SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No. SN/5/2014
Hearing Date: 9th and 10th June 2015
Date of Judgment: 12th August 2015

BEFORE:

THE HONOURABLE MR JUSTICE IRWIN
UPPER TRIBUNAL JUDGE ESHUN
MR C D GLYN-JONES, CBE

BETWEEN:

AHK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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For the Appellant:	**Ms A Weston**
Instructed by:	BWB Solicitors
For the Respondent:	**Mr R Phillips QC** and **Mr J Blake**
Instructed by:	The Government Legal Department
Special Advocates:	**Ms J Farbey QC** and **Mr M Goudie**
Instructed by:	The Special Advocates' Support Office

Approved Judgment

Background and Chronology

1. The Appellant is a Shia Muslim Kurd from Northern Iraq. He comes from a political Kurdish family. The Appellant was an active opponent of the Saddam Hussein government of Iraq between 1993 and 2003. He became prominent in the Iraqi National Congress ["INC"]. In that role he co-operated with US authorities and agencies.

2. The Appellant arrived in the United Kingdom from Iraq on 26 February 1998 and claimed asylum on 26 May 1998. He was granted indefinite leave to remain as a refugee on 27 October 1999. He married his first wife, Sundus, in September 2000. Between 2001 and 2004 he was active in opposition to the Saddam Hussein regime and travelled widely. The Appellant had a son, Karem, who died in March 2008 and is buried in the UK. He also has a daughter, Mariam, who is British born. The Appellant has taken a second wife, and resides at present mostly in the Lebanon. He holds an Iraqi passport.

3. In an application received on 21 January 2004, the Appellant sought naturalisation as a British citizen. He submitted confirmation of his role with the INC. He submitted evidence of proper payment of tax. He explained his history of travel, which he had achieved using a British travel document. He has had no criminal convictions or cautions.

4. As a matter of law, it was for the Appellant to establish his good character. On 2 November 2007 he was refused naturalisation on the grounds that he had not done so. The reason given is as follows:

> "The Home Secretary has refused your application for citizenship on the grounds of national security. This is because of your association with Iranian elements hostile to British national interests."

5. On 21 December 2007, the Appellant's solicitors wrote to the Border and Immigration Agency objecting to the decision, and asserting that the Appellant had not been given notice of the facts which led to the decision so as to allow the Applicant to address the concerns leading to refusal. This led to a reply from the Agency on 8 January 2008, repeating the reason given. The writer acknowledged the obligation to provide information, but stated that "the refusal letter gives sufficient detail in order to meet that obligation". The letter went on to confirm that it would not be in the public interest to disclose any further detail.

6. On 16 January 2008, the Appellant's solicitors faxed a Pre-Action Protocol letter. The letter required that the Defendant should:

> "… withdraw her decision dated 2 November 2007 and issue an Oath of Allegiance and Certification of Naturalisation to the proposed claimant: alternatively to provide full and proper reasons justificatory of her decision sufficient for the claimant to understand the basis of her decision and to provide the claimant with a fair opportunity to rebut those matters upon which the defendant seeks to rely."

7. The Agency replied on 21 January. The form of words given on 2 November was repeated. The Agency rejected the suggestion that the Secretary of State had acted

irrationally or unlawfully in reaching the decision, or acted unfairly in relation to further particulars. The letter asserted that in the view of the writer:

> "The decision to refuse the application on the grounds of national security because your client has associated with Iranian elements hostile to British national interests is one that is reasonably open to the Secretary of State to arrive at."

Proceedings in the Administrative Court

8. The Appellant issued a claim for judicial review on 1 February 2008. The claim was consistent with the Pre-Action Protocol letter. The first remedy sought was an order quashing the decision, the second a mandatory order for the provision of further information and reasons and the third order sought was a mandatory order that the Home Secretary should reconsider. In its unamended form, in addition to taking points of fairness of process, the claim recited the following:

> "In C's case the demand [for further information] is intensified by the disrepute and stigma generated by the refusal in the terms given to date – implying that he is an Iranian spy or fundamentalist and a danger to the British public. C strenuously disputes that he is any such thing."

