim surcharge order of £80 was imposed.

- On 16 November 2016 at East London Magistrates Court, he was convicted of destruction of property and was sentenced to 7 days imprisonment and ordered to pay £115 victim surcharge.

- On 6 April 2017 at Wood Green Crown Court, he was convicted of wounding/inflicting grievous bodily harm, assault by beating and two counts of theft. He was sentenced to a total of 51 months imprisonment. He was also made the subject of a restraining order and protection from harassment for 5 years.

[9] Of note, on 14 April 2016 the applicant was served with a notice that he was liable to deportation in accordance with the Immigration (European Economic Area) Regulations 2016 because of his continued criminal offending.

[10] In response to the notice the applicant submitted representations dated 19 April 2016 setting out why he should not be deported. It appears that no action was taken on this deportation decision as the applicant was again in detention following subsequent offending.

[11] As a result of ongoing offending, on 1 April 2019 a deportation order was served on the applicant on grounds of public policy in accordance with Regulation 23(6)(b) and Regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("EEA Regulations 2016"). No appeal was lodged against this deportation decision.

[12] On 26 June 2019 the applicant was deported to Italy.

[13] On 17 November 2019 he tried to illegally enter the UK when he was encountered at Holyhead. He was refused admission and on 24 November 2019 was returned to Italy.

[14] On 12 December 2019 he was arrested by police in Belfast for criminal damage and was served with illegal entrant papers as someone in the UK in breach of a deportation order.

[15] On 13 December 2019 he was convicted at Laganside Court, Belfast and sentenced to 1 month imprisonment suspended for 1 year. He was remanded on further charges of entering the UK in breach of a deportation order.

[16] He is currently a sentenced prisoner in Maghaberry Prison as a result of a sentence imposed for a domestic assault on his partner. The court does not have the full particulars of that conviction.

[17] However, the sentence was recently considered by the Court of Appeal which upheld a finding of "dangerousness" under the Criminal Justice (Northern Ireland) Order 2008 and the imposition of an extended custodial sentence (ECS) but reduced the length of his custodial sentence from 30 months to 21 months. It also upheld the imposition of a Violet Offences Prevention Order (VOPO).

The impugned decision

[18] From the history set out above it will be seen that the applicant is seeking to challenge a deportation order which was made on 1 April 2019.

[19] These proceedings were issued on 12 October 2020. Self-evidently they are grossly out of time. Order 53, Rule 4 provides:

> "4.-(1) An application for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made."

[20] The date when grounds for the application first arose was the date upon which the order under challenge was made, namely 1 April 2019.

[21] The applicant's previous solicitor made written submissions on 18 June 2020 asking for the deportation order to be revoked. That request was refused on 6 July 2020. Even if the court considers the latter to be the date of the impugned decision the proceedings are still out of time, albeit marginally.

[22] The court does have a discretion to extend the time limit for "good reason".

[23] Although the applicant originally had the benefit of legal representation in the form of an experienced immigration solicitor, junior and senior counsel, they subsequently withdrew from the case and the applicant was thereafter a litigant in person.

[24] He presented his case before this court via Sightlink from Maghaberry Prison. He made an impassioned case to the effect that the deportation order was invalid as he is a British citizen. He indicates that he simply cannot remain in Italy and that if he is deported, he will return to the UK again.

[25] In his affidavit he indicates that when he was originally deported to Italy, he was met by his sister who brought him to his father's house. He had accommodation in a flat rented by his father who brought him food and provided basic necessities. He had no access to money as he had never worked in Italy, nor

did he have any access to benefits. He was totally dependent on his father. After an argument with his father, he flew from Milan to Dublin and then took the ferry from Dublin to Holyhead where he was stopped by the authorities and returned to Rome. When he arrived in Rome he slept in the airport, was forced to shoplift to feed himself and returned to the United Kingdom via Dublin.

[26] He says that he has not lived in Italy since he was a child and has little knowledge or understanding of the Italian language. He says that he simply cannot manage in Italy.

The applicant's case.

[27] The case put forward in the Order 53 statement was essentially a legal one and turns on the interpretation of the Adoption Act 1958, the British Nationality Act 1981 and regulation 37 of the Immigration (EEA) Regulations 2016.

