



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003595

First-tier Tribunal No: DC/50271/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6 June 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

SARBJIT SINGH BAINS
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr Din, counsel, instructed by GLS Solicitors

For the Respondent:

Mrs Nolan, Senior Home Office Presenting Officer

Heard at Field House on 24 May 2023

DECISION AND REASONS

Introduction

1. The Appellant appeals, with permission of First-tier Tribunal Judge Boyes, against the decision of First-tier Tribunal Judge Peer (“the Judge” and “the Decision” respectively) dismissing the Appellant’s appeal against a decision by the Respondent to deprive him of his British citizenship.
2. The Grounds on which permission to appeal to this Tribunal was granted were drafted by the Appellant’s solicitors. The matter came on for error of law hearing on 13 December 2022 before Upper Tribunal Judge Blundell and Deputy Upper Tribunal Judge Hanbury. Mr Din who then, as now, appeared for the Appellant, sought an adjournment in order to apply to amend the Grounds. That adjournment request was granted and an application to amend, containing four amended grounds of appeal was duly filed.

3. At the hearing before us, Mr Din noted that, in light of this Tribunal's recent decision in Chimi v Secretary of State Department (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 (IAC), he no longer sought to rely on amended ground 2. Having abandoned ground 2 and the original grounds of appeal, it remained for us to determine (a) whether to grant permission to rely on the remaining three grounds; and (b) if permission were granted, whether they were made out.
4. At the end of the hearing, we informed the parties that we would grant the Appellant permission to amend so as to rely on his Amended Grounds 1, 3 and 4, but that we were satisfied that we should refuse the appeal, for reasons to follow in writing. These are those written reasons.
5. Neither party to this appeal has suggested that this is a case in which the Appellant's (or any other person's) identity should be anonymised and we see no good reason why anonymity should be granted. Given the importance of the principle of open justice, we accordingly make no anonymity order.

Background

6. The Appellant first came to the UK in 2001 as a student. He married his ex-wife in January 2004. He thereafter obtained leave to remain and then indefinite leave to remain as the spouse of a settled migrant.
7. In 2009, the Appellant successfully applied for naturalisation as a British citizen. In response to questions about whether there was reason to doubt his good character, he answered that there was not.
8. In 2013, the Appellant was charged with a number of counts of rape, alleged to have taken place between 1 September 2007 and 14 April 2012. At trial, the Appellant was convicted on one count of rape and acquitted on the other counts.
9. Importantly for present purposes, although the sentencing remarks have not been obtained by the Respondent (which would have no doubt assisted both in her own decision-making and also that of the FTT), the Appellant disclosed to the Secretary of State a note of advice from counsel who represented him at trial. This stated that the count for which he was convicted "was a single offence, back in 2007, and at a very early stage in the marriage". For this offence the Appellant was sentenced to five years imprisonment.
10. Although the Appellant maintained his innocence in these proceedings in relation to this offence, we do not understand there to have been any appeal (or, at least, any successful appeal) against either his conviction or sentence.
11. The Appellant and his ex-wife divorced on 30 March 2014.
12. On 14 October 2020, the Respondent wrote to the Appellant notifying him that his naturalisation application was being investigated on the basis that he would not have met the good character requirement at the time of the application due to his conviction for rape. After having received representations, including his trial counsel's note of advice, from the Appellant, the Respondent decided that his naturalisation had been obtained by means of fraud, that it was appropriate to

exercise her discretion to deprive him of his British citizenship and that to do so would not breach the Appellant's human rights.

13. The Appellant sought to challenge the Respondent's decision in all three of these aspects in the First-tier Tribunal.

The FTT's Decision

14. After having set out the background, the legal framework, the Respondent's decision and the evidence and submissions before the FTT, the Judge gave detailed reasons for arriving at his findings, as follows.

15. First, he concluded that the Secretary of State's position that the Appellant had been convicted of an offence which occurred prior to his naturalisation was not unsupported by evidence. Although his conviction post-dated his naturalisation, the offence of which he was convicted dated from 2007, as set out in his own counsel's note of advice.

