

SPECIAL IMMIGRATION APPEALS COMMISSION

APPEAL NUMBER: SC/193/2022

DATE OF HEARING: 23 November 2023

DATE OF JUDGMENT: 24 January 2024

BEFORE:

**THE HONOURABLE MR JUSTICE LANE
UPPER TRIBUNAL JUDGE PICKUP
SIR ANDREW RIDGWAY**

BETWEEN:

F4

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

MS ELEANOR MITCHELL (instructed by Birnberg Peirce Limited) appeared on behalf of Appellant.

MR DAVID BLUNDELL KC and MS NAOMI PARSONS (instructed by the Government Legal Department) appeared on behalf of the Respondent.

MR TOM FORSTER KC (instructed by the Special Advocates' Support Office) appeared as Special Advocate.

(Extension of Time)

MR JUSTICE LANE:

1. The appellant, F4, seeks an extension of time under rule 8(5) of the Special Immigration Appeals Commission (Procedure) Rules 2003, so as to enable her to appeal against the decision of the respondent, on 20 December 2019, to deprive F4 of her British citizenship. F4 was outside of the United Kingdom at the time of the decision, being in a facility, known as Camp Al Hol, in Syria, which was controlled by the Syrian Defence Force. F4, who is now 27 years old, has been detained with her young son, born in 2016, in Camp Al Hol and, since March 2021, in Camp Al Roj, which is also controlled by the SDF.
2. F4 was born in Somalia, but around the age of three she came to the United Kingdom to live with her mother. When she was 17, F4 left the United Kingdom for Syria. She married a Swedish national of Somali ethnicity, with whom she had her son and also a daughter, who died when only a few months old.
3. F4's husband is said by her to have been physically and verbally abusive. In the first half of 2019, not long after the death of her daughter, F4 and her son fled ISIS territory in Syria, which is how they came to be in Camp Al Hol.
4. The deprivation decision of the respondent was served "to file" on 20 December 2019. As F4 was outside the United Kingdom at the time of that service, the time limit for her to appeal was 28 days from 20 December 2019: rule 8(1)(b)(ii) of the SIAC Rules. That period expired on 18 January 2020. Until Chamberlain J handed down judgment

in R (D4) v. Secretary of State for the Home Department [2021] EWHC 2179

(Admin.) on 30 July 2021, the practice of serving to file in these circumstances was considered to be lawful. The effect of the judgment in D4, which held that it was not, was retrospectively reversed by section 10 of the Nationality and Borders Act 2022, which came into force on 28 April 2022.

5. F4's notice of appeal, given on 24 August 2022, is, accordingly, out of time by over two years and seven months.
6. The nature and effect of rule 8(5) were considered by SIAC in C12 v. Secretary of State for the Home Department (16 September 2022). The Commission held that the burden of demonstrating that, by reason of special circumstances, it would be unjust not to extend time rests on the appellant. The standard of proof is the balance of probabilities. The Commission noted that the reference to "special circumstances" underlines the need to show there is a reason for the normal time limit to be disapplied. In that regard, the starting point is the explanation for the entire period of delay. If there is no explanation, or no satisfactory explanation, or an explanation unsupported by evidence from the appellant that ought to have been readily available, then the Commission concluded that it would "generally not be appropriate to extend time". Once the explanation for the delay had been established, other factors relevant to the decision fall to be balanced by the Commission. Its task is to identify "injustice", which the Commission described as a "two-way street, which includes both injustice to the appellant and to the respondent who represents the public interest". Amongst the factors said to be relevant to that balancing exercise was that the removal of citizenship engages the person's fundamental rights: Pham v. Secretary of State for the Home Department [2016] 1 WLR 1591. Nevertheless, even in this area, the courts recognise that proper respect must be paid to domestic time limits; and

that doing so may preclude consideration of the substantive case, even in cases where very serious matters are in issue, such as Article 3 ECHR. Thus, the importance of the right in issue “is relevant but it cannot be given conclusive weight” (para.19).

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7. ~~Before us, neither party demurred from this interpretation of rule 8(5), which we in any event respectfully consider to be correct.~~
8. A word, nevertheless, needs to be said about the significance of the expression “special circumstances”. The Commission agrees with Ms Mitchell that the expression imparts no discrete requirement that the circumstances should, in some way, be rare or unusual. This is particularly important in the present case, which is one of a number involving individuals who have been deprived of citizenship, having gone to Syria and allegedly aligned themselves with ISIS, and who now find themselves living in camps, such as Camp Al Roj.
9. In every case, therefore, where the alleged position of the appellant is, at first sight, broadly similar to that of others, there must be an analysis of the particular facts and circumstances of the person in question. The ultimate test is whether it would be “unjust” not to extend time. That is a high hurdle. It is not necessarily to be equated with hardship to the person concerned, if time is not extended. Hardship needs to be set against the important general principle of legal certainty and the desirability of ensuring compliance with rules of procedure. Amongst other things, such rules serve to ensure fairness not only between the interests of the particular parties, but also the interests of other appellants, who have complied with the Rules and whose appeals may be delayed if time is extended in another case. We also agree with Mr Blundell KC that, as a general matter, the longer the point in time between the actions complained of and the hearing in SIAC, the greater the problems might be of evaluating evidence and assessments.

10. The central feature of the present case can be summarised as follows.

Notwithstanding that the deprivation decision had been served to file, F4's mother, in the United Kingdom, was made aware of it, it seems at some point between 27

December 2019 and 5 January 2020. F4's mother communicated the fact of the deprivation decision to F4, using a Voice Note (via WhatsApp) to a mobile telephone to which F4 had intermittent and unauthorised access (mobile telephones being proscribed by the camp authorities). In a number of Voice Note communications, in early January 2020, F4 informed her mother that she did not wish to appeal against the deprivation decision. The respondent's case is that F4 should, in fact, be taken at her word. Her subsequent decision to instruct that a notice of appeal be filed in the summer of 2022 accordingly represented a change of mind on the part of F4. Even having regard to the undoubtedly highly-challenging conditions faced by F4 and her son in the camps in Syria, this, the respondent contends, is not a satisfactory basis for extending time under rule 8(5).

