

SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: SC/192/2022
Hearing Date: 30 October 2024
Date of Judgment: 31 January 2025

Before

**THE HONOURABLE MR JUSTICE SWIFT
UPPER TRIBUNAL JUDGE GLEESON
MR NEIL JACOBSEN**

Between

F3

Appellant

and

**THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

OPEN JUDGMENT

Mr Edward Grieves KC, Ms Helen Foot and Ms Maha Sardar (Instructed by **Deighton Pierce Glynn**) appeared on behalf of the Appellant

Mr M. Goudie KC and Ms A. Guha KC (instructed by the **Special Advocates Support Office**) appeared as Special Advocates.

Ms L. Giovannetti KC and Ms N. Parsons (instructed by the **Government Legal Department**) appeared on behalf of the Respondent.

OPEN JUDGMENT

Mr Justice Swift

A. Introduction

1. This is the judgment of the Commission.
2. The Appellant was born in England and lived here until 2014. Until 2017 she was a dual British/Pakistani national. On 18 April 2017 the Home Secretary wrote to F3 giving notice that she had decided to make an order depriving her of British citizenship. That decision was made pursuant to section 40 of the British Nationality Act 1981 (“the 1981 Act”). In accordance with Regulation 10 of the British Nationality (General) Regulations 2003, as then in force, the Home Secretary served the notice by post, sending it to F3’s last known address in Tower Hamlets, London.
3. When the notice was sent, the Home Secretary would have known that F3 no longer lived at that address. F3 had lived there with her husband (“H”) and their three children until around December 2014. By 2016 at the latest, the Home Secretary knew that F3 had left the United Kingdom. In 2016, counter-terrorist police told F3’s father (“D”) they believed F3, H and their children were in Turkey. Moreover, in the letter sent to F3 on 18 April 2017 the Home Secretary stated that:

“The reason for the decision [to deprive F3 of British citizenship] is that it is assessed that you are a British/Pakistan dual national who has travelled to Syria and is aligned with ISIL. It is assessed that your return to the UK would present a risk to the national security of the United Kingdom”.
4. On 22 April 2017 the Home Secretary made an order in exercise of the power under section 40(2) of the 1981 Act, depriving F3 of British citizenship on the ground that deprivation was conducive to the public good. On 7 June 2017 the 18 April 2017 letter was returned to the Home Secretary, unopened.
5. On 19 August 2022 F3 filed a notice of appeal against the deprivation order, an appeal to this Commission pursuant to section 2B of the Special Immigration Appeals Commission Act 1997. The appeal was commenced out of time. F3 commenced the proceedings with the assistance of Reprieve, a non-profit organisation that provides assistance to persons such as F3, and of solicitors engaged by Reprieve on F3’s behalf.

6. Pursuant to the Commission's Rules (The Special Immigration Appeals Commission (Procedure) Rules 2003) and in circumstances where the appellant is outside the United Kingdom, notice of an appeal must be given no later than 28 days after the appellant was served with notice of the decision that is the subject of that appeal. In this case, as provided for by the 2003 Regulations as they were in force in April 2017, the notice was deemed to have been served "on the second day after it was sent" (see regulation 10(5)(d)), i.e., on 20 April 2017. F3 does not dispute that service of the notice by post to her last known address was effective service. It follows that the issue now is whether in exercise of its power under Rule 8(5) the Commission should extend time for the notice of appeal to be served. 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."

7. F3's application to extend time was first referred to in the Grounds of Appeal filed on 19 August 2022. The application was formally made, and the grounds in support of it pleaded and filed on 2 November 2022.

8. The facts relevant to this application to extend time are as follows. It is common ground that F3 was aware of the Home Secretary's decision by late December 2019. By that time F3 and her children were in a detention camp, Camp Al Hol, in northern Syria on the outskirts of Al-Hawl.

