



Neutral Citation Number: [2021] EWCA Civ 378

C4/2019/3158

**IN THE COURT OF APPEAL**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Thursday 16 March 2021

**Before :**

**LORD JUSTICE COULSON**  
**LORD JUSTICE HADDON-CAVE**  
**and**  
**LORD JUSTICE EDIS**

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**Between:**

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

**Appellant**

**- and -**

**HASHIM TARIQ**

**Respondent**

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Zane Malik QC (instructed by GLD) for the Appellant  
Amanda Jones (instructed by Bhogal Partners) for the Respondent

Hearing date: 4 March 2021  
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**Judgment Approved by the court  
for handing down**

## Lord Justice Haddon-Cave:

### Introduction

1. This case concerns the Secretary of State (“SSHD”)’s decision to refuse the Respondent (“Mr Tariq”)’s application for registration as a British citizen under section 4B of the British Nationality 1981 Act (“the 1981 Act”).
2. The hearing before us took place on 4<sup>th</sup> March 2021. The Court invited submissions first on Ground 2 of the grounds of appeal. After hearing submissions by counsel for both parties on Ground 2, the Court indicated that it would allow the Appellant’s appeal without the need to hear argument on Ground 1, and would provide its reasons in due course.

### Background

3. Mr Tariq was born in Khanewal, Pakistan, on 3<sup>rd</sup> January 1989. Both his parents were Pakistani nationals at the time of his birth. Mr Tariq’s mother was born in Hong Kong and issued with a British National (Overseas) (“BNO”) passport on 10<sup>th</sup> December 1996 and a further BNO passport on 21<sup>st</sup> April 2008. She is now a British citizen.
4. On 9<sup>th</sup> March 1997, Mr Tariq also acquired BNO status (aged eight) and was issued further BNO passports on 26<sup>th</sup> February 2003 (aged thirteen) and 4<sup>th</sup> June 2007 (aged eighteen). Mr Tariq is now 32 and had been lawfully resident in the United Kingdom since the age of 16. He has a British wife and a British child.
5. On 29<sup>th</sup> June 2010, at the age of 21, Mr Tariq applied to register as a British citizen for the first time. His application was refused by the SSHD on 1<sup>st</sup> September 2010. The basis of the SSHD’s refusal was that Mr Tariq held another nationality, namely a dual Pakistani-British nationality, which under the provisions of section 4B of the 1981 Act precluded him from acquiring British nationality. The refusal decision of 1<sup>st</sup> September 2010 was reconsidered and upheld on 24<sup>th</sup> September 2010.
6. On 3<sup>rd</sup> March 2014, Mr Tariq submitted an application for a finding that he was a “stateless” person. This application was refused by the SSHD on 4<sup>th</sup> March 2014.
7. On 8<sup>th</sup> September 2016, Mr Tariq applied again to register as a British citizen under section 4B of the 1981 Act. In support of his application, Mr Tariq produced a letter from the Pakistani Consulate in Birmingham dated the 29<sup>th</sup> June 2016. The letter stated that, as Mr Tariq’s mother has assumed BNO citizenship and “*by default her Pakistani citizenship was cancelled as per the Pakistani Citizenship Act 1951*” and attached a letter from the Pakistani Consulate in Hong Kong SAR dated 22<sup>nd</sup> July 2011 to that effect. The Birmingham Consulate’s letter stated as follows as regards Mr Tariq’s status:

*“Regarding the citizenship status of Mr. Tariq, please note that as a corollary his citizenship was also cancelled when he assumed B.N.O. Passport. Therefore he is not entitled to possess a Pakistani travelling document.”*

8. On 21<sup>st</sup> May 2018, Mr Tariq’s second application for British naturalisation was refused by the SSHD on the grounds that the requirements under section 4B of the 1981 Act were still not met.
9. On 10<sup>th</sup> August 2018, Mr Tariq issued judicial review proceedings in the Upper Tribunal against the SSHD’s decision of 21<sup>st</sup> May 2018. On 10<sup>th</sup> January 2019, these proceedings were transferred to the Administrative Court. On 22<sup>nd</sup> February 2019, Michael Kent QC, sitting as a deputy High Court Judge, granted permission to apply for judicial review.
10. On 25<sup>th</sup> June 2019, Mr Tariq’s claim for judicial review was heard by Helen Mountfield QC sitting as a Deputy High Court Judge of the Administrative Court. On 10<sup>th</sup> December 2019, the Judge handed down her judgment concluding that Mr Tariq met the requirements under section 4B of the 1981 Act, thereby entitling him to British citizenship and making an order to that effect (see further below).
11. On 30<sup>th</sup> December 2019, the SSHD sought permission to appeal against the Judge’s judgment and order of 10<sup>th</sup> December 2019. Permission to appeal was granted by Lady Justice Laing on 16<sup>th</sup> November 2020.

