



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

Appeal Number: UI-2021-001271
DC/50025/2021; IA/01221/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 12 July 2022**

**Decision & Reasons Promulgated
On 14 November 2022**

Before

**THE HON. MR JUSTICE MORRIS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE SHERIDAN**

Between

**MASOOD AHMED
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Alasdair Mackenzie, counsel, instructed by Legal Rights Partnership, Solicitors

For the Respondent: Mr David Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by Masood Ahmed (“the Appellant”) against the decision of First-tier Tribunal judge Elliott promulgated on 29 October 2021 (“the FTT Decision”). By the FTT Decision, the judge dismissed the Appellant’s appeal against the decision of the Secretary of State for the Home Department

("SSHD") dated 27 January 2021 depriving him of British citizenship under section 40(3) British Nationality Act 1981 ("the SSHD Decision"). Permission to appeal was granted by FTT judge Zucker on 18 November 2021.

Factual background

2. The Appellant was born in Pakistan on 27 October 1977. At the age of 17 he married Shazia Mobeen in Pakistan in an Islamic religious ceremony, a nikah. They had four children. In 2004 he entered the UK from Pakistan illegally; he claims that he did so to escape that marriage. In the UK in 2005 he met Sonia Choudhury, a British citizen. In 2007 they underwent a nikah in the UK. In 2008 he returned to Pakistan and on 15 February 2008 made an application for entry clearance as a fiancé of Ms Choudhury.
3. On 17 March 2008 he was granted a visa for 6 months. On that day he had been interviewed by an entry clearance officer ("the March interview"), in the course of which he said that he had not been previously married (Question 7). He claims that he failed to mention his marriage to Shazia Mobeen because he believed that his Pakistani nikah was not recognised in UK law. Asked why he and Ms Choudhury had decided to get married in the UK and not in Pakistan, he replied "I was in the UK". Then, Questions 10 and 11 of the interview recorded as follows:

"Q: But this [i.e. the UK nikah] was under Islamic law only. You are now applying for a fiancé visa, as the UK does not recognise Islamic Marriages that have not been registered. Why not conduct a ceremony here [i.e. Pakistan] where your family are?"

A: I didn't know that it would be ok to do that

Q: Most Pakistani's get married here [i.e. Pakistan] and then apply to join their spouse in the UK on a settlement visa. Why did you not do this?

A: We have already conducted a Nikka there [i.e. in the UK] and in Islam it is not permitted to have another"
4. He returned to the UK on a fiancé visa and on 23 April 2008 he and Ms Choudhury got married in a civil ceremony here. On 9 May 2008 he was granted leave to remain for two years and thereafter on 8 June 2010, indefinite leave to remain ("ILR").
5. On 28 April 2011 the Appellant applied for naturalisation as a British citizen, completing the standard form AN. In that form, he failed to provide details of his previous marriage and confirmed that he had not engaged in any other activities which might indicate that he was not of good character. On 28 September 2011 he was granted British citizenship.
6. In 2015 the Appellant moved to Ireland, in order that Shazia Mobeen and their four children could join him there. He sponsored successful applications to the Irish authorities for residence cards by Shazia Mobeen, as

his spouse and by the four children. In those applications, his residential address was the same as that of the applicants and Ms Mobeen stated that the Appellant was her spouse. In fact Shazia Mobeen and the children returned to Pakistan in 2017.

7. Subsequently the SSHD carried out an investigation into the manner in which the Appellant had obtained British citizenship, on the basis that he had failed to declare his marriage to Shazia Mobeen. (The FTT Decision records that this was a result of information provided by the Irish authorities). The Appellant's representative responded in a letter dated 16 October 2020, in which the Appellant claimed that, on the basis of advice from Ms Choudhury, he genuinely believed that a nikah was not recognised in UK law as a valid marriage and for that reason he had not declared his previous marriage to Shazia Mobeen.

