Appeal No: SC/23/2003
Hearing Dates: 19th – 21st October 2010
Date of Judgment: 5th November 2010

IN THE SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
SENIOR IMMIGRATION JUDGE GOLDSTEIN
MR C SMITH

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Abu HAMZA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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MR E FITZGERALD QC and Ms A Weston (instructed by Birnberg Peirce and Partners)
appeared on behalf of the Appellant

MR R STRACHAN & MS C OWEN (instructed by the Treasury Solicitor)
appeared for the Secretary of State

MR M CHAMBERLAIN (instructed by the Special Advocates' Support Office)
appeared as Special Advocate

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PRELIMINARY ISSUE OPEN JUDGMENT

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The Hon. Mr Justice Mitting :

Background

1. The Appellant, better known as Abu Hamza, was born on 15 April 1958 in Alexandria of Egyptian parents. By virtue of those facts, he acquired Egyptian nationality at birth. He arrived in the United Kingdom on 13 July 1979, having travelled on an Egyptian passport issued on 1 July 1979, valid for 6 months. He was granted leave to enter for one month. His immigration history thereafter is not material to this appeal, save as is set out below. On 25 November 1984 he applied for British nationality on the basis of 5 years residence in the United Kingdom and was granted British citizenship on 9 May 1986.

2. On 1 April 2003 the amendments to s40 of the British Nationality Act 1981 introduced by the Nationality, Immigration and Asylum Act 2002 came into force. On 4 April 2003 the Secretary of State gave notice to the Appellant under s40(5) of his decision to make an order under s40(2) depriving him of his British citizenship. Because the Secretary of State certified under s40(A)(2) that the decision had been taken in part in reliance on information which in his opinion should not be made public for reasons of national security, the Appellant's right of appeal against that decision lay to SIAC. His appeal had a suspensive effect: s40(A)(6). Until it is determined, the Secretary of State cannot make an order. Pending determination of his appeal, he remains a British citizen. His appeal was overtaken by events. On 27 May 2004, he was arrested on an extradition warrant issued at the request of the Federal Government of the United States. Subsequently, he was prosecuted for and convicted of offences against the law of England and Wales. An extradition order has been made and all domestic legal challenges to it have failed. He is currently detained at Belmarsh prison, pending his extradition, while his challenge to it is determined by the European Court of Human Rights. These events led to an agreed stay of his appeal to SIAC. On his application, which was rightly unopposed by the Secretary of State, the stay was lifted and on 9 February 2010 an order was made for the trial of preliminary issues. For present purposes, it is only necessary to consider the first two, which can be encapsulated into a single question: would an order depriving him of British citizenship make him stateless? If it would, the order cannot be made and his appeal must be allowed. If it would not, SIAC would go on to determine the appeal on its merits.

3. It is common ground that the only nationality other than British which he has ever held is Egyptian, so that if, as he contends, he is no longer an Egyptian citizen, the effect of the order would be to make him stateless. It is not his case that he has renounced his Egyptian citizenship. Accordingly, the determinative question on this aspect of his appeal is: has he been deprived by the Egyptian state of his Egyptian nationality?

Law

4. S40(4) of the British Nationality Act 1981 provides:

> "The Secretary of State may not make an order under ss(2) [ie depriving him of British citizenship] if he is satisfied that the order would make a person stateless."

