



Press Summary

THE COURT ORDERED that no one shall publish or reveal the names or addresses of the Appellants or of E3 who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellants or of E3 or of any member of the Appellants' families in connection with these proceedings.

26 February 2025

**N3 (Appellant) v Secretary of State for the Home Department
(Respondent);
ZA (Appellant) v Secretary of State for the Home Department
(Respondent)**

[2025] UKSC 6

On appeal from [2023] EWCA Civ 26

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Sales, Lord Stephens

Background to the Appeal

This appeal concerns the lawfulness of orders depriving a person of their British citizenship and the effect of the Secretary of State withdrawing such orders. N3 is a British Citizen who was born in Bangladesh. E3 is a British citizen who was born in the United Kingdom. Both of E3's parents were Bangladeshi citizens at the time of his birth.

In 2017, the Secretary of State made orders depriving N3 and E3 of their British citizenship on grounds that they had participated in Islamic terrorist organisations and that they posed a threat to national security. The Secretary of State considered both N3 and E3 to be dual British-Bangladeshi nationals and that depriving them of British citizenship would not make them stateless.

On 10 June 2019, E3's daughter, ZA, was born in Bangladesh. If E3 had been a British citizen at the time of her birth, ZA would also have had British citizenship by descent.

Both E3 and N3 appealed to the Special Immigration Appeals Commission ("SIAC") against the decisions to make the deprivation orders on a number of grounds including that, at the date of the decisions, they no longer held Bangladeshi citizenship, and the order would render them stateless. E3 and N3 argued that, under Bangladeshi law, they had lost their Bangladeshi citizenship at the age of 21.

On 18 March 2021, SIAC handed down its judgment in separate cases concerning other alleged dual British-Bangladeshi nationals in a similar situation to E3 and N3. SIAC held that these individuals had lost their Bangladeshi citizenship at age 21 and depriving them of their British citizenship would therefore render them stateless.

In light of SIAC's judgment, on 20 April 2021 the Secretary of State wrote to E3 and N3 stating that the deprivation orders had been withdrawn and that their British citizenship had been reinstated. Solicitors acting for E3 and N3 replied to the Secretary of State disagreeing that their citizenship needed to be 'reinstated'; instead, the solicitors argued that the deprivation orders had always been unlawful and never existed, with the result that E3's and N3's citizenship had always remained intact. This would also mean that ZA would have had British citizenship at birth through E3. The Secretary of State replied refusing to accept that E3 and N3 had been British citizens during the period in which the deprivation orders were in force and had not been withdrawn.

In 2021, N3, E3 and ZA sought judicial review of the Secretary of State's refusal to accept that E3 and N3 were British citizens in the relevant period. Their claims were linked and heard together. Their claims were dismissed by the High Court, and their appeals were dismissed by the Court of Appeal. N3 and ZA now appeal to the Supreme Court.

Judgment

The Supreme Court unanimously allows ZA's appeal in full, and N3's appeal in part. The Court holds that if a deprivation order is withdrawn it is to be treated as having no effect for the purpose of determining an individual's citizenship status in the period from the date of the making of the order until it is withdrawn. E3 and N3 are therefore to be regarded as having British citizenship throughout this period. The consequence of this for ZA in the present case is that she is a British citizen by virtue of E3's status as a British citizen at the time of her birth. Lord Sales and Lord Stephens give the judgment, with which the other members of the Court agree.

Reasons for the Judgment

N3 and ZA put forward two grounds in the appeal. First, their primary ground is that for the Secretary of State lawfully to exercise her power to deprive a person of their British citizenship a precedent fact must be established, namely that the person would not be rendered stateless by the Secretary of State making a deprivation order. If this precedent fact is not established, then the deprivation order is of no effect and the person has always retained their citizenship. N3's and ZA's second ground is that, even if their precedent fact analysis is wrong, the effect of withdrawing the deprivation orders is that the orders are to be treated in law as not existing from the outset [7]-[9], [69]-[70].

