IN THE UPPER TRIBUNAL

R (on the application of JM) v Secretary of State for the Home Department (Statelessness: Part 14 of HC 395) IJR [2015] UKUT 00676 (IAC)

Field House
London

22 September 2015

BEFORE

UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE MARKUS QC
DEPUTY UPPER TRIBUNAL JUDGE ARFON-JONES

Between

THE QUEEN
(ON THE APPLICATION OF JM)

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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Mr A Berry, instructed by Turpin Miller, appeared on behalf of the Applicant.

Mr Z Malik, instructed by the Government Legal Department, appeared on behalf of the Respondent.

The child, born in the United Kingdom, of a foreign national, who seeks to be recognised as stateless, but who can under the law of the parent's nationality, obtain citizenship of that country by descent by registering their birth, may properly be regarded as admissible to that country , as set out at paragraph 403(c) of HC 395. Though a greater intensity of scrutiny is appropriate in a case such as this, it remains the case that the decision that an individual is not stateless can only be impugned on public law principles.

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ON AN APPLICATION FOR JUDICIAL REVIEW

JUDGMENT

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JUDGE ALLEN: This is an application for judicial review of the Respondent's decision of 27 May 2014 refusing to recognise the applicant as a stateless person. Permission was refused on the papers but was granted by Judges Allen and Arfon-Jones on oral renewal.

2. The applicant is a child, born on 20 March 2013 in the United Kingdom. His mother is a Zimbabwean national. His father is a Portuguese citizen, a Mr F. When Mr F learnt that the applicant's mother was pregnant with the applicant he wished the pregnancy to be terminated but she did not agree and this led to a breakdown in the relationship. He is said to have made it clear that he does not wish to be involved in his son's life and will not assist in obtaining his registration as a Portuguese citizen.

3. The application under paragraph 403 of HC 395 was made under cover of a letter of 6 December 2013. Reference was made to the terms of the Zimbabwean Constitution, noting that a child born to a Zimbabwean parent outside Zimbabwe was required to register in order to be a Zimbabwean citizen by descent. The writer of the letter said that they had contacted the Zimbabwean High Commission to request confirmation of the terms of the Constitution but had received no response. It was said that it was clear that the applicant was not a Zimbabwean national, and nor did he have any right to Portuguese nationality as under the Portuguese Constitution registration was a requirement for nationality and as set out above the father refused to assist in making any application to the Portuguese authorities and without his consent the applicant could not register as a Portuguese national. It was said that as the applicant was not entitled to any nationality there was no prospect that he would be admitted to another country if removed from the United Kingdom.

4. In her decision letter the Respondent set out the relevant provisions (paragraphs 401 and 403 of HC 395), and briefly rehearsed the history set out above. She noted that

there were no valid reasons why the applicant's mother could not register his birth as required under the Constitution and said that at the time she had no basis to remain in the United Kingdom and there were no valid reasons why she could not return to Zimbabwe with the applicant and the fact that she had chosen to remain in the United Kingdom with no status instead of returning to Zimbabwe did not render him stateless. It was said that the applicant was entitled to make an application to be registered as a Zimbabwean national and though his mother's Zimbabwean passport had expired this could be renewed at the Zimbabwean Embassy in London. It was considered that he was clearly a Zimbabwean citizen and was therefore not considered to be stateless.

5. The Respondent then reminded herself of the terms of paragraphs 401 and 403 of HC 395 and concluded that in light of all the evidence above the applicant did not qualify for leave to remain as a stateless person under paragraph 403 of HC 395 as he was not considered to be stateless. He had failed to demonstrate that he was a person who was not considered as a national by any state under the operation of its law and had failed to satisfy the requirements of Article 1(1) of the 1954 United Nations Convention relating to the Status of Stateless Persons and paragraphs 403(b), (c) and (d) of HC 395. It was not accepted that he was a stateless person as defined within the Rules and he had not met the requirements to be granted limited leave to remain as a stateless person.

6. In the grounds, in essence, it was argued that the Respondent was wrong as a matter of law to hold that the applicant was not a stateless person on the basis that he was a Zimbabwean national, drawing attention to the terms of the Zimbabwean Constitution and also what had been said by the Supreme Court in Secretary of State for the Home Department v Al-Jedda [2013] UKSC 62 (hereafter Al-Jedda).

