

Judgment Summary

Ashley Underwood QC appeared before the Special Immigration Appeals Commission (SIAC) as a Special Advocate in the case of P3 (Appellant) v The Secretary of State for the Home Department (Respondent).

Issues

The issues before the Commission were:

1. Did Article 8 apply to all deprivation of nationality cases;
2. If Article 8 is engaged, has the appellant (P3) demonstrated that he would not have a fair and effective appeal from Iraq;
3. If it is held that P3 would not have a fair and effective appeal from Iraq, his s2 SIAC Act 1997 entry clearance appeal should be allowed regardless of the Respondent's national security concerns.
4. If not, should the appeal be allowed because P3's procedural rights outweigh the Respondent's national security concerns.

Decision

SIAC, allowing the appeal, held that the national security risk in permitting P3 to return to the UK was not a serious one, and that P3's article 8 rights outweighed this risk. At present no bail conditions have been attached to the entry clearance. It is possible written submissions will be made.

Background

P3 is a born Iraqi national. He moved to the UK in 1997 and was granted citizenship in 2003. His wife joined him in 2001 and was granted citizenship in 2007. They have three children together all of whom are British citizens.

On 30 December 2017, the Respondent made an Order under s.40(2) British Nationality Act 1981 depriving P3 of his British citizenship on conducive grounds, namely that he was assessed to have links with Iranian intelligence services. P3 was in Iraq at the time of the Order and has not been able to return to the UK since.

P3 made an application for entry clearance on the ground that it is essential that he be present in the UK in order that the deprivation appeal be effective. He submitted, *inter alia*, that refusal to allow him to enter the UK would be a breach of his rights under Article 8 ECHR. P3's application and reconsideration request were refused, bringing the issue before the SIAC.

Detailed Summary

P3's main submission, and what the Commission's principal focus was on, was the Respondent's refusal to grant entry clearance for the duration of the appeal period was incompatible with his Article 8 and Article 13 ECHR rights, in relation to:

- a) Substantive Article 8 rights due to being separated from his wife and children, and;
- b) Procedural Article 8 rights in the linked deprivation appeal.

Evidence was heard from P3's wife, a psychiatrist, and his solicitors and immigration caseworker. P3 relied upon this to demonstrate that he had a continued and deteriorating mental state, with suicidal tendencies, as a result of being separated from his family for an extended period of time. He further relied upon these witnesses to demonstrate the organising and holding of conferences to provide instructions either in person or remotely were not progressing effectively. As such his interference with family life is extremely serious and outweighs the national security threat.

The Respondent's position was that P3's mental state and separation from his family "may be considered harsh" but were justifiable due to the "serious threat" to national security. They further concluded that P3's presence in the UK to his appeal was not essential as he had been able to contact his legal representatives by phone. They concluded that P3's mental health issues did not outweigh the threat he poses to national security.

SIAC held:

S1¹ and Abbas² are binding on SIAC and must lead to the conclusion that P3 was not within the reach of the Convention for the purpose of Article 1. However, as family life is unitary and indivisible³ and P3's wife and children are British citizens present and settled in the UK, this is sufficient for P3 to engage jurisdiction of the ECHR (his family acting as the "jurisdictional peg").

The strength of P3's Article 8 rights must be balanced against the strength of the national security case against him. If the risk to national security were serious, it would require an extremely strong Article 8 case to outweigh it. P3's Article 8 case is a very powerful one, returning to the UK would improve his mental health, family life, and ability to give effective instructions. The Home Department's national security case is not a serious one. As such, SIAC concluded that P3 does not represent a serious threat to the national security of the United Kingdom and his Article 8 rights win out.

The appeal was allowed.

¹ *S1, T1, U1 and V1 v Secretary of State for the Home Department* [2016] 3 CMLR 37.

² *Abbas v Secretary of State for the Home Department* [2018] 1 WLR 533.

³ *Beoku Betts v Secretary of State for the Home Department* [2009] AC 115.