



United Kingdom - Hashi v Secretary of State for the Home Department

The appellant (Mr. Hashi) was born in Somalia, arrived in the UK in 1995 as a child, and was granted UK citizenship in April 2004 at age 14. On 18 June 2012, the Secretary of State issued a deprivation order under section 40(2) of the British Nationality Act 1981, stating it was conducive to the public good to remove Mr. Hashi's citizenship on account of national-security concerns related to alleged involvement in Islamist extremism. By then, Mr. Hashi had left the UK, was detained in Djibouti, and ultimately transferred to the United States where he was prosecuted for terrorism-related offenses. Although he tried to appeal Special Immigration Appeals Commission's ("SIAC") decision, because his primary statelessness claim failed, SIAC refused to extend the 28-day limit for his late appeal. He argued that deprivation rendered him stateless, since Somalia's 1962 citizenship law revoked Somali nationality when a Somali acquired foreign citizenship. SIAC, however, found that this 1962 law had been superseded by a Transitional Federal Charter (TFC) that came into force in February 2004, explicitly allowing dual citizenship. SIAC preferred evidence from the Secretary of State's expert (and noted inconsistencies in the defense expert's prior testimony in a different case), concluding that Mr. Hashi remained a Somali national and thus would not be rendered stateless. The Court of Appeal upheld SIAC's decision in all respects, confirming that the TFC had legal force from early 2004, that Mr. Hashi retained Somali nationality, and that his deprivation of British citizenship did not contravene the statutory prohibition against making a person stateless.

Case name (in original language) : N/A

Case status: Decided

Case number: T2/2015/0715

Citation: [2016] EWCA Civ 1136

Date of decision: 17/11/2016

State: United Kingdom

Court / UN Treaty Body: England and Wales - Court of Appeal (Civil Division)

Language(s) the decision is available in: English

Applicant's country of birth: Somalia

Applicant's country of residence: United Kingdom

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Deprivation of nationality, Determination/confirmation of nationality
, Burden/standard of proof

Relevant Legislative Provisions:

British Law

Section 40 of the British Nationality Act 1981

Rule 8 of the Special Immigration Appeals Commission (Procedure) Rules 2003

Section 2B of the Special Immigration Appeals Commission Act 1997 (c68)

European Law

European Convention on Human Rights (ECHR), Article 3, Article 6

Somali Law

Somali Law Number 28 of 1962 (the Somaliland Citizenship Law), Article 2, 3, 4, 6, 10

the charter for a Transitional National Government of Somalia, Article 2, 4

the Transitional National Charter, Article 3, 4, 10, 71

Somali Provisional Federal Constitution, Article 8(3)

Facts

The case concerned an appeal from a decision of Special Immigration Appeals Commission ("SIAC") to refuse to extend the appellant's (Mr. Hashi)'s time for appealing the Secretary of State for the Home Department's ("SS") 18 June 2012 decision to deprive Mr. Hashi of his United Kingdom citizenship.

Mr. Hashi was born in Somalia, came to the UK as a child in 1995, and acquired UK citizenship in 2004 at age 14, he then returned to Somalia in 2009 when he was 19.

On 18 June 2012 the Secretary of State issued a deprivation order under section 40(2) of the British Nationality Act 1981, stating it was "conducive to the public

good” to remove Mr. Hashi’s citizenship on account of national-security concerns related to alleged involvement in Islamist extremism. By then, Mr. Hashi had left the UK, was detained in Djibouti, and ultimately transferred to the United States where he was prosecuted and sentenced to nine years in prison for terrorism-related offenses. Although he tried to appeal SIAC’s decision, his appeal was lodged outside the 28-day limit, with his time for appeal expiring on 16 July 2012. SIAC contended that no extension of time was needed, as his main ground for appeal, mainly that if his UK citizenship was revoked, he would be rendered stateless (an illegal act per Section 40(4) of the British Nationality Act 1981), was wholly rejected. SIAC decided that it was the “preferable view” that Mr. Hashi had not lost his Somali citizenship in April 2004, when he acquired his UK citizenship and that, if he had, it was “probable” that he had regained it. SIAC also held that Mr. Hashi “probably” knew “quickly” of the deprivation decision but “was not concerned to lodge a timely appeal” and that the picture was “essentially one of indifference” on Mr. Hashi’s part. Therefore, SIAC were satisfied that it would not be unjust to refuse an extension of time and dismiss Mr. Hashi’s appeal.