7. Mr Berry developed the points made in the grounds and the points also that had previously been made in oral submissions at the permission stage. He reminded us of the legal framework including the relationship between the 1954 United Nations Convention relating to the Status of Stateless Persons ("the Stateless Persons

Convention") and the 1951 Convention relating to the Status of Refugees ("the Refugee Convention"). The Stateless Persons Convention did not provide a regularisation mechanism but this could be done by states and this had been done in Part 14 of the Immigration Rules. Mr Berry referred to the UNHCR's Handbook on Protection of Stateless Persons at paragraph 50 which said the following:

> "An individual's nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process for acquiring nationality but those procedures are yet to be completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention. Similarly, where requirements or procedures for loss, deprivation or renunciation of nationality have only been partially fulfilled or completed, the individual is still a national for the purposes of the stateless person definition."

8. This guidance had been incorporated, word for word, into the Home Office guidance on "Applications for Leave to Remain as a Stateless Person" dated 1 May 2013, which was also quoted at paragraph 34 of Al-Jedda. It was therefore the case that as a matter of domestic and international law the question arose for determination at the moment of decision. The argument on behalf of the Respondent that it was a question of taking a valid step was hopeless as it was inconsistent with the Home Office's own guidance. The requirement that the birth be registered was a Zimbabwean constitutional requirement and not an evidential rule. Mr Berry accepted that the expert report which had been provided was postdecision and did not go to the Respondent's error of law. It was, however, he argued, relevant to relief in the exercise of discretion.

9. As regards the wording of the particular Rule, and the use of the words "is recognised" at paragraph 403(b), it should be noted that it was a question of recognition rather than making the applicant a stateless person, and the same approach existed in asylum cases. It was a question of recognition that the person

fell within Article 1 of the Stateless Persons Convention. It was not subjective and was to be interpreted consistently and in good faith in accordance with the ordinary meaning of the words.

10. Mr Berry referred also to the question of the standard of review and argued that, as set out in Pham v Secretary of State for the Home Department [2015] UKSC 19 and also in R (Lord Carlile) v Secretary of State for the Home Department [2014] UKSC 40, a greater intensity of review was appropriate in a case such as this where the court had institutional expertise and the constitutional proprieties concerning the separation of powers between the branches of government were respected. It was important to bear in mind that there was no longer insistence on uniform application of the rigid test of rationality but it depended very much on the context. It was appropriate to impose an exacting and intense standard of review in a case such as this where it involved a question of whether the United Kingdom was complying with its international obligations, particularly where that obligation was provided for in domestic law and policy and involved an extension of surrogate protection for a person subject to the UK jurisdiction who lacked any country to call his own and was part of a corpus of international human rights treaties, not just governing relations between states but providing rights upon which individuals might rely. There was no need for deference to the executive, and the Tribunal had extensive institutional expertise. The Supreme Court had relied upon the UNHCR interpretation of the treaty without demur.

11. Mr Berry argued that nothing material turned on the use of subjective language in the Immigration Rules. The point was made both at paragraph 30 in Al-Jedda and in Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014 at 1047 that it was necessary for the court to enquire as to whether the facts to be evaluated by the Secretary of State existed and had been taken into account, and whether the judgment had been made upon a proper self-direction as to those facts. The Secretary of State could not simply apply her own view to the situation. She could not say that it was the applicant's fault because he had not taken a step as a matter of recognition.

12. It was the case that section 40(4A)(c) of the British Nationality Act 1981 had been put in place to address the outcome of Al-Jedda but no change correspondingly had been made in the Immigration Rules. The use of the term "admissible" at paragraph 403(c) was not about the acquisition of nationality but whether the person was returnable, for example if they were not a national but had a visa or leave of some kind. An example might be a Kuwaiti Bidoon who if documented, albeit not a national, would potentially be returnable to Kuwait. There was a need for an evidential basis for a person to be concluded to be admissible otherwise it would amount to a judicial black hole.

