



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: UI-2022-006108**

**HU/06727/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On the 15 August 2023**

**Before**

**THE HON. MR JUSTICE DOVE, PRESIDENT  
UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**RAUF QARI ABDUL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Anonymised (see below)

For the Respondent: Cathryn McGhahey KC instructed by Government Legal Department

**Heard at Field House on 09 June 2023**

**INTRODUCTION**

1. The appellant, who was born on 1<sup>st</sup> January 1969, appeals against a decision of the respondent dated 20<sup>th</sup> July 2020 to refuse his Human Rights claim. His appeal was dismissed by a panel of the First-tier Tribunal promulgated on 16<sup>th</sup> August 2022. This appeal was listed to be heard on 3<sup>rd</sup> April 2023 but that hearing had to be adjourned on account of issues in relation to the grant of the appellant's legal aid. The hearing reconvened on 9<sup>th</sup> June 2023 and proceeded to a conclusion.
2. Subsequent to the hearing we received further submissions in relation to the question of anonymising the appellant's representatives. The details of counsel in the FtT were anonymised, and the continuation of this order was sought in these proceedings. We are unable to reach a

concluded view in respect of these issues without a further hearing to enable both the appellant's counsel and any interested third parties to make representations. We are concerned to ensure that the substance of our decision is known as soon as possible. The course we are adopting is therefore as follows. We are promulgating the substance of the decision now, but reserving the decision in relation to anonymity to a hearing on 17<sup>th</sup> November 2023. In the meantime, and without prejudice to any decision which we reach in relation to anonymity, we have withheld counsel's details from this decision. If there are any interested parties who would like to participate in the hearing on the 17<sup>th</sup> November 2023, or provide written submissions to be considered at that hearing, we would be grateful if they would notify the Upper Tribunal of that intention within 28 days of the promulgation of this determination.

#### Factual Background

3. The appellant was born in Pakistan and entered the United Kingdom as an adult. He was naturalised as a British Citizen on 16<sup>th</sup> November 2004.
4. On 9<sup>th</sup> June 2012 he was sentenced for conspiracy to engage in sexual activity with a child and of trafficking for sexual exploitation a 15-year-old girl. The total sentence imposed was one of 6 years' imprisonment coupled with being placed on the Sex Offenders Register for an indefinite period.
5. On 31<sup>st</sup> July 2015 the respondent gave the appellant notice of intention to deprive the him of his British citizenship following which, on 2<sup>nd</sup> December 2015, he was served with notice of a decision to deprive him of his British Citizenship. On 18<sup>th</sup> December 2015 the appellant appealed to the FtT who dismissed that appeal on 27<sup>th</sup> April 2016. Ultimately, via an appeal to the Upper Tribunal, the matter progressed to the Court of Appeal who dismissed the appellant's appeal on 8<sup>th</sup> August 2018. Prior to this on 17<sup>th</sup> July 2018 an order depriving the appellant of his British citizenship was signed; he was served with that deprivation order on 18<sup>th</sup> July 2018. On 12<sup>th</sup> September 2018 the respondent issued the appellant with a letter making a decision to deport him.
6. On 24<sup>th</sup> September 2018 the appellant purported to renounce his Pakistani citizenship, and subsequently on 28<sup>th</sup> October 2019 attended an interview with Pakistan government officials. On 3<sup>rd</sup> March 2020 the respondent served a decision on the appellant to make a deportation order replacing her earlier decision of 12<sup>th</sup> September 2018. On 23<sup>rd</sup> March 2020 the appellant submitted representations on the basis of Article 8 to the respondent. Those representations were rejected by the respondent on 27<sup>th</sup> July 2020. This is the decision which is the subject matter of this appeal with the appellant contending that the decision was unlawful as a result of a breach of his Human Rights.

#### The proceedings before the FtT

7. Following case management hearings an agreed list of issues was arrived at as follows:
- “(1) (a) Are the appellants stateless, and (b) if so, can they recover their Pakistani nationality?  
(2) Is the decision of the respondent to refuse the appellants’ human rights claim unlawful under s.6 HRA as being incompatible with their rights under Art 8 ECHR?  
(3) In ruling on (2), does the Tribunal have jurisdiction to rule on  
(a) whether the respondent will actually be able to remove the appellants; and/or  
(b) if not, whether Art 8 ECHR requires the respondent to grant them leave to remain?  
(4) If the Tribunal does have such jurisdiction then,  
(a) will the SSHD actually be able to remove the appellants to Pakistan; and  
(b) if not, does Art 8 ECHR require the respondent to grant the appellants leave to remain?”
8. The reference to “appellants” arose because in addition to the appellant in these proceedings there were parallel proceedings in respect of another person called Adil Khan, and both of these individual appeals were heard and determined together. At the hearing the appellant gave no oral evidence. An application on his behalf was made to admit an additional witness statement but this was refused by the FtT. Subsequently an agreed set of facts was settled which assisted in relation to these matters. The agreed facts, so far as relevant to the appellant, were as follows:

