SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: SC/123/2013
Hearing Dates: 24th, 25th & 26th May 2016 & 2 May 2017
Date of Judgment: 31st May 2017

Before:

THE HONOURABLE SIR JOHN GRIFFITH WILLIAMS
UPPER TRIBUNAL JUDGE GILL
MR PHILIP NELSON CMG

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Between:

L2	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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Mr Hugh Southey QC and Mr Faisal Saifee (instructed by **HMA Solicitors)** appeared on behalf of the Appellant
Mr Jonathan Glasson QC and Ms Rosemary Davidson (instructed by the Government Legal Department) appeared on behalf of the Secretary of State
Ms Helen Mountfield QC and **Mr Zubair Ahmad** (instructed by the Special Advocates' Support Office) appeared as Special Advocates

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OPEN JUDGMENT

The Hon. Sir John Griffith Williams :

Introduction

1. L2 ("the Appellant") was born on 14 October 1981 in Nigeria. His Nigerian nationality is not in dispute. He gained British citizenship (together with his father and siblings) in about 1997. He moved to the United Kingdom with his family in 1999, when he was aged about 18 years. He had both Nigerian and British passports.

2. In the United Kingdom he completed his education, obtaining a first-class honours degree in mathematics and statistics in 2005. In June 2007, he travelled to Turkey. On 11 May 2008, he was found in possession of a firearm and ammunition when he was subject to a random stop-and-search by police officers in Camden. On 11 July 2008, in the Crown Court at Blackfriars, he pleaded guilty to offences of possession of a firearm with intent and assaulting a police officer. On 30 January 2009, in the Crown Court at Blackfriars, he was sentenced to a total of 30 months' imprisonment. He was released on licence in or about September 2009. He travelled to Saudi Arabia in October 2011. In July 2012, he travelled with his second wife to Morocco and at the end of March/early April 2013 onward to Lagos, Nigeria where they stayed with his father and where his wife gave birth to their first child, K, on 2 August 2013.

3. On 21 October 2013, the Secretary of State for the Home Department ("the SSHD") made a decision, pursuant to the provisions of section 40(2) of the British Nationality Act 1981, to deprive the Appellant of his British nationality on the grounds that she was satisfied the deprivation was conducive to the

public good. She certified that her decision was taken wholly or in part in reliance on information which should not be made public in the interests of national security and because disclosure would be contrary to the public interest. The Appellant was served with a notice of deprivation order on 8 November 2013 at the British Consulate in Lagos. The notice informed him:

> *"The reason for the decision is that it is assessed that you have been involved in Islamist extremism and present a risk to the national security of the UK due to your extreme activities".*

The SSHD made the Deprivation Order that same day, with the effect that the Appellant was excluded from the United Kingdom.

4. Notice of appeal was lodged on 4 December 2013. The grounds of the appeal as later amended are as follows:

> *"(i) The Appellant did not constitute a risk to the national security of the United Kingdom such that it was "conducive to the public good" to deprive him of his British citizenship;*
>
> *(ii) It was not a proportionate response to any risk posed by the Appellant for the Secretary of State to deprive him of his British citizenship;*
>
> *(iii) The decision violates the Appellant's right to respect for family and private life under Article 8 ECHR and therefore comprises a breach of section 6 of the Human Rights Act.*
>
> *(iv) The deprivation of the Appellant's citizenship having the effect of removing his European citizenship and preventing the Appellant from entering the Union should be measured against a yardstick of proportionality under EU law.*
>
> *(v) The deprivation of citizenship would only be permissible under EU law on grounds of national security if the Appellant had been informed of and was able to address the essence of those grounds in a manner which takes due account of the necessary confidentiality of the evidence"*

5. While is it accepted on behalf of the Appellant that the Commission is bound by the judgment of the Court of Appeal Civil Division in *Regina (G1) v*

Secretary of State for the Home Department [2012] EWCA Civ 867; [2013] QB 1008 – and so European Union (EU) law does not apply in this case – the Commission is invited, in the light of the observations of the Supreme Court in *Pham v Secretary of State for the Home Department* [2015] UKSC 19 at paragraphs 61-62 (Lord Carnwath JSC with whom Lord Neuberger P, Lady Hale DP and Lord Wilson JSC agreed) and the approach of the Commission in *M2 v Secretary of State for the Home Department* (SIAC 22 December 2015) and *K2 v Secretary of State for the Home Department* (SIAC 22 December 2015) – to consider the substantive and procedural impact of European Union law on the assumption that that law applies on the issue of the proportionality of the deprivation of citizenship. The Appellant reserves the right to argue elsewhere that *G1* was wrongly decided. We will return to this later in the judgment, observing that G1 and K2 are one and the same person.

Subsequent Events

6. In or about April 2014, the Appellant's wife and daughter applied for and obtained British passports and travelled to the United Kingdom. His wife, who was then pregnant, gave birth to their second child, F, on 20 November 2014. She and the two children stayed with her mother until September 2015 when they returned to Nigeria to live with the Appellant in Ogun State. The Appellant's wife has been granted 5 years' residency rights in Nigeria. Both children are British nationals as well as Nigerian nationals with Nigerian passports.

The Evidence

7. The OPEN evidence relied upon before the Commission was as follows:-

(1) On behalf of the Appellant, his position statement dated 28 August 2015 and his witness statement dated 25 September 2015 with its appended exhibits, the witness statements of Marie Sesay and of Sukaina Bollocce Sesay both dated 8 April 2016 and the report dated 20 March 2016 of a social worker and approved mental health practitioner, Dionne Tonge. No oral evidence was given by or on behalf of the Appellant: see below.

(2) On behalf of the Respondent, a first amended statement dated 10 August 2015 and a second amended statement dated 25 January 2016. The witness EZ gave evidence as to their contents.

(3) The Commission has also received CLOSED material which has not been served on the Appellant or his open representatives but has been served on the Special Advocates acting on his behalf.

8. The first OPEN National Security Statement was served in June 2015. In that statement, the SSHD made clear that she would be relying on CLOSED evidence. In response to that statement, the Appellant served detailed written evidence (see below). At a hearing on 4 April 2016 his counsel said he would be giving evidence by video link from Nigeria and that the necessary arrangements were in hand. On 6 April 2016, his representatives emailed the respondent's solicitors stating that "in addition to his own evidence" the Appellant would be relying upon the evidence of Marie Sesay. On the evening of 23 May 2016, those acting for the Appellant informed the Respondent's representatives that Marie Sesay would not be giving evidence. It is said that she made that decision on 23 May, taking the view that the

journey from where they lived in Ogun state to Lagos and then on to Ikoye, where the video link facility is, would have taken approximately 4 hours by public transport and required transfers from buses at busy stations during peak rush hour traffic; it would have been difficult for them to travel with their two young children and there was nowhere for them to leave the children.

9. On 24 May 2016 (the first listed day for the hearing of the substantive appeal) the Appellant wrote a letter in which he stated:

> *"I have chosen to boycott this trial and not give evidence because I have completely lost hope in the UK justice system and don't believe that I will get a fair trial … How can I have hope in a justice system where evidence is relied upon by the government to deprive me of my citizenship are all hidden and not laid bare for all to see and scrutinise? Due to this my solicitors cannot defend my case properly. So, tell me, how can I expect a fair trial? …"*

10. In a subsequent statement on 24 May 2016, he said he wanted to continue with his appeal and wished to rely upon the written evidence which had been served on his behalf.