5. In their written submissions, filed before the hearing, Mr Fitzgerald QC and Miss Weston submitted that s40(4) encompassed both *de jure* statelessness and *de facto* statelessness; and that the Appellant was required to do no more than establish a reasonable likelihood that the order would make him stateless. Mr Fitzgerald reserved the right to argue elsewhere that establishing *de facto* statelessness and/or proving no more than a reasonable likelihood of statelessness of either kind would suffice; but in his closing submissions, Mr Fitzgerald accepted that SIAC should decide the issue on the basis that it was necessary for the Appellant to establish on balance of probabilities that he would be made *de jure* stateless by the order. We are satisfied that his conditional concession was right, for reasons which we can state shortly. The United Kingdom has signed and ratified two relevant conventions: the Convention relating to the Status of Stateless Persons done at New York on 28 September 1954, which entered into force on 6 June 1960 and the Convention on the Reduction of Statelessness done at New York on 30 August 1961, which entered into force on 13 December 1975. The 1954 Convention defines statelessness in Article 1.1: "For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any state under the operation of its law." On the materials which have been presented to us, this is universally understood to refer to *de jure* statelessness only. The 1961 Convention does not define statelessness. At a conference of legal experts convened by the UN Secretary General which concluded its proceedings in August 1961, the conference recommended "that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality". As the authoritative survey of the history of international negotiations about statelessness by Hugh Massey, Senior Legal Advisor, UNHCR Geneva, dated April 2010, demonstrates (in section 3), this was no more than an exhortation and not a definitive statement of the meaning of statelessness in the 1961 Convention. His survey also demonstrates that there is no internationally agreed definition of *de facto* statelessness. Against that background, it is hardly likely that Parliament intended to link the prohibition on the making of a deprivation order to an undefined status which has never been the subject of international agreement. The obvious, and, we are satisfied, only proper conclusion is that Parliament intended that the Secretary of State should not make a deprivation order in respect of a person if satisfied that the effect would be that he would therefore be made a person who is not considered as a national by any state under the operation of its law – the definition in Article 1.1 of the 1954 Convention. Such an interpretation has the advantage of aligning domestic law with the United Kingdom's international obligations. As to the burden and standard of proof, we are satisfied that the burden is on the Appellant and that he must prove that he would be made stateless on the balance of probabilities. The prohibition on making a deprivation order if it would make a person stateless is an exception to the general power of the Secretary of State to make the order, if the conditions set out in s40 are satisfied. Conventional statutory construction requires that a person who seeks to establish the existence of an

exception to a general power must prove it. The issue is one of fact. Accordingly, it is susceptible to proof on balance of probabilities. SIAC so held in *Al Jedda v SSHD* 23 May 2008, paragraph 4, a proposition which the appellant accepted in his appeal to the Court of Appeal at (2010) EWCA Civ 212, paragraph 3. In the majority of cases, determination of the issue will depend principally upon an analysis of the nationality laws and public acts of a foreign state or states, facts readily capable of being established on balance of probabilities. In a small number of cases, of which this is one, determination of the issue is not at all straight forward; but that is no reason for lowering the standard of proof. S40(4) requires the Secretary of State to be "satisfied" that the order would make a person stateless, not that there is a reasonable likelihood that it would do so. There is no internationally agreed or generally accepted standard by which the issues should be determined. Neither the language of the relevant conventions nor the general practice of states and international organisations requires the standard to be equated with that which applies in cases concerning the 1951 Convention Relating to the Status of Refugees. (For that reason, the concession made by the Secretary of State in *Darji v SSHD* (2004) EWCA (Civ) 1419 at paragraph 12 is inapplicable in this case). Finally, as our analysis of the material in this case demonstrates, it is possible, even in a difficult and unusual case, to apply the conventional civil standard of proof without injustice.

6. The definition of stateless person in Article 1.1 of the 1954 Convention has as its premise the principle that it is for a state to determine, under its law, who are and who are not its nationals. Articles 7 and 8 of the 1961 Convention contain conditional prohibitions on depriving a person of nationality when to do so would make him stateless and Article 9 prohibits deprivation of nationality on racial, ethnic, religious or political grounds. Subject to that, the states parties to the 1961 Convention are free to frame their nationality laws and to make executive decisions under them as they like. States which are not parties to the 1961 Convention are not subject even to those limited restrictions. The Secretary of State and SIAC is not concerned with the reasonableness of the laws of a foreign state or of decisions made under them to deprive a person of his nationality, but with their effect. If the effect is to deprive a person of nationality and that person has no nationality other than British, he may not be deprived of his British citizenship. In the ordinary case, as we have observed, it will be apparent from the laws and public acts of the foreign state whether a national of that state has been deprived of nationality; but there are circumstances in which they will not provide a conclusive or even satisfactory answer. A state's laws may confer very wide discretionary powers on the executive. They may give legal effect to executive decisions which are not made public. In such circumstances, the Secretary of State, if she has the relevant materials, and SIAC, in any event, must determine whether the foreign state has, under operation of its law, effectively deprived the person of nationality. That is the issue which we must determine in this case.