13. As regards the point that the Secretary of State would make that the child had a constitutional right to be a Zimbabwean citizen and his mother could register the birth, it was a question of whether he would get an immigration document and it was not a given that he would be admitted simply as a child of a Zimbabwean national. The same was true in the United Kingdom. For example a person had a right to join their spouse but there were also financial requirements. At the moment the mother was undocumented and there was no evidence of how registration of birth operated in Zimbabwe. This tied in also with paragraph 403(d). The relevant question was whether the applicant was stateless today and not whether he should be granted citizenship. It was a question of temporary relief. It was not a predictive exercise, as was clear from the UNHCR guidelines on statelessness and the Respondent's guidance. There had been no response to the enquiries made with the Zimbabwean Embassy, so the matter did not fall foul of paragraph 403(d).

14. If the person were stateless then the extra limb added by the Rules added nothing. They could not sit on their hands, but that had not been done, as the constitutional provision had been provided and also an expert opinion. The UNHCR guidelines and Al-Jedda could not be reversed. Admissibility could not be conflated with statelessness.

15. In his submissions Mr Malik focused on four particular points.

16. The first was that the Respondent's decision as to whether the applicant qualified under paragraph 403 could be challenged only on Wednesbury grounds, and hence the applicant in a judicial review claim could not rely on evidence not before the decision-maker at the time of decision. This was not controversial in general terms, but Mr Malik argued that what was relied on in Pham and Lord Carlile was refuted by what had been said by the Court of Appeal in Giri [2015] EWCA Civ 784 where the court made it clear that it was a Wednesbury challenge only. It was clear that there was a contrast to be made in respect of a decision under the Rules and one under a statute. The approach with regard to section 40 adopted in Al-Jedda could not be adopted in respect of a decision under the Rules because of the distinction set out at paragraphs 19 and 20 in Giri. In addition Mr Malik relied upon what was said at paragraph 32 in Giri about the proper approach in a rationality challenge. There Richards LJ had said that he did not accept that the relevant question was anything other than whether it was reasonably open to the decision-maker on the material before him to find that deception had been used. It was not a question of proportionality but a question as to whether it was open to the Secretary of State on the material before her to conclude as she did. There was nothing in the Lord Carlile case that undermined that. It concerned a Convention right and it was concluded that it was for the reviewing court to decide whether there was a breach and issues of proportionality but that was not the instant case. That had involved a statutory discretion to exclude from the United Kingdom, not a decision under the Immigration Rules.

17. Mr Malik's second point was that on a proper construction of paragraph 403(b) the applicant had to satisfy the Secretary of State not only that he was stateless but also that there were good reasons for him to be recognised as such for the purposes of a grant of leave to remain. The proper approach was set out in Mahad [2009] UKSC 16. The Immigration Rules were not to be construed strictly but sensibly in accordance with the normal meaning of the words used. The question was what the Secretary of State must have intended when she formulated the Rules. IDIs were not usually to be used to construe the words of a particular Rule. Mr Berry's argument would lead

to an abuse of the Rules and it could not be assumed that the Secretary of State would so intend. There had to be a reason why the word "recognised" was used. It was not simply a matter of saying a person was stateless. It should be contrasted with the section of the Rules at Part 11 concerning asylum. The reference there at paragraph 334(ii) was: "he is a refugee" and it did not say that he was recognised as a refugee by the Secretary of State. If Mr Berry's construction was correct then anyone could come to the United Kingdom, have a child, fail to register the birth and claim entitlement under the Rules referring to statelessness. It was potentially applicable to any child born in the United Kingdom to a foreign national and could not be right. It was not being said that the applicant was stateless in general terms but that he could not be recognised as stateless under paragraph 403. Mr Berry's argument was geared to whether the applicant was stateless as opposed to whether he should be recognised as stateless. This was an argument in the alternative. The Secretary of State would contend that the applicant was not stateless but even if he was he was not recognised as stateless.

18. The third point concerned paragraph 403(c). It was the case that all the requirements of paragraph 403 were required to be met. But even if the Secretary of State recognised a person as stateless she could refuse the application if not satisfied that the person was not admissible to another country. There was a purpose to these provisions. The Bidoon example did not assist the applicant as the scenario was completely different. He was admissible to Zimbabwe once his birth was registered. There was no reason to read the word "admissible" restrictively.