11. The appellant's case is that the evidence discloses, at the time she made the Voice Note communications, that F4's state of mind was such that she is not to be taken as having actually made a decision and that, accordingly, she did not subsequently change her mind. Rather, it was only by a gradual process that F4 came to understand the significance of the deprivation decision and to have the confidence to be able to seek to challenge it.

12. In order to explain the context of the Voice Notes, it is necessary to go back to July and August 2019. The relevant information is contained in the first witness statement of Maya Foa of Reprieve. Reprieve met F4's mother and two of F4's cousins on 17 July 2019. The family informed Reprieve that F4 and her child had been detained in Camp Al Hol since around April 2019. They said that F4 had been injured and that

she and her child were starving. They said contact was irregular as she needed to borrow phones from other detainees. At a further meeting on 30 August, the family informed Reprieve that the condition of F4 and her child continued to be dire and they were extremely malnourished. Both suffered from chronic diarrhoea.

13. On 27 September 2019, F4's mother signed an authorisation, in order for Reprieve to assist with F4's defence, to consult with lawyers and to receive any documents and information relating to her case from the British Foreign and Commonwealth Office.
14. On 29 November 2019, Ms Foa wrote to the FCO requesting consular assistance on behalf of F4 and her child "to facilitate their return to the UK as a matter of urgency". It was pointed out that their health had deteriorated dramatically.
15. On 24 December 2019, the FCO replied to Ms Foa to inform her that the Foreign Secretary had decided not to assist F4's repatriation and that FCO officials had been informed that the Secretary of State for the Home Department had taken a separate decision to deprive F4 of her British nationality.
16. Birnberg Peirce Solicitors had been instructed to act in connection with the repatriation request. As a result, the Home Office wrote to Anne McMurdie of Birnberg Peirce on 27 December 2019, informing her of the deprivation notice having been served to file. Thus, it appears that both Reprieve and F4's family were informed of the deprivation decision.
17. It also appears that, at some stage between 27 December 2019 and 5 January 2020, F4 herself became aware of that decision and had indicated that she did not wish to appeal it. The reason for so finding is that in a Voice Note from F4's mother to F4 on 5 January 2020, F4's mother said, "I sent you a voicenote previously, please listen to it ... I wanted to tell you that your citizenship has now been revoked last Friday".

18. On 6 January 2020, F4 replied "Please leave the appealing of the visa/ID [this phrase, translated from the Somali, can also encompass "citizenship": statement of translator dated 9 October 2023] I told you mum but maybe you did not understand me in the first Voice Note".

19. On 5 January 2020, F4's mother sent F4 another Voice Note, in Somali (part of which has already been quoted). This Voice Note continued as follows:-

"We can appeal the decision ... you have to apply for the appeal and express that you want to appeal the decision. There is a letter written by a human rights lawyer that is working with us and I'm going to send it to you that is in English. Use this letter as an example and express your appeal in this style and return it back to me ... I want to go ahead with the appeal but it needs to be expressed by you that you want to appeal your citizenship".

On 6 January 2020, F4 responded in Somali as follows:-

"Mother I am not angry with you, but I want to say this quickly. Please leave the idea of appealing the ID/visa. I told you mum but maybe you did not understand me in the first Voice Note. Because if they take my ID/visa ... then god [seemingly with a small 'g'] may provide another way/open another way for me. If they are going to take away my ID/visa, then leave it. So, please, leave it and do not open a case mother. Just leave it".

20. On 9 January 2020, Reprieve sent a letter to the cousin of F4. This letter was addressed to F4. It was sent on to her on the same day, using the phone of F4's mother. The letter is exhibited to Ms Foa's second witness statement. It runs to over two pages. It is written by Zoe Bedford. She tells F4 that she has been working with her mother and cousin to try to get F4 and her son brought safely back home to the United Kingdom. The letter states that in December the British Government said that they would not bring F4 home and that a decision had been made to take her British nationality from her. The letter says that Reprieve is working closely with Anne McMurdie and Dan Furner at Birnberg Peirce and that they would like to try to help F4 challenge "these decisions" so that F4 and her son can return to the United

Kingdom, if that is what F4 wants.

21. The letter stated that it was known that F4's mother had already asked F4 whether she wanted to appeal but this was, nevertheless, "a big decision" and it was difficult for F4's mother to explain everything in a Voice Note. Accordingly, Ms Bedford said that she wanted to make sure that F4 had more information before deciding what to do. The letter therefore set out F4's options.
22. It was explained that the Government had said that they would not help F4 to return to the United Kingdom, but they might help her son to return without F4, if F4 were to tell them that is what she wanted to happen. The letter then said that Reprieve were "really sorry that the British Government has done this. We don't think it's fair or right". Ms Bedford said that she knew that F4 would never want her son to be brought home without her and Reprieve did not think that this would be in his interests or in those of F4. If F4 wanted, Reprieve would try to make sure that the Government helps "BOTH you and [your son] come back together by asking the court to order them to do this".
23. It was said that Ms McMurdie and Mr Furner thought there were two ways in which they could help F4. First, F4 could appeal the decision to remove her British citizenship. Reprieve would ask the court in question to keep the identity of F4 and her son secret to protect her, which meant that "no one in the camp and no other member of the public would need to know that you are bringing the appeal". Reprieve thought that F4 should appeal because "it will be very hard for you to ever come home to the UK or even to visit if you do not try to keep your British nationality".
24. The other way of challenging was by way of a judicial review of the Government's decision not to help to repatriate F4 and her son. Again, Reprieve said that they did

not consider that the decision was “fair or right”. Again, the court would keep the names and identities secret.