9. F3, her husband and their five children had been in Baghuz. In early 2019 Baghuz was the site of a major battle between ISIS and the Syrian Democratic Forces ("the SDF"), a coalition of primarily Kurdish militias that had been formed as a rebel group during the Syrian civil war. During the fighting F3's oldest child (who was eight years old) was killed and F3 suffered a significant head wound. In March 2019 F3, her husband and their remaining children left Baghuz. F3 and the children were then separated from her husband. F3 and the children were taken to Camp Al Hol by SDF soldiers. F3 says the soldiers beat her severely. At Camp Al Hol, F3 was treated for a number of very serious injuries: the head injury she had suffered in Baghuz; and the injuries she says were the result of the beating at the hands of SDF soldiers. As a result of these injuries F3 was initially unable to walk. She now walks with the aid of crutches; she has limited mobility on her right side. F3 and her children remained at Camp Al Hol until around August 2020.

10. The evidence we have is that conditions for F3 and her children at Camp Al Hol were very poor. The only shelter available was a flimsy tent, broken by the winds and prone to collapse. The water supply, from tanks, was unclean and bottled water was hard to come by. Food was scarce. F3 was reliant on monthly food packages from aid organisations or donations from others at the camp. Overall, the picture that emerges is that conditions were such that each day was a struggle for survival.
11. We have statements from D, and F3's brother-in-law ("BIL"). Both refer to being in phone contact with F3 while she was at Camp Al Hol. D refers to F3 contacting her sister (who lives in London) using somebody else's mobile phone. BIL says that he was in contact with F3 from the middle of 2019, first on Facebook Messenger, then by WhatsApp, and that F3 told him that she was using someone else's phone.
12. BIL says that in January in 2020 he sent F3 a photograph of a letter sent by the then Foreign and Commonwealth Office (which we shall refer to as "the FCDO" in keeping with the department's current title) to Messrs Imran Khan & Partners ("IKP") dated 18 December 2019. F3's evidence, relayed in a statement made by her solicitor, is that she saw a photograph of the first page of this letter from the Foreign Secretary. This letter referred to the Home Secretary's deprivation decision. The page of the letter sent is as follows:

"Thank you for your letters requesting that the Government facilitate the return of [F3] and her three children ... to the UK from an IDP camp in north east Syria, and the return of [H] from detention in north east Syria. I apologise for the delay in providing a substantive response.

On the request to assist with the repatriation of [F3] and her children and [H], the Foreign Secretary has considered the matter carefully and has decided that he will not seek to assist... They are no longer eligible for consular assistance, [F3] having been deprived of British nationality on 22 April 2017... and the Government assesses that they are a threat to national security, having travelled of their own volition to join a proscribed terrorist organisation.

...

... While we will not assist the repatriation of [F3] to the UK, if she were to make a fresh request for her children to be repatriated without her, we would urgently investigate the practicalities of doing so. In considering whether to make such a request, [F3] should obtain independent legal advice in order to understand the full consequences of her decision. [F3] should ensure that [H] also consents to this course of action although if it is impossible to contact him in detention, we would take this into account."

13. By way of context, during 2019 BIL had sought advice from IKP in relation to his brother's situation. We have not been provided with specific information about the nature of the instructions but we have been told that it was BIL who instructed IKP, and that BIL and D met with IKP in 2019. In either September or October 2019 IKP arranged a meeting with the FCDO attended by BIL and D. The focus of this activity was to try and secure the FCDO to intervene to help H, F3 and their children return to the United Kingdom.
14. For present purposes, the significance of F3's sight of the 18 December 2019 letter, or at least the first page of that letter, is that this was the first time she was aware that the Home Secretary had made a decision removing her British citizenship. We accept that F3 first saw the page of the letter in January 2020. It is the Home Secretary's position that from January 2020 when F3 had notice of the deprivation decision, she could have taken steps to obtain advice on the possibility of an appeal and take steps to pursue an appeal. The Home Secretary submits there was no good reason for the matter to wait until August 2022 when the Notice of Appeal was filed and that therefore the Commission should not in the exercise of its power under Rule 8(5) extend time to allow the appeal to be pursued.

