Appeal No's: SC/106/107/108/109/2012
Hearing Date: 13th – 16th November 2012
Date of Judgment: 21st December 2012

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
UPPER TRIBUNAL JUDGE GILL
SIR PAUL LEVER

S1, T1, U1 & V1

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellant:	Ms S Harrison & Ms A Weston Instructed by Birnberg Peirce & Partners Sols
For the Respondent:	Mr R Tam QC, Mr R Jones Instructed by the Treasury Solicitor for the Secretary of State
Special Advocate:	Mr C Cory-Wright QC & Mr Z Ahmad Instructed by the Special Advocates Support Office

OPEN JUDGMENT

Background

1. This is one of a number of judgments given in this appeal on the substantive issues other than statelessness. Any appellate court wishing to understand our full reasons for the conclusion which we have reached will need to read all of them. This is the only judgment which will be posted on SIAC's website.

2. The appellants were all British citizens by birth. S1, now aged 49, was born of Pakistani parents in Newcastle-upon-Tyne. T1, U1 and V1 are three of his sons, now aged 25, 23 and 21 respectively, all born in London. On 31st March 2011 the Secretary of State personally decided to deprive each of the appellants of British citizenship. Notice of her decision was served on the same date by posting it to their last known address in the United Kingdom under regulation 10(1)(b) of the British Nationality (General) Regulations 2003. (It was subsequently redirected to an address in Pakistan.) Orders depriving each appellant of his British citizenship were signed on behalf of the Secretary of State on 2nd April 2011. In its judgment of 27th October 2011, SIAC has already decided that each of the appellants retain Pakistani nationality, so that the effect of the decision and order was not to make them stateless. Accordingly, the Secretary of State's decision did not breach section 40(4) of the British Nationality Act 1981.

3. All four appellants have maintained strong connections with Pakistan and each has spent a significant part of his life there. T1, V1 and U1 state that they have lived "between" the UK and Pakistan since they were children and, according to S1, all three children received part of their education in Pakistan. S1 has built at least one house in Pakistan. All four now live in Sheikhpura District Pakistan. S1 his wife and two or more of his children live in a house built by him as a family home. U1 and his wife and child live nearby in a house built on land owned by S1. The precise location of the houses is identified in the confidential judgment. All four appellants lived there voluntarily between the departure of S1, T1 and V1 from Manchester Airport on 28th October 2009 and of T1 from Egypt at about the same time, for Pakistan, until the making of the order to deprive them of British nationality on 2nd April 2011. When the decision to make that order was made, they had been based there for 17 months. They retained no home or business in the United Kingdom. The statements made during the port stop of 28th October 2009 by S1 that most would return to the United Kingdom on 6th November 2009 and by U1 and V1 that they would return on 23rd December 2009 have been belied by events. S1's explanation is that they had become worried about increasing interference in their lives by British authorities.

The curtailed exculpatory review

4. When serving her evidence in opposition to an appeal, the Secretary of State is obliged by rule 10(1)(b) of the SIAC Procedure Rules to file with SIAC any exculpatory material of which she is aware. This was done. Rule 10A(1) requires an appellant to file with SIAC the evidence on which he wishes to

rely, whereupon an obligation to make a reasonable search for exculpatory material and to file it with SIAC is imposed on the Secretary of State by rule 10A(2)(a) and (c). In this case, the evidence filed by the appellants was limited to the issue of statelessness, the difficulties of conducting their appeal from Pakistan, their family circumstances and evidence not specific to them about Pakistan. They did not file any statement setting out their case on the national security issue.

5. This prompted an application by the Secretary of State for an order striking out the appeals under rule 40 (1). A cross-application was made by the appellants to stay the appeals. Both were refused on 8 October 2012. Miss Harrison indicated that the appellants would not file evidence about the national security issue, but would about their reasons for not doing so. This was done, but only in general terms, on 12th October 2012.

