SPECIAL IMMIGRATION APPEALS COMMISSION

APPEAL NUMBER: SC/150/2018

DATE OF HEARING: 9th, 10th, 11th, 12th, 16th & 18th November 2020

DATE OF JUDGMENT: 19th February 2021

BEFORE:

THE HONOURABLE MRS JUSTICE CHEEMA-GRUBB DBE
UPPER TRIBUNAL JUDGE O'CONNOR
MR ROGER GOLLAND

BETWEEN:

R3

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

MR HUGH SOUTHEY QC & MR DAVID SELLWOOD (instructed by Duncan Lewis Solicitors) on behalf of the Appellant

MR ZUBAIR AHMAD QC & MR BILAL RAWAT (instructed by the Special Advocates' Support Office) appeared as Special Advocates.

MR RORY DUNLOP QC & MISS NATASHA BARNES (instructed by the Government Legal Department) appeared on behalf of the Respondent.

OPEN JUDGMENT

The Honourable Mrs Justice Cheema-Grubb DBE:

Summary

1. The Secretary of State ("SSHD") decided to deprive the Appellant of British citizenship on grounds of conduciveness to the public good due to the threat he is assessed to pose to the United Kingdom's national security. She was satisfied that he would not be rendered stateless by that action and on 26 May 2017 made the order under s.40(2) British Nationality Act 1981. This appeal is concerned with whether that decision, elemental to his personal identity, was justified. In accordance with s.40A(2) of the 1981 Act the Secretary of State certified that her decision was taken wholly or partly in reliance on information which, in her opinion, should not be made public in the interests of national security. Accordingly the appeal has been heard at the Special Immigration Appeals Commission ("SIAC"). We have conducted Open and Closed hearings for the purpose of receiving evidence on the appeal and hearing submissions. We have relied on Open and Closed evidence to determine the appeal.

Anonymity

2. By an order of the Commission dated 10 September 2019, anonymity and reporting restrictions apply to this appeal. In summary, by that order the Appellant is to be known as "R3" and nothing may be published which might identify him as an Appellant before the Commission. To be clear the order applies to, but is not limited to, his name, his age, his current and former addresses, his nationality and country of return, his ethnicity and his family members.

Previous Determinations

3. On 27 June 2018 SIAC directed that the question of whether the Appellant was a Pakistani citizen at the date of the decision should be dealt with as a preliminary issue. The subsequent hearing was entirely in Open and resulted, on 7 December 2018, in a judgment that he was.
4. On 3 June 2019 the Appellant applied to amend his grounds of appeal and sought directions for further information to be supplied by the Respondent. These applications were refused on the papers 1 July 2019 and renewed in an Open hearing on 11 October 2019. They were refused by Supperstone J on 31 October 2019.
5. The Commission prepared to hear argument under the Rule 38 procedure in July

2020 but the date was vacated following discussions between the Special Advocates and the Respondent, and limited further disclosure into the Open, because no ruling was required.

6. The Commission has, itself, given careful and very anxious scrutiny to possible methods of gisting and summary but we have come to the conclusion for ourselves that the Special Advocates were right not to seek a ruling on further disclosure from the Commission. Having heard all the evidence, including R3's own evidence in Open, and using our joint experience, we were unable to formulate disclosure which would have properly directed the Appellant's attention to relevant matters beyond the key assessment disclosed to him.
7. Does this mean that the appeal process has been unfair? We are sure it has been conducted according to the law and the Commission's rules. We are also sure that the Appellant has been given an accurate account of the reasons for deprivation of his citizenship. Given the nature of that reason he must have inferred, accurately, that he should provide any evidence that might explain contact he has had with AQ aligned groups and also provide as full an account as possible of his activities while in Syria. This he has done. He has been assisted by experienced lawyers, including leading and junior counsel. He relies on over 1000 pages of evidence of different kinds. The Special Advocates have heard his testimony and his witnesses. They have tested the Secretary of State's evidence and made submissions as to its limitations.
8. We are satisfied that the process for appeal has been fair to the Appellant.
9. The foregoing is separate to the considerations which arise as to 'ZZ disclosure' (*ZZ (France) v Secretary of State* [2013] QB 1136).

Outline Chronology

10. R3 was born in July 1979 in England. He was a dual national at all material times before the Respondent's decision, holding both British and Pakistani citizenship. In April 2003 he married his first wife ("W1"). Four British children were born to them between January 2006 and December 2012.
11. On a day prior to 30 May 2013 R3 separated from his wife. On that date he travelled from London to Istanbul on a one-way ticket with no booked return. He went on into Syria.
12. In April 2015 he married his second wife ("W2"), a Syrian national who bore him a daughter, in 2016.
13. On 17 May 2017 the SSHD's Special Cases Unit, National Security Directorate sent

a submission to the Secretary of State recommending that R3 be deprived of his citizenship. An Open summary of that submission includes the core allegation;

> "The Security Service assess that [R3] is located in Syria and aligned with an AQ-aligned group."

14. The Security Service assessed that any individual assessed to have travelled to Syria and aligned with an AQ-aligned group posed a threat to national security. The summary also indicates that attention had been given to the safe-guarding and welfare of minors and it was assessed that deprivation made no material difference to the welfare of R3's children and, in any event, any best interest considerations were out-weighed by police and public protection considerations. There were no substantial grounds to believe that a real risk of mistreatment contrary to Articles 2 (right to life) or 3 (prohibition of torture) of the European Convention on Human Rights ("ECHR") arose if deprivation was ordered. This was relevant, despite the territorial limit of the ECHR, because of the practice of the Home Office to consider such risks and only recommend deprivation if there was no real risk.
15. On 24 May 2017 a notice advising R3 of the proposed deprivation was issued and posted to his last known address in the United Kingdom. In it he was told,

> "The reason for the decision is that it is assessed that you are a British/Pakistani dual national who has travelled to Syria and is aligned with an AQ-aligned group. It is assessed that your return to the UK would present a risk to the national security of the United Kingdom."

16. On 26 May 2017 the deprivation order was made. The material content read,

> "(R3)
> Born in London, United Kingdom.
> On 25th July 1979.
> Be deprived of his British citizenship on grounds of conduciveness to the public good.
> The Secretary of State is satisfied that (R3) will not be rendered stateless by such action."

17. On 27 August 2017 R3 was arrested by Turkish authorities in Turkey. He sought consular assistance and was informed that he had been deprived of his British citizenship.
18. On 11 April 2018 he filed a notice of appeal against the deprivation order.
19. On 2 May 2018 the SSHD served her first Open national security case. It included an MI5 statement on the threat to national security from individuals with UK links who have aligned with an AQ-aligned group in Syria ("the AQ statement"). The key assessment in this national security case was,

> "The Security Service assessed that (R3) has travelled to Syria and is aligned with an AQ-aligned group."

20. On 17 May 2019 the SSHD served an amended first Open national security case which added this,

> "Whilst we accept that (R3)'s travel to Syria may have been motivated partly by a desire to provide humanitarian aid, we maintain our assessment that (R3) travelled to Syria and aligned with an AQ-aligned group."

21. Disclosure following the Rule 38 and Rule 4(3) process was also provided on that date and read,

> "As a result of consultation between the Special Advocate and Counsel for the Secretary of State the following additional disclosure has been provided;
> It is assessed that R3 may possibly be related to [B3]".

A footnote stated that B3 was deprived of his British citizenship by the Secretary of State for the Home Department, on conducive grounds.

22. On 31 October 2019 and 17 May 2020 R3 served his first and second witness statements.
23. On 29 May 2020 the SSHD served her second Open national security case in response to the Appellant's first witness statement.
24. On 2 and 15 October 2020 R3 served his third and fourth witness statements.

The cases presented

25. In summary, the Respondent's case is that R3 has spent years in war-torn Syria, closely associated with his cousin B3 who has been deprived of his British citizenship on conducive grounds. Although there is credible evidence that R3 has done humanitarian work, and indeed, may have been motivated, at least partly, by an intention to do so when he first travelled to Syria, he has aligned himself with an AQ-aligned group and presents a danger to the national security of the UK, should he be allowed to return.
26. The Appellant's case, in summary, is that he is purely a humanitarian aid worker who has sacrificed his personal safety to go to the service of distressed civilians in Syria. He was compelled by compassion. Although a Muslim he is not an extremist Islamist and he decries Al-Qaeda. His connection with his cousin was close but entirely innocent. He is currently trapped in Turkey with his second wife and Syria-born but British child. He would like to return to the UK, see his four older children and make a home for his family. He is effectively stateless in Turkey and cannot

envisage living safely in Pakistan, a country with which he has no real connection.

The submissions to the Secretary of State

27. The Open Security Service (MI5) AQ statement was served (on 2 May 2019) with an accompanying bundle of open source materials. The Security Service assessed that,

> "UK-linked individuals who travel to align with AQ in Syria represent a serious and credible threat to UK national security. We assess that the majority of UK-linked individuals who do so will take on combatant roles, including undergoing military training and engaged in fighting, and that some of those will go on to support AQ's wider external attack aspirations. However, this assessed threat to UK national security applies regardless of whether individuals have fulfilled combatant or non-combatant roles; they are, at a minimum, likely to have been radicalised and contributed to the continuance of AQ as an entity, providing support that will ultimately assist AQ in meeting its aims and objectives.
> Over 850 UK linked individuals of national security concern have travelled to engage with the Syrian conflict. Of total travellers from the UK, approximately 15% are deceased and just under half have returned to the UK.
> For the purposes of this statement, the individuals against whom we are recommending disruptive action are all associated with groups that we assess are aligned with AQ.
> ...
> **Evolution of AQ in Syria**
> In 2011, protests against the ASSAD regime in Syria, which were part of the region-wide 'Arab Spring', developed into an insurgency after members of the Syrian armed forces defected and led an armed resistance against government forces. By 2012, the insurgency had developed into civil war; opposition factions, including both secular rebels and Islamist extremist militants, emerged and waged military campaigns against the Assad regime and each other.
> In 2011, al Qaeda in Iraq militants, led by Abu Mohammed AL-JULANI, entered Syria from Iraq with the aim of overthrowing the ASSAD regime and establishing an Islamic caliphate. AL-JULANI's group declared itself 'Jabhat al-Nusra' or Al Nusrah Front (ANF) in January 2012. In April 2013, AL-BAGHDADI announced a merger between ANF and the Islamic State of Iraq, resulting in the successor group Islamic State of Iraq and the Levant (ISIL.)
> Al-JULANI however, rejected the merger and reaffirmed his allegiance to Al-ZAWAHIRI rather than AL-BAGHDADI. AL-ZAWAHIRI ordered the disbanding of ISIL in October 2013, and declared that ANF and AL-JULANI would lead AQ's efforts in Syria, which AL-BAGHDADI ignored. As a result, ISIL and ANF each developed a separate presence in Syria. In February 2014, AL-ZAWAHIRI publicly disavowed ISIL, and the group has since been considered an entirely distinct entity from AQ (and ANF). ANF remained AQ's main publicly declared affiliate in Syria until July 2016...
> Despite the rise of ISIL, and the on-going military action led by the

US and Russia, we assess that AQ-aligned groups in Syria have remained resilient and continue to be a prominent force within the region.

