



Neutral Citation Number: [2016] EWCA Civ 1136

Case No: T2/2015/0715

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SPECIAL IMMIGRATION APPEALS COMMISSION
THE HONOURABLE MR JUSTICE IRWIN

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/11/2016

Before:

THE RIGHT HONOURABLE LORD JUSTICE LONGMORE
THE RIGHT HONOURABLE LORD JUSTICE UNDERHILL
and
THE RIGHT HONOURABLE LORD JUSTICE LINDBLOM

Between:

HASHI	<u>Appellant</u>
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	<u>Respondent</u>

Baroness Kennedy QC & Faisal Saifee (instructed by HMA Solicitors) for the Appellant
**Miss Lisa Giovannetti QC & Ms Kate Grange (instructed by Government Legal
Department) for the Respondent**
**Miss Judith Farbey QC (instructed by Special Advocates' Support Office) as the Special
Advocate**

Hearing dates: 25th October 2016

Approved Judgment

Lord Justice Longmore:

Introduction

1. In form this is an appeal from a decision of the Special Immigration Appeals Commission (“SIAC”) to refuse to extend the appellant (Mr Hashi)’s time for appealing the decision of the Secretary of State for the Home Department (“SS”) of 18th June 2012 to deprive Mr Hashi of his United Kingdom citizenship. That decision was made on the basis that the SS was satisfied that it would be “conducive to the public good” to deprive Mr Hashi of his UK citizenship because he had been involved in Islamist extremism and presented a risk to the national security of the United Kingdom. His citizenship had been granted to him on 16th April 2004 when he was aged 14 after he had come to the United Kingdom from Somalia as a child with his parents in September 1995. Mr Hashi had 28 days to appeal the order and his time for appeal therefore expired on 16th July 2012. A notice of appeal was submitted on his behalf on 5th October 2012 but the SS agreed to treat it as being served on 5th August 2012 when Mr Hashi was detained in a Djibouti prison, having returned to Somalia in or about 2009 when he was about 19 years of age. He has since been removed from Djibouti to the United States where he has been sentenced (as we were told) to 9 years imprisonment for conspiring to provide material in support of a terrorist organisation.
2. The essential reason why SIAC refused Mr Hashi an extension of time was that they rejected the main contention behind his substantive appeal (if he were allowed to make it) namely that, if his United Kingdom citizenship was revoked, it would render him stateless and that, by reason of **section 40 (4) of the British Nationality Act 1980**, it was therefore illegal to deprive him of his UK citizenship. That in turn depended on the question whether he lost his Somali citizenship at the time he acquired UK citizenship on 16th April 2004 and had not regained it at any time before 2012. SIAC decided that it was the “preferable view” that he had not lost his citizenship in April 2004 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. For those reasons, SIAC were not satisfied that it would be unjust to refuse an extension of time and dismiss Mr Hashi’s appeal.
3. Section 40 of the British Nationality Act 1981 (as amended) 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.
 - (3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of –
 - (a) fraud,
 - (b) false representation, or

- (c) concealment of a material fact.
- (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.
- (4A) But that does not prevent the Secretary of State from making an order under subsection (2) to deprive a person of a citizenship status if –
 - (a) the citizenship status results from the person’s naturalisation,
 - (b) the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British over-seas territory, and
 - (c) the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory.
- (5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying –
 - (a) that the Secretary of State has decided to make an order,
 - (b) the reasons for the order, and
 - (c) the person’s right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c68).

....”

Sub-section (4A) was added by the Immigration Act 2014 and was not therefore the law when Mr Hashi was deprived of his UK citizenship in 2012.

- 4. Rule 8 of the Special Immigration Appeals Commission (Procedure) Rules 2003 provides that any appeal from an order of the Secretary of State must be made within 28 days but rule 8(5) provides:-

“The Commission may extend the time limits in this Rule if satisfied that by reason of special circumstances it would be unjust not to do so.”