The SSHD Decision

8. After setting out the above factual background at §§8 to 45, the SSHD Decision summarised the Appellant's response on 16 October 2020 (at §§47 to 59). In particular the SSHD Decision set out the Appellant's case, as follows:

“52. It was then claimed that Sonia Choudhry had advised you that the Nikah in Pakistan, with Shazia Mobeen, was not a valid marriage and therefore did not need to be referred to in your applications. It was then stated that the Nikah you had in the UK with Sonia Choudhry was not recognised, which was why you had to return to Pakistan and apply for a fiancé visa

53. It was then stated that you denied making any false representations deliberately and that you accept that you had a Nikah with Shazia Mobeen in Pakistan in or about 1995. It is then claimed, however, that Sonia Choudhry advised you that it was not a valid marriage and you relied on this information. The response then claims that he genuinely believed that a Nikah was not recognised in UK law as a valid marriage

54. It was stated that you declared yourself as single prior to marrying Sonia Choudhry as you genuinely held the belief that the Nikah with Shazia Mobeen did not constitute as a recognised form of marriage in the UK, and because of this there was no deception”

(emphasis added)

9. Then at §§61-83, the SSHD set out her reasons, in the light of the Appellant's case put before her, for concluding nonetheless that the fraud (i.e. the failure to disclose the previous marriage) was deliberate and material. The SSHD referred to relevant provisions of Chapter 55: Deprivation and Nullity of British Citizenship. She considered that he was not eligible to naturalise as he had failed to disclose his previous marriage and that that had enabled

him to be granted ILR and thus accrue enough residency to naturalise (§63). Had he disclosed his true circumstances, it was entirely possible that neither ILR nor citizenship would have been granted (§64). At §65, the SSHD Decision recorded that the Appellant claimed that he “did not purposely fail to disclose the marriage with Shazia Mobeen as the relationship ended in 2004 when you left Pakistan”, but went on to point out that he had been living with her in Ireland since arriving in the UK. At §66, she states that, if it had been known at the time of the application for naturalisation that he had not been entitled to his ILR, then that application would have been refused: “the fraud employed by you did have a direct bearing on the grant of citizenship you received”. The SSHD Decision then continued, in important passages:

“67. Chapter 55.7.7.1 states that the caseworker should be satisfied that there was an intention to deceive: an innocent or genuine omission should not lead to deprivation. However, a deliberate abuse of immigration or nationality application processes may lead to deprivation (Annex P7, Section 55.7.7.1).

68. You had ample opportunity during your Entry Clearance application and interview, various communications and naturalisation application to provide the Secretary of State with this information. However, you made a conscious choice not to, and it is on this basis that your deception is classed as deliberate.”

(emphasis added)

10. At §§69 and 70, the SSHD Decision addressed the claim that the Appellant had been acting on the advice of Ms Choudhury. §§73 to 82 then addressed “the good character requirement” in a naturalisation application, as set out in Guide AN and Chapter 18. The Appellant’s failure to disclose his previous marriage both in his naturalisation application and in his earlier dealings with the SSHD meant that he was not of “good character, and had this been known at the time, his application would have been refused”. This section of the SSHD Decision concluded as follows:

“82. Had the caseworker been aware of these details, there is no doubt your application would have been refused both because your deception was material and because of questions about your good character. Therefore, deprivation is both balanced and proportionate.

83. For the reasons given above it is not accepted there is a plausible, innocent explanation for the misleading information which led to the decision to grant citizenship. Rather, on the balance of probabilities, it is considered that you provided information with the intention of obtaining a grant of status and/or citizenship in circumstances where your application(s) would have been unsuccessful if you had told the truth. It is therefore considered that the fraud was deliberate and material to the acquisition of British citizenship”

(emphasis added)

Finally, at §§84 to 93, the SSHD addressed factors relevant to discretion.

Legal Framework

11. Sections 40(2) and (3) of the 1981 Act provides as follows:-

“(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

(3) 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”.

Section 41A of the 1981 Act sets out a requirement of ‘good character’ for those applying for citizenship.

