Appeal No: **SC/143/2017**
Hearing Dates: **1-2 February 2022**
Date of Judgment: **16th February 2022**

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

THE HONOURABLE MRS JUSTICE STEYN DBE
UPPER TRIBUNAL JUDGE LANE
MR NEIL JACOBSEN OBE

K3

APPELLANT

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellant: Hugh Southey QC and Alasdair Mackenzie
(instructed by Duncan Lewis Solicitors)

For the Respondent: Neil Sheldon QC and Rosemary Davidson
(instructed by **the Government Legal Department**)

JUDGMENT

Introduction

1. On 11 September 2017 the Secretary of State for the Home Department made an order depriving the Appellant, K3, of his British nationality pursuant to section 40(2) of the British Nationality Act 1981 ("the 1981 Act"). K3 has appealed pursuant to s.2B of the Special Immigration Appeals Commission Act 1997. We held a hearing on 1 and 2 February 2022 to determine, as a preliminary issue, whether the Appellant was a citizen of Bangladesh on the date of the Secretary of State's decision.

2. The Appellant contends that he was not a Bangladeshi citizen when the Secretary of State made her decision. Consequently, he was rendered stateless by that decision, there being no other nationality to which he might be entitled. If that is so, it would follow that the Secretary of State was not entitled to deprive him of British citizenship (see s.40(4) of the 1981 Act). The Secretary of State, on the other hand, contends that the Appellant was a Bangladeshi citizen when she decided to deprive him of his British nationality, and so her decision did not render him stateless.

3. The Commission heard expert evidence by video-link from Australia from Professor Ridwanul Hoque PhD (called by K3) and Mr Kazi Mohammed Tanjibul Alam (called by the Secretary of State). The Commission also received uncontested evidence from Sophie Jackson, an official working within the Home Office (called by the Secretary of State).

4. The hearing was held entirely in OPEN. The evidence and submissions were all provided in OPEN: the Commission did not receive any CLOSED material. We

have set out our decision and reasons in this OPEN judgment. There is no CLOSED judgment.

The dispute in outline

5. The statelessness issue has been determined in a series of cases concerning individuals alleged by the Secretary of State to have had dual British and Bangladeshi citizenship at the date on which she made an order depriving them of their British nationality. Those cases are:

   i) *G3 v Secretary of State for the Home Department* (SC/140/2017) ("*G3*"), a decision of the Commission chaired by Lane J.

   ii) *E3 and N3 v Secretary of State for the Home Department* (SC/138/2017 and SC/146/2017), a decision of the Commission chaired by Jay J ("*E3 & N3 (SIAC)*". In *Secretary of State for the Home Department v E3 and N3* [2019] EWCA Civ 2020 ("*E3 & N3 (CA)*"), the Court of Appeal (Flaux LJ, with whom Singh and Haddon-Cave LJJ agreed) allowed the Secretary of State's appeal and remitted the case to the Commission. Following *C3, C4 & C7* (see subparagraph (iv) below) the Secretary of State conceded the appeal in *E3 & N3*.

   iii) *Begum v Secretary of State for the Home Department* (SC/163/2019) [2020] HRLR 7, a decision of the Commission chaired by Elisabeth Laing J. This case was the subject of appeal (and a claim for judicial review), which reached the Supreme Court (*Begum* [2021] AC 765), but not in relation to the Commission's findings regarding the law of Bangladesh.

iv) *C3, C4 and C7 v Secretary of State for the Home Department (SC/167/2020, SC/168/2020 & SC/171/2020),* a decision of the Commission chaired by Chamberlain J ("*C3, C4 & C7*").

6. In each of those cases, save *Begum*, the effect of Bangladeshi law was that the appellants lost their Bangladeshi citizenship at the age of 21; and Bangladeshi law did not have the effect of restoring their Bangladeshi citizenship prior to the deprivation decisions in each of their cases. The position was different in *Begum* because the appellant had not reached the age of 21 when the Secretary of State's deprivation order was made, and so she retained her Bangladeshi citizenship pursuant to s.14(1A) of the Citizenship Act 1951.

7. However, in each of those cases the appellant was British by birth, having been born in the United Kingdom. Whereas K3 was born in Bangladesh and later became a British citizen. This is the first case in which the Commission has determined the statelessness issue in relation to a Bangladeshi-born appellant who obtained British citizenship by naturalisation or registration.

8. The dispute between the parties is narrow. The answer depends on the construction, as a matter of Bangladeshi law, of SRO No.69/2008 ("the 2008 Instruction").

9. Both parties accept the analysis of Bangladeshi law given by the Commission in *C3, C4 & C7.* Accordingly, both parties accept that the 2008 Instruction has the effect of restoring Bangladeshi nationality to some, but not all, British citizens who lost their (dual) Bangladeshi citizenship at the age of 21. The question is where the line is drawn between the class to whom Bangladeshi citizenship is restored by the 2008 Instruction (which we shall refer to as "Class

A") and the class that does not receive that benefit (which we shall refer to as "Class B").

10. The Secretary of State's case is that all those who acquired British citizenship by naturalisation or registration fall within Class A and only those who were born British fall within Class B. Whereas the Appellant contends that Class A is confined to those who not only acquired British citizenship by naturalisation or registration but did so (a) having taken the positive step of applying on their own behalf and (b) took an oath as part of the process of acquiring British citizenship. Class B consists not only of those who were born British, but also those who subsequently acquired British citizenship without meeting those two additional criteria.

11. As the Secretary of State has not sought to persuade us to depart from the conclusions reached by the Commission in *C3, C4 & C7* regarding the law of Bangladesh, no question of abuse of process with reference to the *Devaseelan* principles has arisen: see *Devaseelan* [2002] UKIAT 00702*, [2003] Imm AR 1 and *C3, C4 & C7* at [67] to [71].

The law

12. There is no dispute as to the applicable legal provisions and principles.

Principles applicable on appeal

13. Section 40 of the 1981 Act provides, so far as relevant for present purposes:

> "Deprivation of citizenship
>
> …

> (2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.
>
> …
>
> (4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless."

14. Section 40(4) of the 1981 Act prohibits the making of a deprivation order under s.40(2) where the Secretary of State is satisfied that the order would make a person stateless. There is no requirement for the Secretary of State to be satisfied that the order would *not* make the person stateless: *C3, C4 & C7*, [16]. The burden is on the Secretary of State to show that this precondition was met. Although this is a "*comparatively easy burden for the Secretary of State to discharge*", it "*provides a protection for the individual against the arbitrary exercise of the power*": *E3 & N3 (CA)*, [59].

15. If that burden is discharged, the burden is transferred to the Appellant to establish that nonetheless the deprivation order will render him stateless: *E3 & N3 (CA)*, [58]. We note that the Appellant has reserved the right to seek to challenge the placement of the burden of proof on him, at the second stage, in any future appeal. In the event, however, this is not one of those rare cases which has turned on the burden of proof: *C3, C4 & C7*, [19].

16. The civil standard of proof, that is, the balance of probabilities, applies: *E3 & N3 (CA)*, [56], referring to *Abu Hamza v Secretary of State for the Home Department* (SC/23/2003).

17. The question is whether the Appellant was rendered stateless as at the date of the order depriving him of his British nationality: *C3, C4 & C7,* [18], citing *Al-*

Jedda v Secretary of State for the Home Department [2014] AC 253, [32] (Lord Wilson) and *Pham v Secretary of State for the Home Department* [2015] 1 WLR 1591, [101] (Lord Sumption). It is for the Commission to decide that question for itself: *C3, C4 & C7,* [17], citing *B2 v Secretary of State for the Home Department* [2013] EWCA Civ 616, [96] (Jackson LJ) and *Al-Jedda*, [30].

18. Whether an individual is stateless must be determined by reference to Article 1 of the UN Convention Relating to the Status of Stateless Persons. As the Commission observed in *C3, C4 & C7* at [20]:

> "According to Article 1 of that Convention, a person is stateless if he is "not considered as a national by any state under the operation of its law". There is a distinction between those who are stateless *de jure* (i.e. have no nationality under the laws of any state) and those who are stateless *de facto* (i.e. have such nationality but are denied the protection that should go with it). The definition in Article 1 of the Convention corresponds "broadly" to the first of these meanings, though the words of the Convention are determinative: *Pham*, [21]."

Approach to determining foreign law

19. Foreign law is to be treated as a question of fact which must be proved. This generally requires expert evidence, although such evidence may not be necessary where the law in question is in English and is that of another English-speaking country whose law forms part of the common law: *KV (Sri Lanka) v Secretary of State for the Home Department* [2018] 4 WLR 166, [31] (Leggatt LJ).

20. The correct approach to the determination of foreign law in a case where expert evidence is relied upon was summarised in *C3, C4 & C7* at [22] (citing *G3* and *Al-Jedda v Secretary of State for the Home Department* (SC/66/2008)):

> "(a) The function of experts is to assist the Commission in deciding what the courts of the foreign State would decide if the issue arose for decision before them.
>
> (b) The Commission is not permitted to conduct its own researches into the foreign law.
>
> (c) But if different views are expressed on the issue, the Commission must look at the sources referred to by the experts in order to decide between their conflicting testimony.
>
> (d) The Commission is not entitled to reject agreed expert evidence unless:
>
> > "it is "obviously false", "obscure", "extravagant", or "patently absurd", or if "[the relevant expert] never applied his mind to the real point of law" or if "the matters stated by [the expert] did not support his conclusion according to any stated or implied process of reasoning"; or if the relevant foreign court would not employ the reasoning of the expert even if it agreed with the conclusion. In such cases the court may reject the evidence and examine the foreign source so as to form its own conclusions as to their effect. Or, in other words, a court is not inhibited from "using its own intelligence as on any other question of evidence"": Dicey, Morris & Collins, *The Conflict of Laws*, 14th ed., para. 9-015.
>
> (e) To the extent that the experts fail to say what rules of construction of the foreign state will apply to the legislative sources under consideration, the Commission must construe those sources in accordance with the English rules of statutory construction, since English law presumes that, in the absence of evidence to the contrary, the foreign rules of statutory construction are the same as the English rules: *Al-Jedda* [Commission decision SC/66/2008], [14], citing Dicey, Morris & Collins (op. cit.), para. 9-018."