11. The Commission's approach where appellants are unwilling to give evidence was considered by Ouseley J. in *Ajouoau and A, B, C and D v Secretary of State for the Home Department* (SC/1,6,7,9 and 10/2002), date of judgment 29 October 2003 at paragraph 117:

> *"Some Appellants have given evidence to the Commission upon which they have been cross-examined. They have done so whilst re-iterating their objections to the unfairness of the procedures which govern the appeals. Others have given statements but have been unwilling to answer questions on them, saying that the procedures were unfair. We raised the question of whether inferences adverse to the Appellants should be drawn in such circumstances, which would apply the more so where an Appellant provided no statement at all. Both sides were in agreement that that would be unfair and we agree. We*

> *are conscious that cross-examination of an Appellant proceeds on a basis where he does not know the significance of some of the questions being asked or the extent to which they may seek to lay the groundwork for a contradiction with closed material, with which he cannot deal except to the extent that he may have anticipated the point and provided other material to the special advocates to use as they saw fit. The standard of proof is not high. The Respondent must establish something before there can be any basis for saying that what he has said clearly calls for an answer; by the stage at which he has established that, the low threshold of proof here would have been already established. He cannot reach that threshold by the silence of an Appellant or by his refusal to answer questions on his written statement. But a refusal to answer questions does mean that less weight can be given to the written statement…"*

We will return later in this judgment to our consideration of the Appellant's evidence and the evidence called on his behalf.

The applicable law

12. Section 40(2) of the British Nationality Act 1981 states:

> *"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."*

There is no issue that a deprivation of nationality may be in the public interest and so conducive to the public good if a person has been engaged in terrorism and represents a future threat to the national security of the United Kingdom. There is no issue that the burden is on the SSHD to prove, on the balance of probabilities, that it is conducive to the public good for the Appellant to be deprived of his citizenship.

13. The proper approach to an appeal pursuant to the provisions of section 2B of the Special Immigration Appeals Commission Act 1997 was analysed by the Commission in *Halil Abdul Razzaq Ali Al-Jedda v Secretary of State for the Home Department* [2009] SC/66/2008 at paragraphs 8-13 in the judgment of

Mitting J whose approach has been applied subsequently by other constitutions of the Commission. That approach was helpfully summarised by Irwin J in *Y1 v Secretary of State for the Home Department* SC/112/2011 at paragraph 13:

> *"The appeal is a challenge to the merits of the decision itself, not to the discretion to make the decision. We have come to our own decision as to the facts, applying the civil standard of proof. We have given great weight to the assessment of the Secretary of State and her security advisers, but in the end we reach our conclusions, based on our own assessment as to whether the Appellant represents a threat to the national security of the United Kingdom. We have considered what inferences can properly be drawn from the Appellant's past actions and current capacity and beliefs, so as to inform our assessment of future risk. Finally, we make our own assessment of the impact of the deprivation decision on the Convention rights of the Appellant, and, in relation to Article 8, of members of his family."*

14. In *Y1* the Commission considered what constitutes a threat to national security. Irwin J said at paragraph 56:

> *"We have cited reasonably extensive passages from Secretary of State for the Home Department v Rehman [2003 1 AC 153] in order to ground our proper approach, when considering what constitutes a threat to national security. The critical points emerging from the speeches in Rehman are as follows: firstly, there must be a proper factual basis for the decision; secondly, the Secretary of State is entitled to take the material together, to form an overview, and there is no obligation to treat each discrete piece of information as a separate allegation, which, if refuted or weakened one by one, necessitates without more a decision against deprivation; thirdly, the essence of the test is that the individual represents a "danger" to national security, not that he or she can be proved to have already damaged it: the Secretary of State is entitled to take a preventative or precautionary approach; fourthly, national security is engaged with matters beyond the borders of the United Kingdom, perhaps particularly in relation to terrorism, even where that activity is directed against other States; fifthly, due deference must be shown to the policy of the Executive with regard to national security, and the views of the Secretary of State must be given considerable weight."*

15. Subsequent to the Commission's judgment in *Al-Jedda* (above), the Supreme Court gave judgment in *Pham v Secretary of State for the Home Department* [2015] UKSC 19. In their judgments, Lord Carnwath JSC at paragraphs 59-60, Lord Mance JSC at paragraph 98, Lord Sumption JSC at paragraph 108 and Lord Reed JSC at paragraph 119 all favoured the inclusion in deprivation cases of a requirement that the deprivation must be proportionate. Lord Mance said:

> *"A correspondingly strict standard of judicial review must apply to any exercise of the power in section 40(2) and the tool of proportionality is one which would in my view and for the reasons explained in Kennedy –v- Charity Commission be both available and valuable for the purposes of such a review. If and so far as a withdrawal of nationality by the United Kingdom would at the same time mean loss of European citizenship, that is an additional detriment which a United Kingdom court could also take into account, when considering whether the withdrawal was under United Kingdom law proportionate. It is therefore improbable that the nature, strictness or outcome of such a review would differ according to whether it was conducted under domestic principles or whether it was also required to be conducted by reference to a principle of proportionality derived from Union law" (emphasis added).*

Clearly the guidance in the earlier decisions above of *Y1* and *Rehman* must be applied with these observations of the Supreme Court in mind. In *K2* (SC/96/2010) at paragraph 22 and *M2* (SC/124/2004) at paragraph 34, the Commission had regard to the proportionality of the deprivation orders, the subject of those appeals. We will do likewise.

The Appellant's evidence

16. The Appellant denies he is an Islamist extremist who has been involved in terrorism-related activity and disputes that he presents a risk to the national security of the United Kingdom. His case is that it was only in 2006 that he

began to take the Islamic religion seriously. In 2006 and 2007, he taught mathematics at schools in Whitechapel and in North West London. He travelled to Turkey with his friend, Ali Adorus, whom he had met and got to know in 2006. The journey was solely for holiday purposes. They stayed in Turkey for a few weeks, during which time an unidentified man helped him and Adorus to find an apartment in which they stayed; he is unaware of anyone called Muammar Shandoul.

17. His evidence is that on his return to the United Kingdom, the Security Service started "a campaign of purposive harassment" against him. At about the time he started his new teaching job in September 2007, persons from the Security Service, posing as employment agents, got in touch with him. We summarise his complaints. He said they bothered him a number of times, even attending at his home early in the morning; on one occasion a police officer threatened him through a closed door that he could make things really difficult for him, could have him arrested, sent to a country abroad, detained and tortured. On another occasion they showed him a photograph of a man who resembled the man he had met in Turkey. His evidence is that he felt vulnerable, was unable to think rationally, and was at a low ebb and so he bought a firearm to protect himself from the Security Service. He pleaded guilty on a basis of plea which reflected his case and the sentencing judge was satisfied that the dangerous offender provisions of the Criminal Justice Act 2003 did not apply in his case and that there were exceptional circumstances justifying the imposition of a sentence less than the 5 year statutory minimum.