12. In appeals against decisions under section 40(3), the FTT’s role is to determine whether the SSHD’s discretionary decision to deprive an individual of British citizenship was exercised correctly, by applying public law or *Wednesbury* principles, rather than conducting a merits review. That said, where Article 8 is in issue, the FTT should decide for itself whether the decision is compatible with the decision-maker’s duties under the Human Rights Act 1988: see *R (Begum) v SIAC* [2021] UKSC 7; [2021] Imm AR 879 at §§68-71, per Lord Reed, giving the judgment of the Supreme Court; and *Ciceri (deprivation of citizenship appeals; principles)* [2021] UKUT 00238.

13. Specific guidance was given to the FTT in the headnote to *Ciceri* as follows:

“Following *KV (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 2483, *Aziz v Secretary of State for the Home Department* [2018] EWCA Civ 1884, *Hysaj (deprivation of citizenship: delay)* [2020] UKUT 128 (IAC), *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7 and *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769 the legal principles regarding appeals under section 40A of the British Nationality Act 1981 against decisions to deprive a person of British citizenship are as follows:

- (1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in *Begum*, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.
- (2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.
- (3) In so doing:
 - (a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and
 - (b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).
- (4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.
- (5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in *EB (Kosovo) v Secretary of State for the Home Department* [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs 13 to 16 of *EB (Kosovo)*.

- (6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).
- (7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good".

14. Whilst the headnote to *Ciceri* at (1) above refers only to findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held, we accept the Appellant's submission that the intention of §71 in *Begum* was clearly that the judicial decision-maker in a deprivation appeal should consider *any* public law error in the SSHD's decision and not just any unlawful approach to the facts: see *Laci v SSHD* [2021] EWCA Civ 769 at §40. The correct approach is that all public law grounds are, in principle, open to an appellant.

The duty to give reasons

15. Whilst there is no universal requirement to give reasons for administrative decisions, the law recognises that they may be needed in various situations in the interests of fairness: *R v Secretary of State for the Home Department ex parte Doody* [1994] 1 AC 531. Relevant questions include the character and the subject matter of the decision being taken, including whether there is an appeal on the merits which allows for a second opinion, or whether there is a need to know for purposes of possible judicial review proceedings whether a decision has been lawfully made. The degree of particularity required depends on the nature of the case, but the reasons given must "enable the reader to know what conclusion the decision-maker has reached on the principal controversial issues": *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 WLR 153 at 166-7. As "a matter of good administration and fairness the [decision-making body] should give such reasons as are appropriate and reasonable in the circumstances", both because "the obligation to give reasons causes a decision-making body properly to focus its mind on the task before it" and because the subject of the decision should be in a position "to satisfy itself that the decision has been properly taken' and to challenge it, if appropriate": *R(Asha Foundation) v Millennium Commission* [2003] EWCA Civ 88 at §24. In *Begum* at §71, Lord Reed stressed the need for the appellate decision-maker to "bear in mind the serious nature of a deprivation of citizenship, and the severity of the consequences which can flow from such a decision". A 'strict standard of

judicial review' therefore applies to such cases: *Pham v Secretary of State for the Home Department* [2015] UKSC 19 at §98.

The relevant policies

16. Chapter 55 of the Home Office Nationality Instructions is headed "Deprivation and Nullity of British Citizenship". Chapter 55.7 addresses the issue of "materiality" of the fraud to the acquisition of citizenship and provides inter alia, as follows

"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:

- ...
- ...
- 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...."