16. Second, it was not unreasonable for the Secretary of State to hold a view on the evidence and information available that the appellant was dishonest in his approach to the naturalisation application form in declaring he was of good character and that he was not engaging in any activity which might impugn his good character. After noting the Appellant's submission that the test for dishonesty was that derived from the Supreme Court's decision in Ivey v Genting Casinos [2017] UKSC 67 and that he at all times has maintained his innocence, the Judge stated as follows:

"I am not convinced the case law on the concept of dishonesty in criminal proceedings assists the appellant. These are not of course criminal proceedings and completion of the application for naturalisation was a matter of choice. Even if the appellant is held to have genuinely held the belief that he was not engaging in any activity which might impugn his good character, the test for dishonesty requires his conduct be considered against the standards of ordinary reasonable people and there is no requirement that he appreciate what he has done is dishonest. In circumstances where he has been convicted of a crime including the component that he could have had no reasonable belief in consent, it is clear that ordinary reasonable people believe the appellant's conduct to be criminal activity which impugns good character and that he knew this as he could not have any reasonable belief in consent. I cannot conclude that people residing within the United Kingdom respecting the rights and freedoms and laws of this country are unaware that rape is wrong. Ordinary reasonable people would consider concealing that activity supported the acquisition of citizenship in the face of the contents of the guidance accompanying the application form."

17. Third, the Judge concluded that the Respondent had not acted unreasonably in deciding to exercise her discretion to deprive. The Appellant's primary submission in this respect was that deprivation was disproportionate in light of the Respondent's delay in taking deprivation action. The Appellant put the delay at 7 years. As to this, the Judge stated:

"64. ...There was no real evidence before me as to when the respondent became aware of the appellant's conviction. The respondent notified the appellant matters were being investigated in October 2020 and the deprivation

decision was taken in October 2021. If the respondent was aware around the time of the conviction in late 2013 or early 2014, the respondent has taken approximately 7 years to act. The respondent has produced no real explanation as to this. On the evidence before me, it is difficult to reach any firm findings about a reasonable period for action from awareness of conviction and/or possible engagement of section 40(3) and an additional period constituting delay. I am prepared to accept however that there presents some period of delay in the decision-making in relation to this appellant.

65. The relevance of delay relates to the extent to which an individual has strengthened roots during the period of delay, the impact on status during the period of time awaiting a decision and the extent to which it reveals a system producing unfair or unpredictable outcomes.

66. The appellant has produced no real evidence to demonstrate how in particular his roots and ties to the UK have strengthened during the period from the end of 2013/early 2014, which is the earliest any decision might possibly have been taken, other than by way of the passage of time. A portion of this time period will have been spent in prison due to the appellant's conviction and five year sentence for rape.

67. In some respects, his ties to the UK have demonstrably weakened given the dissolution of his marriage. Having entered the UK in 2001, from 2006 onwards the appellant's applications for leave, his application for ILR and his application for naturalisation were all based on being a spouse of a settled person. In oral evidence, the appellant explained that he has had no contact with his daughter since 2012. The appellant gave no evidence of any efforts or inclination to build or develop any relationship with his daughter or any other details of his private life in the UK.

68. I accept that the appellant has some family members in the UK as he was initially accommodated by family members when he came to the UK as a teenager for the purpose of study. There is however no evidence to indicate those relationships have altered or strengthened in any particular way other than through the passage of time during which relationships can as readily weaken as strengthen. The appellant has also worked during his time in the UK to support himself and his bank statements record he pays child maintenance so provides some financial support for his daughter.

69. The appellant enjoyed British citizenship during the period of any delay and was not in a position of precariousness with regard to his status in the United Kingdom affecting any rights or impacting on his ability to work or other aspects of private life.

70. There was no particular evidence before me to suggest that decision-making to deprive persons of citizenship in these circumstances was unfair or unpredictable. Although timing and in particular delay potentially introduces some unpredictability, I consider that to the extent this exists it is not of material impact in the appellant's circumstances where he cannot show particular development of private life other than by way of inference due the passage of time. I also note the seriousness of the offence for which he was convicted which is treated as never 'spent' thus accepted to carry certain consequences indefinitely for individuals including that they will likely never be able to naturalise.