B. Decision

15. The issue for us is one of factual assessment. We were referred, briefly, to authority including the Commission's decision in *F4 v Secretary of State for the Home Department* (SC/193/2022). However, the outcomes in other cases are driven by the facts in hand. For example while there are some similarities between the circumstances of F4 and those of F3 (F4 was also detained at Camp Al Hol; her appeal was also an appeal against a deprivation decision; that appeal was commenced a little over two and a half years late; and F4 had also been assisted by Reprieve to contact lawyers to commence proceedings), F4's application for an extension of time was refused because of messages F4 had sent to her mother, well before she commenced the appeal, to the effect that she did not want to appeal against the Home Secretary's decision. On the facts before it in F4, the Commission concluded that F4 should be taken at her word. That decision does not assist us, save to make plain that the facts of each case matter. Beyond that, so far as concerns any matters of principle, we consider that the "special circumstances" required by Rule 8(5) must be substantial and there must be correlation between the special circumstances found to exist and the appellant's ability to file the appeal such that it would be unjust not to allow the application to extend time.

16. In this case, we are entirely satisfied that the circumstances in which F3 has found herself since arriving at Camp Al Hol in March 2019 have been such as to provide “special circumstances” that prevented a notice of appeal being filed and which render it unjust not to extend time for the notice of appeal to be filed until 19 August 2022.
17. As we have already indicated, the Home Secretary takes no point in respect of the period before January 2020 when F3 saw the page from the Foreign Secretary’s letter of 18 December 2019. The reasons that follow concern the period from then until 19 August 2022 when the notice of appeal was filed.
18. Throughout that period F3 and her children lived under abysmal conditions. We have already described conditions at Camp Al Hol. F3 and her children remained there until around August 2020. Then they were moved to Camp Al Roj, another detention camp in north east Syria controlled by the SDF. The camp contains some 2,500 people. The general conditions in the camp are described in witness statements made by Maya Foa, the joint Executive Director of Reprieve, which has access to those detained in Camp Al Roj and has provided assistance to some of those detained at that camp, including F3. The camp is said to be an unsafe, inhumane and violent place. The camp is run by SDF soldiers. The regime is strict. Soldiers regularly search tents, often at night. Any breach of camp regulations is harshly punished. The camp is lawless, violence between those who are detained is commonplace. There is inadequate shelter, water and food, and poor medical care.
19. F3 and her children live in very poor conditions at Camp Al Roj. They have a tent that is four metres square. Like the tent used at Camp Al Hol, this tent is also flimsy and also often collapses in the wind or rain. The weather tends to extremes, either very hot or very cold. From May to October the camp is very hot, so hot that the top of the tent, which is made of plastic, has partly melted. Food is scarce and F3 and her children rely on packages provided monthly by the World Food Programme. The water is dirty. In addition to the physical problems already described, shortly after arriving at Camp Al Roj, F3 began to suffer from breast pain and developed lumps under her breast and arm. No effective treatment was available to F3 in the camp and her condition became progressively worse. F3 became very sick. By early 2022 she was extremely weak, had no appetite and was reliant on others for her basic needs and those of her children.
20. The opportunities for those detained at Camp Al Roj to communicate with the outside world are limited. There is a camp mobile phone, but access to that phone is very limited. A

detainee may have access to the phone only once in a few weeks. Access comprises only two or three minutes use at any one time. Communications are monitored by the camp authorities. Further, since a single phone is available, there is no possibility of privacy. Any person using the phone could see any message sent to the phone to any other person unless the message was deleted. In any event detainees may use the phone only to contact family members. They are not allowed to contact legal representatives or other organisations. Detainees are not allowed to have their own mobile phones. Anyone found in possession of a phone is at risk of imprisonment, in most cases this will be for a matter of months. In some instances women who have been imprisoned have not been permitted to take their children with them. This means that unless they are able to make other arrangements for their children to be cared for by other detainees, the children are left to fend for themselves. Notwithstanding these risks some detainees do have phones. Others may barter to use these phones. But since the phones are shared, here also there is no privacy of communication. Any message sent to the phone could be seen by anyone with access to the phone unless that message is immediately deleted.