Chapter 55.7.7 is headed "Deliberate" and provides as follows:

"55.7.7.1 The caseworker should be satisfied that there was an intention to deceive: an innocent error or genuine omission should not lead to deprivation. However, a deliberate abuse of immigration or nationality application processes (for example Knowledge of Life/ESOL testing) may lead to deprivation." (emphasis added)

The FTT Decision

17. In the FTT Decision, the judge summarised the facts and the parties' respective cases. The Appellant's case was that he did not realise he had to mention the previous marriage; it was a genuine mistake and not fraud. In any event, even if he was found to have committed fraud, it was not material because he would have been entitled to entry clearance in 2008 on

the basis that he was the unmarried partner of Ms Choudhury. The judge summarised the course of the hearing, including the Appellant's oral evidence and the parties' submissions. At §§55 to 65 he set out the relevant law and made his findings at §§66 to 121. At §74, he identified the real issue as being whether the Appellant was being dishonest when he failed to disclose the previous marriage at any time between 2004 and the SSHD being alerted to the fact by the Irish authorities. Dishonesty had to be established. At §§78 to 80, he set out the pertinent parts of the March interview. At §94 to 97 he summarised the contents of the SSHD Decision, and in particular §§64, 65, 68 and 83.

18. At §§98 to 108, he set out his conclusions on the issues of fraud and materiality in the following terms

“98. The letter does not, I accept, condense into one paragraph the reason why the Respondent did not accept the Appellant explanation however it is reasonably clear from a reading of that letter that it was a combination of the several opportunities that the Appellant had to make his disclosure, combined with the information contained in the Irish applications that led her to the conclusion that the Appellant's explanation was not a plausible and innocent one.

99. I have considered the documentation that was in the Respondent's possess at the time of making that decision. It is clear that, even if his marriage to Shazia Mobeen had run into difficulties in 2004, it was regarded as a valid marriage in Pakistan. The Appellant has not argued that his marriage was not valid there. He clearly regarded it as such as he said in evidence and in his representations to the Respondent that he was unable to separate from her. In his witness statement the Appellant says that he married Shazia Mobeen, albeit against his will. Nowhere in his representations or in his witness statement or in his oral evidence does the Appellant suggest that he did not believe that he was validly married in Pakistan. He had four children by her between 1996 and 2003, which does not suggest that the marriage had broken down as he claims.

100. The Appellant was also asked during the course of his interview with the entry clearance officer in Islamabad in 2008 whether he had been married. The Appellant said no. He knew that he had been married, and lawfully married in Pakistan. He was not asked whether he had entered into a marriage that was regarded as valid in UK law. It was a straightforward denial that he had been previously married, which the Appellant must have known was not true.

101. The questions on the application form for indefinite leave to remain relating to previous partners are also not limited to any previous marriage recognised in UK law. The form states 'If you

were previously married or in a civil partnership, please give the full name of previous husband or wife.....' The Appellant did not disclose any details notwithstanding the fact that he knew that he was lawfully married in Pakistan.

102. The Appellant's representatives stated in their letter of October 2020 that 'Our client has only now learned the distinction between Nikkas contracted in the UK and Nikkas contracted overseas.' The representations do not explain why, if he had only discovered that his marriage to Shazia Mobeen regarded as valid in 2020, he applied for her to join him as his 'spouse' on the Irish application forms. His representatives also stated that he did not have the marriage certificate relating to that marriage. That seems to be untrue since it was provided with the Irish applications to the Irish authorities.
103. In his evidence before me the Appellant said that he discovered that his first marriage was valid at about the time he made the Irish applications. That is at odds with the representations made on his behalf in October 2020. I have no doubt that is because he knew that he has to explain why he had described Shazia Mobeen as his 'spouse' in his Irish applications.
104. The Appellant's representations were that he had relied on advice given to him by Sonia Choudhry about the validity or otherwise of his first marriage, yet he sought legal advice from a Solicitor about how he could seek leave to remain in the United Kingdom on the basis of his marriage to her. He also said that it was Sonia Choudhry who had told him to bring the children 'here' but which I took him to mean Ireland. He again sought advice of a Solicitor and said that he told him that he had a wife in the UK and also a wife in Pakistan and asked whether he could bring her to Ireland. That is also at odds with the suggestion that he only realised that his Pakistani marriage was valid in 2020.
105. Considering that evidence together, which was before the Respondent when she made her decision, I am satisfied that the Respondent was entitled to find that, on the balance of probabilities, the Appellant had acted dishonestly in failing to disclose his marriage to Shazia Mobeen and had therefore committed fraud.
106. There was reason why the Appellant would have a motive to withhold the information. Had he disclosed that he was married in Pakistan he would inevitably have failed in his application for entry clearance as a fiancé. Whilst it is submitted on his behalf that he would have succeeded anyway as an unmarried partner and so had no reason to lie, the Appellant himself does not seem to have been aware of that as he has not suggested in his evidence or prior representations to the Respondent that was