## **The Law**

### **UK Legislation**

#### *The British Nationality Act 1981*

12. Section 4B of the 1981 Act entitles a person who has the ‘status’ of a BNO to be registered as a British citizen on application under the following circumstances:

*“Section 4B: Acquisition by registration: certain persons without other citizenship*

*(1) This section applies to a person who has the status of—*

...

*(d) British National (Overseas)*

*(2) A person to whom this section applies shall be entitled to be registered as a British citizen if—*

*(a) he applies for registration under this section,*

*(b) the Secretary of State is satisfied that the person does not have, apart from the status mentioned in subsection (1), any citizenship or nationality, and*

*(c) the Secretary of State is satisfied that the person has not after [the relevant day] renounced, voluntarily relinquished or lost through action or inaction any citizenship or nationality.*

*(3) For the purposes of subsection (2)(c), the “ relevant day ” means—*

*(a) in the case of a person to whom this section applies by virtue of subsection (1)(d) only, 19th March 2009, and*

*(b) in any other case, 4th July 2002.”*

*Hong Kong Act 1985 and The Hong Kong (British Nationality) Order 1986*

13. Section 2 of the Hong Kong Act 1985 enabled an Order in Council to make provision, upon the handover of sovereignty of Hong Kong to the People’s Republic of China on 1<sup>st</sup> July 1997, for persons who were British Overseas Territories (“BOT”) citizens to acquire a new form of British nationality called British National (Overseas) (“BNO”).
14. The relevant Order in Council, The Hong Kong (British Nationality) Order 1986 (SI 1986 No. 948), provided that persons who immediately before 1<sup>st</sup> July 1997 (a) were BOT citizens by virtue of having a connection with Hong Kong and (b) but for that connection would not be BOT citizens, could register as BNO before 1<sup>st</sup> July 1997.
15. Unlike BOT citizenship, BNO status did not bestow a right of abode in the United Kingdom. However, recently on 31<sup>st</sup> January 2021, the Home Office published guidance entitled *Hong Kong British National (Overseas) Route* which provides a pathway whereby those with BNO status may now acquire entry clearance and leave to remain in the UK, and after 5 years continuous residence by this route, the right to apply for settlement and indefinite leave to remain (“ILR”).

Pakistani legislation

*Pakistan Citizen Act 1951*

16. The following provisions of the Pakistan Citizen Act 1951 (“the 1951 Act”) are relevant:

*“14. Dual citizenship or nationality not permitted*

*(1) Subject to the provisions of this section if any person is a citizen of Pakistan 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 Pakistan.*

*(IA) Nothing in sub-section (1) applies to a person who has not attained twenty-one years of his age:*

*(2) Nothing in sub-section (1) shall apply to any person who is a subject of an Acceding State so far as concerns his being a subject of that State.*

*(3) Nothing in sub-section (1) shall apply, or shall be deemed ever to have applied at any stage, to a person who being, or having at any time been, a citizen of Pakistan, is also the citizen of the United Kingdom and Colonies or of such other country as the Federal*

*Government may, by notification in the official Gazette, specify in this behalf.”*

*“19. Cases of doubt as to citizenship*

*(1) Where a person with respect to show citizenship a doubt exists, whether or a question of law or fact makes an application in that behalf to the Federal Government, the Federal Government may grant him a certificate that at the date of the certificate he is a citizen of Pakistan.*

*(2) The certificate, unless it is proved to have been obtained by fraud or false representation or concealment of any material fact, shall be conclusive evidence of the fact recorded in it.”*

**The Judgment below**

17. The issues for decision by the Administrative Court were twofold:

- (1) Whether Mr Tariq was *still* a citizen of Pakistan and so precluded from claiming British nationality because of the terms of section 4B(2)(b) of the 1981 Act.
- (2) Whether, even if he was *no longer* a citizen of Pakistan, this was because he had renounced, voluntarily relinquished or lost his Pakistani nationality through action or inaction on or before 19<sup>th</sup> March 2009 and so precluded from claiming British nationality because of the terms of section 4B(2)(c) of the 1981 Act.

