JUDICIARY OF
ENGLAND AND WALES

Hilal Al-Jedda v Secretary of State for the Home Department

Court of Appeal (Civil Division)

29 March 2012

SUMMARY TO ASSIST THE MEDIA

The Court of Appeal (Lord Justice Richards, Lord Justice Stanley Burnton and Lord Justice Gross) has today reluctantly allowed Mr Al-Jedda's appeal against the Home Secretary's decision to deprive him of his British nationality.

Introduction

The appellant, Mr Al-Jedda, came to the United Kingdom in 1992 as a refugee from the regime of Saddam Hussein. He was granted asylum and in 2000 he was granted British nationality. In 2004 he travelled to Iraq, where he was detained by British forces on grounds of suspected involvement with terrorism. He sought unsuccessfully to challenge his detention. On 30 December 2007 he was released from detention without charge. Just prior to his release, on 14 December 2007, the Secretary of State for the Home Department made an order under section 40(2) of the British Nationality Act 1981 depriving him of his British nationality. The appellant wants to return to the United Kingdom but the consequence of the order is that he has no right to do so. At the time of the judgment under appeal he was living with his family in Turkey.

Section 40 of the 1981 Act provides:

> "(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.
> …
> (4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless."

The appellant lodged an appeal to the Special Immigration Appeals Commission ("SIAC") against the Secretary of State's order. He now appeals SIAC's decision of 26 November 2010.

At the time when he first came to the United Kingdom, the appellant had Iraqi nationality. The effect of his being granted British nationality in 2000 was that, under the law of Iraqi as it existed at the time, he lost his Iraqi nationality. The main issue for SIAC to determine was whether his Iraqi nationality had been automatically restored to him by one or other of a number of Iraqi legislative instruments enacted following the occupation of Iraq by coalition forces in 2003. (para 5)
SIAC concluded that the appellant had that the appellant had had Iraqi nationality restored to him automatically either by the Law of Administration for the State of Iraq for the Transitional Period ("the TAL"), adopted on 8 March 2004 by the Governing Council of Iraq during the period of occupation by coalition forces, or by Iraqi Law No.26 of 2006 ("the 2006 Nationality Law") which

came into force on 7 March 2006 following the end of the occupation, the expiry of the transitional period and the approval of a new Iraqi Constitution. (para 9)

<u>The Iraqi legislation and SIAC's findings on it</u>

This is set out in detail in paragraphs 13 - 41.

<u>Issues on the appeal</u>

These are set out in detail in paragraphs 42 - 46 but essentially are that SIAC erred in law in coming to its decision.

The Court considers the interpretation of Article 11(C) of the Law of Administration for the State of Iraq for the Transitional Period (TAL) in paragraphs 47 - 101. **Lord Justice Richards concluded: " ... that Article 11(C) of the TAL did not operate to restore the appellant's Iraqi nationality citizenship automatically; and since he made no application for its restoration, he did not become an Iraqi citizen by virtue of the TAL." (para 101)**

The Court considers the interpretation of Article 10 of the 2006 Nationality Law in paragraphs 102 - 118. **Lord Justice Richards concluded: "... in the absence of any application by the appellant, Article 10 has not operated to restore Iraqi nationality to him." (para 118)**

<u>Respondent's notice</u>

This is considered in paragraphs 119 - 123. The Secretary of State argued that it was not her decision to deprive him of his nationality that made him stateless, but his own failure to apply for the restoration of his Iraqi nationality; or at least, in the terms of section 40(4) of the British Nationality Act 1981, the Secretary of State was entitled in the circumstances not to be satisfied that the order would make him stateless. (para 119)

Lord Justice Richards "... reject[ed] the Secretary of State's argument for the straightforward reason that section 40(4) requires the Secretary of State (and, on appeal, the court) to consider the effect of the *order* made under section 40(2): would the *order* make the person stateless? If Iraqi nationality was not restored to the appellant automatically under the Iraqi legislation considered above, he was not an Iraqi national at the time of the order: his only nationality at that time was British nationality. The effect of the order would therefore be to make him stateless. That would be the effect of the order irrespective of whether he could previously have acquired another nationality had he chosen to do so, or whether he could do so in the future." (para 121)

He went on to conclude: "I am satisfied that in this case the appellant has proved to the requisite standard that at the time of the Secretary of State's order he was not considered as a national by the State of Iraq under the operation of Iraqi law, even though it would have been open to him and would still be open to him to make an application for the restoration of Iraqi nationality under that law. There is no suggestion that he was considered as a national by any other State save the United Kingdom. In those circumstances the order depriving him of his British citizenship plainly made him stateless." (para 123)

Conclusion:

Lord Justice Richards concluded:

"For the reasons I have given I would allow the appeal and quash the Secretary of State's order depriving the appellant of his British nationality.

"In one way that result is deeply unsatisfactory, in that the Secretary of State is satisfied, for reasons upheld by SIAC, that to deprive the appellant of his British nationality is conducive to the public good. But it needs to be borne firmly in mind that the British Government took the positive step of granting the appellant British nationality in 2000 and that Parliament has legislated in clear terms that an order depriving a person of his British nationality may not be made unless deprivation is conducive to the public good *and* the order would not make him stateless. It appears that at the time of making the order the Secretary of State was unaware that the grant of British nationality to the appellant had caused him to lose his Iraqi nationality, and that the issue of statelessness was therefore not given the consideration it would otherwise have been given." (paras 124 - 125)

Lord Justice Stanley Burnton, agreeing with Lord Justice Richards' conclusions and reasons, said:

"...this is a conclusion in relation to this appellant I have come to reluctantly." (para 127)

He added that if the Government had retained the right, conferred by the original provisions of the British Nationality Act 1981 to remove a person's UK nationality on the ground that he had shown himself to be disloyal or disaffected to the Crown, the result of the case might well have been very different. That right was not restricted to cases where the removal of British nationality would not render the person stateless. For reasons of which the Court is unaware, that right was abolished when the 1981 Act was amended in 2002. (para 127-128)

Lord Justice Gross, agreeing with the reasons given by Richards and Stanley Burnton LJJ, said:

".. I too feel driven to allow this appeal. I do so with great reluctance, in circumstances where the appellant's case is conspicuously lacking in merit and where the Secretary of State has determined that depriving the appellant of his British nationality is conducive to the public good. Unfortunately, however, s.40(4) of the British Nationality Act 1981 (as amended) leaves no scope for the exercise of any discretion." (para 129)

"Had the power set out in Art. 8.3(a)(ii) of the Convention [on the Reduction of Statelessness] been incorporated in domestic legislation, the landscape of this litigation is likely to have been very different. As it is, we have no choice but to apply s.40(4) in accordance with its terms." (para 131)

-ends-

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.