Statutory framework

Sections 1 to 11 of the British Nationality Act 1981 ("**the 1981 Act**") set out the circumstances in which a person acquires British citizenship. For the purposes of this appeal, the relevant provisions are sections 1(1) and 2(1)(a) [23]-[24]. The status of citizenship is a fundamental status at common law, and grounds a common law right of abode in the United Kingdom. This is an important right and therefore the principle of legality is engaged, meaning that general or ambiguous words in legislation will not readily be interpreted as intended to remove this right [26]-[27]. The United Kingdom also has a treaty obligation not to render a person stateless, under article 8.1 of the Statelessness Convention [29].

Section 40 of the 1981 Act sets out the circumstances in which a person may be deprived of their status as a British citizen by an order made by the Secretary of State. Under section 40(2),

the Secretary of State may make a deprivation order if “satisfied that deprivation is conducive to the public good”. Under section 40(4), the Secretary of State may not make such an order if “satisfied that the order would make a person stateless”. Section 40A sets out provisions in relation to appeals against deprivation orders. Section 40A must be read with section 2B of the Special Immigration Appeals Commission Act 1997 (“SIACA”) which provides for an appeal to SIAC if the Secretary of State’s decision to make a deprivation order was made on national security grounds. It is for the appellate body to determine for itself whether the ground for making a deprivation order exists and/or whether the order would make the person stateless; it does not ask simply whether the Secretary of State had reason to be satisfied subjectively of those matters [30]-[34].

The Court makes several points about the right of appeal against a deprivation order. First, it is usual for more information to be available to the appellate body than was available to the Secretary of State. Second, the appellate body makes its own decision on all the evidence before it. Third, the appellate body does not fulfil a judicial review function. It does not examine the lawfulness of the Secretary of State’s deprivation decision on ordinary public law grounds. It examines whether the ground for a deprivation order exists and/or whether the order would in fact make the person stateless. Fourth, a court order takes effect from the date of the order. Fifth, the outcome of an appeal is usually that the matter at issue is treated from the outset in the manner determined by the appellate court [34]-[40].

To assess the meaning of sections 40 and 40A, the Court considers two amendments which were made to section 40A and then repealed [52]. First, by an amendment made in 2002, an appeal under section 40A had the effect of suspending the Secretary of State’s power to make a deprivation order until the appeal was determined. After the repeal of this amendment, the deprivation order can be made before any appeal is determined. The purpose of the repeal was to facilitate enforcement measures at an early stage (including to allow immigration detention of the person concerned with a view to their removal, or to prevent them from entering the United Kingdom from overseas) and thereby allow for protection of the public as soon as the deprivation order had been made. The purpose of the repeal was not to enable the United Kingdom to breach its obligation under the Statelessness Convention by making a person stateless during the period between the making of the deprivation order and the outcome of an appeal [53]-[56]. Secondly, an amendment made in 2004 enabled the appellate body to order that a deprivation order be treated as having had no effect, and this too was later repealed. The Supreme Court considers that the purpose of repeal was to maintain the lawfulness of immigration enforcement action taken under the deprivation order while an appeal was being determined. It was not to ensure that the effect of a successful appeal was never to produce any legal effects from the outset, nor to achieve the result that a person should be treated as stateless in the period between the making of the deprivation order and the outcome of the appeal [57]-[60].

The normal principles of statutory interpretation apply [61]. When interpreting statutes, courts seek to determine the meaning of the words in light of their context and the purpose of the statutory provision [62]-[65]. Another principle of interpretation is the principle of legality, under which courts should be slow to impute to the legislature an intention to override established rights where that is not clearly spelt out [66]. A further guide to interpretation is that courts should seek to interpret domestic law in a way that is compatible with the United Kingdom’s international treaty obligations. The 1981 Act was passed after the Statelessness Convention and sections 40 and 40A deal with the subject matter of the international obligation not to render a person stateless and the right of appeal from a deprivation decision. Therefore, those provisions are to be interpreted, if they are reasonably capable of bearing such a meaning, as not being inconsistent with the obligation to which they are intended to give effect [68].