**“Agreed Facts**

1. On 17 July 2018 the Respondent signed deprivation orders in relation to AK and QR. At that point they ceased, as a matter of law, to be British citizens.
2. A hearing took place on 18 July 2018 in the Court of Appeal in relation to AK and QR’s appeal against the decision to make a deprivation order.
3. AK gave oral evidence that, at that hearing, (a) counsel for the SSHD informed the court about the deprivation orders that had been made; and (b) a judge said that those orders should be served on the Appellants.
4. On 18.07.18 the deprivation order relating to QR was posted, under cover of a letter, to QR [at his home address]. This letter was returned to sender.
5. At some point QR applied to renounce his citizenship. In order to make such an application he needed to provide various documents including: (i) Form X & Particulars (One Pager), typed in (not hand-written); and (ii) Application addressed to the Pakistan High Commission stating reasons for Renunciation of Pakistani Citizenship (see PDF and URL from PHC). The actual forms submitted by the As are not in evidence.
6. QR’s renunciation of Pakistani citizenship is dated 24 September 2018 [177]. It states at the top: *‘whereas he/she has been assured Citizenship of the United Kingdom upon renunciation of Pakistan Citizenship’*.
7. On 8 November 2018 the letter enclosing the deprivation order for Mr Rauf was re-posted to [to his home address]. This letter was not returned to sender.

8. The SSHD does not dispute the evidence, from the Appellants, that at the time each of them first submitted their Form X to the PHC, orders depriving them of their British nationality had not yet been signed. However, by the time the renunciation certificates were granted, such orders had been signed.”
9. The appellant also made an application to admit an addendum expert report addressing the status of the reported renunciation of Pakistani citizenship and the risk to him upon return to Pakistan. Again, the FtT refused this application as it had been made extremely late in the day.
10. Finally in this connection the appellant made an application for the disclosure of the factual circumstances of Mr Aziz, who had also been a co-defendant in the criminal proceedings, who had been served notice of intention to deprive him of his British citizenship upon conviction, and who had been a participant in the deprivation appeals which proceeded ultimately to the Court of Appeal. It was submitted that this material was relevant as the appellant was in a similar position to Mr Aziz and should have been treated alike. The application was opposed by the respondent on the basis that Mr Aziz was not an appellant before the FtT. The FtT refused this application stating that the position regarding Mr Aziz was irrelevant, and the appellants who were before the FtT were the persons whose appeals and evidence were pertinent to the FtT decision. It appears that after this application was initially refused it was renewed when the appellants’ counsel received further information in the form of a document dated 31<sup>st</sup> October 2018 confirming to Mr Aziz that following his renunciation of his Pakistani citizenship the respondent would not be issuing a deprivation order. The FtT maintained its earlier ruling that the decision in relation to Mr Aziz was separate and irrelevant to the cases of the appellants before them.
11. The FtT panel organised its consideration of the issues by starting with issue 1 and the question of whether the appellant was stateless, and if so whether he could recover his Pakistani nationality. The FtT panel commenced their consideration of this issue by noting the burden of proving statelessness rested with the appellant on the balance of probability. The appellant had a certificate indicating his renunciation of Pakistani citizenship. He had been deprived by the Respondent of his British citizenship. The first question therefore was the validity of the certificate of renunciation of Pakistani citizenship, since if that certificate were valid then the appellant would have established that he was indeed stateless. In relation to this issue the FtT concluded as follows:

“60. Section 14A of the Pakistani Citizenship Act 1951, as amended by the 1972 Act provides

14A Renunciation of citizenship.—

(1) If any citizen of Pakistan residing outside Pakistan, who is not a minor and:-  
(a) is also a citizen or national of another country, or

(b) has been given by the competent authority of another country any valid document assuring him of the grant of the citizenship or nationality of that other country upon renouncing his citizenship of Pakistan, makes in the prescribed manner a declaration renouncing his citizenship of Pakistan, the declaration shall be registered by the prescribed authority; and upon such registration that person shall cease to be a citizen of Pakistan:

61. The renunciation certificates with respect of the appellants are dated 14 and 24

September 2018. Both of them are in the same terms and it is worth quoting the exact

terms of the relevant section below:

Whereas (*Mr Rauf/Mr Khan*) has applied for certificate of renunciation as a Citizen of

Pakistan. And whereas he/she has been assured Citizenship of the United Kingdom

upon renunciation of Pakistan Citizenship.

Now therefore in pursuance of the powers conferred by the Pakistan Citizenship Act

1951 and the rules made thereunder, the Government of Pakistan hereby grant to the

said (*Mr Rauf/Mr Khan*) this certificate of renunciation and declare that he/she is no

longer citizen of Pakistan from the date of registration of renunciation as indicated

above.

62. The terms of the renunciation certificates are crucial, in particular the statement

regarding the appellants having been assured citizenship upon renunciation.

This

statement indicates that renunciation was granted under s14A(1)(b); that the Pakistani

High Commission[LTJ1] granted renunciation on the basis that the appellants had been

given a valid document by the British authorities assuring them of the grant of British

citizenship upon renunciation. That simply was not the case.