ever an option suggested to him. In any event his chances of success under that route would be far less certain than under the fiancé route since, in addition to living together in a relationship akin to marriage he would have had to meet the immigration status requirements contained in the relevant part of the immigration rules. Having arrived in the United Kingdom unlawfully he could not do so.

107. I am satisfied that the fraud was material to the grant of British citizenship. Had the Appellant not succeeded in his entry clearance application as a fiancée he would have been unable to apply for indefinite leave to remain. He compounded his previous non-disclosure by again failing his is application for indefinite leave to disclose his prior marriage. That led directly to the grant of British citizenship.

108. Bearing in mind the standard of proof, I am satisfied that the Respondent has demonstrated that there was ample evidence upon which she was properly entitled to find that the relevant condition precedent under section 40(3) of the 1981 Act exists for the exercise of the discretion to deprive the Appellant of his British citizenship. I find that the Respondent has shown that the Appellant used deception and deliberately concealed his true marital status throughout his various applications.”

(emphasis added)

19. The FTT judge found at §109 that he was satisfied that the Appellant’s fraud had a direct bearing on the grant of leave and his naturalisation. He was satisfied that the SSHD had exercised her discretion properly. At §§110 to 121, the judge considered the position under the Human Rights Act, concluding that the decision to deprive was a proportionate one in all the circumstances. He dismissed the Appellant’s appeal.

The grounds of appeal

20. The Appellant appeals against the FTT Decision on the following two grounds:

- (1) The Judge erred in finding that the SSHD had lawfully concluded that the Appellant’s misrepresentation of his marital status in the course of previous applications was dishonest.
- (2) The Judge misunderstood the Immigration Rules relating to unmarried partners when reaching conclusions on the materiality of the Appellant’s misrepresentation.

The Parties’ submissions

The Appellant’s case

21. As regards Ground (1), the Appellant submits as follows:

- (1) The Appellant's failure to disclose his previous marriage was innocent, based on his mistaken belief that the Pakistani nikah would not be recognised in the UK. The FTT judge erred in not finding that, in the SSHD Decision, the SSHD made errors of law. First, the SSHD failed to make clear findings on the question of the Applicant's knowledge or understanding or to give reasons for concluding that his failure to mention his marriage in his application for naturalisation was dishonest, and not innocent. In particular, the SSHD did not say whether she rejected the Appellant's explanation (set out at §54 Decision) or, if she did reject it, she did so without providing any reasons. Further the SSHD's finding (at §68 Decision) that the Appellant consciously and deliberately chose not to mention his previous marriage addressed the wrong question. The question was not whether the failure was deliberate but whether it was dishonest. The Appellant's case was not that he had forgotten to mention the marriage, but rather that he did not think he needed to. The SSHD failed to take into account the Appellant's answer to Question 10 in the March interview; which clearly indicated that he had not understood that a nikah in Pakistan would be recognised in the UK. Finally, the SSHD failed to take into account that the Appellant had no need to lie, as he would have succeeded in his application at the time, on the basis of being an unmarried partner.
- (2) The FTT judge's reasons for finding that the SSHD had acted lawfully were insufficient and/or wrong. In particular §98 FTT Decision fails to address the correct issue, namely that the SSHD had not made any findings at all about the Appellant's explanation, had not given any reasons for rejecting that application and had not taken relevant matters into account. Secondly, at §§100-104 and 107, the FTT judge had made a number of findings of fact of his own as to whether there had been fraud which was material. However, as explained in *Ciceri*, those were questions for the SSHD and not for the FTT judge himself.