71. The appellant was an adult at all relevant times and as an adult is to be held accountable. I have found that it was reasonable for the Secretary of State to be satisfied that the appellant obtained naturalisation by means of fraud and as such had discretion to deprive the appellant of his nationality. Looking at the respondent's treatment of the mitigation from the perspective of public law, the respondent is entitled to apply her policy which provides that an adult is

assumed to be responsible for their actions. I find the respondent took appropriate account of and accorded appropriate weight to the appellant's mitigation and there is clearly no basis whatsoever to consider the respondent's rejection of the appellant's mitigation as a step no reasonable decision-maker would take or as infecting the reasonableness of the decision overall."

18. Fourth, in relation to article 8 ECHR, the Judge accepted that, given the Appellant's presence in the UK for over 20 years, he had private life in the UK sufficient to engage Article 8(1). Given the Appellant's divorce and evidence that he had not seen his daughter since 2012, the Judge concluded that, save as to the possibility of developing a relationship with his daughter in future, the Appellant did not have family life here. In relation to proportionality, the Judge stated as follows:

"77. I am required to give significant and due weight to the public interest in the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct in considering whether the deprivation decision is proportionate.

78. I have considered the impact and relevance of any delay above and do not consider it places significant weight on the appellant's side of the scales.

79. The appellant asks me to take account of his long residence. The appellant's length of residence does not outweigh the public interest in the integrity of British nationality law as that would be illogical as it would benefit persons who engaged in prolonged deception which is the mischief section 40(3) addresses. I give the long residence little if any weight in the balancing exercise I am required to conduct. The appellant's length of residence will be of some bearing on any decision as to whether to grant leave or seek to remove the appellant although conclusions on that issue are outside my task on this appeal. The case law provides that I am not to engage in consideration of matters which are not reasonably foreseeable consequences of the deprivation action and any grant of leave or removal action requires separate decision taking account of the different rules and public interest in play.

80. In the circumstances and on the evidence available to me, it is difficult to conclude that there will be anything other than very limited interference arising from the deprivation decision itself in the appellant's private life and to the extent that article 8 can properly be said to be engaged in relation to family life between the appellant and his daughter given the lack of any substantive relationship between them, there is no relevant interference arising from the deprivation decision itself.

81. There will be a period of time of approximately 8 weeks once the appellant is appeal rights exhausted and formally deprived of British citizenship by way of order before any further decision as to whether to take steps to remove the appellant or grant some form of leave and as such a period of uncertainty as to his immigration status in the UK.

82. I find that any impacts on the appellant's private life arising from the deprivation decision cannot outweigh the heavy public interest identified in relation to deprivation decisions and as such find the decision to be proportionate and justified in so far as it can be taken to constitute any form of interference in relevant article 8 rights of the appellant or of the appellant's daughter if viewed from the perspective of the possibility of her building a relationship with her biological father in the future although no contact or relationship appears to have been attempted by the appellant since 2012."

19. The Judge accordingly dismissed the Appellant's appeal.

Appeal to the Upper Tribunal

20. As already noted, the Appellant has sought to rely on three grounds of appeal. Although these were originally labelled 1,3 and 4, for convenience, we refer to them as Grounds 1-3 below. These are, in summary, as follows:
- a. First, that the Judge erred by failing to apply the approach mandated by the Supreme Court in Ivey;
 - b. Second, that the Judge failed adequately to consider the impact of delay;
 - c. Third, that the Judge's approach when determining the reasonably foreseeable consequences of deprivation was unreasonable.
21. We now consider these in turn.

Ground 1: Dishonesty

22. The Appellant submitted that, in not applying Ivey, the Judge erred in his assessment of whether the Appellant had the necessary degree of dishonesty in stating on his application for naturalisation that he was of good character.
23. We reject this ground. It is clear from the passage in the Decision cited in paragraph 16 above that the approach which the Judge adopted was the Ivey approach. The effect of Ivey was, as the Judge also set out, to abolish the requirement that a criminal defendant (and therefore on the Appellant's submission, someone whom it is proposed be deprived of their citizenship status under s.40(3) of the British Nationality Act 1981) is required to appreciate that his conduct had been dishonest by the standards of ordinary reasonable people before he or she can be found to be dishonest. As the Court of Appeal said in Booth [2020] EWCA Crim 575, the Ivey approach requires two questions to be answered: (a) what was the defendant's actual state of knowledge or belief as to the facts; and (b) was his conduct dishonest by the standards of ordinary decent people?" These are precisely the questions that the Judge considered in the passage cited above.
24. Had we agreed with Mr Din that the Judge had not applied the Ivey approach, we would have had to go on to consider whether that is in fact the correct approach. As this ground fails at the first hurdle, it is not necessary for us to do so. In not considering the correctness of the premise of the Appellant's submission (namely that Ivey applies in the present context), we should not be taken to be endorsing it.

