Press Summary

THE COURT ORDERED that no one shall publish or reveal the name or address of the Appellant who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellant or any member of her family in connection with these proceedings.

12 May 2025

U3 (Appellant) v Secretary of State for the Home Department (Respondent)

[2025] UKSC 19

On appeal from: [2023] EWCA Civ 811

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Sales and Lord Stephens

Background to the Appeal

This appeal is concerned with the approach that the Special Immigration Appeals Commission ("**SIAC**") should take to disputes about matters which are relevant to the assessment of national security in appeals relating to the deprivation of British citizenship and the refusal of leave to enter the UK.

The appellant was a British citizen until the events with which these proceedings are concerned. She has three children, who are British citizens. She and her children, and her then husband, lived in ISIL-controlled territory in Syria between August 2014 and October or November 2017. On 18 April 2017 the respondent, the Secretary of State for the Home Department, gave the appellant notice under section 40(5) of the British Nationality Act 1981 (as amended) that she had decided to make an order under section 40(2) of that Act depriving the appellant of her citizenship on the ground that she was satisfied that deprivation was conducive to the public good. The notice said that "it is assessed that you are a British/Moroccan dual national who has travelled to Syria and is aligned with ISIL. It is assessed that your return to the UK would present a risk to the national security of the United Kingdom." On 31 May 2018 the appellant appealed against the deprivation decision to SIAC under section 2B of the Special Immigration Appeals Commission Act 1997 as amended ("**the 1997 Act**").

In 2019 the children were repatriated to the UK. They have subsequently been cared for by members of the appellant's family. The appellant remains in Syria with her present husband. On 11 August 2020 the appellant applied to the Secretary of State for an entry clearance granting her leave to enter the UK. On 18 December 2020 that application was refused. On 15

January 2021 the appellant appealed against the entry clearance decision to SIAC under section 2 of the 1997 Act, on the ground that since the decision prevented her from rejoining her children, it was an unjustified interference with the right to respect for family life under article 8 of the European Convention on Human Rights ("**the Convention**"), and was therefore unlawful under section 6(1) of the Human Rights Act 1998. That appeal was subsequently heard by SIAC together with the appeal against the deprivation decision.

On 4 March 2022 SIAC dismissed both appeals. The Court of Appeal dismissed the appellant's further appeal, endorsing SIAC's approach of carefully evaluating all the evidence in the case, applying public law principles to the appellant's challenge to the Secretary of State's assessment of the threat she posed to national security, and refraining from substituting its own national security assessment for that of the Secretary of State. The appellant now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appellant's appeal. It holds that SIAC approached the issues in the present case on essentially the proper basis, and the specific errors identified by the Court in the lower court judgments had no effect on the outcome of the appeal. Lord Reed gives the judgment, with which the other members of the Court agree.

Reasons for the Judgment

An appeal to SIAC, whether under section 2 or section 2B of the 1997 Act, is an appeal in substance as well as in form, and is not equivalent to an application for judicial review **[43]**. Appeals under those provisions can raise questions of fact as well as points of law **[44]**. Unlike in most judicial review proceedings, in the present context SIAC is not confined to considering the evidence which was before the decision-maker at the time when the decision under challenge was taken.

Applying the public law approach required by *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7 ("***Begum***"), the appellant's evidence that she was not a threat to national security could be taken into account in a number of ways **[18]**. First, evidence relating to events occurring prior to the deprivation decision might identify the significance of a matter which the Secretary of State did not consider but ought to have considered **[19]**. Secondly, SIAC is not confined to considering material which was or ought to have been available to the Secretary of State at the time when the decision under appeal was taken. It can consider other material, including evidence which has only subsequently come into existence **[45]**. Thirdly, if an individual appeals against a deprivation decision, the national security assessment is updated during the appeal proceedings to take account of the appellant's evidence and any material uncovered by the review. SIAC then treats the Secretary of State's updated national security assessment as superseding the original one **[20], [46]-[47]**.

It is within SIAC's jurisdiction to make findings of fact. It does so, as it did in the present case, on the balance of probabilities, in accordance with the general rule governing civil proceedings. However, not every issue which SIAC may have to decide in an appeal can be determined by making findings of fact on a balance of probabilities **[48]**. In particular, where an appeal is brought against a decision on a ground which challenges the Secretary of State's assessment that the decision is justified because the affected person poses an unacceptable risk to national security, the nature of that issue requires SIAC to adopt a different approach **[54]**. This is for two reasons.