63. In these circumstances, it seems to us that it matters not whether the appellants were

aware of the date their British citizenship had been deprived. At the time they applied

for renunciation their deprivation appeals were ongoing. They would have been well

aware that the British authorities were seeking to deprive them of citizenship, and we are satisfied that this is the very reason they sought to renounce their

Pakistani

citizenship in the first place. In any event, there was no document assuring them of a

grant of British citizenship upon renunciation.

64. The effect of this upon the status of the renunciation certificates is unclear. Para 8-9 of

Laura Gumbley's statement states that on 10 September 2021 she met with the First

Secretary of Consular and Community Affairs from the Pakistan High Commission

and during those discussions she was informed that in order to renounce Pakistani citizenship an individual is required to attend an interview at which they must disclose they hold another nationality in order to prevent themselves rendering themselves stateless. If it transpires that a false declaration was made the renunciation may be deemed null and void.

65. The agreed facts indicate that at the time of the application for renunciation the deprivation orders had not been signed, although by the time the renunciation certificates were issued they had been. It seems therefore that the appellants held British citizenship at the time of making their application to renounce. There is no evidence that either appellant lied to the Pakistani High Commission. However, we observe that they did not inform the Pakistan High Commission that the British authorities were seeking to deprive them of citizenship, a plainly relevant factor.

However, whether any false assertion was made is irrelevant to the issue of the validity of the certificates. The fact is that the renunciation certificates were issued under an incorrect premise, and there is no definitive evidence as to the subsequent effect on their validity.

66. The burden of proving the validity of the certificates lies on the appellants. It is evident that they were granted on the basis that the Pakistan High Commission were of the view that the appellants satisfied s14A(1)(b), which they did not. The whole point of s14A is to prevent renunciation of Pakistani citizenship rendering an applicant stateless. This is reiterated from the discussions had by Laura Gumbley and the Pakistan High Commission. While it cannot be proved definitively by the respondent that the certificates are invalid, it certainly cannot be shown on the balance of probabilities that the certificates are valid in the circumstances. "

12. Having concluded that the appellant was unable to prove that the certificate of renunciation of Pakistani citizenship was valid the FtT panel went on to assess the question of whether or not the appellant could easily re-acquire his Pakistani nationality. In respect of that issue, they concluded as follows:

"69. The expert report of Asad Ali Khan dated 24 January 2022, at [17-18] confirms that even if the appellants are considered stateless, they can re-acquire their Pakistani nationality relatively easily by filling out a form Y. The appellants' criminal convictions in the United Kingdom would not affect their ability to regain their

Pakistani nationality. He reiterates this conclusion at [34-35] stating:  
34. In the event the appellant makes a declaration in Form Y prescribed under the Rule 19-B of the Pakistan Citizenship Rules 1952 that shall be a sufficient proof of the intent of resumption of citizenship and as the declarant he shall be treated as a citizen of Pakistan. In light of Pakistani jurisprudence (Umar Ahmad Ghumman (Petitioner) v Government of Pakistan and Others (Respondents) PLD 2002 Lahore 521) since the UK allows dual nationality, the appellant as a citizen of Pakistan under the 1951 Act, cannot be made to lose his citizenship unless the acquisition of UK citizenship had made it a condition precedent and he does so or his conduct falls within the mischief of section 16 of the 1951 Act which in my view does not.  
35. Overall, my professional view is that the appellant's criminal convictions in the UK (trafficking and rape) do not affect his ability to regain Pakistani citizenship because of the decision in Umar Ahmad Ghumman (Petitioner) v Government of Pakistan and Others (Respondents) PLD 2002 Lahore 521. His crimes in the UK do not affect his ability to resume his Pakistani citizenship if he makes a declaration in Form Y of the 1952 Rules.  
70. In fact, following the summary of authorities and conclusions reached in AS (Guinea), this application should be made and rejected before the appellants can be regarded as stateless. While the authorities recognise that there can be inherent difficulties in proving statelessness, this is not such a case. Here the appellants are unwilling, as opposed to unable to produce supporting evidence. Neither appellant has made any such application either for a passport or for re-acquisition of nationality by way of a Form Y. Mr Rauf's legal team confirmed that Mr Rauf will not make such an application. The fact that the appellants do not wish to make an application means there is a lack of any other evidence other than the certificates which indicate that they are stateless. AS (Guinea), quoting MA (Ethiopia) v Secretary of State for the Home Department [2009] EWCA Civ 289 at [50] stated:  
53. Any other approach leads, in my view, to absurd results. To vary an example given by my Lord, Lord Justice Stanley Burnton in argument: the expert evidence might show that three out of ten in the appellant's position were not allowed to return. If that

evidence were accepted it would plainly be enough to constitute a real risk that the appellant would not be successful in seeking authorisation to return. But it would be strange if by the appellant's wilful inaction she could prevent the Tribunal from having the best evidence there is of the state's attitude to her return. She could refuse to put to the test whether she might be one of the seven who would be successful. It would in my view be little short of absurd if she could succeed in her claim by requiring the court to speculate on a question which she was in a position actually to have resolved.

