



ILPA

**AMNESTY
INTERNATIONAL**



8 March 2023

Dear Mr Armstrong

Re: Effect of High Court judgment in *R (Roehrig) v Secretary of State for the Home Department* [2023] EWHC 31

On 20 January 2023, the High Court handed down this judgment. As you will be aware, it concerns the meaning of 'settled' for the purposes of the British Nationality Act 1981 – particularly as this relates to people exercising European Union free movement rights and whether their children born in the UK are thereby born British citizens by virtue of section 1(1)(b) of the Act.

Up until very recently, the Home Office position has been that the question of whether such a person (i.e. someone exercising European Union free movement rights) was settled for these purposes was different before 2 October 2000 to what it was from that date. The date is significant because it is the date on which the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, took effect, setting out matters concerning European Union free movement rights and concerning the meaning of 'settled' (regulation 8). The change, in summary, was that before that date, such a person was treated as 'settled' whereas from that date such a person was only treated as 'settled' if meeting various additional conditions specified in regulation 8.

At the hearing of *R (Roehrig) v Secretary of State for the Home Department*, the Home Secretary argued for a different position. She argued that there had been no change on 2 October 2000. Rather, she said the regulations merely set out what the law had always been. Accordingly, it was (and we understand remains) her position that people exercising European Union free movement rights have never been settled for the purposes of the British Nationality Act 1981 unless they also meet the additional conditions. The High Court has accepted this position in its judgment.

We are concerned that this leaves potentially many thousands of people born in the UK before 2 October 2000 to nationals of relevant European countries (i.e. those countries, which at the time of the person's birth in the UK were members of the European Union or its predecessor) in an uncertain position regarding their citizenship of the UK. For those who have had children, it potentially leaves their children in a similarly uncertain position.

Accordingly, please would you notify us as to what steps you will be taking to protect the position of what must be many thousands of people across these two generations as regards their status as British citizens?

On the second day of the hearing, the Home Secretary informed the court that she had instituted a 'pause' upon consideration of first applications for a British passport made by people born in the UK before 2 October 2000 to a parent exercising European free movement rights. It was subsequently clarified that the pause had begun on 11 October 2022 (the day before the hearing began). As you may recall, the Chair of the Project for the Registration of Children as British Citizens (PRCBC) wrote to you on 21 October 2022 requesting further information about this 'pause'. We append a copy of her letter of 21 October 2022 to this. A response remains outstanding.

Accordingly, please would you notify us as to the following:

- (a) Is this pause still in operation?**
- (b) What are the criteria that identify the passport applications to which the pause applies (or would apply were an application to be made)?**
- (c) When and how has or will this pause be made known to the people to whose passport applications it applies (or would apply were an application to be made)?**

We must emphasise that the uncertainty regarding British citizenship to which we have referred arises from what would appear to be, on the analysis of both the Home Secretary and the High Court, an error on the part of the Home Office that has persisted for almost 40 years. It affects many people born over a period of almost 18 years from 1 January 1983 to 1 October 2000 inclusive; and many people who were then born to these people. It raises a potential question about the British citizenship that the people affected have long understood they possess and been treated by the Home Office as possessing.

It must surely have been known to the Home Office – at least at the time the Home Secretary made her argument to the court in October last year – that this uncertainty would arise.

Accordingly, we would be grateful to hear from you as a matter of some urgency as to how it is proposed to secure the position of the people affected (both generations described in this letter, and future generations) against any continuing uncertainty or threat to their status as citizens of the UK (British citizens).

Yours sincerely

PRCBC, ILPA, the3million and Amnesty UK

Cc: PRCBC letter dated 21 October 2022