18. The Administrative Court received expert evidence on Pakistani law from Professor Niaz Shah, Reader in Law at the University of Hull. The Judge recited Professor Shah’s answers to the six questions he was asked to address as follows:

*“21. The answers Professor Shah gave in response to these questions were as follows:*

- i) The claimant was a citizen by birth and descent but that status ceased when he attained the age of 21 on 2 January 2010. His citizenship by birth and descent was ‘impliedly’ confirmed by the two letters of Pakistani missions in Hong Kong and the UK.*
- ii) The claimant’s citizenship was ceased, not cancelled: in Professor Shah’s view, the letters issued by the missions which used the word ‘cancelled’ did not correctly reflect Pakistani citizenship law.*
- iii) The claimant is no longer a citizen of Pakistan – he was a citizen by birth and descent, but this ceased on 2 January 2010.*
- iv) The letters from the consulates were reflective of citizenship law except the incorrect wording of ‘cancellation’ and they did not provide the correct date of cessation of the claimant’s citizenship.*
- v) The letters are sufficient proof of cessation of the claimant’s Pakistani citizenship.*

- vi) *Citizenship by birth cannot be cancelled but it can be ceased or renounced [sic] by a voluntary act of the concerned citizen.*”

19. As regards the first issue for determination, the Judge answered in the negative and found Mr Tariq was no longer a Pakistani national on the basis of both the expert evidence of Professor Shah and the Pakistani Consulate’s letter. She held:

*25. As to the first proposition, on any view, the evidence is that by the date of his application for British citizenship, the claimant was no longer a Pakistani national. Professor Shah concluded that, as a matter of Pakistani law correctly construed, the Claimant was a citizen of Pakistan by birth and descent. He also concluded that, as a matter of Pakistani law, the Claimant ceased to be capable of being a dual Pakistani national when he became a major at the age of 21. So on Professor Shah’s evidence, the claimant’s Pakistani citizenship ceased on 2 January 2010, because, as a matter of Pakistani law, he was not entitled to remain a Pakistani national and a foreign national other than a British citizen after his 21<sup>st</sup> birthday, 3 January 2010.*

*26. The Pakistani embassy’s letter take a different route and provides a different date, but still concludes that the claimant is not now a Pakistani citizen. It certifies that the claimant lost his nationality because it was cancelled as a ‘corollary’ of assuming a BNO Passport, which happened in 2007.*

*27. Either way, the date of this application for naturalisation, on 8 September 2016, the claimant was no longer a Pakistani citizen. If he cannot become a full British citizen, he is stateless.*

20. As regards the second issue for determination, the Judge rejected the SSHD’s proposition that Mr Tariq lost his Pakistan nationality because he failed to take relevant steps before his 21<sup>st</sup> birthday on 3<sup>rd</sup> January 2010 to preserve his Pakistani citizenship (although the Judge acknowledged this was a correct reading of Pakistani law according to Professor Shah). The Judge found that the reason Mr Tariq was no longer a Pakistani citizen was because the Pakistani Government regarded him as having lost his Pakistani citizenship when he acquired a BNO passport and place reliance upon the letter from the Pakistan Consulate dated 29<sup>th</sup> June 2016. She held:

*“28. The issue then arises whether the reason that the claimant is no longer a Pakistani national is because he renounced, voluntarily relinquished or lost that nationality through action or inaction on or before 19 March 2009.*

*29. It is not suggested that the claimant has ever taken any positive action to renounce, relinquish or lose his Pakistani citizenship. The defendant’s case is that, as a matter of Pakistani law, after the relevant date 19 March 2009, he could have taken steps to renounce his British*

*Nationality (Overseas), and, if he had done so, he would have been permitted by Pakistani law to retain his Pakistani nationality.*

*30. I reject the proposition that the reason that the claimant lost his Pakistani nationality was because he failed to take steps which he could, and therefore should, have taken after 19 March 2009 but before 3 January 2010 to retain that nationality. That may be the correct reading of Pakistani law, according to the expert on this subject, but it is not the reason that the claimant is not a Pakistani national.*