71. The only evidence therefore that the appellants are stateless are the renunciation certificates which were issued on the erroneous basis that the appellants satisfied s14A(1)(b). There is no evidence indicating that the Pakistan High Commission would not grant a passport upon application. There is no evidence that the Pakistan High Commission would not grant nationality upon application. In fact, the evidence indicates that there is a relatively easy process for the appellants to regain their nationality. The fact that they will not do so is their choice, however the result of which the Tribunal does not have reasonably available evidence upon which to conclude that the appellants are stateless as claimed.

72. It follows that in answer to Issue 1(a), we find that there is insufficient evidence to demonstrate that the appellants are stateless. In answer to Issue 1(b), based on the expert evidence, even if the appellants were stateless they could reacquire their status relatively easily."

13. The FtT panel then turned their attention to the question of whether they had jurisdiction to rule on if the respondent would actually be able to remove the appellant and/or if not, did Article 8 of the ECHR require the respondent to grant the appellant leave to remain. This issue arose out of the submission that on the basis the appellant was stateless his removal was a practical impossibility. Further, reliant upon the case of *AM (Belarus) v Secretary of State for the Home Department* [2022] EWCA Civ 780 at paragraph 13 summarising the test from *RA (Iraq) v Secretary of State for the Home Department* [2019] EWCA Civ 850, the appellant's submission was that he would be left in a state of limbo with no evidence there was any realistic prospect of removal and that that was a matter which impacted upon his rights under Article 8 of the ECHR as effecting the weight to be attached to the public interest in any decision being made in respect of his continued presence in the UK.



The conclusions which the FtT panel came to in respect of this submission were set out as follows:

“76. We consider whether we have jurisdiction to rule on whether the appellants can actually be removed. There are relevant differences between the old statutory appeal scheme under the old provisions of the 2002 Act, and the current statutory regime which is worth outlining at this stage.

77. The old section 82 of the 2002 Act stated that an immigration decision would attract a right of appeal. The old section 82 identified those decisions which were ‘immigration decisions’ and relevantly provided:

82. Right of appeal: general

(1) Where an immigration decision is made in respect of a person he may appeal to an adjudicator.

(2) In this Part “immigration decision” means—  
[.....]

(j) a decision to make a deportation order under section 5(1) of that Act, and  
(k) refusal to revoke a deportation order under section 5(2) of that Act.

78. The old section 84 of the 2002 Act provided:

84 Grounds of appeal

(1) An appeal under section 82(1) against an immigration decision must be brought on

one or more of the following grounds—  
[.....]

(c) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c 42)

(public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant’s Convention rights.

[.....]

(g) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom’s obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act

1998 as being incompatible with the appellant’s Convention rights.

An appeal brought on the ground of S84(1)(g) specifically required the Tribunal to

consider an individual’s human rights only in the context of their removal as a consequence of an immigration decision. However, an appeal brought on the ground

23 of s84(1)(c) required the Tribunal to consider whether the immigration decision

breached the individual’s human rights.

79. Thus, with respect to the old scheme, it was possible for an appellant to appeal on the

basis that the decision to make a deportation order was unlawful under s6 of the 1998

Act, on the basis that it would breach the appellant's Article 8 rights in circumstances where his leave to remain would be cancelled and he could not be removed from the United Kingdom. Indeed, this was the framework upon which the appeal in RA was being considered.

80. With respect of the current statutory scheme with which we are concerned, it is no longer possible to appeal against a decision to make a deportation order. Since the amendments made by the 2014 Act it is only decisions to refuse a protection claim, to refuse a human rights claim or to revoke protection status which attract a right of appeal.

81. The appeals before the Tribunal are appeals against the refusal of a human rights claim. A human rights claim is defined under s113 of the 2002 Act as a claim that it would be unlawful under s6 of the 1998 Act to remove a person from the United Kingdom. The ground of appeal is that the decision is unlawful under section 6 of the Human Rights Act 1998.

82. Thus, under the current scheme the jurisdiction conferred upon the Tribunal in a human rights appeal is limited to a ruling on whether a decision to remove a person from the United Kingdom would be unlawful under section 6 of the 1998 Act. In other words, our jurisdiction is to consider the position of the appellants were they to be removed. The precise definition of a human rights claim as outlined in the 2002 Act as amended, in our view, precludes us from considering whether they can be removed and/or the position of the appellants in the event that they not removable.

83. We also take notice of MY(Pakistan) v Secretary of State for the Home Department [2022] 1 WLR 238 which held that an application for leave to remain and 'a human rights claim' were two conceptually different kinds of thing serving different purposes. The former is a mechanism by which the respondent might be required to grant leave to remain, and the latter was a claim that the claimant's removal would be contrary to their rights under the 1998 Act, the refusal of which would generate a right of appeal under section 82 of the 2002 Act as amended.

