



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 40

P1195/23

OPINION OF LORD LAKE

In the Petition of

SHORSH MOHAMMADI (AP) (F/E)

Petitioner

for

Judicial Review of decision by the Secretary of State for the Home Department

**Petitioner: K Forrest, advocate; Drummond Miller LLP**

**Respondent: S Crabbe, advocate; Office of the Advocate General**

1 May 2025

[1] The petitioner has indefinite leave to remain in the United Kingdom and has applied for naturalisation as a British Citizen. As part of his application, he sought exemption from the requirements to have knowledge of English and knowledge of the way of life in the United Kingdom. The requirements for knowledge of life and language are referred to by the acronym KOLL. The respondent refused the petitioner's application for exemption and refused the application for naturalisation on the basis that the KOLL requirements were not met. The petitioner seeks review of the decision not to grant him exemption from the KOLL requirements. The challenge is made on the basis, (1) that the respondent failed to apply Home Office Policy and (2) the respondent failed to take material matters into account or failed to state reasons why those matters were discounted.

[2] The issue of acquiring British Citizenship by naturalisation is regulated by the British Nationality Act 1981, section 6. Subsection (1) of that section provides that the Secretary of State may grant a certificate of naturalisation if satisfied that the applicant fulfils the requirements of Schedule 1 of the Act. Paragraph 1(1) of Schedule 1 stipulates five requirements for naturalisation. Two of them are as follows:

- “(c) that he has a sufficient knowledge of the English, Welsh or Scottish Gaelic language;
- (ca) that he has sufficient knowledge about life in the United Kingdom;”

Paragraph 2 of the Schedule states:

“If in the special circumstances of any particular case the Secretary of State thinks fit, he may for the purposes of paragraph 1 do all or any of the following things, namely— ...

- (e) waive the need to fulfil either or both of the requirements specified in paragraph 1(1)(c) and (ca) if he considers that because of the applicant's age or physical or mental condition it would be unreasonable to expect him to fulfil that requirement or those requirements.”

[3] The Home Office have published guidance on the KOLL requirements and the basis on which exemption will be granted from the requirement. In relation to the exercise of discretion permitted by paragraph 2 of the Schedule, it states:

“You must exercise discretion if the applicant:

- is suffering from a long-term illness or disability that severely restricts their ability to learn English or prepare for the Life in the UK test
- has a mental condition which prevents them from speaking or learning English to the required standard

Where a person provides evidence that they would be unable to satisfy one part of the requirement, it does not automatically mean that they will be unable to meet the second part of the requirement. It may be that their condition would make it unreasonable for them to prepare and complete the Life in the UK test but due to the different nature of how English language is assessed they are still able to demonstrate that they satisfy the English language requirement.

### **How to exercise discretion**

You must consider how the condition would prevent the applicant from taking the Life in the UK test or learning English. For example, discretion may be appropriate where an applicant:

- is deaf
- is a person without speech
- has a speech impediment which limits their ability to communicate in the relevant language

Each application must be considered on its own merits and will depend on the facts in each case including whether the applicant is a national of a majority English-speaking country.

Life in the UK test centres, and many colleges can cater for a variety of disabilities such as blindness. An applicant may be able to do the test even if they produce evidence of a disability.

You must also consider whether an applicant's condition would prevent them from meeting both parts of the requirement or just one.

### **Evidence of physical or mental condition**

If an applicant claims to have a physical or mental condition, they must provide original and current medical evidence from a medical practitioner. This must include the medical waiver proforma. Where a request for an exemption does not include a medical waiver proforma completed by a relevant medical practitioner you must provide the applicant with the opportunity to provide this unless the application falls to be refused on another ground.

Where an applicant fails to provide a completed waiver despite the document being requested, you must consider whether they satisfy the knowledge of English language and life in the UK requirements based on the information available. Any refusal must make it clear that they do not meet the language and / or life in the UK requirements and have not provided the specified evidence to be considered for a waiver from these requirements."

[4] When the petitioner applied for naturalisation as a British Citizen, he submitted, as part of his application, form "Waiver – KOLL" seeking exemption from the requirements noted above. It is a requirement stated on the form that it is completed by a GMC registered medical practitioner. The petitioner's form included the following (the indented text in italics being what was completed by his general practitioner):

“What is the nature of the person's condition?

