



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DC/00018/2018

THE IMMIGRATION ACTS

Heard at Field House
On Tuesday 2 July 2019

Decision & Reasons Promulgated
On Wednesday 17 July 2019

Before

**MR JUSTICE MURRAY
(SITTING AS AN UPPER TRIBUNAL JUDGE)
UPPER TRIBUNAL JUDGE SMITH**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MUHAMMAD NAJAT

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer

For the Respondent: Ms A Nizami, Counsel instructed by Rahman & Co solicitors

DECISION AND REASONS

BACKGROUND

1. This is an appeal by the Secretary of State for the Home Department. For ease of reference, we refer below to the parties as they were in the First-tier Tribunal albeit that the Secretary of State for the Home Department is technically the Appellant in this particular appeal. The Respondent appeals against a decision

of First-Tier Tribunal Judge PMS Mitchell promulgated on 30 April 2019 (“the Decision”) allowing the Appellant’s appeal against the Secretary of State’s decision dated 13 April 2018 depriving the Appellant of British citizenship. The appeal is under section 40A British Nationality Act 1981.

2. The Appellant was granted British citizenship following the grant of four years’ exceptional leave to remain (“ELR”) and then indefinite leave to remain (“ILR”). It is common ground that, when applying for both ELR and ILR (and also when making the application for citizenship), the Appellant used a false name, date of birth and place of birth. He is from Iraq and of Kurdish ethnicity and both of those factors were correctly disclosed. The false declarations came to light only when applications were made for British passports on behalf of his children. We record also for completeness that the Appellant and his family currently live in Iraq where the Appellant has spent most of the past ten years.
3. Although the Judge accepted that the Appellant had made false declarations as asserted by the Respondent in relation to his name, date and place of birth, he concluded that the use of a false identity was not a factor which led the Respondent to be deceived in relation to the Appellant’s entitlement to citizenship. Put another way, he did not accept that the use of false information was causative of the grant. For that reason, he allowed the appeal.
4. The Respondent appeals on two grounds. First, he says that the Judge’s acceptance of the Appellant’s evidence that he had changed his name by deed poll to his real name by the time of the grant of British citizenship was not relevant to the issues and should not have been taken into account when deciding the appeal. He says that, even if that were correct, the Respondent was unaware of the change. Second, he says that the Judge gave inadequate reasons for his conclusion and/or that the conclusion is perverse. Having accepted that the Appellant used a false identity, he says that it is “wholly perverse” to suggest that the Respondent would have granted the application for citizenship if he had been aware of that fact. He also says that the Judge’s finding that the Appellant did not conceal a material fact is perverse given the Appellant’s acceptance that he failed to disclose that the identity he was using at the time was false.
5. Permission to appeal was granted by First-tier Tribunal Judge Chohan in the following terms so far as relevant:

“2. In short, the grounds argued that the judge erred by allowing the appeal having found that the appellant had given false details to the respondent application for British nationality was made.

3. The judge concludes paragraph 33 of the decision that the appellant’s use false name and date of birth was not a factor which led the respondent to be deceived into granting British citizenship. Curiously, the judge concludes that by the time British citizenship had been granted the appellant and changes name to his real name by deed poll. It is difficult to understand how that had any bearing on the exercise of deception. It does

seem that the respondent granted British citizenship based on the false details.

4. There is an arguable error of law.”
6. The matter comes before us to decide whether the Decision contains a material error of law and, if we so conclude, to either re-make the Decision or remit the Decision to the First-tier Tribunal for re-making.

THE DECISION

7. The way in which the Respondent puts his case against the Appellant is probably most conveniently expressed in the Decision as follows:

“12. The Secretary of State now says that they would not have granted leave to him if they had known he originated from the Kurdish Autonomous Area. It was safe to return the appellant to Erbil which is in the Kurdish Autonomous Area (Kurdistan).

13. The appellant now accepts that he gave a false name and date of birth when he arrived in the United Kingdom therefore it is unnecessary to replicate all the credibility issues raised by the Secretary of State.

14. The appellant’s false claim that he was born married in Kirkuk and his incorrect date of birth were fundamental in his claim for international protection. It is apparent from the applications made for his children to come to the United Kingdom that he was not born or lived in Kirkuk. The appellant’s explanations of being exhausted confused were unsatisfactory. The appellant has not provided a plausible explanation for his deceptions.