Facts

1979 to 1988

7. In his witness statement of 28 July 2010, the Appellant sets out the difficulties which he experienced in attempting to obtain a passport or travel document from the Egyptian Consulate in London between 1981 and 1988. The source of this difficulty is readily explained. He was of an age at which he was required to perform military service, but he had not done so. Hence, the issue to him of a travel document valid only for 6 months and the later refusal to issue a full passport. He knew that this was the reason, because he explained that it was so in correspondence with the Home Office – on 3 June 1982, 30 September 1984 and 10 October 1984. This does not begin to demonstrate that the Egyptian state had deprived him of nationality. Although it seems that he did not seek the permission of the Egyptian authorities to acquire British citizenship before doing so, a decree was issued by the Ministry of Interior on 8 June 1988 permitting him to acquire British nationality while retaining Egyptian nationality. He says that he has no knowledge of how the decree came to be made and suggests that his name may have been inserted at the head of the lists of names contained in it after the event. He claims that he did not apply for permission at any time. He does, however, accept that in 1988, with the help of a friend with contacts in the Egyptian Embassy, he did make an application to the Consulate for a passport. He does not now remember what forms he completed. We are satisfied that, on balance of probabilities he must have completed a form which contained a request to permit him to acquire British nationality, while retaining Egyptian nationality. There would have been advantages for him in doing so: ease of travel to Egypt, as he contends and inheritance rights under Egyptian law, as the expert called for him, Sabah Al-Mukhtar, stated. In 1988, he was of no interest whatever to the Egyptian authorities save, perhaps, as someone who had not performed his military service. It is inconceivable that he would have been named in the decree unless he had applied for permission. We are satisfied that he did so. The decree came into the hands of the British Embassy by 2003, at the latest. General Afify, the expert called by the Secretary of State, confirms that it is genuine. We are satisfied that it is.

8. Law number 26 for the year 1975 concerning the Egyptian nationality contains the following provisions relevant to this case:

> "Article 10
>
> An Egyptian may not acquire a foreign nationality except after obtaining a permission to be issued by means of a decree of the Minister of Interior to that effect. Otherwise, he shall continue to be regarded as Egyptian, in all cases, unless the Cabinet of Ministers decides to strip him of the nationality according to the provisions of Article (16) of the present law.
>
> An Egyptian who acquires a foreign nationality shall be deprived of the Egyptian nationality, if he has been permitted to obtain the foreign nationality.
>
> However, a permission to acquire a foreign nationality may also comprise the permission for him, his wife and minor children, to retain the Egyptian nationality. If within a period

not exceeding one year from the date he acquires the foreign nationality, he declares his wish to benefit thereby, they shall retain their Egyptian nationality despite their obtaining of the foreign nationality.

…

Article 16

The Cabinet/Council of Ministers may issue a substantiated decree stripping the Egyptian nationality from anyone enjoying it, in any of the following cases:

If he acquires a foreign nationality, in a manner other than what is set forth in Article (10).

…

(5) If his normal stay is abroad, and he joins a foreign body whose purposes include working for the collapse of the social or economic order of the state, by the use of force or any other illegal means.

…

Article 22

All decrees concerning obtaining, withdrawing, stripping, restoring or restituting the Egyptian nationality, shall take effect from the date of their issuance. They shall also be published in the official journal within 30 days from the date of their issuance. This shall not affect third parties of good will.

All rulings issued in nationality matters shall be considered as a proof for all, and their pronouncement shall be published in the official journal."

9. Mr Al-Mukhtar contended, in his written report and in his oral evidence, that the effect of the first sentence of Article 10 is that an Egyptian national who acquires foreign nationality without permission automatically loses his Egyptian nationality. General Afify disagrees. He contends that the words of the first and second sentences of Article 10 mean what they say: an Egyptian national may not acquire foreign nationality without permission. If he does so, he will continue to be regarded as Egyptian in all cases, unless subsequently stripped of nationality under Article 16. On this issue, we have no hesitation in preferring the opinion of General Afify, not least because it accords with the plain language of the article. He is also, as we explain below, better placed than anyone to give an authoritative explanation of Egyptian nationality law. He also explained that, even though the application for permission may have been made more than one year after the Appellant acquired British citizenship, the decree was nonetheless permissible and effective to allow him to retain

Egyptian nationality. This was not an issue on which Mr Al-Mukhtar expressed an opinion. Again, we accept General Afify's opinion as an authoritative statement of what Egyptian law permits. We are satisfied that the 1988 decree had the effect that the Appellant retained his Egyptian nationality, even though he had also acquired British nationality.