Registration as a British citizen

21. Section 3(1) of the 1981 Act provides as follows:

> "If while a person is a minor an application is made for his registration as a British citizen, the Secretary of State may, if he thinks fit, cause him to be registered as such a citizen".

22. There has been no amendment to this subsection since enactment. It was in force in the terms quoted above on 3 February 1992 when the Appellant was registered.

23. The 1981 Act is silent as to who may make an application on behalf of a minor but regulation 5 of the British Nationality (General) Regulations 1982 provided (as in force in 1992) that:

> "An application may be made on behalf of someone not of full age or capacity by his father or mother or any person who has assumed responsibility for his welfare."

24. The guidance in force in 1992, "Chapter 9, Registration of Minors at Discretion under Section 3(1)", stated at §9.3

> "**<u>Application forms and who may apply</u>**
>
> 9.3.1 Applications will normally be made either:
>
> a. on Form MN1; <u>or</u>
>
> b. by being included in a parent's or someone else's application for registration or naturalisation.
>
> 9.3.2 Anyone who has assumed responsibility for a minor may apply for him to be registered under s.3(1), but in practice we normally expect that an application will be made by:
>
> a. one or both parents; <u>or</u>
>
> b. a guardian; <u>or</u>
>
> c. a custodian; <u>or</u>
>
> d. a local authority or other body which has care and custody of the child.
>
> 9.3.3 In some cases it may be appropriate for an application to be made by:
>
> a. someone else who has the responsibility for the minor (eg another relation);
>
> b. the minor himself."

25. The current guidance is entitled "Registration as British citizen: children" dated 9 August 2021 ("the 2021 Registration Guidance") and states (at p.14):

> "As the child has an entitlement to be registered as a British citizen there is no legal requirement for the parent to consent to the application. However, you must note any information provided about consent." (p.14)
>
> "**Applications made by children themselves**
>
> There is nothing in law to prevent children making their own applications. However, in practice, you should normally refuse such an application if you do not have the consent of the parents or the person with legal responsibility for the child. However, if children are 17 or over and have good reason for making the application themselves, you can consider it in the normal way. This may be appropriate, for example, where children have no contact with their natural parents and have been in the care of the local authority but the care order has now been discharged.
>
> If the child is married or in a civil partnership, and the relationship is recognised as valid in UK law, less weight should be attached to the parental views than would otherwise be the case.
>
> **The child's views**
>
> If the application is made on Form MN1, the child may well have signed consent to the application but this is not normally essential. If it becomes apparent during the consideration of the application that the child does not wish to become a British citizen, you should consider whether it would be right to refuse the application. It is a matter of judgement whether a child is of sufficient intelligence and understanding to make an informed decision on this. The older the child is, the more appropriate a refusal is likely to be." (pp.37-38)

Oath of allegiance

26. In 1992, section 42 of the 1981 Act provided (so far as relevant):

> "(1) Subject to subsection (2)—
>
> (a) a person shall not be registered under any provision of this Act as a citizen of any description or as a British subject;

> (b) a certificate of naturalisation shall not be granted to a person under any provision of this Act,
>
> unless—
>
> (i) …
>
> (ii) the person concerned has within the prescribed time taken an oath of allegiance in the form indicated in Schedule 5.
>
> (2) So much of subsection (1) as requires the taking of an oath of allegiance shall not apply to a person who—
>
> (a) is not of full age;…"

27. A person is (and was in 1992) of "full age" if he has attained the age of 18 years: s.50(11) of the 1981 Act.

28. The oath of allegiance in Schedule 5 to the 1981 Act (now and when the Appellant's parents acquired British citizenship), requires the person on becoming a British citizen to swear (or affirm: see the Oaths Act 1978) to

> "be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second Her Heirs and Successors according to law."

It does not (and did not in 1986 or 1992) require the individual to renounce their allegiance to any other state.

29. As originally enacted, the requirement for adults to take an oath (or affirmation) was absolute. On 1 January 2004, section 42 was amended by the Nationality Immigration and Asylum Act 2002 ("the 2002 Act") to add subsection (6) which provides that the Secretary of State may waive or modify any of the requirements under subsections (1)-(5) (including the oath requirement) where "*the Secretary of State thinks it appropriate because of the special circumstances of a case*". One example of where this may be appropriate is given in the current guidance applicable to naturalisation applications –

"Nationality policy: Naturalisation as a British citizen by discretion" dated 10 November 2021 ("the 2021 Naturalisation Guidance") which states (at p. 12) that the requirement to swear an oath may be waived where an adult who is not of full capacity is naturalised.

30. Citizenship ceremonies were introduced by the 2002 Act. Ms Jackson has explained that prior to their introduction, adults who were required swear an oath "*were sent the relevant forms in the post to take to a public notary to swear*". With respect to children, the 2021 Registration Guidance states (at p.11):

> "Unlike adults, when children successfully obtain citizenship there is no legal requirement for them to attend a ceremony and take the oath and pledge. However, if they are part of a successful family application they will receive an invite along with their parents to attend the ceremony and receive their certificate of registration, and if they wish, take the oath and pledge.
>
> An oath of allegiance and pledge may have to be taken at the citizenship ceremony if either of the following applies:
>
> - the applicant applies under section 1(4) as an adult
> - the applicant applies under sections 1(3), 1(3A) or 1(4) as a child and becomes an adult by the time the case is decided."

The facts

31. The basic facts are not in dispute. The Appellant was born in Habiganj, Bangladesh on 14 August 1982 to a Bangladeshi mother and a Bangladeshi father. On 6 March 1986, the Secretary of State registered the Appellant's father as a British citizen pursuant to s.7(1) of the 1981 Act.

32. In 1987, the Appellant emigrated from Bangladesh to the UK with his mother. On 3 February 1992, the Appellant's mother naturalised as a British citizen pursuant to s.6(1) of the 1981 Act. On the same day, when the Appellant was nine years old, he was registered as a British citizen (along with his two siblings) pursuant to s.3(1) of the 1981 Act.

33. Ms Jackson has explained that where a child was registered at the same time as a parent was registered or naturalised, it would be usual for all the applications to be included on one form, and that it is likely to have been cheaper and/or more convenient for the applications by the Appellant's mother and the three children to be made together. We find that a single application was made in this case, resulting in the conferral of British citizenship on the Appellant, his mother and his two siblings.

34. The nationality at birth of the Appellant, both his parents and his two siblings is recorded on the Home Office file as Bangladeshi.

35. The Appellant's parents would have been required, when they became British citizens, to take an oath of allegiance to Her Majesty Queen Elizabeth II, her heirs and successors according to law. The oath did not include any renunciation of allegiance to Bangladesh.

36. As the Appellant was a child, he was not required by UK law to take an oath of allegiance on acquiring British citizenship. Although it is possible for a child to take the oath voluntarily, Ms Jackson acknowledges that it is unlikely at that time (prior to the introduction of citizenship ceremonies) that a child would have done so. We find that the Appellant did not do so.

37. The Appellant reached the age of 21 on 14 August 2003. The Appellant lived in the UK until 2015. On 18 May 2015, he travelled from the UK to Bangladesh. On 17 April 2015, he had been granted a "No Visa Required" stamp in his UK passport by the Bangladeshi High Commission, which he used to enter Bangladesh.

38. On 11 September 2017, the Secretary of State made an order depriving the Appellant of his British citizenship on grounds of conduciveness to the public good, the Secretary of State being satisfied that he would not be rendered stateless by such action.

The experts

39. We heard evidence from two Bangladeshi law experts. Professor Hoque is a professor of law at the University of Dhaka, Bangladesh. He is currently the Legal Officer of Charles Darwin University, Australia. Professor Hoque has a highly impressive CV. He describes his special field of teaching and research as comparative constitutional law. His areas of expertise include Bangladeshi citizenship and immigration law. His work has included, in 2012, drafting two Bills on passports and immigration on behalf of the Ministry of Home Affairs of the Government of Bangladesh. Professor Hoque qualified as an advocate in Bangladesh and practised law as a member of the Chittagong Bar for about a year prior to joining academia. Professor Hoque was called by the appellants in *G3, E3 & N3,* and *C3, C4 & C7*, and by the Secretary of State in *Begum*. Subject to some reservations on certain matters (notably in *E3 & N3 (SIAC)*, [52]), Professor Hoque's evidence has been accepted by the Commission, and

preferred to the evidence given by a number of other experts, in each of these cases.