84. The approach taken in AM (Belarus) further fortifies our conclusion. In that case the appellant was deported in 2001. He was returned to the United Kingdom on the basis

that he informed the officials in Belarus that he was not a citizen of Belarus. The appellant resided in the United Kingdom for a number of years, various applications having been refused. In 2017 the appellant made an application for leave to remain on the basis of statelessness. This having been refused, the appellant brought a claim for judicial review. Had there been a ground of appeal upon which the appellant could 24 make his 'limbo' argument within a substantive appeal he would have done so, judicial review being the remedy of last resort.

85. Thus with respect of Issue 3(a), we find we do not have jurisdiction to consider the actual removability or otherwise of the appellants.

86. With respect of Issue 3(b), it was agreed by both counsel for Mr Rauf and the respondent, that the Tribunal did not have jurisdiction to rule on whether Article 8 required a grant of leave to remain. We respectfully agree."

14. Having reached this conclusion the fourth of the agreed issues did not arise, on the basis that the FtT panel had concluded that they did not have jurisdiction to rule upon whether the respondent would actually be able to remove the appellant, and if not whether Article 8 required the respondent to grant him leave to remain.
15. The FtT panel then moved on to consider the second of the agreed issues, namely whether or not the decision to refuse the Human Rights claim was appropriate. Turning, firstly, to Exception 1 of Section 117C(4) of the Immigration, Nationality and Asylum Act 2002, the FtT panel noted that the appellant had lived for a significant period of time in the United Kingdom and had a wife and 5 children who were resident here. Apart from this and his work as a taxi driver there was little to demonstrate he was culturally and socially integrated into the United Kingdom. Furthermore, he had been convicted of serious sexual offences targeting girls who were not of his religion or culture which the FtT panel took as a strong indication that he was not socially or culturally integrated into the UK. The FtT panel noted that the appellant had been resident in Pakistan until he was an adult and continued to speak the language. There was no reason why anyone in Pakistan would be aware of the appellant's criminal history in the United Kingdom and therefore there were in the view of the FtT panel no very significant obstacles to his reintegration into Pakistan.
16. Turning to Exception 2 the FtT panel noted that the appellant had a wife and 5 children, as set out above, who were resident in the UK and who had provided letters in support of his appeal. However, on the basis of the limited evidence available to them the FtT panel concluded that the appellant had not established that it would be unduly harsh for him and his family to relocate to Pakistan. Having established that the

appellant did not fall within either Exception 1 or 2 the FtT panel proceeded to consider whether there were any other compelling circumstances to justify the conclusion that the removal of the appellant would not be in the public interest, and they concluded that there were none. Accordingly, the appellant's appeal was dismissed.

#### The grounds of appeal

17. The appellant was granted permission to appeal upon four grounds. Ground 1 is the contention that the FtT panel erred in declining to order that the respondent disclose the documents to the appellant relative to Mr Aziz. Ground 2 is the submission that the FtT panel erred in law in finding that the appellant had made misrepresentations to the Pakistani authorities when he applied to renounce his Pakistani citizenship, and also erred in their conclusion that there was no definitive evidence of the effect of those misrepresentations on the validity of his renunciation. Ground 3 is the contention that the FtT panel erred in finding that it had no jurisdiction to consider whether the appellant would in fact be removed and/or to consider any Article 8 claim arising from that inability to remove the appellant. Ground 4 is the submission that the FtT wrongly declined to rule on whether the effect of the deprivation of the appellant's British citizenship gave rise to the automatic revival of his indefinite leave to remain, a status that he had enjoyed prior to the grant of citizenship.
18. In the appellant's skeleton argument, a further issue is identified namely whether or not he is liable to automatic deportation as a foreign national criminal, notwithstanding the decision of the Court of Appeal in *Zulfiqar v SSHD* [2022] 1 WLR 3339, once he was deprived of his British citizenship.

#### Submissions and Conclusions

##### Ground 1

19. As set out above, ground 1 of the appeal is the submission that the FtT panel were wrong to decline to order the disclosure of the decisions which were reached in the case of Mr Aziz. The appellant's submission in relation to ground 1 is based upon the accepted factual circumstance that whilst Mr Aziz had been a co-defendant in the criminal proceedings and thereafter a co-appellant in the deprivation proceedings, he had not ultimately been deprived of his citizenship. It was submitted on behalf of the appellant that given the equivalence in the circumstances between the appellant and Mr Aziz the appellant was entitled to understand and have disclosed to him the basis upon which it had been concluded that, ultimately, Mr Aziz would not be the subject of having his citizenship deprived. The importance of like cases being decided alike justified the ordering of the disclosure of this information so as to enable the appellant to understand whether, and if appropriate argue, there had been an inconsistency in his treatment as compared to the

