

CASE NOTE

DETERMINING STATELESSNESS OF A DEPORTEE IN THE UK: HOW NOT TO DO IT

JUDITH CARTER*

TABLE OF CONTENTS

I	Case Summary.....	57
A	Introduction	57
B	Factual Background and Chronology.....	58
C	Detention and Failed Removal.....	60
D	Legal Issues at Stake	61
II	Holding and Reasoning	61
III	Analysis	62
A	Foreign Law	63
B	Additional Factual Problems.....	64
C	Procedural Problems	64
D	Reference to Inconsistent Standards	65
E	Statelessness as Giving Access to Human Rights.....	66
IV	Conclusion.....	67

I CASE SUMMARY

A *Introduction*

The Court of Appeal of England and Wales ('Court of Appeal') in *Johnson v Secretary of State for the Home Department*¹ examined whether the fact of statelessness should result in an exemption from automatic deportation under United Kingdom ('UK') legislation and decided it did not. The trial was a claim for damages for unlawful detention and was appealed from a judgment of the England and Wales High Court ('High Court').²

This case note, written by a practising solicitor, considers how statelessness could have been determined during and after the period of detention and at the later trial. The note also suggests how UK Home Office ('Home Office')

* Judith Carter is a lecturer and practising solicitor working for stateless migrants present in the UK. Email: judith.carter@liverpool.ac.uk.

© 2026 The Author. This is an open-access article licensed under a Creative Commons Attribution 4.0 International Licence, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence and indicate if changes were made. See <https://creativecommons.org/licenses/by/4.0/>.

¹ *Johnson v Secretary of State for the Home Department* [2024] EWCA Civ 182 ('CA'). This was the final judgment as the case was not heard by the Supreme Court.

² *Johnson v Secretary of State for the Home Department* [2022] EWHC 3120 (KB) ('HC').

procedures and the approach to foreign laws could be improved.³ Similar cases have examined whether it is lawful to refuse to grant a residence permit to someone who is not removable in the context of their deliberate obstruction by lying about their identity,⁴ a deportation case where the person had provided insufficient evidence of statelessness,⁵ and whether indefinite detention of stateless persons is lawful.⁶ In this case, the appellant ('Johnson') was eventually recognised to be stateless,⁷ so the question was not academic.

B Factual Background and Chronology

Johnson's mother, who was accepted by all parties to have been a Ugandan citizen, entered the UK with her two children on a visit visa in October 1989. Johnson's birth certificate indicates he was born at Central Middlesex Hospital (London, UK) on 24 December 1989. His father is not named on the certificate,⁸ but the High Court judgment states he 'was Ugandan'.⁹ Neither judgment records how either of the parents acquired Ugandan nationality. His mother remained in the UK and lodged an asylum claim in January 1991, which was refused in March 1997.

In 1999 and at age 10, Johnson became eligible to be registered as British, but there is no record in the court judgments that anyone applied for him.¹⁰

In 2002, Johnson's mother applied for and received a Ugandan passport for her son, which stated that his place of birth was Rwerere, Uganda. In the summer of 2005, his mother requested leave to remain in the UK for herself and her three children on grounds of long residence,¹¹ stating that Johnson was Ugandan, and providing both his Ugandan passport and his UK birth certificate. The Home Office made enquiries but the discrepancy as to his place of birth was never

³ The argument in the analysis below is not that the Appellant was stateless at the time of the detention, but that the method of determining nationality was seriously lacking in reference to law, definitions and procedural standards.

⁴ *R (AM (Belarus)) v Secretary of State for the Home Department* [2024] UKSC 13, [1]–[4] (Lord Sales, Lords Lloyd-Jones, Hamblen, Stephens and Lady Simler agreeing). AM was not stateless on the facts.

⁵ *AS (Guinea) v Secretary of State for the Home Department* [2018] EWCA Civ 2234 [57]–[60] (Lord Kitchin, Mc Combe LJ agreeing at [62], Lindblom LJ agreeing at [63]).

⁶ The Australian case of *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137 considered the constitutionality of indefinite detention of a stateless person. See Hannah Gordon, 'NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs: The End of Indefinite Immigration Detention in Australia?' (2024) 6(1) *Statelessness and Citizenship Review* 143.

⁷ *HC* (n 2) [124].

⁸ The recital of a letter from the Defendant to the Claimant also states that the Claimant first gave his father's name to the Home Office on 23 January 2014: *ibid* [116(2)].

⁹ *ibid* [13].