18. While in prison, he met Ibrahim Hassan (Abu Nusaybah) and he continued to meet him following his release. When serving his sentence, he spent time in segregation because he refused to be subjected to strip searches and he was placed once on 'bully' watch after he and a cellmate had contrived a complaint of bullying against him by the cellmate so that the cellmate could be transferred to another prison. He was released in September 2009.

19. In early 2010 he was introduced to his first wife, Ayesha Semper. In January 2011 she gave birth to their daughter, A. In 2010, he worked briefly as a labourer on a construction site, but was injured on his third day at work.

20. During 2010-2011 he became more involved in attending demonstrations organised by persons affiliated to Al-Muhajiroun ("ALM"); these included Ibrahim Hassan but while he became acquainted with some of those associated with ALM, he did not consider himself a part of the group and never attended their private gatherings. He attended regularly public classes held by Abu Bara, also known as Mizanur Rahman. He knows none of the individuals involved in the murder of Lee Rigby. He had no significant contact or involvement with Shah Jalal Hussain.

21. Through these contacts he obtained employment as a bookkeeper in a business (Master Printing House) run by Yazdani Chaudry. He met Afsoor Ali whilst working at Master Printing House.

22. When he was paid £3,200 compensation for his work injury, he used the money to travel to Saudi Arabia for Hajj in October 2011, the pilgrimage being organised by UK Hajj & Umrah Services Limited. Others known to him, including Afsoor Ali, were on the same pilgrimage, staying in the same

hotel with the arrangements made by the same travel company. On his return to the United Kingdom, he was questioned in a Port Stop under Schedule 7 of the Terrorism Act 2000. Following his return, he separated from and divorced his wife.

23. In March 2012 he married Marie Sesay, who has dual British and Sierra Leonean nationality and passports. During 2012, he attended Da'wah stalls in Walthamstow where he would hand out leaflets referring people to his website "Call2Guidance", the content of which reflected his non-extremist conception of Islam. He was occasionally accompanied by Ibrahim Hassan who would also hand out the leaflets. He was never involved in Minbar Ansaar Deen ("MAD").

24. In July 2012, he travelled with his wife by EasyJet to Agadir. They planned to sightsee in Morocco and experience the month of Ramadan in an Arab country but their plans were fluid and so they bought only one-way tickets. They travelled in Morocco, visiting Marrakech, El Jadida and Casablanca. After a few weeks there he met a man in a mosque who spoke fluent English and whom he told of his desire to learn Arabic; the man told him of a settlement in the desert to the south of Agadir where they could stay and learn Arabic and so they went to a settlement in South Morocco where they were provided with a tent and studied Arabic with Moroccans for about 6 months, often going to call centres and internet cafes "in the nearby town" to call their families in the United Kingdom.

25. Towards the end of November 2012, his wife became pregnant; when she ceased to suffer from morning sickness, they travelled at the end of March and

in early April to Lagos, Nigeria via Mauritania, Mali, Burkina Faso and Benin using their respective Nigerian and Sierra Leonean passports. They were detained for several days at a checkpoint in Mali but released when they proved they were only in Mali in transit. Once in Lagos, they stayed with the Appellant's father and Sesay gave birth to their first child, K, on 2 August 2013.

26. His journey to Saudi Arabia was solely for the purposes of Hajj and while he accepts he knew Afsoor Ali before travelling to Saudi Arabia and that he lied during a Port Stop interview when he claimed he did not know him, that was because he wanted to bring the Schedule 7 examination to an end. He is not and has never been a member of MAD. He has never accessed its website. His own website ("Call2Guidance") reflects his non-extremist conception of Islam. He met Ibrahim Hassan when they were both on remand in HMP Wandsworth and they remained in contact subsequently, manning a Da'wah stall together.

27. He is not linked or affiliated to ALM and has not attended any of its meetings. He has never met Omar Bakri but knows Anjem Choudary whose brother got him employment at Master Printing House. He has been in contact with him and others since he moved to Nigeria about issues of Fiqh. He has lived in Nigeria since April 2013; he is attempting to set up a business there. His case is that even if he poses a risk to the national security of the United Kingdom, the deprivation order is disproportionate because that risk could be adequately managed by other means. His case is that the deprivation order amounts to a violation of Article 8 of the ECHR; while his wife and two daughters moved

to Nigeria in September 2015 to be with him, that was an enforced choice which is not in the best interests of his wife or children. His case is that their best interests should not be displaced by national security interest.

The OPEN evidence bearing on the issue of national security

28. The witness EZ has been a member of the Security Service since October 2011. From December 2011 to June 2015 he worked in the section of the Security Service which investigates all aspects of the international terrorism, including terrorism inspired by a radical interpretation of Islam. Since June 2015, he has worked in the section of the Security Service responsible for investigative training. He adopted as his evidence the Amended First and Second Security Service Statements. He stated that where the statements contain assertions of fact, he believes them to be true and where they contain assessments, they are assessments with which he agrees. EZ confirmed the assessment that the Appellant's journey to Turkey in June 2007 was for extremist purposes. He travelled with Ali Adorus and it is assessed he associated with extremists who included Muammar Shandoul. Adorus was arrested in Ethiopia in June 2013 and is believed by the Security Service to remain in detention there. Shandoul was excluded from the United Kingdom in 2007 and convicted of terrorism offences in Tunisia in 2008.

29. EZ confirmed that the Appellant was arrested on 11 May 2008 in possession of an 8mm handgun and ammunition following a random stop-and-search by police officers in Camden. He shouted "*Allahu Akhba*r" ("God is Great") when he was arrested. On 30 June 2008, he pleaded guilty to offences of possession of a firearm with intent and assaulting a police officer. He was

sentenced to 30 months' imprisonment. His explanation for his possession of the firearm was that he was being harassed by the Security Service. The Security Service does not accept the truth of that claim.

30. During his time in prison, the Appellant's views were assessed to be highly extremist in nature.

31. On 9 November 2011, the Appellant arrived at London Heathrow Airport on a flight from Saudi Arabia. When he was examined under Schedule 7 of the Terrorism Act 2000, he said he had left London Heathrow on 16 October 2011 to go to Saudi Arabia to complete Hajj. Asked about two men (one of whom was Afsoor Ali) to whom he had been seen talking while in the queue for passport control, he said he had met them towards the end of the trip in Medina and they happened to travel back on the same flight. He said he did not know their names. The Security Service assesses that Ali was and continues to be associated with the proscribed ALM. Ali was arrested in 2012 and imprisoned at HMP Belmarsh following his conviction of a section 58 Terrorism Act 2000 offence. He was released from prison in October 2016.

32. Ali was also examined under Schedule 7; he gave a different account to that of the Appellant. He said he had travelled to Saudi Arabia on the same day as the Appellant with friends from East London. The examining officers ascertained that the Appellant and Ali had stayed at the same hotel throughout their stay in Saudi Arabia and that both had listed their employment as "Master Printing House, Whitechapel".

33. In answer to Mr Southey, EZ said it was assessed that the Appellant had two purposes in going to Saudi Arabia – the first, the Hajj, the second to engage in

extremist activities. He accepted it is possible that the Appellant did not want to co-operate with the examining officers, but he observed the examining officers had assessed the Appellant's answers as well-rehearsed and it did not appear he was withholding information.

