



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/00490/2019
HU/00507/2019
HU/00498/2019

THE IMMIGRATION ACTS

Heard at Field House
On 19 July 2019

Decision & Reasons Promulgated
On 8 August 2019

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR G S
MRS H K
MISS A K

(ANONYMITY DIRECTION MADE IN RESPECT OF THIRD RESPONDENT)

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer
For the Respondent: Mr J Tramboo, Counsel, instructed by Shireen Tramboo Solicitors

DECISION AND REASONS

1. This case concerns the issue of whether in order to be accepted in an appeal as stateless a person must show they have taken reasonable steps to show they have sought to acquire a nationality to which they have an entitlement dependent upon making an application.

2. The appellant (hereafter the Secretary of State or SSHD) has permission to challenge the decision of Judge Havard of the First-tier Tribunal (FtT) sent on 3 April 2019 allowing on human rights grounds the appeal of the claimants, the first and second being citizens of India, against the decision of the SSHD made on 18 December 2018 refusing leave to remain. Although finding that the first and second claimants lacked credibility and had not shown there would be very significant obstacles to their return to India, the judge allowed the appeal of all three because he was satisfied the third claimant, Miss A K, born in the UK in July 2016, was stateless. In their application for leave to remain of 3 July 2018 the claimants had not raised the statelessness issue and correspondingly the SSHD's refusal decision made no mention of it. It was first raised in the claimants' grounds of appeal against the SSHD's decision. The judge (before whom the claimants were appellants) reasoned at paragraphs 155-162:

- “155. I am satisfied that, had it not been for the birth of the Third Appellant on [...] July 2016, there are no exceptional circumstances which would mean that it would be proportionate to allow the appeals of the First and Second Appellants outside of the Immigration Rules and I would have dismissed their appeals. I repeat, in particular, paragraphs 122 to 125 above.
156. However, in the absence of any evidence to the contrary, I must approach this matter on the basis that the Third Appellant, whom I have found to be stateless, would not be permitted entry into India. This means that if I were to dismiss the appeals of the First and Second Appellants, it may lead to circumstances in which, without any other family support in the UK, the Third Appellant, who will be three years old in July 2019, would be taken into the care of the local authority.
157. Ms Arnesen submitted that there must be someone in a position to care for the Third Appellant whilst the First and Second Appellant return to India in order to regularise the position. However, without any evidence to support such a submission, this is far too speculative when considering the welfare of the child.
158. Whilst I have already commented on my assessment of the conduct of the First and Second Appellants, it is clearly not in the best interests of the Third Appellant to be separated from her parents. Despite the decisions they made with regard to their elder daughter, there is no evidence to suggest there are concerns with regard to their parenting of their younger daughter.
159. In considering the question of proportionality in a democratic society when assessing the legitimate aim to be achieved, I have considered the public interest considerations which are set out in the Immigration Act 2014 and, in particular, Sections 117A and B of the Act as set out above.

160. I am satisfied on the facts that the proposed removal of the First and Second Appellants would amount to an interference in the family life of the Third Appellant which would have consequences of such gravity as to engage the operation of Article 8 and would be in breach of Section 55 of the 2009 Act.
161. In my judgement, when considering all the circumstances in the round, in assessing proportionality, I find that, in carrying out a balancing exercise, the public interest in the maintenance of effective immigration control is outweighed by the Appellants' rights to a family life and this is based primarily on the assessment of what is in the best interests of the Third Appellant.
162. For these reasons, I find that, taken as whole, it is disproportionate to remove the Appellants from the United Kingdom. To refuse this appeal would cause the United Kingdom to be in breach of Section 6 of the Human Rights Act 1986 and the Appellants succeed in their appeal under Article 8 ECHR."