¹⁰ Section 1(4) of the *British Nationality Act 1981* (UK) ('BNA') provides for registration as British of people born in the UK who remain there for the first ten years of their lives. There is no age limit to apply for registration under that section, but since 2006 there has been a statutory requirement that an applicant over 10 years old must be of 'good character': at s 41A. The immigration status of the parent is not relevant to such an application. The BNA removed automatic acquisition of nationality by birth on the territory from 1 January 1983.

¹¹ At *HC* (n 2) [14], there is a reference to the 'Legacy' team which operated a policy of limited amnesty and grant of leave to families of failed asylum seekers who had been present in the UK since before the coming into force of the *Human Rights Act 1998* (UK), which incorporated most of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) ('ECHR') into UK law on 1 October 2000. Debate in the House of Commons, UK Parliament on 6 September 2010 refers to the 'Legacy' programme as already in operation in 2006: *HC Deb* 6 September 2010, vol 515, col 15.

clarified by his mother.¹² His mother and siblings were granted indefinite leave to remain at some point (the date is not recorded in the judgments).¹³

Johnson began offending in 2005, and by 2010 had 17 convictions for 30 offences, including aggravated burglary with others on Christmas Day 2009, for which he was sentenced to eight years' imprisonment on 12 September 2010.¹⁴

In May 2013, the UK introduced a residence permit which could be obtained on the grounds of statelessness and inability to enter any other country, with a condition that it would not be granted to a person subject to deportation.¹⁵ The Home Office published detailed guidance to caseworkers on how to determine statelessness.¹⁶

Johnson's immigration status remained unresolved until January 2014,¹⁷ when Home Office officials began considering whether he should be deported. The Home Office records dated 9 January 2014 note the discrepancy relating to country of birth and that an official contacted the London hospital to check the birth records. They received confirmation by telephone that the record was genuine, and they asked for confirmation in writing.¹⁸

On 17 January 2014, the Secretary of State refused Johnson's application for indefinite leave to remain and served a Notice of Intention to Deport on him.¹⁹

On 27 January 2014, a Home Office record justified Johnson's immigration detention based on his criminal history, risk of absconding, and public safety concerns and the likelihood of removal.²⁰ The note recorded that there was a copy

¹² His mother had died by April 2018, when Johnson said her death had given him a 'dramatic change of perspective for the better': *HC* (n 2) [116].

¹³ *ibid* [15].

¹⁴ *CA* (n 1) [22] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]).

¹⁵ UK Visas and Immigration, 'Part 14: Stateless Persons' in *Immigration Rules* (Rules, 1 May 2013) paras 401–9 ('Part 14 Immigration Rules'). All versions of these Rules use the definition of statelessness in the *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960), art 1(1) ('1954 Convention'). The current version of these Rules is called 'Appendix Statelessness': UK Home Office, *Immigration Rules: Appendix Statelessness* (Rules, 3 August 2026) ('Appendix Statelessness'). The name of the part of the Rules remains constant; identifying the correct version which was applied on a particular date requires a consultation with the National Archive. This note refers to 'Part 14 Immigration Rules' which was in force with various amendments which are not relevant here, 1 May 2013 to 30 January 2024; and *Appendix Statelessness* introduced on 30 January 2024. The removal of 'Part 14 Immigration Rules' and introduction of *Appendix Statelessness* was published here: UK Home Office, *Statement of Changes in Immigration Rules* (Policy Paper No HC 246, 7 December 2023) 8–9.

¹⁶ UK Home Office, *Applications for Leave to Remain as a Stateless Person* (Guidance, Version 1.0, 1 May 2013) 5–10 ('2013 Version 1.0 Stateless Leave Guidance'). The substance of this part remains the same since 2013 even though the name of the guidance has changed: see, eg, UK Home Office, *Asylum Policy Instruction: Statelessness and Applications for Leave to Remain* (Guidance, Version 2.0, 18 February 2016) 11–18 ('2016 Version 2.0 Stateless Leave Guidance'); UK Home Office, *Stateless Leave* (Guidance, Version 3.0, 30 October 2019) 29 ('2019 Version 3.0 Stateless Leave Guidance'); UK Home Office, *Permission to Stay as a Stateless Person* (Guidance, Version 10.0, 3 August 2026) ('2026 Version 10.0 Permission to Stay as a Stateless Person Guidance').

¹⁷ A baby born in the UK is not present in the UK unlawfully, though return to the UK from abroad could be refused: *HC* (n 2) [15]. To access certain rights in the UK a person will, since 2014, need to request immigration status or British nationality: see *Immigration Act 2014* (UK), Introductory Text; *Immigration Act 2016* (UK), Introductory Text.