*31. The reason he is not a Pakistani national is because the Pakistani government itself regard him as having lost that status when he assumed a BNO passport. Professor Shah observed (at paragraph 7.5) that he was unable to reach a firm conclusion on the status of BNO holders, ie whether Pakistan will treat them as British citizens.*

*32. On this, therefore, I have only two pieces of evidence.*

*33. The first is section 19(2) of the Pakistan Citizenship Act 1951, which provides that a certificate from the Pakistani government is conclusive proof of citizenship or not, as a matter of Pakistani law.*

*34. The second piece of evidence, as noted above, is that the Pakistani consulate has issued a formal document which says that the Claimant's Pakistani citizenship was cancelled when he received his British National (Overseas) passport. The first BNO passport the Claimant received was in 1997, when the Claimant was eight years old. He received later passports in 2002 and 2007 - all when he was a child, on the government's view as to the Pakistani law of majority (ie that he was a child until he was 21).*

*35. I accept that, on Professor Shah's reading of the law, this document from the consulate may be a mistaken reading of the law of Pakistan. But that does not alter the clear, and only, evidence I have that, in fact, the Pakistani government ceased to recognise the claimant as a Pakistani citizen, and regarding the claimant's nationality as having been cancelled when he assumed a BNO passport, at his parents' volition, in 1997. So in fact, on the evidence before me, that is the date on which the Pakistani government ceased to treat the claimant as a Pakistani citizen.*

*36. I was asked to find that the consulate letter was conclusive evidence as to when the claimant lost his nationality. A straightforward reading of the text of section 19(2) of the Pakistan Citizenship Act 1951, read as if it were an English statute, would suggest that this letter was irrebuttable proof that the claimant's Pakistani citizenship had ceased when the Pakistani government said it had ceased - ie on acquisition of a BNO passport in 1997. But there is no evidence before me other than this text as to the meaning of this*

*provision as a matter of Pakistani law. Professor Shah was not asked for a view on the meaning of section 19.*

*37. However, I do not need to decide this point of Pakistani law to reach a decision of fact for the purposes of deciding whether the reason the claimant lost his Pakistani nationality was because of a failure to take positive steps to retain it between 19 March 2009 and 3 January 2010.*

*38. I find that the reason the claimant lost his Pakistani nationality was that the Pakistani government ceased to treat him as a Pakistani national when he acquired a British National (Overseas) travel document while he was a child (in 1997). By the time he was an adult, the claimant could not have been expected to ‘renounce’ his Pakistani citizenship, because the evidence before me is that the Pakistani government regarded it as having already ceased when he was an eight year old child.*

*39. I conclude that the claimant was not a Pakistani citizen when he applied for British citizenship. He had lost his Pakistani citizenship while he was still a minor, either by operation of Pakistani law or because of the Pakistani government’s incorrect – but conclusive – application of it. Since he was a child when this happened, he could not be said for the purposes of section 4B(2) of the British Nationality Act 1981 to have ‘renounced’ his citizenship or lost it by inaction as an adult after 19 March 2009. By the time he was 18, let alone 21, he had no Pakistani nationality to renounce or lose.”*

21. On this basis, the Judge concluded that Mr Tariq was entitled to British citizenship and quashed the SSHD’s decision of 21<sup>st</sup> May 2018.

### **Grounds of Appeal**

22. The SSHD raised two separate grounds of appeal against the judgment below:

- (1) Ground 1: The Judge erred in holding that Mr Tariq met the requirement in Section 4B(2)(b) of the 1981 Act, as Mr Tariq is still a citizen of Pakistan.
- (2) Ground 2: The Judge erred in holding that Mr Tariq met the requirement in Section 4B(2)(c) of the 1981 Act, as Mr Tariq renounced his Pakistani citizenship through inaction after the relevant day.

### **Preliminary point: Is the claim academic?**



23. Ms Amanda Jones on behalf of Mr Tariq raised a preliminary point: she argued that the appeal had become academic because of the Home Office's recently announced policy granting Hong Kong people with BNO status a route to ILR after residing in the UK for 5 years (see above).
24. Mr Zane Malik QC on behalf of the SSHD acknowledged that it will be open for Mr Tariq to apply for leave to remain pursuant to the new policy and such an application would be considered on its merits; but submitted that these proceedings were not academic.
25. In my view, the claim is far from academic. The dispute between the parties remains live and the route to ILR and settlement in the UK for BNO holders is markedly different from that envisaged by the current proceedings whereby the Court's decision in his favour would entitle Mr Tariq to British citizenship immediately.