34. Mr Southey invited EZ to consider the Appellant's account in his witness statement that in around 2010-11 he became more involved in attending demonstrations organised by people affiliated with ALM, but he did not consider himself to be a part of the group. EZ said that while the matter could be expanded in CLOSED evidence, he assesses that the Appellant was a member of ALM which is not tolerant of moderate followers of Islam and did not welcome people unless they shared its views.

35. He said it is assessed that the Appellant was previously associated with MAD and ALM; it is strongly assessed that the Appellant is a close associate of Ibrahim Hassan who was a close associate of Michael Adebolajo who is serving a sentence of life imprisonment for the murder of Drummer Lee Rigby. The Appellant is also assessed to be a close associate of Shah Jalal Hussain. Hassan and Hussain were arrested in 2013; they subsequently pleaded guilty to offences contrary to sections 1 and 2 of the Terrorism Act 2000. They are currently on licence following their release from prison. The Security Service assesses that the Appellant was one of the original members of MAD which was proscribed in 2013.

36. The proscribed ALM was co-founded by Omar Bakri and Anjem Choudary. It has been described by the group "Hope Not Hate" as "the single biggest gateway to terrorism in recent history". In 2015, a publication by the Director

of International Security Studies at the Royal United Services Institute for Defence and Security Studies assessed that 23 foiled or successful terror plots in the UK have involved individuals assessed to be linked to ALM.

37. The Appellant and Marie Sesay flew to Agadir in July 2012. EZ said there is no reason to disbelieve that the beginning of the holiday was spent sightseeing. The Security Service assesses that the Appellant thereafter travelled to Mali and that he was located there with the Islamist extremist group, AQ-M, and its splinter group, MUJWA, with whom it is likely he was engaged in terrorist-related activities which included, but may not have been limited to, fighting alongside rebel groups against Malian and French forces which were deployed in the region from January 2013.

38. The witness EZ was invited to consider the witness statement of Marie Sesay which supported the Appellant's account in his witness statement about his time in Morocco and his journey to Lagos. In general terms, she said they had insufficient money to pay for flights from Agadir to the United Kingdom when she became pregnant and had no alternative but to travel by land from south Morocco, through Mauritania, southern Mali, Burkina Faso and Benin to Nigeria. The Appellant used his Nigerian passport and she used her Sierra Leonean passport which she said would have been stamped when they crossed some of the borders. She described spending a night in Mali, being stopped by Malian soldiers at a checkpoint, being detained for three or four days in a police compound where the soldiers were more interested in her than the Appellant. She was told that was because it was thought she was from northern Mali because of the way she was dressed; EZ said he did not believe

her account to be accurate. By reference to a map, he said the journey she described would be significant and unlikely to have been undertaken by a pregnant woman; EZ did not accept the credibility of the account that the Appellant and Sesay went to Nigeria because the Appellant knew of a hospital where Sesay would confidently give birth because the Appellant had left Nigeria when he was 18 years old and had not lived there for some 15 years and so would not have known of any such hospital. EZ said that return flights from Agadir to the United Kingdom were both available and affordable. He said that in a Port Stop on 17th April 2014 at London Heathrow airport, Marie Sesay was asked about the travel to Nigeria in April 2013; she made no mention of Mali until towards the end of the examination when she was told that it was known that she had travelled to Mali. She then said she and the Appellant had travelled through Mali but had only stayed for one night. EZ observed that the account in her witness statement accorded with that of the Appellant but was inconsistent with the account she gave when examined on 17th April 2014. He said he would not have expected her to have then forgotten a stay of three or four days in a police compound in Mali. EZ observed that the Appellant in his witness statement said nothing of the Malian authorities being more interested in Marie Sesay.

39. The Security Service notes that the Appellant has not said how long he was detained whilst he was in Mali, has given no specific dates for when he left Morocco and when he arrived in Nigeria, states that he was forced to pay the Nigerian border officials to allow them to cross into Nigeria although this is inconsistent with an earlier claim in his witness statement where he states that he had run out of local currency. The Security Service notes that he has

provided no supporting evidence for his wife's ill health or their journey. It is assessed that it is likely that their passports would have been stamped at least once during the border crossings. EZ said that the Appellant's account and that of his wife lack credibility.

40. EZ was asked about an MG11 statement made by Marie Sesay's mother, Sukaina Sesay, on 12th November 2015 in which she detailed events involving her son Abdul whom she believed had gone to Turkey and travelled to Syria to maybe join ISIS. He said he was only aware of this statement about 10 days before the hearing and when he was preparing to give evidence in the appeal. He said the Appellant's link to Abdul, who was likely to be with ISIS, supports the continuing risk the Appellant poses. He said it is assessed the Sesay family is close and so Abdul is likely to be in contact with his sister and the Appellant in Nigeria. EZ said he was unaware of the content of the Appellant's website "Call2Guidance".

The case for the SSHD

41. In support of her case that the Appellant is an Islamist extremist who has been involved in terrorism-related activity and poses a risk to the national security of the United Kingdom, the SSHD relies upon the above assessments made from a number of strands of evidence. It is assessed that the Appellant went to Turkey for extremist purposes, associating there with extremists, who included Muammar Shandou1. The SSHD does not accept the Appellant's claim that he bought the firearm and ammunition because he was being harassed by the Security Service and notes that when he was arrested following the random stop-and-search, he shouted "*Allahu Akhbar*" ("God is Great"). When the

Appellant was serving his prison sentence, he was assessed to be highly extremist in nature. The SSHD relies upon the Appellant's lies when questioned during the Port Stop on his return from Saudi Arabia on 9 November 2011 about Ali Afsoor (an extremist who has been convicted under UK terrorism legislation) to whom he was observed to be talking while waiting in the immigration queue and whom he claimed to have only met towards the end of the trip.

42. He is assessed to have been an original member of the proscribed MAD and a close associate of a fellow MAD member, Ibrahim Hassan, who is himself a close associate of Michael Adebolajo, one of the murderers of Drummer Lee Rigby. He is also assessed to be linked to the proscribed group ALM. It is assessed that the purpose of the journey to Agadir in July 2012 was only in part for tourism purposes; the real purpose of the journey was to visit Mali where it is assessed it is likely he received training from terrorist groups and engaged in fighting against French and Malian forces.

Reliability of the Appellant's evidence

43. Mr Southey submitted that the SSHD was unable to point to any OPEN evidence of a terrorist purpose for the trip to Turkey or of Ali Adorus' involvement in terrorism-related activity until he left the United Kingdom in May 2009. There is no OPEN evidence of the Appellant's awareness of Ali Adorus' terrorism activity or of his involvement in any terrorism-related activity of Muammar Shandoul. Of the firearms offence, Mr Southey submitted the Appellant was suffering from symptoms of anxiety and paranoia

at the time and the Dangerous Offender provisions of the Criminal Justice Act 2003 were not applied.