¹⁸ *HC* (n 2) [18].

¹⁹ *ibid*.

²⁰ *ibid* [20]. This paragraph sets out an internal note in full.

of an expired Ugandan passport on the Home Office file,²¹ and that Johnson ‘claims to be British’.²²

C *Detention and Failed Removal*

On 16 February 2014, at the end of his criminal sentence, Johnson was detained under immigration powers.²³ The next day, the UK Secretary of State made a deportation order under s 32(5) of the *UK Borders Act 2007* and generally maintained the same justifications for detention until just before Johnson was released. In March 2014, the Home Office noted that there was a risk of statelessness in Johnson’s case and in two other Ugandan cases.²⁴ Johnson’s appeal against deportation was rejected by the First-Tier Tribunal (Immigration and Asylum Chamber) on 16 October 2014 which stated that he was Ugandan, although we do not have access to the determination to examine the reasoning.²⁵

The Home Office focused on persuading the Ugandan authorities to accept Johnson both before and after a failed removal on 9–10 December 2014.²⁶ This was in spite of those authorities’ vague references to the need for a national to somehow maintain Ugandan nationality while living outside the country — since, until 9 December 2014, they believed him to have been born in Uganda.²⁷ The Home Office did not provide the UK birth certificate to the Ugandan authorities — it was Johnson who produced it to the immigration authorities on arrival at Entebbe airport on 9 December 2014.²⁸ The note of the events in Entebbe say that the ‘Immigration’ staff were of the view that Johnson ‘may have lost his citizenship’ and had ‘been away an awfully long time’.²⁹ Johnson was returned to the UK, and to detention.

After Johnson was released from detention in June 2015, the Ugandan High Commission confirmed that they ‘would not accept the Claimant into Uganda’.³⁰ Written confirmation came from the hospital that the birth certificate was genuine.³¹ Johnson made further attempts to have his nationality or statelessness determined after release, which failed. The High Court judge, without having heard argument on the point, declared that Johnson was ‘de facto’ and not ‘de jure’ stateless in November 2019, when the Home Office made a grant of 30 months

²¹ *ibid* [20], [21].

²² *ibid* [21].

²³ *Borders Act 2007* (UK) s 36.

²⁴ Evidence of S Buckle, Senior Executive Officer, who made some of the detention decisions for the Defendant: *HC* (n 2) [27]–[29].

²⁵ The reference in the judgment is to [1] of that Tribunal determination which suggests there was no argument on the point: *ibid* [49].

²⁶ *ibid* [190]. The Defendant’s responses to the Claimant’s arguments were that the failure to provide evidence of place of birth to the Ugandan High Court was not a breach of the duty of candour; that removal could be carried out relying on an expired passport; that the Ambassador’s statement of the law in an inter-governmental meeting was ‘not determinative’.

²⁷ *ibid* [164]–[225]. These paragraphs were mostly reproduced in *CA* (n 1) [50]–[52], [59(c)] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]).

²⁸ *HC* (n 2) [56], [59].

²⁹ *ibid* [59]. Home Office policy was not to reveal criminal convictions to the embassy in the Emergency Travel Document procedure, but the policy was not always followed: John Vine, *An Inspection of the Emergency Travel Document Process* (Report, March 2014) [8.34]–[8.35].

³⁰ *HC* (n 2) [99]. This occurred on 25 June 2015.

³¹ *ibid* [102]. This occurred on 20 July 2015.

discretionary leave to remain on 12 December 2019, nearly six years after he was originally detained.³² No extract from the Home Office decision letter is available.

D Legal Issues at Stake

The question before the Court of Appeal was whether the statelessness itself could render a deportation order ‘absurd’ and therefore unlawful.

Before the High Court, Johnson (‘Claimant’) argued that the Secretary of State’s (‘Defendant’) failure to provide information about his country of birth to the Ugandan authorities was unlawful.