25. Under the heading “What should you do if you want to come home ...?”, it was said that if F4 still wanted to come back to the UK with her son, then the advice was to bring both an appeal and a judicial review.
26. The letter then pointed out that there was a deadline to appeal the decision to take away F4’s British nationality. This was 20 January 2020 “which is very soon”. The letter said that “If you do not challenge the decision to take away your British citizenship now, it will be much, much harder for you to come back home with [your son]”. Accordingly, the letter said that, if F4 thought there was a chance she might want to come back to the UK with her son or to continue to be a British citizen, Ms Bedford suggested appealing the decision “now. It will be **very, very hard (maybe impossible) to do this later**” (original emphasis). The letter explained that, if F4 did decide to appeal now, she could always withdraw it if she changed her mind later. Ms Bedford appreciated that this was a “big decision and you will probably have questions”. If F4 sent a Voice Note to her mother, she could pass this on to Reprieve and they would try to answer her questions.
27. Under the heading “What are the next steps?”, a form of words was provided to F4 to give to her mother, instructing Birnberg Peirce to act for her in her appeal. This was said to be the most important thing to do at the moment. The suggestion was that the form of words should be written on a piece of paper, signed and dated and then a photograph of it taken, which could be sent to F4’s mother.
28. On 16 January 2020, F4 sent her mother a Voice Note in Somali, stating “Mother I don't want to complain. I told you I do not want it so please tell those who sent the

letter I don't want it". On the same day, she sent another message, in English, as follows:- "I do not want the British citizenship".

29. F4's cousin sent F4 two messages on 17 January 2020, in English, urging her to appeal and pointing out that she could always change her mind if she decided she no longer wanted to do so. Ms Foa says she has no knowledge of any response being made by F4 to those messages.
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30. Between 18 January 2020 and 8 July 2021, there is no indication that anything was done in respect of the appeal. On 8 July 2021, Ms Foa and a Reprieve colleague met F4 in person at Al Roj Camp. According to Ms Foa's first witness statement, they discussed F4's citizenship and the process for appealing. Ms Foa says it was clear to them that F4 did not fully understand the implications of her citizenship deprivation, "was overwhelmed and paralysed by fear, had deep-seated misapprehension about the consequences for herself and her child of her lodging an appeal". She was afraid that this would result in the British Government taking her child away from her forcibly, without her consent. Ms Foa answered F4 that her child would not be repatriated without her unless she consented to it, but "We were unsuccessful in dispelling F4's fears". Ms Foa says that, in the experience of Reprieve, women in camps often have misunderstandings and misapprehensions about the process of appealing citizenship and the consequences for their children. She says that detainees do not have access to legal advice or to any reliable means of communicating with individuals outside of the camp and, as a result, rumours and misinformation spread rapidly.
31. On 10 July 2021, Ms Foa and her colleague had a follow-up meeting with F4, during which she gave Reprieve authorisation to assist her in welfare and repatriation-related services. At the hearing, the Commission asked to be shown a copy of the authorisation document. This was provided after the short adjournment. It is headed,

“Authorisation for Repatriation and Welfare Related Services (UK)” It authorises Reprieve to have access to all and any medical, etc., records for use in the provision of repatriation or welfare-related services. It authorises Reprieve to request personal information, including from the Home Office; to arrange for lawyers in the UK to represent F4 and her child in legal proceedings that relate to or affect the repatriation of F4 or her child, and which relate to their welfare; to provide assistance in relation to any proceedings in UK courts and tribunals concerning the same; and to manage messages and coverage in relation to the repatriation of F4 and her child, as well as their welfare. F4 consents to Reprieve collecting personal information about F4 and her child “in order to assist with repatriation and welfare-related services ...”. The document ends by stating that it and its effects “have been fully explained to me in a language that I understand and I understand the consequences of my agreeing (whether by signature or oral confirmation) to the contents of this document”.

32. In December 2021, there was another meeting with F4 in the camp. Ms Foa describes F4 “remaining fearful and expressing concerns regarding the deprivation of her citizenship, which would result in her child being taken away”. She said that she wanted to go back to the United Kingdom but did not want to be separated from her child. She said that, if she was not worried about her child, then she would be fine to appeal. Ms Foa said she tried to reassure F4 in this regard. At the end of the meeting, F4 indicated “that she needed more time to make up her mind”.
33. In June 2022, Ms Foa and her colleague met F4 in Camp Al Roj. F4 seemed more relaxed and more able to understand what they explained about her citizenship deprivation. They said that the appeal was time sensitive. F4 confirmed she understood and asked for Reprieve to return and talk about it more. That was on 15 June. On 18 June, they met again and discussed the citizenship deprivation at length,

at the end of which F4 “confirmed that she wished to appeal this decision”. F4 gave “oral authorisation” to Reprieve for Ms McMurdie of Birnberg Peirce to represent F4.

34. On 22 October 2022, Ms Foa and her colleague met with F4 at Camp Al Roj. This was several weeks after Birnberg Peirce had filed the late notice of appeal. Ms Foa asked F4 if she could tell Ms Foa “a bit about what she had understood when her family messaged her about her citizenship deprivation”. F4 said that at some point when she was at Camp Al Hol, “she thought that maybe her citizenship had been taken from her but she was not certain of this. She explained that she did not really comprehend that someone’s citizenship could be taken from them”. According to Ms Foa, F4 said she did not fully understand what her deprivation meant and what appealing it would entail or what an appeal would lead to. She said she could not remember what her mother told her, citing long-term memory issues. F4 said she had been very ill at the time and that this “impacted her ability to process information”. The focus at that time was taking care of herself and her child and she was not in a position to think about issues beyond their survival. She thought it was an issue she could return to later after she found out more about the implications of her deprivation and an appeal on her and her child. She “explicitly stated she did not intend to give up her right to be a British citizen”. It was only after she had met with Reprieve in Camp Al Roj that it was confirmed to her that she had been deprived. She said she had initially been afraid that her child would be taken from her if she took steps to appeal the decision. She said lots of women had heard this and it took a while for her to be reassured that this was not going to happen automatically.

35. Ms Foa’s second statement was filed in response to the respondent’s observation that F4 had not given evidence herself in support of her application for an extension of time. In this statement, Ms Foa says that she has conducted hundreds of hours of

interviews with detainees in camps in Syria. Some 70,000 people are detained for a presumed association with the Islamic State. Around 58,000 women and children are held in two open-air camps, Al Hol and Al Roj. Only about 2,600 women and children are held in Camp Al Roj. Ms Foa then describes the general conditions in the camp. She said that conditions were particularly dire in Al Hol, when F4 and her son arrived there. In early 2019, the camp's population had grown from 9,800 to 73,393.