### **Submissions**

26. As stated above, we invited counsel to address us first on Ground 2.

#### *SSHD's submissions on Ground 2*

27. Mr Zane Malik QC's submissions on Ground 2 can be summarised as follows:
  - (i) It is well established that the question of a person's nationality is to be determined by reference to the law of the state, on the expert evidence, not what agencies of the state say about that person's nationality.
  - (ii) Even assuming the issuing of a BNO passport meant that Mr Tariq fell within the ambit of section 14(1) of the 1951 Act, he nevertheless fell within the exception in section 14(1A) of the 1951 Act and would not have ceased to be a citizen of Pakistan until he turned 21 years old on 3<sup>rd</sup> January 2010, as Professor Shah concluded in paragraph 5.2 of his report.
  - (iii) The Judge erred in failing to follow the (unchallenged) expert evidence of Professor Shah and in preferring the incorrect statement of the law in the Pakistani Consulate's letter.
  - (iv) The Judge should have held that Mr Tariq lost his Pakistani citizenship after the relevant date of 19<sup>th</sup> March 2009 and the section 4B(2)(c) requirement has not been met.

#### *Mr Tariq's submissions*

28. Ms Jones submitted that the Judge was entitled to find that the evidence met the requirements under section 4B(2)(c).
  - (i) There was evidence before the Court that Mr Tariq was no longer a Pakistani citizen. That evidence took the form of the letter sent from the Pakistani Consulate dated 29<sup>th</sup> June 2016 which stated that Mr Tariq's citizenship had also been cancelled when he assumed a BNO passport and therefore he was not entitled to possess a Pakistani travel document.
  - (ii) This evidence was in accordance with the SSHD's guidance on the type of evidence that should be provided in an application under section 4B of the 1981 Act. The Guidance states that "*documentary evidence that you have no other citizenship or nationality*" can include "*a letter from the country in which you were born saying whether you*

*have ever held that country's citizenship or nationality". (iii) The cases of Al-Jedda and Pham are distinguishable because they relate to deportation for serious offences. The fact that the courts in those cases were prepared to find that a person is not 'stateless' for the purposes of deportation for serious criminal offences does not mean the same approach should be taken when it comes to a person of good character.*

## **Analysis**

### *The 1981 Act*

29. Section 4B(1) of the 1981 Act entitles four categories of person to apply to be registered as a British citizen, including under sub-section (d), persons with "...*British National (Overseas)*" status.
30. Section 4B(2) of the 1981 Act entitles a person to be registered as a British citizen if the SSHD is satisfied that they have not, after "*the relevant day*", "*renounced, voluntarily relinquished or lost through action or inaction any citizenship or nationality*". Section 4B(3) provides that the "*relevant day*" in relation to persons applying by virtue of sub-section 4(B)(1)(d), *i.e.* those with BNO status, is 19<sup>th</sup> March 2009.
31. The Judge determined that the role of the court was to decide for itself whether, as a matter of fact, the claimant met the section 4B requirements, relying on *R(Harrison) v Secretary of State for the Home Department* [2003] EWCA Civ 432 [34]. Under section 3(8) of the Immigration Act 1971, the burden of proving the facts was on the claimant ("*where any question arises under this Act whether or not a person is a British citizen...it shall lie on the person asserting it to prove that he is*"). Though a similar section does not appear in the 1981 Act, the Judge accepted the SSHD's submission that a claimant must prove the facts upon which they rely.

