Practitioner's note on
R (Roehrig) v Secretary of State for the Home Department
[2024] EWCA Civ 240

1. On 12 March 2024, the Court of Appeal (Macur, Nicola Davies and Phillips LLJ) handed down judgment in *R (Roehrig) v Secretary of State for the Home Department* [2024] EWCA Civ 240. The Court of Appeal dismissed the appeal against the judgment of Eyre J to refuse judicial review: [2023] EWHC 31 (Admin). [1]

2. The Appellant (**"A"**) was born in the UK on 20 October 2000 to a French national mother (**"M"**) who was, at the time of A's birth, exercising EU free movement rights as a worker. A claimed that, at birth, he had automatically acquired British citizenship by virtue of s.1(1)(b) of the British Nationality Act 1981 (**"the BNA 1981"**), which provides that a person born in the UK automatically acquires British citizenship if, at the time of their birth, their mother or father is settled in the UK. Per s.50(2) of the BNA 1981, a person is settled if they are *"ordinarily resident in the United Kingdom …without being subject under the immigration laws to any restriction on the period for which he may remain."* 'Immigration laws' are defined in s.50(1) of the BNA 1981 as *"the Immigration Act 1971 and any law for purposes similar to that Act which is for the time being or has at any time been in force in any part of the United Kingdom"*.

3. A's argument, in essence, was that M was (i) ordinarily resident in the UK (ii) without being subject under the immigration laws to any restriction on the period for which she may remain and, accordingly, A automatically became a British citizenship on birth.

4. The Court of Appeal followed the High Court in concluding that (i) the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 were immigration laws for the purposes of s.50(1) of the BNA 1981; and (ii) at the time of C's birth, these regulations restricted the period for which M "*may remain*".

5. In reaching the second of these conclusions, the Court of Appeal also followed the High Court in holding that its earlier decision in *R (Coomasaru) v Immigration Appeal Tribunal* [1983] 1 WLR 14 meant that a restriction on the period for which someone may remain was not limited to temporal conditions – such as a grant of limited leave to remain where a person is permitted to stay only up to a defined date – but included other conditions, which if no longer met would or could bring to an end the period during which the person may remain.

[1] Press Release of High Court judgment, 20 January 2023 HERE

6. Following the High Court's judgment, and in direct response to that judgment, the Secretary of State introduced and Parliament passed, via an accelerated procedure, the British Nationality (Regularisation of Past Practice) Act 2023.[2] This Act makes clear that whatever the correct interpretation of s.50(1) in the circumstances that gave rise to this litigation, the interpretation of that section, which the Secretary of State had applied until the hearing before the High Court to people born before 2 October 2000, (an interpretation consistent with A's case and from which the Secretary of State had departed as regards those born on and after that date) is now – and is to be treated as always having been – correct.

7. The Court of Appeal has refused permission to appeal, and A is currently considering an application to the Supreme Court for that permission.

This note was prepared by:

- Solange Valdez-Symonds, solicitor at Project for the Registration of Children as British Citizens (PRCBC)
- Adrian Berry, senior counsel at Garden Court Chambers, and
- Steve Valdez-Symonds, Refugee and Migrant Programme Director, Amnesty UK

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[2] See PRCBC note: PRCBC note for practitioners on the British Nationality (Regularisation of Past Practice) Act 2023 HERE