First, the question whether a decision is justified on the ground of a risk to national security is based on an evaluative judgment or assessment that an unacceptable risk exists, not on the existence of a particular fact or the occurrence of a particular event. An understanding that a

particular fact exists or that a particular event has occurred may form part of the basis of the assessment, but such assessments commonly refer, as in the present case, to suspicions or likelihoods; and even where the assessment is based on an understanding that a particular fact exists or that a particular event has occurred, whether or not that can be proved on a balance of probabilities will not be determinative **[55]**. A risk is a possibility. The existence of a risk can therefore arise from evidence which is sufficient to establish a possibility but falls short of proof on a balance of probabilities. The evaluation of the risk then depends on such factors as the degree of risk, the possible methods of addressing the risk, and the gravity of the consequences if the risk eventuates **[58]**. In practice, the assessment of risk, in the context of national security, will often be based on a number of items of information or intelligence, individually disputable or inconclusive, but cumulatively giving rise to reasonable grounds for an apprehension that, for example, the person in question has been in contact with terrorists and has aligned with their objectives. Those possibilities do not have to be proved to have occurred on a balance of probabilities in order for it to be reasonable to conclude that the person would present a risk to public safety if he or she returned to the UK, or that the risk is sufficiently serious to justify a deprivation decision **[61]**.

Second, SIAC is not the primary decision-maker. Responsibility for assessing whether a person presents such a risk to national security that a deprivation decision or the refusal of entry clearance is justified has been given by Parliament to the Secretary of State, subject to a right of appeal to SIAC. Furthermore, the Secretary of State is also exercising a discretion. SIAC's role in this context is therefore to review the Secretary of State's exercise of his or her discretion, based on an evaluative judgment of the risk to national security, applying public law principles (except to the extent that they are inconsistent with the statutory scheme) **[63]-[64], [81]-[82]**. Furthermore, in this context a court or tribunal will always attach weight to the assessment made by the primary decision-maker, for both institutional and constitutional reasons. The Secretary of State acts on the basis of expert advice, and is accountable to Parliament **[65]-[68]**.

Subject to one qualification, the Court considers that SIAC adopted the correct approach in the present case. The qualification is that SIAC approached the appeal against the deprivation decision on the basis that the issue it had to decide was whether the Secretary of State could rationally assess, as at the date of the decision, that the appellant posed a risk to the national security of the UK. However, it is possible for the appeal to be based on evidence which was not before the Secretary of State at the time when the deprivation decision was taken **[83]-[84]**. Nevertheless, in the circumstances of the present case, that misunderstanding had no effect on SIAC's decision **[85]**. Having scrutinised the evidence with care, it rejected the challenge to the Secretary of State's assessment that the appellant presented a significant risk to national security. Having reached that conclusion, it was correct to dismiss the appeal against the deprivation decision **[108]**.

On appeal, the Court of Appeal was incorrect to hold that the issue SIAC has to decide is whether the Secretary of State's assessment is based on facts that have been established on a balance of probabilities. Rather, the central question is whether the evidence, viewed as a whole, provides a rational basis for the Secretary of State's decision, applying public law principles. It would not do so, if the decision was based on a view of the evidence that could not reasonably be held; but the decision would not be irrational merely because the probability, for example, that the appellant had been in Syria was less than 50% **[87]-[92]**. Ultimately, however, the Court of Appeal correctly concluded that SIAC could not, in the circumstances of the present case, overturn the Secretary of State's assessment **[93]**.

In relation to the refusal of entry clearance, this constituted an interference with the rights of the appellant's children under article 8 of the Convention **[99]**. The Court rejects the argument that the approach adopted in *Begum,* and in the present case, meant that SIAC's procedures no

longer met Convention standards. In particular, appeals under sections 2 and 2B of the 1997 Act are adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence, in which the appellant can challenge in an effective manner the allegations that he or she represents a danger to national security, and in which SIAC can react in cases where the assessment has no reasonable basis in the facts or is otherwise unlawful or arbitrary **[105]-[107]**. In the present case, SIAC carefully assessed the best interests of the appellant's children, and correctly concluded that the interference with their article 8 rights which would result from the refusal of the appellant's application for entry clearance was proportionate **[108]**.

References in square brackets are to paragraphs in the judgment.