AQ's strategy in Syria

AQ's long term strategy is to act as a vanguard to attack the West and its interests, in order to weaken the West's influence, inspire popular uprising and overthrow 'apostate' Islamic governments. Open source reporting indicates that Al-ZAWHIRI "had made it clear" that, although the group is focusing on local campaigns, it still remains committed to attacks on the West in the long term.

We assess that AQ's initial aim, as at 2016 is to overthrow the ASSAD regime and that it is therefore willing to tolerate more moderate Islamic opinions in the short term in order to embed itself in communities in the long-term….

…

External attack planning in Syria

Due to the nature of the threat posed by AQ and its persistent attempts to recruit or inspire Western nationals to undertake terrorist attacks in their countries of origin, we assess that British individuals who align themselves with AQ in Syria pose a national security risk, even when these individuals may have shown no prior intention to conduct attacks against the UK or the West more generally. This is due to the potential for these individuals to have been recruited by AQ specifically for the purpose of conducting or enabling attacks in the UK or elsewhere, or for them to become further radicalised by AQ and subsequently involved in either supporting or conducting attacks of their own accord. We asses that the threat posed by AQ-aligned British nationals in Syria would increase significantly should they ever return to the UK.

We assess that AQ has maintained an intention to conduct attacks against the West, including specifically against the UK, since the beginning of the Syrian conflict and the establishment of the group's formal presence there.

…

Ideological commitment of British nationals to AQ in Syria

MI5 assesses that individuals with AQ in Syria who are not involved in attack planning nevertheless pose a threat to UK interest by supporting AQ's attempts to promote its ideology, destabilising attempts to resolve the Syrian conflict and radicalising and recruiting other individuals to AQ's cause. We assess that British nationals who travel to Syria to join AQ have made a conscious decision to do so because of their commitment to AQ ideology.

…

We assess that anyone who has travelled voluntarily to align with AQ is aware of the ideology and aims of AQ and that attacks that it has carried out. Furthermore, we assess that an individual aligning with AQ will be subject to radicalisation and desensitised to violence, so this ideological commitment is likely to remain, or even grow stronger.

…

FUTURE RISK FROM AQ IN SYRIA

…MI5 assesses that the threat from AQ-aligned individuals who return to the UK from Syria could manifest itself in the following ways:

a) Involvement in directed attack planning
b) Involvement in enabled attacks
c) Radicalising and recruiting UK-based associates
d) Providing support to AQ operatives
e) Position a latent threat to the UK"

CONCLUSION

AQ's strategy in Syria is focussed on long term objectives. We assess that, while mounting terrorist attacks against the West remains on AQ's agenda, the current focus is waging a 'hearts and minds' campaign within Syria, overthrowing the ASSAD regime, establishing territory and forming an *emirate.* Due to this patient strategy of political indoctrination coupled with military action, AQ poses a long term threat to UK national security.

We assess that UK-linked individuals who travel to Syria and align with AQ represent a serious and credible threat to UK national security. We assess that the majority of UK-linked individuals who do so will take on combatant roles, including undergoing military training, engaging in fighting and supporting AQ's wider external attack aspirations. However the threat to UK national security applies regardless of whether the individual has fulfilled a combatant or non-combatant role. Most UK-linked individuals will have spent a considerable amount of time in theatre, in some cases up to four years. They are likely, at a minimum, to have been radicalised, desensitised to violence and to have contributed to the continuance of AQ as an entity, providing support that will ultimately assist AQ in meeting its long term aims and objectives, which include attacking the West. Any individual returning from theatre to the UK after having been radicalised further by AQ groups will be deemed to present a threat and will need to be investigated in order to determine the level of threat posed…We assess that while these individuals would continue to present a threat to the UK from Syria, or from the third country should they leave theatre in the future, the threat would increase significantly if they were allowed to return to the UK.

…

The more individuals who return to the UK, the greater is the threat that one or more of them might carry out a terrorist attack here."

28. Annex A listed AQ-aligned groups in Syria and noted that the structures, allegiances and co-operation between fighters and groups fluctuates regularly and at short notice, among them,

"Al Nusrah Front (ANF)/Jabhat Fatah al-Sham (JFS)/Hayat Tahrir as-Sham (HTS)

On 28 July 2016, Al Nusrah Front (ANF) announced that it was splitting from AQ and rebranding itself as Jabhat Fatah Al-Sham (JFS). We assess that JFS remained aligned with AQ despite the announcement that they had broken away.

On 28 January 2017, 6 months after the alleged split with AQ, JFS

publicly announced that it has dissolved JFS to form a new group in Syria known as Hayat as-Sham (HTS)."

29. A Re-amended Open Security Service (MI5) Statement, revised as a result of Rule 38 requests in R3's case included the following additional assessments and updates,

> "...Over 900 UK linked individuals of national security concern have travelled and engaged with the Syrian conflict. Of total travellers from the UK, just under half have returned to the UK.
> ...
> On 27 February 2018, Hurras al-Din (HaD) announced its formation online and is assessed to be an AQ-aligned group operating in northwest Syria. HaD formed out of AQ-aligned defectors from HTS – it is currently assessed to comprise of approximately 1,000 to 1,500 members. ...
> ...The lack of public endorsement of the group by AQ and HaD's silence on its allegiance do not mean that HaD is not an AQ group; we assess the lack of public endorsement relates to concerns about the level of international counter-terrorism pressure to which an official AQ-aligned group would be subjected.
> ...We assess that the AQ strategy has become increasingly fragmented, following changes in the military situation in Syria and the formation of HaD in February 2018.
> ...
> **Ideological commitment of British nationals to AQ in Syria**
> ...
> We acknowledge that there may be legitimate humanitarian work being carried out by AQ-aligned individuals in Syria, although we assess that at least some of this activity is intended to raise funds for terrorism-related activity.
> ...There are many groups in Syria that are fighting the ASSAD regime, some of whom are considered moderate. We assess that, if foreign fighters, including British individuals, align themselves with an AQ-aligned group, they have done so because they support AQ and are likely to have made an ideological commitment to the extreme and violent beliefs, values and worldview of AQ. We assess that, during their time with AQ, these individuals are likely to be further radicalised. "

30. The first Open National Security statement, specific to R3 and served on 17 May 2019 was introduced with a two page 'Open Summary of deprivation submission' summarising the invitation to the Secretary of State, including the matters already referred to. Five annexes were referred to although the basis for the conclusion that R3 had aligned with an AQ-aligned group was in Annex D which was wholly withheld.

31. Annex B consists of the Security Service's assessment concerning Article 2 and 3 ECHR risks as a result of deprivation. After summarising as follows,

> "(i) While there are a number of scenarios as to what will happen to

individuals in Syria and ISIL-controlled territory in Iraq, the risk of detention is a real (ie not fanciful) possibility;
(ii) If individuals are detained on the battlefield, it will be as a result of their involvement in the current conflict; the deprivation decision is most unlikely to be of any material relevance to the chances of their being detained or killed as a result of military action;
(iii) A UK-linked individual who has been deprived of his/her British nationality is likely to receive broadly the same treatment (for better or worse) as an individual who retains British nationality.'

The submission contains general country information about Syria, provided by the Foreign and Commonwealth Office,

> "The human rights situation in Syria is poor. Local NGOs have reported thousands of credible cases of government authorities engaging frequently in torture, including during interrogations. Most cases of torture or mistreatment occur in detention centres operated by the government's security service branches. Capital punishment is legal in Syria, although there is limited information on its current use, due to the ongoing conflict. In addition, torture and mass executions are known to occur in ISIL-controlled territory in Syria."

32. As to the risk of mistreatment during detention by Syrian government forces or other non-state actors with no relationship with the British government British nationality is said to be unlikely to make a positive material difference to treatment. However,

> "We assess that, in some circumstances, being a UK-linked individual might make a difference in terms of treatment in detention, compared to a detainee with no links at all to the UK. This is most likely to be the case with (i) the Iraqi government, (ii) some Kurdish forces, (iii) the Turkish government and (iv) other non-state actors over which the UK has some influence. It is assessed, however, that – to the extent that there is influence – this can be harnessed as much for UK-linked foreign national individuals as for British national individuals. Regardless of whether the intercession is effective or not (we recognise that is some cases it might not be) it is unlikely to be materially different between those two individual groups (ie former and current British nationals.)
> ......
> Where there is an opportunity for intervention in respect of a detainee by HMG with a detaining state in the region (eg Iraq), in terms of FCO intervention, this would only be provided for a current British national."

33. In Annex C the submissions included the following as to the impact on R3's children,

> "With reference to section 55 of the Borders, Citizenship and Immigration Act 2009, it is considered that deprivation will not, in

itself, have a significant effect on the best interests of his children in the UK. It will neither impact on their mother's status nor their own status in the UK. It is acknowledged that deprivation may well have an emotional impact on the children, however, in taking account the best interests of the children as a primary consideration in the discharging of the SSHD's s.55 duty, it is considered that the public interest in depriving [R3] clearly outweighs any interest his UK-based children might have in him remaining a British citizen. Due consideration has also been given to [R3] choosing to absent himself from his family in the UK, and the risk he may pose to the wellbeing and interest of his children should he return to the UK."

34. As to Article 8 the following appears,

> "..[R3] has lived in the UK and held British citizenship since birth. Given he has travelled to Syria freely and engaged in terrorism related activity, any interference with his right to private and family life in the UK is necessary and proportionate in the interest of national security."

35. The 29 May 2020 bundle consisted of the second Open National Security statement and the statement of a Security Service witness RQ as well as a summary of the reasons for withholding closed materials. The National Security statement contains the result of a review carried out by the Respondent's counsel of material held by MI5. The Secretary of State maintained her key assessment but added, with reference to R3's own statements (IR3),

> "Within IR3 [R3] has stated that he travelled to Syria with the help of his first cousin, [B3] and he also describes undertaking charity work there for a charity launched by [B3] , called "Live Updates from Syria". We assess that [B3] travelled to Syria and aligned with an AQ-aligned group. On 26 May 2017 [B3] was deprived of his British nationality on the grounds that his presence in the UK is not conducive to the public good.
> Whilst we accept that [R3's] travel to Syria may have been motivated partly by a desire to provide humanitarian aid, we continue to assess that [he] travelled to Syria and aligned with an AQ-aligned group.
> In IR3, when discussing his departure for Syria in May 2013, [R3] has stated that he "*was not aware at the time that the FCO had warned against travel to Syria and the media were reporting on many medics and aid workers travelling on convoys into Syria without any problems*." Our case does not rely solely on the fact of travel to Syria, we assess that [R3] also voluntarily aligned with an AQ-aligned group while there."

The grounds of appeal

36. Following the preliminary rulings and prior to the hearing, the Appellant's grounds were refined by Mr Southey QC into,

(i) The allegation made against the Appellant is unfounded or fails to be made out to the required standard.

(ii) The decision is disproportionate and fails to be justified by reference to European Union law.

(iii) The decision is not justified or proportionate under domestic law.

(iv) The decision amounts to a disproportionate interference with the Appellant's right to respect for private and family life protected by Article 8 ECHR.

