



## Press Summary

*THE COURT ORDERED that that no one shall publish or reveal the name or address of the Respondent who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Respondent or of any member of his family in connection with these proceedings.*

**24 April 2024**

### **R (on the application of AM (Belarus)) (Respondent) v Secretary of State for the Home Department (Appellant)**

**[2024] UKSC 13**

*On appeal from [2022] EWCA Civ 780*

**Justices:** Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lord Stephens, Lady Simler

#### **Background to the Appeal**

The issue in this appeal is in what circumstances will a refusal by the Home Secretary to grant leave to remain (“LTR”) to an individual, who cannot be removed to their country of nationality, violate that individual’s right to respect for private and family life under article 8 of the European Convention on Human Rights (“ECHR”).

The respondent, AM, is a Belarusian national. AM arrived in the United Kingdom (“UK”) in 1998 and claimed asylum. His asylum claim was refused in December 2000 and, following unsuccessful appeals, he was removed to Belarus on 29 June 2001. However, when examined upon arrival, AM provided false information which led the Belarussian authorities to believe that he was not, in fact, a citizen of Belarus. The result was that he was refused entry and was returned to the UK. AM has been convicted of various offences in the UK and qualifies as a foreign criminal for the purposes of the Nationality, Immigration and Asylum Act 2002. The appellant, the Home Secretary, wishes to extradite him to Belarus. However, AM has not been cooperative in relation to this and has successfully managed to thwart the Home Secretary’s efforts to remove him.

The result has been that AM has continued to be present in the UK, but without any grant to him of LTR. This has left AM with “limbo” status. Incidents of AM’s limbo status are that (1) he has no permission to work in the UK; (2) he does not have full access to the services of the NHS; (3) he is disqualified from entering into a tenancy agreement and from opening a

bank account; and (4) he receives only very limited social welfare benefits at the same level as any failed asylum seeker awaiting removal from the UK receives.

On 15 September 2010, AM filed an application for judicial review of the Home Secretary's failure to provide him with LTR or permission to work in the UK. The Home Secretary subsequently agreed to reconsider AM's asylum claim and the High Court stayed the judicial review proceedings. The Home Secretary again refused AM's asylum claim. AM's appeal against this refusal was dismissed. On 9 February 2017, AM applied to the Home Secretary for LTR as a stateless person. This too was refused. In July 2018, AM successfully applied for permission to restore the judicial review proceedings which had been stayed. He also successfully applied to add a second ground challenging the refusal to grant him LTR on grounds of statelessness.

Throughout this process AM has suffered from ill-health. In early 2018, he was diagnosed with psychotic symptoms. Evidence was adduced that his mental health had also been adversely affected by delays in resolving his case and his limbo status. While in detention, AM made efforts to harm himself and attempted suicide.

On 11 February 2021 the Upper Tribunal dismissed AM's challenge to the Home Secretary's determination that AM is not stateless, but upheld AM's claim that refusal to grant him LTR (with permission to work) violated his rights under article 8 of the ECHR. The Home Secretary appealed to the Court of Appeal in relation to the finding of violation of article 8. AM did not appeal in relation to the issue of statelessness. The Court of Appeal dismissed the Home Secretary's appeal. The Home Secretary now appeals to the Supreme Court.

## **Judgment**

The Supreme Court unanimously allows the appeal. Lord Sales gives the only judgment, with which the other Justices agree.

## **Reasons for the Judgment**

The Supreme Court holds that the *Gillberg* principle does not apply in the case of AM. This principle derives from the judgment of the European Court of Human Rights in *Gillberg v Sweden*, GC, judgment of 3 April 2012, which held that article 8 of the ECHR had no application in circumstances where the repercussions for the applicant of which he complained were all foreseeable consequences of his commission of the offence for which he was convicted. In the case of AM, the Supreme Court considers that the effects about which he complains, resulting from denial of LTR, are not consequences in terms of how others perceive and react to him which arise from a criminal conviction or court order; nor are they direct penal effects flowing from breach of a legal rule [76].

Nevertheless, the Supreme Court holds that AM's own conduct in thwarting the attempts by the Home Secretary to remove him to Belarus is a highly material factor for the purposes of the relevant proportionality analysis under article 8 [87]. Even though it is unlikely that AM could in practice be removed to Belarus, the public interest in maintaining an effective system of immigration control and in containing welfare costs remain relevant considerations. It does not follow that where the individual is capable of thwarting his or her removal indefinitely and is plainly intent on doing so the Home Secretary becomes obliged under article 8 to grant them LTR [93]. As a related but distinct point, the public interest in focusing expenditure of scarce public funds and allocation of scarce public resources and access to the employment market to meet the needs of UK citizens and persons lawfully in the country remains a relevant consideration [98].

The fact that AM might not have lived an especially enviable life while present in the UK will not detract from the perception of others that they can benefit in their own lives from being obstructive in the way that he has been. If the due operation and enforcement of immigration controls can be seen to be placed, in effect, in the hands of an illegal immigrant who does not want to be removed, public confidence in the system of immigration controls will be undermined [100]. Furthermore, the Home Secretary's policy reflected in paragraph 276ADE of the Immigration Rules is to grant LTR after 20 years' residence in the UK but only if the individual does not fall for refusal under the specified suitability requirements in the Immigration Rules. AM clearly could not satisfy those requirements [101]-[103].

By reason of the errors in the Upper Tribunal's decision, which were not identified and corrected by the Court of Appeal, it falls to the Supreme Court to decide whether article 8 obliged the Home Secretary to grant LTR to AM [104]. The Supreme Court holds that AM's right under article 8(1) of the ECHR is engaged to the extent that AM has been subject to an extended period of limbo status without a grant of LTR, even though that situation has been brought about by his actions [107]. However, the allocation of limbo status to AM was in accordance with the law under article 8(2) [108]. It was also a proportionate means of achieving a legitimate aim. Little weight should be given to AM's private life because it has been established at a time when AM was in the UK unlawfully and when his immigration status was precarious [111]. On the other hand, the deportation of foreign criminals is in the public interest, especially in respect of serious offending [112]. It is that public interest which AM has succeeded in undermining by his deliberate and fraudulent actions [114]. In light of the state's margin of appreciation in this context, the Home Secretary was entitled to decide that AM should not be granted LTR. That decision struck a fair balance between AM's rights and interests and the general interest of the community in the state maintaining effective immigration controls and focusing state benefits and other resources on citizens and lawful immigrants [117].

*References in square brackets are to paragraphs in the judgment.*

**NOTE:**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**