Consideration of the applicable statutes.

[28] Section 2 (1) of the Immigration Act 1971 states that British citizens have a right of abode in the UK;

> "2. Statement of right of abode in United Kingdom.
>
> (1) A person is under this Act to have the right of abode in the United Kingdom if -
> (a) he is a British citizen; or
> (b) …"

[29] The effect of Section 2 (1) is that a person cannot be deported if they are a British citizen.

[30] The applicant argues that he is a British citizen and therefore ought not to be the subject of a deportation order. He argues that the proposed respondent has misdirected itself in law by misinterpreting Section 1 (5) and Section 1 (5A) of the British Nationality Act 1981 ("The 1981 Act").

The British Nationality Act 1981.

[31] Section 1 (5) and (5A) in their current amended form provide as follows:

> "**[F13]** (5) Where—
> (a)any court in the United Kingdom **[F14** or, on or after the appointed day, any court in a qualifying territory**]** makes an order authorising the adoption of a minor who is not a British citizen; or

> (b)a minor who is not a British citizen is adopted under a Convention adoption,
> that minor shall, if the requirements of subsection (5A) are met, be a British citizen as from the date on which the order is made or the Convention adoption is effected, as the case may be **[F15** effected under the law of a country or territory outside the United Kingdom**]**
> (5A) Those requirements are that on the date on which the order is made or the Convention adoption is effected, (as the case may be) -
> (a)the adopter or, in the case of a joint adoption, one of the adopters is a British citizen; and
> (b)in a case within subsection (5)(b), the adopter or, in the case of a joint adoption, both of the adopters are habitually resident in the United Kingdom **[F16**or in a designated territory**]**."

[32] It can be seen from the provisions above that there is a possibility of the adopted child becoming a British citizen if three criteria are satisfied;

(a) He or she was the subject of a "convention adoption" –s.1(5)(b);

(b) One of their adoptive parents is a British citizen -s.1(5A)(a);

(c) Both of their adoptive parents habitually reside in the UK -s.1(5A) (b)

[33] A "convention adoption" is defined in the interpretation section of the 1981 Act, namely section 50, as follows:

> "**[F4** "Convention adoption" means an adoption effected under the law of a country or territory in which the Convention is in force, and certified in pursuance of Article 23(1) of the Convention]"

[34] Further on down the list of definitions in section 50 the "convention" is defined as being the 1993 Hague Convention:

> "…for the purposes of this subsection and the definition of 'convention adoption' in subsection (1), the 'convention' means the Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption concluded at the Hague on 29 May 1993."

[35] The applicant's adoption order was made by an Italian Family Court in 1976, almost 20 years before the Hauge Convention came into force.

[36] Further, the definition of a "convention adoption" for the purpose of the 1981 Act (on which the applicant relies) is an adoption which has been "certified in pursuance of Article 23(1) of the convention". Article 23(1) of the Hauge Convention is as follows:

> "Article 23
>
> (1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c), were given."

[37] It is quite clear the Hauge Convention did not apply when the applicant's adoption order was made in Italy in 1976 and that his adoption was not "certified" in accordance with Article 23(1) of the convention. It is not therefore a "convention adoption" for the purposes of s.1(5) and s.1(5A).

[38] Therefore the applicant as a matter of law cannot establish that he is a British citizen under the British Nationality Act 1981. He cannot do so for two reasons. Firstly, the formulation relied upon by the applicant was introduced on 1 June 2003 some 25 years after his adoption. There is nothing in the provision itself stating that it will operate retrospectively, and the presumption is that it does not. Secondly, even if the provision did operate retrospectively, it does not apply to him because he was not the subject of a "convention adoption" for the reasons set out above.

[39] Thus the applicant cannot establish as argued in his Order 53 statement that the Home Office has misdirected itself in law by misinterpreting the relevant provisions of the British Nationality Act 1981.

The Adoption Act 1958.

[40] The second limb of the applicant's Order 53 statement relies on the Adoption Act 1958 ("The 1958 Act").