40. Mr Alam is a Senior Advocate at the Bar of Bangladesh. He has practised as an advocate in Bangladesh for about 23 years. Having been called to the Bar of England of Wales in 1997, as a non-practising barrister, he was enrolled as an Advocate by the Bangladesh Bar Council on 6 December 1998. Having been an Advocate of the High Court Division of the Supreme Court of Bangladesh for more than six years, on 15 August 2005 he was enrolled as an Advocate of the Appellate Division of the Supreme Court of Bangladesh (the highest court). He informed us during his oral evidence that he has recently been appointed a Senior Advocate. Mr Alam describes his main area of practice as public law with a special focus on judicial review and constitutional matters under Article 102 of the Constitution of the People's Republic of Bangladesh. Although the description of his specialist areas given in his CV is essentially focused on commercial and corporate matters, we accept that Mr Alam has extensive experience arguing issues of legislative and constitutional interpretation before both Divisions of the Supreme Court of Bangladesh, and he has been instructed by both the Government of Bangladesh and individuals to advise on issues concerning Bangladeshi citizenship. Mr Alam has not given evidence to the Commission in any of the earlier cases to which we have referred.

41. We address the experts' evidence and the views that we have reached in detail below. In broad terms, much of Professor Hoque's analysis is persuasive, and we acknowledge his evident expertise in the area. Nevertheless, on the narrow issue of interpretation between the parties on this appeal, we are of the view that

Mr Alam's evidence was more securely based in an assessment of the interpretative principles the Bangladeshi courts would apply and he was more attuned to the approach those courts would take (e.g. to the admission and consideration of extrinsic materials).

42. We have not found, as the Secretary of State suggested, that Professor Hoque's evidence was unbalanced or derived from a process of reasoning backwards from a desired conclusion. On the contrary, we accept that he has taken a non-partisan approach and given his honest opinion, which is worthy of respect. But we are of the view that his evidence on the critical interpretative issue was rather detached from the approach that would be taken by the Bangladeshi courts applying settled principles of construction.

43. Mr Hugh Southey QC, leading Counsel for the Appellant, submits we should reject Mr Alam's evidence for the same reasons as the Commission in *C3, C4 & C7* gave at [97(h)] for according less weight to the opinion of the Secretary of State's expert Mr Hossain:

> "Mr Hossain's understanding of the effect of the 2008 Instruction was necessarily affected by his understanding of the proviso to article 2B(1) of the 1972 Order. He believed that the latter already prevented those who became British citizens at birth from losing their nationality by operation of s.14 of the 1951 Act. That being so, the 2008 Instruction had the effect of clarifying the true position (at least in relation to UK nationals). But this is not consistent with the terms of the Instruction, which make clear that it is an exercise of the power conferred by article 2B(2) of the 1972 Order. Furthermore, our rejection of Mr Hossain's view as to the effect of the proviso to article 2B(1) necessarily causes us to accord less weight to his view as to the interpretation of the 2008 Instruction, given his own view as to the connection between the two instruments."

44. We have borne in mind in considering how sure a guide Mr Alam is in ascertaining how the courts of Bangladesh would interpret their laws that a

significant part of Mr Alam's analysis is inconsistent with the view reached by the Commission in earlier cases (and the Secretary of State does not seek to persuade us to depart from the Commission's earlier analysis). Mr Alam has taken the same view of the 1972 Order and the 2008 Instruction as Mr Hossain. While we do not adopt his analysis where it differs from the Commission's interpretation in *C3, C4 & C7,* we acknowledge that the interpretation of those provisions is difficult and remains untested before the courts of Bangladesh. Professor Hoque confirmed his view that Bangladesh's citizenship laws remain "haphazard" and "internally conflicting". Ultimately, Mr Alam's disagreement with Commission's interpretation of the 1972 Order has not significantly diminished our assessment of the value of his evidence on the determinative issue.

The matters of Bangladeshi law that are common ground

45. The territories now comprising Bangladesh were part of British India until 1947, when they became East Pakistan. Bangladesh became an independent State on 26 March 1971.

46. Bangladesh is a common law country with a written constitution. The Constitution of the People's Republic of Bangladesh ("the Constitution") was adopted on 4 November 1972 and came into force on 16 December 1972.

47. As Professor Hoque explains:

> "The Constitution is the supreme law of the land and, if any other law is inconsistent with it, that law shall stand void to the extent of inconsistency (article 7). An Act of Parliament or any other primary or secondary statute must conform to the Constitution, while <u>any secondary legislation must be consistent with the primary statute—its parent law—as well as the Constitution</u>. A

> secondary law can be declared void by court on ground of overstepping the limits set by the primary statute." (Emphasis added.)

48. The Constitution conferred power on the President to promulgate ordinances. Since March 1973, when Bangladesh's first parliament was formed, primary laws are made in the form of Acts of Parliament or, when parliament is not in session, as Ordinances (by the President).

49. The Citizenship Act 1951 ("the 1951 Act") was originally part of the law of Pakistan (entitled the "Pakistan Citizenship Act 1951"). Upon the independence of Bangladesh, it was adopted as a Bangladeshi law (subject to the name of the Act being altered as we have indicated). It was written in English and the English version remains the only authentic one.

50. Section 4 of the 1951 Act provides (and provided at all relevant times):

> "**Citizenship by birth**
>
> Every person born in Bangladesh after the commencement of this Act shall be a citizen of Bangladesh by birth:
>
> Provided that a person shall not be such a citizen by virtue of this section if at the time of his birth –
>
> (a) his father possesses such immunity from suit and legal process as is accorded to an envoy of an external sovereign power accredited in Bangladesh and is not a citizen of Bangladesh; or
>
> (b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy."

51. The Appellant was a Bangladeshi citizen at birth pursuant to s.4 of the 1951 Act. Mr Alam's view is that that is so because the Appellant was born in Bangladesh and neither of the exceptions in clauses (a) or (b) applies. Whereas Professor Hoque considers that, despite the express words of s.4, Bangladesh

does not in practice accord citizenship to a person born in Bangladesh unless at least one of the parents is a citizen of Bangladesh. It is unnecessary for us to determine whether s.4 is qualified as Professor Hoque suggests because the experts agree that the Appellant's parents were both Bangladeshi citizens when he was born.

52. Section 14 of the 1951 Act provides so far as relevant (and provided at all relevant times):

> "**Dual citizenship or nationality not permitted**
>
> (l) Subject to the provisions of this section if any person is a citizen of Bangladesh under the provisions of this Act, and is at the same time a citizen or national of any other country, he shall, unless he makes a declaration according to the laws of that other country renouncing his status as citizen or national thereof, cease to be a citizen of Bangladesh.
>
> (1A) Nothing in sub-section (1) applies to a person who has not attained twenty-one years of his age."

53. The Bangladesh Citizenship (Temporary Provisions) Order 1972 (Presidential Order No.149 of 1972) ("the 1972 Order") was made on 15 December 1972, but was given retrospective effect from 26 March 1971. The 1972 Order was amended by the Bangladesh Citizenship (Temporary Provisions) (Amendment) Ordinance 1973 and then again by the Bangladesh Citizenship (Temporary Provisions) (Amendment) Ordinance 1978. All these instruments were enacted in English. The 1972 Order is primary legislation.

54. Article 2 of the 1972 Order provides:

> "Notwithstanding anything contained in any other law, on the commencement of this Order, every person shall be deemed to be a citizen of Bangladesh-

(i) who or whose father or grandfather was born in the territories now comprised in Bangladesh and who was a permanent resident of such territories on the 25th day of March, 1971, and continues to be so resident; or

(ii) who was a permanent resident of the territories now comprised in Bangladesh on the 25th day of March, 1971, and continues to be so resident and is not otherwise disqualified for being a citizen by or under any law for the time being in force:

Provided that if any person is a permanent resident of the territories now comprised in Bangladesh or his dependent is, in the course of his employment or for the pursuit of his studies, residing in a country which was at war with, or engaged in military operations against Bangladesh and is being prevented from returning to Bangladesh, such person or his dependents, shall be deemed to continue to be resident in Bangladesh."

55. When the Appellant was born, his father and mother were both "deemed" citizens of Bangladeshi in accordance with Article 2 of the 1972 Order, as they were born in the territories that (in 1971) comprised Bangladesh, and they were permanent residents of Bangladesh when independence was declared.

56. Article 2B of the 1972 Order (as amended) provides:

"(1) Notwithstanding anything contained in Article 2 or in any other law for the time being in force, a person shall not, except as provided in clause (2), qualify himself to be a citizen of Bangladesh if he-

(i) owes, affirms or acknowledges, expressly or by conduct, allegiance to a foreign state, or

(ii) is notified under the proviso to Article 2A:

Provided that a citizen of Bangladesh shall not, merely by reason of being a citizen or acquiring citizenship of a state specified in or under clause (2), cease to be a citizen of Bangladesh.

(2) The Government may grant citizenship of Bangladesh to any person who is a citizen of any state of Europe or North America or of any other state which the Government may, by notification in the official Gazette, specify in this behalf."

57. The meaning of Article 2B has been considered by the Commission in the series of cases to which we have referred. Most recently, in *C3, C4 & C7*, the Commission concluded at [75] to [80], in summary:

i) Article 2B(1) was originally enacted in 1973 and its purpose was to prevent those considered to be hostile to Bangladesh at its inception from becoming citizens; it was not concerned with dual citizenship which (when Article 2B(1) was originally enacted) was prohibited by section 14 of the 1951 Act;

ii) Article 2B(2) was inserted in 1978 and conferred power on the Government of Bangladesh to grant citizenship to citizens of certain friendly states. Article 2B(2) is the principal operative provision.

iii) The proviso to Article 2B(1) ("the proviso") was intended to qualify the effect of Article 2B(1) rather than effect a change in nationality law. It was not intended to abrogate s.14 of the 1951 Act generally. The meaning of the proviso is that the bare fact of dual nationality is not, in and of itself, something which demonstrates that an individual "owes, affirms or acknowledges… allegiance to a foreign state".