The appeal framework

37. The Appellant was present by video-link from Turkey throughout the Open hearings, including submissions. There has been no suggestion that he has not been able to exercise his right to appeal effectively, including the ability to give instructions and evidence. During his evidence there were a couple of occasions when the flow of questions and answers was interrupted but these were short and readily resolved. Care was taken by his legal representatives to ensure that the Appellant had connected to the hearing at all the other Open sessions, before they began. Two of the Appellant's witnesses also gave evidence by video-link. The Secretary of State's witness RQ gave evidence in court, screened, during the Open hearing. As well as a trial bundle of statements and accompanying material which ran to 1375 pages and an authorities bundle, we were provided with the March 2020 report of the Independent Reviewer of Terrorism Legislation and a lap-top onto which had been loaded a variety of documentary, news and other audio-visual data. All of this material has been viewed and considered.

38. Section 40 of the 1981 Act provides, as is material;

> (2) 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.
>
> ....
>
> (5) Before making an order under this section in respect of a person the Secretary of State must give the person a written notice specifying-
>
> (a) that the Secretary of State has decided to make an order,
> (b) the reasons for the order, and
> (c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997.

39. Section 40A(1) of the 1981 Act provides for a right of appeal to the First-tier Tribunal but s.40A(2) provides that s.40A(1) shall not apply to a decision if the

Secretary of State certifies that it was taken wholly or partly in reliance on information which, in his opinion, should not be made public in the interests of national security. The relevant provision in that instance is s.2B of the Special Immigration Appeals Commission Act 1997 which provides:

> "A person may appeal to the Special Immigration Appeals Commission against a decision to make an order under section 40 of the British Nationality Act 1981 (c.61) (deprivation of citizenship) if he is not entitled to appeal under section 40A(1) of that Act because of a certificate under section 40A(2)..."

40. Section 5 of the 1997 Act provides for the Lord Chancellor to make rules to govern s.2B appeals, including by having regard to the need to ensure that information is not disclosed contrary to the public interest. Accordingly, Rule 4(1) of the Special Immigration Appeals Commission (Procedure) Rules 2003 provides that SIAC shall 'secure that information is not disclosed contrary to the interests of national security.'

41. This appeal is a challenge to the merits of the decision to deprive. It is common ground that SIAC has to decide for itself whether the Secretary of State's decision was conducive to the public good, on the basis of all the evidence before it (see *Al-Jedda v SSHD* [2013] UKSC 62 at [30] applied in *Y1 v SSHD* SC/112/2011 and *M2 v SSHD* [2015] UKSIAC SC 124 2014). In doing so SIAC should give great weight to the assessment of the Secretary of State who is in the best position to judge what national security requires (see *Home Secretary v Rehman* [2013] 1 AC 153 at "[26])."

42. We adopt the parameters of the task as summarised in *Y1* at [56],

> "...The critical points emerging from the speeches in *Rehman* are as follows: firstly, there must be a proper factual basis for the decision; secondly, the Secretary of State is entitled to take the material together, to form an overview, and there is no obligation to treat each discrete piece of information as a separate allegation, which , if refuted or weakened one by one, necessitates without more, a decision against deprivation; thirdly, the essence of the test is that the individual represents a "danger" to national security, not that he or she can be proved to have already damaged it: the Secretary of State is entitled to take a preventative or precautionary approach; fourthly, national security is engaged with matters beyond the borders of the United Kingdom, perhaps particularly in relation to terrorism, even where that activity is directed against other States; fifthly, due deference must be shown to the policy of the Executive with regard to national security, and the view of the Secretary of State must be given considerable weight."

43. We have come to our decisions as to whether there is a proper factual basis for the

deprivation decision. We give weight to the assessment of the Secretary of State and her security advisers, but we have reached a conclusion, based on our own assessment of the Open and Closed evidence, whether we are satisfied to a high degree of conviction that the Appellant presents a future risk of threat to the national security of the UK. We have also made an assessment for ourselves of the impact of the deprivation decision on the Convention rights of both the Appellant and his family, both that in the UK and his new family presently in Turkey.

Who is R3?

44. His parents were naturalised British citizens when he was born. He has three siblings, all married and living in England. His mother lives with his younger brother. His father died in July 2017. R3 went to local schools in Leytonstone. After A levels he obtained a BSc in computing from the University of Westminster. Towards the end of his university career, he tells us, he began to take more interest in his Muslim faith, became devout, grew a beard and started using Islamic chat rooms as well as listening to talks on cassettes and on YouTube. He became more conscious of the various struggles that Muslims faced in different parts of the world. As to influences at that time he listened to Sheikh Muhammad Al Shareef from Canada and Imam Anwar al-Awlaki. The Appellant acknowledged that the latter "became very extreme towards the later part of his life but my interest in his talks remained his earlier stuff." He would do research for Islamic opinions on a topic and make up his own mind. Nor was he politically active although he helped with bucket collections for a registered charity Helping Household Under Great Stress (HHUGS) for those adversely impacted by anti-terrorism laws and policies. He helped distribute leaflets and collect signatures for a petition to prevent the extradition of Babar Ahmad to the USA. He also helped to run a youth club for several years at the Masjid al-Tawhid in Leytonstone, where he took Quran lessons himself. A reference from the Masjid confirms that he had a good rapport with young people and part of the initiative of the club was to help youngsters avoid extremism.
45. He had experience of European travel as a student and also went to the USA. For his honeymoon he had been to Dubai. In December 2006 he visited Switzerland with his brothers and a first-cousin, B3. The Appellant worked for B3's father, as a gas engineer.
46. When he was 11 he travelled to Pakistan with his family for the Eid al-Adha festival. He returned to Pakistan after graduating, in 2001 for two weeks with his

mother who wanted to visit. His last trip to Pakistan was in April 2009 when he went on his own and travelled around for a month at a time when he was having problems with his wife. On his return he was detained at the airport for a few hours and asked questions about his religious practices and political views. In his witness statement he recorded,

> "I was not surprised that I had been stopped. One of my friends at that time was Muhammed Tunveer Ahmed ('Tunveer'). Tunveer's younger brother Abdul Jabbar Khan was married to [B3]'s sister Zakia. [B3] and I were also close and therefore we would often see one another. Tunveer, Abdul Jabbar and their other brother Mohammed Azmir Khan were all placed under control orders and asset freezing orders in 2007. Abdul Jabbar was a member of Al-Muhajiroun and had absconded and was reportedly killed in Pakistan in 2010. Azmir was also reportedly killed by a drone in Pakistan the following year. I am not and have never been a member of supporter of Al-Muhajiroun. Although [B3]'s in-laws were members, he himself was not. To be a member or supporter you would need to be preaching or doing some sort of dawah for the group which neither [B3] nor I were ever involved in. Abdul Jabbar did invite me to his home and to some Al-Muhajiroun lectures some times which I recall attending I always kept an open mind about different Muslim groups but I did not agree with them."

47. Mr Dunlop QC, for the Respondent, asked him about these relationships and the Appellant drew back somewhat from the impression his statement gave. He said he was not 100% sure he knew that all three brothers on control orders were members of Al Muhajiroun. He accepted that he was drawing a distinction between feeling sympathy for a set of beliefs and actively promoting it although he denied that he had even felt sympathy for Al Muhajiroun. He had known in 2005 that it was a proscribed organisation and that it advocated violence but he denied knowing that it had praised the 9/11 attacks at a conference in 2002. He denied having chosen to befriend and spend time with its supporters and said he didn't have a "decent relationship" with any of the three. Attending lectures did not indicate sympathy and, anyway he only attended "maybe two." He had only met Abdul Jabbar a few times on family occasions. He was friends with Tunveer because of the family relationship from 2000 and he knew that he spoke about controversial issues but he wasn't sure about his views on violence. He claimed to have kept his contact with the three brothers limited to when he was doing work for Tunveer or at a family event. He was asked why he had not expressed these limitations in his statement and replied that he had not thought he needed to. He agreed that Islam is a religion of peace and said that violence in the name of Islam is unthinkable. He disputed that

he was friends with three people who preached and advocated an unacceptable distortion of Islam. He said, "It was limited contact, I came across Tunveer occasionally so I was not spending a huge amount of time sharing opinions."

48. In 2010 Tunveer was arrested for attempting to abscond from his control order and the Appellant was accused of assisting him. He was interviewed but released without charge. On another occasion he was arrested in connection with another matter which was not pursued but during a search of his home CS gas containers were found and he was charged with possession of a noxious substance which he denied because, he said, he didn't know how it had got into his shed. He was convicted and sentenced to 120 hours community service. He maintains that he had not known it was there.
49. The Appellant's ex-wife confirms in her statement that he thought of Tunveer as his friend. The last call Tunveer had made in 2010 before being arrested, was to the Appellant.
50. The Appellant told us he was also stopped when he returned from a visit to Saudi Arabia on pilgrimage with his parents in 2011 for a short interview.

Why did R3 go to Syria in 2013 and was he only doing humanitarian work there?

51. The Appellant's statement explains that his life before he went to Syria was "a bit of a mess." He was still working as a gas engineer but not making enough money to move out of his parents' house where he lived with his wife and family. He had started a restaurant business which failed. He was the only member of the family trained to operate his father's kidney dialysis machine but a few weeks before he left the UK his wife left home after an argument and although she returned so the children could go to school, they were effectively separated as a couple. The Appellant felt he had found his calling when he saw the humanitarian catastrophe unfold in Syria during its civil war. His cousin [B3] had been in Syria for a year already and sent him WhatsApp messages about the help needed in the refugee camps. He says,

> "He never directly encouraged me to come but I was asking him lots of questions about how I could help. I saw and heard from the mainstream media and from various charities and aid groups about the increasing number of people travelling to Syria to help the oppressed people there and began to think about going there myself. I had been assisting with the aid convoys going over so it was a logical next step. I felt that I had found some sort of purpose or meaning in my life. I wanted to go and help IDP's and refugees. I had no concrete plans of what I was going to do and how I was going to do it but I just knew I needed to go. I wanted to get

> the greater reward from God for helping people on the ground. [B3] was already there so at least I had a contact who could help me out...Although I had never travelled anywhere else for humanitarian purposes, Syria drew me for an additional reason. Syria is mentioned many times by the Prophet (peace be upon him) as a land of blessing and the rewards of helping the people there are enormous. "

52. He was not aware that the Foreign and Commonwealth Office had warned against travel to Syria and he had seen media reports of doctors and aid workers joining convoys to Syria without any problems. He booked a one-way ticket not knowing when he would return but expecting to be gone for six months to a year. The Appellant relies on extensive media research done by his solicitor, Fahad Ansari which confirms that although reports about British nationals being among rebel groups began to emerge in mid-2013 the frequency of aid convoys only decreased significantly in 2014 after the kidnapping of the aid worker Alan Henning in December 2013. It was at around the same time that the Foreign and Commonwealth Office communications focussed on terrorism and 'Islamists' in Syria rather than the Assad regime and the need for non-lethal and humanitarian aid.

53. R3 expressed no fear for himself in his statement. He said that after he arrived in Syria his concern was,

> "...the increased in-fighting between the various groups trying to take control of different areas. As a foreigner, there is a general assumption that you are either with Daesh or Jabhat al-Nusra so if a different group takes over who did not know me or what I am doing in Syria, there is an automatic assumption that must be with one of those two groups."