II HOLDING AND REASONING

The Court of Appeal agreed with the High Court that the Defendant’s decision to make the deportation order was lawful, because the statutory requirement to make it did not depend on the statelessness or removability of the deportee, but on the definition of ‘foreign criminal’ which applied where there was a conviction of more than 12 months, and the person was not a British citizen.³³ The statute could not be read as if it were subject to any additional requirements. None of the statutory exceptions could apply, since none of them referred to statelessness and in other contexts (such as deprivation) Parliament had done so.³⁴ In addition, circumstances could change, so the fact that a person cannot at present be removed is not relevant.³⁵ The *Hardial Singh* principles³⁶ were complied with throughout, since the Secretary of State had a reasonable belief that Johnson was Ugandan, acted diligently and always intended to deport.³⁷

The parties to the appeal accepted that the High Court had correctly identified the relevant facts, except for one important omission.³⁸ The Court of Appeal proceeded on the basis that they had not been presented with any Ugandan nationality law — which was in any case a matter of fact and would have needed expert evidence —³⁹ and stated only that ‘Ugandan officials are at present asserting that the appellant is not a national of Uganda and the respondent has proceeded on that basis’.⁴⁰ The High Court additionally found that there was no need to reach any conclusion as to the lawfulness of the Defendant’s failure to

³² *ibid* [122]–[124], [164(4)].

³³ *CA* (n 1) [56]–[57], [63]–[64] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]).

³⁴ *ibid* [56]–[59], [91] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]).

³⁵ *ibid* [61] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]).

³⁶ *R v Governor of Durham Prison; Ex parte Hardial Singh* [1983] EWHC 1 (QB) established four principles for a period of detention to be lawful: it must be lawful and have removal as its purpose, only last for a reasonable period, end if it appears removal is not possible within a reasonable period, and the Secretary of State must act diligently to effect removal. These were placed on a statutory footing, with important changes, by s 12 of the *Illegal Migration Act 2023* (UK).

³⁷ *CA* (n 1) [75] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]). Except for an agreed period of one month.

³⁸ *ibid* [23] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]). The omission here refers to a telephone call from the relevant hospital, made before 4 February 2014, confirming the validity of Johnson’s UK birth certificate.

³⁹ *ibid* [49] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]). An expert report adduced by the Claimant was explicitly ignored by the High Court because permission had not been sought to adduce it and so there is no record of what the expert addressed: *HC* (n 2) [10].

⁴⁰ *CA* (n 1) [49] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]).

provide the UK birth certificate to the Ugandan authorities before removal,⁴¹ and did not engage with the Defendant's argument that there was no 'duty of candour' in state to state communications.⁴²

III ANALYSIS

The UK is a signatory to the 1954 *Convention Relating to the Status of Stateless Persons* ('1954 Convention') and the 1961 *Convention on the Reduction of Statelessness*.⁴³ The UK has historically determined statelessness in the context of asylum⁴⁴ and deportation⁴⁵ cases as well as other areas. In April 2013, it introduced a procedure for requesting a determination of statelessness leading to a grant of a residence permit where: the person met the definition of statelessness in article 1(1) of the 1954 Convention; was not admissible to any other country; and did not fall under the General Grounds of Refusal.⁴⁶ Those grounds include that a residence permit must not be issued under the statelessness route where 'the applicant is the subject of a deportation order, or a decision to make a deportation order'.⁴⁷

The Home Office published guidance to caseworkers on how to interpret the *Immigration Rules*.⁴⁸ The guidance is broadly based on the United Nations High Commissioner for Refugees *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons* ('UNHCR Handbook').⁴⁹ Some key differences are the standard of proof (the civil standard or balance of probabilities) in relation to the facts, and the burden of proof — which lies with the applicant but shifts (conditionally) to the Home Office once the applicant has done everything they reasonably can themselves.⁵⁰

⁴¹ *HC* (n 2) [175]; *CA* (n 1) [51] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]). The Claimant did not raise this argument in the Court of Appeal: at [53]–[54] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]).

⁴² *HC* (n 2) [186(1)(b)(i)], [190(4)(a)]. See below Part III(D).

⁴³ 1954 Convention (n 15); *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 185 (entered into force 13 December 1975).

⁴⁴ See, eg, *YL (Nationality-Statelessness-Eritrea-Ethiopia) Eritrea CG v Secretary of State for the Home Department* [2003] UKIAT 00016.

⁴⁵ *MA (Ethiopia) v Secretary of State for the Home Department* [2009] EWCA Civ 289, [49]–[53] (Elias LJ, Stanley Burnton LJ agreeing at [85], Mummery LJ agreeing at [87]), quoted in *AS (Guinea) v Secretary of State for the Home Department* (n 5) [50] (Lord Kitchin, McCombe LJ agreeing at [62], Lindblom LJ agreeing at [63]), discussing *R v Secretary of State for the Home Department; Ex parte Valentina Bradshaw* [1994] Imm AR 359.

⁴⁶ 'Part 14 Immigration Rules' (n 15).