Ground 2: Delay

25. Mr Din criticises the Judge's approach to delay. He says that there was evidence, contrary to what the Judge said in para. 64, set out above, as to when the Respondent became aware of the Appellant's conviction, namely the Respondent's refusal, which stated that "the misrepresentation only came to the Secretary of State's attention as a result of information supplied by Kent police in 2013."
26. It may be that the Judge overlooked this, but we are satisfied that it makes no difference to anything. The Judge plainly proceeded on the assumption favourable to the Appellant that, given the paucity of the evidence, there was delay in this case, and the period of delay mentioned by the Judge is "approximately 7 years",

which was “the period from the end of 2013/early 2014”. Mr Din did not suggest that there was any difference of approach required between assessing delay where the Respondent found out about the Appellant’s alleged crimes from or shortly after his conviction (i.e. in late 2013/2014), and assessing delay if the Respondent found out at some earlier point in 2013. He was in our judgment right not to do so, as the Respondent would plainly have been entitled not to decide to deprive the Appellant of his nationality until after he was convicted. Accordingly, to the extent that the Judge did not take into account what was said in the Respondent’s refusal letter about Kent police having brought the Appellant’s misrepresentation to the Respondent’s attention in 2013, it is not an error that could have made any difference to the Judge’s assessment and is accordingly immaterial.

27. This ground is accordingly also rejected.

Ground 3: Reasonably foreseeable consequences

28. In Ground 3, Mr Din takes aim at the Judge’s reference to “approximately 8 weeks” between any formal decision to deprive and any further decision in relation to his immigration status during which the Appellant will be in the UK unlawfully and will have the panoply of restrictions on those here unlawfully imposed on him, a period sometimes referred to as the “limbo period”. There are two difficulties with this submission.

29. First, so far as we can ascertain, Mr Din did not make any submission before the FTT as to the appropriate length of time over which these restrictions should be assumed to apply. Nor was he able to put forward a particular time frame before us that which he says ought to have been applied. In those circumstances, in light of the Respondent’s target of 8 weeks for making such a decision, but the fact that the Respondent in the refusal letter had stated that the decision would be within 8 weeks, subject to any representations the Appellant might make, the Judge was, in our judgment, entitled to consider that a period of “approximately 8 weeks” was an appropriate time period.

30. Second, the effect of the limbo period on the analysis required by Article 8 ECHR has been authoritatively considered by this Tribunal in Muslija (deprivation: reasonably foreseeable consequences) [2022] UKUT 337 (IAC). In that case, it was held, as set out in Headnote (4), that

“Exposure to the “limbo period”, without more, cannot possibly tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship. That means there are limits to the utility of an assessment of the length of the limbo period; in the absence of some other factor (c.f. “without more”), the mere fact of exposure to even a potentially lengthy period of limbo is a factor unlikely to be of dispositive relevance.”

31. There has been no “additional factor” suggested here. Accordingly, even if some significantly longer limbo period than approximately 8 weeks were likely, the exposure to such a period, and the restrictions that will be imposed on the Appellant as a result, could not tip the proportionality balance in the Appellant’s favour. Even if (contrary to our conclusion above) the Judge erred in deciding that approximately 8 weeks were an appropriate period, any such error was accordingly immaterial.

32. Ground 3 is likewise therefore rejected.

Notice of Decision

The Appellant's application to amend his Grounds of Appeal so as to rely on Grounds 1, 3 and 4 as set out in his application of 27 December 2022 in place of his original grounds of appeal is granted.

The Decision of the FTT did not involve the making of an error on a point of law. The appeal is accordingly dismissed and the Decision of the FTT shall stand.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 May 2023