54. When he left on 30 May 2013 he took £3000 savings leaving £5000 in cash for his wife W1 and children. His family was not happy with his decision to go. As to his wife he said,

> "I had not told [W1] that I was definitely going to go to Syria. I had told her that I was going to Turkey to help out in the refugee camps which would possibly involve also going into Syria. I did not want to make her worry too much so I guess I did not want to give her too much information...I did not tell her how long I was going for. To be honest, I did not know myself as I did not have a plan."

55. In her statement W1 confirms that her husband told her he was going to Turkey to help refugees on the border and that was where she believed B3 was too.

56. The Appellant said his brother took him to the airport. In Istanbul he paid for a six month visa and took a coach from the airport to Rehanly near the border, a fifteen

hour journey. He stayed overnight in a hotel and then went to the border crossing where he told Turkish officers he was going to Syria to give humanitarian assistance. B3 had arranged for a lift to the camps where he was, at Atmeh in Idlib province, and for him to stay with a family he knew there.

57. Mr Dunlop tested this account of arriving in Syria. The Appellant said that what he was going to do was not certain but on the coach journey as soon as he arrived at the border or on his way to the border he had a telephone conversation with his cousin who told him the options and the Appellant decided to go into Syria immediately. He agreed that he had not told his wife he was going to Syria. He said he had left what he was going to do deliberately vague with her. He didn't want to cause her unnecessary concern. He was more open with his brothers who didn't worry about him when he went travelling. He made it clear to them that it was a probability that he would go into Syria. He agreed that within a day of arriving in Turkey he had travelled on to Syria. He agreed that the border crossing was "pretty much instant." He could not explain why his statement contained no reference to this seminal conversation with B3 while on the way to the border as a result of which the Appellant travelled straight on into Syria.

58. The Appellant said he was known in Syria by a kunya (nickname), Abu Hanzalah. He said he spent his time helping B3 who was living with his wife and helped to distribute aid arriving in convoys. The Appellant had worked with Dr Shajul Khan on hospital projects. The camps the Appellant and B3 were involved in were not associated with any military group. After a few months he started to rent a house in Atmeh town. Daesh caused conflict in Atmeh but was driven out in 2013 by a coalition of other groups led by Jaysh ul Mujahideen. A couple of years later Jabhat al-Nusra (JAN) developed a presence in the town. JAN operated a humanitarian department and carried out aid work, but not in Atmeh. Of himself and B3 who met together every day to discuss their tasks and schedule, the Appellant said,

> "We made a conscious decision not to work on any projects in collaboration with this group as we had a policy of not working with military groups."

59. The Appellant reiterated this separation in cross-examination. There were a lot of different military groups in the area, they came and went, merging, disbanding and so on. From 2015 onwards JAN were one of the most powerful and had a big presence but he and B3 did not co-operate with any of them in any way. We did not find this to be a credible account, not least in light of the degree to which other

witnesses described needing to at least negotiate with military groups in order to keep their work going. The impression given by the Appellant was that for the most part he and his cousin were able to get on with their aid work unhampered by demanding militia and that when demands were made for aid from them, they were able to deflect or resist.

60. B3 launched a brand to raise awareness and funds called Live Updates from Syria (LUFS). A number of screenshots from the Facebook page from November 2013 to August 2017 were provided. Videos are often embedded within updates and many updates show images of children. Overall, they show a focus on fundraising, messages of gratitude and reporting of aid distribution. The Appellant said LUFS would fundraise for specific projects for a registered UK charity and the charity would arrange for the money to go to its Syrian partners after which LUFS would then help in implementation, but sometimes containers or convoys arrived which LUFS took charge of distributing. As well as the two of them, three Syrians were on the distribution committee. The Appellant's role was distribution, the warehouses and logistics. At one stage they had five distribution centres and he recruited staff from the local area. By the time he left to go to Turkey in 2017 LUFS had fifty staff and two warehouses for up to eleven containers of aid. He delivered aid to hospitals and would be approached in the street, at the mosque or at his home. He said,

> "We, however had to be very careful who we gave aid to and had a policy of never distributing it to any military groups, even when they asked us for it. We would refuse to even give food to them as we were aware it could impact other charities who were working with us. Moreover, we did not want to give an impression that we were supporting one militia against another. However, we had to handle it sensitively. Making an outright refusal would carry inherent dangers for our own safety and we had to diplomatically explain to them that we were given the aid as a trust to give to the needy widows and orphans and that they could approach other aid groups for help if they needed it. Some militias were persistent but rarely became intimidating or forceful.
>
> On one occasion Hayat ut-Tahrir al-Sham (HTS) members came to one of our warehouses and told staff that they needed to carry out an inventory of all our stock...I confronted the HTS soldiers and told them that it was not their property to check...this soldier then called his senior officer who I also argued with before they backed down. This happened a few times when we were not present and they took aid from the warehouses...They were the armed group who were in charge of the area and by confronting them after the event, we would have been putting ourselves in a lot of danger...
>
> By the time I left in August 2017, the percentage of aid delivered that was then lost in theft by either employees or armed groups was very small, approximately 1%."

61. B3's wife B3W provided a statement dated 2 October 2020 in support of her husband's cousin's appeal. She has been living in Atmeh, Syria since 2012 with her family. She said,

> "[R3] joined us in Atmeh in May 2013 and quickly became [B3]'s right hand man on our projects. They used to both work together for [B3]'s father in the UK and back then I remember it was [R3] who was always the one checking up on [B3], making sure he was where he needed to be and doing the work he had to be doing. It was the same over here. [R3] took charge of the warehouses and logistics and was running the show behind the scenes while [B3] was the face of Live Updates making the personal connections, building relationships and fundraising. They were a great team."

She continued that LUFS had been harassed by HTS for many years and they behaved as if they had priority over the aid. After a spate of trouble with HTS in 2019 her husband was arrested by HTS in June 2020 and accused of mis-managing funds intended for humanitarian purposes. He was released in July but then rearrested in August and has been in custody since then.

62. The Appellant's Syrian wife ("W2"), states that she did not know of him being involved with any militant group and was aware only that he was involved in distributing food, blankets, and toiletries to widows and orphans, setting up schools and housing for refugees, teaching the Quran and doing youth work with teenage boys in the camps.

63. When he was cross-examined about the role he played with LUFS and his cousin the Appellant said that as people donated money to LUFS intending it should go to charitable causes, they needed to have records. He was responsible for establishing systems for distribution of aid donated to LUFS. The systems were partly computer based and partly on paper. He kept records of where all the donations went and what they were spent on. He accepted he had not produced any records for the hearing. It is clear from his evidence that his role extended to recording where financial donations were spent.

64. The Appellant agreed with Mr Dunlop that HTS was formed from a merger between various groups including JAN around the start of 2017 and the incidents when HTS took aid from LUFS warehouses must have been that year before he left for Turkey but he maintained his evidence that although the 1% figure he gave was an estimate because container loads made stock-counting time-consuming, they had records of where everything went and despite some uncertainty due to delegation of tasks to others he was confident that only a very minimal figure was lost due to

armed groups taking it and others pilfering. Again, we found this evidence unpersuasive when allied with his case that their operation was not under the aegis of any military group who would have an interest in protecting it.

65. In his statement the Appellant describes how he helped build a school but didn't have anything to do with the vision, curriculum or management. He would travel with armed protection to get through checkpoints into and out of danger zones in order to take abandoned equipment such as chairs, desks and roof tiles. He described one area occupied by fighters from Turkestan where the leader told him he could take roof tiles for the school project. The Appellant, with others spent two months stripping the roof of an abandoned building while shelling was going on. One of his helpers was injured by shrapnel after a tank shell landed nearby. He described building a children's playground as another project he led. He also described teaching the Quran to children aged 6-12 in schools operated by LUFS with funding from a UK charity and providing education and guidance to local youth aged 10-17 in the camps. This was separate from B3. With a group of local people he provided activities such as football, horse-riding and swimming together with Quran and moral teaching. Video and photographic material illustrated this, as well as other aspects of the Appellant's evidence.
66. A number of witnesses provided statements which spoke of the Appellant's compassionate nature and his desire to help the Syrian people, including his ex-wife and his brother Amir, both of whom believe that he did only good work for refugees while in the country. Amir said that he was fully aware that R3's intention in travelling to Turkey was to carry out aid work in Syria. Dr Shamela Islam-Zulfiqar, a medical practitioner and humanitarian activist who works for Syria Relief Charity as a fundraising executive and Medical Deployment Lead travelled to Syria three times in 2013 and several times since then to the Turkey/Syria border area. She confirms that armed protection is necessary to carry out such work in Syria as well as 'engagement' with local militias in order to arrange safe passage. She has never met the Appellant but she met B3 and his wife during one of her trips in 2013. Her impression was that they were dedicated to humanitarian work at huge personal risk.
67. Complementary evidence was provided by Faddy Sahloul, CEO of a UK registered charity serving in Syria and bordering countries. His organisation works in areas which larger relief charities cannot access. A level of interaction with rebel groups is necessary in order to work in such areas and many of his staff and operations

have been threatened or harmed. The charity's work was filmed by the BBC Panorama programme and the crew were escorted by a militia group for safety from others. Mr Sahloul too has no direct knowledge of the Appellant but he knows of B3 through the LUFS media. To his knowledge LUFS is working successfully in Syria to give aid.

68. Nagiebullah Khaja, a Danish journalist and film-maker who travelled in Syria during the civil war and covered the humanitarian crisis, was called to give evidence of his personal contact with the Appellant on four trips to Syria in 2014 and 2015. He knew the Appellant as Abu Hanzalah. In 2014 he was working closely with his cousin R3, distributing aid, building a school and a mosque. Over a two week period Mr Khaja saw him several times on one visit and also on a second visit when he was based in Aleppo but took time to visit the Appellant and his cousin who were still heavily involved in aid work. In November 2015 he filmed B3 and his team who were cleaning up camps after flash floods. The Appellant did not want to appear in front of the camera.

69. The witness was able to conclude,

> "From what I know from my time with [R3] he is definitely not somebody who was involved with or aligned to any militant group, let alone Al-Qaeda. A lot of my work was investigating foreign fighters particularly with Nusra and I came across many individuals including British citizens who are fighting with them. As far as I am aware and from my dealings with him and with the various militant groups I have investigated, [R3] is not in any way linked to them."

He also described how he had to interact with various militant groups in order to do his work but he never expressed support for them.

70. The Appellant dealt with occasions when he had possessed firearms in Syria. He bought a handgun within a month of arriving and used it for target practice but never proactively. He and B3 carried Kalashnikovs in their vehicles when they used ambulances to transport aid near the front line but he never handled one on such a trip. It was standard operating procedure on aid drops to have local Syrians and arms to protect the people and aid from militias and other forces. He did handle a Kalashnikov while travelling around outside Atmeh but never used it. Finally, he did carry out his share of a local guard duty to protect the town when requested by the mosque from 2015 to 2017; a total of half a dozen times. He went up a mountain to practice firing a Kalashnikov for those occasions but never had to use it.

71. The Appellant criticised AQ in his statement. He had never supported or aligned

with AQ, JAN, HTS or any other group that follows a similar ideology and justifies the targeting of civilians.