⁴⁷ UK Home Office, 'Part 9: General Grounds for the Refusal of Entry Clearance, Leave to Enter or Variation of Leave to Enter or Remain in the United Kingdom' in *Immigration Rules* (Rules, 6 April 2013) para 322(1B). As paragraph 322(1B) is now archived, a similar provision is in force under UK Home Office, *Immigration Rules: Part Suitability* (Rules, 11 November 2025) SUI 2.1. These Rules were updated on 11 November 2025 by UK Home Office, *Statement of Changes in Immigration Rules* (Policy Paper No HC 1333, 14 October 2025) 12–30.

⁴⁸ See, eg, UK Home Office, *2013 Version 1.0 Stateless Leave Guidance* (n 16). Further revisions followed in 2016, 2019 and 2026. For 2026, see UK Home Office, *2026 Version 10.0 Permission to Stay as a Stateless Person Guidance* (n 16) 5. See above n 16.

⁴⁹ United Nations High Commissioner for Refugees, *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons* (Handbook, 2014) ('UNHCR Handbook'); UK Home Office, *2013 Version 1.0 Stateless Leave Guidance* (n 16) 4–5.

⁵⁰ See, eg, UK Home Office, *2026 Version 10.0 Permission to Stay as a Stateless Person Guidance* (n 16) 23. The earlier versions remain largely consistent: see above n 16.

In light of this background, the following analysis critiques the approach of all parties to the task of determining nationality. In this case, a risk of statelessness was identified by the Home Office just over one month into the detention.⁵¹ There was a complete failure by the Home Office to operate its own statelessness determination procedure.

A Foreign Law

In the UK, foreign law is a matter of ‘fact’ for the court to determine.⁵² The Special Immigration Appeals Commission, which hears appeals against deprivation of British nationality on national security grounds, takes the analysis of foreign laws and statelessness seriously and calls experts as a routine matter.⁵³ In the detention and deportation space, different standards apply, as illustrated in the case under consideration where the parties made five legal errors. Firstly, they refer to the wrong country’s nationality laws: The Home Office and the High Court judge⁵⁴ stated that, as Johnson was not British,⁵⁵ he was Ugandan.⁵⁶ Secondly, they refer to the immigration status of a parent in the UK as relevant to her ability to pass her nationality to her child under Ugandan law.⁵⁷ Thirdly, they refer to nationality laws on acquisition at birth which postdate the Claimant’s birth: Johnson was born in the UK in 1989, but there are repeated references to the law as stated in the 1995 *Constitution of the Republic of Uganda* (‘Ugandan Constitution’) as being applicable to the Claimant’s acquisition of nationality.⁵⁸ Fourthly, the Home Office officials note the foreign state’s reference to its own laws without checking them: the Home Office records that the Ugandan authorities

⁵¹ *HC* (n 2) [28]–[29].

⁵² *CS and Others (Proof of Foreign Law) India* [2017] UKUT 199 (IAC) [16].

⁵³ See, eg, *Al-Jedda v Secretary of State for the Home Department* [2012] EWCA Civ 358 [6]–[8] (Richards LJ, Stanley Burnton LJ at [126], Gross LJ agreeing at [129]) for a contemporary example of experts giving oral evidence before the Special Immigration Appeals Commission. The view of the relevant government as to its own nationality laws is not necessarily accepted by the Commission, and such an example was accepted by the judge in the High Court in this case at [201], referring to the Defendant’s arguments at [190(3)]: *HC* (n 2).

⁵⁴ *ibid* [207].

⁵⁵ There is no doubt that Johnson did not meet the criteria for automatic acquisition of British nationality under s 1(1) of the *BNA* (n 10), and the Home Office wrote to tell him so: *HC* (n 2) [22]. Johnson could no longer register as British (due to birth and 10 years’ residence in the UK), because he would not meet the good character requirements: *BNA* (n 10) s 41A.

⁵⁶ On 29 January 2014, the Home Office told Johnson that he was a Ugandan national since both of his parents were Ugandan and had not settled in the UK at the time: *HC* (n 2) [22].

⁵⁷ *ibid*. Some states, eg Malaysia, do make renewal of a passport conditional on lawful residence in the country of residence though this does not appear to be a deprivation or loss of nationality: ‘Passport Renewal’, *High Commission of Malaysia, London* (online) <https://www.kln.gov.my/web/gbr_london/passport_renewal>, archived at <perma.cc/96UQ-DGPA>.