The Grounds of Appeal

- 5. On Mr Hashi’s behalf Baroness Kennedy QC presented three grounds of appeal:-
 - i) that SIAC was wrong to apply a subjective test of Mr Hashi’s state of mind and unfairly concluded that he was subjectively “unconcerned” by the

deprivation decision without affording him the opportunity of giving oral evidence, when the delays were caused by his family;

- ii) that SIAC had failed to consider the human rights of Mr Hashi under the European Convention on Human Rights, since there were substantial grounds for believing that, if deprived of UK citizenship, he would suffer ill-treatment contrary to Article 3 and could not receive a fair trial contrary to Article 6 of the Convention; and
 - iii) that SIAC's conclusions (to the effect that the deprivation of UK citizenship would not render Mr Hashi stateless) made after hearing expert evidence on Somali law, were wrong.
6. As the appeal progressed the issues were refined because Baroness Kennedy accepted that the decision of this court in S1 v SSHD [2016] EWCA Civ 560 (that the Convention had no extra-territorial application to a person outside the jurisdiction when the deprivation order was made) precluded her second argument at this level of appeal. She also accepted that, if SIAC's conclusions about statelessness were correct, there would be no point in extending his time for appeal. Accordingly the first ground of appeal would fall away if the third ground failed.
7. In these circumstances, it is sensible to concentrate on the third ground of appeal; it is also sensible, although SIAC's conclusions were expressed in terms of "the preferable view" and "probability", to decide whether SIAC's conclusions are, in fact, correct since expert evidence has been heard and it would be pointless to say that the question of statelessness was arguable and then grant an extension of time in order to ask SIAC to re-decide the matter.

Somalia

8. The Somali Republic ("Somalia") was formed in 1960 from British Somaliland (retained by the United Kingdom after World War II) and Italian Somaliland (an Italian trusteeship granted by the United Nations after that war). The subsequent history of Somalia and its citizenship laws is set out in detail in SIAC's comprehensive judgment which I will attempt to summarise.
9. Somali Law Number 28 of 1962 (the Somaliland Citizenship Law to which I shall refer as "the 1962 Law") provided:-

"Article 2. Acquisition of Citizenship by Operation of Law

Any person:

- (a) whose father is a Somali citizen;
- (b) who is a Somali residing in the territory of the Somali Republic or abroad and declares to be willing to renounce any status as citizen or subject of a foreign country

shall be a Somali Citizen by operation of law.

Article 3. Definition of "Somali"

For the purpose of this law, any person who by origin, language or tradition belongs to the Somali Nation, shall be considered a “Somali”.

Article 4. Acquisition of Citizenship by Grant

Somali citizenship may be granted to any person who is of age and makes application therefore, provided that:-

...

- (c) he declares to be willing to renounce any status as citizen or subject of a foreign country.

...

Article 6. Renunciation of Foreign Citizenship

3. Any person who, in accordance with articles 2 and 4 of this law, declares that he is willing to renounce any status as citizen or subject of a foreign country, shall make such declaration before the President of the District Court of the district where he resides, or if he resides abroad a Consulate of the Somali Republic.

...

Article 10. Renunciation of Citizenship

Any Somali citizen who:-

- (a) Having established his residence abroad, voluntarily acquires foreign country (sic);

...

- (c) ...shall cease to be a Somali citizen.”

10. In 1991 the northern part of Somalia declared its independence as Somaliland but it is not recognised internationally. Civil war ensued. United Nations’ attempts to create stability ended in failure in 1995. Formal reconciliation attempts began again in March 2000 and in May of that year delegates representing a wide spectrum of Somali society met in Arta, Djibouti to participate in a conference for peace and reconciliation. It adopted a charter for a Transitional National Government (“TNG”) and selected a 245 member Transitional National Assembly (“TNA”). In October 2000 the TNA passed a vote of no confidence in the TNG and the Prime Minister was dismissed. Civil war (if it had abated) resumed. The delegates had, however, adopted a Transitional National Charter (“the TNC”) the preamble to which recited:-

“We, the delegates representing all the Somali people, and their power, fulfilling the decisions of the traditional elders’ conference at Arta town, Republic of Djibouti on 6th June 2000; considering the destruction and agony of the Somali people and the need to re-establish government ...

DO HEREBY ADOPT this Transitional Charter.”

11. Articles 2 and 4 of the TNC Charter provided:-

“Article 2

THE PEOPLE, RELIGION AND LANGUAGES

1. The People of Somali Republic consists of all the citizens

...

3. Parliament of Somalia shall enact a special law that shall define how to obtain, suspend or lose [citizenship]. Every citizen of the Somali Republic shall be entitled to retain their citizenship notwithstanding the acquisition of the citizenship of any other country.