36. So far as F4's evidence was concerned, Ms Foa said that F4 had not given evidence or been able to review the material in Ms Foa's first witness statement because of the extremely limited channels of communication and risks. Detainees are prohibited from possessing their own phones with potentially severe punishment if they are found to be in breach.

37. At para.54, Ms Foa said that the process of building trust with F4 took more time and effort than with many other detainees and that F4 seemed to struggle more than most detainees to understand what the deprivation decision meant. She also appeared at the outset to be transfixed and paralysed by the conviction that, if she were to take any action on the issue of her citizenship, the UK Government could take her son from her, despite Ms Foa's repeated attempts to reassure her. This meant that in July 2021, Ms Foa did not even get to the point of talking with F4 about the timing of her appeal. By the time of the December 2021 meeting, Ms Foa understood that, in the light of the judgment in D4, the timeliness issue was not, in effect, pressing.

38. At para.82, Ms Foa says that the issue of F4's son being separated from her was something that F4 herself volunteered and was the main reason raised in their meetings for F4 being afraid to proceed with the appeal. Ms Foa understood that F4 feared "both that the British authorities might take her child on their return to the UK (including if she were detained) and that they could forcibly repatriate him without her

and without her consent. I understood her fear to essentially be that any contact with the British Government could provoke the separation of her child from her at some point in time” (para.83).

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39. Ms Foa’s third witness statement contains details of the Voice Note messages described earlier. It also exhibits a briefing that Reprieve prepared for UK Ministers concerning the repatriation of F4 and her son. This was accompanied by a medical report/opinion on both of them by Dr Juliet Cohen.
40. Ms Foa’s fourth witness statement addresses the respondent’s contention that F4 had sufficient clarity of thought and ability to agree to Reprieve requesting consular assistance for her repatriation in November 2019 and that it could, therefore, be inferred that she had a similar level of clarity of thought in respect of her possible appeal in January 2020. Ms Foa says that the reference in the repatriation submissions to F4’s wishes reflected her desire to return home, which she had communicated when she was still a British citizen. “It was different from the situation in January 2020, when F4 was presented with information about the deprivation of citizenship”. By the time Reprieve wrote to F4 in January 2020, there was “a much more complex, confronting and overwhelming scenario for a vulnerable young woman than simply communicating to her family that she wanted to come home”.
41. Professor Patel is Professor of Clinical Psychology at the University of East London. She has produced three reports. She describes the first as containing a “preliminary psychological opinion” based on the information provided to her, which, in turn, was based on Reprieve’s communications with F4 and their first-hand knowledge of conditions of the Camp Al Hol in which F4 was initially detained and Camp Al Roj, where she is now detained. Professor Patel had also conducted an interview with F4’s mother. She had read Dr Cohen’s report, the first two witness statements of Ms Foa

and the letter of January 2020 sent by Reprieve.

42. Professor Patel states at para.3 of her first statement that it is “important to note that as I have not had the opportunity to meet with [F4] or speak to her directly, I do not purport to provide a detailed psychological or mental health evaluation here. I have also not reviewed her medical records ...” At para.4, Professor Patel points out that,
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“I have a professional relationship with Reprieve as a consultant. I have worked with them in this capacity for 9 years. I provide guidance and professional training to their staff in order to support their learning and professional development ... I provide guidance to staff where there are issues of risk ... I also provide consultations and support ... to help staff and senior management reflect on their work and its impact on them ...”

43. The report then details the account given by F4’s mother to Professor Patel about F4’s early life and upbringing. Professor Patel then describes F4 travelling to Syria, including that F4 was injured in a bombing raid a week before arriving in the Al Hol Camp, falling on the back of her head and sustaining an injury. There follows a synopsis of the evidence given by Ms Foa.
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44. Beginning at para.39, the first report sets out Professor Patel’s preliminary and provisional psychological opinion. Professor Patel considered that F4’s adverse life experiences in childhood, her chronic health problem with asthma and other hardships growing up in a single parent home were “highly likely to have impacted on her psychological and physical health as an adult”. There then follows an analysis of F4’s subsequent life. Amongst other things, Professor Patel noted that it is “clinically significant” that F4’s mother had previous experiences of significant life events, including displacement and living in a refugee camp, and that it is likely “these experiences have an impact on her relationship with her daughter”. F4’s history of childhood adversity, as well as her chronic health condition, were likely to have impacted on her psychological development as an adolescent, leading to possible

psychological difficulties.

45. The further hardship endured at the hands of F4's husband was also highly likely to have had a severe and enduring psychological and physical impact on F4. Professor Patel says that it is highly likely that at the time of the Voice Note exchanges in 2020, F4 was still in a state of trauma and grief and in survival mode, fearing for her son's and her own safety. Safety and ensuring security are basic human needs. It was "highly plausible" that, given her own psychological and physical vulnerability, F4 was not in an emotional or psychological state where she could attend to or realistically engage in the process of understanding what the deprivation decision meant and making a reasoned decision about lodging an appeal in the United Kingdom. Furthermore, "where there is a traumatic brain injury ... there can be a range in the nature and severity of cognitive impairments". As a result, Professor Patel considered the account given by F4, as relayed by Ms Foa in her two statements, was "highly clinically plausible". Regardless of how clear the Reprieve letter may have appeared, it was also "highly plausible" that the letter would not at that point have been sufficient to facilitate understanding and decision making by F4. All this meant it was entirely consistent that F4 could not emotionally and cognitively attend to and process the content of a letter of that kind, at least without repeated in-person discussions to ensure understanding.
46. Professor Patel considered that, given the mother-child bond, F4's fear of her son being forcibly taken away and separated from her was "likely to be genuine and clinically highly plausible given her apparent psychological state and her previous experiences ..." Regardless of whether the threat to remove the son was objectively realistic, psychologically the cognitive perception of threat was a key feature of trauma.