⁵⁸ For example, *HC* (n 2) [109(3)], [116(3)] refers to the Claimant’s position. See ‘Constitution’, *Parliament of the Republic of Uganda* (online) <<https://www.parliament.go.ug/page/constitution>>, archived at <perma.cc/R3TY-YP9R>; *Uganda Independence Act 1962*, 10 & 11 Eliz 2, c 57. There have been four versions of the *Constitution of the Republic of Uganda* since Ugandan independence in 1962. In 1962 citizenship was addressed in the *Uganda Independence Act 1962* (n 58), in the 1962 *Constitution of the Republic of Uganda* and there was a complex *Uganda Citizenship Act 1962* (Uganda), to allow for nationality to be retained on a transitional basis pending acquisition of Ugandan nationality, once that was determined. Possibly that was in force in 1989. The 1995 *Constitution of the Republic of Uganda* was amended in 2005 as regards acquisition of dual citizenship, and again in 2015 and 2018. There is a *Citizenship and Immigration Control Act 1999* (Uganda). Legislation refers to powers to make rules, just as in the UK.

referred, in a different case, to art 10 of the *Ugandan Constitution* as somehow requiring ongoing registration of nationality. A simple reading of the 1995 *Ugandan Constitution*, which may have been the version meant by the Ugandan officials, reveals art 10 to refer only to automatic acquisition of nationality.⁵⁹ Fifthly, all parties fail to consider the existence of laws providing for loss of nationality: the judgment records that the Home Office was fully aware, by early April 2014, that Johnson may not ‘be’ Ugandan and was at risk of statelessness, noting two similar cases.⁶⁰ Home Office records refer to the Ambassador’s statements, and the ‘stance’ of the Ugandan authorities without ever putting any relevant Ugandan law to those officials.⁶¹

B Additional Factual Problems

The relevant facts were never clearly assembled, which results in a faulty framework for determining nationality:⁶² the country of birth of the Claimant and his parents and grandparents is relevant to the acquisition of Ugandan citizenship,⁶³ though the Defendant in argument said that the place of birth was not material to acquisition of Ugandan nationality;⁶⁴ there was no real enquiry as to why the Claimant’s mother lied to the Ugandan authorities about the country of her son’s birth; and the Home Office relied on the Claimant’s own assertions to the First-Tier Tribunal, that he was ‘Ugandan’ as evidence of his nationality, knowing that he had also — erroneously — stated that he was British because he was born in the UK.⁶⁵ Regarding the Claimant’s Ugandan passport, the Home Office was correct to check its validity, but it failed to provide all the relevant information to the Ugandan authorities to help them do so.⁶⁶ The UNHCR *Handbook* suggests that ‘[a]uthentic, unexpired passports raise a presumption that the holder is a national of the country issuing the passport’.⁶⁷ A passport that has been ‘fraudulently’ issued raises no such presumption, and neither does an expired one.⁶⁸

C Procedural Problems

The UK Government’s failure to identify the correct place to determine the Claimant’s nationality lies at the heart of the five-year delay in identifying his statelessness.

⁵⁹ HC (n 2) [28].

⁶⁰ *ibid* [27]–[29].

⁶¹ *ibid* [100], [107].

⁶² *ibid* [18]. The Defendant’s witness said ‘that she did not think that the Defendant had ever been clear in relation to the Claimant’s place of birth’.

⁶³ Ugandan nationality could be acquired by descent for one generation only, according to a simple reading of art 10 of the 1962 *Constitution of the Republic of Uganda* (n 58) which was the applicable nationality law in 1989, as far as we know.

⁶⁴ HC (n 2) [190(2)], [190(4)].

⁶⁵ *ibid* [22].

⁶⁶ It was accepted that the Home Office did not send the UK birth certificate to the Ugandan authorities: CA (n 1) [51] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]). It appears that the Home Office considered that those authorities were fixed with knowledge of it when the Immigration Officers refused the Appellant entry to Uganda only on 9 December 2014 when Johnson showed it to them.

⁶⁷ UNHCR *Handbook* (n 49) [95].

⁶⁸ *ibid*. Johnson’s Ugandan passport was expired: HC (n 2) [20]–[21].

The Home Office failed to refer to any guidance or process on statelessness once a risk of statelessness was identified.⁶⁹ The UK Government does not treat statelessness as giving rise to any ‘protection’ needs under the *1954 Convention*, so it has not included any procedural safeguards in the statelessness determination procedure — which is situated in a residence permit application framework, and not in a bail, deportation or detention context. Therefore, there is no automatic referral into the procedure, unlike for people raising a fear of persecution who are directed to the asylum procedure.⁷⁰ As a result of this failure, despite the Defendant’s awareness — over 14 months before release — that the Claimant was at risk of statelessness, it did not conduct a specialist analysis of his nationality.