Article 4

SUPREMACY OF LAW

1. The Charter is supreme law of the country.

2. The organisation of the State and the relationships of the States and other persons, public or private, shall be governed by law.

3. The International Law recognised globally and International treaties signed by Somali Republic are part of the laws of the country.

4. The Islamic Shari’ah shall be the basis of all laws of the country, no law which is not compliant with the general principles of Shari’ah can be enacted.

5. Any law which is inconsistent with this Charter is invalid. ”

12. A further attempt to restore national institutions was made when a Transitional Federal Government (“TFG”) was formed in 2004. This obtained international support. A draft Transitional Federal Charter had been devised by 15th September 2003 and in January 2004 a leaders’ consultation took place in Nairobi in Kenya. The draft charter was amended and adopted by signature on 29th January 2004. Despite objections from a number of members of the Somali Restoration and Reconciliation Council (“the SRRC”) the draft Transitional National Charter (“the TFC”) was endorsed at a plenary session of the conference by the majority of delegates on 23rd February 2004.

13. On 22nd August 2004 the Transitional Federal Parliament (“the TFP”) was unanimously inaugurated when all disputes about the terms of the TFC were resolved.

14. The importance of these 2004 dates is, of course, that, if the 1962 Law governed, Mr Hashi lost his Somali citizenship when he acquired British citizenship in April 2004 between the adoption of the TFC by the delegates in Nairobi in February 2004 and the inauguration of the TFP in August 2004. If the TFC was part of the law of Somalia in February 2004, Mr Hashi was not stateless in April 2004; but if the TFC was not law until August 2004, the 1962 Law was in force when he acquired UK citizenship on 16th April 2004 so that, unless he regained his Somali citizenship at a later date or would otherwise be recognised as a Somali citizen, he forfeited his Somali citizenship and, when he was deprived of his United Kingdom citizenship in 2012, he became stateless.
15. The following articles of the TFC are relevant:-

“ARTICLE 3. SUPREMACY OF LAW

1. The Transitional Federal Government of the Somali Republic shall be founded on the supremacy of the law and shall be governed in accordance with this Charter.
2. This Charter for the Transitional Federal Government shall be the supreme law binding all authorities and persons and shall have the force of law throughout the Somali Republic. If any law is inconsistent with this Charter the Charter shall prevail.
3. The validity, legality or procedure of enactment or promulgation of this Charter shall not be subject to challenge by or before any court or other State organ.

ARTICLE 4. INTERPRETATION OF THE CHARTER

1. The Charter shall be interpreted in a manner:-
 - a) That promotes national reconciliation, unity and democratic values;
 - b) That promotes the values of good governance;
 - c) That advances human dignity, integrity, rights and fundamental freedoms and the Rule of Law.
2. A person may bring an action in the Supreme Court for a declaration that any Law or action of the state is inconsistent with, or is in contravention of this Charter.
3. The Supreme Court shall determine all such applications on a priority basis.

...

ARTICLE 10. CITIZENSHIP

1. Every person who at the time of the coming into force of this Charter was a citizen of the Somali Republic shall be deemed to be a citizen of the Somali Republic.
2. Every person of Somali origin shall be entitled to citizenship of the Somali Republic provided that:-
 - a. He/she was born in the Somali Republic; or
 - b. His/her father is a citizen of the Somali Republic.
3. A person who is a citizen of Somalia under this Article cannot be deprived of that citizenship.
4. Every Citizen of the Somali Republic shall be entitled to retain their citizenship notwithstanding the acquisition of the citizenship of any other country.
5. Parliament shall within twelve months pass legislation regulating matters relating to citizenship.

...

ARTICLE 71. TRANSITIONAL PERIOD

1. The Charter shall have legal effect pending the eventual enforcement of the National Federal Constitution.
2. The 1960 Somalia Constitution and other national laws shall apply in respect of all matters not inconsistent with this Charter.

...

12. For the avoidance of doubt, this Charter shall come into force on the date the delegates at the Somali National Reconciliation Conference in Kenya approve it and continue to be operational until the approval and enforcement of the Federal Constitution.”

16. Much later, on 1st August 2012, the Somali National Constituent Assembly adopted a Provisional Federal Constitution. Article 8(3) of that constitution provides:-

“a person who is a Somali citizen cannot be deprived of Somali citizenship, even if they become a citizen of another country.”