Legal arguments by the applicant

Mr. Hashi relied on 3 grounds of appeal:

1. **The Subjective Test:** SIAC was wrong to apply a subjective test of Mr. Hashi’s mind and unfairly concluded that he was subjectively “unconcerned” by the decision to deprive him of his UK citizenship, without giving the Mr. Hashi the opportunity to present oral evidence
2. **Human Rights:** SIAC had failed to consider Mr. Hashi’s human rights under Article 3 and 6 of the ECHR, as there were substantial grounds for believing that Mr. Hashi would suffer ill-treatment because of the loss of his UK citizenship, and that he could not receive a fair trial.
3. **Statelessness:** SIAC’s conclusion that the deprivation of Mr. Hashi’s UK citizenship would not render him stateless, notwithstanding expert evidence on Somali law, was wrong.

As the appeal continued Mr. Hashi’s counsel accepted that the Court of Appeal’s decision in *S1 v SSHD* [2016] EWCA Civ 560 (that the ECHR had no extra-territorial application to a person outside the jurisdiction when the deprivation order was made, relevant as Mr. Hashi was in Djibouti at the time the order was made) precluded counsel’s second argument. In addition, Mr. Hashi’s counsel accepted that

grounds 1) and 3) were intrinsically linked, and if SIAC's conclusions about statelessness were correct, there would be no point in extending Mr. Hashi's time for appeal. Accordingly, the Court focused on the third ground for appeal, statelessness, making a definite decision as to the status of Mr. Hashi's Somali citizenship to avoid passing the case back to SIAC.

After the Court had concluded that Mr. Hashi most likely never lost his Somali citizenship. Mr. Hashi's counsel advanced several additional grounds of appeal in her skeleton argument.

1. The burden of proof lay with the Secretary of State to show that Mr. Hashi would not be stateless, rather than Mr. Hashi having to prove he would be stateless
2. That Somali Law Number 28 of 1962 was operative until August 2012 when the constitution of that year was adopted, citing Professor Hart's prerequisites for a functioning legal system. Namely that i) rules must be obeyed and, ii) rules must be accepted as common standards by officials. Mr. Hashi contended that no such conditions existed in Somalia from April 2004 until August 2012
3. That SIAC had applied the test in *Republic of Somalia v Woodhouse Carey S.A.* [1993] QB 54 incorrectly, erroneously concluding that there was a Somali government between April 2004 and August 2012
4. That Article 10(4) of the Transitional National Charter did not change Somali Law Number 28 of 1962 but merely provided a mechanism for Somalis to retain their citizenship if they became a citizen of another country while abroad
5. That SIAC should not have relied on custom and practice

Legal arguments by the opposing party

The Secretary of State advanced several arguments to the Court

1. **The Deprivation Order was Lawful:** The Secretary of State argued that depriving Mr. Hashi of his UK citizenship was conducive to the public good due to his involvement in Islamist extremism and the associated risk to national security. Contending that under Section 40(2) of the British Nationality Act 1981, deprivation is permitted on such grounds, provided it does not render the person stateless.
2. **Mr. Hashi Was Not Stateless:** The Secretary of State maintained that Mr. Hashi retained Somali citizenship despite acquiring British nationality in 2004. This argument rested on Professor Aubkar Hassan Ahmed's assertion that the

Transitional Federal Charter (TFC) of Somalia, adopted in February 2004, superseded the older 1962 Somali Nationality Law. The Charter explicitly allowed dual nationality and stated that Somali citizens could not be deprived of citizenship even after acquiring another nationality (Article 10(4)), meaning Mr. Hashi never lost his Somali citizenship and was not stateless.