9. The grounds went on to claim that any derogation on public interest grounds from the duty of fairness should be justified:

> "… before a High Court Judge who will rule on the appropriateness of proceeding in CLOSED session with a Special Advocate in lieu of the claimant and his lawyers."

10. The grounds concluded that:

> "If it is ruled that SSHD can lawfully withhold data that would be sufficient for C to be able to respond meaningfully to SSHD's concerns, the Court should also rule on the reasonableness of the substantive merits of the refusal. Save for this, the legality of any substantive refusal of C's naturalisation application is not, as yet, in issue."

11. In a short witness statement supporting the judicial review claim, the Appellant emphasised his prominence within Iraqi and Kurdish political and social circles and the importance of his personal reputation "in an atmosphere which over the years has been riven with suspicion and intrigue". He expressed his shock at the decision and asserted he had done nothing that could possibly warrant the conclusion that he was a risk to national security. He went on to say:

> "I fear that wrong information may have influenced the Home Secretary to reach that view. I also dread the impact of such a decision on my standing, reputation and future."

The Appellant emphasised the stigma which he said the refusal represented, which he characterised as:

> "…Kafkaesque, because I am completely in the dark about why and anxious about what can have happened to result in this shocking conclusion."

12. In submissions to us Ms Weston for the Appellant has emphasised, both in writing and orally, that there was:

> "… in the public domain a great deal of material making assertions about his associations with Iran which is unreliable and wrong … he has been the subject of widespread media speculation, disinformation, rumour, allegation and counter-allegation apparently for political reasons."

13. It is also worth emphasising that while the challenge to the decision mounted in the judicial review was principally focused on the allegation that the procedure was unfair, it was also explicitly a challenge to the substance of the decision. It is for that reason we have set out some of the content above. As it was formulated in those grounds, once it was established that no further details could be given in OPEN and where a CLOSED hearing examined the critical evidence with the assistance of Special Advocates, then the challenge was to the substance of the decision.

14. It is not necessary to trace the long history of litigation in the Administrative Court. The Appellant was unsuccessful in seeking CLOSED material proceedings in the High Court. Such a development required an Act of Parliament. On 26 June 2013, the Appellant's claims for judicial review were dismissed. Permission to appeal was granted. However on 25 June 2013, Section 15 of the Justice and Security Act 2013 had come into force, inserting Sections 2C and 2D into the Special Immigration Appeals Commission Act 1997. On 6 February 2014, pursuant to the legislation, the Secretary of State certified the decision in this case enabling the challenge to be pursued as a statutory review in SIAC. The Court of Appeal proceedings were stayed by Richards LJ in the same month, see *AHK v SSHD* [2015] 1 WLR 125, [2014] EWCA Civ 151.

Proceedings in SIAC

15. Nor is it necessary to recapitulate the Preliminary Issues Judgment in this case (heard with three others) in July 2014, nor the conclusions of the Divisional Court in March 2015, see *AHK v SSHD* [2015] EWHC 681 (Admin). The principles are clear. Section 2C of the SIAC Act 1997 requires a conventional judicial review approach to challenges such as this, although the particular procedures in SIAC demand a heightened obligation to review the material with care. The Commission must be mindful that the presence of Special Advocates and the other SIAC procedures cannot completely substitute for fully informed instructions. Without access at least to the material relied on by the writer of the summary, the rationality of the summary and the basis of the recommendation are untestable, and so such material must be available to the Commission. The Commission does not need to determine for itself whether the facts advanced as justifying the decision are in fact true. The existence of the facts advanced as justifying the refusal to naturalise does not constitute a

condition precedent, and fact finding of that kind is not necessary to determine whether the procedure is fair or rational. Finally, in the absence of an arbitrary or discriminatory decision, or at the very least some other specific basis in fact, refusal of naturalisation will not engage Convention rights. It is for any given Appellant to lay the groundwork for such a claim on the basis of specific fact. Save as to the somewhat narrower approach to disclosure set out in the Divisional Court judgment, the Divisional Court approved the approach laid down in the preliminary issues judgment.