*Amputation right leg - shot in Iran. Has a prosthetic leg - associated pain + reduced mobility*

*Chronic low mood and depression*

*Severe migraines*

*Poor concentration*

How does their condition impact on their daily life?

*Mobility reduced. Walks at the slow pace with considerable pain*

*Struggles with cooking. Unable to stand and often forgets to put cooker off properly*

*Memory issues, poor concentration, low mood. Has very little help - friend visits one / week.*

*Alone rest of time.*

*Frequent migraines can last up to a week.*

How would this condition prevent them from learning English? There are a number of ways to learn English, including classes and home study. The language requirement for citizenship and settlement is only for speaking and listening skills - not reading and writing

*Has limited English language skills*

*Poor concentration and memory issues past 10 years has made it difficult to improve his English skills.*

How would this condition prevent them from studying for the knowledge of life in the UK test? The study materials are available in a number of formats, including audio

*Poor concentration*

*Poor understanding of English and technology*

How would this condition prevent them from sitting the knowledge of life in the UK test or taking an English test? The knowledge of language and life in the UK test can be taken in audio form and that [sic] test centres can cater for a range of disabilities.

It is computer based and comprises 24 questions with multiple choice answers.

Candidates are allowed 45 minutes and the pass mark is 18 correct answers

*I feel he would be unable to manage the test. His experience so far has left him confused and frustrated. He guesses at multi choice answers due to lack of understanding of the process.*

In your opinion is this condition likely to improve sufficiently for them to be able to study and take the required tests? If so, is this likely to do so within the next two years?

*No”*

[5] On 19 December 2022 the respondent wrote to the petitioner indicating that his application for exemption had been refused and indicating that he was not considered to meet the criteria for exemption. The respondent said:

“it is noted that you have been resident in the UK now for some considerable time, 10 years, therefore it is reasonable to expect that you would already have a good grasp of the English language, culture and history.”

The respondent said that the petitioner should provide confirmation that the statutory KOLL requirements were met or, alternatively, should provide sufficient additional medical evidence confirming information in regard to the claimed conditions. In relation to the latter option, the respondent specifically asked for information about how long the conditions had been ongoing for, when they were diagnosed, the specific treatment given for those conditions and the response to it. She sought confirmation that the conditions were longstanding and permanent and unlikely to improve in the next 2 years and asked for medical evidence to support the statement in that the application for exemption that the petitioner had had memory issues for the past 10 years. The petitioner was given until 19 January 2023 to provide the information. The petitioner did not supply any medical evidence to the respondent. By email dated 22 February 2023, the petitioner’s application for naturalisation was refused. By letter dated 2 August 2023, he sought a review of that decision but the decision was confirmed on 2 October 2023.

### **Submissions for the petitioner**

[6] The petitioner draws attention to the use of the words “must” in the first paragraph of the policy quoted above and submits that this means that the discretion has to be exercised if the applicant is suffering from a long-term illness that severely restricts his ability to speak English or prepare for the KOLL test and has a mental condition that prevents him from speaking or learning English to the correct standards. It is submitted that the terms of the doctor’s report were such to indicate that the petitioner’s lack of

understanding of English and lack of concentration skills would prevent him studying for the test and that, so far as sitting the test is concerned, he would be unable to manage it.

[7] The petitioner contends that the respondent erred in seeking a further medical report. It was submitted the discretion is not to be based on the number of medical reports but what they say. The respondent has failed to take account of what was said in the report by the petitioner's GP; it was an error to focus on the quantity of the reports and not their quality. It was submitted that nothing is said in the decision about the answers that were given by the doctor to the specific questions included in the application form. It was submitted that the requirement on a person seeking exemption is to provide a form from a doctor addressing the critical issues, such as a long term disability, and that the petitioner had complied with this requirement.

[8] In relation to the second ground of challenge, it was submitted that the respondent had erred in the manner of rejecting the medical evidence provided. It was recognised that the respondent was not bound to accept the conclusions of the doctor but was submitted that, if she was not going to do so, it was incumbent upon her to obtain evidence which contradicted it.

