

Neutral Citation No.: [2008] NICA 54

Ref:	KERH4853.T
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*Judgment: approved by the Court for handing  
(subject to editorial corrections)*

Delivered:	19/9/08
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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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BETWEEN:

OLEG FEDOROVSKI

(Applicant) Appellant;

and

THE SECRETARY OF STATE FOR NORTHERN IRELAND

(Respondent).

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**KERR LCJ**

[1] This is an appeal from a decision of Mr Justice Gillen whereby he dismissed an application for leave to apply for judicial review made by the appellant, Mr Oleg Fedorovski.

[2] This is the latest episode in a long series of applications by Mr Fedorovski and they are a tribute to his persistence, not to say ingenuity, in his opposition to an anticipated decision of the Home Office (a decision that has not yet crystallised) to seek to have him removed from this jurisdiction. But today's application is on a related issue rather than directly concerned with any foreshadowed removal application. It relates to the Home Office's designation of Mr Fedorovski in their records as Ukrainian. As he has pointed out, he has never applied for Ukrainian citizenship and it is his settled intention never to apply for citizenship. He contends, therefore, not without justification, that he is wrongly designated as Ukrainian.

[3] It has been pointed out in a number of judgments delivered variously by Mr Justice Weatherup, Mr Justice McLaughlin, Mr Justice Gillen and, indeed, by this court that the issue in relation to his possible removal from the United Kingdom ultimately is not whether or not Mr Fedorovski is Ukrainian. It is whether the Home Office has reason to believe that, if he were removed from this jurisdiction

and returned to the Ukraine, he would there be accepted, but, as I have said, today's application does not bear directly on that issue.

[4] We are satisfied that Mr Fedorovski would enjoy a right to challenge his designation as Ukrainian in Home Office records if that were a substantive issue, but as Mr McGleenan has pointed out, it is not an issue of substance. It is an issue of form and, therefore, even if it were the current position that those records that recorded his nationality as Ukrainian represented the Home Office's position on Mr Fedorovski's nationality, we would be obliged to conclude, as did Mr Justice Gillen, that this is not a matter in which the discretionary remedy of judicial review should be available. But quite apart from that, as I have sought (I rather fear forlornly) to explain to Mr Fedorovski, whatever may appear in its records the legal position, the unimpeachable, unchallengeable, irredeemable legal position, is that the Home Office has committed itself to the statement that they do not regard him as Ukrainian.

[5] He has said that he can repose no confidence in statements made by counsel on behalf of the respondent nor indeed in a letter from the Crown Solicitor's Office in which the position of the Home Office is stated because he has been able to demonstrate through the offices of Mr Vaux, who contacted the Home Office, that as late as yesterday there were records within the Home Office which recorded him as Ukrainian. I can understand how he feels unable to ignore that circumstance, but I say again, in the hope, probably a pious hope, but nevertheless one which is worth expressing, that Mr Fedorovski may obtain some comfort from what I state is the unequivocal legal position.

[6] The statement in the letter of 2 June 2008 has been recorded in the judgment of Mr Justice Gillen. It is recorded in the words that now fall from me and it is to the effect that the Home Office has committed itself unequivocally to the statement that he is not regarded as Ukrainian. That statement and the record of it in the judgment of this court and the judgment of Mr Justice Gillen trumps any document that may repose or reside in the database of the Home Department. As a matter of law the Home Office is bound by its statement that it does not regard Mr Fedorovski as Ukrainian. In those circumstances the appeal is dismissed.