The Appellant's Procedural Attack

16. In her original and supplementary written submissions Ms Weston submits that the OPEN reasons given to this Appellant are "so vague and unparticularised as to have denied him any opportunity of understanding – or even speculating effectively – as to what conduct has generated the allegation". She emphasises the importance of the issue to the Appellant.

17. As a consequence of the hearing pursuant to SIAC Procedure Rule 38 some further material was disclosed to the Appellant. The first portion of this material consists of the Appellant's application for asylum in 1998. In the course of the application the Appellant summarises his work for the INC in the 1990s. The basis of the asylum claim, and indeed the grant of asylum, was the risk to the Appellant of remaining in Iraq at that stage. There are then disclosed a number of records from Port Stops. The first is a Port Stop of the Appellant's father's second wife, Gelawish Mohammed from July 2000. There is a brief record of a Port Stop of the Appellant in 2001.

18. Also provided was a fuller record from the Metropolitan Police of a Port Stop in June 2005. The Appellant was returning to the UK from Dubai. He was found to be in possession of a newly-issued Iraqi passport, US$10,000 in cash and a large quantity of jewellery. The report sets out the Appellant's explanation, which is that he had travelled to Dubai for medical treatment. More broadly, the Appellant is recorded as explaining his past involvement with the INC, his position as Chief of Intelligence for the INC, and his history since as a businessman with extensive travel to Iran and America, documented in his UK Travel Document, which was in his possession as well as the Iraqi passport. He is recorded as informing the officer that in his role as Chief of Intelligence, he ran an office based in Tehran "inside the Iranian Central Revolutionary Council government offices" and that he travelled to and stayed in Iran on numerous occasions for work purposes. The report is sceptical as to the Appellant's possession of the Iraqi passport and as to why he was using the Iraqi passport rather than the UK Travel Document. The report is also sceptical of his explanations for the cash he was carrying. However, the report concluded that further examination was thought to be inappropriate. Photocopies of the passport were supplied to the Appellant pursuant to Rule 38. The Appellant is critical of much that is recorded in the Metropolitan Police report from 2005. We address this briefly below.

19. Following the conclusion of the Rule 38 process, a second witness statement was served from Mr Philip Larkin. He is head of the Home Office unit which deals with applications for citizenship within the Office for Security and Counter Terrorism. His witness statement sets out that the material underlying the decision to refuse naturalisation has been reviewed and, upon review, supported the reasons for refusal

set out in the decision letter. He also confirms the provision to the Commission and the Special Advocates of a closed statement and exhibits containing the specific underlying material relevant to the decision, as well as further documents which support or corroborate the decision.

The Secretary of State's Policy

20. The Secretary of State has developed written Guidance for officials considering naturalisation. Since September 2009 part of the developed policy is subject to restricted circulation and does not appear in the public domain. The written policy set out in Annex D to Chapter 18 of the Nationality Instruction CO/1076/2008 does not represent a change in policy, but a record of established practice within the Home Office. The Respondent emphasises that the grant of citizenship is a privilege not a right. The burden of demonstrating good character is on the Applicant.

21. In response to the Rule 38 documentation and the second statement from Mr Larkin, the Appellant filed a reasonably lengthy witness statement with some supporting material, on 15 April 2015. We consider below what use can properly be made of such after-coming evidence in a statutory review. The statement describes his background and personal circumstances. He describes his close association with Ahmed Chalabi, leader of the INC and, as at the date of the statement, Chairman of the Financial Committee of the Iraqi parliament. He describes his cooperation with the Central Intelligence Agency ["CIA"] during the 1990s. The INC were funded by the US to pursue "joint US and INC objectives in Iraq". There were covert actions against Saddam Hussein. This involved on occasion moving equipment or people into Iraq through Iran, something that the Appellant says he and his associates were "specifically required to do by the US who could not make direct contact with the Iranians". He gives some specific examples.