47. Professor Patel concluded that the account of the reasons for F4 not appealing earlier was “highly clinically plausible”.
48. Professor Greenberg is Professor of Defence Mental Health based at King’s College, London. He notes Professor Patel making it clear that there is a limited amount of information available to her. Having examined Professor Patel’s generally negative assessment of F4’s life in London, Professor Greenberg observed that, in the briefing by Reprieve to Ministers, F4 was described as a bubbly and sociable kid who was open and warm hearted with others. It also stated that F4 had been raised in London by her mother to whom she was very close.
49. In the opinion of Professor Greenberg, the report of Professor Patel had a number of limitations which substantially impacted on the validity of her conclusions. She relied heavily on information from Reprieve, which Professor Greenberg considered to be highly likely to have been presented in a way to support F4 in her appeal, although that was a matter for the court to form a view about. Although much of the information in her report about the potential impact of childhood adversity on F4’s mental health and psychological vulnerability was valid, Professor Patel did not appear to have elicited essential information from F4’s mother in order to help her form a balanced view on F4’s mental health status prior to going to Syria. The fact that F4 had successfully enrolled on a college course suggested to Professor Greenberg a degree of motivation or parental influence, even though F4 abandoned the course prematurely. If F4 had grown up in a loving and supportive home, this would, in the opinion of Professor Greenberg, substantially mitigate the childhood adversities that F4 had experienced. Professor Patel’s report did not contain what Professor Greenberg considered would have been a reasonable exploration of what F4’s childhood was really like.
50. Despite the hardships, F4 had, nonetheless, functioned well enough to keep herself and her son alive in what are described as highly-challenging circumstances. This suggested to Professor

Greenberg that F4 was functioning to a reasonable level. If F4 had been severely depressed, for example, that would have been likely to have substantially affected her ability to function, with consequential impacts on her ability to stay alive. The Voice Note evidence did not suggest that ~~F4 was hopeless about her future, unable to function or unable clearly to express her views that she did not want to progress with the appeal.~~

51. Professor Patel did not explain how someone who was very cognitively impaired had, nonetheless, kept herself and her son safe in an environment which was highly challenging and threatening. F4 had also shown resilience and determination to escape an abusive and violent marriage. Overall, Professor Greenberg considered Professor Patel's report to be highly speculative. Whilst acknowledging the limitations, the report was based very heavily on the reports of Ms Foa and on the interview with F4's mother, which focused almost exclusively on the negative aspects of F4's upbringing.
52. Professor Patel's second report addressed the Voice Note messages that had been provided in translation, where appropriate. Professor Patel considered that the content of these communications did not alter her view that it was highly clinically plausible and indeed likely that F4's capacity to engage and process the relevant information and make an important decision about it had been constrained by her psychological state. That view was reinforced by the messages of 24 December 2019. These messages are described in Ms Foa's third witness statement. F4 told her mother that

“they physically hit people to move them. They will literally force them, sometimes even rape them and take their clothes off. I went to see a doctor and they do a security check before and while checking me they were touching my breasts. I don't have the old phone that we used to speak on, but if I get a new one I will call you more. I don't want to stay here for the rest of my life, but I don't want to move to the new place. In the other place, rapes happen. Where I am now is better, despite what happened with the guard”.

53. After seeing Professor Greenberg's report, Professor Patel filed a third report. So far as concerns Professor Patel's interview with F4's mother, Professor Patel states that many of her questions "were met with silence and tears and [F4's mother] did not – and in my professional opinion, was not able to – say more at that time: she tearfully repeated the same information to me many times over". This was the first time that F4's mother had met Professor Patel and the interview was not lengthy. F4's mother was visibly distressed throughout it. F4's mother was "unable to respond to my questions attempting to explore the quality of her relationship with F4". Whilst Professor Greenberg was right that maternal love and support would have supported F4's psychological wellbeing and development, Professor Patel regarded it as "speculative to say this would on the balance of probabilities have 'substantially mitigated the adverse effects of her early life adversities'".

54. Although F4's voice messages "appeared to be clear that she had engaged with her family about the appeal" and that she "did not avoid talking about it", Professor Patel considered that Professor Greenberg had a "different and what I consider to be a simplistic, and literal, interpretation of what constitutes avoidance in psychological understanding, theory and practice".

55. The respondent has identified CLOSED material which "provides potential insight into F4's poor health". We address the significance of this material in our CLOSED judgment.

DISCUSSION

56. The appellant's case centres on her being able to show, on the balance of probabilities, that it is more likely than not that her Voice Note statements of January 2020, making it plain that she did not wish to appeal the deprivation decision, were not the product of a properly-formed decision on her part and that, consequently, what occurred in 2022 cannot be described as a change of mind on her part.

57. On their face, the Voice Note statements of F4 could hardly be clearer. Even accepting that F4 may not be particularly proficient in the Somali language, despite growing up with a Somali-speaking mother, it is apparent that, as early as 6 January 2020, F4 was stating in terms that she ~~did not wish to appeal, postulating that what her mother had said to her on 5 January was the~~ result of the mother not understanding F4 the first time. On 5 January, F4's mother had explained about the appeal. The response from F4 of 6 January said that, if they took away "my ID/visa ... then god may provide another way/open another way for me". That was, on its face, a coherent reason for not wishing to appeal.
58. There then occurred the sending of the Reprieve letter on 9 January 2020. The Commission agrees with the respondent that this letter is a model of clarity and simplicity. It explains why appealing the deprivation decision was highly important if F4 wished to return to the United Kingdom with her son.
59. F4 had about a week to consider what was said in the letter. On 16 January 2020, F4, in a Somali-language message, told her mother that, although she did not want to complain (which can only be about the mother pressing the point of appealing) F4 did not want to do this. On the same day, in English, F4 said, "I do not want the British citizenship". This last communication is significant for two reasons. First, being in English, there can be no doubt at all as to what F4 was intending to communicate. Secondly, the expression "British citizenship" as opposed to "British nationality" occurs three times in the Reprieve letter, including in the suggested form of words of instruction to Birnberg Peirce. We find that it is highly likely that F4's use of this expression shows that she had read the Reprieve letter in its totality.
60. All this means that the appellant's case faces a significant hurdle. She must show that it is more likely than not that the context in which the communications were sent was such that F4 was not expressing a decision based upon any material engagement with the question of whether she should appeal but, rather, that she was in such a mental state that she did not

appreciate the significance of the deprivation decision and/or that she was not prepared to engage with it because all her mental and physical resources were needed to keep her and her son alive in the challenging conditions of the camp.