6. At the hearing on 8th October 2012, after the stay was refused, Miss Harrison indicated that the appellants wished the hearing fixed for the week commencing 12th November 2012 to go ahead. Mr. Jones indicated that, in that event, it was unlikely that a full exculpatory review could be undertaken. On 19th October 2012 the Treasury Solicitor wrote to state that there would be "serious if not insurmountable" difficulties in preparing for hearing on that date. The appellants' solicitor replied on the same date stating that it was their position that the hearing should go ahead on 12th November 2012 and that, if the Secretary of State was unable to conduct an exculpatory review in time for it, they would waive it and rely on their own material. On 22nd October 2012 SIAC directed that the reasonable search for exculpatory material which the Secretary of State was required to undertake under rule 10A(2)(a) would be limited to that which could be done before 12th November 2012; and that the hearing would go ahead. This prompted a lengthy reply from the Treasury Solicitor on 31st October to the effect that the Secretary of State would do her best.

7. We are satisfied that she has done so. On 29th November 2012 the Secretary of State provided detailed open and closed explanations of the searches carried out. In the light of such explanations and in the circumstances explained above we are satisfied that the Secretary of State has fulfilled her duty to make a reasonable search for any exculpatory material under rule 10(A)(2)(a). We are also satisfied that we have sufficient material to permit us properly to determine proceedings under rule 4(3).

The principal issues

8. The principal issues which we must now address are:

   i) The nature of the test which the Secretary of State must satisfy to establish that it is conducive to the public good to deprive the appellants of their British citizenship.

ii) Whether, in the case of each appellant individually, that test has been satisfied.

iii) Whether, when making the decision to deprive the appellants of British citizenship, the Secretary of State owed to them a duty under Articles 2 and 3 of the European Convention on Human Rights.

iv) If so, whether by reason of her decision, the United Kingdom was in breach of its duties to the appellants under Articles 2 and 3.

9. We analyse and set out our conclusions upon the questions of principle identified above in this open judgment; but the reasons for reaching those conclusions are set out elsewhere.

The first issue: the test to be applied

10. Since 16th June 2006, sub-section 40(2) of the British Nationality Act 1981 has provided,

> "The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good."

The test which it replaced was that she was satisfied that the person has done anything "seriously prejudicial to the vital interests of…the United Kingdom". The change was plainly deliberate and was noted and commented upon by the Joint Committee on Human Rights during the passage of the Immigration Asylum and Nationality Bill through Parliament. The Committee correctly observed that the original test set a significantly higher threshold than the new one: see its third report.

11. Mr. Tam QC submits that Parliament should be taken to have decided that a test well understood in the context of immigration law should be applied, without qualification, to deprivation decisions. Miss Harrison submits that, given the seriousness of the decision for the individual concerned, the established international consensus against arbitrary deprivation of citizenship and the United Kingdom's obligations under Article 8 ECHR, a more stringent test is required. The test which she proposes is that a decision to deprive can only be made if there is a real direct and immediate threat to a vital public interest.

12. It is common ground and obvious that national security is a vital public interest. It is the only interest with which we are concerned or, in future cases, likely to be concerned. No good purpose would be served by our attempting to define a test applicable to other circumstances.

13. A classic modern statement of the circumstances in which it would be conducive to the public good to deport a person on grounds of national security is that set out by Lord Slynn in *Secretary of State for the Home*

> "It seems to me that the appellant is entitled to say that "the interests of national security" cannot be used to justify any reason the Secretary of State has for wishing to deport an individual from the United Kingdom. There must be some possibility of risk or danger to the security or well-being of the nation which the Secretary of State considers makes it desirable for the public good that the individual should be deported. But I do not accept that the risk has to be the result of "a direct threat" to the United Kingdom as Mr. Kadri has argued. Nor do I accept that the interests of national security are limited to action by an individual which can said to be "targeted at" the United Kingdom, its system of government or its people as the Commission considered….To require the matters in question to be capable of resulting "directly" in a threat to national security limits too tightly the discretion of the Executive in deciding how the interests of the state, including not merely military defence but democracy, the legal and constitutional system of the state, need to be protected. I accept that there must be a real possibility of an adverse effect on the United Kingdom for what is done by the individual under enquiry but I do not accept that it has to be direct or immediate. Whether there is such a real possibility is a matter which has to be weighed up by the Secretary of State and balanced against the possible injustice to that individual if a deportation order is made."

14. We take as our starting point for consideration of these submissions the observations of the Commission in *Al Jedda v. SSHD* SC/66/2008 7th April 2009 at § 4:

> "Citizenship is the fundamental civic right. It is not necessary to go as far as Warren CJ in *Trop v. Dulles* 356 U.S. 86 in evaluating the importance of its loss as "the total destruction of the individual status in organised society"; but on any view, its loss, for the citizen, is a very serious detriment."