### *Professor Shah's evidence*

32. I agree with the Judge's approach. Mr Tariq was seeking to bring himself within the provisions of the 1981 Act. The burden was, therefore, on him to show that he had not, after 19<sup>th</sup> March 2009, renounced, voluntarily relinquished or lost his Pakistani citizenship through action or inaction.
33. The Court below had the benefit of (unchallenged) expert evidence on Pakistani law from Professor Shah. The following points are clear from his report.
34. As regards the 1951 Act:
  - (1) Section 14(1) of the 1951 Act contains a general prohibition against dual citizenship or nationality: a citizen of Pakistan who is also a citizen or national of another country "*shall, unless he makes a*

*declaration... renouncing his status as citizen or national thereof, cease to be a citizen of Pakistan”.*

- (2) Section 14(3) grants an exception in relation to citizens of Pakistan who are also citizens of “*the United Kingdom and Colonies*” and other specified countries.
- (3) Section 14(1A) disapples the prohibition in sub-section 14(1) in relation to “*a person who has not attained the twenty-one years of his age*” and, therefore, provides protection to children under 21 against automatic cessation of Pakistani citizenship. (Similar protection is provided to children under 21 by section 14A in relation to “*renunciation*” of Pakistani citizenship.)

35. Professor Shah explained the rationale of section 14(1A) as follows:

*“4.9 ...The logic behind subsection 1A seems to be that children will not lose their right to citizenship by birth as the decision to acquire/prefer citizenship of another country would have been made by their parents. On attaining adulthood, they need to choose between Pakistani citizenship or the citizenship of another country. In a sense, parental decision on dual citizenship will not trigger the cessation of their Pakistani citizenship until 21 years old...”*

36. It should be noted that Mr Tariq was not 21 until 3<sup>rd</sup> January 2010, *i.e.* over nine months after the “*relevant day*” under section 4B of the 1981 Act, namely 19<sup>th</sup> March 2009.

37. Professor Shah’s evidence on the primary question he was asked is admirably clear:

***“Question (1): Whether Mr Tariq, according to the relevant domestic law of Pakistan, is a citizen of Pakistan***

*5.1 Mr Tariq was a citizen by birth because he was born to Pakistan parents when the Citizenship Act 1952 was in force. His parents were also citizens of Pakistan at the time of his birth. Therefore he was a citizen by descent as well.*

*5.2 Mr Tariq was born on 3 January. He acquired BNO on 9 March 1997 when he was about two month and 8 year old. Given that he was a minor on 9 March 1997, he was caught by section 14(1)(1A) of the Citizenship Act... He attained the age of 21 on 2 January 2010. From reading the documents, it seems that he did not renounce his BNO, as he was, as he was required to do under section 14, to retain his Pakistani citizenship. Mr Tariq’s Pakistani citizenship ‘ceased’ under section 14 of the 1951 Act when he attained the age of 21. **Conclusion: Mr Tariq was a citizen by birth and descent but that status ceased when he attained the age of 21 on 2 January 2010. ...”***

(bold in original; underlining added)

38. Professor Shah further described Mr Tariq’s failure to renounce his BNO status as “*the voluntary act of choosing a BNO over Pakistani citizenship*” which meant that Mr Tariq’s Pakistani citizenship “*automatically ceased by the operation of section 14 of the Citizenship Act*” (paragraph 5.4 of his report).

*Judgment below*

39. The reasoning of the Judge below is not altogether easy to follow. The Judge appears to accept, in full, the evidence of Professor Shah that Mr Tariq’s Pakistani citizenship ceased on 2<sup>nd</sup> January 2010 because of the prohibition against dual nationality (paragraph [25] of the judgment). The Judge also appears to accept that, on the basis of Professor Shah’s evidence, the Pakistani Consulate’s letter of 29<sup>th</sup> June 2016 “*may be a mistaken reading of the law of Pakistan*” (paragraph [34]).
40. However, the Judge nevertheless appears to have proceeded to rely upon the Pakistani Consulate’s letter of 29<sup>th</sup> June 2016 as the essential basis of her decision. This is apparent from paragraphs [38] and [39] of the judgment which are repeated below for convenience:

“38. *I find that the reason the claimant lost his Pakistani nationality was that the Pakistani Government ceased to treat him as a Pakistani national when he acquired a British National (Overseas) travel document – while he was a child (in 1977). By the time he was an adult, the claimant could not have been expected to ‘renounce’ his Pakistani citizenship, because the evidence before me is that the Pakistani government regarded it as having already ceased when he was an eight year old child.*

“39. *I conclude that the claimant was not a Pakistani citizen when he applied for British citizenship. He had lost his Pakistani citizenship while he was still a minor by operation of Pakistani law or because of the Pakistani government’s incorrect – but conclusive – application of it.”*

(underlining added)