3. The SSHD's grounds are confined to the contention that the judge misdirected himself in law in respect of his finding regarding the third appellant's statelessness. Having found (i) that the first and second claimants had not taken reasonable steps to try and register the birth of their daughter with the Indian High Commission and (ii) that indeed they acted in bad faith, the grounds assert that the judge should not have made a finding that the third claimant was stateless. The judge's finding of statelessness was said to be contrary to the '**Bradshaw** principle and the guidance given by Kitchin LJ in **AS (Guinea)** [2018] EWCA Civ 2234 at [57]:

- "57. These authorities reveal a consistent line of reasoning. A person claiming to be stateless must take all reasonably practicable steps to gather together and submit all documents and other materials which evidence his or her identity and residence in the state or states in issue, and which otherwise bear upon his or her nationality. The applicant ought also to apply for nationality of the state or states with which he or she has the closest connection. Generally, these are steps that can be taken without any risk. If, in the words of Elias LJ, the applicant comes up against a brick wall, then, depending on the reasons given, the adjudicator will decide whether the applicant has established statelessness, and will do so on the balance of probabilities. Of course, from time to time, there may be cases where it would not be reasonable to expect the applicant to take this course, and in those cases the Secretary of State will assist the applicant by making enquiries on his or her behalf but again there is no reason why the issue of statelessness cannot be decided on the balance of probabilities. By contrast, in refugee cases, it is necessary to make an assessment of what may happen in the future in another country, and whether the applicant faces a real risk of persecution there. This is a very different kind of

assessment and it is one which, by its nature, justifies the adoption of a different and lower standard of proof. I recognise that, as the appellant and UNHCR contend in their sixth submission, many of the cases to which I have referred were decided before the promulgation by UNHCR of the guidance in 2012 and the Handbook in 2014 but in my judgment the reasoning in these decisions remains robust and authoritative.”

4. In **AS(Guinea)** Kitchin LJ at [48] summarised the case of **R v Secretary of State for the Home Department Ex parte Valentina Bradshaw** [1994] Imm Ar 359 (hereafter **Bradshaw**) as follows:

“[M]s Bradshaw, a citizen of the former USSR, had been granted indefinite leave to remain in the United Kingdom as a result of her fraudulent misrepresentations but asserted that she was stateless and so could not be removed. Lord MacLean, sitting in the Outer House of the Court of Session, found that she had failed to establish that she was a stateless person and that before she could be said to be stateless within the meaning of Article 1 of the 1954 Convention, she would have had to apply to those states which might consider her to be and might accept her as a national, and that she had not done.”

At [49] Kitchin LJ went on to cite the description given of the ‘**Bradshaw** principle’ by Henriques J in **R (on the application of Tewolde) v Immigration Appeal Tribunal** [2004] EWHC 162: “namely, that a person who claims to be stateless must apply for the citizenship of any country with which she has a close connection and must be refused before he can be entitled to reside in this country.”

Analysis

5. Before proceeding to evaluate the SSHD’s ground, it is necessary to set out certain agreed matters.

6. It is not in dispute before me that the issue of whether the third claimant is stateless falls to be decided by reference to the meaning of a “stateless person” as set out in Article 1(1) of the 1954 UN Convention Relating to the Status of Stateless Persons, namely “a person who is not considered as a national by any state under the operation of its law”: see paragraph 401 of the Immigration Rules.

7. It is also not in dispute before me that if the third claimant had any nationality at the date of hearing it could only be Indian: she was not eligible for British nationality (or any other nationality) at that point in time (nor still).

8. Nor does Ms Everett before me take any issue with the analysis of Indian nationality law as set out by Mr Ockelton, Vice President of the Upper Tribunal, in **R (on the application of MK) (a child by her litigation friend CAE v SSHD)** [2017] EWHC 1365 (**Admin**) (hereafter **MK**) at paragraph 9:

“9. Proceeding then on the basis of the material before me I find the following facts in relation to the relevant Indian law. Indian citizenship is acquired by descent, and a child born outside India after 1992 is a citizen of India by descent if either of the child’s parents was at the time of his birth a citizen of India other than by descent. If, however, the birth was outside India on or after 3 December 2004 (the date of commencement of the Citizenship (Amendment) Act 2003 (India)) the child is not a citizen unless the birth is registered at an Indian consulate ‘in such form and in such manner as may be prescribed.’ If the registration is after the child’s first birthday it needs ‘the permission of the Central Government’. In either case the parents have to declare, also ‘in such form and in such manner as may be prescribed’, that the child does not hold the passport of any other country. There is no suggestion that citizenship is granted from the date of registration: it is obtained by the birth, provided that the birth is registered.”

9. I turn then to consider the SSHD’s ground. The judge’s finding was that at the date of the hearing the third claimant was stateless because she had not been registered as a citizen of India at the High Commission of India and therefore did not fall within the personal scope of the Indian Citizenship Act, 1955 as amended. The judge considered that this finding was supported by the judgment of Mr Ockelton in MK.