Leaving Syria in 2017

72. He went to Turkey in August 2017 because his ex-wife had taken their children there on holiday after his father died in July that year. They had previously met there in 2014 and had a good holiday together. By 2017 it was harder to cross the border and he made an arrangement with a smuggler who took him on a mountain route and he crossed the border at night. A car then took him to Istanbul. He was stopped at an army checkpoint and produced a Turkish residence document belonging to a Syrian friend who had allowed him to use it. He had been exchanging messages with his ex-wife in the days before he left Syria. They all met to do some sight-seeing but the Appellant realised he was being followed. His family returned to the hotel but the Appellant was arrested in a mosque. He had sent a message to B3 fearing this was about to happen. His ex-wife and children were also detained for a week, before they returned to the UK.
73. Questioned by counsel for the Respondent the Appellant said the decision to go to Turkey was a relatively spontaneous decision resulting from his father's death that year and a wish to see his children. He planned to be with them for a few days or a week. He was asked why he didn't cross the border legally. The situation on the border had changed and that was not possible. He was asked what telephone number he had used to call the smuggler but he said he could not remember it. It was possibly one he had been using before. He had never had a Syrian telephone number and at the time, mid-2017 he was using a Turkish number.
74. While in Syria he had changed his phone number, he could not remember how often, twice perhaps. This would be if the SIM card stopped working. He initially said he changed his number for the last time in the week before he travelled to Turkey, the timing was a coincidence. Then he said that the number he had been using was purely work related, staff would call him on it and he got another SIM card to use so that when he went to Turkey he had one handset but two SIM cards. When tested about why he did this he said, "I probably used the old number to call the smuggler. I don't remember the numbers." He claimed he didn't know the smuggler's name. A name referred to in the interview record from his detention in Turkey was put to him and he was asked if that was the smuggler. The Appellant said, "I would not have thought so. I only came across that name once I was detained." He agreed that the name was quite memorable and he didn't remember

referring to the man by that name. He didn't provide any phone number he had used either in Turkey or Syria.

75. He said his own passport had expired but he had not tried to use it to enter Turkey or produced it when stopped. He accepted that he didn't have the right to enter Turkey using an identification document belonging to Mudar Basbus, a Syrian friend. It was not clear why he chose to use the false identity rather than produce an expired but otherwise legitimate passport.

76. While in custody he was accused of being a member of Daesh/ISIS and entering Turkey illegally. The Appellant's brother arranged for a Turkish lawyer and an interpreter. A record of the interview was produced in translation. In his statement the Appellant said that the record was not completely accurate or "complete as, for example, I did make additional references to my aid work which are not mentioned." He was cross-examined about his account as documented in the translated interview record. Mr Dunlop asked him about the accuracy of the record and the Appellant said that missing references to what he had said about his aid work was the main inaccuracy. He agreed he had been represented by the lawyer his brother had arranged, that each page bore his signature and that the content had been translated to him before he signed it. However, he signed it only on the basis that what was translated to him from the Turkish was accurate as a record of what he had told the interpreter in answer to questions he was being asked. He agreed that when asked for brief information about his personal background he had not mentioned that he had a wife and child in Syria. He agreed that the record showed he had not given a truthful answer about how he had entered Turkey in 2017. He denied that he had lied. He said he didn't have to say how he had entered Turkey because those questioning him knew that. The authorities told him he had entered illegally. He didn't think that the interpreter had read out that part of the record which states, "I didn't enter-depart Turkey via illegal means." However, he agreed with Mr Dunlop that he had read the record of interview when preparing his witness statements and the only inaccuracy he had pointed out was the lack of sufficient reference to what he had said about his aid work.

77. Mr Dunlop returned to questioning about telephone numbers. The Appellant agreed that when asked; "What are the phone numbers and email addresses you have used until today? Are there any lines registered in your name but you are not using or are being used by someone else?" He had replied, "As I mentioned above, my email address is igatha.shaam@gmail.com. My phone number is the number on the sim

card in the phone, which you have taken from me. I don't have any other numbers." But he denied that his answer was untrue. He said they had asked about the number he had in his possession which were registered to his name and the other numbers he had inside Syria were not registered in his name. He denied that the answer he had given in his interview was misleading in any way. He didn't think any numbers in Syria could be registered in a person's name; no ID or checks were required.

78. Although he had used a number in Syria for "possibly months, not years" at a time he could not remember it. The significance of these answers arose from the apparent reason for his detention in Turkey revealed in the interview record and court documents provided to the Commission. The underlying investigation appears to have been connected to telephone contact between a number used by 'Mudar Basbus' and a number attributed by the authorities to Ebubekir aka Ilhami Bali who was suspected of involvement in Daesh/Isis.

79. When asked during his interview who he had contacted the Appellant said that on the phone that had been taken from him on his detention he said he had contacted people within the context of his charity work and children and others that he taught the Quran to. He gave the names of men in charge of three camps in the Atmeh region. The Appellant told the Commission that these were all the people that he had regular contact with. He didn't mention the smuggler that he had had contact with or his cousin B3 even though he had called him when he feared he was about to be detained. He was asked why he didn't mention B3 and he said he was trying to paint a picture of his work, if he were to give the names of camp managers that would legitimise his work. It was not easy to follow this reasoning. If the Appellant truly believed (indeed knew) his cousin to be a genuine aid worker who had been active in humanitarian work for even longer than he himself, it is difficult to see why he would hesitate to mention him.

80. The Appellant did not accept that he had been in possession of or used the number which the Turkish authorities alleged had been in contact with Ebubekir. Implausibly, he could not remember whether either the number he had been using that week, ie the new number, or his old SIM, were the same as the number put to him in the interview, where he said,

> "I don't remember this number. It may belong to me but I don't remember the number. I have purchased the line in the phone which was taken from me, a week ago and I started using it. I have called the taxi driver.....the receptionist of a hotel...another hotel where my wife was staying... I have had no contact with the person mentioned above called Ebubekir..."

81. Aysegul Karpuz, a practising member of the Izmir Bar Association of Turkey has been representing the Appellant in his Turkish immigration matters, since April 2018. She gave evidence from her office in Izmir, Turkey through an interpreter. We found her to be a genuine and objective witness with a professional and careful demeanour.
82. She raised potential concerns about the integrity of the process of detention and interview for terrorist suspects like the Appellant in August 2017. She was not the lawyer arranged for the Appellant by his brother and she did not know the lawyer who had been present at the interrogation and whose name is on the record although she had no reason to doubt his competence. She was able to assist the Commission with her experience of the process. The note of interview will not have been a verbatim record and in order to check whether it had been elicited in an appropriate manner she would want to know how often the legal representative had intervened to ensure it was being done lawfully. This could not be assessed from the written record. The presence of a lawyer was not of itself a guarantee that human rights had been respected because lawyers in what may be termed 'political' cases may be intimidated and step back from challenging the authorities. Sometimes they are scared and sometimes not. Examples of improper procedure were interviews that took place in the middle of the night after or with ill-treatment of the suspect. Ms Karpuz also said that no competent lawyer would let his client sign an interview record until it had been translated into a language he understands.
83. While accepting this evidence of what may happen to a terrorist detainee from Ms Karpuz we note that in his evidence the Appellant did not allege any mistreatment during or before the interview which was conducted, according to the record, between 7.10 and 8.30pm, his brother had arranged for a lawyer to attend and no criticism was made of that lawyer or the interpreter by either the Appellant or his brother.
84. Mr Dunlop asked the Appellant about a further translated record, this time from the Istanbul 10th Magistrates Court in which the Appellant is recorded as having said that he had spent a few months in Turkey when he arrived from the UK in 2013. The Appellant said that isn't true and he didn't think he would have said it. The record also indicates that he said he had no previous convictions. The Appellant agrees that he said that because he didn't think that his conviction in respect of the CS gas had been recorded; he believed that his sentence of community service

meant he had no criminal record, but he conceded this might be an error on his part. He said he might have been represented by a duty solicitor after arrest although he could not remember if he had a lawyer at the trial where his defence was not accepted. We were somewhat surprised at this lapse of memory and expect that any representative would not have left the Appellant in doubt that he had acquired a conviction.

85. No charges were pursued against the Appellant in Turkey although he was detained for six months and then released to a deportation centre. The record of the decision not to prosecute contains the following, "an indictment cannot be filed only based on an intelligence report." He remains flagged as a terror suspect although Ms Karpuz is trying to have the marking removed. She confirmed that the Turkish language record of the decision not to prosecute does contain the same assertion about an intelligence report being insufficient to support an indictment, but she said that in Turkey a case can be opened up in court even if the case could not proceed to a conclusion purely on evidence such as that of an intelligence report. But in the Appellant's case she understood the prosecutor's decision to vindicate him entirely.

86. In both forms of detention, in prison (after two weeks at the police station about which he did not complain), and the immigration detention, the Appellant complained about the conditions and the adverse impact that his loss of citizenship, along with consular support, had on how he was treated. He was shocked by the decision to deprive him and felt betrayed, although he had been aware that B3 had had the same experience. In Turkey he has been refused any formal status due to the terror code attached to his name after his arrest for suspected involvement with Daesh/Isis.

Aid as a cover

87. Robin Yassin-Kassab, a British writer and journalist of Syrian origin visited the Turkey/Syria border and surrounding areas on several occasions during 2013 and 2014. His research was focussed on Syrian experiences of the revolution and war and he claimed little expertise on the foreigners who went there during the period that the Appellant did. However, he was able to provide some relevant evidence. In 2013 Mr Yassin-Kassab spent a day at Atmeh camp interviewing refugees, civil activists, fighters and aid workers. His understanding of aid needs within and around Atmeh is that most refugees arrive with very little and need everything. The camp had grown to 30,000 people when he visited it. The most obvious military presence at the time was the Free Syrian Army. In this area civilians often carried

arms, including to defend themselves against kidnapping, and this did not indicate membership of an armed group. Mr Yassin-Kassab found the Appellant's account of his purchase of a firearm soon after arrival, "very plausible." The witness assessed that in recent years JAN, rebranded as HTS, had grown to dominate most of Idlib province where Atmeh was located.

88. He had heard of the Appellant, B3 and LUFS but knew little about them. He observed that the limited LUFS media output he has seen did not contain hate speech. He had no reason to believe they were aligned with any military group. His view is that it is improbable that these men involved in building a media profile to promote charitable activities would lead a double life in the war zone as fighters.

89. Amongst the material relied upon by the Secretary of State is a report dated March 2018 by Rodger Shanahan 'Charities and terrorism: Lessons from the Syrian crisis' for the Australian policy think-tank the Lowy Institute. This explored the challenge faced by international security agencies from individuals and groups who use genuine humanitarian needs generated by conflict as cover for foreign fighters and to raise funds to support terrorist groups. Examples are included of British-born jihadists who have subsequently been open about their willingness to exploit humanitarian activities in Syria and Iraq. Omar Hussain aka Abu Sa'eed Al-Britani described in a blog the utility of humanitarian cover in avoiding detection. Syed Hoque and Mashoud Miah were convicted in 2016 of using humanitarian convoys to fund terrorism in 2012 and 2013 as well as sending money to a relative who was a member of the AQ affiliated Jabhat al-Nusra. The first British suicide bomber in Syria Abdul Waheed Majeed had registered with an aid convoy administered by the Children in Deen charity three days before it left the UK and in February 2014 the Charity Commission had issued a warning that "aid convoys to Syria may be abused for non-charitable purposes."

