



9 October 2013

PRESS SUMMARY

Secretary of State for the Home Department (Appellant) v Al-Jedda (Respondent) [2013] UKSC 62
On appeal from [2012] EWCA Civ 358

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Wilson and Lord Carnwath.

BACKGROUND TO THE APPEALS

This appeal relates to immigration law and the British Nationality Act 1981 (“the Act”). Pursuant to section 40 (4) of the Act, the Secretary of State for the Home Department (“the Secretary of State”) cannot deprive a person of his British citizenship on the ground that it is conducive to public good if she is satisfied that it would make that person stateless.

Mr Al-Jedda came to the UK from Iraq in 1992 and was granted British nationality on 15 June 2000. As a result, because of Iraqi law, he automatically lost his Iraqi nationality. In September 2004 Mr Al-Jedda travelled from the UK to Iraq. He was arrested in Iraq the following month by US forces who transferred him into the custody of British forces. Mr Al-Jedda was held, without charge, for more than three years. Soon after his release he travelled to Turkey where he currently lives.

In judicial review proceedings Mr Al-Jedda contended that his internment violated his rights under article 5(1) of the European Convention on Human Rights (right to liberty and security). This was rejected by the UK courts, including the House of Lords. However, the Grand Chamber of the European Court of Human Rights held that his internment had violated his rights under article 5(1). In separate proceedings, initiated in 2006, Mr Al-Jedda brought a claim for habeas corpus in which he asserted that his internment had become unconstitutional under Iraqi law. After his release, he re-pleaded the claim as one for damages. The claim was dismissed and the Court of Appeal upheld the dismissal.

By order dated 14 December 2007, shortly prior to his release from internment, the Secretary of State deprived Mr Al-Jedda of British citizenship pursuant to her powers under the Act. This order was preceded by a letter to Mr Al-Jedda, dated 12 December 2007, by which the Secretary of State informed him of why she was satisfied that depriving him of British Citizenship would be conducive to the public good.

On 11 January 2008 Mr Al-Jedda appealed to the Special Immigration Appeals Commission (“the Commission”), one of his grounds of appeal being that the Secretary of State’s order would render him stateless and was therefore void. The Commission concluded that Mr Al-Jedda had, through an Iraqi law in force between 2004 and 2006, regained Iraqi nationality and would therefore not be rendered stateless by the Secretary of State’s order. Mr Al-Jedda appealed and on 12 March 2010 the Court of Appeal, allowing the appeal, directed the Commission to rehear the issue. On 26 November 2012, the Commission again concluded that Mr Al-Jedda had regained Iraqi nationality prior to the date of the Secretary of State’s order and was therefore not stateless. In the decision under current appeal the Court of Appeal found this second decision to be erroneous in law. The effect of this was that the Court of Appeal had to consider the Secretary of State’s alternative contention, namely that if, on 14 December 2007, Mr Al-Jedda had not been an Iraqi national, it had been open to him to regain it by application and that it had been his failure to make the application, rather than her order, which had made him stateless.

The Court of Appeal, rejecting the Secretary of State’s alternative contention, held that the effect of her order would be to make Mr Al-Jedda stateless. The Secretary of State appeals against this decision.

JUDGMENT

The Supreme Court unanimously dismisses the appeal by the Secretary of State. The Court rejects the Secretary of State's alternative argument. From a plain reading of the statute and surrounding guidance, it is clear that the question is simply whether the person holds another nationality at the date of the order depriving him of his British citizenship.

REASONS FOR THE JUDGMENT

- On the evidence before the Court of Appeal, the validity of the premise upon which the Secretary of State bases her argument, namely that Mr Al-Jedda could have applied to the Iraqi authorities for restoration of his nationality, that he had a right to its restoration and that restoration would have been effective immediately, is not clearly established [25].
- Even adopting the suggested premise, the Section 40(4) restriction on the Secretary of State's power to deprive a person of his British citizenship does not permit her to conduct an analysis of the relative strength of contributing factors. The question is simply whether the person holds another nationality at the date of the order depriving him of his British citizenship [32].
- The ability of the Secretary of State to assert that the person in question could quickly and easily re-acquire another nationality would create confusion in the application of what should be a straightforward exercise [32].
- In section 12 of the Act, a person can renounce British citizenship as long as they have another nationality or, notably, will *acquire* another nationality. Parliament could have made an analogous provision in section 40(4), preventing a person from being made stateless, for example, '*in circumstances in which he has no right immediately to acquire the nationality of another state*' but it did not do so [33].
- The Home Office has incorporated, verbatim, parts of 2012 United Nations guidelines on statelessness into its own guidance, dated 1 May 2013, entitled "Applications for leave to remain as a stateless person". This stipulates that "... *An individual's nationality is to be assessed as at the time of determination of eligibility ... It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making [a]... determination, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process for acquiring nationality but those procedures have not been completed, he or she cannot be considered as a national... Similarly, where requirements or procedures for loss, deprivation or renunciation of nationality have not been completed, the individual is still a national for the purposes of the stateless person definition.*" The Secretary of State's own guidance helpfully addresses the very issue in question, but unhelpfully to her appeal [34].
- An outstanding issue, which is not for this court to resolve [29], relates to the Secretary of State's assertion, following the Supreme Court hearing, that she now understands that Mr Al-Jedda has a genuine Iraqi passport and a valid grant of Iraqi nationality [27]. Mr Al-Jedda responds that the passport to which the Secretary of State refers is a fake one, used by him at the time to travel from Iraq to Turkey in 2008 [28 (a)]. It may be that the Secretary of State will make a further deprivation order on the basis that, given the Iraqi passport, Mr Al-Jedda would not be rendered stateless by it. Mr Al-Jedda would no doubt dispute this conclusion and may also contend that the Secretary of State is prevented from alleging the validity of the passport at this late stage. The Court does not comment on these possibilities [29].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html