SIAC observed that, although the adoption of the constitution occurred two months after the SS deprived Mr Hashi of his citizenship, the policy behind both the 2000 and the 2004 charters was clearly embodied in the latest constitutional document.

17. SIAC decided, with the assistance of expert Somali law evidence, that the TNC of 2000 did not operate as law in Somalia but that the TFC of 2004 did, as from

February 2004. Thus pursuant to Article 10, Mr Hashi retained the Somali citizenship which he had at that time and therefore, he was not stateless when he was deprived of his UK citizenship. They held further that if that was wrong the Somali authorities would at any time after August 2004 respond to the charters of 2000 and 2004 and the consistent provisions laid down in the 2012 constitution by taking the view that Mr Hashi was what they called “de jure a Somali citizen”.

Statelessness

18. SIAC had evidence of Somali law from two Somali experts. SS called evidence from Professor Aubkar Hassan Ahmed, formerly a professor of law at the university in Mogadishu and since 2010 a legal adviser to the President. He expressed the view that the 1962 Law was overturned by Article 2(3) of the TNC and that there was a need to encourage the many Somalis who had fled the country during the civil war and had acquired a second nationality to return to the country with a guarantee that they would be entitled to dual citizenship. He said further that the TNC continued to function until the adoption of the TFC which was in force from February 2004, the date of its adoption by the majority of delegates in Nairobi. The TFC then took over as the law in force about citizenship in Somalia. There was no known instance of a Somali citizen losing his citizenship as a result of the Law of 1962 and, said Professor Ahmed, custom and practice in Somalia was consistent with his interpretation of the TFC.
19. Mr Hashi called expert evidence from a Somali lawyer, Mr Abdiwahid Osman Haji who was serving on the National Conference on Justice and Rule of Law in Somalia and had been appointed by the Directorate of Immigration and Nationality to be one of three lawyers to review and “upgrade ... to modern standards” inter alia the Law of 1962. He said that the TNC of 2000 never became law at all and the TNG was defunct by 2003, its three year mandate expiring “without becoming minimally operational”. He said further that the TFC of 2004 was not implemented by the TFG on any significant level. It was “nothing more than a “peace accord” among warring parties”.
20. SIAC came to its conclusion that in April 2004 the relevant law of Somalia was that contained in the TFC adopted in February 2004. They thus accepted Professor Ahmed’s view on this point and rejected that of Mr Haji. The major reason for rejecting Mr Haji’s evidence was that, in an earlier case of Mohamed v SSHD in 2012 he had given expert evidence that the TFC was in force in 2004 being established “as the supreme law binding all authorities” on those matters it addressed. The issue in that case was whether an arrest and deportation from Somaliland breached the law and legal process in Somaliland and Somalia and the reason that Mr Haji gave for saying that the arrest and deportation did breach that law was that the TFC was the relevant law at the time. The inconsistency between that evidence and the evidence given by Mr Haji in this case was all too obvious and SIAC clearly thought that they could not rely on Mr Haji’s evidence. Mr Haji sought to explain the inconsistency by saying that his evidence was directed to the question whether Somaliland was internationally recognised as a separate country but SIAC said correctly that that was not remotely sufficient.
21. Baroness Kennedy accepted that this was a significant difficulty in the way of persuading this court to hold that the evidence of Professor Ahmed should not have

been accepted by SIAC. In my view it is a fatal difficulty. Foreign law is a question of fact; SIAC saw and heard both Professor Ahmed and Mr Haji give evidence and made up their minds accordingly, as they were entitled (and indeed bound) to do. In my judgment this court cannot legitimately interfere with the conclusion that the TFC had the force of law as from February 2004.

