Case Summary
Secretary of State for the Home Department v Al-Jedda

1. Reference Details

Jurisdiction: Supreme Court of the United Kingdom

Date of Decision: 9 October 2013

Case Status: Final

Link to full case: http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2012_0129_Judgment.pdf

2. Facts of the Case

Al Jedda was an Iraqi national by birth and moved to the UK in 1992 along with his wife and claimed asylum. In 2000 he and his family were granted British citizenship, upon which he automatically lost his Iraqi nationality under Iraqi law.

In September 2004, Al Jedda travelled to Iraq from the UK. In October 2004, the US forces arrested him there and handed him over to the British forces and he was detained by them without charge until 30 December 2007. Al-Jedda claimed that the imprisonment amounted to a violation of his right to liberty and security and his claim was eventually upheld by the European Court of Human Rights on 12 December 2007. After his release, he moved to Turkey on 3 February 2008, where he continues to live.

On 14 December 2007, prior to his release, the Secretary of State made an order under the British Nationality Act 1981 (the "Act") depriving Al Jedda of his British nationality on the ground that it would be conducive to public good. Under section 40(4) of the Act, the Secretary of State could not make such an order if he was satisfied that the order would make a person stateless. In domestic proceedings challenging his detention, the House of Lords on 12 December 2007 had recorded in its judgment that Al Jedda held both British and Iraqi nationality, which apparently was due to the fact that it was not understood then that upon acquiring British nationality, Al Jedda had lost his Iraqi nationality.

In January 2008, Al Jedda challenged the order depriving him of British nationality before the Special Immigration Appeals Commission (the "SIAC") on the grounds that the order had made him stateless and was therefore void. The SIAC rejected this contention on the basis that Al Jedda had not been able to prove on the balance of probabilities that he had not regained Iraqi nationality. The SIAC was directed to rehear the issue by the Court of Appeal, and held again on 26 November 2010 that he had automatically regained Iraqi nationality under Article 11(c) of the Law of Administration for the State of Iraq for the Transitional Period ("the TAL") which had been in force between June 2004 and May 2006.

The Court of Appeal set aside as erroneous in law the SIAC's conclusion that Al Jedda had automatically regained Iraqi nationality. It also rejected the Secretary of State's alternative contention that even if Al Jedda had not been an Iraqi national before 14 December 2007, it had been open to him to regain Iraqi nationality and therefore it was his failure to apply for nationality rather than the order which rendered him stateless, on the grounds that section 40(4) of the Act merely required the Secretary of State to consider whether the order would render a person stateless, and that was the effect of the order irrespective of whether Al Jedda

could previously have acquired another nationality had he chosen to do so, or whether he could do so in the future.

The Secretary of State appealed the decision of the Court of Appeal before the Supreme Court.

3. Law

National laws:

- British Nationality Act 1981 (Section 40);
- Nationality, Immigration and Asylum Act 2002 (Sections 4(1),56);
- Home Office Guidance dated 1 May 2013 on "Applications for leave to remain as a stateless person".

Iraqi laws:

- Iraqi National Law No 43 of 1963 (Article 11);
- Law of Administration for the State of Iraq for the Transitional Period (Article 11(c))(in force between June 2004 and May 2006);
- Iraqi Law of Nationality 2006 (Artcile 10).

Regional laws:

- European Convention on Nationality 1997 (Article 7(1));
- Decision of the European Court of Human Rights in *Karassev v Finland,* Application No 31414/96 holding that denial of citizenship may violate the right to respect for private life under Article 8 of the European Convention on Human Rights.

International laws:

- Universal Declaration of Human Rights (Article 15);
- Convention on the Reduction of Statelessness 1961 (Article 8 (1));
- Guidelines on Statelessness No 1 issued by the United Nations High Commissioner for Refugees on 20 February 2012.

4. Legal Arguments

Appellant's Arguments

The Secretary of State argued the premise that on 14 December 2007, Al Jedda could have applied for restoration of his Iraqi nationality and that he would have had a right to have it restored to him under Iraqi law with immediate effect and suggested that the court should allow the appeal and remit the case back to the SIAC to consider whether the premise was valid under Iraqi law. During the proceedings, the Secretary of State learnt that on 20 January 2008, Al Jedda had applied for an Iraqi passport providing with his application a copy of a certificate of nationality; and that an Iraqi passport showing a valid grant of nationality had been issued to him on 28 January 2008. On this basis, the Secretary of State asserted that the premise described above was indeed valid, and the case need not be remitted to the SIAC.

It was argued that the word "satisfied" in section 40(4) of the Act conferred a latitude upon the Secretary of State to look beyond the mere effect of an order stripping a person of British citizenship and consider whether the person could secure restoration of a previous nationality.

Further, it was argued that section 40(4) requires the "real" cause of statelessness to be identified, which in this case was Al Jedda's failure to apply for restoration. The Secretary of State argued that the section should be given a purposive construction in that where grounds for depriving someone of nationality exist she should not be disabled from making an order

depriving the person of nationality where the person could easily and immediately avoid becoming stateless.

Respondent's Arguments

On the point of the Iraqi passport granted to Al Jedda, he submitted that this was a fake passport which he had used to leave Iraq to go to Turkey which the government and its counsel had known about, and which they had never before challenged as not being fake. He further stated that he had never procured a certificate of nationality and the document may have been fraudulently procured by the person Al Jedda hired to arrange for a fake passport.

On the substantive issue, Al Jedda disagreed with the Secretary of State's position that if he could have acquired Iraqi citizenship but had failed to do so he was not stateless. He argued that he was stateless at the time of the Secretary of State's decision to deprive him of British nationality and so section 40(4) had been breached.

5. Decision

The court stated that it was not its function to consider the issue of whether the Iraqi passport used by Al Jedda was a valid grant of Iraqi nationality, confining itself to the question of whether the order by which he was deprived of his British nationality was valid at the time it was made. The court identified some of the submissions that may be made by Al Jedda to challenge any future decision of the Secretary of State to make a further deprivation order at such a late stage because of his possession of the passport.

The court rejected the argument that the word "satisfied" in section 40(4) of the Act allowed the Secretary of State to go beyond the effect of the order as the requirement that one should be satisfied of a fact does not enlarge or otherwise alter the nature of the fact. It further held that section 40(4) does not permit or require an analysis of the "real" cause of statelessness, and the only question that the Secretary of State had to answer was whether the person held another nationality at the date of the order. The Secretary of State's argument that this analysis should be limited to whether the person could regain a previous nationality was itself illogical and, if valid, should have applied to the acquisition of a new nationality as well. It noted that a person may have good reasons for not wishing to acquire a nationality available to him.

The court also supported its decision by referring to section 12 of the Act which provides that a renunciation of British citizenship shall not be registered unless the Secretary of State is satisfied that the person will after the registration have or acquire another nationality, and if that person does not have another nationality on the date of registration and does not acquire it within six months, he shall be deemed to remain a British citizen. Such wording is in line with the 1961 Convention and the court held that Parliament could have made an analogous addition to section 40(4). The court noted that Parliament had chosen not to do so and held that therefore the interpretation put forward by the Secretary of State was unwarranted.

It further referred to the Home Office guidance on "Applications for leave to remain as a stateless person" dated 1 May 2013 which provides that an individual's nationality is neither a historic nor a predictive exercise, and that procedures which have not been completed should not be taken into account at the point of determination in support of its decision. The court stated that "the Secretary of State's own guidance eloquently exposes the fallacy behind her appeal."

Remedy

Appeal dismissed.