44. Mr Southey says it is not disputed that the Appellant and Ibrahim Hussain met in prison and through their association with MAD but there is no intelligence that the Appellant was involved in any offending by Ibrahim Hussain, who was convicted in relation to his involvement with MAD from 2012 and after the Appellant had left the United Kingdom. Mr Southey submitted there is no OPEN evidence of the Appellant knowing Shah Jalal Hussain other than by reason of them both working for Master Printers. He submitted EZ was unable to point to any OPEN evidence to show that the Appellant was a member of ALM as opposed to being associated with it. He was not associated with it after 2010.

45. Mr Southey relies on the acceptance by EZ of the proposition that the Appellant's dissociation from Afsoor Ali when questioned under Schedule 7 on his return from Saudi Arabia may have been for reasons other than involvement in terrorism. EZ could point to no OPEN evidence of continuing contact between the Appellant, Marie Sesay and her brother Abdul other than for family reasons.

46. Mr Southey placed particular emphasis on EZ's evidence that the travel to Mali in 2012 was "the tipping point" and there had been no earlier occasion for the SSHD to exercise any powers over him. EZ said he had no reason to disbelieve the Appellant and his wife's account that they had "experienced Moroccan culture and lifestyle at the beginning of their trip".

47. Mr Southey submitted that the credibility of the account in the witness statements of the Appellant and his wife is supported by the lack of OPEN evidence to contradict it, by the fact that both provided detailed statements when they were not sure of the evidence against them and by the broadly consistent accounts in those witness statements.

48. On behalf of the SSHD, Mr Glasson submitted that the accounts are unreliable. First they are vague and avoid details which would enable verification and some of the detail is inherently improbable. There is also an absence of supporting evidence notwithstanding that this was noted in the SSHD's second statement served in November 2015 and so there had been opportunity to redress that omission.

49. We have considered these submissions and the evidence in its entirety. We make it clear that we have drawn no adverse inferences from the unwillingness of the Appellant and Marie Sesay to attend for cross examination. In concluding as we have that the Appellant's evidence is not credible in its material particulars, we reject the submissions of Mr Southey and accept the force of the submissions of Mr Glasson. We have had particular regard to the following:

i) The Appellant, supported by Marie Sesay, has given an account which is short on detail which one or other or both can be expected to recall – by way of example, and relevant to the issue of his whereabouts at material times, the town visited regularly on a number of occasions to use an internet café (see paragraph 24 above) is not named.

ii) The improbability of the Appellant's account of coincidental meetings with total strangers, the first in Turkey who arranged accommodation with a family which is not identified and the second in Morocco who arranged for the Appellant and his wife to stay for 6 months at an encampment in the desert.

iii) We reject the Appellant's explanation for his lie when questioned during the Port Stop on 9 November 2011 about his association with Afsoor Ali (see paragraphs 31-33 above); the lie would hardly have lengthened the interview unless there was more to their association and so he intended clearly to give a false impression of that association.

iv) The inconsistencies between the accounts of Marie Sesay in her Port Stop examination on 17th April 2014 and in her witness statement – see paragraph 38 above. Her omission to mention Mali until she was told that it was known that she had travelled to Mali, in our judgment and in the context of all the other evidence, cannot have been an oversight and is explained by her knowledge that the Appellant had spent time in Mali probably for terrorism purposes. We are satisfied her witness statement was tailored to support the Appellant's case.

The National Security Case

50. We accept the assessment that the Appellant spent many months in Mali with AQ-M and its splinter group MUJWA and that it is likely he received training by Al Qaida and fought alongside AQ-M against French and Malian forces. That is a proper inference reached on the OPEN evidence but there is abundant support for our conclusion in the CLOSED evidence. We add that

there is nothing in the CLOSED evidence which runs counter to that conclusion.

51. Adopting the approach of the Commission in *M2* at paragraph 21 in the judgment of Irwin J, re-stating and reaffirming the above cited passage in *Y1* (see paragraph 14 above), we have concluded, on the OPEN evidence of the Appellant's past conduct, on the balance of probabilities, that he is a danger to national security and that should he return to the United Kingdom he would engage here in terrorism-related activities. We reject Mr Southey's submission that "a preventive or precautionary approach is not appropriate" and that there must be real, direct and immediate threat (see paragraph 14 above). While we accept the threat must be real, it need not be direct or immediate. Having reviewed both the OPEN and CLOSED evidence, we are satisfied that the SSHD was accordingly fully justified in her conclusion the Appellant represented a risk to the security of the United Kingdom. It follows we reject the first ground of appeal that the Appellant did not constitute a risk to the national security of the United Kingdom such that it was "conducive to the public good" to deprive him of his British citizenship. In any event on the basis of the OPEN and CLOSED evidence we are satisfied that the Appellant would indeed pose a direct and immediate threat to the national security of the United Kingdom.

52. EZ accepted that the evidence of the trip to Mali was "the tipping point" which prompted the Security Service to advise the SSHD to make the deprivation order. We are satisfied the other strands of evidence, individually and together, while amply supporting the conclusion the Appellant has been

involved in Islamist extremism, also provide strong support for the conclusions drawn on the Mali evidence that he is a danger to the national security of the United Kingdom.

53. We identify the following parts of the evidence:

i) The Appellant subscribes to Islamist extremism ideology and has done so since 2007.

ii) He is affiliated to both ALM and MAD, both proscribed organisations.

iii) While we accept the force of the submission of Mr Southey that there can be various reasons for associations, which need not be unlawful, the Appellant has a wide network of extremist associates. It is a permissible inference that the number of and the time these associations have lasted prove they were to further the Appellant's Islamist extremism. The associations include:

- Ali Adorus who attempted to travel to Tanzania with Mohammed Emwazi ("Jihadi John"); the Appellant does not challenge the SSHD's assessment that Adorus is an extremist.

- Marcel Schroedl who was excluded from the United Kingdom on national security grounds and is currently believed to be in detention in Ethiopia on terrorism charges.

- Anjem Choudary, a co-founder of ALM, who was convicted in July 2016 for inviting support for the Islamic State in Iraq and the Levant (ISIL) group, and who has been described by the think-

tank "Hope Not Hate" as "a serious player on the international Islamist scene"; the Appellant does not challenge the SSHD's assessment that he is an extremist.

- Ibrahim Hassan, the founder of MAD, who has twice been convicted of terrorism offences and was a close associate of Michael Adebolajo, the murderer of Drummer Lee Rigby; the Appellant does not challenge the SSHD's assessment that he too is an extremist.