22. Undaunted by this difficulty, however, Baroness Kennedy pursued other submissions contained in her written skeleton:-
- i) the burden of proof lay with the SS to show that Mr Hashi would not be stateless if he was deprived of his UK citizenship rather than on Mr Hashi to show that he would be stateless;
 - ii) the Law of 1962 was operative until August 2012 when the constitution of that year was adopted; neither the TFG nor the TFC were accepted as legitimate by the parties to the conflict since the overthrow of President Said Barre in 1991 nor by the general population; there was no constitution, territorial reach was disputed, no functioning central government existed, the judiciary had been undermined and respect for fundamental rights and the rule of law was minimal: in support of this contention she cited Professor Herbert Hart's two necessary and sufficient conditions for the existence of a legal system, (1) that rules of behaviour, valid according to the system's criteria of validity must be generally obeyed and (2) that rules specifying the criteria of legal validity, change and adjudication must be accepted as common public standards of official behaviour by its officials, The Concept of Law (3rd ed. 2012) page 116 and submitted that no such conditions existed in Somalia from April 2004 until August 2012;
 - iii) SIAC had purported to apply the rules of recognition of a state enunciated by Hobhouse J in Republic of Somalia v Woodhouse Carey S.A. [1993] QB 54 but had wrongly applied those rules; if the rules were applied correctly, the conclusion would be that there was no Somali government and therefore no relevant law between April 2004 and August 2012;
 - iv) on its true interpretation, Article 10(4) of the TFC did not purport to change the law of 1962 but simply provided a mechanism for Somalis, after the effective date of the charter, to retain their Somali citizenship if they became a citizen of another country while abroad; and
 - v) SIAC should not have relied on custom and practice.

Burden of proof

23. No doubt the SS has the burden of showing that she was satisfied that her order would not make Mr Hashi stateless. That is a comparatively easy burden to discharge and Mr Hashi does not challenge that she was so satisfied.
24. But Mr Hashi is entitled to and does assert that she was wrong to be so satisfied and on that question he must have the relevant burden of proof. If at the end of the day the court is left in genuine doubt whether a person who is to be deprived by his UK citizenship would be stateless, his claim to challenge the SS's decision will fail. Such

cases will inevitably be rare since, if the challenge is a serious matter, there will have to be evidence of the relevant law as there was in this case. The court will then make up its mind on that evidence as SIAC did. In Al-Jedda v SSHD [2012] EWCA Civ 358 Richards LJ recorded (paras 122-3) that there was no dispute in that case that the burden of proof was on the appellant on the balance of probabilities. He expressed no surprise at that absence of dispute. Neither do I.

Absence of a legal system

25. The force of this submission was much diminished by Baroness Kennedy's acceptance in the course of oral argument that the TFC did acquire legal force as from August 2004 when it was ratified by the National Assembly. If the TFC did have the force of law from August 2004, the question at issue is just the narrow one, namely whether it only had force on that date or as from February 2004 when it was adopted at the conference. Nice questions about the necessary and sufficient conditions for the existence of a legal system fade into the background. In any event, Professor Ahmed was confident that there was a legal system and all the points about the absence of a constitution or a functioning legal system, the undermining of the judiciary and the minimal existence of human rights and the rule of law could have been (and, no doubt, were) put to him. SIAC did not accept that there was no law or legal system and were entitled to decide the case accordingly.
26. On the crucial point of the date when the TFC came into force, SIAC accepted (para 75) that it was not straightforward. Professor Ahmed had, however, given evidence that the TFC itself had the date of February 2004 on its front page and that Article 71.12 expressly stated that it came into force "on the date the delegates of the Somali National Reconciliation Conference in Kenya approve it". That approval was given in February 2004. Objections raised by some delegates were only raised after agreement had been reached on the substantive points of the charter and did not, in any event, relate to the provisions about citizenship. SIAC accepted this evidence after hearing the experts' evidence and it would be quite wrong for this court to come to any different conclusion.

Wrong application of Woodhouse criteria

27. I do not read SIAC's judgment as purporting to apply the criteria enunciated by Hobhouse J for the determination by an English court of the question whether a state is to be recognised. It is true that, in considering whether the TNC of 2000 had legal force, SIAC cited (paras 65-67) the Woodhouse case and the later decision of Lloyd Jones J in SSHD v CC and CF [2012] EWHC 2837 (Admin) as authority for the proposition that the UK government recognises states rather than governments and for the further proposition that, if a court has to determine who is authorised to represent the state, international recognition does not alone suffice if the relevant regime exercised virtually no administrative control in its supposed territory. But those observations were only made in relation to the TNG and the TNC and led to the conclusion that the TNC did not have legal force.
28. When SIAC came to consider the TFC the position was different. It is true that SIAC stated (para 73) that they had considered the position of TFG as an indicator of the status of the TFC as part of Somali law and made some remarks, in that context, supportive of Mr Hashi's case but they concluded that none of those considerations

undermined Professor Ahmed's evidence that the TFC became the law of Somalia, supported as it was by Mr Haji in his report in the Mohamed case.