58. This reflects Professor Hoque's analysis. Mr Alam disagrees: his view is that the courts in Bangladesh would treat s.14(1) of the 1951 Act as having been impliedly repealed by Article 2B of the 1972 Order. However, Mr Neil Sheldon QC, leading Counsel for the Secretary of State, has wisely refrained from asking the Commission to revisit (again) the interpretation of Article 2B, and places no reliance on the note verbale that featured in *E3 & N3* and *C3, C4 & C7*. In these circumstances, it has been unnecessary for us to consider in depth the competing

arguments put forward by Mr Alam. But we have taken into account his analysis of the 1972 Order in reaching our general assessment of his evidence, as indicated above.

59. Accordingly, it is common ground between the parties that s.14(1) of the 1951 Act had the effect that the Appellant's father and mother each lost their Bangladeshi citizenship on registering or naturalising as British citizens (in 1986 and 1992, respectively). The Appellant would have lost his Bangladeshi citizenship, too, when he registered as a British citizen on 3 February 1992 but for the fact that he was under 21 years of age: s.14(1A) of the 1951 Act. Section 14(1A) operated to prevent the Appellant losing his Bangladeshi citizenship until he reached the age of 21.

60. When the Appellant turned 21 years of age the exception to the prohibition on dual nationality under section 14(1A) of the 1951 Act ceased to apply. On 14 August 2003, the Appellant ceased to be a Bangladeshi citizen by reason of the operation of s.14(1) of the 1951 Act. The question, to which we turn next, is whether the Appellant's Bangladeshi citizenship was retrospectively reinstated by the 2008 Instruction.

61. Before doing so, we note that it is common ground that the 2008 Instruction operates retrospectively to reinstate the Bangladeshi citizenship of a class of persons who acquired British nationality prior to 2008 and, consequently, lost their Bangladeshi citizenship pursuant to s.14 of the 1951 Act. The Appellant's parents are in the class of beneficiaries (Class A) who, having lost their Bangladeshi citizenship, have had it retrospectively reinstated by the 2008 Instruction so that they are both dual British-Bangladeshi citizens.

Was the Appellant's Bangladeshi citizenship (retrospectively) reinstated by the 2008 Instruction?

62. The 2008 Instruction is a statutory notification officially called "S.R.O. No.69-Law/2008". It was issued by the Ministry of Home Affairs on 17 March 2008 pursuant to Article 2B(2) of the 1972 Order. It is secondary legislation for which the parent Act is the 1972 Order.

The translation

63. The 2008 Instruction was enacted in Bangla. In *E3 & N3 (CA)* the Court of Appeal described a translation produced by an independent translator, Mr Das, as the most authoritative ("the Das translation"). In *C3, C4 & C7*, the Commission asked the experts to take the Das translation and highlight the phrases which they considered to be significant to its meaning and to insert next to those words or phrases the original Bangla verbs (transliterated). The transliterated version of the Das translation of the 2008 Instruction provides:

> "The Government, in exercise of the power conferred in sub-article (2) of article 2B of the Bangladesh Citizenship (Temporary Provision) Order, 1972 (P.O No. 149 of 1972), by cancelling all the circulars or directives or orders or notifications issued hereinbefore in this behalf, has issued the following directives only in case of the United Kingdom as regards granting or continuation of Bangladeshi citizenship of those Bangladeshis who **have acquired citizenship** [*nagorikottoprapto*] of the United Kingdom:-
>
> (a) The Bangladeshi citizenship of any citizen of Bangladesh according to the law as in force in Bangladesh shall remain as it is notwithstanding their **acquiring citizenship** [*grohon*] of the United Kingdom, unless the oath to be taken for **acquiring citizenship** [*nagorikottoprapti*] of that country does contain any oath to renounce allegiance to their own country (Bangladesh);
>
> (b) In the aforesaid circumstances, the citizen of Bangladesh, who **has acquired citizenship** [*grohon-kari*] of the United

> Kingdom, shall not be required to **obtain dual citizenship** [*grohon-er*] from the Government of Bangladesh;
>
> (c) All Bangladeshis who **have acquired citizenship** [*grohon-kari*] of the United Kingdom may retain and use their Bangladeshi passports;
>
> (d) On the expiry of validity, their passports shall have to be renewed as usual;
>
> (e) Bangladeshi passports can be issued again to those who had previously **acquired citizenship** [*grohon*] of the United Kingdom.
>
> 2. This order shall be applicable only in case of citizens of Bangladesh **acquiring citizenship** [*grohon-kari*] of the United Kingdom.
>
> 3. This order is issued in the public interest and shall come into force forthwith."

The Commission's conclusions in C3, C4 & C7

64. In *C3, C4 & C7* the Commission stated at [97]:

> "Our conclusions are as follows:
>
> (a) Insofar as it is necessary to prefer one translation over the other, we prefer the translation used in E3 & N3, which was supplied by an independent translator (and thus independently of any view as to the proper interpretation of the text translated), to that of Mr Hossain, which was prepared in the course of preparing evidence for these proceedings. Mr Das's independent translation renders both "nagorikottoprapto" and "grohon" as "acquire". This shows two things: first, that the expert translator did not think it right to use different words to translate these terms, despite the wealth of alternatives available in English; second, that the English word chosen was a word which connotes "getting" rather than merely "having".
>
> (b) The interpretation of a legal text is necessarily dependent on context. In this regard, we prefer Prof. Hoque's evidence as to the meaning of the relevant terms in the context of Bangladesh nationality law. Despite his obvious eminence, Mr Hossain did not claim to be an expert in this area of the law. We therefore conclude that both "nagorikottoprapto" and "grohon" are words which connote the conferral of nationality by a positive act, rather than by automatic operation of law at birth.

> (c) This is consistent with the reference in para. 1(a) to "the oath to be taken for acquiring citizenship". This contemplates a process by which citizenship is "acquired" by positive reciprocal acts of the applicant (in applying for it) and the UK Government (in conferring it). Whilst we noted Mr Hossain's view that the same phrase could be translated as "any oath taken for the purpose of receiving citizenship" (the Bangla text apparently does not use an article at all), the fact that there is a reference to oaths at all seems to us to be a strong indicator that the type of citizenship the legislator had in mind was the kind acquired upon application.
>
> (d) It is also consistent with para. 1(b), which uses "grohon" on the second occasion to refer to something that can only be conferral by application (as even Mr Hossain agrees).
>
> …
>
> (f) Prof. Hoque and Mr Hossain agreed that it would have been easy to find Bangla words describing those who "have" UK citizenship or "are" UK citizens. The fact that such simple words were not used seems to us, as it seemed to Prof. Hoque, to be significant.
>
> (g) Prof. Hoque' s view is more consistent with the terms and aims of the 2008 Instruction as reported in the press at the time. He referred to an article in The Daily Star, an English language newspaper published in Dhaka. In an article published on 24 March 2008, reporting what a "senior foreign ministry official" has said, the word "grohon" was rendered as "acquired"; and it was said that the 2008 Instruction "will be applicable only for the expatriate Bangladeshis living in the UK". Those born in the UK would not ordinarily be described as "expatriates".
>
> …" (Emphasis added.)

65. Accordingly, the Commission concluded that the 2008 Instruction did not operate to confer Bangladeshi nationality on C3, C4 or C7.

Principles of interpretation of Bangladeshi law

66. First, Mr Alam gave evidence that the courts of Bangladesh would focus, principally, on the words of the legislative measure and, if it is secondary legislation (as the 2008 Instruction is), the parent law (here, the 1972 Order). As Md Fazlul Karim J observed in *Bangladesh Telecommunications Regulatory*

Commission vs Ekushey Television Ltd 58 DLR (AD) 2006 83 ("*BTRC vs Ekushey*"), giving the sole judgment of the Appellate Division:

> "27. … the object of all interpretation is to discover the intention of the legislature and the same is to be deduced from the language used by it. …"

67. Mr Alam stated that the courts of Bangladesh have consistently deprecated both reading between the lines of a statute to import words and giving a restrictive interpretation. In relation to the importation of words, he cited the Appellate Division's judgment in *BTRC v Ekushey* in which Md Fazlul Karim J observed:

> "39. In this respect it should be remembered the statutory principle that caution has always been used while interpreting an Act not to travel beyond the Act itself unless the context so permits.
>
> 40. Lord Loredorn in the case of *Vickers, Sons and Maxime Ltd vs Evano (1910) AC 444* held:
>
> > "We are not entitled to read words into an Act of Parliament, unless reasons for it are to be found within the four corners of the Act itself."
>
> 41. It is in keeping with the rule of liberal construction that nothing is to be added or taken from the statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mercy held in *Thompson vs Goold & Co (1910) AC 409* that:
>
> > "It is a wrong thing to read into an Act of Parliament words which are not there and in the absence of necessity it is a wrong thing to do.""

68. Professor Hoque agreed, in cross-examination, that it is a fundamental principle of statutory construction that when construing legislation the court should avoid reading in words unless it is necessary to do so; and that this principle applies equally to the interpretation of secondary legislation. Although he described the principles as "not very binding" and dependent on the circumstances, Professor Hoque accepted the basic proposition that the courts of Bangladesh would focus

principally on the intention of the legislature as conveyed by the words used in the legislation.