10. In MK Mr Ockelton cited the Supreme Court decision in Al-Jeddah v SSHD [2013] UKSC 62. At paragraphs 31 to 37 he stated:

“31. As I have made clear, these decisions are not specifically on statelessness as it applies in paragraph 3 of Schedule 2 to the 1981 Act. They are on statelessness as it applies in s 40(4) of the same Act. Before me, Mr Brown’s clear argument was that the Supreme Court’s decision in Al-Jeddah was not applicable to the present case because the guidance to which Lord Wilson refers at [34], and which he evidently regarded as the coup de grace to the Secretary of State’s argument in that case, is applicable only to “persons who have no other right to remain in the UK but who cannot be removed because they would not be admitted to another country for purposes of residence to allowed to stay” and so cannot apply to the claimant because she would be admitted with her parents to India.

32. I am afraid that will not do. The guidance, in ‘Asylum Policy Instruction: Statelessness and applications for leave to remain’ (the current edition is 18 February 2016) indeed is not specifically on point, as it is concerned with the application of Part 14 (paragraphs 401 and following) of the Immigration Rules and not of either of the statutory provision I am looking at. But, as I have already noted, paragraph 401 expressly incorporates the 1954 Convention’s definition into the Rules, and this

guidance is on how to apply the Rules. It is necessarily implicit that this guidance on the meaning of 'statelessness' within the Rules, and furthermore, because of paragraph 401, is the Secretary of State's understanding of the meaning of statelessness under art 1(1) of the 1954 Convention.

33. The point being made by Lord Wilson is that it is the UNHCR's guidance on the meaning of statelessness for the purposes of art 1(1) of the 1954 Convention that has been adopted into the Secretary of State's own guidance [the guidance referred to here is the 2014 UNHCR Handbook on Protection of Stateless Persons under the 1954 Convention]. The date of the guidance excluded it from consideration in relation to the decision-making in Al-Jeddah itself. But the Court makes its own decision on the meaning of statelessness at that time within the context of s40(4) and does so as a matter of statutory interpretation against the background of the Conventions [the two Conventions referred to here are the 1954 Convention and the Convention on the 1961 Reduction of Statelessness]. It then notes that the UNHCR Guidance produces the same result, and has been adopted by the Secretary of State.
34. Now it is clearly open to the Secretary of State and indeed anybody else to say that the notion of having no nationality for the purposes of the Refugee Convention is different from that of statelessness for the purposes of the Statelessness Conventions and any associated national legislation. The terms are different, and the context is different: in the Refugee Convention the essential context is the threat of expulsion and issues of destination are crucial, whereas the statelessness issue is in essence static. It would also have been open to the Secretary of State to say in the course of either the Al-Jeddah litigation or this case that for the purposes of the legislation respectively under consideration the meaning of statelessness within art 1(1) was neither determinative nor directly relevant. Our law is a dualist system, and neither the 1954 nor the 1961 Convention has as such been incorporated, so the Conventions are not part of the law, and the UNHCR guidance is not a source of English (or United Kingdom) law.
35. What the Secretary of State is not entitled in my judgment to do is to say that in both s40(4) of, and paragraph 3 of Schedule 2 to, the 1981 Act, and in Part 14 of the Immigration Rules, the notion of statelessness is to be determined in accordance with its meaning in art 1(1) of the 1954 Convention, but that it has different meanings in those different provisions. But that is what she seeks to do. In Al-Jeddah there is no sign, so far as I can see, that the Secretary of State argued that 'stateless' in s40(4) should not have the same meaning as in the 1954 Convention: the crux of the argument was on surrounding issues, that is to say the procedure of determining the issue and the cause of the statelessness. The Secretary of State's guidance on Part 14 of the Rules, which needs to

follow the meaning of the term in the 1954 Convention, makes it clear that she applies the UNHCR guidance on the meaning of 'stateless'. In the present case, as noted above, it is specifically conceded that the meaning of statelessness is to be determined in the same way. There is no room for applying a different meaning. 'Stateless' means, in the provision with which I am concerned, the same as it means in the provision with which the Supreme Court was concerned in Al-Jeddah. What it means in those provisions is determined by the Supreme Court in Al-Jeddah, which is obviously binding on me. The Secretary of State has made the matter even plainer by her adoption of the UNHCR guidance in relation to decisions made in under the Rules. The same meaning must apply to all the cases in which the matter is to be determined in accordance with the meaning in the Convention.