1988 to 2003

10. During this period, the Appellant gained notoriety in both the United Kingdom and Egypt for his political views and alleged actions. He also lost both of his hands and one eye in an explosion in Afghanistan. The Secretary of State determined to take steps to deprive him of British citizenship as soon as possible after the amendment of s40 and did so. Apart from an article which appeared in *Al-Ahram* on 30 May 2004, to which we refer below, there is no evidence that the Egyptian authorities took any action in relation to his nationality before the Secretary of State gave notice of his intention to deprive the Appellant of British citizenship on 4 April 2003. There was contact between the British Embassy and the Egyptian authorities during 2003 with which we deal in the closed judgment. Our firm conclusion is that, as at the date on which the Secretary of State gave notice, the Appellant remained an Egyptian national and would not, if the order had then been made, have been made stateless by it.

2004

11. The Appellant's arrest on 27 May 2004 was widely publicised on the following day. On 30 May 2004, the following article appeared in *Al-Ahram*:

> "Abu Hamza Al-Masri is not an Egyptian national
>
> Official Egyptian sources said that Mustafa Kamil, known as Abu Hamza Al-Masri-, who is being detained at Belmarsh detention centre in South London, does not carry official Egyptian passport. He was stripped of his nationality after he was granted a British nationality and his failure to inform the concerned authorities in Egypt.
>
> The source added that stripping Abu Hamza of his nationality has made it difficult for the British Government to easily take the necessary measure to remove him from Britain.
>
> Both the United States of America and Yemen are demanding his extradition to stand trial in their countries. Britain is demanding assurances from the US that he will not face executions if he were to be found guilty once he was tried there."

At some time in 2004, probably contemporaneously with the *Al-Ahram* article, the following statement appeared on the Egyptian state information service website under the heading "Cairo Press Review – Headlines".

"Abu Hamza Al-Masri doesn't carry Egyptian nationality".

12. We have received a good deal of evidence about the status of the *Al-Ahram* article – from Mr Al-Mukhtar, in a written statement by Dr Walter Tice Armbrust, a Fellow of St Anthony's College Oxford and a lecturer in Oriental Studies at that university and from General Afify. There is little difference between them. *Al-Ahram* is not the Official Journal or Gazette. Publication in it is not sufficient to satisfy Article 22 of the Nationality Law. But it is not just an ordinary commercial newspaper. The majority shareholding is held by the state. It is, as Dr Armbrust observes regularly used by the government to announce its position on issues which it considers to be important. We accept Mr Al-Mukhtar's analogy with *Izvestia* in the Soviet Union. It is very unlikely that an article such as the one cited above would appear without express government authorisation. Again, General Afify's views demand the greatest respect. He set them out in paragraph 2.6 of his report of 12 May 2010:

> "…what was published in the *Al-Ahram* newspaper, which is the largest Egyptian newspaper, that official sources confirmed that (the Appellant) was stripped of his Egyptian nationality and that it was withdrawn from him, indicates to (the Appellant) and his lawyer that there is a resolution issued by the Council of Ministers to withdraw his nationality as it cannot be imagined that the *Al-Ahram* newspaper would invent this news and attribute it to what it called "official sources" as there is no smoke without fire."

His conclusion was that this amounted to indirect proof that Egyptian nationality had been withdrawn from the Appellant, despite the terms of the 1988 decree. The headline on the Egyptian state information service website adds little if anything. It was probably no more than repetition, in a single sentence, of the news item which had already appeared in *Al-Ahram*.

13. At a minimum, the *Al-Ahram* article illuminated the view which must by then have been formed by the Egyptian Government: that it did not wish to take the Appellant back. Whether or not the statement is wholly true is another matter. It was deniable and drafted in terms which could be attributed to a journalist. The second sentence ("he was stripped of his nationality after he was granted a British nationality and his failure to inform the concerned authorities in Egypt") implies that a decree was made soon after he had acquired British nationality. The 1988 decree belies the implication. As a matter of language, it is consistent with a decree having been issued in the recent past; but, for reasons explained below, that may also have been incorrect. Mr Strachan submits that the article may well be the result of a mistake. We doubt it.

14. As a Note Verbale from the British Embassy to the Ministry of Foreign Affairs dated 18 October 2004 reports, Egyptian authorities had recently offered to provide written confirmation that the Appellant retained his Egyptian nationality. The Note Verbale was an attempt to obtain that confirmation. It produced a disappointing, but illuminating, answer, after eight weeks delay, on 15 December 2004:

> "I have the honour to inform you that the relevant Egyptian authorities have advised that no conclusion was reached which could be provided to you on this matter".