90. According to the report some jihadists use social media to create profiles of themselves as humanitarian workers with carefully curated images of involvement with widows and orphans which are "almost impossible for media organisations or researchers to verify." Muslim converts such as Oliver Bridgeman who claimed to be working in refugee camps and were the subjects of news and documentary focus, were subsequently suspected of engagement in hostile activities. He had been seen on social media delivering aid for the UK charity One Nation and the UK Charities Commission opened an investigation into One Nation in November 2016 regarding its financial controls, trustee decision making and due diligence in its relations with

other individuals and organisations. Mohammed Zhubi had used a charitable foundation to solicit funding but was indicted on terrorism charges in the US. Abdul Salam Mahmoud was visible on the social media profile of Zhubi's foundation caring for children in Syria but he was later claimed as a martyr by JAN. Roger Abbas was an Australian kickboxer said to have been killed in crossfire while volunteering in a refugee camp in Syria but was claimed by a jihadi website as having died fighting with JAN in Aleppo.

91. The report emphasises the role of strengthened domestic legislation to prevent manipulation of humanitarian activities. The key findings included:
    - "While terrorist abuse of charitable donations is a limited problem, even small amounts of funding can have disproportionately large effects.
    - Early government intervention in setting due diligence standards for humanitarian aid groups operating in, or raising funds for use in, high risk conflict zones is essential."

92. Mr Yassin-Kassab gave evidence from his home in Scotland and was cross-examined by Mr Dunlop. He agreed that the mind-set of foreigners who went to Syria during the war was not the focus of his research. He was closely in touch with the civil revolutionaries not the Islamists. He agreed with Mr Dunlop that he knew little about the Appellant and his cousin. When he concluded that a double life is improbable he meant that it would be unsafe for humanitarian workers to fight for a military group in an area where there were other military groups. They would be targeted by other groups for assassination or arrest. He thought it might be possible for days or months to lead such a double life but not for longer. His experience of this part of Syria is that everyone wanted to know what everyone else was doing and where their allegiances were. It would be impossible to hide what someone was doing for years. If an individual was with ISIS they would have to go to an area where ISIS was dominant or once the word was out they would not be able to stay in an area controlled by a different group. The witness maintained his view that both the Appellant and his cousin were working in aid provision and education for refugees and only in that.

93. Counsel referred him to documented examples of terrorist fighters who pretended to be aid workers such as Omar Hussain aka Abu Sa'eed Al-Britani. Mr Yassin-Kassab accepted that he had not read the relevant material before writing his report in this case. He had not known about Syed Hoque and Mashoud Miah. He had

heard about Abdul Waheed Majeed before composing his report but not in depth and he had not sought out further information. He had not heard of Mohammed Zhubi, Abdul Salam Mahmoud, Oliver Bridgeman or Roger Abbas. He was unaware of the Commission's determination in the case of *U2*. He conceded that many individuals involved in terrorism were known to be connected to the Charity Aid Convoy but the central thrust of his opinion was that the Appellant had been operating in Syria for so long and if he had also been a fighter he believed that would have been discovered in that time.

94. He told Mr Southey in re-examination that he was aware B3 has recently been arrested by a military group which he believed was due to an argument over aid or money but that did not lead him to change his opinion. He said

> "It frequently happens that groups target people who have access to money and aid in order to control it, so they have power to distribute it, either to their loyal community or to show people have to be friendly to them to get aid. I met a Syrian American who told me the same story, he armed himself when delivering aid, he tried to travel inside Syria with militias in order to defend himself or the aid itself. If one of these men had been attacked on basis of them being with a rival group that would change my opinion but if it is just to get access to the aid then it doesn't change my opinion."

95. The Appellant also relies on extracts from the memoir, "War Doctor" by Dr David Nott who travelled to and worked in a hospital in Atmeh in 2012 and, in Bab al-Hawa (also in northern Syria) and Aleppo in 2013, 2014 and 2016. These speak of the fear felt by those administering medical aid, from ISIS and other militia groups and demonstrate the bravery of doctors in the war. Dr Nott does not refer to the Appellant or LUFS.

96. Robert Gleave, Professor of Arabic Studies at the University of Exeter provided a wide-ranging expert report on alms and charity work in Islam, the unity of Muslims across national boundaries, the history of Shari'a law and such terms as the Caliphate in Islamic thought. He was not cross-examined. He confirmed that Muslim people may demonstrate their solidarity with suffering Muslims and carry out a religious duty by travelling to warzones to provide humanitarian assistance, without any intention to join in military activity. Syria, or 'Sham' has a special significance to Muslims due to its role in the end times as well as having been the home of the first dynasty of Islam. Further, that the delivery of such aid requires a "modus operandi" with local powers some of which will not be viewed positively by Western powers. One striking element of the Appellant's evidence of course, is

that he did not claim to have needed to achieve anything approaching an understanding with any military group.

What are R3's prospects?

97. After he was released from immigration detention in February 2019 his mother and brother travelled to see him and he was able to get accommodation. He was detained again in June 2019 after he went to a beach in Izmir socialising with men he had met in detention in Turkey, all of whom had terror codes attached to them. He told the Commission that he socialised with these men because he didn't know anyone else although his evidence was also that when he was released on 18th July he stayed with other friends who did not have terror codes attached to them. He denied that he had spent time with the men who were alleged to be terrorists because he shared their world view that violence was justified. It is noteworthy that Ms Karpuz had also been told by the Appellant that he had no other friends and that was why he had been with them when detained.
98. His wife and daughter made several unsuccessful attempts to cross the border from Syria into Turkey before managing to join the Appellant in August 2020. She describes these in her statement. The family has not registered with the Turkish authorities, not least because they believe the local quota for refugees has been reached.
99. The Appellant will not return to Syria. His cousin has been detained by HTS after a series of disputes. He does not consider Pakistan is an option because he fears that intelligence will be shared between Turkey and Pakistan.
100. Ms Karpuz, confirms that he has no status in Turkey and cannot work legally or access free health services. She has launched an appeal to remove the terror code which prevents him obtaining residence documents or travel documents. She states that Pakistan has refused to accept him as a citizen.
101. The Appellant would like to return to the UK with his wife (who is now pregnant) and daughter, although he is concerned that he might be made subject to some form of restrictive order or prosecuted. He also wishes to play a greater role in the lives of his older children. As Turkey refuses to grant him residence he remains vulnerable to be detained and as he cannot earn a living, he is reliant on his British family. W2 confirms his concerns about their precarious situation in Turkey. She says,

> "Ideally, we would all love to go to the UK together where we can live in peace and safety. I understand that if [R3] loses his case, it might still be possible for me to return to the UK with Sara because

> she is a British citizen. However, I could not do that. I have gone through hell to try and reunite my daughter with her father and to sever that tie again would only destroy her psychologically. While I do have a better rapport with [R3's] mother now than I did before, and I am sure she would allow me to live with her in her home, I do not want to raise my child as a single mother in a foreign land...Neither [daughter] nor I speak English and [R3's] own mother is elderly and often unwell. We know nothing about the UK and would really need [R3] to assist. I cannot rely on his brothers to help me. They are all married with their own children....I know that they are also helping [R3's] ex-wife with his four other children..."

R3's family in London

102. The Appellant told us he had initially spoken with his children once a week after he left but this reduced to once a month or every six weeks by August 2017. Now he speaks to them weekly again when they visit his mother, as his ex-wife no longer facilitates contact between them after her experiences in Turkey. However, she does still consult him about medical treatment, schooling and extracurricular activities.

Evidence from the Security Service

103. RQ confirmed the two Open National Security Service statements. She had listened to the evidence called on behalf of the Appellant. She was taken to the media digest prepared by the Appellant's solicitor. She agreed that some people, including some of those whose statements had been served by the Appellant such as Faddy Sahloul or Dr Nott had travelled to Syria for legitimate humanitarian reasons and that in 2013 official UK aid which also went to opposition areas, was going to be increased. She agreed that reporting in the media raised concerns that UK aid was indirectly providing support for AQ and in December 2012 before the Appellant travelled the Charities Commission reminded charities of FCO advice against travel to Syria but itself was not suggesting that people should not travel, only that the risks had to be assessed with care. She agreed that the Appellant may have been motivated partly by humanitarian concerns. Although the Security Service's case was not in Open she pointed out that the Appellant did not travel under the auspices of any charity and the critical part of the Security Service assessment as to the threat he poses to national security is that he has aligned with an AQ-aligned group.

104. Mr Southey, reading from the Executive Summary of the Lowy Institute's report asked if she agreed that most humanitarian groups operating in Syria have legitimate aims. She did agree but pointed out that the sentence continues, "the civil

war and rise of radical Islamist groups that resulted has shown how easily the desire to assist those in need can be manipulated by jihadists." She accepted that witnesses such as Mr Khaja had seen R3 doing aid work but she disputed his ability to comment on the entirety of his activities in Syria. Although he had concluded the Appellant is not involved with extremists he had only met him on four occasions and the Security Service did not dispute that part of what R3 was doing in Syria was humanitarian. Similarly Dr Islam-Zulfiqar formed a favourable impression of B3 but she had limited contact with him. According to his statement Mr Sahloul has been involved in the delivery of aid for a significant period of time but his conclusion that LUFS was solely involved in aid work had to be seen in light of the fact that he had never worked with it. RQ agreed with a view expressed by Mr Yassin-Kassab that if someone is involved in fighting in Syria word will quickly travel of it.

105. When asked about the documentaries and other audio visual material provided to the Commission RQ disagreed that they show B3 engaged in aid work over a long period of time. She referred to the Lowy Institute report and the lengths to which those using humanitarian aid as a cover for jihadi activities may go and the degree to which they will use media organisations to propagate that image. When asked if the four news pieces provided had been produced by journalists hood-winked by B3 RQ repeated her view that just because this footage existed did not mean that he was exclusively engaged in aid work. Although there was an active Facebook feed for LUFS and a quantity of reporting and documentaries, all of which suggested that B3 and LUFS were active aid providers over an extended period of time in an area where other charities did not have a presence on the ground, it did not illustrate the entirety of what he was involved in in Syria. When pressed RQ used the phrase, of R3, that he may have "pretended to engage" in humanitarian work but she said she could not go into this any further in Open evidence. However, she maintained that the Security Service case is that the Appellant may have been motivated by a desire to do humanitarian work.

106. Alignment did not mean mere physical presence in an area controlled by AQ or AQ aligned groups. JAN was willing to tolerate more moderate opinions in some areas it controlled because it was conducting a 'hearts and minds' operation. Willingness to provide aid in an area controlled by AQ was not enough to show alignment. Interacting with an AQ aligned group because there was one in the area the aid worker was operating in did not in itself demonstrate alignment. She also

agreed that the Appellant had a level of involvement in LUFS based on his statements and that LUFS worked with UK based charities to deliver aid. Other questions she was asked about LUFS, whether B3's recent detention by HTS indicated that he was not aligned with HTS and whether the Security Service disputed the Appellant's claim that in his spare time he worked with young people and sought to warn them against extremism, she could not answer in Open evidence.