61. According to Ms Foa's first witness statement, it was only on 22 October 2022 that F4 was asked to explain what she had understood when her family had messaged her about the citizenship deprivation in January 2020. At this point, F4 had already decided (in June 2022) that she wished to appeal. If her statements in January 2020 had, in fact, represented her freely formed decision not to appeal, then it was plainly in the interests of F4, in October 2022, to try to overcome that obvious difficulty.
62. One therefore needs to read what is said at paras.36 to 42 of Ms Foa's first statement (and the passages in later statements relating to them) with some degree of caution. Accepting what is there said involves concluding that, even though the Voice Note evidence strongly indicates that F4 read the Reprieve letter, she was not "certain" that her citizenship had been taken from her. Even though F4's state of mind may have been very sub-optimal at the relevant time, it is however, difficult to understand why, if she was in doubt, she did not express that to her mother and cousin in the messages. Instead, and in marked contrast, the messages exhibit a degree of frustration which a young person may often feel towards a parent who is, in their eyes, badgering them to do something they have decided not to do.
63. There is also a contradiction in paras.36 to 42 of the statement. As presented to the Commission, F4's case is that she was not able to reach a decision in January 2020, owing to her mental and physical state and her concerns for the health of her son. Paragraph 40, however, talks about F4 describing rumours at the time about what would happen to detainees, including that they would be transferred to Iraq. This made it more difficult for her to understand "what was actually true". That suggests someone bringing a proper understanding to bear on matters. If in January 2020, F4 was in fact questioning the veracity of what her

mother and Reprieve were telling her about the position of the United Kingdom Government, this sits most uncomfortably with the suggestion that she was not in a psychological position to engage with the information provided to her about the deprivation of her citizenship.

64. Paragraph 41 says that “F4 repeated she had initially been afraid her child would be taken from her if she took steps to appeal the deprivation of her citizenship”. Given that the context of these paragraphs was F4 being asked about “what she had understood when her family messaged her about her citizenship deprivation”, para.41 is entirely contradictory of the stance taken by F4 before SIAC, as well as being contradictory of paras.37 to 39. That stance was that in January 2020, F4’s statement in the Voice Notes could not be taken at face value because of her mental and physical state, rather than because she feared the consequences of appealing, including the risk that she would be separated from her son. That asserted fear is, rather, put forward to explain the delay between 8 July 2021, when Ms Foa first met F4 in the camp, and 22 June 2022, when F4 communicated to Ms Foa that she wished to appeal.

65. Any suggestion that, in January 2020, F4 feared that repatriation might have the effect that, on arrival in the United Kingdom, she would be separated from her son is further undermined by the letter of 24 January 2020 from Birnberg Peirce to the Secretary of State for Foreign and Commonwealth affairs, threatening a judicial review of the decision not to provide assistance for F4 and her son to return to the United Kingdom. This letter, written after the deprivation decision had been taken and communicated to Birnberg Peirce, F4’s mother and F4, reiterates her desire to return to the UK with her son. If F4 had, at this point, genuinely believed that appealing her deprivation of citizenship (which the Reprieve letter made plain was important if she wished to return) could in fact result in separation, then it is remarkable she did not communicate this to her mother and, by extension, to those advising her.

66. We do not find that the appellant can derive material assistance from the reports of Professor Patel. Importantly, Professor Patel’s first and primary report is entitled “Provisional and

preliminary psychological opinion”. The reasons for her opinion being of a provisional and preliminary nature are made plain by her. Professor Patel had no direct contact with F4. She had not been able to review any of F4’s medical records. She had to rely upon Ms Foa’s ~~recollections, extending back several years, of what F4 told Ms Foa was her physical and~~ mental state, both in January 2020 and in the period leading up to it. As a result, the most significant findings by Professor Patel, including as to the position in January 2020, are couched in terms of clinical plausibility, albeit of a high order. So, too, is her overall conclusion in para.75, that the overall account of the reasons for F4 not appealing earlier “is highly clinically plausible”.

67. Those findings, however, presuppose that everything F4 is recorded as saying to Ms Foa is not only more likely than not to be an accurate statement of what F4 said to Ms Foa, but also an account by F4 that is more likely than not to be genuine. We have already explained why there is good reason to doubt the genuineness of F4’s account of her thoughts and feelings in January 2020. Quite apart from that, however, Ms Foa’s witness statements are her attempts to recall, up to 17 months after the first of the meetings described, what F4 said to Ms Foa. In her second statement, Ms Foa says on a number of occasions (e.g. paras.71(a), 73(v) and 77) that she is reporting conversations to the best of her recollection. As far as we are aware, at no point does Ms Foa refer to having used notes in the preparation of her statements. When the Commission questioned Ms Mitchell about this, Ms Mitchell needed to take instructions. She told us that Ms Foa did consult notes although Ms Mitchell was unable to say whose notes those were. The Commission was informed that notes taken by Reprieve are treated as confidential and are never shared with anyone. That includes lawyers. Reprieve’s policy is understandable but it does mean that the respondent is entitled to emphasise the contrast between, on the one hand, Ms Foa’s account and, on the other, the actual words of F4, expressed in January 2020, as recorded in the Voice Notes.