Both Mr Fitzgerald and Mr Strachan seek to draw a logical inference from the wording of this note. Mr Fitzgerald submits that it is most consistent with a decree having been issued stripping the Appellant of his nationality and that the explanation for the fact that no such decree was produced was that the Egyptian Government did not wish to impair the ability of the British Government to take any step, including the revocation of the Appellant's citizenship, which it thought necessary in its own interests. Mr Strachan submits that the only logical explanation for the wording is that the Egyptian Government had not issued a decree stripping the Appellant of his nationality: otherwise, they would surely have provided it or referred to it in the Note Verbale. None of these conclusions, nor any other which we have considered, provides a satisfactory, let alone logical, answer to the conundrum. The only source of authoritative assistance which we have available to us is the opinion of General Afify. His opinion is of greater value than any other, because of the positions which he has held in the Egyptian Government and because of his current relationship with the government. From 1967 until 2005 he was in full time government service in a series of increasingly senior posts. From 1997 to 2002 he was Director General of the Nationality, Immigration and Passport Department. From 2002 to 2005, he was a Deputy Minister of Interior, responsible for port security and nationality, immigration and passports. He is now in private practice, as a well-qualified lawyer (in 2003 and 2005, he supplemented his Bachelors Degree in Law and Police Studies with a Masters Degree and PhD in Law). In the course of his evidence, more fully described below, he said the following (imperfectly translated – but the gist is clear):

> "I would explain to all present that my duty is to cooperate with the issue of Hamza and with my colleagues in the Ministry of Interior to place the facts in the presence of the Honourable Judge with honesty and without being on either side no matter what the result would be".

This indicated to us that he had, recently, discussed the case with former colleagues in the Ministry of Interior, as well as formed his own view about it. We draw the conclusion that he has a very well-informed understanding of how the Egyptian Government works in immigration and nationality matters and has open to him channels of communication to serving officials to help inform his opinion.

15. When the hearing started, General Afify's stated position was that the Appellant had retained his Egyptian nationality. He said so in a supplementary report dated 18 October 2010 and gave an unequivocal opinion about the steps which had led him to that opinion. In so doing, he went beyond the careful and provisional views which he had expressed in his report of 12 May 2010. His oral evidence took a remarkable turn. He requested not to be examined in chief in the conventional way, but to make a lengthy statement, which he did. It began with a history of the undisputed facts and the bald statement that the 1988 decree established that the Appellant remained an Egyptian national,

notwithstanding his acquisition of British citizenship. He then dealt with the hypothesis that a decree withdrawing citizenship had been made, but not published. He said that, in order for it to be lawful, it had to be published in the Official Gazette. He then explained what the Appellant would have to do to challenge the apparent decision. First he would have to submit an official power of attorney to an Egyptian solicitor and pay his fees and court fees. His solicitor would then make an application to the Ministry of Interior. If, after three months, he got no response, his solicitor must submit an application to the court to raise the issue. This would take a long time, because the Ministry of Interior would request adjournment and adjournment once more. At the end, judgment would be issued by the court to oblige the Ministry of Interior to specify the situation of the Appellant. The Ministry of Interior would not do so. The Appellant would then have to appeal to a criminal court to seek an order for the imprisonment of the Minister and his suspension from office. At the end of this process, the Egyptian court would issue a judgment that the Minister must be imprisoned and suspended from office. Of course, this judgment would not then be enforced: not every Egyptian lawyer would be prepared to issue an application to order the Minister of Interior to be imprisoned and dismissed. "We cannot imagine the time and cost and effort required". At the end, the Appellant would have endless documents and records of legal judgments, which he would have to get translated, before taking them to the British Embassy. The meaning behind General Afify's description of the legal process which would have to be undertaken to challenge an unpublished decree is plain: it would be costly, endless and futile. His statement about the need for honesty, already cited, followed soon after and set the scene for the denouement

16. General Afify said that he had received the Note Verbale of 15 December 2004 the day before he gave his evidence, after he had signed his second report. He said that the letter "has no colour or taste or smell" but he could say something different from it. The formal legal position was that the 1988 decree established that the Appellant retained joint nationality. If, therefore, the decree was still valid, the Ministry of Foreign Affairs would have been able to say that it remained valid (we have summarised a somewhat longer answer). But the legal position had changed. Egyptian nationality had been removed from the Appellant. The letter from the Ministry of Foreign Affairs – issued six years ago – means one thing: that Egyptian nationality has been stripped from the Appellant.