22. As the 1990s progressed, the Appellant describes how the INC worked successfully, strengthening their relationships with members of the US Senate and Congress and in particular with the US Department of Defense "which had its own CIA equivalent – the DIA". The INC were using these channels to build a lobby in America favourable to their cause. Relationships with the DIA and the US State Department, and funds and support for the INC flowed from those sources. The Appellant tells us that the British Ministry of Defence also played a role in this.

23. The Appellant then describes changing relationships with the CIA and the US in terms which it is helpful to quote:

> "13. When the CIA saw that our relations were very good with US Dept of Defence and in particular the Defence Intelligence Agency (DIA) we realised we may have profited from an internal US 'turf war' between the CIA and DIA. They clearly had differing objectives and I don't profess to understand that dynamic relationship.
>
> 14. Then in about 2000 the CIA requested a meeting – they requested us to end our relationship with the DIA and work exclusively with the CIA. We refused – we had been burned before by the CIA – we were more vulnerable before – we

> didn't need them now we had cover in the Senate and Congress. What was more – we were legitimate and could not be written off as expendable 'assets' any more. That decision came back to bite me but at the time, we felt confident we had strong relationships of mutual benefit and a good degree of transparency certainly of our actions – between the two parties."

24. The Appellant addresses his contact with the Iranians. The essence of this account is that it was at the behest of the Americans that the INC developed relationships with the Iranian Ministry of Information. An example was an agreement with the DIA to channel up to a thousand operatives into Iraq through cooperation with Iran and via neighbouring countries. The Appellant rejects the suggestion that he or the INC did or could have cooperated with the Iranian Revolutionary Guard or had an office in their headquarters.

25. The Appellant expands on his relationship with the DIA, describing how in 2002 "as soon as they were getting on a war footing" the DIA wished to depend on the Appellant's help and made him undergo two polygraph tests, which were carried out on separate occasions in a London hotel. It was after those tests that the Appellant was instructed by the DIA to go to northern Iraq. In extended passages, the Appellant sets out his cooperation with the DIA and some of the steps that were taken in and around Iraq itself in the period leading up to the fall of Saddam Hussein and thereafter. The Appellant describes (paragraph 34) how these relationships were going well, until around March 2004. However, at that stage, it is said for political reasons, tension grew between Ahmed Chalabi and the United Nations. This caused a rupture between the Appellant, Chalabi and the United States. In March 2004 arrest warrants were issued against the Appellant and Chalabi. As the Appellant puts it in paragraph 36:

> "That is when all the US allegations started about spying and other nonsense about currency [an allegation concerning the forgery of currency]."

26. He goes on to say that all of the charges against himself and Chalabi were dropped in the end:

> "This was always a scheme to scare us off and a kick in the teeth from the CIA we had upset by going it alone. "

27. The Appellant says (paragraph 40) that the attacks on himself and on Chalabi surfaced mostly in the media:

> "I never had any warrant saying anything about me being a spy. These allegations surfaced but there was no formal approach, no arrest, no formal documents, no warrants, no approach from DIA or intelligence, no interview. They knew where I was. And they knew it was nonsense from beginning to end."

28. We pause in consideration of the Appellant's witness statement to say that we can find no basis on which to conclude that his explanation of the rupture between the

Appellant, the INC and the United States and the allegations against the Appellant was stimulated by the release of the material under Rule 38. This first long section of the Appellant's witness statement is not connected with the fairly limited material released pursuant to Rule 38. On the contrary, it is clear the Appellant knew about all of this, and must be taken to have seen it was relevant, before he launched judicial review proceedings, let alone the review in SIAC.

29. The Appellant's witness statement does go on to comment on the Rule 38 material and in particular the Port Stop. He is dismissive of any relevance in his stepmother's 2000 Port Stop. We agree with that. He is critical of what he suggests are inaccuracies and excessive suspicion in the Metropolitan Police record of his own Port Stop. He may well be right in some of these points. We do not consider that it is necessary to resolve them.