41. In my view, the Judge’s approach and findings - which were based on the Consulate’s letter in preference to Professor Shah’s evidence - were flawed for two principal reasons.
42. First, the Judge failed to have regard to the well-established principle that the question of a person’s nationality is a *de jure* matter, *i.e.* to be determined by reference to the actual law of the state on the basis of expert evidence, not what agencies of the state may assert about that person’s nationality (see *Secretary of State for the Home Department v Al-Jedda* [2013] UKSC 62 [2013] 3 WLR 1006 and *Pham v Secretary of State for the Home Department* [2015] UKSC 19 [2013] 1591). In *Pham*, the Vietnamese Government

asserted that Mr Pham was not a citizen of Vietnam, but the Court held, by reference to the expert evidence, that under Vietnamese laws Mr Pham was a Vietnamese national. The Supreme Court stated (at paragraph 92):

*“If the relevant facts are known and on the basis of those facts and the expert evidence it is clear that under the law of a foreign state an individual is a national of that state, then he is not de jure stateless. If the Government of the foreign state chooses to act contrary to its own law, it may render the individual de facto stateless. Our own courts, however, must respect the rule of law and cannot characterise the individual as de jure stateless. If this outcome is regarded as unsatisfactory, the remedy is to expand the definition of stateless persons in the 1954 Convention or in the 1981 Act, as some have urged. The remedy is not to subvert the rule of law. The rule of law is now a universal concept. It is the essence of the judicial function to uphold it.”*

43. Ms Jones did not seriously pursue her submission as to the non-applicability of the *Pham* principle in the current context. In my view, it is plainly applicable.
44. Second, the Judge wrongly treated the Consulate letter as conclusive on the question, notwithstanding her acknowledgment that it was incorrect in law. The Judge appears to have been influenced by her own reading of section 19(2) of the 1951 Act:

*“36. ... A straightforward reading of the text of section 19(2) of the Pakistan Citizenship Act 1951, read as if it were an English statute, would suggest that this letter was irrebuttable proof that the claimant’s Pakistani citizenship had ceased when the Pakistani government said it had ceased – i.e. on acquisition of a BNO passport in 1997.”*

45. Unfortunately, the Judge’s reading of section 19(2) was mistaken. She failed to have regard to the terms of sub-section 19(1) which governs section 19(2). Section 19(1) permits the Pakistan government “to grant... a certificate certifying that a person is a citizen of Pakistan”. It does not permit the grant of a certificate (or letter) that a person is not a citizen of Pakistan. Section 19(2) provides that a certificate “shall be conclusive evidence of the fact recorded in it”. The certificate referred to in section 19(2) is clearly that permitted by section 19(1), namely a positive certificate certifying the fact that a person is a citizen of Pakistan. Section 19 does not permit the grant of a negative certificate (or letter) that a person is not a citizen of Pakistan, still less that the same shall be conclusive evidence of non-citizenship. This is clear from a straightforward reading of section 19. In stating the opposite (and, moreover, equating the Consulate letter with a formal certificate), the Judge misdirected herself. (It should be noted that section 16 of the 1951 Act provides that an order of the Federal Government is required to deprive a person of Pakistani citizenship.)
46. Ms Jones sought valiantly to argue that the Judge’s findings in paragraphs [38] and [39] were correct on the question of causation. However, as I have

explained, the Judge's findings were expressly predicated on the Pakistani Consulate letter which the Judge was wrong to give precedence to. In any event, both the Birmingham Pakistani Consulate of 2016 letter touching on Mr Tariq's status and the earlier Hong Kong Pakistani Consulate letter of 2011 concerning his mother's status post-dated Mr Tariq's 21<sup>st</sup> birthday when, according to Professor Shah's unchallenged evidence, section 14 of the 1951 Act put Mr Tariq to his election. There is no evidence that the Pakistani Government informed Mr Tariq at any earlier stage that it was treating Mr Tariq as having lost his Pakistani citizenship when he was a child, still less that the Pakistani Government could lawfully do so in the light of the express protection afforded by section 14(1A) of the 1951 Act.

### **Conclusion**

47. For these reasons, in my view, this appeal should be allowed on Ground 2. In the circumstances, it was not necessary to hear argument on Ground 1.

### **Lord Justice Edis**

48. I agree.

### **Lord Justice Coulson**

49. I also agree.