19. Mr Malik's final point concerned paragraph 403(d). This was an unusual provision and not to be found repeated elsewhere in the Rules. It put an obligation on the applicant to gather and submit all relevant evidence because in such cases the Respondent would have to form a view, for example as to the Zimbabwean domestic laws and Constitution. If an application were put in without the relevant evidence that alone could be a reason to refuse. The decision letter addressed this. There was nothing in the application to say why the applicant was not admissible to Zimbabwe and the refusal was correct. It was too late to rely on the expert report as it had not

been before the decision-maker. On the information before her the Respondent was clearly entitled to conclude that the applicant was not stateless. It was not for a single reason but by reference to all of the provisions to which Mr Malik had referred.

20. By way of reply Mr Berry argued with regard to Mr Malik's first point that Giri was a post-study work case, not a human rights case on statelessness and what was said in paragraph 32 might be relevant in deception cases but was not the issue here.

21. With regard to the second point, it was not a question of the applicant being a migrant but he was a child born within the jurisdiction and it was a question of the protection of a child. The Respondent had a discretion as could be seen from paragraph 405 to grant 30 months' leave as a maximum, so there was some flexibility and it was a question of how the child could be protected where they had no status and were born in the United Kingdom. He could be given leave up to the point when his mother could be removed as an unlawfully present person and he could be removed in line and would therefore be protected and the Rules were sufficiently flexible. There was no actual vice in this case therefore. The question was whether there was evidence that the person was admissible at the moment. There was also the question of what other basis they were admissible on if they were not a national. The question of whether the appeal arose under the Immigration Rules or under statute was irrelevant. If there was a sound evidential basis for finding the applicant was stateless then he was entitled to succeed. The notion of "recognised" argued by Mr Malik could not be right and would introduce an element outside the Rules and the guidance. With regard to paragraph 334, although the word "recognised" was not used, the header of the Rule required the Secretary of State to be satisfied and the rest followed from that. The language was similarly subjective.

22. Otherwise on the "admissibility" point, the Tribunal was referred to what was said in the Secretary of State's guidance. It was accepted that this was not necessarily authoritative but it showed what was in the Respondent's mind. There was an element of sweeping up at the end of the letter with regard to what was said about

subparagraphs (c) and (d) of paragraph 403. Entitlement to citizenship was not enough.

DISCUSSION

23. We begin by setting out the relevant provisions of the Immigration Rules, the Stateless Persons Convention, and the Zimbabwean Constitution.

(1) HC 395

"**PART 14**

STATELESS PERSONS

Definition of a stateless person

401. For the purposes of this Part a stateless person is a person who:

(a) satisfies the requirements of Article 1(1) of the 1954 United Nations Convention relating to the Status of Stateless Persons, as a person who is not considered as a national by any State under the operation of its law;

(b) is in the United Kingdom; and

(c) is not excluded from recognition as a Stateless person under paragraph 402.

Requirements for limited leave to remain as a stateless person

403. The requirements for leave to remain in the United Kingdom as a stateless person are that the applicant:

(a) has made a valid application to the Secretary of State for limited leave to remain as a stateless person;

(b) is recognised as a stateless person by the Secretary of State in accordance with paragraph 401;

(c) is not admissible to their country of former habitual residence or any other country; and

(d) has obtained and submitted all reasonably available evidence to enable the Secretary of State to determine whether they are stateless.

Refusal of limited leave to remain as a stateless person

404. An applicant will be refused leave to remain in the United Kingdom as a stateless person if:

(a) they do not meet the requirements of paragraph 403;

(b) there are reasonable grounds for considering that they are:

(i) a danger to the security of the United Kingdom;

(ii) a danger to the public order of the United Kingdom; or

(c) their application would fall to be refused under any of the grounds set out in paragraph 322 of these Rules.

Grant of limited leave to remain to a stateless person

405. Where an applicant meets the requirements of paragraph 403 they may be granted limited leave to remain in the United Kingdom for a period not exceeding 30 months."

(2) Stateless Persons Convention

"**Convention Relating to the Status of Stateless Persons**

CHAPTER I

GENERAL PROVISIONS

Article 1 Definition of the term 'Stateless Person'

1. For the purpose of this Convention, the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law.

2. This Convention shall not apply:

(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(iii) To persons with respect to whom there are serious reasons for considering that:

(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

(c) They have been guilty of acts contrary to the purposes and principles of the United Nations."