Citizenship is a vested status, founded in the law of the United Kingdom. It differs from the right of an alien to enter or remain in the United Kingdom – a right which can only be granted by executive decision and can be taken away by it, subject to appeal to the Immigration and Asylum Chamber of the First Tier Tribunal or SIAC as appropriate. In those circumstances, it is not self-evident that Parliament must have intended that the "conducive to the public good" test should be the same in a deprivation, as in an exclusion or deportation, case.

15. International instruments are of limited utility in discerning Parliament's intention. Article 15 of the Universal Declaration of Human Rights declared by the General Assembly of the United Nations on 10th December 1948 declares that "No-one shall be arbitrarily deprived of his nationality". When enacting the amendment to section 40(2) of the 1981 Act by s6 Immigration Asylum Nationality Act 2006, Parliament can safely have been taken not to have intended to permit infringement of that declaration; but that does not take the matter very far. The Secretary of State does not contend for the existence of a power to make an arbitrary decision. Such a decision would clearly be unlawful, but the fact that it would be does not assist in determining the intended meaning of "conducive to the public good" in section 40(2). Nor is Article 8 of the Convention on the Reduction of Statelessness done at New York on 30th August 1961, which provides,

> "1. A contracting state shall not deprive a person of its nationality if such deprivation would render him stateless….
>
> 3. Notwithstanding the provisions of paragraph 1 of this Article, a contracting state may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:
>
> (a) That, inconsistently with his duty of loyalty to the contracting state, the person…
>
> (ii) Has conducted himself in a manner seriously prejudicial to the vital interests of the state."

Under the wording inserted by s4. Nationality Immigration & Asylum Act 2002, section 40(2) reflected the wording of this proviso, but section 40(4) imposed a further prohibition, introduced in its present form by the 2002 Act, on deprivation of citizenship not mandated by Article 8: the prohibition on deprivation if the Secretary of State was satisfied that a deprivation order would make a person stateless. That prohibition remains. Accordingly, the amendment to section 40(2) did not put the United Kingdom in breach of its international obligation under Article 8. It follows that Article 8 is not a useful or even permissible guide to the construction of section 40(2) as amended. Nor is Article 7.1.d of the European Convention on Nationality done at Strasbourg on 6th November 1997, which uses the same language, for the simple reason that the United Kingdom has not signed or ratified that Convention. Accordingly, save for the outer limit declared in Article 15(2) of the Universal Declaration on Human Rights, international instruments provide no real assistance in determining the test.

16. Miss Harrison's proposed test has no secure foundation in law, policy or practice. Indeed, it amounts to little more than a partial disagreement with the observations of Lord Slynn in *Rehman*. We are satisfied that it is in part unsound in principle. It is common ground and clearly right that, for it to be conducive to the public good to deprive an individual of British citizenship,

that individual must pose a threat to national security. We can, however, see no reason why that threat must be either "direct" or "immediate". A simple example will suffice to illustrate why. Suppose that a dual British-Iranian citizen provided scientific or significant financial assistance to the Iranian State to develop a nuclear weapon, it may well be conducive to the public good to deprive that individual of British citizenship. Yet, in the early period of a programme to develop a nuclear weapon, the threat which he posed would not be immediate; and it would never be direct. Why should the Secretary of State be prohibited from depriving him of British citizenship?

17. We accept that the threat posed to national security must be "real", but the inclusion of that word in the test adds nothing to it: it is axiomatic that a threat to national security must be "real" and not fanciful or hypothetical. In the course of his submissions, we put to Mr. Tam the proposition that the threat must be "serious". His response was that that was not, in principle, the right test, but if it was, it was satisfied in this case. On reflection, we do not think that adding the word "serious" to the test materially alters or clarifies it. We are satisfied that, in national security cases, a simple test is applicable: has the Secretary of State satisfied us that an individual appellant poses a threat to national security. If she does so, and there is no other inhibition on the decision to deprive his appeal will be dismissed. If not, it will be allowed.

