PRESS RELEASE

Home Office misunderstood British citizenship laws over several decades – High Court rules

Thousands of people have been affected for nearly 40 years

High Court decides Home Office regulations introduced in October 2000 did not change the law

The case "exposes just how badly British citizenship rights have been understood and respected since their introduction in 1983" – Solange Valdez-Symonds

Today's decision (20 Jan) by the High Court has found that the Home Office has incorrectly applied the law on British citizenship for nearly 40 years. This particularly concerns people who were born to a parent exercising European Union free movement rights.

The High Court has made this decision in dismissing the case of Mr Roehrig,[1] who challenged the Home Office's refusal to recognise him as a British citizen when he applied for a British passport.

Background to the case
The British Nationality Act 1981 ended automatic acquisition of citizenship by birth on UK soil. From 1 January 1983, when the Act took effect, people born in the UK have only acquired British citizenship automatically at birth if one of their parents is a British citizen or settled in the UK at the time of their birth.

Originally, the Home Office understood the meaning of 'settled' to include people exercising European Union free movement rights and recognised people born in the UK to a parent exercising such rights to be British citizens at birth. This changed on 2 October 2000. On that date, Home Office regulations[2] took effect which stated that a parent exercising European Union free movement rights was only settled if other conditions were met (such as being granted indefinite leave to remain under UK law).[3]

Until 11 October 2022, immediately before the High Court hearing of Mr Roehrig's case, the Home Office had treated the regulations as having changed the law. People born in the UK before 2 October 2000 to a parent exercising European Union free movement rights were, therefore, born British citizens; and people born on or after that date in similar circumstances were only born British citizens if satisfying the additional conditions.

Mr Roehrig's circumstances

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[1] *R (Antoine Lucas Roehrig) v Secretary of State for the Home Department* [2023] EWHC 31 (Admin)
[2] These regulations are the European Economic Area (Immigration) Regulations 2000, SI 2000/2326
[3] Regulation 8 of SI 2000/2326

Mr Roehrig was born shortly after 2 October 2000 in the UK to a French mother who had moved to the UK to live and work under European Union free movement law. She was exercising European Union free movement rights but did not meet the additional conditions.

Mr Roehrig argued that, under British citizenship law, he was automatically made a British citizen at his birth and that there was no power for the Home Office to change the law of British citizenship by making the regulations about European Union free movement rights in October 2000. If so, he said, his mother's status as 'settled' before 2 October 2000 could not have changed on that date; and his birth in the UK shortly after that date to a mother exercising free movement rights must have the same effect as it would if it had taken place a few weeks earlier – so, he was born a British citizen.

The High Court's decision

The Home Office changed its position on the law in the course of the legal proceedings. Before the court, it argued the law did not change on 2 October 2000. Instead, it argued it had misunderstood the law as it applied over the near 18 years up until that date. It also announced it had put on hold new applications for passports made by people born in the UK before 2 October 2000 to parents exercising free movement rights. It remains to be seen what the Home Office intends to do with these applications.

The High Court has today agreed that the law did not change on 2 October 2000 and agreed that the Home Office wrongly understood this and its effect up until the day before the hearing of Mr Roehrig's case. The court has addressed several complex arguments on the meaning of 'settled' in the British Nationality Act 1981. Ultimately, it has decided that exercising European Union free movement rights in the UK is not sufficient in itself for a parent to be settled; and without more a person born in the UK to such a parent is not automatically born a British citizen.

Although the High Court has also refused Mr Roehrig permission to appeal, he intends to seek to apply to the Court of Appeal for that permission.

Solange Valdez-Symonds, solicitor for Mr Roehrig and CEO of the Project for the Registration of Children as British Citizens (PRCBC), said:

"*Today's judgment is a body blow for Mr Roehrig who was born and has lived in this country his entire life – but he will now seek to continue his fight for his passport by appeal to the Court of Appeal.*

"*The judgment also exposes just how badly British citizenship rights have been understood and respected since their introduction in 1983 – including most importantly by the Home Office which is the government department responsible for giving effect to them.*

"*Terrible injustice is done to people by failures to understand and apply British nationality laws fully and equally.*

"*This must change – not only because of the alienation and uncertainty being inflicted upon many British people, but also because it is fundamental that we should be able to rely upon our government and lawmakers to understand and respect our citizenship and our rights to it.*"

Mr Roehrig is represented by Jessica Simor KC (Matrix Chambers), Adrian Berry (Garden Court chambers) and Admas Habteslasie (Landmark chambers), counsel, and Solange Valdez-Symonds, solicitor.

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