22. As to Ground (2), the Appellant submits as follows:

- (1) Even if he had disclosed his previous marriage, he would have qualified for leave to enter in any event as an unmarried partner, and so any misrepresentation was not material. The FTT judge's reasons for rejecting this contention (at §106 Decision) were wrong, as he misdirected himself there as to the requirements of the immigration rules as regards unmarried partners. There is no requirement as to immigration status of either party during any period of cohabitation (unlike the position for those who apply for leave to remain).
- (2) Under paragraph 55.7.2 of the Nationality Instructions, the question is whether the person would *in fact* have qualified for leave if they had given the correct information. The applicant's knowledge at the time is irrelevant. Here the Appellant would have qualified on the alternative

basis, and so, any misrepresentation was not material. Although the Appellant did not rely on this basis, it should have been obvious to the SSHD.

23. As to the appropriate disposal, the Appellant submits that, if we find an error of law, the case should be retained in this Tribunal, which should conclude that the SSHD Decision was unlawful.

The SSHD's case

24. As regards Ground (1), the SSHD submits that the FTT judge did not err in finding that the SSHD reached a lawful conclusion on dishonesty. The FTT judge's overall finding at §98 was one properly open to him, after consideration of the relevant evidence. Careful examination of the SSHD Decision demonstrates that the SSHD did give reasons for rejecting the Appellant's explanation. At §§47 to 60, the SSHD set out the Appellant's case as put in the 16 October 2020 letter, and then, at §§61 to 84, set out the SSHD's reasons in the light of that case. It is clear from the March interview that, even if the Appellant did not know *before* the interview that a Pakistani nikah was recognised in the UK, he certainly knew that to be the case, in the light of Questions 10 and 11, and in particular his answer "I didn't know that it would be ok to do that". The Appellant should then have corrected his answer to Question 7. This analysis of the interview favours the SSHD's case and undermines the Appellant's claim of a genuine belief that the Pakistani nikah was not recognised in the UK. Further, the Appellant's case that his belief was based on advice given to him by Sonia Choudhry was inconsistent with what he learned in interview, and in any event, correctly, not accepted by the SSHD, as explained in §§69 and 70 Decision. Looking at the reasoning as a whole, the SSHD took into account the multiple opportunities to disclose the truth, which were not taken by the Appellant.
25. As to Ground (2), the false statement (as to the previous marriage) was material within the meaning of paragraph 55.7.2. Even if the FTT judge was mistaken as to the immigration rules relating to unmarried partners, but for that statement, the Appellant would not otherwise have qualified for entry clearance as a fiancé .

Analysis

Ground (1)

26. We consider that, despite the carefully constructed attempt by Mr Clarke to find reasons to justify the SSHD Decision, the SSHD did not make clear findings that the Appellant was dishonest nor give adequate reasons for her conclusions. She did not explain why she found that she did not believe the Appellant when he said that he did not know that the Pakistani marriage to Shazia Mobeen was relevant. Despite identifying the test at §67, §68 SSHD Decision does not make a finding of "intention to deceive" on the part of the Appellant. We accept Mr Mackenzie's submission that, given the nature of

the Appellant's case, the SSHD addressed the wrong question at §68. Whether the Appellant made a conscious choice or not was not the issue.