107. The latest government figures on numbers of UK-linked people who travelled to engage with the conflict were provided in the Security Service statements: 900 had gone and just under half had returned. RQ had seen a recent update and the figures had not changed very much. She was referred to the March 2020 Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Act 2000 and 2006. As part of his assessment of the use of Temporary Exclusion Orders Jonathan Hall QC notes that [para. 8.44]

> "The typical profile is a British mono-national who has travelled to Syria and spent time in Daesh controlled area and may therefore have been (i) further radicalised, (ii) de-sensitised through exposure to extreme violence and (iii) provided with some terrorist training. TEOs are considered to be particularly appropriate for returning women. Despite the relatively limited obligations that may be imposed (compared to the broader TPIM power), I am informed that the Home Office consider that TEOs are an effective response for a range of individuals returning from Syria and Iraq, especially in the absence of a criminal justice response. I have seen one file where a decision to impose a TEO was taken for an individual with dual nationality."

And later [8.60],

> "...there is a category of individuals who have returned from places such as Syria for whom the milder obligations of a TEO appear to have been sufficient."

108. RQ explained that this commentary lacked context. She did not claim that TEOs were ineffective where the alternative was no response at all but she did not consider that they are the most effective response. Although a TEO had been used in the case of at least one dual-national she pointed out that there would be a number of legal and practical features which would affect the case by case decision. The gist of a letter from the Home Secretary to the Prime Minister, part of the Secretary of State's Open case, set out the strategy for reducing the risk from those UK-linked individuals who had travelled to Syria or Iraq and may potentially return

to the UK. It included the following passages,

> "Given the high risk that returners are likely to pose to the UK, our key principle is that we should prevent return to the UK where it is appropriate and lawful to do so. And where it is not we should seek to delay and manage their return, and prosecute where the evidence allows. Minors should be safeguarded from further harm. We must ensure that UK-linked individuals captured abroad, whether in theatre or in third countries, are treated in accordance with international norms.
> Achieving these principles will not be straightforward. Preventing return is likely to be possible in a relatively small number of cases, mainly through the deprivation of British nationality of dual nationals, and exclusion of non-nationals. So management or return and risk will be the guiding principle for the remainder. For some this may involve the cancellation of passports, or the imposition of Terrorism Investigation and Prevention Measures (TPIMs), where there is an appropriate case. Temporary exclusion Orders (TEOs), are also available and both TPIMs and TEOs may require (among other things) mandatory engagement on a de-radicalisation programme once back in the UK."

109. RQ explained that TPIMs and TEOs were ways to mitigate the risk where deprivation was not possible but where it was possible it should be sought with case specific considerations taken into account. The welfare of children, in terms of being safeguarded from further harm, which could mean preventing return of those who might radicalise minors but also the welfare of the children of those returning, and their interests, were factors to be considered. They had been considered in R3's case in that the welfare of his UK based children was specifically referred to in the Open Summary of deprivation submission. She agreed that there was no reference to the Appellant's daughter born in Syria in that submission and while she would not confirm or deny that it was prepared at a time when the Security Service did not know about that child she understood that as the daughter was born before he lost his citizenship she would be a British citizen. RQ did not believe that there has been any reconsideration of the deprivation decision in light of the birth of this fifth child.

110. RQ did not agree that the risk posed by an individual should be discounted on the basis that they had a child but minors should be a consideration. Risk had to be weighed against other considerations including practical and legal features, and the presence of minors, so it is not a trump card. She could not say in Open evidence what factors had been found to mean that despite the risk posed by the dual-national mentioned by Jonathan Hall QC a TEO was imposed rather than deprivation. She would not accept that the correct term was factors that 'outweighed' the risk. We

have heard her explanation in Closed evidence and agree that there were particular features in that case not shared by R3. She was not aware of examples of individuals subject to TEOs carrying out terrorism related activities once they had returned to the UK but she did not have all the relevant information. She stressed that the Independent Reviewer's report evaluated TEOs in and of themselves but not alongside the range of measures available such as deprivation. She invited attention to the Commission's judgment in *U2* where TEOs and TPIMs were considered lesser measures for mitigating risk.

111. She was pressed on whether she considered that an assessment of risk to national security was a knockout feature that trumped all other factors, including the welfare of children that may otherwise weigh against depriving someone of their citizenship. She did not accept that deprivation necessarily harms minors in this particular case because the Syrian born child remained a British citizen irrespective of R3's status. She could not say whether the child had any legal status in Turkey but confirmed that if she was returned to Syria it would not be practical for UK authorities to provide her with assistance.

112. The Appellant's current circumstances were put to the witness. She agreed that he has encountered administrative difficulties as a result of being deprived of his British citizenship and it may well be the case that he has difficulty accessing medical treatment and working. She did not challenge his assertion that he is at risk of detention in Turkey but she did not think his lack of citizenship means he faces detention. She did not accept that he was at risk of deportation to Pakistan; she is not an expert in Turkish deportation policy. She could not confirm or deny that the UK and Pakistan share intelligence or that the UK and Turkey have done so. She agreed that British citizenship may help someone detained by Turkish authorities but the treatment was unlikely to be materially different. Features such as the charges an individual faced, the validity of their detention and other extenuating circumstances could restrict the sort of assistance, intercession or intervention the FCO was able to provide, even for a citizen.

Closed evidence

113. We received evidence in Closed which was tested by the Special Advocates. Nothing that we heard in Closed undermined the Secretary of State's Open case. It is plain from our comprehensive recital of the Open evidence that the evidential foundation for the Secretary of State's decision to deprive is not capable of disclosure to the Appellant, his lawyers and the public. We have prepared a Closed

judgment summarising that evidence, but we will place into this Open judgment as much of our conclusions on the evidence and discussion of the law as possible.

Some Legal Resolutions

114. We have been assisted by succinct and cogent submissions on the law. We extend our thanks to counsel on all sides. Counsel for the Appellant and the Special Advocates have invited our attention to rule 4(3) of the Special Immigration Appeals Commission (Procedure) Rules 2003 (SI 2003/1034) and we confirm that we are satisfied the material available to the Commission is sufficient to enable us to properly determine proceedings. Firstly, bearing in mind the very serious step that deprivation of citizenship embodies, (the word 'radical' is used by Lord Mance in *Pham v Home Secretary* [2015] 1 WLR 1591, [2015] UKSC 19), we are sure that the decision on this appeal is unlikely to turn on whether the Commission applies domestic law, ECHR jurisprudence or EU law. This is because the theoretical distinctions between such concepts as reasonableness at common law, proportionality in the ECHR and proportionality in EU law are not material in this context, as for which see, the Supreme Court in *Pham* at [59-60] *per* Lord Carnwath, [93-98] *per* Lord Mance and [110] *per* Lord Sumption. A high hurdle of powerful justification exists for the Secretary of State before deprivation can be made or upheld and no refinement is achieved by any distinctions between the different legal frameworks. The Commission has made a global assessment.

115. Secondly, we are bound to find that EU law does not apply to a deprivation decision in which there has been no actual or purported exercise of any right conferred by EU law, see *G1 v SSHD* [2012] EWCA Civ 867; [2013] QB 1008, considered in *S1 and others v SSHD* [2016] EWCA Civ 560; [2016] 3 CMLR 37. However, the custom has become for the Commission to consider whether the Appellant would have been afforded additional protection under EU law if it had applied. The main potential impact in this appeal is on disclosure of the evidence underlying the Secretary of State's decision.

116. Mr Dunlop argues that what has become known as 'ZZ level disclosure' after *ZZ (France) v SSHD* [2014] EWCA Civ 7; [2014] QB 820 ie disclosure of the essence of the grounds on which a decision is taken would not necessarily be required even if EU law applied. His submission is that such a high level of disclosure fell to be made because Directive 2004/38 applied in ZZ's case and it does not apply in R3's. Accordingly, he argues compellingly that EU law would not require domestic law to be read down in a way that was contrary to Parliament's

intention. Parliament's intention is that there should not be disclosure of details of the reasons for deprivation if such disclosure was contrary to national security and s.40(5) (b) of the 1981 Act does not require particularised or detailed reasons to be provided and s.5 Special Immigration Appeals Commission Act 1997 and Rule 1 of the SIAC Rules make it clear that Parliament did not intend any disclosure to be made in Open which might be damaging to national security.

117. If we had to determine the answer we would accept these submissions and reject Mr Southey's argument that the application of EU law to his case would offer the Appellant significant procedural advantages, both in terms of a higher level of justification for closed procedures and the enhanced 'ZZ level' disclosure: the essence of the grounds for the decision if not the evidence underlying the essence. Mr Southey also urges us to conclude that a decision under EU law would have been more favourable to R3 because the threshold for deprivation would be higher under EU law than in s.40 of the British Nationality Act. In this respect he relies on *Rottman v Freistaat Bayern* [2010] QB 761 in which the CJEU asserted jurisdiction over decisions about nationality by member states and *Tjebbes and others v Minister van Buitenlandse Zaken* Case C-221/17; [2019] 3 WLR 191 in which the CJEU held that a decision to withdraw nationality requires due regard to the principle of proportionality for each person concerned. Like the Commission in *U2 v SSHD* (SC/130/2016) 19 December 2019, we have not found it helpful to try to discern, on a speculative basis what level of EU threshold might be applied, particularly in a case involving a risk to national security.

118. Thirdly, the moment in time we are considering is the time at which the decision to deprive was made, see the Supreme Court in *Al-Jedda v SSHD* [2013] UKSC 62 at [30] and [32]. The parties agree that s.85(4) Nationality Immigration and Asylum Act 2002 does not apply. Accordingly, matters which post-date the decision under challenge are not, generally, to be taken into account on appeal. Mr Southey's submission that the Supreme Court in *Pham* (supra) took account of the inability of Mr Pham to return to Vietnam which only became clear after the date of the decision in question and that the courts considering the case subsequently had regard to his later admissions and guilty pleas in determining whether the decision was justified, is ambitious because the Courts did not say they were doing that. Reference to post decision facts in a judgment does not necessarily mean a connection between those facts to the determination of an appeal. We can see no objection to the admissibility of evidence coming to light after a decision has been

made but which relates to the circumstances existing at the time of the decision, when the decision is challenged on appeal. But any such evidence of circumstances or events after the decision was taken could only be relevant insofar as they may illuminate the facts at the time of the decision. The same conclusion was reached by SIAC in *Y1 v SSHD at* [17].

119. Fourthly, our task is the making of a global assessment of whether the decision to deprive was justified at the time it was made by subjecting the grounds for the decision to intense review. It does not require only taking into account those past facts proved on the balance of probabilities. We disagree with Mr Southey's argument that the speech of Lord Slynn in *Rehman* should be interpreted as suggesting that only matters proved to the civil standard could be relied on by the Secretary of State, and in any event we agree with Mr Dunlop that the views of other members of the court were crystal clear in the opposite direction: Lord Steyn at [29], Lord Hoffman at [56] and Lord Clyde at [63].

120. On a deprivation appeal the Commission must be satisfied on the balance of probability that the highly impactful decision was justified taking a global view, even if there are no individual past incidents proved to the civil standard (we do not say that this is such a case.) We respectfully agree with Lord Slynn that there is a 'whole exercise' to conduct [22]:

> "Here the liberty of the person and the opportunity of his family to remain in this country is at stake, and when specific acts which have already occurred are relied on, fairness requires that they should be proved to the civil standard of proof. But that is not the whole exercise. The Secretary of State in deciding whether it is conducive to the public good that a person should be deported, is entitled to have regard to all the information in his possession about the actual and potential activities and the connections of the person concerned. He is entitled to have regard to precautionary and preventive principles rather than to wait until directly harmful activities have taken place, the individual in the meantime remaining in this country. In doing so he is not merely finding the facts but forming and executive judgment or assessment. There must be material on which proportionately and reasonably he can conclude that there is a real possibility of activities harmful to national security but he does not have to be satisfied, nor on appeal show, that all the material before him is proved and his conclusion is justified to a "high civil degree of probability."..."