Conclusion on the meaning and effect of paragraph 3 of Schedule 2 to the 1981 Act.

36. The conclusions from what is set out above are as follows. For the purposes of the statutory provision in issue, a person is stateless if he has no nationality. Ability to acquire a nationality is irrelevant for these purposes. A child born on or after 3 December 2004, outside India, of parents at least one of whom is an Indian national, and who has not been to India, is not an Indian national unless registration of the birth has taken place in accordance with the provisions of the Citizenship Act 1955 (India) as amended. If the child has no other nationality, the child is stateless for the purposes of paragraph 3 of Schedule 2 to the British Nationality Act 1981 and, if the other requirements of that paragraph are met, is entitled to be registered as a British citizen. If, therefore, C's birth had on the date of the decision under challenge not been registered, she is entitled to British Citizenship
37. I recognise of course that this conclusion opens an obvious route to abuse. Indeed, the facts of the present case might be said to be an example of abuse. M and F are both overstayers. Both have sought, and been refused, further leave. They have preferred to allow C to be stateless all her life to date rather than to register her birth and obtain Indian nationality for her. Yet C's right to British nationality (and the consequence that she will not be or become a national of India) will now immeasurably improve M and F's prospects of being allowed to stay in the United Kingdom. But the Secretary of State's position in this case on the one hand, and the authorities on the other, necessarily lead to this result."

11. The UNHCR Guidance being referred to by the Supreme Court was the "Guidelines on Statelessness No 1" issued on the 20 February 2012 HCR/GS/12/01. In Al-Jeddah at [34] Lord Wilson noted that in these guidelines the High Commissioner:

“ addressed some of the effects of the authoritative definition of a stateless person in article 1(1) of the 1954 Convention. Para 43 of his guidelines, entitled “Temporal Issues”, has been incorporated, word for word, into the Home Office guidance on “Applications for leave to remain as a stateless person” dated 1 May 2013, referred to at para 13 above.”

12. Lord Wilson then went on to quote para 3.4 of this guidance:

“3.4 ... An individual’s nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process for acquiring nationality but those procedures have not been completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention. Similarly, where requirements or procedures for loss, deprivation or renunciation of nationality have not been completed, the individual is still a national for the purposes of the stateless person definition.”

13. The conclusion of Lord Wilson, with whom Lord Neuberger, Lady Hale, Lord Mance and Lord Carnwath agreed, was that that since the Home Office had incorporated the UNHCR guidance on this issue into his own guidance, it was not open to the Secretary of State to bring an argument which was contrary to that policy.

14. I derive from the above cases, the following.

15. First, although the specific issue being decided in Al Jeddah concerned whether an order made pursuant to section 40(2) of the British Nationality Act 1981 was valid if it would render a person stateless, the ratio of the decision was that the approach to nationality has to be what I shall term an ‘actual nationality’ approach, according to which nationality – or in this case the lack of nationality – is to be assessed at the time of decision by reference to whether a person has the nationality of a state by operation of its law. The SSHD had sought to appeal the decision of the Court of Appeal which had been expressed by Richards LJ as follows:

“121. I would reject the Secretary of State’s argument for the straightforward reason that section 40(4) requires the Secretary of State (and, on appeal, the court) to consider the effect of the *order* made under section 40(2): would the *order* make the person stateless? If Iraqi nationality was not restored to the appellant automatically under the Iraqi legislation considered above, he was not an Iraqi national at the time of the order: his only nationality at that time was British nationality. The effect of the order would therefore be to make him stateless. That would be the effect of the order irrespective of whether he could previously have acquired another nationality had he chosen to do so, or whether he could do so in the future.”

16. In Al-Jeddah the challenge advanced by the Secretary to this ruling was that the approach should be one of what I shall term “potential nationality” (meaning nationality which a person does not possess but has an entitlement by way of making an application and satisfying the authorities of that state that they meet the relevant requirements). The Supreme Court rejected this as being both wrong in law and contrary to the Secretary of State’s own guidance on statelessness.