The lack of clear referral and application policies led to a procedural ping-pong. In December 2015, the Claimant sought a revocation of the deportation order on the basis that the Ugandan authorities did not treat him as a Ugandan national.⁷¹ His application was not referred to the specialist statelessness determination team.⁷² He then applied under the statelessness residence permit procedure, despite not being eligible for a grant of permit because of the deportation order in force.⁷³ The residence permit team refused to determine his statelessness and rejected the application on 23 September 2016.⁷⁴ In 2018, there was a change in policy to allow the residence permit team to determine statelessness,⁷⁵ then refer that decision to the criminal cases team so that they could lift the deportation order⁷⁶ and grant a period of discretionary leave.

D *Reference to Inconsistent Standards*

There is a great difference in standards between the state-to-state negotiations regarding forced removal, which the Defendant argued before the High Court, and the determination of statelessness for an individual requesting protection.

In defence of her failure to provide correct information to the Ugandan authorities, the Secretary of State argued that there was no international rule of law which required a duty of candour in state-to-state negotiations.⁷⁷ That argument failed to address the more relevant principle that states must act in good faith in interstate relations to comply with customary international law.⁷⁸

By contrast, in the ‘specialist statelessness determination procedure’, the burden is on the applicant to: provide all relevant and correct information to the

⁶⁹ *ibid* [27]–[28].

⁷⁰ ‘Part 14 Immigration Rules’ (n 15) paras A34–34A; UK Home Office, *Appendix Statelessness* (n 15) S 1.1–1.3.

⁷¹ *HC* (n 2) [105].

⁷² *ibid* [112].

⁷³ *ibid*.

⁷⁴ *ibid*. See UK Home Office, ‘Part 14: Stateless Persons’ in *Immigration Rules* (Rules, 19 May 2016) para 404(c). See also *HC* (n 2) [114], [119], [124].

⁷⁵ UK Home Office, *2019 Version 3.0 Stateless Leave Guidance* (n 16) 24. Cf UK Home Office, *2016 Version 2.0 Stateless Leave Guidance* (n 16) 21. The author also received correspondence to this effect in unreported deportation cases where the author challenged two similar decisions as being unlawful in the summer of 2018.

⁷⁶ Section 34(4) of the *Borders Act 2007* (n 23) allows the Secretary of State to temporarily revoke a deportation order for the purpose of ‘taking action’ under the *Immigration Act 1971* (UK) so that a period of leave to enter or remain may be granted.

⁷⁷ Relating to the Secretary of State’s failure to provide correct information to the Ugandan authorities as to country of birth: *HC* (n 2) [186(1)(b)(i)], [190(4)(a)].

⁷⁸ James Crawford (ed), *Brownlie’s Principles of Public International Law* (Oxford University Press, 9th edn, 2019) 34.

other state authorities;⁷⁹ make all reasonable efforts to acquire or reacquire nationality; and try to obtain entry to another country.⁸⁰ The guidance to Home Office caseworkers provides lists of documents relevant to a nationality decision,⁸¹ and includes that once the applicant has made all reasonable efforts, the caseworker is obliged to assist the applicant by helping them collate evidence and make enquiries.⁸² Where an applicant provides false information in support of a request for a visa, the *Immigration Rules* provide for either mandatory or discretionary refusal.⁸³

E Statelessness as Giving Access to Human Rights

Could any of the statutory exemptions to mandatory deportation apply where a person is, or is at risk of, statelessness?⁸⁴ This would be most likely to arise where there could be a breach of the *European Convention on Human Rights* ('ECHR').⁸⁵ The exemption to deportation based on the right to family and private life⁸⁶ has been codified in statute: where the sentence is four years or more the appellant must evidence 'very significant obstacles to... integration' in the receiving country and 'very compelling circumstances' to overcome the statutory presumption that deportation is in the public interest.⁸⁷ The granting of the Claimant's leave to remain in 2019⁸⁸ is an indication that statelessness which results in irremovability can meet those stringent tests.⁸⁹ A grant of leave in this situation meets the UK's obligations under art 8 of the *ECHR*.⁹⁰ An additional indication that statelessness was the only factor influencing the decision to lift the deportation order in December 2019, was that the Claimant had lost his appeal against deportation in

⁷⁹ UK Home Office, *2026 Version 10.0 Permission to Stay as a Stateless Person Guidance* (n 16) 23. See above n 16 (this part is a constant since 2013): 'Where a response from the state includes reasoning that appears to involve a mistake in applying the local law to the facts of the case or an error in assessing the facts, you must seek clarification from the state concerned. Whilst it is the subjective position of the other state that is critical in determining whether an individual is its national for the purposes of the stateless person definition, you must consider the evidence provided to the state by the applicant. If it is clear that the applicant has provided false or misleading information to state officials, this may be viewed as evidence of false representations and may lead to a refusal of the Statelessness application'.