68. Besides the inevitable limitations on Professor Patel's reports which we have already identified, we accept the criticism by Professor Greenberg that Professor Patel's account of F4's early life, and the inferences Professor Patel draws from this with regard to F4's behaviour, are based to ~~an impermissible extent on what Professor Patel heard from F4's mother.~~ Beginning at para.39, Professor Patel spends some four pages of her report analysing and commenting on F4's life from birth to young adulthood, when she left home. Amongst the matters noted were that age three is a highly-vulnerable age for a young child for whom security and love are paramount to healthy psychological and physical development and that where caregivers themselves (i.e. F4's mother) have experienced significant life events, losses, adversity and psychological distress, this can have an adverse impact on their emotional capacity to be attentive to their child's needs for emotional and physical closeness, as well as their need for emotional and physical safety (paras.44 and 45).
69. At para.46, it is said that children with chronic health difficulties are known to have an increased risk of emotional and behavioural problems. At para.47 it is said to be unclear whether F4 had established close trusting friendships with others and to what extent she suffered from cognitive difficulties. At para.48, it is said that it appears F4 had not made any friends at college and that, according to her mother, F4 had not settled there. At para.49, it is said to be clinically significant that F4's mother was a single parent with previous experiences of significant negative life events. It was likely that these experiences had impacted on the mother's relationship with F4, both at a young age and at a later stage. At para.50, it is said that, in the case of F4, "her history of childhood adversity as well as a chronic health condition are likely to have impacted on her psychological development and possible psychological difficulties".
70. Professor Greenberg opined that Professor Patel did not appear to have elicited essential information from F4's mother to help her form a balanced view on F4's mental health status

prior to her going to Syria. Professor Patel's response, in her third statement, was, in effect, that the information summarised in her report was all that she was able to glean from F4's mother and that many of Professor Patel's questions were met with silence and tears. The interview was not a lengthy one and F4's mother was distressed throughout it.

71. This information should, we consider, have been put forward earlier. The fact that it was not casts doubt upon the reliability of Professor Patel's first report. The position in this regard is not helped by para.10, in which she asserts that the interview process should not categorise and list "positive" and "negative" aspects of an individual's background or experiences in a formalistic way. The objective is to address "the complexity of human experience, based on available information". It was not Professor Patel's fault that F4's mother's reacted as she did during their first and only meeting. The limitations that this imposed upon Professor Patel's ability to address the "complexity" of the relationship between F4 and her mother should, however, have been made plain in the original report.

72. Ms Mitchell attempted to deflect criticism of Professor Patel by submitting it was not F4's case that her cognitive impairment started in the United Kingdom. It arose, rather, from her head injury and the starvation and other forms of ill-treatment she had experienced whilst in Syria. As we have seen, however, that is not how Professor Patel approached the issue in her report. Although she did not refer to cognitive impairment, it is plain that she regarded the negative aspects of F4's childhood and adolescence (formed from her conversation with F4's mother) as having a bearing upon F4's psychological state at the relevant time in Syria.

73. Further doubt on F4's asserted mental state in January 2020 is cast by the material supplied by Reprieve to the FCO in connection with the request for the repatriation of F4 and her son. The briefing to Ministers describes in considerable detail the physical state of F4 and her son. No reference is made to any concerns that the family in the United Kingdom might have had about F4's mental state. Despite the asserted difficulties in communicating with F4, the briefing not

contains considerable detail about F4's physical condition. It describes her becoming so weak that she now struggles to stand or walk unaided and that her feet are blackened and swollen from exposure to extreme cold. The briefing was accompanied by a medical report/opinion of Dr Cohen. She describes reported symptoms of F4 and her son as including weakness, fatigue and dizziness, shortness of breath, wheezing and coughing; swelling and black discolouration of feet, broken skin on feet and pain in feet; thinning of her hair; bleeding from the rectum with pain in opening her bowels and persistent diarrhoea. Dr Cohen suggested that F4 might be suffering from multiple vitamin and mineral deficiencies. These can affect cognitive function with confusion, memory difficulty and depression. This aspect of the report serves to emphasise the significance of the lack of any suggestion by the United Kingdom relatives to Reprieve or Professor Patel that, in their interactions with F4, the relatives thought F4 might have been exhibiting such symptoms.

74. The briefing document also paints a significantly different picture of F4's life in the United Kingdom, compared with that painted by Professor Patel. The briefing document says that F4 "was raised in London by her mother, with whom she was very close. [F4's] cousin ... who is 11 years older than [F4] lived nearby and spent a good deal of time with the family". She describes F4 as "a bubbly and sociable kid" who was open and warm hearted with others. F4 is said to have "enjoyed school and had hopes of becoming a midwife. After her GCSEs [F4] enrolled at ... College to study health and social care".
75. In the light of the limitations of the evidence of Ms Foa and Professor Patel, we agree with Mr Blundell KC that it is significant that no witness statements from F4's mother or F4's cousin has been filed in connection with this application. They would plainly have had relevant light to shed upon matters from the summer of 2019 until January 2020.
76. As well as the repatriation briefing note, no mental issues were identified when F4 was visited by the FCO's NGO partners in the camp on 13 December 2019. This records that NGO staff

were able to identify and reach F4 and her son. F4 was said to have asthma and the son to have severe diarrhoea. Immediate medical support was given by bringing a doctor to the camp, who provided “all the prescribed medicines, including vitamins to the mother and son, in addition, winter clothes kit was arranged and provided immediately”. The following day, arrangements were to be made to get a separate tent, as F4 and her son were sharing a tent with another United Kingdom woman at that time.

77. We acknowledge the limited nature of this information. It does, however, strongly suggest that Dr Cohen’s concerns about vitamins were addressed. Even if the doctor did not personally see F4 (which cannot be ascertained with certainty from the note), one would have expected the NGO staff to have recorded any concerns they had about F4’s mental state, such as not being able to make themselves understood to her (and vice-versa).
78. On the state of the evidence before the Commission, we conclude that F4 has failed to show, on the balance of probabilities, that her Voice Note statements of January 2020 should not be read at face value, as representing her considered decision not to appeal against the deprivation of her British citizenship. In so finding, we are not to be taken as minimising the situation in which F4 found herself in the camp; nor as minimising the problems being experienced by her son and F4’s natural concern about him. The supporting and background evidence, however, does not begin to resolve the problems with paras.36 to 42 of Ms Foa’s first witness statement, when read against the Voice Note records, especially those of 6 January 2020.
79. Even if F4 were able to surmount the primary problem of the Voice Note messages, and if one ignores the period of apparent silence between January 2020 and July 2021, the Commission is not satisfied that F4 has shown, on balance, that there was a satisfactory reason for her to delay submitting an appeal until she gave her authorisation in June 2022. At para.27 of Ms Foa’s first statement, she identified the specific reason why F4 refused to engage with the citizenship issue, when they met on 8 July 2021, as being F4’s fear that this would result in the British

Government taking her child away from her forcibly, without her consent.

