

Good character and applications for citizenship

Raza Halim — 4 March 2014 — 1 Comment

In *Hiri v Secretary of State for the Home Department* [2014] EWHC 254 (Admin) the Administrative Court found for the Claimant in an application for Judicial Review of the Secretary of State's decision to refuse naturalisation on grounds of 'good character'. The judgment provides useful judicial comment as to how the Secretary of State must approach assessments of an applicant's character by reference to her policy and otherwise. The Secretary of State's policy on 'good character' has undergone several iterations since the justiciable decision in this case; however, the utility of Mrs Justice Lang's remarks reach beyond the relevant policy in *Hiri* and bears application to the Secretary of State's broader approach to these cases.

The Claimant, a national of Botswana, had been described by senior military figures as an "intelligent, motivated and hard-working soldier" with an "exemplary record of conduct", who "had his character put to the test ... where his peers have had to depend on him in austere and challenging environments." Despite that evidence and several invitations to revisit her initial decision, the Secretary of State repeatedly asserted that the Claimant was not of "good character", insisting on the narrow basis of a sole speeding offence for which he received 5 points and a £100 fine after pleading guilty by post. The Claimant had been driving at 81mph at 1:21am on a section of the M1 motorway that had temporarily had the speed limit reduced to 50 mph.

At §35, Lang J makes clear that

"In my judgment, in deciding whether an applicant for naturalisation meets the requirement that "he is of good character", for the purposes of the British Nationality Act 1981, the Defendant must consider all aspects of the applicant's character. The statutory test is not whether applicants have previous criminal convictions – it is much wider in scope than that." [emphasis supplied]

The Court adopted the Claimant's submission that the facts and nature of any criminal offence, the length of time which has elapsed since its commission, as well as any pattern of repeat offending, taken together with any mitigating circumstances and where the sentence passed sat in the range available to the sentencing court, are all features that are materially relevant to the assessment of that offence and its weight when assessing good character in the round [§35]. That is so notwithstanding any stipulation of policy putting those considerations out of the mind of the decision maker (as in this case), or misconceived self-direction by a decision-maker fettering her or his discretion.

Lang J holds that the correct approach in these premises is not to determine whether a conviction is capable of being 'overlooked' (that is to say have no regard paid to it) or 'disregarded' (that is to say to take no notice of or leave out of consideration or ignore that conviction); rather the conviction is to be "weighed in the balance against the countervailing evidence of good character, in order to assess character as a whole" [§53-4].

The Administrative Court has held that the Secretary of State is "entitled to adopt a policy on the way in which criminal convictions will normally be considered by her caseworkers, but it should not be applied mechanistically and inflexibly. There has to be a comprehensive assessment of each applicant's character, as an individual, which involves an exercise of judgment, not just ticking boxes on a form." [§36] That warning finds substantial footing in classic principles of public law (see *R v Secretary of State for the Home Department ex p Venables* [1998] A.C. 407, *R v Eastleigh Borough Council ex p Betts* [1983] 2 A.C. 613, *Pankina & Ors v Secretary of State for the Home Department* [2010] EWCA Civ 719). Further, the requirement to make a comprehensive assessment is found to be one that is demanded by *law* [§38].

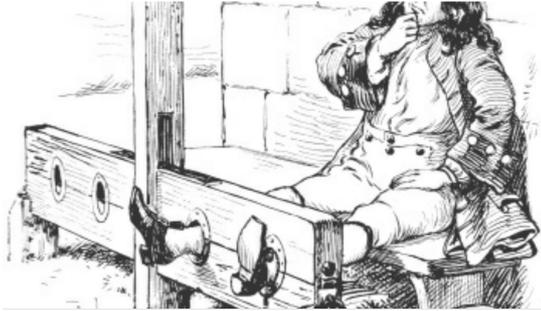
The case has attracted substantial positive [media attention](#) across the spectrum. It was curious that the Secretary of State saw fit to litigate this case, but has produced a judgment that will hopefully be helpful to applicants and practitioners alike.

The solicitor in this case was Toufique Hossain, Director at Duncan Lewis.

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One response to *Good character and applications for citizenship*

[jack](#) 4 March 2014 at 10:20 am

You guys are all doing an excellent job keeping us informed just what is going on at the Home Office and UKBA under Ms May as Home Secretary. No wonder the Home Affairs Select Committee and the Public Accounts Committee have censured / criticised the Home Office under Ms May since 2010. It isn't satisfactory to keep blaming Labour Ms May has had ample time to get the job straight and she's failed dismally. Thank you guys for giving us Joe Public the facts / the truth – well done good luck to you all. jack

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