- treatment of Mr Aziz. The FtT panel were therefore in error when they concluded that the material associated with Mr Aziz was irrelevant.
20. In response it is submitted on behalf of the respondent that, as the FtT panel observed, they were solely dealing with the merits of the appeal in respect of the appellant. Any decision in respect of Mr Aziz would be based upon his particular circumstances, a matter which was specific to his case, and which would be of no assistance to the appellant at all. Furthermore, it was clarified in the hearing before us, as we were advised by the respondent it had been clarified at the FtT panel hearing, that in the case of Mr Aziz he had obtained his renunciation of Pakistani citizenship prior to him being deprived of British citizenship which was a reason why the respondent had acted quickly against the appellant because at the time when he was deprived he had yet to secure his renunciation before the deprivation order was made.
21. In our judgment the FtT panel were clearly right to decline to order the disclosure of the information relating to Mr Aziz's case. Whatever had been determined in Mr Aziz's case was specific to the particular circumstances of Mr Aziz, and was therefore irrelevant to the determination of the merits of the appellant's case which fell to be determined upon the circumstances and evidence relating to his appeal. The broad principle that like cases should be decided alike did not justify the speculative disclosure of the material pertaining to Mr Aziz's case which would have been specific to the particular circumstances of Mr Aziz alone. Indeed, as matters turned out in the hearing before us it appears from such information as the respondent chose to make available in respect of Mr Aziz's case it was demonstrated that there was a clear distinction in the facts relevant to Mr Aziz's case confirming, if it were necessary, that the material in his case was irrelevant to the specific merits of the appellant's case. There was therefore no error of law in the approach taken by the FtT panel and ground 1 must be dismissed.

#### Ground 2

22. Ground 2 of the appeal is the submission that the FtT panel erred in their conclusions at paragraph 65-66 of their decision set out above. It is submitted that these conclusions were not rationally open to the FtT panel, and that on the basis that the deprivation of citizenship takes effect when an order is made and not when it is served no misrepresentation to the Pakistani authorities can properly be said to have taken place. This is submitted to be the case on the basis that the appellant had not been served with the deprivation order by September 2018 when he renounced his Pakistani citizenship. The mere fact that the appellant was told there was to be a deprivation order during the proceedings before the Court of Appeal hearing in July 2018 is insufficient to amount to binding and proper notice of the deprivation of his citizenship.

23. In our judgment it is important to observe that the conclusions which the FtT panel reached were based upon their findings of fact, in particular in paragraph 63 of their determination. The factual conclusion that at the time when the appellant applied for renunciation of his Pakistani citizenship, he would have been well aware that the British Authorities were seeking to deprive him of his citizenship, is in our view unassailable. Furthermore, the FtT panel were entitled to conclude that there was no document assuring the appellant of British citizenship upon renouncing his Pakistani citizenship. The certificate of renunciation of Pakistani citizenship dated 24<sup>th</sup> September 2018 reflects both the Pakistani legislation which the FtT panel quoted, and also the evidence of Ms Gumbley, in its citation that the appellant “has been assured citizenship of United Kingdom upon renunciation of Pakistani citizenship”. Given the appellant was well aware at the time of his application that there was no such assurance on offer on the basis that he was the subject of proceedings to deprive him of his citizenship, the FtT panel were fully entitled to reach the conclusion as a question of fact “that the renunciation certificates were issued under an incorrect premise”. Thus, as they also concluded, there was no definitive evidence as to the impact of that incorrect premise on the validity of the certificates leading to the conclusion that the appellant could not demonstrate that the certificate was valid. In our judgment these were all questions of fact which the FtT panel was entitled to reach for the conclusions which they gave. The findings were based on the evidence which was before the FtT panel and were rationally open to them. It follows that there is in our view no substance in the appellants ground 2.

#### Ground 3

24. Ground 3 is the appellant’s contention that the FtT panel erred in concluding that they did not have jurisdiction under section 82 of the Nationality, Immigration and Asylum Act 2002 to consider the actual removability of the appellant. On the facts there is no realistic prospect, it is submitted, of the appellant being removed since he has expressly stated that he would not cooperate with any resumption of his Pakistani citizenship by completing the relevant form, form Y, and therefore he is effectively stateless and will remain in limbo in the UK incapable of being removed.
25. The appellant relies upon the decision of the Court of Appeal in *RA (Iraq) v SSHD* [2019] EWCA Civ 850. That case concerned an appeal against a decision of the Upper Tribunal arising under section 84(1)(c) of the 2002 Act in respect of the impact upon the article 8 rights of that appellant of him having remained in a state of limbo (i.e., with an undetermined immigration status) in the light of the cancellation of his leave to remain which had occurred some 12 years earlier. The decision the subject of appeal was a decision to deport that appellant made on 9<sup>th</sup> October 2008. After an unfortunate and complex procedural history, the matter was remitted to the Upper Tribunal limited to that

appellant's ground of appeal under section 84(1)(c) of the 2002 Act namely that "the decision is unlawful under section 6 of the Human Rights Act 1998... as being incompatible with the appellant's Convention rights".