69. Secondly, Mr Alam stated that it is a principle of statutory construction that laws should be interpreted harmoniously, wherever possible, and in a manner that avoids rendering them redundant or nugatory. We understood him to use the word nugatory in the sense of having no value and serving no purpose. In support of this part of his evidence, Mr Alam cited *Doly Enterprise vs Additional District Judge, 1st Court, Dhaka* 59 DLR (2007) 37, in which Farah Mahbub J, sitting in the High Court Division, observed:

> "13. However, the principal object of interpretation of law is not only to find out a particular meaning of a word or words, placed in the statute but to dig out the meaning of the legislation through the medium of words by which the intention of the legislature has been expressed, and in doing so the Court must see that it is giving effect to the intent and purpose of the statute in question. To interpret is not to restrict or to expand the meaning of the statutory law rather, in truth, it intends to convey the purpose of legislation. So, every effort is necessary to make a statute workable and not to render it futile by giving a "meaningless" interpretation in order to frustrate the legislative intention. It is an elementary rule of construction that the intention of the legislature must sought from the statute, taking as a whole, into consideration along with other matters and circumstances which led to the enactment of the statute."
>
> 14. … the Court should attempt to avoid absurd consequences in any part of the statute…
>
> 18. So, the Court must avoid a construction which would render a statute meaningless and ineffective and would adopt the rule of liberal construction so as to give meaning to all parts of the provisions and to make the whole effective and operative. … It is an elementary rule of construction that the plain intention of the legislature is to be sought from the words used and not in the whole sea of speculation and surmise but from the conjectures as are drawn from the words alone or something contained in them." (Emphasis added.)

70. Professor Hoque also referred to the requirement to construe secondary legislation consistently with the primary statute under which it is made, as well as the Constitution (see paragraph 47 above). We accept that the courts of Bangladesh would apply the principles of statutory construction to which we have referred above.

71. Thirdly, in his oral evidence, Mr Alam stated that the courts of Bangladesh would generally not interpret legislation by reference to extraneous materials, but if on their face the provisions appear not to make sense, or there is confusion as to their meaning, then the courts would take into account the context in which the legislation was passed, having regard to documents such as the parliamentary debates. Professor Hoque expressed the view, orally, that Bangladeshi courts will rely on extrinsic matters, but did not address the circumstances in which they are prepared to do so. We accept Mr Alam's evidence on this point.

72. Fourthly, in *C3, C4 & C7* the Commission observed at [61]:

> "both experts agree that a generous and liberal approach is adopted to Bangladeshi citizenship law. As it was put by MJ Rahman J in *Golam Azam* at [47], "[t]he superior courts in our country have always interpreted the law of citizenship liberally so that one's claim to citizenship is upheld rather than destroyed"."

One of the experts who agreed, in *C3, C4 & C7*, that such an approach would be adopted was, of course, Professor Hoque.

73. Mr Alam gave evidence to the same effect, expressing the view that the courts of Bangladesh would adopt a liberal interpretation of citizenship laws.

74. Professor Hoque did not refer to this liberal approach in his report for these proceedings, but he did so in a Report on Citizenship Law: Bangladesh, published in 2016. In his 2016 Report he considered the judgment of the Appellate Division of the Supreme Court of Bangladesh in *Bangladesh vs Golam Azam* 46 DLR (AD) (1994) 192. The Government of Bangladesh had declared, in 1973, that Professor Golam Azam, who had returned to Bangladesh using a passport issued by Pakistan, did not qualify as a "deemed" citizen of Bangladesh. The Attorney-General contended that it would be a "national catastrophe" if Professor Azam, who had been involved in anti-Bangladesh activities during the war in 1971, was deemed a citizen. The Appellate Division (unanimously) ruled in Professor Azam's favour. In his 2016 Report, Professor Hoque expressed the view at §3.2:

> "Bangladeshi citizenship law leaves no room for arbitrary deprivation of citizenship, while the country's Supreme Court has almost without any exception interpreted the rules relating to cancellation or withdrawal of citizenship from a liberalist legal stance.
>
> …It can be safely argued that in *Golam Azam*, the court in effect made inapplicable the ground of lack of allegiance to deprive citizenship acquired by birth.
>
> That the Bangladeshi courts have persistently interpreted citizenship law liberally to promote the individuals' right to citizenship is further evident in cases concerning citizenships of Biharis in Bangladesh, discussed below." (Emphasis added.)

75. In his oral evidence, Professor Hoque acknowledged that the Bangladeshi courts have persistently interpreted citizenship law liberally, but he sought to suggest that this case-law was confined to the particular area of citizenship rights of Biharis, in relation to whom the courts have taken a liberal and progressive approach enabling them to assert their rights to citizenship. He suggested this approach was not relevant in interpreting the 2008 Instruction.

76. Mr Alam agreed with the statement in Professor Hoque's 2016 Report that the Bangladeshi courts have persistently interpreted citizenship law liberally to promote the individuals' right to citizenship. He acknowledged that most of the citizenship cases have concerned the rights of Biharis but rejected the contention that the liberal approach identified and endorsed by the Appellate Division in *Golam Azam* was confined to such cases.

77. We find that the courts of Bangladesh would first seek to ascertain the meaning of the 2008 Instruction from the words used, having regard to the parent statute (the 1972 Order) and the Constitution, but any doubt as to the intended meaning would be resolved in favour of a construction that upholds rights of citizenship, taking the liberal approach to interpretation described by MJ Rahman J in *Golam Azam*.

The Appellant's interpretation of the 2008 Instruction

78. The Appellant submits the Commission should adopt Professor Hoque's interpretation of the 2008 Instruction. Professor Hoque's view is that the 2008 Instruction does not apply to the Appellant for two reasons: (a) he did not take an oath of allegiance on registering as a British citizen; and (b) as a child, he did not make the application to register as a British citizen on his own behalf. Consequently, his Bangladeshi citizenship was not retrospectively reinstated by the 2008 Instruction.

79. Professor Hoque considers that the 2008 Instruction distinguishes between two categories of dual British-Bangladeshi nationals. The 2008 Instruction applies only to those who (a) naturalise/register as British, (b) having made an application on their own behalf, and (c) take an oath (which does not involve

renunciation of allegiance to Bangladesh). The 2008 Instruction does not apply to those who (a) are born British, (b) register as a child without making an oath, (c) register as a child without making an application on their own behalf, and (d) register/naturalise as British and take an oath renouncing allegiance to Bangladesh.

80. The two categories described in Professor Hoque's report did not explicitly cover everyone. That is because UK nationality law allows for the possibility of an adult to register/naturalise in circumstances where the application has been made on their behalf and/or without making an oath (e.g. if the individual lacks capacity); and allows for the possibility of a child making an application on their own behalf, and for a child to make the oath voluntarily. Professor Hoque's view, expressed orally, was that the 2008 Instruction would not apply to a person who registers while a child as they would not be *required* to take an oath and he did not accept that a child would be able to make an application on their own behalf. In relation to an adult who is permitted to register/naturalise without taking an oath, Professor Hoque accepted that they would, exceptionally, be covered by the 2008 Instruction so long as they met the condition of having made an application on their own behalf. The latter was the key criterion.

81. There is no dispute between the experts or the parties that a person who makes an oath by which they renounce allegiance to Bangladesh does not benefit from the 2008 Instruction. Such a person's Bangladeshi citizenship will not be reinstated. There is also no dispute between the parties (albeit the experts disagree) that the 2008 Instruction does not apply to those who are British born. Leaving those criteria aside, we address Professor Hoque's reasons for

considering that only those who have registered/naturalised and (a) who have taken an oath and (b) made an application on their own behalf have their Bangladeshi citizenship retrospectively reinstated by the 2008 Instruction.

82. In relation to the suggested requirement to take an oath of allegiance in the context of applying for British citizenship, Professor Hoque states in his report:

> [i] "The 2008 Instruction sought to introduce an exception to this rule of dual citizenship, entitling only a special class of "Bangladeshi citizens" who have accepted/acquired British citizenship by affirming an oath under UK law that does not require renunciation of allegiance to Bangladesh." (§53)
>
> [ii] "Paragraph 1(a) of the 2008 Instruction states that if a "Bangladeshi citizen" accepts British citizenship, they will be able to retain Bangladeshi citizenship if the oath that is needed to be made when accepting such citizenship does not contain an affirmation of renunciation of allegiance to Bangladesh. According to paragraph 1(b), "in the aforementioned circumstances", Bangladeshi citizens acquiring/accepting UK citizenship will not have to apply for dual citizenship. In narrating the scope of paragraphs 1(a) & (b) of the 2008 Instruction, I have relied on my own translation of the Bangla text thereof. I have used below the translated version of the 2008 Instruction that SIAC endorsed." (§53)
>
> [iii] "The 2008 Instruction has not used the term "naturalisation", but it appears to be clear enough that it applies only to those "Bangladeshi citizens" who have taken a positive step to "accept" or "acquire" UK citizenship such as those who have naturalised as British citizens as well as by making an oath of allegiance. The Instruction also applies to a person who has acquired UK citizenship by registering, which is an active step too as the registration requires the making of an oath of allegiance. By a "positive step", I mean making an application to accept ("grohon") or acquire UK citizenship as well as making an oath of citizenship." (§54)
>
> [iv] "The way paragraph 1(a) of the 2008 Instruction has used the phrases such as "Bangladeshi citizens", "acceptance ["grohon"] of UK citizenship", and "the oath to be taken for acquiring citizenship of that country" (as in para. 51 above) points to a conclusion that the framers of the law wanted to include only one class of "Bangladeshi citizens" who accept or acquire UK citizenship by making a positive step such as an application for British citizenship and by making an oath that

does not compel the affirming person to abandon allegiance to Bangladesh.” (§54)