17. Second, it was the “actual nationality” approach of the Supreme Court in Al-Jeddah that Mr Ockelton applied in MK.

18. Third, the ‘actual nationality’ approach was confirmed by Mr Ockelton’s confirmation in MK of an ‘actual nationality’ approach in the specific context of a child of Indian parents who had not as yet acquired Indian nationality, which was a form of acquisition dependent upon application. Even though the issue in MK was focussed on whether the child was eligible for British nationality under the 1981 Act, Mr Ockelton correctly explains why, whether the legal framework is statelessness under the 1981 Act or statelessness under the Immigration Act and Rules, it is the definition of statelessness set out in Article 1(1) of the 1954 Convention that applies.

19. Fourth, it was the ‘actual nationality’ approach taken in MK that was applied by the judge in the instant appeal.

20. What has thus to be decided by me is whether the decision made by the Court of Appeal in AS(Guinea) requires a different view to be taken. AS(Guinea) not only post-dates MK but is a Court of Appeal decision.

21. In my judgement AS(Guinea) cannot be relied upon in the way sought by the SSHD in this appeal. There are two main reasons.

The ratio of AS (Guinea)

22. First of all, I consider it doubtful that the ratio of AS (Guinea) endorses a ‘potential nationality’ approach, for a number of reasons:

- (i) the issue of whether the approach to determination of nationality (or lack of it) should be either an ‘actual’ or ‘potential’ nationality approach was not identified as an issue in the case: at [2] Kitchin LJ stated that:

“the appeal raises two points of principle: first, the standard of proof applicable to the determination of whether a person qualifies for the status of a stateless person as defined in the 1954 Convention relating to the Status of Stateless Persons (“the 1954 Convention”); and secondly, the relevance of a finding that a person is stateless to an assessment carried out pursuant to paragraph 390A of the Immigration Rules.”;

(ii) there is nothing to suggest that their lordships were directed to the decision of the Supreme Court in Al-Jeddah;

(iii) the Court of Appeal appears to have proceeded on the basis that the UNHCR guidance should be accorded “considerable weight”, even though, as we know from Al-Jeddah, that guidance adopts an ‘actual nationality’ approach;

(iv) at the time the case came before the Court of Appeal, the Home Office guidance remained the same and, as noted above, it endorsed the UNHCR approach;

(v) the principal passage of AS(Guinea) relied upon by the SSHD in this appeal is capable of being read as being concerned with a rule of evidence rather than as a pronouncement about basic principles of nationality law; and

(vi) I agree with Mr Ockelton that the ‘Bradshaw principle’ is capable of being read as a rule of evidence only.

The authority of Al-Jeddah

23. My other main reason for considering that the SSHD’s grounds cannot be relied upon in the manner sought is that, even assuming AS(Guinea) is read as requiring that the approach to nationality be a ‘potential nationality’ approach, there is, as we have seen, Supreme Court authority to the contrary; and, by the doctrine of judicial precedent, if the Upper Tribunal is faced with two conflicting authorities, one from the Court of Appeal, one from the Supreme Court, it must follow the latter. Uncomfortable as it would be if AS(Guinea) is read in this way, that would seem to me the only conclusion open to me to reach.

24. To conclude, it cannot be an error of law for a tribunal judge to apply an ‘actual nationality’ approach to the issue of whether someone is a stateless person within the meaning of the 1954 Convention, since that is the approach enjoined by the Supreme Court decision in Al-Jeddah. The subsequent Court of Appeal decision in AS (Guinea) has not altered this position.

The abuse issue

25. As Ms Everett made clear in her submissions, there is an obvious concern on the part of the SSHD about the potential for abuse, illustrated in her view by the facts of this case, the judge having found that the first two claimants had exercised bad faith in failing to make an application to the Indian High Commission on behalf of their child, the third claimant. As Mr Ockelton pointed out in MK, the current state of the law opens up an obvious route to abuse and on the findings of the judge in the instant case the child’s parents have deliberately avoided lodging a proper application. At the same time, whichever position is taken regarding acquisition of nationality – either the ‘actual nationality’ approach taken by the Supreme Court or the ‘potential nationality’ approach seemingly espoused by the SSHD’s grounds – there will be the possibility of abuse (as an example of abuse in the

context of a 'potential nationality' approach, consider a stateless applicant for refugee status whose country of former habitual residence is entirely safe but who has the potential to apply for and obtain the nationality of another state which has just become unsafe (because, let us suppose, of a coup). If a 'potential nationality' approach is applied, he or she may be able to require the SSHD to assess risk on return by reference to the country of potential nationality, even if this person's only motive for considering this possibility is to avoid being assessed by reference to his or her country of former habitual residence.