17. When asked to clarify his evidence by Mr Strachan, when he began his examination in chief, General Afify stuck firmly to his opinion. He accepted that the decree by which nationality had been withdrawn should have been published in the Official Gazette and that he had no information that it had been – but, as he pointed out, he did not have the time to spend going through each issue of the Official Gazette to confirm that that was so. At one stage, he said that non-publication meant that the decision was "illegal" on the sensible ground that the person affected could not know about it if it was not published. He had 60 days – from the date upon which he became aware of it – in which to challenge it. Mr Strachan asked him what the effect of non-publication was. His firm reply, repeated to Mr Fitzgerald was that the decision took effect

from the date upon which the decree was issued, even though it was not published then or later in the Official Gazette. This accords with a natural reading of Article 22 and we accept General Afify's opinion on this point.

18. Presented with this open goal, Mr Fitzgerald had no difficulty in cross-examination in establishing that General Afify's opinion was that the 1988 decree was no longer valid, that he had subsequently been stripped of his nationality on the grounds set out in Article 16(1) of the Nationality Law by a subsequent effective decree and that, as a matter of Egyptian law, the Appellant was no longer an Egyptian citizen.

19. If, therefore, General Afify's evidence is right, the Appellant has succeeded in establishing on balance of probabilities that an order depriving him of British citizenship would, by reason of the loss of his Egyptian nationality, make him *de jure* stateless.

20. Mr Strachan did not suggest that the evidence of General Afify was given in bad faith or seek to argue the possibility, canvassed by us, that the denouement provided an elegant solution to a dilemma faced by the Egyptian Government: how to avoid having to take the Appellant back at some time in future, without making and publishing a decision which might cause domestic political problems for it. Nevertheless, he submitted that General Afify's opinion was mistaken. To do so, he argued that his opinion was based solely or primarily upon the wording of the Note Verbale of 15 December 2004. Up until the time at which he took that into consideration, his opinion was firm: the Appellant was an Egyptian citizen. We accept that it is just about possible to mount a respectable argument to that effect, but it does not properly reflect the reality. General Afify was giving an opinion based on his knowledge of Egyptian law and, more importantly, of how the Egyptian Government, at senior levels, works. He clearly did not find it implausible or even unusual that the government would issue a decree without publishing it. On that premise, his opinion is unlikely to be mistaken. On any view, the actions of the Egyptian Government in this case are difficult to explain by the standards of public administration and law in the United Kingdom or in other European civil law systems. There is no perfectly logical explanation for its actions, whether it did, or did not, strip the Appellant of Egyptian nationality. In the end, our only sure guide to the answer is the clear view which we have formed that General Afify would not have expressed himself in the terms that he did in his oral evidence unless he had very good grounds for believing and did believe that a decree had been issued, probably unpublished, which effectively stripped the Appellant of his nationality.

21. We cannot say when that decree was published. It may be that the actions and enquiries of the British Government in and after 2003 prompted the issuing of a decree before 30 May 2004. It is possible, but less likely, that a decree was issued immediately after news of the arrest of the Appellant on 27 May 2004 became known. A possible explanation – just in our view, the most likely – is that the decision to make the decree was taken then, but not implemented until later, possibly after the receipt of the Note Verbale from the British Embassy in October 2004. Any conclusion about the approximate date of issue would, however, be speculative. All that we can be satisfied about, on balance of

probabilities, is that a decree has been issued and that its effect is to deprive the Appellant of Egyptian nationality. It is immaterial that the decree was almost certainly issued after the then Secretary of State gave notice of his intention to deprive the Appellant of his British citizenship on 4 April 2003. Because the Secretary of State cannot make a deprivation order until his appeal has been determined, SIAC must take into account all relevant facts and circumstances, whether they occurred before or after notice was given. (Since the repeal of s40(A)(6) by Schedule 2 to the Asylum and Immigration Act 2004 came into force on 4 April 2005, an appeal does not have a suspensive effect and, if a deprivation order is made, the relevant date by reference to which the issue is to be determined is the date of the Secretary of State's order).

22. For the reasons given, we are satisfied on balance of probabilities that if a deprivation order were to be made, the Appellant would be made stateless. The conclusions which we have reached in the closed judgment supplement, but do not contradict, that conclusion. Accordingly, this appeal is allowed.