15. It was considered that even if the decision to deprive the appellant on fraud grounds under section 40(3) had the consequence of rendering the appellant stateless it would be in all the circumstances reasonable and proportionate given the seriousness of the fraud. The appellant was a national of Iraq when he became a British citizen. The appellant can apply for reinstatement of his citizenship to the Iraqi authorities.”

8. The Judge made findings that the Appellant had used a false name and date of birth but found that “the salient parts of his claim are substantially accurate”. Those were that he was Iraqi, that he claimed asylum in that nationality and based also on his ethnicity (which was his true ethnicity) and that he was from Kurdistan. The Judge also accepted that, although the Appellant was born in Erbil, he had lived in Kirkuk before coming to the UK. The Judge accepted that the Appellant had given an explanation for providing some false details in relation to his first wife and that, in any event, that had no bearing on the Respondent’s decision to grant ELR. He dealt at [32] of the Decision with the Appellant’s case as regards his marriage in Iraq which the Judge found was probably a proxy marriage which the Appellant did not attend. We do not need to deal with that further as no issue is taken with the Judge’s findings in that regard.

9. Having made those findings, the Judge reached the following reasoned conclusions:

“33. Much of this though is somewhat otiose as regards this decision. The fact is that the appellant arrived in the United Kingdom was refused asylum on the basis of credibility and yet was immediately granted exceptional leave to remain. There have been various times in the past when it has been possible to return people to Iraq or Kurdistan. Neither party has been able to provide this tribunal with any definitive timescales as to when this may have occurred. Irrespective that it is quite clear that the appellant was granted exceptional leave to remain in 2002 immediately after having been refused a claim for asylum. If the Secretary of State had been able to return the appellant to Iraq they would have done so at that time. The appellant has been consistent throughout that he is Kurdish. The appellant was found not to be credible at his asylum appeal and yet the Secretary of State having been put on notice that the appellant claimed to come from Kurdistan still allowed the appellant’s exceptional leave to run its course until the appellant was able to obtain British citizenship in 2008. The basis on which the appellant was granted British citizenship was on the basis of him being granted exceptional leave to remain and then indefinite leave to remain in 2007 and having undertaken the appropriate tests. The fact that the appellant used a false name and date of birth initially does not appear to have been a factor which led to the Secretary of State being deceived as regards the grant of British citizenship. The appellant had by deed poll at the time of being granted British citizenship changed his name to his real name.

34. I do not consider that Secretary of State has shown that the basis of the grant of British citizen to the appellant was on the basis of fraud or that the appellant’s false name and date of birth was even relevant to that decision. I do not consider that there has been a fraud, false representation or concealment of a material fact which led to the grant of British Citizenship. I allow the appeal.”

THE LEGAL AND POLICY BACKGROUND

10. Section 40(3) British Nationality Act 1981 is as follows:

“The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—

- (a) fraud,
- (b) false representation, or
- (c) concealment of a material fact.”

11. The Judge referred to two decisions of this Tribunal at [17] and [18] of the Decision. The relevant parts of the guidance given in the headnote of those two decisions are set out below to assist in explaining our later conclusions:

Pirzada (Deprivation of citizenship: general principles) [2017] UKUT 00196 (IAC)

“(i) The Secretary of State has two separate powers of deprivation, exercisable on different grounds, as set out in sub-ss (2) and (3) of s 40 of the British Nationality Act 1981.

...

(iii) The power under sub-s (3) arises only if the Secretary of State is satisfied that registration or naturalisation was obtained by fraud, false representation or concealment of a material fact. The deception referred to must have motivated the grant of (in the present case) citizenship, and therefore necessarily preceded that grant.

...

(v) The restrictions on the rights of appeal imposed by s 84 of the 2002 Act do not apply to appeals against a s 40 decision: therefore, any proper ground of appeal is available to an applicant. The grounds of appeal are, however, limited by the formulation of s 40 and must be directed to whether the Secretary of State's decision was in fact empowered by that section. There is no suggestion that a Tribunal has the power to consider whether it is satisfied of any of the matters set out in sub-ss (2) or (3); nor is there any suggestion that the Tribunal can itself exercise the Secretary of State's discretion.”

BA (deprivation of citizenship: appeals) [2018] UKUT 00085 (IAC)

“(1) In an appeal under section 40A of the British Nationality Act 1981, the Tribunal must first establish whether the relevant condition precedent in section 40(2) or (3) exists for the exercise of the Secretary of State's discretion to deprive a person (P) of British citizenship.

...

(3) In a section 40(3) case, the Tribunal must establish whether one or more of the means described in subsection (3)(a), (b) and (c) were used by P in order to obtain British citizenship. As held in Pirzada (Deprivation of citizenship: general principles) [2017] UKUT 196 (IAC) the deception must have motivated the acquisition of that citizenship.