21. The conditions we have described provided a clear and substantial and, on occasion no doubt overwhelming, impediment to commencing an appeal against the deprivation decision. F3's circumstances throughout the period from January 2020 bear no comparison to those that might ordinarily apply to a person considering whether to commence legal proceedings. In ordinary circumstances, the person would have the decision document, have the opportunity to consider the document, and have the opportunity to take legal advice on the possibilities for challenging the decision. Where the decision is to remove British citizenship, section 40(5) of the 1981 Act requires that before the deprivation order is made the Home Secretary must give notice of the decision to make the order, provide the reasons for the order, and inform the person of the right of appeal against the decision. Armed with this information, there is then 28 days in which to commence an appeal. That period is a relatively short period. Nevertheless it is long enough to allow the person to obtain legal advice, if they wish, and reflect on whether an appeal should be pursued.
22. The circumstances facing F3 were very far removed from the ordinary. The first point, although perhaps on the facts of this case the least significant point, is that, while by January 2020 F3 knew of the decision to remove her British citizenship and from the page of the letter she had seen also knew that citizenship had been removed because she had travelled to Syria to join ISIS, she had not seen the decision or been provided with the information required by section 40(5) of the 1981 Act. More significantly, the conditions in which F3

and her children lived at Camp Al Hol and in which they lived and continue to live at Camp Al Roj are oppressive. As we have said, the impression we have formed is that every day in these camps presents a struggle for survival. Without more, these conditions were a significant impediment to the exercise of any right of appeal against the Home Secretary's decision. Further, F3 was in poor health, at times in very poor health, throughout the period. This made it more difficult still to do the things she needed to do day by day to keep herself and her children alive. All these matters, taken together, provide special circumstances that engage the operation of Rule 8(5) as they are circumstances that impeded F3's ability to commence the appeal in time.

23. The Home Secretary does not dispute the evidence as to the conditions in Camp Al Hol and Camp Al Roj or the evidence concerning F3's poor health. Her case rests on three matters. *First*, that even though the opportunities to communicate with those outside the camps were limited, in particular at Camp Al Roj, opportunities for communication did exist and were such that F3, had she wished, could have instructed lawyers to commence an appeal sometime after January 2020 and well before August 2022. The Home Secretary points out that for a period in 2020, until August, when she was moved to Camp Al Roj, F3 did have her own mobile phone and did use that phone to contact her sister and BIL. *Second*, the Home Secretary contends that D and BIL took advice from IKP in London and that too provided the opportunity for an appeal against the Home Secretary's decision to be started at any time from early 2020. *Third*, the Home Secretary's submission considers the assistance that Reprieve provided to F3 that enabled the present appeal to be commenced. Reprieve was first in contact with F3 in December 2021. The Home Secretary contends that Reprieve could have acted more promptly and the appeal could have been commenced before August 2022.
24. We do not consider any of these matters persuasive. Whether considered separately or together, these matters neither diminish the special circumstances that applied throughout the period to August 2022 nor make good a submission that notwithstanding those circumstances it would be unjust to extend time.
25. We accept that it is not impossible for those like F3 in detention camps in northern Syria to make contact with friends, family and others by mobile phone. However, we accept the evidence that in Camp Al Roj access to the camp phone was highly restricted and that use of that phone to contact lawyers was prohibited. We also accept that in Camp Al Roj use

of personal mobile phones was prohibited and that anyone using a phone (other than the camp phone) was at risk of punishment including imprisonment.