(3) Constitution of Zimbabwe

"**CONSTITUTION OF ZIMBABWE AMENDMENT (NO. 20)**

36 Citizenship by birth

(1) Persons are Zimbabwean citizens by birth if they were born in Zimbabwe and, when they were born -

(a) either their mother or their father was a Zimbabwean citizen; or

(b) any of their grandparents was a Zimbabwean citizen by birth or descent.

(2) Persons born outside Zimbabwe are Zimbabwean citizens by birth if, when they were born, either of their parents was a Zimbabwean citizen and -

(a) ordinarily resident in Zimbabwe; or

(b) working outside Zimbabwe for the State or an international organisation.

(3) A child found in Zimbabwe who is, or appears to be, less than fifteen years of age, and whose nationality and parents are not known, is presumed to be a Zimbabwean citizen by birth.

37 Citizenship by descent

Subject to section 36(2), persons born outside Zimbabwe are Zimbabwean citizens by descent if, when they were born -

(a) either of their parents or any of their grandparents was a Zimbabwean citizen by birth or descent; or

(b) either of their parents was a Zimbabwean citizen by registration;

and the birth is registered in Zimbabwe in accordance with the law relating to the registration of births."

24. The 1954 United Nations Convention relating to the Status of Stateless Persons (hereafter the Stateless Persons Convention) was signed by the United Kingdom on 28 September 1954 and ratified on 16 April 1959. For people who qualify as stateless persons the Convention provides important minimum standards of treatment, upholds their right to freedom of movement, requires states to provide them with identity papers and travel documents and prohibits their expulsion where they are lawfully on the territory of a State Party. Provision is made in Part 14 of the Immigration Rules for the grant of leave to remain to certain stateless persons and also the Respondent has issued guidance to decision-makers concerning the determination of applications for leave to remain made under this provision.

25. The background to the Convention is set out at paragraphs 12 to 16 of the judgment of the Supreme Court in Al-Jedda. That case was concerned with a deprivation of citizenship. Section 40 of the British Nationality Act 1981 empowers the Secretary of State by order under subsection (2) to deprive a person of a citizenship status if she is satisfied that deprivation is conducive to the public good. However, by subparagraph (4) the Secretary of State may not make an order under subsection (2) if she is satisfied that the order would make a person stateless.

26. The claimant in Al-Jedda was born in Iraq in 1957 and inherited Iraqi nationality. He came to the United Kingdom and sought asylum and was granted indefinite leave to remain initially and then subsequently in 2000 British nationality which meant that he automatically lost his Iraqi nationality under Iraqi nationality law. Subsequently the Secretary of State made an order depriving him of British citizenship and it was concluded in 2008 by the Special Immigration Appeals Commission that the claimant had not shown that he had not regained Iraqi nationality under the Law of Administration for the State of Iraq for the Transitional Period. The Court of Appeal set aside the Commission's conclusion, and its decision was upheld by the Supreme Court.

27. At paragraph 26 the court identified the issue before it:

> "Namely whether an order for deprivation made against a person who, at its date, can immediately, by means only of formal application, regain his other, former, nationality is invalid under section 40(4) of the [British Nationality] Act."

Among other things, on behalf of the Secretary of State, it was argued that the law should not allow the claimant to complain of a state of affairs of his own making in failing to secure immediate restoration of his Iraqi nationality. This argument was rejected. At paragraph 32 Lord Wilson, with whom the other four Justices agreed, said:

> "But a facility for the Secretary of State to make an alternative assertion that, albeit not holding another nationality at the date of the order, the person could, with whatever

degree of ease and speed, re-acquire another nationality would mire the application of the subsection in deeper complexity."

He noted at paragraph 33 that it would have been open to the Secretary of State to add the words "in circumstances in which he has no right immediately to acquire the nationality of another state" to the words in section 40(4) but this had not been done and the Secretary of State was regarded as inviting the court to place a gloss, as substantial as it was unwarranted, upon the words of the subsection. The court noted the UNHCR "Guidelines on Statelessness No 1", adopted verbatim in the Home Office guidance, and set out at paragraph 7 above.