- Shah Jalal Hussain, the co-founder of MAD, who was convicted with Hassan of terrorism offences; again, the Appellant does not challenge the assessment that he is an extremist.

iv) He had access to an 8 mm pistol and ammunition in May 2008. We do not accept his explanation for its possession. On the assumption that his account of harassment may be true, it cannot explain why the Appellant who says he has never fired a firearm and who says he would not fire one, should think to acquire one. The Appellant, who has no criminal record and no known non-terrorist criminal associates, has not explained how he was able to acquire the loaded pistol. His evidence is simply not credible. His shouting of "*Allahu Akhbar"* is inconsistent with his explanation for his possession of the weapon. We should add that the apparent acceptance by the sentencing judge of his basis of plea provides no support for his explanation. Cases sometimes proceed to sentence on a basis of plea even though the basis itself is not supported by the evidence. We add that the material then available to

the Crown Prosecution Service and to the Crown Court did not include any intelligence material.

v) We accept the assessments that his trip to Turkey in 2007 was probably for extremist purposes. His account of a meeting with a stranger who provided accommodation is improbable. The Appellant has provided no explanation for the time he spent in Turkey or of his meeting with Muammar Shandoul, one of the many Islamist extremists with whom he has been linked;

vi) While a part of the reason for the Appellant's trip to Saudi Arabia was Hajj, the fact he was accompanied by a known Islamist extremist from whom he sought to distance himself during the Port Stop interview justifies the inference that another reason for the visit may well have been Islamist extremism;

vii) Having reviewed both the OPEN and CLOSED evidence, we accept the assessments that the Appellant was in Mali with AQ-M and its splinter group Mujwa, that he is likely to have received training by Al Qaida and that he fought alongside AQ-M against French and Malian forces. These inferences are based upon his own admission he was in Mali (although for a much shorter time), the inconsistencies in the accounts of Marie Sesay (see paragraph 38 above) and the improbability of his explanations, notably lacking particularity for the time he spent in Morocco. The evidence of the trip to Mali together with all the other material viewed as a whole provides ample support for the National Security case.

European Union Law

54. Mr Southey's submissions have been rehearsed before and rejected by other constitutions of the Commission – see *K2* and *M2* above – and so we intend no disrespect to him or to his submissions if we summarise them selectively and briefly.

55. He submitted the proportionality of the SSHD's decision falls within the ambit of European Union law because the consequence of the order is to deprive the Appellant of his European Union citizenship; it follows he is entitled to the procedural advantages of stricter rules limiting disclosure on grounds of national security: see *ZZ (France) v Secretary of State for the Home Department* [2013] QB 1136, a decision of the Court of Justice of the European Union. He submitted that as a matter of procedure, if EU law applies, the Appellant would be entitled to have disclosed to him the essence of the national security grounds, that is to say the details of those with whom he is said to have associated, when that association happened and what is said to have happened. He submitted further that the right to good administration enshrined in Article 41 of the Charter of Fundamental Rights reflects a general principle of European Union law and so the Appellant was entitled to be consulted before the order was made.

56. We are not persuaded on the facts of this case that these submissions have any force. Mr Southey's submission that the Appellant is entitled to have disclosed to him the essence of the national security grounds "that is to say the details of those with whom he is said to have associated, when that association happened and what is said to have happened" fails to differentiate between the grounds

on the one hand and the evidence in support of the grounds on the other. The SSHD disclosed to the Appellant the essence of her case: see paragraphs 5-8 of the First Amended Statement on behalf of the Secretary of State and the Second Amended Statement. Consultation would have achieved nothing.

57. He submitted that the threshold for deprivation cannot be less demanding than the criteria in Article 28 of the Directive 2004/38: he submitted "serious grounds of public policy or public security" (Article 28(2)) are necessary to expel an EU citizen with rights of permanent residence, that "imperative grounds of public security" (Article 28(3)) are required if the individual has resided in the host member state for the previous 10 years and that there must be "exceptional circumstances" (Article 28(3)). He submitted the most onerous requirements must be fulfilled before a member state can withdraw citizenship and EU law requires proof that the Appellant undermined the special relationship of solidarity and good faith between himself and the United Kingdom before a deprivation order could be made and that necessarily implies proof of his conduct and facts that threaten with an overwhelming degree of seriousness some specific aspect or aspects of the public security of the United Kingdom.

58. He submitted in his Further Submissions that countries in Europe tend only rarely to invoke any powers to deprive individuals of their citizenship and that these countries require a conviction of terrorism-related offences or proof of conduct directly prejudicial to the member state in question. He referred the Commission to Article 7(1)(d) of the European Convention on Nationality which provides there can be no loss of nationality *ex lege* or at the initiative of

the State Party save in cases which include "conduct seriously prejudicial to the vital interest of the State Party". We are not persuaded these are matters to which we should have regard because the United Kingdom is not a signatory to that Convention but we would add that even if these are material considerations, they would not assist the Appellant because we are satisfied (see above) that his presence in the United Kingdom would be seriously prejudicial to the national security of the United Kingdom and therefore that there are imperative grounds of public security for the decision to deprive him of his British citizenship.

59. Mr Southey submitted it is necessary also to determine whether the effect of the order is to deny the Appellant's children the genuine enjoyment of the substance of their rights conferred by the status of citizenship of the European Union, a denial which he submits has occurred because the only realistic option for the family is to live in Nigeria.

60. These submissions amount to a challenge to the binding decision of the Court of Appeal in *G1* (above) that the withdrawal of citizenship is governed exclusively by domestic law and that the provisions of European Union law are not engaged. But for the observations of Lord Carnwath JSC at paragraphs 61 – 62, Lord Mance JSC at paragraph 99 and Lord Sumption JSC at paragraph 110 in *Pham* (above) that the Commission should take the common law test as its starting point and then see in what respects (if any) its conclusions are different applying Article 8 of the Human Rights Convention or EU law, Mr Southey's submissions would call for no further consideration.

61. We agree with the submissions of Mr Glasson that the Supreme Court could not have intended that the Commission should conduct a two-fold trial procedure to consider fully litigated hypothetical issues of European law.

62. We accept that the Commission is not strictly bound by earlier decisions of other constitutions but its consistent practice has been to follow earlier decisions of other constitutions, absent any intervening appellate judgment. Even so, we have considered the issue of disclosure in the light of *ZZ v The Secretary of State for the Home Department* [2014] EWCA Civ 7 and the Commission's interpretation of the requirement that "the essence of the grounds" for making a deprivation order must be disclosed.

63. Our conclusion is no different to that reached in *M2 –v- The Secretary of State for the Home Department* SC/124/2014 at paragraph 104 of the judgment that, applying that test, some further disclosure would be necessary and likely to take the form of a further summary or gist. We are of the view that even were matters omitted from the CLOSED case which would require such further summary or gist, the outcome of the case would be the same.

64. We agree with the submissions of Mr Glasson that European Union law would confer no material advantage to the Appellant: the duty and extent of disclosure is very much case-specific. We agree also that the right to good administration, which is again context-specific, is not unqualified and may be restricted if a restriction is justified by the public interest and is not disproportionate. We are satisfied that prior consultation may have jeopardised the effectiveness of the deprivation decision but, in any event, would have made no difference to the outcome.

Proportionality

65. In determining whether the deprivation order is a proportionate response under principles applicable at common law EU law or the ECHR to the threat to national security which the Appellant presents, we have directed ourselves that it is necessary to weigh up, on the one hand, the Appellant's rights to British citizenship (manifestly at the weightiest end to the sliding scale), the consequences to him of the deprivation of citizenship (including the loss of EU citizenship), the mitigating factors identified by Mr Southey and, on the other hand, the threat he presents to the security of the United Kingdom, bearing in mind that the SSHD is the statutory decision-maker and having regard to the Executive's special competence in the area of national security.