26. Having undertaken an extensive review of the authorities Haddon Cave LJ undertook an analysis of the correct approach to cases in which an appellant has been left for a very significant period of time with an undetermined immigration status. Prescribing a four-stage approach, starting with obtaining an understanding as to whether or not the limbo relied upon was prospective (for instance where a decision to deport a person has been made but no deportation order has been written), or actual (for instance, a person in respect of whom a deportation order has been made but who has yet to be deported). Drawing the distinction between these two categories will ultimately impact upon the weight to be attached to the public interest in striking the article 8 balance. The second stage is whether it is established that removal is capable of being undertaken immediately or in the foreseeable future and whether or not there are any further remaining steps to be taken to facilitate deportation. Thirdly, the case will require a detailed and specific examination of its facts. Fourthly, and finally, a balancing exercise will be required between the public interest in maintaining an effective system of immigration control and the impact upon an individual's article 8 or other Convention rights. In the present case the appellant relies upon *RA* as establishing the jurisdiction for the FtT panel to enquire into the prospects of the appellant's removal, and to consider the impact on his article 8 rights in the light of his contention that his removal is wholly impractical.
27. The appellant also contends that the approach taken in *Antonio v SSHD* [2022] EWCA Civ 809, in which the principles in *RA* were considered in relation to an argument respecting an appellant whose prospects of removal were remote and who therefore was in limbo, a status which has the potential to affect his article 8 rights.
28. The appellant contends that there is further supporting authority in relation to the need to consider the question of whether or not an appellant is in limbo, without leave to remain in the United Kingdom and with no current prospect of being deported or removed, and the impact of that situation on their article 8 rights. This was the approach taken by the Upper Tribunal and also the Court of Appeal in the case of *AM (Belarus)* [2022] EWCA Civ 780. In that case both the Upper Tribunal and the Court of Appeal endorsed the application of the guidelines provided in *RA* for the purposes of assessing the impact on article 8 rights in respect of a person in limbo.
29. In response to the reasoning of the FtT panel in respect of the changes to rights of appeal effected by the Immigration Act 2014 it is submitted on behalf of the appellant that in the context of a Human Rights claim under article 8, the definition for which has not changed since prior to the changes to the appeal rights made by the 2014 legislation, it remains necessary for the decision maker to take all

considerations into account in making that assessment, including the question of whether or not the person concerned is in limbo. It is intended that the appeal should be “one stop” appeal and it was inappropriate for the FtT to conclude that the relevant evidence in respect of the appellant’s Human Rights claim was effectively constrained in the manner which they suggested.

30. The resolution of these contentions is in our judgment to be found by examining the scope of the jurisdiction granted in respect of a decision of this kind. Section 82 of the 2002 Act provides as follows:

“82. Right of appeal to the Tribunal

(1) A person (“P”) may appeal to the Tribunal where –

...

(b) the Secretary of State has decided to refuse a Human Rights claim made by P.”

31. Section 113(1) of the 2002 Act provides a definition of a “Human Rights claim” in the following terms:

“Human Rights claim means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom or to refuse him entry into the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998...”

32. Section 84 of the 2002 Act provides for grounds of appeal in a form which simplified the version of section 84 that preceded it. It provides as follows:

“84. Ground of appeal

...

(2) An appeal under section 82(1)(b) (refusal of Human Rights claim) must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998.”

33. Starting from the clear terms of the statute creating the appeal jurisdiction it is clear to us that a Human Rights claim, which was the subject matter of the present appeal, is a claim which is predicated on the removal of the person from the United Kingdom and the consequences of that removal in terms of the person’s Human Rights. The language of “to remove the person from or require him to leave the United Kingdom” clearly emphasises that the claim is one which is predicated on the person’s removal from the United Kingdom. The question in principle, therefore, does not engage the question of whether or not it is practical to remove that person for any particular reason. The removal of the person is assumed for the purpose of the assessment in the appeal.

34. This point is thrown into sharp relief by consideration of the previous provisions of the 2002 Act prior to amendment by the 2014 Act which



are set out above. Those rights of appeal were predicated upon a challenge to an “immigration decision” which were defined to include, for instance, a decision to make or revoke a deportation order. The simplification of the appeal rights undertaken by the Immigration Act 2014 removed these provisions. As the FtT panel pointed out in paragraph 79 of their determination, the old framework was the basis upon which the appeal in *RA* was determined. The subject matter of an appeal based upon the contention that a deportation was unlawful under section 6 of the 1998 Act could include the consideration that the appellant could not be removed from the United Kingdom. The removal of the right to appeal against the making of a deportation order effectively excludes the need to consider the question of whether or not removal is feasible or realistic. The definition of a Human Rights claim precludes that by requiring consideration of the Human Rights claim on the basis that the appellant is removed. As was pointed out during the course of argument, this position is potentially more advantageous to an appellant, because it means that the consideration of the appellant’s case proceeds upon the basis that any private or family life in the United Kingdom is completely ruptured by the decision being appealed.