28. It is of course necessary to recognise the statutory context in which the appeal in Al-Jedda arose, as contrasting with the judicial review context within which we are operating. It is also the case that Al-Jedda was concerned with interpretation of a particular statutory provision albeit within the context of Article 1(1) of the Stateless Persons Convention, whereas we have to consider the proper approach to a decision challenged by way of judicial review in the context of Part 14 of the Immigration Rules.

29. The former point is of particular significance. As Mr Berry accepted, section 40(4A) was introduced into the British Nationality Act 1981 as a response to the decision of the Supreme Court in Al-Jedda, and there is no suggestion that that amendment to the legislation goes contrary to the United Kingdom's obligations under the Stateless Persons Convention. Section 40(4A)(c) in effect enables the Secretary of State to make an order depriving a person of a citizenship status where she has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory. Likewise, it is entirely open to the Respondent in Immigration Rules to establish a mechanism by which statelessness applications are to be addressed, the Convention being silent on such matters. The question in this regard, which we shall address below, is whether the decision made in the context of the language employed in the Rules is lawful.

30. As regards the issue of the standard of review, we note the submission of Mr Berry that Pham and Lord Carlile suggest the appropriateness of a greater intensity of review in a case where as here the Tribunal has institutional expertise and there are no reasons for deference to the views of the government. In Giri, the authority upon which Mr Malik relied in this regard, the observations of Lord Sumption at paragraph 109 in Pham were noted, and the court accepted that a finding that deception had been used as in that case should be scrutinised very carefully but did not accept that the relevant question was anything other than whether it was reasonably open to the decision-maker on the material before him to find that deception had been used. That does not seem to us to detract from the force of what was said by Lords Carnwath, Mance and Sumption in Pham and also what Lord Sumption said in Lord Carlile, for the reasons essentially argued by Mr Berry and as set out in our summary of his submissions above. It is appropriate also to bear in mind the fact that, as was said by Lord Mance in Kennedy v The Charity Commission [2014] UKSC 20 at paragraph 51, the nature of judicial review in every case depends on the context and that in this particular context a greater intensity of scrutiny than might otherwise be the case may be appropriate.

31. Mr Malik also relied on Giri with regard to the proper approach of a judicial review court to challenges to decisions made under the Immigration Rules, in particular at paragraphs 19 and 20.

32. There the Court of Appeal contrasted the proper approach to a case involving the exercise of the power under section 3 of the 1971 Immigration Act to grant leave and a decision to remove a person under section 10 of the 1999 Act on the grounds that they had used deception in seeking leave to remain. In the former case it was said that the key point was that statute conferred the power on the Secretary of State or the immigration officers on her behalf to make the decision whether to grant or refuse leave to remain and it was said that it was for the Secretary of State or her officials in the exercise of that power in reaching their decision to determine which provisions of the Rules would apply and whether relevant conditions were satisfied, including the determination of relevant questions of fact. However, with regard to a

section 10 decision, as a matter of statutory construction the very existence of the power to remove would depend on deception having been used and in judicial review proceedings challenging the decision to remove the question whether deception had been used would be a precedent fact for determination by the court, in accordance with what had been held in Khawaja v Secretary of State for the Home Department [1984] AC 74.

33. It is relevant also to refer to Mahad [2009] UKSC 16 where it was said by Lord Brown that the proper approach to the construction of the Rules like any other question of construction depends upon the language of the Rule construed against the relevant background, which involves a consideration of the Immigration Rules as a whole and the function which they serve in the administration of immigration policy. The Rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy.

34. Bringing these matters together, we agree with Mr Berry that a more intense level of review of the Respondent's decision is appropriate, but it is necessary to bear in mind that that scrutiny is in the context of a decision under the Immigration Rules and not under statute.

35. This is of relevance to Mr Berry's response to Mr Malik's argument that his approach is to put form over substance. We do not think we can simply take the remarks quoted above from Al-Jedda and apply them to the particular context with which we are concerned of a decision under the Immigration Rules. Article 1(1) of the Stateless Persons Convention, as Mr Berry accepted, contains the terse definition set out at paragraph 23 above, and the mechanism by which statelessness applications are to be addressed is, as we have observed above, essentially a matter for signatories to the Convention and this has been done by the Respondent in Part 14 of the Immigration Rules. In interpreting the Immigration Rules it is relevant also to bear in mind that IDIs are not usually to be used to construe the words of a particular Rule.