3. **Mr. Hashi was not at risk of Statelessness:** The Secretary of State argued that there was no credible risk of statelessness, as the Somali authorities would treat Mr. Hashi as a *de jure* citizen under existing law and practice, particularly given his Somali origin, despite his lack of formal documentation.
4. **No Special Circumstances to Justify Extending Time for Appeal:** The Secretary of State maintained that SIAC was correct to deny Mr. Hashi an extension of time to appeal the deprivation decision because a) his delay showed “indifference” rather than genuine concern, b) there were no special circumstances under Rule 8(5) of SIAC's procedure rules that made it unjust not to allow the late appeal and, c) since he was not stateless, there would be no point in extending time.

Decision & Reasoning

The Court of Appeal upheld the decision to revoke Mr. Hashi's British citizenship

Substantive Grounds for Appeal

Ground One: The Court dismissed Mr. Hashi's argument noting how for this argument to be tenable it would be essential to prove that Mr. Hashi was stateless. Accordingly Ground Three became the focal point of the hearing.

Ground Two: Following *S1 v SSHD* [2016] EWCA Civ 560, the Court of Appeal concluded that as Mr. Hashi was outside the jurisdiction of the UK for the purposes of the ECHR, no appeal could be advanced on this basis.

Ground Three: With grounds one and two exhausted the Court made a final determination on the status of Mr. Hashi's citizenship.

SIAC heard evidence from two Somali legal experts, a former professor of law at the university in Mogadishu, who appeared for the respondent, and a serving member of the National Conference on Justice and Rule of Law in Somalia, who appeared for Mr. Hashi. The first expert (the Professor) argued that Somali Law Number 28 of 1962 (“the 1962 Law”) was overturned by Article 2(3) of the Transitional National Charter

("the TNC"), and the TNC was in force until the Transitional National Charter ("the TFC") was adopted in February 2004, accordingly the Professor opined that Mr. Hashi never lost his Somali citizenship. Conversely, the second expert (the member of the National Conference) argued that the TNC never became law and that the charter for a Transitional National Government ("TNG") and the TFC were defunct by 2004, with the former expiring "without becoming minimally operational", while the latter was "nothing more than a "peace accord" among warring parties".

SIAC accepted the Professor's view, noting how in the earlier case of *Mohamed v SSHD* (2012) the second expert gave testimony that conflicted with what he presented to SIAC, previously concluding the TFC was in force in 2004 "as the supreme law binding all authorities". The Court of Appeal contended that as "foreign law is a question of fact", the TFC had the force of law from February 2004. In addition, SIAC's determination that Hashi was de jure a Somali citizen in 2012 did not rest solely on the conclusion that the TFC took effect in February 2004. Rather, SIAC also found that—by 2012—the Somali authorities would have considered the TFC to have been in force since 2004, thus conferring full legal citizenship on Hashi under Article 10. The Court equally rejects the argument that this finding conflicts with *Al-Jedda v SSHD* [2014] AC 253, because *Al-Jedda* addressed whether an individual's alleged statelessness stemmed from his own failure to apply for Iraqi nationality. That scenario is different from Mr. Hashi's position, which turned on whether he was already a Somali citizen by force of the TFC at the time of the deprivation order. The possibility of obtaining a passport is likewise a separate factual question—SIAC's primary point was that Somali law rendered him a citizen in 2012, so he could not be stateless. Therefore, the Court held that Mr. Hashi never lost his Somali citizenship, and was not stateless in 2012, upholding SIAC's decision.

Additional Grounds Advanced in Mr. Hashi's Skeleton Argument

1. The Court noted that while the Secretary of State must show she was satisfied her order would not render a person stateless, it is ultimately for the individual challenging that conclusion to prove—on the balance of probabilities—that they would indeed be stateless. If "genuine doubt" remains, the challenge fails. The Court cited *Al-Jedda v SSHD* [2012] EWCA Civ 358 in noting it was common ground there that the burden lay on Mr. Hashi to demonstrate statelessness, which aligns with the Court's view that the burden rests on the individual bringing the challenge.