Ground 1: the precedent fact analysis

The appellants submitted that the exercise of the power by the Secretary of State to make a deprivation decision or order is dependent on the absence of statelessness as a precedent fact. The Court rejects this submission. The plain meaning of section 40(5) read with section 40(4) is that, before making a deprivation decision or deprivation order, the Secretary of State must form a subjective opinion regarding whether such an order would make the person stateless. This does not depend on whether that would in fact be the case. Parliament could have, but did not, use language in section 40(4) specifying that the absence of statelessness was an objective fact which must exist before the Secretary of State could make a deprivation order [72]-[75]. The appellants further submitted that as the appellate body decides whether the person would be rendered stateless, it follows that the absence of statelessness as a matter of objective fact must be the condition precedent for the exercise by the Secretary of State of the power to make a deprivation order. The Court also rejects this submission. The power of the Secretary of State to make a deprivation order is not qualified by reference to the separate function of the appellate body to determine the position as a matter of fact [82].

Ground 2: the alternative ground relying on the effect on a deprivation order of a successful appeal

It was common ground between the appellants and the Secretary of State that the effect of the decision by the Secretary of State to withdraw the deprivation orders in this case (on the ground that it had become clear from the result in the other proceedings that the appeal to SIAC would succeed) was the same as if there had been a successful appeal to SIAC [6]. The Court therefore focuses on the legal effect of the outcome of a successful appeal.

The appellants argued that the effect of SIAC allowing an appeal was that for all purposes and at all material times the deprivation order made by the Secretary of State had to be regarded as unlawful and of no effect. A consequence of the appellant's analysis was that the individual would have a good claim for damages for false imprisonment in relation to the period between the making of the deprivation order and the decision of SIAC [84]. On the other hand, the Secretary of State submitted that if an order did have validity and legal effect in the period until a contrary determination by SIAC, it had to be treated as being valid in that period for all purposes. This would mean that N3 and E3 were not British nationals during the period in which the order was in force, and that consequently ZA did not acquire British citizenship by virtue of E3 being a British citizen in that period [85].

In the Court's view, the extreme submissions made by each party should be rejected [87]. The appellant's analysis must be rejected as permitting claims for false imprisonment would undermine the intended effect of the applicable statutory provisions, to allow immigration enforcement measures to be taken lawfully during that period as explained above [84]. The Secretary of State's analysis must also be rejected as it would involve giving the relevant statutory provisions a wider effect than is justified by their limited purpose, and would be contrary to their proper interpretation reflecting the fundamental right of citizenship in accordance with the principle of legality [86]. The Court holds that the proper analysis involves a middle position [87].

The legal effect of a failure to comply with a condition for the exercise of a power conferred by a statute, where that is not spelled out expressly, depends upon an inference as to Parliament's intention as to what that effect should be. The statute may reflect an intention to balance a number of intersecting purposes, both as to substantive outcomes and as to the procedural protections inherent in the regime [88].

In this case, an interpretation of the statutory provisions is available which both gives effect to their purpose (protecting the Secretary of State and her officials in relation to immigration enforcement measures in the period before the determination of an appeal by SIAC) and respects the fundamental right of citizenship and the United Kingdom's international obligations [89]-[90]. Once SIAC determines that a deprivation order would render the

individual stateless and allows the appeal against the order (or the Secretary of State concedes that SIAC must allow the appeal), then for the purpose of determining the individual's citizenship status in the period from the date of the making of the order until the appeal is allowed (as distinct from the purpose of deciding whether immigration enforcement action taken in that period was lawful) the order is to be treated as having no effect [90]. This means that both N3 and E3 are to be regarded as having been a British citizen throughout the relevant period. The consequence of this for ZA is that she is a British citizen by virtue of E3's status as a British citizen at the time of ZA's birth [91].

For these reasons, the Court allows ZA's appeal and makes a declaration that she is a British citizen. The Court also allows the appeal by N3 in part, subject to the qualifications explained above [94].

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: [Decided cases - The Supreme Court](#)