26. The Home Secretary submits this restriction did not make it impossible for F3 to use a mobile phone and she points to occasions when it appears likely that F3 did use a mobile phone when she was in Camp Al Roj. We accept that F3 may have had some access to a mobile phone on some occasions since she has been at Camp Al Roj. But that is not determinative. The question for us under Rule 8(5) is not whether circumstances rendered it impossible for the appeal to be filed earlier. What is relevant is that phone communication was heavily restricted. Any call to a lawyer would have put F3 at risk of severe penalty, preventing her from continuing to care for her children.
27. The circumstances in Camp Al Hol were different and the evidence is that between early 2020 and August 2020 F3 did have a mobile phone and would have had some opportunity to contact lawyers. There is a dispute between the parties as to whether in this period F3 realised she could appeal against the deprivation decision. F3's evidence is that she did not realise an appeal was possible until she spoke to Reprieve in December 2021. The Home Secretary contends this is inherently unlikely. She refers to correspondence written by IKP to the FCDO in mid-2020 which refers to the possibility of appeal and submits that since F3 accepts she was in phone contact with her sister and BIL in the same period we should infer the possibility of appeal must have been mentioned to F3. Yet even if we were to draw the inference the Home Secretary suggests should be drawn, we do not consider that the possibility that F3 could have contacted a lawyer before August 2020 when she was removed from Camp Al Hol and taken to Camp Al Roj is such that we should refuse the application for an extension of time.
28. All the circumstances prevailing in that period must be considered. As we have already observed, conditions in Camp Al Hol were appalling. F3 was responsible for four young children, one of whom was significantly affected by bronchitis. F3 had been injured and was unwell. Our conclusion is that it is likely that F3 was occupied for the better part, if not the whole, of each day doing whatever was necessary to feed and shelter and take care of her children. All this must have been physically and mentally exhausting. The opportunity available to F3 to take the steps necessary to commence an appeal would have been vanishingly small.

29. Moreover even in Camp Al Hol it does not seem that having a mobile phone is the same as having unlimited opportunity for communication. The phone contact that D and BIL refer to in this period appears to be intermittent and brief, usually comprising exchanges of messages rather than anything approaching normal conversation. This is material. Giving the instructions necessary for an appeal to be commenced takes time. It is not a matter completed in a short message. F3 did for a period in 2020, have access to a mobile phone but the opportunity that gave to start an appeal would have been very slight indeed.
30. We do not consider the contact that BIL and D had with IKP was such that an extension of time to commence this appeal should be refused. The position seems to be that BIL instructed IKP in 2019 with a view to securing H's return to the United Kingdom. In mid-2019 BIL and D met with IKP. The objective was to obtain assistance from the Government to secure the return of H to the United Kingdom together with F3 and their children, and the focus of their efforts was directed to the Foreign Secretary. There was a meeting with the FCDO in September or October 2019 which prompted the Foreign Secretary's letter dated 18 December 2019. IKP then had further contact with the FCDO during 2020 also with a view to persuading the Foreign Secretary to help bring H, F3 and their children to the United Kingdom.
31. The Home Secretary's submission was that IKP could have pursued an appeal against the deprivation decision alongside their efforts to gain the support of the Foreign Secretary. This submission collapses into the Home Secretary's first submission because, even though IKP met with D, IKP were not instructed by F3. D never purported to instruct IKP. D's evidence is that he did not know that an appeal against a deprivation decision was possible.
32. The final part of the Home Secretary's submission concerns the time taken by Reprieve between its first meeting with F3 in December 2021, and August 2022 when the appeal was filed. The sequence of events is explained in the statements made by Ms Foa.
33. IKP first asked Reprieve to assist F3 in August 2021. Reprieve first met F3 on its next visit to Camp Al Roj which was on 9 December 2021. Ms Foa's evidence is that at this first meeting F3's primary concern was her health and the health of her children. This took up the major part of the meeting. Before the meeting ended Reprieve had raised the possibility of an appeal against the deprivation decision but F3 was unable to make a decision on that before the meeting ended.