18. The Joint Committee was concerned that the Secretary of State need not establish objectively reasonable grounds for a deprivation decision. It is a theoretical possibility that a decision could be based upon an assessment of future risk not founded upon past or present conduct. If such a case arose, it would have to be dealt with on its merits. In all deprivation cases – in fact in all cases so far considered by SIAC – the Secretary of State's decision has been founded upon past and present conduct and the conclusions as to current and future risk founded upon it. For the reasons explained in paragraphs 3 – 14 of *Al Jedda* (op. cit.), our approach is to attempt to find past facts on the balance of probabilities. We have been able to do so in this case, albeit for reasons only explained in the closed judgment. The Joint Committee's concern that deprivation decisions might be justifiable only on subjective grounds has not, so far, proved to be justified; and we have no reason to believe that it will in future. SIAC's examination of the material upon which the Secretary of State relies provides a robust safeguard against arbitrariness.

19. For the reasons explained, the approach which we adopt to the first principal issue in this appeal is to determine whether or not each appellant poses a threat to national security; and we will determine that issue by reference to our findings about the past and present conduct of each appellant, made on the balance of probabilities.

Second issue: In the case of each appellant, has that test been satisfied?

20. For the reasons set out in the closed judgment, we are satisfied in the case of each appellant that it was conducive to the public good to deprive him of British citizenship.

Third issue: In making the deprivation decision, did the Secretary of State owe to the appellants a duty under Articles 2 and/3 ECHR?

21. Article 1 ECHR provides,

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section 1 of this Convention."

22. When the deprivation decision was made and put into effect by the deprivation order the appellants were in Pakistan, not in the United Kingdom. Nevertheless, Miss Harrison submits that they remained within the jurisdiction of the United Kingdom for the purposes of Article 1. Her submission is principally founded on the nature of the decision made by the Secretary of State. A decision to deprive a British citizen of British citizenship is within the jurisdiction of the United Kingdom, notwithstanding that the person affected is abroad. Further, every step in the taking and implementation of the decision occurred in the United Kingdom: the decision was made personally by the Secretary of State in the Home Office. It was served on the appellants by sending it to their last known address in the United Kingdom under regulation 10(1)(b) of the British Nationality (General) Regulations 2003. The deprivation order was signed in the Home Office by an official and took effect immediately on signature. In at least one sense, therefore, the deprivation decision was one made within the jurisdiction of the United Kingdom.

23. That, however, does not determine the question which arises under Article 1 ECHR. In international law, state jurisdiction is not a single concept: Oppenheim's International Law 9th Edition p456 § 136. It does not follow that because the United Kingdom has jurisdiction to deprive a dual national of citizenship, even if the person deprived is resident abroad in the state of his other nationality, he is to be treated as within the jurisdiction of the United Kingdom for the purposes of Article 1 ECHR. It is settled law that jurisdiction in Article 1 is primarily territorial: see the Grand Chamber's analysis of the drafting history of Article 1 in § 17 – 18 in *Bankovic v. UK* [2007] 44 EHRR SE5 and its conclusions at § 57 – 61. The basic principle was reiterated by the Grand Chamber in *Al-Skeini v. UK* [2011] 53 EHRR 18 at§ 131,

> "A state's jurisdictional competence under Article 1 is primarily territorial. Jurisdiction is presumed to be exercised normally throughout the state's territory. Conversely, acts of the contracting states performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 only in exceptional cases."

The court identified exceptions to that general principle in § 133 – 142: acts of diplomatic and consular agents, the exercise of public powers in a foreign state through the consent invitation or acquiescence of the government of that territory, through "the exercise of physical power and control" over a person outside its territory, where it exercises effective control of an area outside its territory and when the territory of one convention state is occupied by the

armed forces of another. None of those exceptions or circumstances exist here.

24. Miss Harrison's proposition is not founded on the identified exceptions to the territorial principle. It is founded on the principle itself: because, in the exercise of its personal jurisdiction, the United Kingdom has deprived one of its nationals of citizenship, it has prevented him from enjoying an incident of that status – the right to return to and live in the United Kingdom – and has deprived him of diplomatic and consular protection while in Pakistan.

25. The second proposition is not well-founded. The United Kingdom has signed and ratified the 1930 Hague Convention and Pakistan has succeeded to it. Article 4(a) provides,

> "A state may not afford diplomatic protection to one of its nationals against the state whose nationality such person also possess."