[v] “Naturalisation, acquisition/acceptance of UK citizenship by an adult Bangladeshi citizen by way of registering would be a positive action on the part of the applicant. Since such a person also needs to make an oath of citizenship, the 2008 Instruction would apply to him/her provided that the oath does not require renunciation of allegiance to Bangladesh.” (§54)

[vi] “As regards paragraph 1(a) of the 2008 Instruction, there indeed is a difference between the Bangla text and the [Das translation] with reference to the word “unless”. The Bangla text (please see paragraph 53 above for my own translation [see subparagraph [ii] above]) shows that the framers conjoined “acceptance” of UK citizenship [**“acquisition” in the English translation**] and the making of an oath. As the above italicized words, [“]the oath to be taken for acquiring citizenship[”], show, the framers of the 2008 Instruction wanted to ensure that “acceptance” of UK citizenship is accompanied by making an oath that does not require renunciation of allegiance to Bangladesh. The difference in the original text and the translated version of paragraph 1(a) is regarding the location of the phrase “the oath to be taken for acquiring citizenship”. The original Bangla text of paragraph 1(a) would strongly support my conclusion that the 2008 Instruction covers only those “Bangladeshi” citizens who naturalise or register as British and always make an oath of allegiance as part of the process.” (§56)

[vii] “Moreover, the preamble of the 2008 Instruction uses a Bangla term “nagorikottoprapto”, which is a combination of two words: “nagorikotto” and “prapto”. There is no doubt that “nagorikotto” means “citizenship”. “Prapto” means something that has been “achieved”, “received”, “awarded”, or “got”. As such, although “nagorikottoprapto” has been translated to mean a citizen of Bangladesh who has “acquired citizenship”, the more correct and contextual translation of the term would refer to those who have “accepted” (“grohon” in Bengali) UK citizenship or have been given or awarded British citizenship pursuant to, for example, an application. In the common parlance, such a word in Bangladesh would ordinarily mean a Bangladeshi citizen who has naturalised, or has been registered, as a British citizen by making an oath of citizenship under the law of foreign country.” (§56)

[viii] “One might argue that since K3 had not ever had to make an oath of British citizenship, he would not have to abandon allegiance to Bangladesh and hence would be covered by the 2008 Instruction. This would be a misplaced interpretation, because the framers of the 2008 Instruction had deliberately and knowingly used the terminologies of accepting/acquiring British

> citizenship and made an oath of allegiance under UK citizenship law a condition. A person who is a British national at birth "acquires" that citizenship in accordance with the British citizenship law. However, any person in K3's position who acquires British citizenship by registering does not "acquire" it for the purposes of the 2008 Instruction, because of the absence of an oath under the British law as cited in para. 1(a) of the 2008 Instruction." (§62)
>
> [ix] "…as I have made it clear based on the actual texts of the Instruction, the framers of the law wanted to include only those "Bangladeshi citizens" who positively "accept" UK citizenship by making an application and by (positively) making an oath that does not compel them to abandon allegiance to Bangladesh." (§62)
>
> [x] "Moreover, when making a reference to an oath of allegiance under UK nationality law, the framers omitted to state what would be the case if taking an oath was not required at all in some cases. … The framers of the 2008 Instruction nevertheless inserted the condition of "oath of allegiance" under the UK law that would not require abandonment of allegiance to Bangladesh and intentionally omitted to provide the rule in regard to a case in which oath of allegiance is not required at all under UK law." (§62)
>
> (Emphasis added. Words in square brackets added, save those in bold in subparagraph [vi].)

83. In relation to the suggested requirement that the beneficiary of British citizenship must have made the application on their own behalf, Professor Hoque states in his report:

> [xi]"Further, paragraph 2 of the 2008 Instruction clearly uses the term "grohonkari", the meaning of which is "a person who has accepted something", which again shows the inevitability, in the context of citizenship, of a positive step such as an application for citizenship on the part of the intended beneficiary of 2008 Instruction." (§56)
>
> [xii] When a child like K3 is registered under UK nationality law, there is no positive action as the application to get registered is made by his/her parents. The positive action that the framers of the 2008 Instruction had in mind has to be taken by the person for whose benefit the Instruction is sought to be applied. Accordingly, in the hypothetical case of a child getting registered and being required to make an oath (not renouncing allegiance to Bangladesh), the 2008 Instruction would still not apply

> because there is no positive action, and the child is not a Bangladeshi citizen "accepting" UK citizenship in the sense of the meaning of acceptance used in the text of the 2008 Instruction. Here comes the intention of the framers to cover only the first-generation expatriates of those "Bangladeshis" who naturalise or register as adults (further explained below)." (§59)

84. Professor Hoque suggests that the historical background to the enactment of the 2008 Instruction supports his construction. He relies on a report in the *Daily Star, Dhaka* (an English language newspaper circulating in Bangladesh) published on 24 March 2008 ("the Daily Star article"). The newspaper report concerns an official visit to the UK by the then Chief Adviser of the Caretaker Government Fakhruddin Ahmed. On 18 March 2008, the day after the 2008 Instruction was issued, and the day it is was notified in the official gazette, Mr Ahmed held "a news conference with ethnic Bangladeshis at the Bangladeshi High Commission" in London at which he conveyed the government's decision.

85. The Daily Star article states:

> "…Showing the government notification to the journalists, the chief adviser said from now on, British passport-holder Bangladeshis would automatically retain their Bangladeshi citizenships. "This will put an end to a longstanding problem of the Bangladeshi-Britons retaining dual citizenship," the official said. According to the home ministry circulation, despite acquiring the British citizenship, a Bangladeshi will be able to retain Bangladeshi citizenship unless one relinquishes one's allegiance to Bangladesh "voluntarily". Secondly, a Bangladeshi British will not require permission from Bangladesh government for retaining dual citizenship. Thirdly, Bangladeshi citizens acquiring British citizenships will be able to preserve and use Bangladeshi passports. Fourthly Bangladeshi-British citizens will be able to get their Bangladeshi passports renewed after expiry of dates. Fifthly, a new Bangladeshi passport could be issued for those who have already acquired the British citizenship. This notification will be applicable only for the expatriate Bangladeshis living in the UK." (Emphasis added.)

86. Professor Hoque notes that the newspaper included the comment that we have underlined, "without clarifying whether this was an official statement as to the

notification's scope or a comment of the reporter". Nevertheless Professor Hoque states:

> "I do agree with the newspaper report that the 2008 Instruction was for expatriates in the UK, a term which is meant to include only the first-generation Bangladeshi-British. …
>
> … People born in the UK to their Bangladeshi or Bangladeshi-origin parents or Bangladeshi citizens who as children have moved to the UK at their early stage with their parents are usually understood as second-generation Bangladeshi British. The term "expatriates" also includes all Bangladeshis who are Bangladeshi migrant workers or skilled professionals overseas." (Emphasis added.)

87. Professor Hoque agreed, when giving oral evidence, that there is nothing in the 1972 Order to indicate that the legislature had the objective of excluding those who do not take an oath or whose application is made on their behalf, but he considered there was no need for the parent legislation to give that indication. In his view, the 1972 Order allows (rather than promotes) dual citizenship, Article 2A having been inserted in view of the historical ties with the UK and Article 2B with a view to strengthening diplomatic ties to the States of Europe, including the UK, and North America.

88. He took the view that a distinction based on whether an individual's application was made by them or on a parent's application would not fall foul of the equality clause in Article 27 of the Constitution. More generally, he considered that the 2008 Instruction would not pass the equality clause, but that was on the basis that it only benefitted Bangladeshi-Britons and not any other dual nationals. He remained of the view he had expressed in his report given in *N3 & E3* where he stated:

> "Based on the nature of the sovereign power to regulate citizenship, I would say that art. 2B(2) is not discriminatory *per*

> *se*. This is, however, not to claim that the SRO 69 made under art. 2B(2) is non-discriminatory. Rather, I would say the whole idea of allowing British-Bangladeshis automatically to retain dual citizenship in exclusion of citizens who naturalised as citizens of other countries than the UK is discriminatory. Again, this opinion about the instrument's discriminatory character in a particular aspect must not be taken as meaning that the instrument is discriminatory against Bangladeshi citizens who are in the same situation as N3."

89. Professor Hoque expressed the view that the main intention behind the 2008 Instruction was to benefit "expatriate", "first-generation" Bangladeshis "*probashi*" Bangladeshis - which group did not encompass a person who left Bangladesh as a child, even if they left Bangladesh at the age of 17. The term "expatriates" includes all Bangladeshis who are Bangladeshi migrant workers or skilled professionals overseas. In common parlance, the "first generation" are the adults. If the framers had wanted to include children, they would have clearly said so. The "first-generation" contribute to Bangladesh, whereas he suggested that people like K3, who left as children, do not feel a connection to Bangladesh. He said this was evident in the living experience of people, which he had seen when living in London for four years, and based on "anthropological studies and movies".

90. Professor Hoque described the 2008 Instruction as an "extraordinary benefit" to British-Bangladeshis, given by a caretaker government that was under pressure from the British-Bangladeshi community, and needed their help. In view of the style of drafting, an error in the preamble where he states the word used (in Bangla) to refer to article 2B is not "article" but "paragraph", and his understanding that it was not under discussion before Mr Ahmed's visit to London, he believes it was drafted in a hurry.

91. When asked if there was any good reason why the government would have sought to draw a distinction between British-Bangladeshis according to whether they left Bangladesh as adults or children, Professor Hoque said "I can't go into that detail." He said the focus should be on the intention evident in the 2008 Instruction. "I'm simply interpreting this literally to say K3 is excluded." He suggested "there may be many reasons" why the children are excluded, but did not elaborate on what those reasons might be. Professor Hoque did not accept that his interpretation creates arbitrary distinctions.