[41] The applicant's case is that the 1958 Act applies to him and in doing so, it unlawfully discriminates against him. It treats adopted children as British citizens if their adoptive father is/was English, but not if their adoptive mother is/was English. He claims that this amounts to gender/other status related discrimination.

[42] Section 19 of the 1958 Act provides:

> "**19-Citizenship**

> (1) Where an adoption order is made in respect of an infant who is not a citizen of the United Kingdom and colonies, then, if the adopter, or in the case of a joint adoption the male adopter, is a citizen of the United Kingdom and colonies, the infant shall be a citizen of the United Kingdom and colonies as from the date of the order.
> (2) The references in this section to an adoption order include references to an order authorising that adoption under the Adoption of Children Act (Northern Ireland) 1950, or any enactment of the Parliament of Northern Ireland for the time being enforced."

[emphasis added]

[43] The scope for section 19 to convey British citizenship on a child is dependent on there being an "adoption order".

[44] Adoption order is defined in section 57 of the 1958 Act as:

> "'Adoption order' has the meaning assigned to it by section 1 of this Act."

[45] Section 1 of the 1958 Act provides:

> "**1- Power to make adoption orders.**
> (1) Subject to the provisions of this Act, the court may, upon an application made in the prescribed manner by a person domiciled in England or Scotland, make an order (in this Act referred to as an adoption order) authorising the applicant to adopt an infant."

[46] The extent of the 1958 Act is dealt with in section 60. It does not extend to apply in Italy. It only applies to adoption orders made in the UK. Therefore the 1958 Act does not apply to the applicant's adoption.

[47] It is important to consider section 4(2) of the subsequent Adoption Act 1968. It had the potential to extend the reach of "adoption orders" within the citizenship element of S19 of the earlier 1958 Act to include "overseas adoptions". However, when section 4(2) was commenced by a commencement order in 1973, the reference to section 19 was removed. It did not therefore apply S19 (and the citizenship potential therein) to "overseas adoptions". As a result, the provision does not apply to the applicant.

[48] The applicant relies on the Supreme Court's decision in *Carlos Johnson v SSHD* [2016] UKSC 56. That case dealt with a difference in treatment of citizenship for children born to married couples compared to those born to unmarried couples.

[49] The Supreme Court held that whilst the European Convention on Human Rights did not guarantee the right to acquire a particular citizenship, the denial of citizenship, which had such an important effect on a person's social identity, was sufficiently within the ambit of Article 8 to trigger the application of the prohibition on discrimination in Article 14. The court held that birth outside wedlock was a "status" for the purposes of Article 14 and fell within the class of suspect grounds which meant weighty reasons were required to justify discrimination. In that case what needed to be justified was the current liability of the claimant to be deported when he would not be so liable had his parents been married to one another at the time of his birth, which was at present a distinction based solely on the accident of birth outside wedlock for which the claimant was not responsible. The court held that no such justification had been suggested for that distinction and it was impossible to say that the claimant's claim based on Article 14 and Article 8 was clearly unfounded and that, accordingly the Home Secretary certificate to that effect would be quashed.

[50] When applying the principles of *Johnson* to the applicant's circumstances, I would be inclined to hold that there is an arguable case based on discrimination in relation to the distinction made between a male adopter and a female adopter. However, that is of no avail to the applicant in this case because unlike the applicant Johnson, the offending provision, namely section 19 of the 1958 Act does not apply to overseas adoptions. In *Johnson* the impugned the provisions at issue, namely section 2 and section 15 of the British Nationality Act 1981 applied to the claimant. Therefore, the second limb of the applicant's argument also fails.

The Immigration (EEA) Regulation 2016.

[51] The applicant's third complaint relates to regulation 37 of the Immigration (EEA) Regulation 2016. The proposed respondent points out that the applicant is entitled to an "out of country" appeal against the refusal to revoke the deportation order, pursuant to regulation 37 of the Immigration (EEA) Regulation 2016, ie an appeal initiated once he has been removed from the UK.