27. Having clearly and correctly identified the Appellant's case at §54, at no point in the SSHD Decision did the SSHD go on to explain why she did not accept that this was a genuine belief. She merely stated, by way of assertion, that it was not plausible (§83). Even if it could be inferred from the SSHD Decision as a whole, that the SSHD had concluded that she simply did not believe the Appellant, that was not sufficient, as she gave no reasons for so concluding.
28. We conclude that the SSHD's reasons in the SSHD Decision for her finding of deliberate fraud are not sufficiently clear and cogent, to enable the Appellant to know why his explanation had been rejected, or indeed whether it had in fact been rejected. Accordingly the SSHD did not comply with her duty to give reasons and thus was in breach of the requirement of procedural fairness.
29. Further, in our judgment, the FTT judge erred in law in not addressing this point. Rather he substituted his own views in seeking to fill the gaps in the SSHD Decision. At §99 FTT Decision, the judge made a finding that the Appellant believed that the marriage was valid in Pakistan. That did not address the issue, which was whether he believed it was recognised *in the UK*. At §§100 to 103 FTT Decision, the judge made findings as to whether the Appellant had made other false statements. But they were not the basis of the SSHD Decision and thus not relevant. The fact that the judge considered that the SSHD Decision was correct for other reasons based on facts found by him is irrelevant.
30. As regard the specific answer to Question 10, whether or not it can be inferred from that one answer that the Appellant realised that a Pakistani nikah would be recognised in the UK, the SSHD Decision itself did not rely upon, or even refer to, the specific answer to Question 10. Nor was this a point made by the FTT judge. Mr Clarke's arguments here amounted effectively to a new case, raised for the first time on this appeal.
31. In our judgment the FTT judge erred in failing to conclude that the SSHD Decision was unlawful for not finding, or not giving reasons for finding, that the Appellant was dishonest. For this reason, Ground (1) succeeds and this appeal will be allowed.

Ground (2)

32. In the light of our conclusion on Ground (1), we do not need to go on to determine Ground (2). Had it been necessary to do so, we would have dismissed the Appellant's case on Ground (2). If there was dishonest deception on the Appellant's part, that deception was material. The fact that the Applicant might have been able to apply for entry clearance on a different basis (i.e as an unmarried partner) does not mean that the

deception was not material to the application that he did, in fact, make i.e. for entry clearance *as a fiancé*.

33. We accept that the Appellant does not need to show that he was aware of the alternative route at the time. Nevertheless we remain of the view that, on the hypothesis that the failure to disclose the previous marriage was a dishonest false statement, that failure was material in the sense that leave to enter (and eventually citizenship) was obtained “by means of” that false statement: see section 40(3) of the 1981 Act. Further, in our judgment, as a matter of construction, the words “would not otherwise have qualified” in the third bullet in paragraph 55.7.2 of the Nationality Instructions mean qualified in respect of the particular “immigration or asylum application” in relation to which the false details had been given. The possible alternative route of leave to enter as an unmarried partner is not “relevant” to *the application* the Appellant was making at the time. If he had not lied, the application which he in fact made would have been refused. He made no application as an unmarried partner. He would have had to have applied separately for entry clearance as an unmarried partner with a separate application and relying on separate evidence. The leave to enter *as a fiancé* which he did apply for was obtained by means of the false statement. ■

Conclusion on the appeal

34. For these reasons, we conclude that Ground (1) succeeds. There was an error of law in the FTT Decision.

Re-making

35. We set aside the FTT Decision. We retain the decision in this Tribunal. In the light of our clear conclusion (paragraph 31 above) that the SSHD Decision was unlawful, we accept the Appellant’s submission that it is appropriate to proceed to remake the decision now, pursuant to section 12(2)(b)(ii) Tribunal, Courts and Enforcement Act 2007.
36. We find that the SSHD Decision was unlawful for failure to give adequate reasons. We therefore allow the Appellant’s appeal against the SSHD Decision and set aside the SSHD Decision. It will now remain for the SSHD to make a fresh lawful decision.

Notice of Decision

The decision of the First-tier Tribunal involved the making of a material error of law and is set aside. The decision is remade.

The decision of the Secretary of State for the Home Department dated 27 January 2021 depriving the Appellant of British citizenship under section 40(3) British Nationality Act 1981 was unlawful for failure to give adequate reasons and is set aside.

No anonymity direction is made.



Signed
2022

Date 29 September

The Honourable Mr Justice Morris