



[UK - SSHD v Hashim Tariq](#)

The applicant applied for British citizenship on the basis of s.4B of the British Nationality Act 1981 (which does not allow the grant of British citizenship when the applicant already has another nationality), relying on a letter from a Pakistani Consulate confirming that his Pakistani nationality was cancelled. The Court of Appeal reversed the lower court's decision, which had been in favour of the applicant, on the basis that (1) it failed to apply the principle that the person's nationality was to be determined by reference to the actual law of the state on the basis of expert evidence, not what agencies of the state might assert about that person's nationality; and (2) the lower court's reading of Pakistani law was mistaken.

Case status: Decided

Case number: [2021] EWCA Civ 378

Citation: The Secretary of State for the Home Department v Hashim Tariq [2021] EWCA Civ 378

Date of decision: 16/03/2021

State: United Kingdom

Court / UN Treaty Body: Court of Appeal

Language(s) the decision is available in: English

Applicant's country of birth: Pakistan

Applicant's country of residence: United Kingdom

Key aspects: Acquisition of nationality, Burden of proof, Voluntary renunciation of nationality

Relevant Legislative Provisions:

- British Nationality Act 1981, section 4B
- Hong Kong Act 1985, section 2
- Order in Council, The Hong Kong (British Nationality) Order 1986 (SI 1986 No. 948)
- Pakistan Citizen Act 1951, sections 14 and 19
- Immigration Act 1971, section 3(8)

Facts

The applicant was born in Pakistan to Pakistani parents. Aged eight he acquired British National (Overseas) ("BNO") status, because of his mother's connection to Hong Kong. He was 32 at the time of the judgment and lawfully resident in the UK since the age of 16. He has a British wife and a British child. His applications for British naturalisation were refused on the basis that he held another nationality, which, under s.4B of the British Nationality Act 1981, precluded him from acquiring British nationality. The applicant also made an application for a finding that he was a stateless person, which was refused (see paras. 3-8).

Judicial review proceedings concluded that the applicant met the requirements in s.4B, entitling him to British citizenship. The court received (unchallenged) expert evidence on Pakistani law. The evidence stated that the applicant was a citizen of Pakistan by birth and descent, but as he acquired BNO status when aged eight and failed to renounce it when he attained 21, his status as a citizen ceased automatically when he reached the age of 21. The lower court (1) found that the applicant was no longer a Pakistani national, and (2) rejected the authorities' argument that he had lost his Pakistani nationality because he failed to take steps before his 21st birthday to preserve it. The lower court primarily based its findings on the Pakistani Consulate letter which – according to the court – showed that the Pakistani Government regarded the applicant as having lost his Pakistani citizenship when he acquired a BNO passport at the age of eight (see paras. 9-10, 17-21).

Legal arguments by the applicant

The lower court's decision was correct. The Pakistani Consulate letter showed that the applicant was no longer a Pakistani citizen. This evidence was in accordance with the authorities' guidance on the type of evidence that should be provided in an application under s.4B. *Al-Jedda* and *Pham* were distinguishable because they related to deportation for serious offences, as opposed to this case which concerned a person of good character (see para 28).

Legal arguments by the opposing party

The lower court erred in holding that the applicant fell within s.4B. The question of a person's nationality was to be determined by reference to the law of the state, on the expert evidence, and not what agencies of the state say about that person's nationality. Under Pakistani law, the applicant would not have ceased to be a citizen

of Pakistan until he turned 21. The lower court erred in failing to follow the expert evidence and in preferring the incorrect statement of the law in the Pakistani Consulate's letter. Thus, the applicant had renounced his Pakistani citizenship through inaction after the relevant day (i.e., 19 March 2009) (see para. 27).

Decision & Reasoning

The Court of Appeal held that the burden was on the applicant to show that he had not, after 19 March 2009, renounced, voluntarily relinquished or lost his Pakistani citizenship through action or inaction (see para. 32).

The Court of Appeal also found that the lower court's approach and findings - which were based on the Pakistani Consulate's letter in preference to the expert evidence - were flawed for two principal reasons. First, the lower court "*failed to have regard to the well-established principle that the question of a person's nationality is a de jure matter, i.e. to be determined by reference to the actual law of the state on the basis of expert evidence, not what agencies of the state might assert about that person's nationality*" (*Pham and Al-Jedda*). Second, the lower court wrongly treated the Pakistani Consulate letter as conclusive. The lower court's reading of the relevant Pakistani law was mistaken. While that law permitted the Pakistani government to grant a certificate certifying that a person was a Pakistani citizen, it did not permit the grant of a negative certificate or letter that the person was not a Pakistani citizen (see paras. 41-46).

Decision documents

[The Secretary of State for the Home Department v Hashim Tariq \[2021\] EWCA Civ 378.pdf](#)

Outcome

The decision of the lower court that the applicant was entitled to British citizenship was reversed.

Caselaw cited

R (Harrison) v Secretary of State for the Home Department [2003] EWCA Civ 432

Secretary of State for the Home Department v Al-Jedda [2013] UKSC 62 [2013] 3 WLR 1006

Pham v Secretary of State for the Home Department [2015] UKSC 19 [2013] 1591