



19 October 2016

## PRESS SUMMARY

**R (on the application of Johnson) (Appellant) v Secretary of State for the Home Department (Respondent) [2016] UKSC 56**  
*On appeal from [2016] EWCA Civ 22*

**JUSTICES:** Lady Hale (Deputy President), Lord Kerr, Lord Reed, Lord Hughes, Lord Toulson

### BACKGROUND TO THE APPEAL

The appellant, Mr Johnson, was born in Jamaica in 1985 to a Jamaican mother and British father who were not married to one another. His father moved to the United Kingdom with him when he was four, and he has lived here ever since. Under the law in force at his birth, Mr Johnson became a Jamaican citizen but not a British one. He would have been a British citizen had his mother and father been married to one another, or married subsequently, or had his mother had been the parent with British citizenship. He would also have been granted British citizenship had he or his father applied while he was still a child and, if over 16, of good character. But no application was made.

Between 2003 and 2008 Mr Johnson was convicted of a series of serious criminal offences, culminating in a conviction for manslaughter for which he was sentenced to nine years' imprisonment. In 2011 the Secretary of State made a deportation order against him on the ground that he was liable to automatic deportation as a 'foreign criminal' under section 32(5) UK Borders Act 2007 ('UKBA'). Removal directions were set. Mr Johnson appealed, arguing that deportation would breach his right to family life protected by article 8 of the European Convention on Human Rights (the 'Convention') and be unlawfully discriminatory under article 14, given that he would not have been liable to deportation had his parents been married to one another. After reconsideration the Secretary of State confirmed her decision and also certified that Mr Johnson's claim was clearly unfounded, thereby removing his right of appeal against her decision in this country. Mr Johnson's claim was amended to challenge both the deportation decision and the issue of the certificate.

The High Court held that discrimination against a child of unmarried parents at birth and thereafter violated Mr Johnson's Convention rights, and quashed the certificate. The Court of Appeal allowed the Secretary of State's appeal, holding that there had been no violation of Mr Johnson's rights at the relevant time, namely his birth, which was long before the Human Rights Act 1998 ('HRA') came into force.

### JUDGMENT

The Supreme Court unanimously allows the appeal, finding that Mr Johnson's liability to deportation by reason of the accident of his birth outside wedlock is unlawfully discriminatory, in breach of his Convention rights. The consequence is that the certificate granted by the Secretary of State will be quashed and Mr Johnson's appeal against the decision to deport him will be certain to succeed. The court also makes a declaration that the statutory requirement that a person in Mr Johnson's position must also be of good character in order to be granted British citizenship is incompatible with Convention rights, pursuant to section 4 HRA. Lady Hale gives the only substantive judgment, with which the other justices agree.

## REASONS FOR THE JUDGMENT

Over the past fifty years there has been progressive reform of provisions discriminating against children of unmarried parents. Since 2006 a person in Mr Johnson's position has been entitled to automatic British citizenship at birth but this change was not retrospective [12, 14-17]. One of the benefits of British citizenship is the right not to be deported as a foreign criminal. The obligation on the Secretary of State to deport a foreign criminal does not, however, apply if removal will breach his Convention rights: s 33(1) UKBA [18].

The issue before the court was whether the basis for Mr Johnson's appeal, namely that to deport him would breach his Convention rights, was clearly unfounded so as to justify the grant of the certificate. This raised the questions of whether the rules denying him citizenship had a 'one-off effect' at his birth or had continuing consequences which were within the scope of the HRA, and whether this discriminatory effect could be justified [23].

The right to a nationality is not as such a Convention right but denial of citizenship when it has important effects on a person's identity falls within the ambit of article 8 and so triggers the application of the prohibition of discrimination in article 14 [27]. Birth outside wedlock is a 'status' for the purpose of article 14 and falls within the class of 'suspect' grounds where very weighty reasons are required to justify discrimination [29, 30]. In Mr Johnson's case, what needed to be justified was his current liability to deportation when he would not be so liable but for the accident of birth outside wedlock for which he was not responsible. No justification had been suggested for this and it cannot therefore be said that his claim that deportation would breach his Convention rights was clearly unfounded [34].

In these circumstances the certificate would be quashed and Mr Johnson's appeal allowed to proceed. His appeal is also, for the same reasons, certain to succeed [35].

The court went on to consider whether any of the statutory provisions affecting persons in Mr Johnson's position should be subject to a declaration that they are incompatible with Convention rights, pursuant to s 4 HRA. It was not necessary to do so in order to dispose of the case, but the court makes such a declaration in respect of paragraph 70 of Schedule 9 to the Immigration Act 2014, which imposes a requirement that an applicant for British citizenship who, but for their parents' marital status would have automatically acquired citizenship at birth, be also of good character [36-39].

*References in square brackets are to paragraphs in the judgment*

### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>