35. Turning to the authorities upon which the appellant relies to support his contentions it is important to observe, firstly, that as set out above and in the FtT panel’s determination, the case of *RA* was a case which was determined under the old appeal legislation in the unamended 2002 Act. It was therefore considered in a very different statutory context to the present case in which a different legislative architecture provides for a different jurisdiction. Similarly, *Antonio* was a case decided under the old legislation, and William Davies LJ in paragraph 19 of the lead judgment in that case made clear that the court was not considering the position of that appellant under the appeal provisions since the 2014 revisions. The case of *AM (Belarus)* was an application for judicial review, and not one which was directly engaged with the question of the relevant considerations in hearing an appeal against a Human Rights claim in the context of the post 2014 legislation.
36. It follows from reasons which have been set out above that we are entirely satisfied that the FtT panel was correct to conclude that it was not part of their role, and not a necessary decision in the appeal, for them to seek to resolve whether or not it was practicable for the appellant to be removed. A determination of Human Rights under any asserted period when the appellant might be in the UK but without immigration status and with limited prospect of removal did not arise for consideration. The consideration of the appellant’s article 8 claim in fact arose in the context of it being taken as the essence of his claim that he had in fact been removed with the need to consider the impact of that removal on his article 8 rights. It follows that ground 3 must be dismissed.

Ground 4

37. Ground 4 is the appellant's contention that the effect of the decision to deprive him of his citizenship was that he reverted to the indefinite leave to remain which he had held previously prior to his naturalisation as a British citizen. It is submitted on his behalf that this indefinite leave to remain cannot have vanished into the ether, and the removal of this status is not directly dealt with by the statutory regime. Having been deprived of his British citizenship it is logical that his status should revert to that which he held prior to the grant of citizenship namely a person with indefinite leave to remain in the United Kingdom.
38. We are entirely satisfied that this ground is without merit on the basis that the decision of the Upper Tribunal in *Hysaj (deprivation of citizenship: delay)* [2020] UKUT 128 (IAC) is determinative upon this point in particular for the reasons specified in paragraph 95 of that decision. Whilst the appellant contends that the context of that case can be distinguished on the basis that the present case does not deal with naturalisation obtained by fraud, that submission does not engage with the principle reasoning for the decision in *Hysaj* namely that the decision to grant leave to remain under section 3 of the Immigration 1971 is limited persons subject to immigration control. The question of granting leave to remain to a person falling within section 1(1) of the 1971 Act as having a right of abode simply does not arise. After deprivation the respondent retains a discretion to grant indefinite leave to remain to a person whose citizenship has been deprived, but there is no basis within the statute to conclude that indefinite leave to remain status is revived upon citizenship being deprived. It follows that ground 4 of the appellant's case must be dismissed.

#### Preliminary point

39. In the appellant's skeleton argument, a preliminary point is raised in relation to the question of whether or not the appellant is a foreign national criminal, liable to deportation under section 32 of the UK Borders Act 2007, or a person liable to deportation under section 5 of the Immigration Act 1971 on the basis that his presence in the United Kingdom is not conducive to the public good. In this connection the appellant drew attention to the case of *Zulfiqar v SSHD* [2022] EWCA Civ 492 [2022] 1 WLR 3339. In that case the Court of Appeal concluded that on its true construction the relevant date for determination of foreign criminal status for the purposes of the 2002 and the 2007 Act was the date of the decision by the respondent to make the deportation order and not the date upon which the person was convicted of the index crime. On this basis it was submitted on behalf of the appellant that rather than the use of powers under section 32 of the 2007 Act the respondent ought to have used her powers under the 1971 Act, and therefore the appellant was to be subject to discretionary rather than automatic deportation. Thus, it is submitted that the respondent used the wrong power in connection with the appellant and that the question of the loss of citizenship was thereby a matter which ought to have

been incorporated into the proportionality balance by the FtT panel, but they failed to do this.

40. We are quite unpersuaded that this adds anything material to the appellant's case. Firstly, the question of which power ought to have been used by the respondent in making the deportation decision was not a matter which was directly raised before the FtT panel, nor was this point taken before them in order for it to be taken into account in their decision. Secondly, on the basis of the scope of the jurisdiction of the appeal as set out above, bearing as it does on a Human Rights claim, the point which is raised by the appellant does not in reality make any difference to the content of the appeal. We note that in paragraph 34 of the lead judgment of Underhill LJ that he was "not for myself wholly persuaded that the approach for the Tribunal would be very different even if neither set of provisions applied". In reality therefore as set out above this point adds little to the appellant's appeal and in so far as it is advanced as a fresh ground of appeal it neither has permission nor was it a matter raised for the consideration of the FtT panel.

#### Result

41. For all of the reasons set out above we have concluded that the appellant's appeal should be dismissed on all grounds. The question of the whether the anonymity order in relation to the identity of the appellant's representatives should be continued will, as set out above, be considered at a future hearing.

### **Notice of Decision**

The appeal is dismissed.

Signed Ian Dove

Date 7<sup>th</sup> August 2023

The Hon. Mr Justice Dove  
President of the Upper Tribunal  
Immigration and Asylum Chamber