Accordingly, none of the appellants would ever have been entitled to the diplomatic and consular protection of the United Kingdom while in Pakistan under the Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963 respectively.

26. Some support for the first proposition can be found in the report of the European Commission of Human Rights of 14th December 1973 in *East African Asians v. UK* [1981] 3 EHRR 76. The issue in the case was whether the refusal by the United Kingdom of final admission to thirty-one applicants of Asian extraction formerly resident in Uganda pursuant to the Commonwealth Immigrants Act 1968 subjected them to inhuman or degrading treatment under Article 3 ECHR. Twenty-five of the applicants were British citizens. The 1968 Act removed their right of abode in the UK. Accordingly, all were refused permanent admission to the UK. Some were temporarily detained in the UK. Five were subjected to "shuttle-cocking" and six were stranded in Belgrade on their way to the United Kingdom. All were exposed to the risk of humiliation and ill-treatment in Uganda. (Facts taken from § 252 of the separate opinion of Mr. J. E. S. Fawcett). Jurisdiction was not referred to in the majority report of the Commission. It appears from § 238 of Mr. Fawcett's opinion that in its admissibility decision the Commission had decided that all thirty-one applicants were within the jurisdiction of the United Kingdom under Article 1 because they were UK nationals (ressortissants). All twenty-five British citizens were eventually given permission to stay permanently in the United Kingdom during the proceedings: § 210. The Commission concluded by six votes to three that Article 3 had been violated in the case of the twenty-five British citizens and unanimously that it had not been violated in the case of the six remaining applicants, who were only British protected persons. The reasoning on jurisdiction is unstated and unclear. It is not a judgment of the court. It is known that, before the report was made on 14th December 1973, all twenty-five British citizens were given permission to stay permanently in the United Kingdom. Some or all of them must, accordingly, have been present in the territory of United Kingdom during the proceedings before the Commission. The issue of jurisdiction is,

accordingly, unlikely to have been given careful consideration by the Commission. We do not regard the *East African Asians* case as determinative of the view which the Strasbourg Court would now take of the issue or persuasive.

27. A more recent decision of the second section of the Strasbourg Court (which deals with UK cases) upon which Miss Harrison relies is *Genovese v. Malta* [2012] 1 FLR 10. The issue was whether or not Malta had breached Article 8, taken in conjunction with Article 14, by refusing Maltese citizenship to the son of a Maltese father born out of wedlock, in Scotland, to a British mother. His paternity was established judicially and scientifically. His mother, in her own name and on behalf of the applicant instituted legal proceedings in Malta to challenge the refusal of citizenship to him. The court held that that decision was discriminatory and without objective and reasonable justification and that in consequence the applicant's rights under Article 8 had been infringed by Malta. Jurisdiction was not argued. It is not clear from the report whether the mother and applicant were present in Malta when legal proceedings there were undertaken. If they were, no issue of jurisdiction could have arisen. Further, given the rights of the mother and applicant to travel to Malta under EU law, the parties might have regarded the issue as academic. Consequently, this case is not clear authority for the proposition for which Miss Harrison contends.

28. There is, perhaps, an emerging doctrine in Strasbourg that jurisdiction might exist for some purposes, but not others. Two cases were considered by the Grand Chamber arising out of NATO air strikes on Serbia. The first was *Bankovic*, in which it was held that there was no jurisdiction to entertain a claim for damage caused by the air strike. The second was *Markovic v. Italy* (2006) 44 EHRR 1045, in which the court held that, for the purposes of a claim brought under Article 6, a sufficient "jurisdictional link" existed between claimants for compensation for damage caused by a NATO air strike brought in the Italian courts and Italy. The Grand Chamber reached that conclusion despite its earlier observation in *Bankovic* at § 75 that Article 1 could not be "divided and tailored in accordance with the particular circumstances of the extra territorial act in question". The inconsistency was exposed by Lord Collins in *Smith v. Oxfordshire Assistant Deputy Coroner* [2010] UKSC 29 at § 302. It has now been acknowledged by the Grand Chamber in *Al-Skeini* at § 137. If there is such a doctrine, it is likely, like other developments of Human Rights law undertaken by the Strasbourg Court to be founded upon what is practical and achievable. It is not within the power of the United Kingdom to secure the right of the applicants not be subjected to torture or inhuman or degrading treatment at the hands of the Pakistani State or of non-state actors while they remain in Pakistan, any more than their right to free expression or to freedom of thought, conscience and religion. If the appellants had brought a claim to which Article 6 applied in the United Kingdom, Article 6 would have applied to proceedings to determine that claim, but that is the only respect in which a sufficient "jurisdictional link" could have been established. (There is no such link in these proceedings, because Article 6 does not apply to them: see SIAC's judgment on the preliminary issue in *Al-Jedda* of 22nd October 2008).