34. The next time Reprieve was permitted to visit Camp Al Roj was June 2022. A second meeting with F3 took place on 15 June 2022 and she agreed that Reprieve should instruct a lawyer to act on her behalf. Reprieve contacted Deighton Pierce Glynn (who now represent F3) on 20 June 2022. Dr Sozi of Deighton Pierce Glynn explains the sequence of events between then and 19 August 2022 when the appeal was filed in her third witness (dated 29 October 2024).
35. Considered without context, this sequence of events might appear slow. However, when context is added the position is very different.
36. Reprieve has only limited access to the detention camps run by the SDF. The SDF does allow journalists reasonably regular access but it takes a very different approach for non-governmental organisations such as Reprieve. Reprieve may not visit these camps without the permission of the SDF. In practice, visits are allowed only two or three times each year. In this instance this explains the passage of time between IKP's request to Reprieve in August 2021 and Reprieve's first contact with F3 in December 2021. The December 2021 visit was the first occasion Reprieve had access to Camp Al Roj following IKP's request. After the December 2021 visit the next occasion Reprieve was permitted to visit Camp Al Roj was June 2022, hence the time between Reprieve's first and second meetings with F3.
37. When Reprieve is permitted to visit Camp Al Roj its contact with the women detained there is very strictly controlled and supervised. Before the visit takes place Reprieve must provide a list of names of the women it wishes to meet. Each visit lasts a few days. A list of meetings is prepared day by day and that list must be approved by the SDF. Once approved the list sets the routine for the day. On occasion, unlisted, *ad hoc* meetings do take place, but this is the exception rather than the rule. The women Reprieve meets are not given prior notice of the meeting, or who it is they are to meet, or the purpose of the meeting. The SDF are present at each meeting. Ms Foa's evidence is that it often takes some time for Reprieve to obtain the confidence of the women it meets. She also explains that some women are, at least to start with, fearful of taking legal action. One persistent rumour is that if a women takes legal action she risks being separated from her children. Women are also afraid that if they start legal proceedings to return home they may be harmed by other detainees who consider returning home to be treachery. Ms Foa refers to reports of detainees damaging or destroying other detainees' tents.

38. All these matters explain why Reprieve met F3 twice before she agreed that Reprieve should instruct lawyers to act for her. The Home Secretary submitted that following the meeting in December 2021 F3 did not need to wait to meet Reprieve again. Instead, she could have had a message passed to Reprieve by phone giving her agreement to instruct lawyers. We consider this possibility to be more theoretical than real.
39. The sequence of events that followed Reprieve's meeting with F3 on 15 June 2022 and the dealings between Reprieve and Dr Sozi of Deighton Pierce Glynn is set out in Dr Sozi's third statement. Dr Sozi explains the steps taken to confirm her firm's authority to act and what she did to obtain further information about F3, including from her family in the United Kingdom, from IKP and via a subject access request made to the Home Office. Dr Sozi also obtained a copy of the Home Secretary's deprivation decision (of April 2017) from the Home Office and took the steps necessary to obtain legal aid. We do not consider there was any culpable delay in this period.
40. The premise that underlies the Home Secretary's submission is that all that would have been required for F3 to commence an appeal would be a brief message instructing lawyers to act on her behalf. That premise is unrealistic. In ordinary circumstances, a person faced with a decision such as the one made by the Home Secretary in this case will have the opportunity to consider what course to take either with or without the assistance of lawyers. On any realistic assessment the circumstances affecting F3 substantially removed that opportunity. It was only with Reprieve's assistance that an effective opportunity arose to commence an appeal. Reprieve took steps that were possible and practical to contact F3 and obtain instructions from her to commence an appeal. Similarly, once instructed, Deighton Pierce Glynn took appropriate steps to commence the appeal.
41. Drawing matters together, we are satisfied that F3's detention in northern Syria, first in Camp Al Hol and then Camp Al Roj, the conditions of that detention we have described (not least the severe restrictions on contact with the outside world and the risks that any breach of those restrictions entailed), her ill health, and the need for her to support herself and her children in those conditions, provide special circumstances such that it would be unjust not to extend time for filing the appeal until 19 August 2022, the date the appeal was filed.
42. The application to extend time is therefore allowed. We invite the parties to propose directions necessary for the appeal to be determined on its merits.