(4) In both section 40(2) and (3) cases, the fact that the Secretary of State has decided in the exercise of her discretion to deprive P of British citizenship will in practice mean the Tribunal can allow P's appeal only if satisfied that the reasonably foreseeable consequence of deprivation would violate the obligations of the United Kingdom government under the Human Rights Act 1998 and/or that there is some exceptional feature of the case which means the discretion in the subsection concerned should be exercised differently.”

12. Our attention was also drawn to the decision of Sleiman (deprivation of citizenship; conduct) [2017] UKUT 00367 (IAC) where UTJ Kopieczek provided guidance that “[i]n an appeal against a decision to deprive a person of a citizenship status, in assessing whether the appellant obtained registration or naturalisation ‘by means of’ fraud, false representation, or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship.”
13. The Respondent relies also on the case of Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67 at [74] as follows:

“... When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

That is a case concerning deception in a context other than applications for citizenship.

14. Mr Clarke, in his submissions, referred us to the Home Office guidance concerning deprivations and Chapter 55 thereof, in particular at [55.7] as follows:

“Material to the Acquisition of Citizenship

55.7.1 If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation.

55.7.2 This will include but is not limited to:

- Undisclosed convictions or other information which would have affected a person’s ability to meet the good character requirement
- A marriage/civil partnership which is found to be invalid or void, and so would have affected a person’s ability to meet the requirements for section 6(2)
- False details given in relation to an immigration or asylum application, which led to that status being given to a person who would not otherwise have qualified, and so would have affected a person’s ability to meet the residence and/or good character requirements for naturalisation or registration

55.7.3 If the fraud, false representation or concealment of material fact did not have a direct bearing on the grant of citizenship, it will not be appropriate to pursue deprivation action.

55.7.4 For example, where a person acquires ILR under a concession (e.g. the family ILR concession) the fact that we could show the person had previously lied about their asylum claim may be irrelevant. Similarly, a person may use a different name if they wish (see NAMES in the General Information section of Volume 2 of the Staff Instructions): unless it conceals criminality, or other information relevant to an assessment of their good character, or immigration history in another identity it is not material to the acquisition of ILR or citizenship. However, before making a decision not to deprive, the caseworker should ensure that relevant character checks are undertaken in relation to the subject's true identity to ensure that the false information provided to the Home Office was not used to conceal criminality or other information relevant to an assessment of their character.

..."

SUBMISSIONS AND DISCUSSION

15. Mr Clarke adopted the Respondent's grounds and expanded upon them as follows. In relation to ground one, he submitted that the fact of the change of name by deed poll could not be relevant since the Respondent was unaware of the change of name until 2016 when an application was made for passports for the Appellant's children. The Judge had also not made a finding whether the deed poll was ever disclosed to the Respondent. We did not understand Ms Nizami to dispute that the deed poll was not relevant. However, she said that whether or not and when the Appellant communicated his change of name to the Respondent was not material to the grant of citizenship. As we understood the Appellant's case, therefore, it is that any error in this regard is not material.
16. In relation to ground two, Mr Clarke submitted that the correct approach for the Tribunal faced with the clear, factual matrix in this case was, first, to consider whether the false representation/concealment was dishonest (applying *Ivey*), second, whether the Respondent had correctly exercised his discretion in light of the Chapter 55 guidance and, third, whether there were reasonably foreseeable consequences that would render deprivation a disproportionate interference with the Appellant's human rights. We can discount that latter stage as the Appellant did not assert that the Respondent's decision to deprive breached his human rights.
17. Ms Nizami submitted that the threshold for perversity is a high one and that the Respondent had not shown it to be met. In truth, the grounds were a mere disagreement with the Decision. The Appellant's case is that he was granted

ELR and later ILR and then citizenship for reasons which had nothing to do with the false information which he had given.

