



IAC-FH-AR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DC/00005/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29<sup>th</sup> October 2014**

**Decision and Reasons Promulgated  
On 14<sup>th</sup> November 2014**

**Before**

**THE HON. MR JUSTICE DAVIS  
UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**DAVID JERUSALEM PETERS**

Respondent

**Representation:**

For the Appellant: Dr A Samuels

For the Respondent: Mr I Richards

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against a decision of the First-tier Tribunal promulgated on 7<sup>th</sup> April 2014. The decision was in respect of an appeal by Mr David Jeremiah Peters against a decision to deprive him of his British citizenship under Section 40A of the British Nationality Act 1981.
2. The first issue we must deal with is that the application for leave to appeal was lodged late by the Secretary of State. The delay was something in the order of four weeks. The first application for permission was refused, that is by a Judge of the

First-tier Tribunal, and one of the grounds of refusal was that there was no good reason to extend time. However the application for leave came before Upper Tribunal Judge Allen. He determined the application on 16<sup>th</sup> July of this year and concluded amongst other things that it was in the interests of justice for the application to be admitted.

3. This morning Mr Peters has argued that the Upper Tribunal Judge in reaching that conclusion failed to follow the guidance in a decision of this Tribunal in Ogundimu [2013] UKUT 00060 where the then President of the Upper Tribunal indicated that it would only be an exceptional case where permission to appeal should be granted where there has been a significant delay and in the normal case where such a course is being considered by the Tribunal the normal course thereafter would be to list the permission application for oral hearing. The party seeking leave to appeal then could seek to justify the delay and the party responding to the proposed appeal could argue against any further extension of time.
4. Upper Tribunal Judge Allen did not do that. The delay in this case is probably just on the cusp of that identified in Ogundimu. However we are perfectly satisfied that Upper Tribunal Judge Allen applied his mind to the fact that the application was out of time and reached a concluded decision on the point. We cannot act as some kind of Court of Appeal in respect of Upper Tribunal Judge Allen. We as a matter of fact would have made precisely the same decision, not least because of what we consider was the wholly erroneous basis of the First-tier Tribunal's decision. However if Mr Peters had wished to take issue with the grant of permission that was something he should have done at a much earlier stage and probably by a different route.
5. The substance of the case concerns the fact that Mr Peters has spent some considerable time in the United Kingdom and almost throughout his time here has engaged in grossly fraudulent activity. The findings of fact of the First-tier Tribunal which appear from paragraphs 6 to 16 of the decision do not require detailed rehearsal. They demonstrate that he first appeared before criminal courts in this country in 1998. He went to prison for offences of fraud in 2002 and in 2004, having been sent to prison for two years for offences of various kinds involving fraud and deception, he was deported. As the First-tier Tribunal found "he was by the date of his deportation a thoroughly dishonest person".
6. Having been deported he applied for entry clearance to enter the United Kingdom no more than a few months after his deportation, giving details which were entirely different to those which he had given when he first entered the United Kingdom. He gave no detail at all of his previous history and therefore his entry into this country was, in our judgment, fraudulent.
7. Having arrived in this country he in due course applied for and was granted indefinite leave to remain. That grant was made in total ignorance of his immigration history. Subsequently he applied for British citizenship, an application which as the First-tier Tribunal found would normally have failed in the light of his criminal history and his immigration history. In fact it succeeded because the

authorities were entirely ignorant of the relevant history given the fraud that Mr Peters was practising. Mr Peters, having obtained his leave to remain and his citizenship fraudulently, returned to criminal fraud. He was made the subject of a suspended sentence in September 2010 and then at the Central Criminal Court in July 2011 was sentenced to a very wide range of fraudulent activity that involved a total defrauding of the public of something in excess of £160,000.

8. The judge in the Old Bailey sentenced him to a total sentence of five years' imprisonment.
9. The First-tier Tribunal had
 

“no difficulty in finding that he (Mr Peters) acted knowingly and dishonestly and that the application along with subsequent applications for indefinite leave to remain and British citizenship were merely further links in the chain of dishonesty and deception which he had forged before he was deported and which he continued to forge after his return.”
10. In all of those circumstances it is hardly surprising that the Secretary of State concluded that deprivation of citizenship was going to be entirely conducive to the public good. This was a man whose claim to British citizenship was clearly wholly non-existent.
11. The First-tier Tribunal allowed the appeal against the deprivation of citizenship. They did so under Article 8 of the European Convention. The way in which they purported to do so was by finding that to deprive Mr Peters of citizenship would interfere with his private or family life by removing from him the chance to make an application under Regulation 15A of the Immigration (EEA) Regulations 2006. That was not an application he had made. How it could be an interference with human rights to deprive the appellant (as he then was) of something he had not done and showed no intention of doing is difficult to identify.
12. Moreover on reading the Immigration (EEA) Regulations 2006, in particular Regulation 15A, it is perfectly clear that Mr Peters could not possibly bring himself within the Regulations. The Regulations permit somebody to apply for what is called a derivative right of residence. Thus, somebody who does not themselves have any entitlement to reside in the United Kingdom may satisfy some criteria under Regulation 15A.
13. One of the criteria is that if the person applying is a primary carer of a British citizen. A primary carer is defined as either the person who has primary responsibility for that person's care or a person who shares equally the responsibility for that person's care with one other person who is not an exempt person. The case before the First-tier Tribunal was put on the premise that Mr Peters fell into the second category of primary carer, that is he shared equally the responsibility of the care of children who were British citizens with one other person who was not an exempt person. The other person who was said to be an exempt person was his wife. His wife is a British citizen. There was a clear finding of fact to that effect we have seen the documentary

evidence which would substantiate it. It follows that she **was** an exempt person under the Regulations. Therefore, there is no conceivable basis upon which Mr Peters could make such an application even if he chose to do so. It follows that the entire basis of the First-tier Tribunal's decision was completely flawed. The Tribunal also discussed at some length the principles set out in Zambrano which for reasons we do not need to elaborate have absolutely no relevance to this case at all.

14. It follows that the decision of the First-tier Tribunal was so fundamentally flawed that it cannot stand and we must set it aside. Mr Peters this morning through his representative has acknowledged that there is no material that could be put before us that was not before the First-tier Tribunal. There is no material on the decision to deprive Mr Peters of citizenship, that being the decision under review, which cannot be identified and determined from the facts as found by the First-tier Tribunal.
15. Therefore, this Tribunal is in a perfectly proper position to remake the decision today and it has been conceded that that is an appropriate course for us to take.
16. We remake the decision. We determine that the decision to deprive Mr Peters of his British citizenship was entirely appropriate. His appeal against that decision is dismissed.

Signed

Date **13<sup>th</sup> November 2014**

The Honourable Mr Justice Davis  
(Sitting as a Judge of the Upper Tribunal)