26. Further, proper application of the 'Bradshaw principle' should largely prevent abuse, if fully operated as a rule of evidence. Applied in this way, the SSHD is entitled upon receipt of an application for asylum or leave to remain to require the applicant to take reasonable steps to acquire a potential nationality, so that the decision on the application is not made until the result of those efforts is known.

27. I accept that this option is not open to a tribunal judge. Once the decision has been made and an appeal lodged, the task of the judge is to decide whether as a matter of fact the appellant concerned is stateless at the date of decision. However, it would be open to the SSHD upon receipt of an applicant's appeal to withdraw the decision and issue a fresh decision and, before doing so, request the applicant to produce evidence that they had applied to the relevant Embassy/consulate using due diligence. By those means the 'Bradshaw principle' is still operated as a rule of evidence, requiring the applicant to prove statelessness.

28. Given that the SSHD's sole ground comprised a challenge based on the Bradshaw principle, I can see no alternative to rejecting the SSHD's ground of appeal and upholding the decision of the FtT Judge.

29. In case this matter is taken further, I would add two further observations.

30. The first relates to the judge's comments at paragraphs 140-143:

"140. I also do not accept the evidence of the First and Second Appellants with regard to their failure to make an application online and the fact that in their purported three visits, no one at the High Commission mentioned to them the online process.

141. However, I refer to the document entitled "Birth registration of children eligible for Indian Nationality" (AB130 to 134) and particularly the documents that would have to be annexed with a duly completed online application form. At paragraph vii, it states "**Visa status:** copy of passport page/UK Residents Permit Card showing the visa status should be enclosed."

142. It is not in dispute that neither the First nor the Second Appellant holds a valid visa entitling them to remain in the UK.

143. As a consequence, whilst wholly unsatisfactory, there is some force in the submission made by Mr Reynolds that, even had an application been lodged, it would have been a fruitless endeavour as neither the First nor Second Appellants have a valid visa."

31. Leaving aside that the judge does not appear to have been entirely consistent as to whether a valid visa for the UK was a mandatory requirement under India nationality law (contrast paragraph 143 above with paragraph 163), the fact that there exists an online document on the website of the Indian High Commission entitled "Birth registration of children eligible for Indian nationality" stating that documentation of visa status "should be enclosed" does not demonstrate that a valid visa is a mandatory requirement. It would be at least curious if Indian nationality by descent were made dependent on prospective beneficiaries complying with the immigration law of foreign countries. At the very least, the judge should have sought more evidence regarding this issue before deciding that an application "would have been a fruitless endeavour."

32. The second matter concerns what the judge said at paragraph 156:

"156. However, in the absence of any evidence to the contrary, I must approach this matter on the basis that the Third Appellant, whom I have found to be stateless, would not be permitted entry into India. This means that if I were to dismiss the appeals of the First and Second Appellants, it may lead to circumstances in which, without any other family support in the UK, the Third Appellant, who will be three years old in July 2019, would be taken into the care of the local authority."

33. It is difficult to see any evidential basis for the judge's assessment that the third claimant would not be permitted entry into India. The absence of evidence to the contrary did not amount to evidence that entry would not be permitted. Whether that is correct has to be a matter for evidence. Whether the Indian authorities would refuse a visa to the legitimate child born to two Indian citizens (who were born and had lived in India for a considerable period before they came to the UK) simply because the child was stateless, was a question of fact.

34. On the basis of the above observations, the judge made two errors of law. However, as already noted, the SSHD's grounds did not allege any error in either respect. Hence I maintain my decision to uphold the FtT Judge's decision.

35. To conclude:

The judge did not materially err in law. Accordingly, his decision to allow the appeal must stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the third claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify this claimant or any member of their family. This direction applies both to the third claimant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 5 August 2019

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Dr H H Storey
Judge of the Upper Tribunal