66. We have had regard to all the submissions made by Mr Southey. We do them no injustice by a summary. He identified a number of what he submitted were mitigating circumstances. He submitted the Appellant was suffering from symptoms of anxiety and paranoia in 2008 when he committed the firearms offence. While this is supported by the medical report dated 21st July 2008 of Dr Kooyman, we note he was not then or subsequently suffering from any active mental illness or disorder or any current persecutory ideation. Mr Southey submitted we should have regard to his age (32 years when deprived of his citizenship) and of the greater likelihood of rehabilitation if he is allowed to retain his citizenship and live in the United Kingdom. Mr Southey submitted we should take into account the fact the Appellant had not lived in Nigeria for 14 years and the impact on him and his family of the

relative reduction in their standard of living whether or not that amounts to a violation of Article 8.

67. We have had regard to these submissions but are not persuaded the SSHD's decision was in any way disproportionate. It is the presence of the Appellant in the United Kingdom which, in the light of his past conduct, poses a threat to national security and that cannot be addressed by his return to the country even if he is subjected – as Mr Southey submitted he could be – to strict surveillance and/or to measures under the Terrorism Prevention and Investigation Measures Act 2011.

Article 8

The Facts

68. The Appellant's mother, three sisters and one brother live in the United Kingdom. He has provided no evidence of a close relationship with them or any of them. He has provided no evidence of any continuing association with his first wife or their daughter, A (who is now five years old) although he has stated he is keen to re-establish a relationship with her after having been separated from her since July 2012.

69. The Appellant and his wife chose to travel to Nigeria in about April 2013 when they could have returned to the United Kingdom. We mentioned earlier in the judgment that the Appellant's wife and their baby daughter travelled to the United Kingdom in or about April 2014. This was, he said, because she required medical treatment and because she wanted to live in the United Kingdom. They returned to Nigeria in September 2015 where she now has

five years' residency rights and where the Appellant is trying to set up a business dealing with the purchase and sale of laptop computers. All the indications are that he can make a life for himself and his family in Nigeria.

70. Marie Sesay states that throughout her stay in the United Kingdom she lived with her two daughters at her mother's house together with her siblings and her extended family. The picture she paints is of a close family with her two daughters close to their grandmothers and cousins. However, she felt it was unreasonable to burden her family while depriving the Appellant of his daughters and vice versa and so it was that "after much consideration" she decided to return to Nigeria for him "to have a role in their lives despite knowing the difficulties of living and bring (sic) other family in Nigeria as opposed to the UK". She stated they were compelled to do this because of the circumstances.

71. They lived initially in Lagos with the Appellant's father but it was not particularly safe and so they moved to Ogun state. It is more peaceful there but there is "a remarkable lack of amenities in the area" with intermittent electricity and water supplies. They have decided to home school their daughters because of issues with corporal punishment and bullying and the cost. Their daughters no longer have their close and extended family and have no interaction with children of their own age. Marie Sesay has some concerns that in future the children may suffer discrimination because they are lighter in skin tone than most Nigerians. She says K (now 3 years old) considers London as her home and is noticeably upset when she speaks to her grandmother on the telephone.

72. Dionne Tonge, a social worker, has provided a report following a two hour meeting with the Appellant, his wife and the two children. She concluded (paragraph 1.16):

> *"It was clear from speaking with both parents about their current situation that this is having a negative impact on them and their children…from my assessment it was clear that these children continued to flourish and develop in the stable and nurturing environment provided for them in the UK. They had the stability of their parents, extended family, support network, friends and community living around them. They had grown used to their family dynamic and the British culture in which they were fully immersed. Owing to [F] being born in the UK and the length of the children's residence in the UK, they developed the social norms and cultural expectations of their peers and local community.*
>
> *The circumstances that the family have faced since their relocation to Nigeria are not within my expertise to comment upon; however on the basis of the situation as reported to me, their relocation has meant that [K] and [F] have lost out on their ability to continue with their planned education, family contact and social connections that they had in the UK. On this basis, and the other concerns I have outlined in this report, it would seem to be a reasonable decision to make in the children's best interests that the family return to the UK…*
>
> *I am of the view that the permanent relocation of [K], [F] and their parents from the UK is likely to cause significant detriment to the family members and also on the integrity of the family unit as a whole with lasting and damaging effects on these children."*

The submissions

73. We summarise the submissions of Mr Southey and Mr Glasson.

74. Mr Southey submits that Article 8 has long been recognised as being applicable in an immigration context though the effect of the impugned decision is the denial of an established or intended family life with a person settled in the UK. He submitted the case of *Khan v United Kingdom* [2014] 58 EHRR SE15 relied upon by the SSHD (see below) concerned only private life.

He submitted that physical presence in this country cannot be determinative of an Article 8 claim otherwise a foreign holiday could extinguish a family's Article 8 rights. He submitted it should be remembered that the best interests of the children are not to be devalued by something for which they are in no way responsible.

75. Mr Southey submitted that an assessment of the children's best interests involved a two stage process: first the Commission is required to determine what is in the best interests of the children and, secondly, the Commission is required to assess whether those interests are outweighed by any countervailing factor. He submitted the importance of EU citizenship is also relevant in this context.

76. He submitted there would need to be an extremely compelling case to justify a situation where two children with British citizenship are effectively forced to live with their family in Nigeria under much more challenging conditions which are likely to have adverse long-term effects on their welfare and development.

77. He submitted that the interference with their Article 8 rights is not in accordance with the law. He submitted it is not accepted that there is a statement as to how the discretion to deprive people of citizenship will or may be exercised that is as precise as is practical in all the circumstances.

78. Mr Glasson submitted that as the Appellant, his wife and their elder daughter were outside the jurisdiction of the United Kingdom at the time the deprivation order was made, it follows Article 8 does not apply: see Article 1 of the ECHR which provides "The High Contracting Parties shall secure to

everyone within their jurisdiction (emphasis added) the rights and freedoms defined in section 1 of this Convention"; *S1, T1, U1, V1 v the Secretary of the State for the Home Department* (SC/106-109/2011, 21 December 2012) at paragraphs 21 to 24, 29 and 30 in the judgment of Mitting J and *Khan* (above) paragraphs 24-26. Since the OPEN judgment was reserved, the Court of Appeal (Briggs, Burnett and Lindblom LJJ) has dismissed the appeals in *S1, T1,U1,V1*: [2016] EWCA Civ 560. In that case, on broadly similar facts to the facts of this case; the appellants, all members of the same family and British citizens were living in Pakistan when notices of deprivation were served on them. In upholding the decision of the Commission and rejecting the Article 8 claims of the appellants, Burnett LJ at paragraph 102 of the judgment said:

> *"… both the Strasbourg jurisprudence and its application in this jurisdiction at the highest level vindicate the conclusion of SIAC that for the purposes of article 1 of the Convention the appellants at all times to these proceedings were outside the jurisdiction of the United Kingdom"*

79. The Commission invited counsel to provide further submissions in the light of that decision. Mr Southey's short submission was that the case is distinguishable and has no application to the present case. Mr Glasson's submission was that there are key aspects of the decision of the Court of Appeal which are relevant to this case. These are the rejection of the Appellant's argument that the conducive test in deprivation cases should be "a real and direct and immediate threat to a vital public interest" (paragraphs 37 & 38) and the Court's conclusions on the Article 8 issues (see above). We are satisfied the Appellant, his wife and children were not within the jurisdiction of the ECHR when the order of deprivation was made.