### **Submissions for the respondent**

[9] It was submitted that the use of a language test pursued the legitimate aim of promoting integration and was lawful (*R. (on the application of Bibi) v Secretary of State for the Home Department*, [2015] UKSC 68, at [46] to [48]). The respondent had applied the policy - it required an evaluative judgement as to the petitioner's condition and its effects. The policy states that the respondent should request further information if not satisfied that the information provided is sufficient and the respondent did that. It was argued that it was

reasonable for the respondent to conclude that the general practitioner's report was lacking in detail. The petitioner had not provided the further information requested. It was not for the respondent to prove that the petitioner did or did not meet the requirements of the policy, it was for the petitioner to satisfy the respondent that they were met. The respondent was not satisfied and accordingly requirement for exercising discretion was not met.

[10] In relation to the argument concerning failure to take matters into account, it was noted that the respondent was not obliged to accept the conclusions of the GP

(*MS (Zimbabwe) v Secretary of State for the Home Department*, [2021] EWCA Civ 941, at [61])

and the weight to be given to the report was a matter for the respondent's discretion. The weight to be given to the report would be guided by the relevant policy and objects of the governing legislation. By reference to *R (Jones) v North Warwickshire Borough Council* ([2001] EWCA Civ 315) it was noted that these were directed to achieving integration.

## **Decision**

[11] The apparent intention of paragraph 1 of Schedule 1 of the 1981 Act, is that persons being naturalised as British citizens should have familiarity both with one of the principal languages of the United Kingdom and its culture. The conditions for exercise of the waiver from that requirement are specified both in paragraph 2 of the Schedule and the policy. The conditions are that, despite the intended outcome, it would be unreasonable to expect the applicant to fulfil those requirements *and* that the reason it would be unreasonable is because of the applicant's age or physical or mental condition. There is no question of the age or physical condition being a factor in this case. Therefore, for the petitioner to obtain a waiver, it would be necessary to establish that he had a mental condition and that, as a result of that, it would be unreasonable to expect him to meet the requirements.

[12] It is apparent from this that the condition and the inability to complete the tests are two distinct things. This is understandable. If waivers were given simply on the basis that the applicant could not pass the tests, the policy would be wholly undermined and there would be no purpose in having the requirements. Whenever an applicant was not able to meet the requirements, they would be able to seek a waiver. The Act and the policy recognise that there may be situations where, because of the circumstances of a particular applicant which go beyond the fact that he or she cannot meet the test, it would be unreasonable for them to be imposed.

[13] In the report provided by the GP, little is said other than that poor concentration and memory skills over a period of 10 years have made it difficult to improve the petitioner's English skills. Poor concentration is also given as the reason why he cannot study for the life in the UK test along with the fact that he would guess at answers. The closest the report gets to identifying a mental condition is the reference to low mood and depression. In the report the petitioner's inability to study and the fact he would guess at answers are not directly related to the issues of low mood and depression. There is no consideration of when a diagnosis was made, what treatments have been tried and what effect, if any, they have had. It was with these factors in mind, no doubt, that the communication of 19 December 2022 gave the petitioner a chance to submit additional medical information.

[14] The decision of 22 February 2023 makes express reference to the policy in respect of granting waivers from the KOLL requirements. It is apparent that the respondent has considered the issue of waiver and has applied the policy referred to in the email. The request for additional information accords with the terms of the policy. The decision to refuse the application for waiver was on the basis that, notwithstanding the conditions from which he was said to suffer, the length of time the petitioner has been in the UK meant that it



was reasonable to expect he would have a good grasp of the English language, culture and history. In effect this is concluding that in the circumstances, and notwithstanding the deficits identified by the General Practitioner, it is not unreasonable to expect the petitioner to meet the KOLL requirements. Accordingly, the respondent has exercised the discretion conferred by the policy. In so doing, the respondent has not disregarded or ignored what was said by the General Practitioner. He has accepted the deficit referred to in the application for waiver form but concluded that on the basis of the limited information provided and the fact that the petitioner has been resident in the UK for some time, the petitioner has not established that the condition prevents him from taking the life in the UK test or learning English.

[15] In these circumstances, the petitioner has not demonstrated that the decision is flawed in the ways he contends. The petition is accordingly refused.