36. In this regard, it is relevant to consider why the word "recognised" is employed in paragraph 403(b). There is, as Mr Malik argued, no parallel to this in the Rules concerning refugees. No doubt the broad context is that of status determination. It is relevant also to note that paragraph 403(b) is tied in with the definition in paragraph 401 of a stateless person as a person who satisfies the requirements of Article 1(1) of the Stateless Persons Convention. The point is not a straightforward one. It cannot be right that the Respondent is entitled at whim to decide whether or not to recognise a person as stateless, which might be seen to be an implication of Mr Malik's argument. His argument, as we understand it, is rather that there is a proper basis for non-recognition, in that, as set out at paragraph 23 of his skeleton argument building on the decision letter, there is no reason why the applicant's mother cannot register his birth in accordance with the requirements of the Zimbabwean Constitution; he would be recognised as a citizen of Zimbabwe as soon as his birth is registered; and his mother has no basis for remaining in the United Kingdom and has taken a deliberate decision to continue to reside here instead of registering his birth.

37. A difficulty with this argument is that the wording of paragraph 403(b) strongly suggests that, in effect, choice is taken away from the Secretary of State where it is clear that, under paragraph 401, the person in question is a person who is not considered as a national by any state under the operation of its law, which, it may be said, as matters stand is the position of the applicant. Where that is the case, it is difficult to see a basis on which the Respondent could decline to recognise the person. Paragraph 403(b) essentially takes its tone from paragraph 401.

38. It is however clear in our view that the requirements set out in paragraph 403 are cumulative and hence, even if the Secretary of State recognises a person as stateless, he will still have to show that he meets the criteria set out in paragraph 403(c). This very much turns on the meaning of the word "admissible" in that provision. We agree with Mr Malik that it is proper to interpret this as meaning that a person is either a national of the country or entitled to be a national of the country rather than reading the word "admissible" as meaning that it could apply only to nationals of the state in question. On the applicant's own case he is entitled to be a national of

Zimbabwe subject to fulfilling the registration requirement. The fact of recognition of a person as being stateless can be distinguished from the situation of a person who is recognised as stateless and is not admissible to any other country. Hence it is open to the Respondent in our view to recognise a person to be stateless but to refuse them as she is not satisfied that the person is not admissible to another country, in this case Zimbabwe. The Kuwaiti Bidoon example given by Mr Berry as illustrative in his view of what this provision is intended to address is no more than an example and is not determinative of the kind of case which we consider would fall within paragraph 403(c). In our view, even bearing in mind the need for particularly close scrutiny of the Respondent's decision, it was open to her to conclude that the applicant cannot satisfy subparagraph (c) of paragraph 403 because it was open to her to conclude that he is admissible to Zimbabwe.

39. As regards paragraph 403(d) we see some force in Mr Malik's argument that this places an obligation on the applicant to gather and submit all relevant evidence, because the Secretary of State needs it in order to enable her to form a view as to his ability to satisfy Zimbabwean domestic laws as well as the Zimbabwean Constitution. However the better view, we consider, is that in this case the applicant has fulfilled the requirements of (d) in approaching the Zimbabwean authorities and ascertaining the position under the Constitution. If he satisfies (b), as we have found above, it is difficult to see how he can properly be refused under (d).

40. Bringing these matters together therefore, we conclude that even with the more rigorous scrutiny with which it is appropriate to address the decision in this case, there is a material difference between the statutory appeal context of Al-Jedda and the decision in this case under the Immigration Rules, (as well as between the wording of the Act as amended and the Rules), which the Respondent has properly put in place to enable her to make a decision on the statelessness application of the applicant. We consider that she was entitled to conclude that he has not satisfied the requirements of paragraph 403(c) of HC 395. Accordingly the application for judicial review is refused.

41. We will hear the parties on costs and any other ancillary matters when this judgment is handed down. ~~~~*0*~~~~