⁸⁰ 'Part 14 Immigration Rules' (n 15) para 403, now in UK Home Office, *Appendix Statelessness* (n 15) S 3.

⁸¹ UK Home Office, *2026 Version 10.0 Permission to Stay as a Stateless Person Guidance* (n 16) 24.

⁸² *ibid* 23.

⁸³ UK Home Office, *Immigration Rules: Part Suitability* (n 47) SUI 9–11. At the time of these decisions, these were instead known as 'General Grounds for Refusal': see above n 47.

⁸⁴ See *Borders Act 2007* (n 23) s 33. The question had been left open in *AS (Guinea)* (n 5) [60] (Lord Kitchin, Mc Combe LJ agreeing at [62], Lindblom LJ agreeing at [63]). See above n 5.

⁸⁵ *Borders Act 2007* (n 23) s 33(2)(a).

⁸⁶ *ECHR* (n 11) art 8.

⁸⁷ *Nationality, Immigration and Asylum Act 2002* (UK) s 117C.

⁸⁸ And in three cases known to the author where Discretionary Leave for 30 months was granted, allowing access to employment, social benefits and a Stateless Person's Travel Document.

⁸⁹ The grant of leave in itself cannot be an aid to statutory interpretation: *CA* (n 1) [62] (Lewis LJ, Asplin LJ agreeing at [92], Bean LJ agreeing at [93]).

⁹⁰ See *Aristimuño Mendizabal v France* (European Court of Human Rights, Second Section, Application No 51431/99, 17 January 2006) [66].

October 2014 when he had the opportunity to raise all other relevant matters, including human rights, but he had not argued that he was stateless.⁹¹

The Home Office acknowledges that if left unresolved, the condition of statelessness is likely to lead to diminished enjoyment of basic human rights. This consequence has been consistently expressed in one of the policy intentions in the caseworker guidance on the residence permit procedure:

to provide a means for stateless persons in the UK who cannot obtain admission to any other country for the purposes of permanent residence, to access their basic human rights by granting them permission to stay in the UK as part of our efforts to address wider global issues facing stateless persons.⁹²

IV CONCLUSION

The Court of Appeal dealt succinctly with the Claimant's argument that his statelessness alone rendered a deportation order unlawful. Even in the context of the factual findings in this case, the Court of Appeal could have considered whether statelessness, which also resulted in irremovability, engaged art 8 of the *ECHR* and brought the case under the human rights exemption to automatic deportation. If it were accepted by the Court of Appeal that — as the policy guidance states —⁹³ unaddressed statelessness is very likely to result in breaches of human rights, the Secretary of State would be encouraged to make a referral to the specialist statelessness determination team when a risk of statelessness is identified. Such referrals would raise standards and increase procedural and substantive protections for people who are stateless in the UK.⁹⁴

⁹¹ *Nationality, Immigration and Asylum Act 2002* (n 87) s 84. The High Court noted that 'the Claimant's Ugandan citizenship was not disputed' in the Tribunal appeal heard on 24 September 2014: *HC* (n 2) [49].

⁹² This text appears in the Caseworker Guidance documents from 2019 to date: UK Home Office, *2019 Version 3.0 Stateless Leave Guidance* (n 16) 8; UK Home Office, *2026 Version 10.0 Permission to Stay as a Stateless Person Guidance* (n 16) 8. The 2013 and 2016 versions of the guidance were less explicit but recognised the impact of lack of nationality or lawful status as engaging human rights: UK Home Office, *2013 Version 1.0 Stateless Leave Guidance* (n 16) 4; UK Home Office, *2016 Version 2.0 Stateless Leave Guidance* (n 16) 6. Jurisprudence in the European Court of Human Rights supports that principle: see, eg, *Hoti v Croatia* (European Court of Human Rights, First Section, Application No 63311/14, 26 April 2018) [122]–[124].

⁹³ See, eg, UK Home Office, *2026 Version 10.0 Permission to Stay as a Stateless Person Guidance* (n 16) 7–8. See above n 16.

⁹⁴ UNHCR *Handbook* (n 49) [112]–[115].