30. There are other indications in the evidence advanced on behalf of the Appellant, although coming much later on. We have read the witness statement of Francis Brooke, dated 21 May 2015. Mr Brooke was a consultant who worked as an adviser to the Iraqi National Congress between 1996 and 2003, funded by the US government. He has personal knowledge of the Appellant and of his work with the DIA. He is aware that during the currency of the Iraq conflict the Appellant had "the highest security rating" from the DIA, and "was held in the highest regard by the US government". His account is that the working relationship between the Appellant and the DIA ended amicably in the spring of 2004. His statement concludes as follows:

> "I've been asked a direct question by … [AHK's] solicitor as to whether there was any evidence that [AHK] was an Iranian spy. In my work as a senior and highly experienced US Department of Defense analyst working closely with the DIA during the critical period of pre and post war Iraq I can say that there was no such evidence. I am aware that such charges and allegations as were sounded in the media were not to my knowledge ever pursued. In my personal opinion such allegations are – and always were – preposterous."

The Law

31. The starting point adopted by Ms Weston is that it is fundamental to natural justice and common law fairness that a party should know the case against him. She cites *Kanda v Government of the Federation of Malaysia* [1962] AC 322, *Ridge v Baldwin* [1964] AC 40, *W (Algeria) and Others v Secretary of State for the Home Department* [2010] EWCA Civ 898 and other authority establishing that general principle. She cites the well-known distillation of common law fairness laid down by Lord Mustill in *R v SSHD, ex parte Doody* [1994] 1 AC 531. She relies on the decision of the Court of Appeal in *R v SSHD, ex parte Al Fayed* (1998) 1 WLR 763 as carrying over into cases involving the refusal of naturalisation the principle that proper reasons should be given. Ms Weston fairly describes this as the "default position".

32. Ms Weston then suggests that the disclosure given in this case falls short of the obligations of law, despite the provision of the SIAC Act 1997 and the SIAC Procedure Rules 2003. She submits the delay itself renders the procedure unfair. She submits that the appellant has from the outset sought more reasons for the decision

and an adequate opportunity to address the allegations against him. She submits that the SIAC procedures are inadequate to cure the unfairness. Restrictions on the disclosure of material in the public interest must not be such as to extinguish the "very essence of the right" to disclosure.

33. Through the principle of legality, Parliament must be taken not to have extinguished on restricted respect of Common Law fairness by legislation, except by clear and express words or by necessary implications. In that regards, she relies on the judgment of Lord Dyson in the *Al-Rawi and Others v The Security Service and Others* [2012] AC 531 at paragraph 48 where he emphasises that the maintenance of Common Law principles of fairness:

> "…….are extremely important and should not be eroded unless there is a compelling case for doing so. If this is to be done at all, it is better done by Parliament after full consultation and proper consideration of the sensitive issues involved. It is not surprising that Parliament has seen fit to make provision for a closed material procedure in certain carefully defined situations and has required the making of detailed procedural rules to give effect to the legislation."

34. Parliament has of course done exactly that in legislating for the SIAC regime, and then amending the statutory regime by creating a right of application for review in SIAC of decisions such as this. In his leading judgment in *W (Algeria)*, Sir David Keene analysed in some detail the procedure adopted in Parliament, and set out his conclusion, with which the other members of the Court agreed, that Parliament intended precisely this result, an outcome which the courts and the Commission must respect.

35. We observe that the case in *W (Algeria)* addressed potential breaches of ECHR Article 3: safety on return to the country of origin. Yet the abrogation of procedural rights at common law still applied. We see no other argument which could place an appellant who has failed to achieve naturalisation in a stronger position than someone faced with such rights on deportation. We acknowledge that Ms Weston made no such submission.

36. As her argument developed, Ms Weston laid emphasis not on her guarded attack on the SIAC regime, but on her submission that the SIAC safe-guards in this case are ineffective. She argued that where the court does not have access to all relevant material, or where the reasons given are insufficient to permit of an answer, or where the Special Advocates are unable properly to prepare their role, then the SIAC safe-guards are inoperative, and a review should not proceed, or the appellant should succeed. We address those in turn.