80. On 4 July 2016, Mr Southey drew the Commission's attention to the judgment of the European Court of Human Rights dated 21 June 2016 in *Ramadan –v- Malta* (application 76136/12) and cited a number of passages which emphasised the consequences of the deprivation of citizenship as well as a passage in a dissenting judgment explaining the meaning of private life in a deprivation of citizenship case. Mr Southey submitted the Commission will have to scrutinise the Article 8 issue with particular care. Mr Glasson submitted the decision does not assist the Appellant. Save that the requirement to consider the Article 8 issue with particular care was emphasised, we agree and so no further consideration of the decision is necessary.

81. There is no issue that the Appellant was in fact outside the jurisdiction as at the date of the decision. We are not satisfied his absence from the United Kingdom was temporary in the circumstances. He and his wife left the United Kingdom with one-way tickets in July 2012, some 15 months before he applied for his replacement passport. His explanation as to where he spent the majority of the period of his absence from the United Kingdom between July 2012 and March/April 2013 or what he was doing in the meantime is not credible. He and his wife chose to have their child delivered in Nigeria. Their explanation for that does not bear scrutiny given that his wife returned to the United Kingdom for the birth of their second child. We have concluded that even if Article 8 applies on the facts of this case, for the reasons which follow, we are satisfied there has been no breach of it.

82. Mr Glasson submitted the Appellant spent the first 18 years or so of his life in Nigeria and his father still lives in Lagos. He is recognised in Nigeria as a

Nigerian national and his wife has been granted five years' residency and so the Appellant's second, British, nationality is of little practical value to him. He left the United Kingdom in July 2012 using a one way ticket; he had no apparent intention to return – we would add he chose to go to Nigeria when an option to return to the United Kingdom was available to him. Addressing the submissions of Mr Southey, Mr Glasson said there is no evidence that the Appellant was suffering from any on-going mental health problems in November 2014 and the factor of the relative degeneration in standards of living for the Appellant and his family is insufficient to render the deprivation order disproportionate: see *Bensaid v United Kingdom* [2001] 33 EHRR 10 at paragraph 47.

83. We have considered his Article 8 rights and those of his wife and children. The Appellant has not been rendered stateless because he has retained his Nigerian nationality; his wife and two daughters maintain their UK citizenship and their concurrent European citizenship. We have had regard to the consequences to the Appellant of the loss of British citizenship and his concurrent loss of European citizenship. We have taken into account that the loss of citizenship is a weighty issue as citizenship is a core element of any person's identity. The Appellant lived in the United Kingdom from 1999 when he was 18 years old until July 2012 when he was 31 years old. He has therefore lived in the two countries for comparable periods, although we of course take into account that he obtained his university degree and spent his adult life in the United Kingdom. In terms of employment, the evidence is that the Appellant had two teaching jobs in the United Kingdom, the first as a Mathematics teacher with Ebrahim College in Whitechapel in London from

about October 2006 until shortly before June 2007 and the second as a Mathematics teacher at a school in North West London for an unspecified period of no more than a year. His evidence is that he left the second school because he felt vulnerable as a consequence of being harassed, on his account, by the UK security services. He was imprisoned in 2008. Following his release in September 2009, he obtained employment at a construction firm until he was injured after 3 days. He subsequently found work at a printing business from which he was later made redundant. He then decided to go to Morocco with his wife.

84. The Appellant says in his statement that he has been unsuccessful in obtaining employment in Nigeria as a teacher because he does not have the relevant teaching qualification. However, it is clear from his employment history that he had not worked as a teacher in the United Kingdom for some time and had pursued alternative forms of employment. He also says he has struggled to start a business in Nigeria because he does not have the necessary capital. He is currently trying to establish a business buying and selling laptop computers. We do not place much weight on any difference there may be in relation to employment or business opportunities for the Appellant in Nigeria as a consequence of being deprived of his British citizenship.

85. We accept the Appellant has family connections (his mother, siblings and in-laws) in the United Kingdom and so will lose face-to-face contact with them in the United Kingdom. On the other hand, his father lives in Lagos and his evidence is that he has extended family in Nigeria. We see no reason to doubt

that he will be able to establish ties with the community in Nigeria and re-establish his private life there in all essential respects.

86. We take into account the fact that the deprivation of citizenship arises from the Appellant's own actions and decisions. We place considerable weight on the national security interest. In all of the circumstances, the SSHD's decision to deprive the Appellant of his citizenship is undoubtedly proportionate and therefore there is no breach of Article 8.

87. The Appellant's case is that he should not have had his British nationality revoked and should have it restored in order to enable his wife and children to accompany him to the United Kingdom as a family unit and so enabling the wife and children to enjoy their rights as EU citizens. The principle established in *Zambrano v Office National de l'Emploi* [2012] QB 265 on the jurisprudence to date is only concerned with whether children will be compelled to leave the territory of the EU. There is no authority for the proposition that the principle should be extended to include children who are not in the territory of the EU.

88. In any event, the children are not compelled to remain outside the territory of the EU. The ability of the Appellant's wife and children to enjoy their rights as EU citizens is not impaired. They can return to the United Kingdom and exercise their rights as EU citizens as and when they choose. The decision of the SSHD to deprive the Appellant of his British nationality has not denied them of their rights as British and EU citizens. We have considered *Marin v Administracion del Estrado,* 13 September 2016, a judgment of the Grand Chamber of the Court of Justice of the European Union and are satisfied the

decision has no relevance because there is no question of any automatic deprivation of nationality in this case.

89. We recognise that if the Appellant's wife and children are to return to the United Kingdom and enjoy their rights as EU citizens, they will be separated from the Appellant and that that may not be in the best interests of the children, given that they would not then be living in a family unit with the Appellant. We see no reason to take issue with the suggestion that the living conditions and educational opportunities for the children in Nigeria currently fall well below the standards available in the United Kingdom. However while the best interests of the children are a primary consideration, they are not a paramount consideration. We are satisfied for the reasons given earlier in this judgment that the decision to deprive the Appellant of his British nationality was proportionate, given the considerable weight to be placed on the State's interests on national security grounds and on the facts of this case, the State's interests outweigh those of the children.

90. On 17 March 2017, Mr Southey made further submissions relying upon the decision of the European Court of Human Rights in *K2 v United Kingdom, Application no. 42387/13*, 9 March 2017, to which the SSHD responded in written submissions dated 2 May 2017. We agree with the SSHD's submissions that the decision in *K2* has no application to this case, observing that we have, in any event, had full regard to the issue of proportionality.

Conclusion

91. For all the above reasons, the appeal is dismissed.

Leave to appeal

92. Mr Southey seeks permission to appeal on the ground that it is arguable that the deprivation order is a breach of European Union law. We refuse leave. Our decision is fact-specific. The evidence amply justified the making of the Deprivation Order and for the reasons we have given, whether applying the Common Law or EU law, the decision of the SSHD was proportionate. In our judgment the law is certain, *G1* applies and we are bound by it. We are not persuaded it is arguable that that decision was wrong.