18. In discussions with Mr Clarke, he accepted that he could not pursue a case at this stage that the false information given, in particular in relation to place of birth, had affected the grant of ELR to the Appellant as that was not part of the Respondent's pleaded case. We surmise that the false information about place of birth may have had some causative link. The grant of ELR appears to have been based on a country policy (given its timing and length and since it could not have been on either asylum or human rights grounds on the facts of this case). Mr Clarke agreed that this was probably so, in particular if one takes into account the history of Iraq and Home Office policies at that time as recorded for example in Secretary of State for the Home Department v Rashid [2005] EWCA Civ 744. It is at least possible that there would be a difference between a person claiming to be from Erbil and one claiming to be from Kirkuk, particularly as an ethnic Kurd. However, Mr Clarke accepted that there was no evidence put before the Judge about this nor was it dealt with in the Respondent's decision letter. As the Judge put it at [28] of the Decision "[t]he lack of clarity as regards that grant of ELR does not assist the respondent in his arguments".
19. As it was, therefore, the Judge was left with findings that the Appellant had used a false name (apparently only his first name), a false date of birth and a false place of birth but in circumstances where the Judge accepted that the Appellant had at least lived in Kirkuk although born in Erbil and where both places were in Kurdistan.
20. Mr Clarke submitted though that there remained an error because the Judge had failed to reach any finding in relation to the Appellant's conduct and whether that was dishonest. We disagree. The Judge reaches an express finding at [26] of the Decision that "[i]t is quite clear that the appellant when he arrived in the United Kingdom deliberately used a false name and details." He went on to say however that it was "a reasonable explanation that he was influenced by the people who brought him to the United Kingdom and the advice that they gave him". Whilst that might not have been a conclusion we would draw from the evidence (particularly given the failure of the Appellant to give his correct details at any time after he had been given leave to remain in the UK), the Judge did make a finding and it is a finding which it was open to him to make. As the Judge there observed "[m]any people take the advice given to them by such 'agents' who have little long term interest in the asylum seeker's welfare but are keen to distance themselves from and obfuscate the situation for the British authorities." The conduct may still be dishonest but excused by the reason given for it. That is the effect of the Judge's finding.
21. It is appropriate for us to deal at this juncture with the Respondent's first ground. We agree that the Judge's reference to the Appellant changing his name by deed poll at [33] of the Decision is not relevant. Speaking for ourselves, if anything, it is a factor weighing against the Appellant. He had no

need to change his name to his real name by deed poll unless he wished to perpetuate the fraud and might suggest conduct which was more deliberately dishonest than the Judge found to be the case. However, in the context in which it is relied upon, the remark which is something of an afterthought, makes no difference. It is not a material error.

22. Dealing then with ground two, and Mr Clarke's submission that the Judge failed to deal with Chapter 55, we were at something of a loss to understand this point. We have set out the relevant part of Chapter 55 at [14] above. That appears to us to be consistent with the case-law to which we have also referred above, namely, that consideration must be given when looking at the exercise of discretion to the materiality of the false representations at the time of the grant of citizenship.
23. Mr Clarke may be right to say as he did that there has been undue focus in the Decision on the previous grants of ELR and ILR and whether those would have been given if the true facts had been known. However, it cannot be the case as Mr Clarke appeared to suggest that any knowledge of false representations would affect the grant of citizenship because of the impact of the fraud on the applicant's character and conduct. If that were the case, then there would be no need to consider, as the guidance suggests, whether the false representation had a direct bearing on the grant of citizenship.
24. We can well see that certain sorts of false representation or concealment, for example, in relation to failure to disclose criminal convictions may be more likely than not to lead to the exercise of the Respondent's discretion to deprive. However, we cannot accept that all instances of making a false representation are likely to lead to that result purely on character and conduct grounds as otherwise the guidance would not be worded as it is. The interpretation we place on the guidance is also consistent with what is said in the case-law to which we have referred. The Judge has referred to that case-law and there was no need to refer also to the Chapter 55 guidance which is consistent with the approach set out in the case-law.
25. Mr Clarke's point that the false representations were relevant to consideration of the discretion is also answered by the Judge's acceptance at [26] of the Decision that there was a reasonable explanation for the dishonesty. As we have said, that is not a finding which we would have made on these facts, but we are here to judge whether there is an error of law in the finding made and not whether we would have reached the same finding. The Judge gave reasons for the finding he made and for the conclusions he reached. The high threshold required to show perversity is not met. We are satisfied that there is no error of law in that finding and no error of law in the Judge's conclusions at [33] and [34] of the Decision save for the one reference to the deed poll which, as we have concluded, was not material.

CONCLUSION

26. For all of the above reasons, we are satisfied that the Decision does not contain an error of law. Accordingly, we uphold the Decision.

DECISION

We are satisfied that the Decision does not contain a material error of law. We uphold the decision of First-tier Tribunal Judge PMS Mitchell promulgated on 30 April 2019 with the consequence that the Appellant's appeal remains allowed.



Signed
Upper Tribunal Judge Smith

Dated: 11 July 2019