92. In relation to the Daily Star article, Professor Hoque agreed that there is nothing in it which provides support for the distinctions he draws to exclude K3 from the class who benefit from the 2008 Instruction, observing that he was not sure if the reporter even saw the notification, although Mr Ahmed showed a copy to the audience.

93. Professor Hoque did not accept that his interpretation of the 2008 Instruction involved importing words. He said that it was based on the words of the 2008 Instruction, as he read them in Bangla, the political and cultural background, and his interpretation of the term "expatriates".

94. With respect to the translation of the Bangla word in paragraph 1(a) of the 2008 Instruction that has been rendered as "unless" in the Das translation, and as "if" in Professor Hoque's report (see paragraph 82 above), Professor Hoque said that it literally translates to "if", but in context it means "unless".

95. Professor Hoque said that he could not comment on whether K3 had British citizenship "conferred" on him by the British government, although he agreed the application was made and granted.

The Secretary of State's interpretation of the 2008 Instruction

96. The primary view expressed by Mr Alam in his report is that the courts of Bangladesh would treat s.14(1) of the Citizenship Act 1951 as having been impliedly repealed by Article 2B of the 1972 Order. As s.14(1) was impliedly repealed, the Appellant did not lose his Bangladeshi citizenship when he turned 21. In Mr Alam's view, the purpose of the 2008 Instruction was to streamline the process of enabling dual citizenship for Bangladeshi nationals obtaining citizenship of the UK. In addition, Mr Alam's view is that the 2008 Instruction covers all Bangladeshi-British citizens, including those born in the UK. On these matters, Mr Alam respectfully disagrees with the conclusions reached by the Commission in *C3, C4 & C7*.

97. However, as we have indicated, the Secretary of State does not seek to persuade us to depart from the Commission's conclusions in *C3, C4 & C7*. It is unnecessary, in these circumstances, to address Mr Alam's primary position further, although we have borne in mind the entirety of his analysis when assessing the weight to give to his opinion, and considered carefully how his primary interpretation of the 2008 Instruction impacts on the value of his assessment of that measure.

98. In light of the Commission's earlier rulings, Mr Alam has also considered what the position would be if – as the Secretary of State accepts is the case – the Appellant's Bangladeshi nationality was not preserved by the 1972 Order. His view is that the 2008 Instruction applies to the Appellant and has the effect that he was a Bangladeshi citizen when he was deprived of his British nationality.

99. Mr Alam does not agree that the 2008 Instruction imposes the conditions that Professor Hoque suggests (§37 of Mr Alam's report). In relation to Professor Hoque's view that the 2008 Instruction only applies to those who have taken an oath on obtaining British citizenship, Mr Alam states:

> "Regarding the second limb of the requirements discussed by Dr. Hoque, I believe it would be incorrect to presume that the 2008 Order would be applicable only in cases of UK citizenship that accompanies an oath. Where the purpose was to "automatically retain" (see paragraph 64 of Dr. Hoque's opinion), recognise and facilitate dual citizenship, it would be irreconcilable to limit the purpose for only those categories of citizenship of the UK that requires a person to take an oath. Instead, the emphasis should be on the issue of whether by receiving the UK citizenship, the Bangladeshi person is relinquishing allegiance to Bangladesh. Such an emphasis would be commensurate with other provisions of the parent law, in particular, Article 2B (1) of the PO 1972. Therefore, if no oath is required to be taken, there would not be any relinquishment of allegiance to Bangladesh, and hence the 2008 order would apply to those cases of citizenship." (§42)
>
> "It is clear that swearing an oath is not the determinative factor because the prime consideration is not relinquishing allegiance to Bangladesh. What difference will it make to Bangladesh if a person acquires citizenship of a foreign country by swearing an oath or not? It only matters to Bangladesh to the extent the allegiance to her is not relinquished. As a result, the crucial part of paragraph (a) of the 2008 Order is whether a Bangladeshi citizen relinquishes allegiance to Bangladesh in the process of obtaining citizenship of a foreign state. To interpret the law as requiring an oath to be taken for its application would render the law nugatory given that this requirement would not serve any practical purpose. Had it been the intention of the framers to restrict the scope of 2008 Order to certain class of Bangladeshi citizen based on the method they acquire UK citizenship, then such intention should have been clearly stated in the preamble. But it appears on the contrary that the preamble is stated in generic terms and does not categorise the Bangladeshi citizens on the basis of methods they acquire the citizenship of the UK. A Bangladeshi citizen who also has acquired citizenship of the United Kingdom in a process that did not require him to swear an oath will not cease to be a Bangladeshi citizen. " (§34)
>
> "If we accept [Professor Hoque's] interpretation, there will be differential treatment of Bangladeshi citizens:

> i. Who obtains the UK citizenship by swearing an oath, who will be able to retain the Bangladeshi citizenship (provided, of course, they have not relinquished allegiance to Bangladesh in the oath)
>
> ii. Who obtains the UK citizenship without an oath, who will not be able to retain the Bangladeshi citizenship (not that, this category of persons also did not relinquish allegiance to Bangladesh in the process because there is no oath to be taken)." (§33)

100. In relation to the suggested requirement that the beneficiary of British citizenship must have made an application on their own behalf, Mr Alam disagrees, suggesting that this involves importing words into the law that are not there and giving a restrictive interpretation, contrary to the rules of interpretation ordinarily adopted by the Bangladeshi courts. He states:

> "Even if for argument's sake, it is considered that a positive act is required, I do not think that such act cannot be taken by one of the parents, as adopted by Dr. Hoque. Under the laws of Bangladesh, where the Muslim personal law applies, the father as guardian of the child is responsible for his/her person and property and in the case of K3, the father will have the right to take decision or do acts on his behalf including making of an application until he attains majority. Besides, there is nothing in the 2008 Order itself that the parents cannot apply on behalf of the child and therefore unless prohibited, it is permitted that the legal guardian of a child can make an application." (§41)

In cross-examination, Mr Alam said that in Muslim law, no distinction is drawn between private and public law so far as the relationship between a parent and their ward is concerned.

101. With respect to both conditions, Mr Alam states:

> "I am of the view that the pertinent issue here is determination of the purpose of this 2008 Order. There does not seem to be any good reason for Bangladesh to discriminate in relation to the methods of citizenships in the United Kingdom and allow only two types of UK citizens (as Dr. Hoque suggested) to automatically remain Bangladeshi citizens while the others, such as K3 here, is deprived of the facility. In my view, 2008 Order

> applies to all for so long as there is no oath in the process relinquishing the allegiance towards Bangladesh. Paragraph (a) of the 2008 Order operates negatively in that, if there is any such relinquishment of allegiance to Bangladesh in the process, then the person would no longer continue to be citizen of Bangladesh. In other cases, where there is no oath at all (let alone the relinquishment of allegiance to Bangladesh), the case is plain and simple, and the person continues to be Bangladeshi citizen despite receiving or obtaining the UK citizenship."

102. We note that Mr Alam accepted in cross-examination that he had not addressed, in his report, the consequences for his opinion if the conclusions reached by the Commission in *C3, C4 & C7, G3* and *E3 & N3* are regarded as correct. However, he clearly did address the questions, first, as to the effect of the 2008 Instruction if the earlier Commission decisions correctly interpreted the 1972 Order; and secondly, on the assumption that para 1(a) contemplates a process of conferral by application, whether the Bangladeshi courts would interpret the provision as covering those on whom British citizenship was conferred following an application made by a parent. He also addressed the question whether the 2008 Instruction imports a requirement to take an oath on acquiring British citizenship, an issue not determined by the earlier cases.

103. Mr Alam informed us that there are other instructions in force that are in identical terms to the 2008 Instruction, save for the substitution of the names of different States in place of the United Kingdom. In particular, SRO 270 of 23 September 2008 concerns dual nationals from North America, the USA, Canada and Europe, while SRO 27 of 22 January 2012 concerns those from Hong Kong, Singapore, Malaysia, South Korea and Japan.

104. Mr Alam did not accept that a distinction is drawn between first generation expatriates and others, more removed from Bangladesh. His evidence was that

the Bangla term "*probashi*" refers to migrant workers mainly in the Middle East where 90% of Bangladeshi migrant workers go to work and for whom the migrant workers' ministry was created.

105. Mr Alam gave evidence regarding a senior judge of the Appellate Division who had come to the UK from Bangladesh as a child, obtained British citizenship in childhood, and then returned to Bangladesh as an adult. Mr Alam asked him if he had applied for dual citizenship and the judge responded that he had never ceased to be a Bangladeshi citizen. Mr Alam said that he had never been treated as anything other than Bangladeshi citizen.

106. Mr Alam expressed the view that in certain circumstances a "No Visa Required" stamp is an indicator that the person who has the stamp is also a Bangladeshi citizen, but he acknowledged that it can be issued to people who are not Bangladeshi citizens, such as a spouse or child of a Bangladeshi citizen.

107. With respect to the Das translation, Mr Alam notes that it renders both "nagorikottoprapto" and "grohon" as "acquire" and suggests that these two Bengali words "are not one and the same". He agrees with Professor Hoque that a more appropriate translation, in the context of the law, for the word "grohon" is "accepted". He also agrees with Professor Hoque that "prapto" could mean "received" or "got", but disagrees that it could mean "achieved" or "awarded" in the context, and suggests the appropriate translation is "received" rather than "acquired".