121. Fifthly, we reject Mr Southey's submission that the threshold for deprivation in s.40 of the 1981 Act is too low to permit interference with R3's Article 8 rights. We are also not persuaded that Article 8 applies to those outside the UK (and EU)

at the time of the deprivation decision. At that time the Appellant was living in Syria with a Syrian wife and their child. His children were in the UK and he had not seen them face to face for three years or so, a significant period in the lives of children. He did not want to leave Syria and return to the UK, indeed he believed to do so would have been a betrayal. His stated intention was to remain in Syria. His trip to Turkey was spontaneous and intended to be of short duration. We recognise the impact of the deprivation decision on his youngest daughter but agree with Mr Dunlop that her position is comparable to that faced by S1's child. In his case the Court of Appeal firmly dismissed arguments based on Article 8 and *Ruiz Zambrano v Office national de l'emploi* [2012] QB 265.

Conclusions on the National Security case

1. Is R3 a credible witness?

122. We find that the Appellant gave evidence in an articulate and calm manner. His academic achievements demonstrate his intellectual ability. In evidence he was clear and unambiguous on matters about which there was little dispute or, at least, no contradictory assertion made to him. While we readily accept that giving evidence on an appeal from a foreign country, concerned that the internet connection should be sustained, on such an important topic, without the reassurance of a lawyer in the same room would have been particularly stressful, and we discount a degree of diffidence and some lapses of memory, as well as making proper allowances where an account had been taken from him using an interpreter, namely the Turkish interview record, we discerned that the Appellant avoided some difficult questions and failed to face up to the implausibility of some of his answers. For example his equivocation when questioned about his relationship with Muhammed Tunveer Ahmed and his brothers was in stark contrast to the simple acknowledgement in his statement that they were friends and would see each other often.

123. We bear in mind that R3 has not been told what evidence the Secretary of State relied on to determine that he had aligned himself with an AQ aligned group in Syria. Nonetheless he has engaged fully with the appeal process, providing four substantial witness statements and hundreds of pages of other evidence of his activities in Syria. We regret to say that we did not find his evidence convincing generally, largely because of unrealistic lapses in memory on key subjects (particularly when set against the cogency of his memory on other matters) and the less than credible nature of some of his evidence. By way of further examples his

varying accounts of when the decision to travel into Syria was made; before he left the UK (as told to his family, except his wife) or only after he had arrived in Turkey and was speaking to his cousin by telephone on his way to the border region; the fact that although he had ample opportunity to set out what parts of the record of his interview in Turkish detention he contested, he failed to identify in advance most of the matters he resiled from during cross-examination (including the statement that he had spent a few months in Turkey before going into Syria), his lack of frankness about the telephone numbers he was using while in Syria and Turkey and his failure to remember whether he was represented at the only criminal trial he had experienced in the UK.

124. He claimed to have kept records in paper and electronic form of the funds and aid received and how it was disposed of for the direct benefit (minus 1%) of the refugees but despite direct evidence from B3's wife who is in Syria no part of any records have been produced for the Commission. His reluctance to mention his cousin to the Turkish authorities was inconsistent with his evidence that they were working together and engaged in only humanitarian activities. We were also struck by the fact that he had apparently given Ms Karpuz, the Turkish lawyer who has been representing him on his status in Turkey a false account of his associates prior to his second period of detention in Turkey. He told her that the people he went on a picnic with were the only people he knew there. He admitted this was not correct because after his release he went to stay with friends who did not have a terror code attached to them.

125. We should make plain that we do not attach any weight to the fact that he was convicted after a trial for possession of CS gas and maintains his innocence as many convicted people do. We find the evidence of R3's compassionate character and interest in youth work consistent with a desire to do humanitarian work in a war zone and we have no hesitation in accepting, on all the evidence, that part of his time in Syria was spent doing such work. We take the multi-media material showing him personally engaged in aid work, the warehouses where aid was stored, the school building he helped construct etc at face value but, self-evidently, that is not the portion of his activity that gives rise to the risk identified to the Secretary of State or relied upon to justify deprivation.

126. Overall we gained the firm impression, on the Open evidence, that the Appellant was hiding the full picture of his role and activities in Syria. We did not find him a convincing or wholly credible witness.

2. Did R3 align with an AQ aligned group or groups in Syria?

127. We have considered with care the argument that despite the fact that in the years before he travelled to Syria the Appellant associated with three men who were subject to control orders, the Respondent does not rely on mind-set evidence. This is potentially a factor in the Appellant's favour, but in assessing the weight to be attached to it, we also recognise that his own final account of the SIM card in his possession when he was detained in Turkey is that he had purchased it just before travelling to Turkey and specifically for that trip. We also note his choice to associate with terrorism suspects after release in Syria. In the end we do not consider this to be a strong point in his favour.

128. The Appellant described a long term mode of aid work, within a war zone where conflicts between militias was common, which involved no alignment with any military group. According to him he was fully and only engaged in humanitarian aid work from 2013 to 2017. He and his cousin were able to run a viable and successful fund-raising and aid organisation, with a substantial media presence, relying on occasional, informal armed protection and with absolutely minimal incursion into their stocks of aid by military groups in the area of Northern Syria where they were working. The Closed evidence is conclusive that this account is untrue. We do not accept that the Appellant's denouncing of AQ during the appeal should carry weight against the evidence of his actual activity in Syria. As to that, there is compelling evidence that the Appellant engaged in terrorism-related activity with an AQ-aligned group alongside some humanitarian work. We make it clear that the evidence upon which this conclusion is based indicates alignment well beyond day to day accommodation in order to facilitate aid work.

129. We set out the evidence and our specific conclusions in our Closed judgment but we find this central allegation of AQ alignment in Syria firmly proved.

130. Dealing with some other closing submissions made by Mr Southey, in reaching alignment proved we do not rely on: the admissions made by the Appellant to his infrequent carrying of firearms; the evidence that aid workers sometimes travel with armed protection; the unknowing and/or necessary contact that aid workers may make with extremists as part of daily civilian life or when distributing aid in a war-zone; or the manner in which Muslim people may greet each other even if they are not close to one another.

131. We were not persuaded by the evidence from B3W about the reasons for B3's detention by HTS this year.

3. **Is deprivation proportionate?**

132. The Appellant urges the Commission to find that he has been left in a state of limbo with no status or prospects of status in Turkey and a British child who likewise has no status in Turkey. The impact on his private and family life is devastating and permanent. Furthermore there are other measures that can be taken to manage the degree of risk the Commission finds him to pose. We note that the Secretary of State did not make reference to his fifth child born in Syria, at the time of the deprivation decision. Insofar as it is necessary to separate out this feature from the rest of the circumstances we bear in mind the apparent absence of consideration of her circumstances when the decision was made. We have proceeded on the premise that failure to allow this appeal will mean that his child can only achieve a safe and settled life by being separated from her father and that is a significant interference with her family life.

133. The Respondent contends the Appellant chose to leave his four children and ex-wife in the UK. On his own account he did not tell his children or their mother precisely what his plans were before he left. He saw them for a short holiday in 2014 in Turkey, a year after he had left. Then he did not see them face to face for another three years. His weekly telephone/internet contact also reduced to a substantial degree. He now has weekly contact with his children who are safely cared for by his ex-wife who works and supports them and herself.

134. The Appellant's second wife and his daughter born in Syria are living together in Turkey. Their status there is uncertain but the parties agree that his daughter has British citizenship in her own right (s.2 British Nationality Act 1981). It is entirely possible for her and her mother to apply to travel to the UK. This they have not yet done. Inevitably, taking up her right to live in the UK will mean that the Appellant will lose his family life with his daughter, and realistically, with his wife. His wish is to return to the UK and bring them. His daughter may well wish to live with him as well as with her mother. But in our judgement none of these considerations of the Appellant's own family and private life are substantial enough to come close to upsetting the significance of the risk that the Appellant has been found to pose to the national security of the UK. The Appellant's lack of citizenship is irrelevant, in practical terms, to any such application his wife and child may make in the future.

Conclusions as to Deprivation of citizenship

135. The Appellant has not argued that if we find him to be someone who has aligned with an AQ aligned group in Syria then deprivation of his citizenship would

not be conducive to the public good. Nor is the Secretary of State's case that anyone falling into that category would present a serious and credible threat to national security challenged in this appeal. We conclude that the Secretary of State's decision to deprive R3 of British citizenship was lawful and fully justified. Given the Open AQ Statement and the Closed evidence of his terrorism-related activities in Syria this decision would have been lawful even if it had meant a significant encroachment on his and his family's Article 8 rights at the time but we have found that it does not.

136. In light of the danger that he poses to national security we find that deprivation is conducive to the public good and the choice of measure to be proportionate and reasonable. We would defer to the Secretary of State's expertise in reaching this conclusion if we needed to but we have come to the same conclusion for ourselves. Any measure short of deprivation would not have met the risk effectively. We accept the Security Service witness's evidence that this is the best measure that meets the risk. We have not had to consider whether this is a case in which deprivation was justified on the basis that R3 had fundamentally repudiated his obligations as a citizen in some respect other than posing a danger to national security.

Alternative scenarios

137. We have been invited to indicate how we would resolve this appeal had we accepted alternative legal submissions. We do so in order to avoid troubling higher courts with academic argument and SIAC with re-consideration on a different legal basis. Firstly, we have determined that the deprivation decision was justified when it was made. If we were determining whether it is justified now we would have the same evidence, we would take account of the fact that the Appellant has chosen not to return to Syria but we would still be satisfied, on the Closed evidence, that the risk to national security that he now poses is such as to justify deprivation because it is conducive to the public good.

138. Secondly, if matters that post-date the decision of the Secretary of State in 2017 were to be taken account of we would find no reason to change our determination. The simple fact that the Appellant did not return to Syria after his two periods of Turkish detention or on discovering that he had been deprived of British citizenship does not diminish the force of the evidence of his alignment which the Commission has received and the risk he poses as a consequence. Similarly as to his condition 'in limbo' at the present time or the impact of his

current circumstances, and those of his pregnant wife and child. We note his apparent admission that even after an extended period in detention in Turkey R3 chose to associate with those similarly marked with a terror code rather than other friends he had who were not.

139. Thirdly, we consider the overall concept of proportionality and conclude that the deprivation was proportionate in the circumstances of R3 and his family both at the time of the decision, despite the omission of his youngest child in the submission to the Secretary of State, and now.

140. Fourthly, we return to the potential impact of EU law as regards disclosure. We are bound by *G1* (supra). Nonetheless we have adopted the now customary approach and indicate that it is possible some further disclosure would have been made had the enhanced *ZZ* test applied. In our Closed judgment we have done the exercise of omitting reliance on those matters which might have been disclosed into Open thus, by way of gist or otherwise. However we make it clear that the outcome of this appeal would have been the same and there was nothing in that which might have been disclosed that undermined that essence of the grounds which remained.

Outcome

141. For all these reasons this appeal is dismissed.