37. We see no basis on which it can be said that all relevant material has not been placed before the Commission. On the contrary we are satisfied that it has, pursuant to Rule 4(3).

38. We have dealt above with the reasons given to the appellant and his understanding of them. We record our conclusion below.

39. As to the role of the Special Advocates in this case, we begin by quoting the "Note from the Special Advocates for the substantive hearing":

> "2. The SAs have considered the approach that they should adopt to represent the interests of AHK in these proceedings. In doing so, The SAs have taken into account:
>
> i. That this is a review and not an appeal;
>
> ii. That AHK has been provided with limited disclosure as to the case against him. This significantly limits his ability to provide effective instructions to the SAs. AHK has only been informed that his application for naturalisation has been refused on grounds of national security because of his '*association with Iranian elements hostile to British national interests'* (see Home Office letters dated 8th January and 21st January 2008).
>
> 3. These limitations mean that the SAs are not properly able to make any submissions in closed session beyond support for the case advanced by AHK's Open Representatives (OR's). The SAs are not in a position to engage properly with the SSHD's closed case or advance closed grounds of review. Therefore the SAs do not provide a closed skeleton argument.
>
> 4. The SAs will keep this position under review."

40. In CLOSED, the Special Advocates sought to maintain that position. They did so, naturally enough, with reference to the CLOSED material. As we make plain below, we regard that evidence as bearing very strongly against the case advanced by the Appellant and in favour of the Secretary of State. We consider below, so far as we can do so in OPEN, how that affected the role and effectiveness of the Special Advocates in this case.

Conclusions

41. We begin by considering the contemporaneous evidence as to what was understood by the Appellant and his representatives from the reason for refusal given by the Secretary of State. The Appellant, as a senior and experienced political figure familiar with the complex and turbulent Iraqi scene, must have known better than anyone what was being said and written about him in the public domain. His expressed concern was that some of that material might have influenced the Secretary of State. He knew that the concern did not arise from his activities on behalf of the INC, or (obviously) from his cooperation with the United States authorities. The implication he explicitly read into the reasons given was that "he is an Iranian spy or fundamentalist and a danger to the British public". The Appellant has never sought to introduce any of the publicly available material before either the Administrative Court

or the Commission. We have seen none of the material to which the Appellant refers, and have not been given detail as to its content.

42. We conclude that the reasons given in the decision letter, explicit as to the connections with Iran, were sufficient to focus the Appellant and stimulate him to a substantive reply. Of course we understand that the letter gave no details. However, the Appellant clearly knew of his own activities, modes of operation and connections. In addition he had the advantage of knowing what others had said about him, certainly in public and probably, at least to some degree, in private.

43. It is worth recording one point here so that it can be completely clear. The decision challenged in this case was categorically not reached on the basis of material in the public domain. It was reached on the basis of material which was and remains CLOSED. It was however material bearing directly on the Appellant's association with Iranian elements hostile to British national interests.

44. We have considered with great care the linked questions of the adequacy of the SIAC system as it has operated in this case and the role of the SAs acting on behalf of the Appellant. The matters relied on by the Respondent in CLOSED are clear, specific and readily comprehensible. They could not conceivably be made public without damage to the public interest. In our view, they do not require any instructions to comprehend them. They are such that a proper judgement can be made as to coherence, consistency and reliability. We are confident that we have convincing evidence of what took place.

45. We have borne well in mind the dictate of Lady Hale in *SSHD v MB* [2008] 1 AC 440:

> "Both judge and special advocates will have stringently to test the material which remains closed. All must be alive to the possibility that material could be redacted or gisted in such a way as to enable the special advocates to seek the client's instructions upon it. All must be alive to the possibility that the special advocates be given leave to ask specific and carefully tailored questions of the client. Although not expressly provided for in CPR r76.24 the special advocate should be able to call or have called witnesses to rebut the closed material. The nature of the case may be such that the client does not need to know all the details of the evidence in order to make an effective challenge."