29. The only step which the United Kingdom could have taken to secure to the appellants their rights under Articles 2 and 3 from threats originating in Pakistan would have been to allow them to exercise their right, as British citizens, to return to the United Kingdom. However, at the dates on which the deprivation decision was taken and implemented, there was no such threat. The appellants had gone to live voluntarily in Pakistan and made no complaint that they were under any such threat at that time. They made no attempt to return to the United Kingdom before the decision was made and put into effect. Further, the Secretary of State had no reason to believe that they were under threat and in need of that measure of protection. The case is, accordingly, readily distinguishable in principle and in practice from the *East African Asians* case. The appellant's complaint is not that, while they remain British citizens, the UK refused them an available measure of protection, but that by depriving them of British citizenship, the Secretary of State exposed them to risk. No decision of the Strasbourg Court or, while it existed, the Commission has acknowledged, or even entertained the possibility, that there might be such an obligation. The only decision remotely in point – in relation to British protected persons in the *East African Asians* case – is against it.

30. For the reasons given, we are satisfied that, when the decision to deprive was taken and implemented, the United Kingdom owed no obligation to the appellants to secure to them their rights under Articles 2 and 3 in respect of any subsequent act of the Pakistani State or of non-state actors in Pakistan.

The fourth question: on the facts, would the United Kingdom have been in breach of its duties to the appellants under Articles 2 and 3?

31. In the event that our analysis of the law in the preceding section is wrong, we now address the appellants' claim that the deprivation decision and order have put them at risk of death or ill-treatment at the hands of the Pakistani State or of non-state agents in Pakistan. We have received and examined sufficient evidence to permit us to reach a clear conclusion on this issue. Our detailed reasons for doing so are set out in the closed and confidential judgments. In this part of the open judgment, all that we can state is our approach to the issue and our conclusion.

32. It is common ground that the issue must be judged at the date on which the deprivation decision was taken and implemented. We do not understand the approach and reasoning of SIAC in *Al-Jedda* in § 31 of its judgment on 7th April 2009 to be contentious. We adopt and repeat it. Our focus must be on the direct and intended effect of the deprivation order. We do not, however, exclude any step taken contemporaneously by the United Kingdom in connection with the order such as any communication to the Pakistani authorities of the fact of the order and reason for making it. There is no open evidence about any assessment which may have been made about the risks, if any, posed to the appellants by the making of the order nor about any communication, if made, to the Pakistani authorities about it or the reason for making it. We deal with both issues in the closed judgment.

33. There is no evidence that the appellants have come to any harm in the 17 months since the order was made.

34. For the reasons set out in the closed and confidential judgments, we are satisfied that, if the United Kingdom owed to the appellants, when making and implementing the deprivation decision, duties under Articles 2 and 3 ECHR, it did not breach them.

Other issues

35. The deprivation decision and order in the case of S1 has undoubtedly had an impact on the private and family life of his wife and youngest son, both of whom remain British citizens. She has made two statements, the first undated and the second dated 11th July 2012, in which she sets out the difficulties which they experience in Pakistan. We have no reason to doubt what she says about those difficulties. But for the conclusion which we have reached about the threat to national security posed by S1, those circumstances would have given rise to difficult questions under Article 8 ECHR and Chapter VI of Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004. It is unnecessary for us to set out and analyse the conclusions which we would have reached on those issues, because Miss Harrison accepts that if the United Kingdom was entitled to deprive S1 of British citizenship because he posed a threat to national security, the unavoidable incidental impact upon the rights of his wife and youngest son would be justifiable: under Article 8 ECHR, as an interference necessary in a democratic society in the interests of national security; and under, or by analogy with, Article 28(3) of the Directive, as a decision based on imperative grounds of public security. We are satisfied that her concession was properly made and have acted upon it.

Conclusion

36. These appeals are dismissed.