2. The Court noted how the argument from Mr. Hashi's counsel that the Transitional Federal Charter (TFC) took legal effect at least by August 2004 diminished the broader argument about Somalia lacking a functioning legal system. That narrowed the issue to whether the TFC's force of law began in August 2004 or as early as February 2004. The Professor testified that the TFC was dated February 2004, and Article 71.12 stated it came into force once approved by delegates at the Somali National Reconciliation Conference, which occurred in February 2004. Although some delegates later raised objections, they did not concern citizenship provisions. SIAC preferred this evidence and thus concluded the TFC became law from February 2004; the Court found no basis to disturb SIAC's conclusion.
3. The Court explained that, although SIAC cited the *Woodhouse* case (and later authority) when assessing whether the Transitional National Charter (TNC) of 2000 had legal force, that was only to note how English courts recognize states—not how to determine whether legislation has legal effect. Those observations concluded that the TNC did not constitute law. By contrast, when SIAC turned to the Transitional Federal Charter (TFC), it found the Professor's testimony persuasive and concluded that the TFC did indeed become the law of Somalia. The Court rejects any suggestion that SIAC improperly applied "Woodhouse principles," emphasizing that the issue was not whether Somalia was recognized as a state but whether the TFC amounted to valid Somali law; the existence of conflicting regimes does not mean that a particular law does not exist.
4. The Court noted that Mr. Hashi's argument not only rested on expert testimony that SIAC had already rejected but also overlooked Article 10(2) of the Transitional Federal Charter (TFC), which explicitly confers Somali citizenship on individuals who are Somali by origin and either born in Somalia or whose father is Somali. Mr. Hashi meets at least one of these criteria, making him entitled to Somali citizenship. Moreover, Article 71(2) confirms that older laws apply only if not inconsistent with the TFC; since the 1962 law contradicts Article 10, it cannot undermine Mr. Hashi's Somali nationality.
5. This was not an essential part of SIAC's reasoning but merely an incidental reference in para 76

The Court dismissed the appeal concluding that "SIAC was also correct to hold that it would not be unjust to extend Mr. Hashi's time for appeal since any appeal would be pointless. There are moreover no special circumstances on which Mr. Hashi can rely to circumvent that position".

Decision documents

[Hashi v Secretary of State for the Home Department.pdf](#)

Outcome

The appeal was dismissed, affirming the Secretary of State's decision to revoke Mr. Hashi's UK citizenship. In dismissing all grounds of appeal, the Court noted how Mr. Hashi was not stateless and thus, any appeal based on statelessness to SIAC would be fruitless. The Court noted that if Mr. Hashi was factually or arguably stateless the situation would be materially different and that might constitute a special circumstance to allow Mr. Hashi an extension. The Court additionally noted that while closed material was available the Court did not examine it, and thus, it did not form part of their final rationale.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

<https://www.bbc.com/news/uk-england-london-20157167>

<https://www.thebureauinvestigates.com/stories/2015-01-23/exclusive-terror-suspect-mahdi-hashis-loses-appeal-for-return-of-his-british-citizenship>

<https://www.fairtrials.org/articles/case-studies/madhi-hashis/>

<https://www.theguardian.com/books/2018/nov/17/unbecoming-british-kamila...>

Caselaw cited

Al-Jedda v Secretary of State for the Home Department, [2013] UKSC 62 (9 October 2013)

Somalia v Woodhouse Drake & Carey (Suisse) SA (The Mary) [1992] Q.B. 54 (13 March 1992)

Secretary of State for the Home Department v CC and CF [2012] EWHC 2837 (Admin) (19 October 2012)

S1 v Secretary of State for the Home Department, [2016] EWCA Civ 560 (16 June 2016)

Third party interventions

N/A