46. We have considered whether in this case the Special Advocates were hampered by a lack of instructions from making an effective challenge, whether it is correct that the Special Advocates were "not in a position to engage properly with the SSHD's CLOSED case other than offering "support for the case advanced by AHK's OPEN representatives". With considerable respect to the very experienced and professional Special Advocates appearing in this case, we reject that description of the position they were in.

47. The question of what happened here was capable of challenge, insofar as it could be challenged at all, without detailed instructions. There are repeated judicial dicta, from

the most eminent judges, to the effect that lawyers and judges sometimes find that a seemingly unanswerable case may in fact have an answer. We agree that such can be the case. However, the unexpected answer which emerges is usually an explanation of events giving a different reason for their occurrence, or interpretation of their meaning, rather than altering the facts *per se*. Here we do not believe that there could be an alteration of the facts derived from instructions given in full knowledge of the CLOSED material.

48. It is conceivable, at least hypothetically, that a different explanation could be advanced as to why the relevant events took place. That explanation might theoretically be obtainable if the Appellant were fully informed of the CLOSED material in a way which, we repeat, he could not be, without damage to the public interest. We make no comment, and should not be understood as making any implication, as to the credibility of such an explanation. However, it is imperative to bear in mind the nature of these proceedings. As we have already emphasised, this is a review, not an appeal. We are engaged in deciding whether the response of the Home Secretary and her officials was reasonable and lawful, based on the evidence before them at the time. In our view, they were bound to respond to the information available, were unable to give more detailed reasons than were given, and reached the appropriate conclusion based on the evidence before them. We re-emphasise that, reviewing the decision taken, we have all the material we need, fulfilling the Commission's obligations under SIAC Procedure Rule 4(3).

49. Ms Weston has further submitted that the delay in this case, derived from the long period when the Appellant's judicial review proceedings were effectively stalled in the High Court, means that justice has been denied. We agree that no individual should wait for resolution of his dispute as long as this. The causes of that delay are well-known, unusual and outwith the merits of the case. Nor do we understand Ms Weston to say that mere delay should amend the outcome.

50. We have made reference above to after-coming evidence. The Commission has addressed this issue already in this case. In a review of the legality of a historic decision, after-coming evidence may be helpful to explain why the decision was wrong at the time. But after-coming explanations of primary fact, which might be of critical importance in an appeal, can rarely be receivable as bearing on the review of a historic decision. That must be particularly so where, as here, the relatively detailed explanation of events given by the Appellant in his statement of April 2015, was not in truth stimulated by any disclosure or summary given under SIAC Procedure Rule 38, but should all along have been understood as relevant to the Appellant's suggested "association with Iranian elements hostile to British national interests".

51. We also reject the submission that there is any question here of an arbitrary interference with the Appellant's rights under Article 8 of the European Convention. The first point to make is that on the Appellant's own case, allegations as to his reputation were and are widespread, irrespective of the decision here questioned. Secondly, the decision was communicated privately to the Appellant, and his case has been anonymised. His judicial review and subsequently his SIAC review may have impacted somewhat on his reputation, but only to reinforce what was already public, and in large measure because the Appellant himself has conducted these proceedings in such a way that he may be identifiable. We are clear that reputational impact, if it exists at all, represents no arbitrary incursion on the private life of this Appellant and

very probably no incursion at all. Active steps were taken by the SSHD, the High Court and SIAC to protect the Appellant's privacy. His private and family life, in the ordinary sense, are really hardly engaged by the decision, given the facts here. We reject Ms Weston's submissions based on Article 8.

52. For these reasons, and those expressed and amplified in the CLOSED judgment, we reject the Appellant's submissions. We conclude that the Respondent's refusal to naturalise the Appellant was reasonable and lawful; that there have been effective safeguards in the SIAC proceedings meaning that the proceedings have been fair and have properly protected the Appellant's rights, within the limitations set by the system created by Parliament, and consistent with the European Convention on Human Rights. Specifically, we reject the submission that there has been any arbitrary or unjustified interference with the Appellant's rights under Article 8 of the Convention. Accordingly, the application for Review is dismissed.