[52] The relevant parts of regulation 37 are as follows:

> "**37. Out of county appeals**
> (1) Subject to paragraph (2), a person may not appeal under regulation 36 whilst in the United Kingdom against an EEA decision-
> (d)to refuse to revoke a deportation or exclusion order made against the person;
> …

> (g)to remove the person from the United Kingdom following entry to the United Kingdom in breach of a deportation or exclusion order, or in circumstances where that person was not entitled to be admitted pursuant to regulation 23(1), (2), (3) or (4)."

[53] The applicant complains that it will be impossible for him to arrange an appeal from abroad. However, this is a matter which can be determined by the First tier Tribunal ("FtT") which looks at each case on its own facts. It will be able to make an assessment and give appropriate directions as to whether the applicant can receive a fair "out of country" hearing or whether the appeal cannot be lawfully determined unless the applicant is physically present. The FtT can give a direction to that effect.

[54] This principle is well established in law. In *R (QR (Pakistan)) SSHD* [2018] EWCA Civ 1413 at para [57] Hickinbottom LJ held:

> "[57] I have emphasised that whether an out-of-country appeal will be effective will depend upon the circumstances of a particular case; and, therefore, the extent to which it is possible to give guidance in respect of other cases is necessarily limited. However, as I have indicated, it is my view that the natural and appropriate forum for considering and determining issues as to whether such an appeal will be effective is the First-tier Tribunal. The issue is likely to require the consideration of evidence, and findings of fact, in relation to, amongst other things, the availability and accessibility of appropriate video link equipment to the appellant, the effectiveness of such a link for the purpose of the appellant giving evidence, and the extent to which the appellant being abroad will adversely impact on his representation and/or his ability to obtain supporting professional evidence. These are matters which the First-tier Tribunal is used to considering, and in my view the tribunal will clearly be the appropriate and best forum for the determination of these matters in the vast majority of cases. The guidance given in *AJ (Nigeria)* will assist in focusing the minds of the parties in such hearings."

[55] Although I have analysed the legal arguments put forward on his behalf in the Order 53 statement when the applicant had the benefit of legal representation it was clear in the course of his submissions to the court that the applicant was relying heavily on his Article 8 entitlements under the European Convention on Human Rights ("ECHR") to the effect that he had established a private and family life in the UK and that the deportation order was an unlawful interference with those rights.

[56] Applying the classic tests it is clear firstly that the deportation order is in accordance with law. It pursues a legitimate purpose. As to proportionality this is a matter for the decision maker who must conscientiously take into account all relevant material. The deportation order was based on public policy and public security matters upon which the proposed respondent has a significant margin of appreciation and is best placed to assess.

[57] In both the original deportation order decision and in the revocation decision, the proposed respondent has addressed this issue fully. The decisions set out in detail the applicant's criminal convictions. The court notes that the applicant is currently in custody and has recently been assessed by the Court of Appeal in this jurisdiction as being a dangerous offender. He is the subject matter of a VOPO.

[58] The proposed respondent sets out in detail comments made by various sentencing Judges in relation to the threat or risk associated with the applicant. The proposed respondent has taken into account the written representations made on his behalf. In the original decision it concluded that the applicant's deportation would not breach United Kingdom's obligations under ECHR Article 8 because the public interest in deporting him outweighed his right to private and family life. In the revocation decision the proposed respondent concluded that:

> "It is concluded that there remains a strong justification on the grounds of public policy, public security or public health, in accordance with regulation 27 of the 2016 Regulations on removing you from the UK. It is further considered that this decision complies with the principles of proportionality and is in accordance with regulation 27."

[59] I take the view that this is a perfectly rational decision which is not arguably subject to a Judicial Review challenge.

[60] The court therefore concludes as follows:

(i) The application is out of time.

(ii) There is no good reason to extend the time.

(iii) The applicant has an alternative remedy in the form of an appeal to the First tier Tribunal after he is deported.

(iv) On the substance of his complaint he has not established in law that he is a British citizen. He therefore cannot avail of the provisions of the Adoption Act 1958, the Immigration Act 1971 or the British Nationality Act 1981. In this respect there has been no misdirection in law by the proposed respondent.

(v) The threshold for leave as set out in the case of *Ni Chuinneagain* [2022] NICA 56 of an arguable case having a realistic prospect of success has plainly not been met.

(vi) Leave to apply for Judicial Review has therefore been refused.