

Case Summary

B2 v The Secretary of State for the Home Department

Case Reference: [2013] EWCA Civ 616

1. Reference Details

Jurisdiction: England and Wales Court of Appeal (Civil Division) on appeal from the Special Immigration Appeals Commission ("SIAC")

Date of Decision: 24 May 2013

Case Status: Appeal allowed. B2's underlying appeal will be remitted to SIAC for further consideration.

Link to full case: <http://www.bailii.org/ew/cases/EWCA/Civ/2013/616.html>

2. Facts of the Case

B2 was born in Vietnam on 9 February 1983. Shortly afterwards, his parents took him to Hong Kong, where they lived for some years. In 1989 the family travelled to the UK and claimed asylum. They were granted indefinite leave to remain in the UK and in 1995 they acquired British citizenship.

At the age of 21 B2 converted to Islam. In December 2010 he travelled to Yemen, where he remained until 25 July 2011. It is the assessment of the Security Service that while in Yemen B2 received terrorist training from Al Qaida in the Arabian Peninsula and that B2, if at liberty, would pose an active threat to the safety and security of the United Kingdom and its inhabitants.

On 20 December 2011 the Secretary of State decided to make an order pursuant to section 40 (2) of the British Nationality Act 1981 ("the 1981 Act") depriving B2 of his British citizenship, because she was satisfied that this would be conducive to the public good. The reason for her decision was that the Security Service assessed that B2 was involved in terrorism related activities and had links to a number of Islamist extremists. Section 40 (4) of the 1981 Act provides that the Secretary of State can make an order depriving a person of citizenship status if he is satisfied that such deprivation is conducive to the public good, but not if he is satisfied that the order would make that person stateless. This is intended to give effect to Article 8.1 of the Convention on the Reduction of Statelessness of 1961, which provides (subject to certain specified exceptions) that: "A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless."

On 22 December 2011 the Secretary of State served notice of that decision on B2 pursuant to section 40 (5) of the 1981 Act, in which she stated that she was satisfied that her intended order would not make B2 stateless. Later on 22 December 2011 the Secretary of State made an order under section 40 (2) of the 1981 Act, depriving B2 of British nationality on the grounds set out in her earlier notice. On the same day that order was served on B2 together with a notice of the Secretary of State's intention to order B2's deportation to Vietnam. As soon as these documents had been served on B2, he was detained.

Following 22 December 2011, the British Government informed the Vietnamese Government of the position. The Vietnamese Government declined to accept that B2 was a Vietnamese citizen. The Vietnamese Government has not taken any steps since to deprive B2 of Vietnamese nationality but rather states that B2 is not a Vietnamese national and was not such on 22 December 2011.

By a notice of appeal dated 13 January 2012 B2 appealed to SIAC against the Secretary of State's decision to deprive him of British nationality. One of the grounds on which B2 challenged the Secretary of State's decision is that this decision, if upheld on appeal, would leave him stateless. SIAC held a preliminary hearing to determine the statelessness issue in June 2012. The panel found in favour of B2 and held that the effect of the Secretary of State's decision would be to render him stateless and that the Secretary of State was therefore not permitted to deprive B2 of British nationality.

The Secretary of State appealed to the Court of Appeal.

3. Law

National laws:

- The British Nationality Act 1981 (Section 40)

Vietnamese laws:

- The 1988 Nationality Law
- Decree No. 37/HDBT issued on 5 February 1990 by the Council of Ministers of the Socialist Republic of Vietnam
- The 2008 Nationality Law

International Conventions:

- The Hague Convention on Certain Questions Relating To The Conflict of Nationality Laws of 1930
- The Convention relating to the Status of Refugees of 1951
- The Convention relating to the Status of Stateless Persons of 1954
- The Convention on the Reduction of Statelessness of 1961

4. Legal Arguments

Appellant's Arguments

The Secretary of State's principal ground of appeal was that her decision made B2 *de facto* stateless (i.e. having nationality under the law of a state, but being denied the protection of that state), but not *de jure* stateless (i.e. a person who is not considered as a national by any State under the operation of its law) and that B2 was therefore not stateless under section 40 (4) of the 1981 Act. In the alternative, the Secretary of State contended that, even if B2 became *de jure* stateless, this could not have happened until sometime after the relevant date, namely 22 December 2011.

The Secretary of State relied on evidence that Vietnamese nationality law was ambiguous and enabled the government, not legally but in practice, to pick and choose which persons of Vietnamese origin it would accept back into the country. The Secretary of State argued that this was a classic example of the Vietnamese Government rendering certain citizens *de facto* stateless. The Secretary of State also argued that the 2008 Nationality Law, while it entrusts the final decision in all individual cases to the President, does not give the President unlimited powers. The President is only empowered to take nationality decisions in accordance with the 2008 Law.

Respondent's Arguments

The respondent contended that Secretary of State's decision has made B2 *de jure* stateless. B2 drew attention to Article 1 of the Convention relating to the Status of Stateless Persons of 1954, which provides that "the term "stateless person" means a person who is not considered as a national by any State under the operation of its law." The respondent submitted that in Vietnam the various nationality laws operate in such manner as the executive decides. Therefore he has lost Vietnamese nationality under Vietnamese law and the Secretary of State's decision has made him *de jure* stateless.

5. Decision

The Court held that the word stateless in section 40 (4) means *de jure* stateless not *de facto* stateless. They concluded that the combined effect of the Secretary of State's order of 22 December 2011 and the subsequent responses of the Vietnamese Government was to render B2 *de facto* stateless, but not *de jure* stateless.

The Court considered that although B2 was a British citizen and resided in the UK, he remained a Vietnamese national and was entitled to the protection of the Vietnamese Government. They held that he retained his Vietnamese nationality through all the events of the 1980s and the 1990s and that the 2008 Nationality Law did not change his legal status. The Court considered that the Vietnamese Government had decided to treat B2 as having lost his Vietnamese nationality without going through any of the procedures for renunciation, deprivation or annulment of Vietnamese nationality as set out in the 2008 Nationality Law and its predecessors. The Court held that if the relevant facts are known and on the basis of those facts and the expert evidence it is clear that under the law of a foreign state an individual is a national of that state, then he is not *de jure* stateless. Although they accepted that Vietnam is "a communist state, in which the executive controls the courts and not vice versa", they held that if the government of the foreign state chooses to act contrary to its own law, it may render the individual *de facto* stateless. They stated that under these circumstances they "must respect the rule of law and cannot characterise the individual as *de jure* stateless".

As the Court found in favour of the Secretary of State on the first ground of appeal, the second ground (that, even if B2 became *de jure* stateless, this could not have happened until sometime after the relevant date, namely 22 December 2011) was not considered.