80. At para. 28, Ms Foa says that in her experience women in the camps often have misunderstandings and misapprehensions about the process of appealing their citizenship and, in particular, the consequences for their children. The reason for this is said to be that “detainees do not have access to legal advice or to any reliable means of communicating with individuals outside the camp”. That was, however, emphatically not the position with F4. She did indeed have access to advice. There was the advice from Reprieve, who had been acting for her since 2019 and who had written to her in January 2020 in terms which we are entirely satisfied F4 understood. Furthermore, F4 had access (albeit indirect) to Birnberg Peirce. This access had been available since January 2020 through F4’s mother, with whom F4 was in communication by phone.

81. There is also a fundamental contradiction in the evidence of F4 (as related by Ms Foa), which can be seen from para.30 of the same statement. Here, Ms Foa records that on 10 July 2021, the Head of Reprieve’s Syria and Iraq Detention Project and Ms Foa had a follow-up meeting with F4 “during which she gave Reprieve authorisation to assist her in welfare and repatriation related services”. We have made reference to this authorisation above. It is manifest from its terms that the authorisation, to which F4 agreed, would enable Reprieve and Birnberg Peirce to take steps in connection with the repatriation of F4 and her child. It was, however, F4’s stated fear that, once in the United Kingdom, she would be separated from her child. As we have observed, the authorisation says that the effect of giving it had been fully explained to F4 in a language that she understood and that F4 understood the consequences of her agreement. In those circumstances, it is simply not credible that F4 could, on the one hand, give the repatriation authorisation and, on the other, refuse to appeal the deprivation decision, because might involve her being separated from her son. There are only three possibilities. First, Ms Foa’s recollection may be incorrect and F4 was not, in fact, drawing any such distinction. We

consider this is unlikely, given that F4's asserted reluctance continued for almost a year. The second possibility is that although F4 may have expressed herself in these terms to Ms Foa, F4 did not genuinely believe that appealing the deprivation decision would have these consequences. That is a possibility; although it cannot at this point be ascribed to F4 having "brain fog" or any other similar cognitive disorder, such as is alleged to have been the case in January 2020. But, in any event, that is not F4's case. Given that (a) at para.83 of Ms Foa's second statement, she believes that F4 "feared both that the British authorities might take the child on their return to the UK ... and that they could forcibly repatriate without her"; (b) the authorisation on 10 July 2021 was so inconsistent with F4's alleged fear about appealing as to make it likely that her alleged fear was not genuine; and (c) it cannot be satisfactorily explained by reference to her mental state at the time, F4's motivation must lie elsewhere. To ask what that motivation might be is to venture into the realm of speculation and cannot assist F4's case.

82. The third possibility is that, despite the advice and the obvious illogicality of giving the authorisation for repatriation, etc., F4 genuinely believed (and continued to believe until June 2022) that there was some relevant danger in appealing. Again, we fully bear in mind the circumstances in which F4 found herself. We bear in mind all she had experienced, and had to deal with, over the preceding few years. Even so, however, it was plainly entirely unreasonable for F4 to maintain that stance. If the third possibility contains the explanation for F4's conduct it is, therefore, not a reasonable explanation.
83. If anything, the position becomes even more problematic for F4 in December 2021, when she said that she "needed more time to make up her mind". It matters not, at this point, whether Ms Foa did (or should have) told F4 about the fact that the appeal would need to be made with expedition. At the meeting on 10 July 2021, the legal position was understood to be such that F4 was already well out of time. The dilatoriness on F4's part was not occasioned by knowledge of the judgment in D4. It cannot be excused by reference to it.

84. The respondent contends that the delay between 18 June 2022, when F4 authorised Reprieve to institute an appeal, and 24 August 2022, when notice of appeal was given, falls to be taken into account, notwithstanding that the failure was that of a solicitor with Birnberg Peirce, who did not appreciate the retrospective change in the law made by section 10 of the Nationality and Borders Act 2022. The respondent points out that Birnberg Peirce were the solicitors for D4. Ms Mitchell submits that, given the significance of depriving an individual of nationality, the failings of a legal advisor cannot be attributed to the person who is being deprived of citizenship. The Commission is inclined to agree with Ms Mitchell. This does not, however, assist the appellant because, even if one ignores the period from 18 June 2022, there is no satisfactory explanation for the delay from January 2020 to June 2022, which in its own terms was extremely long.

85. We turn to whether there are other relevant factors that may, nevertheless, mean that there are special circumstances making it unjust not to extend time to enable F4 to appeal. We agree with the respondent that, notwithstanding the fact that removal of citizenship engages a person's fundamental rights, that cannot be given overriding weight. It must still be balanced against the issues we have identified earlier, when discussing C12. This is plainly not a case where the Commission can, at present, take a view of the substantive merits. In particular, it cannot be said that those merits are either very strong or very weak. They therefore play no part in the current exercise.

86. It remains the case that, as Ms Mitchell submitted, refusing to extend time means that there is no prospect of F4 keeping her British citizenship. This means F4 loses her only realistic hope of returning to the United Kingdom along with her son. Furthermore, the future for both of them would be extremely uncertain.

87. The Commission accepts all of this. As we have already said, we reject any suggestion that, because F4 is one of a number of ex-British citizens who find themselves in camps in Syria,

F4's case cannot constitute "special circumstances".

88. The fact remains, however, that F4 has failed to show a reasonable explanation for the extreme delay we have described. She has failed in what Ms Mitchell rightly identified was the central matter; namely, the context of the communications from F4 in January 2020. In her reply at the hearing, Ms Mitchell submitted that what F4 said in those communications was "equally consistent" with the evidence F4 had put forward, including that of Ms Foa and Professor Patel. Being equally consistent, however, does not discharge the burden of proof on F4. In fact, the problems we have with the evidence are such that F4 fails by a far greater margin.
89. In its CLOSED judgment, the Commission has considered potentially exculpatory material, which concerns F4's health. For the reasons given in that judgment, we find it does not assist F4's case.
90. The application is refused and the Commission does not extend time under rule 8(5).
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