108. In relation to the Bangla word for "oath" used in para 1(a) of the 2008 Instruction, Mr Alam said in cross-examination that there is no article. It means any oath, encompassing both someone who took an oath and someone who has

not, so long as the person who took an oath did not renounce Bangladeshi citizenship.

Discussion and decision

109. Before us, as before the Commission in *C3, C4 & C7*, there was some debate between the experts as to the proper translation of the 2008 Instruction. We accept that no translation will convey the meaning of the original perfectly and so we have borne in mind the evidence we have heard regarding the meaning of some of the key words and phrases. However, neither party sought to persuade us to adopt a different translation to the Das translation. In *C3, C4 & C7*, the Commission concluded that insofar as it was necessary to prefer one translation over the other, they preferred the Das translation as it was supplied by an independent translator, and so independently of any view as to the proper interpretation of the text translated, rather than by an expert witness in the course of preparing his evidence. We have taken the same approach as the Commission in *C3, C4 & C7*.

110. We note that the meanings of the word "prapto" (which forms part of the combined word "nagorikottoprapto", the first part of which means "citizenship") put forward by the experts in this case were essentially the same as in *C3, C4 & C7*, with Professor Hoque suggesting that the more correct translation – in preference to "acquired" (given in the Das translation) – would be "accepted" or "given or awarded", while Mr Alam (like Mr Hossain) considered the most appropriate translation was "received". Before us, there was some agreement that the word "grohon" may be more appropriately translated, in the context of the law, as "accepted", rather than "acquired".

111. We also heard evidence as to whether in paragraph 1(a) the word "unless" should be translated as "if", although Professor Hoque who had suggested the latter translation in his report, accepted in his oral evidence that "unless" (the rendering given in the Das translation) is the better translation in context. In relation to the article ("the") before "oath", we note, as the Commission did in *C3, C4 & C7*, that in Bangla the word does not have an article, while adopting the Das translation.

112. We reject the Appellant's contention that the courts of Bangladesh would interpret the 2008 Instruction in a way which subdivides the class of Bangladeshi British citizens who acquired British citizenship by naturalisation or registration, excluding from the benefit of Bangladeshi citizenship those who did not take an oath and/or whose application for British citizenship was made on their behalf by a parent or guardian.

113. *First*, we accept Mr Alam's evidence that these conditions could only be found by reading words into the 2008 Instruction. Even applying a literal interpretation, and accepting as we do that the 2008 Instruction contemplates a process by which citizenship is conferred upon application, the meaning conveyed is that the 2008 Instruction distinguishes between those who were born British (and so are not covered) and those who have naturalised or registered as British.

114. The preamble refers to "those Bangladeshis who have acquired citizenship of the United Kingdom". Paragraph 1(a) refers to "any citizen of Bangladesh … notwithstanding their acquiring citizenship of the United Kingdom". Paragraph 1(b) refers to "the citizen of Bangladesh, who has acquired citizenship of the

United Kingdom". Paragraph 1(c) refers to "All Bangladeshis who have acquired citizenship of the United Kingdom". And paragraph 2 refers to "citizens of Bangladesh acquiring citizenship of the United Kingdom".

115. A person, such as K3, who became a British citizen by dint of being registered as such by the Secretary of State while a child, undoubtedly fits within the language of a person who has acquired citizenship of the UK. Such a person has had British citizenship conferred on them by application. There is no hint in the words of the 2008 Instruction that references to the citizens of Bangladesh acquiring citizenship of the UK are intended to exclude child citizens of Bangladesh or adults who lack the capacity to make an application themselves or to take an oath.

116. Professor Hoque professed to be adopting a literal interpretation, and to be reflecting the intention of the framers, but we agree with the Secretary of State that the passages of his report addressing this issue largely amounted to assertions (see paragraphs 82[i], [iii], [iv], [v], [viii], [ix], [x] and 83 above) rather than reasons. To the extent that he based his construction on his understanding of the Bangla text, Professor Hoque accepted when giving oral evidence that the word "unless" used in the Das translation of paragraph 1(a) is a better translation, in context, than "if" (*cf* paragraph 82[ii]). But in any event, neither rendering imposes a requirement to swear allegiance *to the UK*. At its highest, the wording may indicate an assumption that acquiring British citizenship (whether by naturalisation or registration) entails taking an oath, but the disqualifying condition is clearly stated to be the renunciation of allegiance to Bangladesh, not the failure to swear allegiance to a foreign State. Equally,

whether the 2008 Instruction refers to acquiring (*per* the Das translation) or accepting British citizenship, the ordinary meaning is clearly apt to cover a person on whom British citizenship was conferred on application during their childhood (cf paragraph 83 above).

117. *Secondly*, for the reasons we have given, we find that the courts of Bangladesh would take a liberal and generous approach to the construction of the 2008 Instruction, to promote the individuals' right to citizenship rather than exclude them from Bangladeshi citizenship. It would be inconsistent with such an approach to exclude those who were born in Bangladesh but acquired British citizenship in childhood rather than adulthood. It would also be contrary to such an approach to exclude adults who, for example due to lack of capacity, needed a parent or carer to apply for UK citizenship on their behalf and/or who were not required to take an oath of allegiance, yet that would be the effect of interpreting the 2008 Instruction as Professor Hoque has done.

118. It was striking that, in suggesting that his was the interpretation the courts of Bangladesh would adopt, Professor Hoque did not recognise that it was liable to lead to irrational distinctions being drawn.

119. *Thirdly*, we accept Mr Alam's evidence that the courts of Bangladesh would not adopt an interpretation that manifestly serves no purpose. The concern that is evident in the 1972 Order and the 2008 Instruction is that a person should not be permitted to hold dual Bangladeshi-British citizenship if, on acquiring British citizenship, they have taken an oath renouncing allegiance to Bangladesh. The disqualifying provision is making an oath renouncing allegiance to Bangladesh. It is obvious that Bangladesh has no interest in ensuring that its citizens have

positively sworn allegiance to the Head of State of the United Kingdom. What matters is that the individual has refrained from renouncing allegiance to Bangladesh in the course of acquiring British citizenship.

120. *Fourthly*, we do not accept the cultural or political background provides any support for finding that the 2008 Instruction contains these two conditions. We acknowledge that there was pressure from the British-Bangladeshi community on the government to allow dual citizenship and, naturally, the pressure would have come from adults within the community. But there is no reason to think that those pressuring the Bangladeshi government, many of whom would no doubt have had children, were uninterested in the status of their children.

121. Moreover, if the intention was to benefit (and only benefit) those who emigrated from Bangladesh *as adults*, even on Professor Hoque's analysis the measure (a) would potentially exclude some who were intended to be covered and (b) would cover some who were intended to be excluded. In relation to (a), that is because some of those who naturalise or register as adults, having come to the UK from Bangladesh as adults, may need assistance to apply for British citizenship and the requirement to take an oath may be waived (e.g. due to lack of capacity). In relation to (b), as Professor Hoque accepted, on his analysis, K3 would have been covered by the 2008 Instruction if he had only applied for UK citizenship once he reached 18 years of age. The same would be true of any other Bangladeshi citizen who moved to the UK as a child, if they delayed applying for UK citizenship until adulthood. In addition, although not usual, a child may apply on their own behalf for British citizenship and children may take the oath during citizenship ceremonies. Although Professor Hoque did not accept that

such a child would be covered by the 2008 Instruction, no plausible reason why they would not meet the criteria that he considers apply was given.

122. *Fifthly*, we reject the contention that the Daily Star article provides any support for the argument that the 2008 Instruction does not cover those whose application was made on their behalf or who have not sworn an oath. Professor Hoque's reliance on the statement in this article that it "will be applicable only for the expatriate Bangladeshis living in the UK" provides no support for his interpretation for these reasons:

i) We accept that the interpretation of the 2008 Instruction is not straightforward, and so the Bangladeshi courts might be prepared to look beyond the measure itself, and the parent statute, to consider extrinsic materials that shed light on its meaning. But the line in the article on which Professor Hoque relies, where the word "expatriate" is used, is not a quotation of words said by the government official. A quotation appears earlier in the article, but the words on which Professor Hoque relies may, as he acknowledged, be commentary by the journalist. Commentary by a journalist on the meaning of a legal provision would not be admissible or treated as having any value.

ii) Even if the article was admitted, as Professor Hoque acknowledged, there is no indication in it that the two conditions he has identified apply. The requirement not to have relinquished allegiance to Bangladesh is referred to in the article, but there is no suggestion that those acquiring British citizenship as children would not be covered.

iii) The leap from the English word "expatriate", which would naturally include anyone who has emigrated, to the suggestion that the 2008 Instruction (which does not use the term "expatriate" or "probashi") was intended only to cover those born in Bangladesh *who left in adulthood*, rather than all emigrants from Bangladesh, is unjustified. Moreover, the emphasis in the sentence in which the word "expatriate" word appears seems to be on the fact that this notification applies only to UK dual nationals rather than those living in other States.

123. In our judgement, the interpretation that we have found the courts of Bangladesh would reach is entirely consistent with the conclusions reached by the Commission in *C3, C4 & C7*, and the earlier cases to which we have referred. The distinction drawn by the 2008 Instruction is between those who acquire British citizenship by naturalisation or registration (to whom it applies) and those who were British from birth (to whom it does not apply).

Conclusion

124. For the reasons we have given, we have concluded that the Appellant was a citizen of Bangladesh on 11 September 2017. The Secretary of State's decision did not have the effect of rendering him stateless and so his first ground of appeal is dismissed. His remaining grounds of appeal remain to be determined.