

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 21697/07
Anslem O. ANIRAH
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 26 March 2013 as a Chamber composed of:

Ineta Ziemele, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 22 May 2007,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Anslem O. Anirah, is a Nigerian national who was born in 1960 and lives in Strathaven. He was represented before the Court by Ms T. Christou of the Aire Centre, a non-Governmental organisation based in London.

2. The United Kingdom Government ("the Government") were represented by their Agent, Mr J. Grainger CMG of the Foreign and Commonwealth Office.

A. The circumstances of the case

3. The facts of the case, as submitted by the applicant, may be summarised as follows.

4. The applicant arrived in the United Kingdom in 1988 as a visitor. In May 1994 he was granted indefinite leave to remain on the basis of his marriage to a British citizen. He has four children of this marriage born between March 1988 and January 1992.

5. In March 2001 the applicant was convicted by a Crown Court of conspiracy to evade the prohibition of cocaine and, on an unspecified date, he was sentenced to ten years' imprisonment. No order recommending deportation was made.

6. On 18 February 2005 the applicant's wife filed a petition for divorce.

7. The applicant was released on parole on 20 May 2005. On the same date the Secretary of State gave the applicant notice of his intention to make a deportation order against him. He was thus detained in relation to the deportation proceedings. On 26 May 2005 the applicant appealed the Secretary of State's decision to make a deportation order to the Asylum and Immigration Tribunal ("AIT"). He argued that his deportation would constitute a disproportionate interference with his rights under Article 8 of the Convention.

8. On 11 July 2005 his appeal was refused by the AIT. On 13 December 2006, on reconsideration of the appeal, a Senior Immigration Judge considered that the original decision should stand.

9. On 22 June 2007, the applicant was given removal directions for 5 July 2007 at 10:15 hrs (UK time). However, due to ongoing domestic proceedings the applicant was not removed from the United Kingdom.

10. The applicant's complaints were communicated to the Government of the United Kingdom by the Acting President on 2 July 2007. On 31 July 2007 the Government informed the Court that a petition for judicial review had been presented to the Court of Sessions in Scotland on behalf of the applicant. The petition referred to submissions that had been made on behalf of the applicant to the Secretary of State for the Home Department to which no response had been received and challenged the failure to respond. In light of this information, the case was adjourned by the Chamber on 23 October 2007.

11. On 8 November 2007 the petition was dismissed on the basis of an agreement that the Secretary of State would respond to the representations.

12. On 19 November 2007 the Secretary of State rejected the representations and removal directions were set for 29 December 2007. The removal directions were cancelled when the applicant submitted a further claim for judicial review.

13. The substantive judicial review hearing took place on 18 April 2008 and judgment was issued on 23 May 2008. The claim for judicial review

was dismissed. The applicant was granted permission to appeal. The issue before the Court of Appeal was whether or not the making of a "fresh" claim for asylum entitled the applicant to an in-country right of appeal.

14. On 26 February 2009 the Court of Appeal allowed the applicant's appeal. The Government, however, were granted leave to appeal to the House of Lords. On 26 November 2009 the House of Lords dismissed that appeal.

15. Following that decision, the applicant applied for the revocation of the deportation order. That application was dismissed on 15 December 2010. The applicant appealed to the First-Tier Tribunal (Asylum and Immigration Chamber). On 23 March 2011 the Tribunal allowed the applicant's appeal on human rights grounds and revoked the deportation order. In September 2011 the applicant was granted six months' leave to remain.

16. On 14 November 2011 the applicant's representative wrote to the United Kingdom Border Agency asking that they reconsider the decision to grant him discretionary leave to remain for six months instead of three years. On 16 November 2011 the Government refused that request.

17. In a letter dated 16 November 2011 the Government informed the Court that

> "It is important to note that the applicant will not be considered for removal from the United Kingdom whilst his current circumstances remain; that is, whilst he maintains family life with his children in the United Kingdom. Should the applicant's circumstances change, either positively or negatively, a detailed consideration of the applicant's status would then be made. Any decision to remove the applicant would be subject to domestic legal challenge by the applicant."

18. Prior to the expiry of the applicant's leave on 26 March 2012, he applied for a further three years' discretionary leave or indefinite leave to remain.

19. On 28 December 2012 the Home Office refused to vary the applicant's leave to remain. On 7 January 2013 the applicant lodged an appeal against this decision.

COMPLAINT

20. The applicant complains under Article 8 of the Convention that the decision to deport him constituted an unjustified interference with his right to respect for his private and family life.

THE LAW

21. The present application has been adjourned for five and a half years pending the outcome of domestic proceedings which have not yet resolved. The applicant is currently appealing to the First-Tier Tribunal (Asylum and Immigration Chamber) against the Secretary of State's refusal to vary his leave to remain. If that he appeal is unsuccessful, he might appeal to the Upper Tribunal (Asylum and Immigration Chamber) and from there to the Court of Appeal. There is therefore no reason to believe that the domestic proceedings will soon be resolved.

22. Moreover, there is no evidence before the Court which would suggest that the applicant faces imminent removal. In fact, on 16 December 2011 the Government indicated to the Court that he would not be removed while his relationship with his children remained unchanged and, in any case, any decision to remove him would be subject to domestic legal challenge. Neither party has indicated that there has been any change in the applicant's relationship with his children and there does not, therefore, appear to be any imminent prospect of his removal.

23. Consequently, the Court considers that, in accordance with Article 37 § 1 (c) of the Convention, it is no longer justified to continue its examination of the application.

24. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

25. In view of the above, it is appropriate to strike the case out of the list, without prejudice to the applicant's right to reintroduce his application to the Court upon resolution of the domestic proceedings.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Lawrence Early
Registrar

Ineta Ziemele
President