29. None of this shows a purported application of the Woodhouse principles let alone a flawed application of them. As no doubt SIAC perceived, the Woodhouse principles answered the question "what criteria are to be used for an English court to recognise a foreign state?" That is a different question from that before SIAC which was whether a particular document had the force of law; it would not have been helpful to apply the Woodhouse criteria to that question. The existence of conflicting regimes does not mean that a particular law does not exist.

True meaning of the charter

30. The difficulty with Mr Hashi's submissions under this head is not merely that they depend on Mr Haji's expert evidence which SIAC rejected, but also that they ignore the provisions of Article 10(2) which, on any view, is the key dispositive provision. That provides, as set out above, that every person of Somali origin

“shall be entitled to citizenship of the Somali Republic provided that:-

- a) He/she was born in the Somali Republic; or
- b) His/her father is a citizen of the Somali Republic.”

Mr Hashi fulfilled the first (if not second) of these conditions. Moreover, as SIAC pointed out (end of para 42), the provisions of Article 10 have to be read in conjunction with the provisions of Article 71, clause 2 of which expressly states that national laws are to apply “in respect of all matters not inconsistent with this Charter”. The old Law of 1962, as relied on by Mr Hashi, is plainly inconsistent with Article 10 of the TFC.

Custom and Practice

31. This was not an essential part of SIAC's reasoning but merely an incidental reference in para 76.

The position in 2012 when Mr Hashi was deprived of his citizenship

32. SIAC did not base their decision solely on the existence of the TFC as a document with legal force in February 2004. They also said (para 74) that in 2012 the Somali authorities would regard the TFC as having been in force since 2004 and (paras 78 and 82) that they would take the view that Mr Hashi was de jure a Somali citizen. Although not expressly articulated by SIAC in this part of their judgment, that was because on any view Article 10 of the TFC was undoubtedly in force in June 2012 and that must mean that Mr Hashi was legally (de jure) a citizen of Somalia on that date.

33. Baroness Kennedy submitted on this part of the case that:-

- i) the use of word “would” in para 78 (and 82) of SIAC's judgment showed that they were relying on “custom and practice” which was impermissible; and

- ii) SIAC's conclusion was inconsistent with the Supreme Court's decision in Al-Jedda v SSHD [2014] A.C. 253 in which Lord Wilson JSC at para 32 said the critical question was whether the relevant person "holds another nationality at the date of the order" of deprivation.
34. I do not read this part of SIAC's judgment as being based on (or containing any reference to) "custom and practice" which, as I have said above, was anyway merely an incidental reference in the earlier part of the case. The emphasis put by SIAC on the de jure position is precisely the opposite of any reliance on custom and practice at this stage of decision.
35. Nor can I accept that there is any inconsistency between SIAC's decision on this point and Al-Jedda in the Supreme Court. In that case the question was whether the true cause of the appellant's statelessness was not the SS's order depriving him of UK citizenship but his own failure to apply for the foreign (Iraqi) citizenship which, according to the SS, he would inevitably receive. That is a different question from that which SIAC was addressing in this case which is whether by Somali law Mr Hashi had citizenship as a matter of law (de jure) on the date of his deprivation of UK citizenship in June 2012. That was not a matter considered by the Supreme Court, the effect of whose decision seems to have been reversed, in any event, by the new section 40 (4A).
36. The question whether Mr Hashi could gain a passport, which SIAC held that he was likely to be able to do is, again, not the same question, though much more nearly related. A passport is factual evidence of citizenship, but citizenship itself is a matter of law.
37. I would therefore hold that Mr Hashi was not stateless in June 2012 and SIAC's decision was correct.

Conclusion

38. It must therefore follow 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.
39. If SIAC had concluded that Mr Hashi was stateless in June 2012 (or even that he was arguably stateless) the position would be very different. Statelessness is such a serious matter that it might well constitute a special circumstance for the purpose of rule 8(5) of the SIAC rules. That, however, is not a matter that needs to be decided in this case.
40. I would therefore dismiss this appeal.

Closed material

41. There was certain closed material which had been seen by Miss Farbey and which Miss Giovannetti said was available to the court if the court wished to see it. Ms Farbey did not invite the court to examine it and the court has not done so.

Lord Justice Underhill:

42. I agree.

Lord Justice Lindblom:

43. I also agree.