



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-001844

First-tier Tribunal No:
DC/50168/2022; LD/00260/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 December 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR SANY CHOWDHURY
(NO ANONYMITY DIRECTION)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Raza, Counsel instructed by Charles Simmons Solicitors

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

Heard at Field House on Thursday 7 December 2023

DECISION AND REASONS

PROCEDURAL BACKGROUND

1. By a decision promulgated on 8 September 2023, Upper Tribunal Judge Rintoul found an error of law in the decision of First-tier Tribunal Judge Hendry itself promulgated on 24 April 2023. By her decision, Judge Hendry dismissed the Appellant's appeal against the Respondent's decision dated 15 July 2022 depriving the Appellant of his British nationality.

2. Judge Rintoul’s decision was made following an agreement between the parties that Judge Hendry’s decision involved the making of an error of law. In particular, Judge Rintoul referred to the error made by Judge Hendry in carrying out a full merits review of the facts and relying on case-law which had since been superseded. In consequence of the parties’ agreement, Judge Rintoul set aside the First-tier Tribunal’s decision and gave directions for a resumed hearing in the Upper Tribunal. So it was that the appeal came before me.
3. I had before me evidence in the form of the Appellant’s bundle before the First-tier Tribunal ([AB/xx]) and the Respondent’s bundle before that Tribunal ([RB/xx]). I also had the Respondent’s review. Finally, I received a skeleton argument from Mr Raza and a bundle of legal authorities.
4. I heard oral evidence from the Appellant (who I neutrally refer to as Mr Chowdhury despite the dispute as to his identity). Mr Chowdhury gave evidence via a Sylheti interpreter but who was also qualified as a Bengali interpreter. There were no difficulties in understanding between Mr Chowdhury and the interpreter.
5. I also heard oral submissions from Mr Clarke and Mr Raza before reserving my decision. I indicated that I would provide my decision in writing which I now turn to do.

LEGAL FRAMEWORK

6. This appeal is under the British Nationality Act 1981 (“BNA 1981”). Section 40(3) thereof permits the Respondent to deprive an individual of British citizenship which has resulted from registration or naturalisation if “[he] is satisfied that the registration or naturalisation was obtained by (a) fraud (b) false representation or (c) concealment of a material fact. Section 40A BNA 1981 provides a right of appeal in the circumstances of this case to the First-tier Tribunal (and thereafter to this Tribunal).
7. As to the way in which the Tribunal should deal with the appeal, the Respondent places reliance on the Tribunal’s guidance in Chimi (deprivation appeals; scope and evidence) Cameroon [2023] 00115 (IAC) (“Chimi”) as follows:

“(1) A Tribunal determining an appeal against a decision taken by the respondent under s40(2) or s40(3) of the British Nationality Act 1981 should consider the following questions:
(a) Did the Secretary of State materially err in law when she decided that the condition precedent in s40(2) or s40(3) of the British Nationality Act 1981 was satisfied? If so, the appeal falls to be allowed. If not,

(b) Did the Secretary of State materially err in law when she decided to exercise her discretion to deprive the appellant of British citizenship? If so, the appeal falls to be allowed. If not,

(c) Weighing the lawfully determined deprivation decision against the reasonably foreseeable consequences for the appellant, is the decision unlawful under s6 of the Human Rights Act 1998? If so, the appeal falls to be allowed on human rights grounds. If not, the appeal falls to be dismissed.

(2) In considering questions (1)(a) and (b), the Tribunal must only consider evidence which was before the Secretary of State or which is otherwise relevant to establishing a pleaded error of law in the decision under challenge. Insofar as *Berdica* suggests otherwise, it should not be followed.

(3) In considering question (c), the Tribunal may consider evidence which was not before the Secretary of State but, in doing so, it may not revisit the conclusions it reached in respect of questions (1)(a) and (b).”

8. It was agreed between the parties that question 1(c) is not relevant in this appeal. The Appellant does not contend that deprivation would breach his human rights. The relevant questions are whether the condition precedent is met (and what test applies when determining that question) and whether the Respondent was entitled to exercise his discretion against the Appellant when seeking to deprive him of citizenship.
9. The guidance in *Chimi* follows the Supreme Court’s judgment in *Begum v Secretary of State for the Home Department* [2021] UKSC 7 (“*Begum*”). *Begum* was a case involving the making of a deprivation decision pursuant to section 40(2) BNA 1981 which provides that the Secretary of State may make a deprivation decision if he is satisfied that deprivation is conducive to the public good.
10. In the course of its judgment in *Begum*, the Supreme Court made reference to case-law relating to section 40(3) BNA 1981. It referred in particular to the cases of *Deliallisi v Secretary of State for the Home Department* [2013] UKUT 439 (IAC) (“*Deliallisi*”), *BA (Deprivation of Citizenship; Appeals)* [2018] UKUT 85 (IAC) (“*BA*”) and *Pirzada (Deprivation of Citizenship: General Principles)* [2017] UKUT 196 (IAC) (“*Pirzada*”). *Deliallisi* and *BA* followed an approach requiring the Tribunal to exercise for itself a judgement whether deprivation was appropriate. In *BA*, the Tribunal expressly disapproved the approach in *Pirzada* which confined the Tribunal’s power to considering whether the Secretary of State was entitled to make the deprivation decision (in effect adopting public law principles). The Tribunal in *BA* stated that *Pirzada* should no longer be followed.
11. Having considered those three cases alongside other case-law, the Supreme Court returned to the issue of appeals before SIAC under section 40(2) BNA 1981 and said this:

“66.The opening words (‘The Secretary of State may ...’) indicate that decisions under section 40(2) are made by the Secretary of State in the exercise of his discretion. The discretion is one which Parliament has confided to the Secretary of State. In the absence of any provision to the contrary, it must therefore be exercised by the Secretary of State and by no one else. There is no indication in either the 1981 Act or the 1997 Act, in its present form, that Parliament intended the discretion to be exercised by or at the direction of SIAC. SIAC can, however, review the Secretary of State’s exercise of his discretion and set it aside in cases where an appeal is allowed, as explained below.”

12. As the Supreme Court pointed out at [67] of the judgment, the legislation requires the Secretary of State to be satisfied and not (in that case) SIAC to be satisfied. Whilst what is there said refers expressly to the power under section 40(2) BNA 1981, the wording of section 40(3) in this regard is the same. Further, at [68] of the judgement, the Supreme Court, having referred to what it had already said about the case-law in other Tribunals said this:

“68. ... appellate courts and tribunals cannot generally decide how a statutory discretion conferred upon the primary decision-maker ought to have been exercised, or exercise the discretion themselves, in the absence of any statutory provision authorising them to do so (such as existed, in relation to appeals under section 2 of the 1997 Act, under section 4(1) of the 1997 Act as originally enacted, and under sections 84-86 of the 2002 Act prior to their amendment in 2014: see paras 34 and 36 above). They are in general restricted to considering whether the decision-maker has acted in a way in which no reasonable decision-maker could have acted, or whether he has taken into account some irrelevant matter or has disregarded something to which he should have given weight, or has erred on a point of law: an issue which encompasses the consideration of factual questions, as appears, in the context of statutory appeals, from *Edwards (Inspector of Taxes) v Bairstow* [\[1956\] AC 14](#). They must also determine for themselves the compatibility of the decision with the obligations of the decision-maker under the Human Rights Act, where such a question arises.”

13. The inference from what is there said is that, in the absence of a statutory power permitting a Tribunal to decide the issue for itself, the power is confined to a review of the Secretary of State’s discretion. That is reinforced by the same express wording under section 40(3) BNA 1981 as under section 40(2) BNA 1981.
14. Mr Raza invited me to adopt at least in the alternative, a fact-finding merits review. He pointed out that the issue whether the Begum approach applies to section 40(3) was not expressly determined in Begum. As that was not an appeal against a decision under section 40(3), that is unsurprising. He also pointed out however that the Court of Appeal has twice declined to determine whether the Begum approach does apply to section 40(3) decisions in Shyti v Secretary

of State for the Home Department [2023] EWCA Civ 770 (“Shyti”) and Ahmed v Secretary of State for the Home Department [2023] EWCA Civ 1087 (“Ahmed”).

15. I do not read what is said in Shyti and Ahmed as indicating that the Court of Appeal disagreed with the guidance in Chimi. Indeed, in spite of the guidance in Chimi being before the Court in both cases, it declined to determine the question which lay at the heart of the guidance and decided both appeals against the appellants in those cases. Chimi itself has not been appealed.
16. Nevertheless, as the Court of Appeal pointed out at [92] of its judgment in Shyti, in some cases, including Ahmed, this Tribunal has adopted an approach of deciding the appeal on its merits in the alternative. For reasons which follow, I have concluded that it is not difficult to do so in this case. Out of an abundance of caution, therefore, and notwithstanding my own view that Begum does apply, and that Chimi is correctly decided, I have adopted a merits-based fact finding approach in the alternative.
17. The other issue of law which arises is one of causation. In this regard, the Appellant relies on the guidance given in Sleiman (deprivation of citizenship; conduct) [2017] UKUT 367 (IAC) (“Sleiman”). The headnote in that case for which guidance is given is 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.”
18. Mr Raza relies in his skeleton argument on what is said at [60] of the decision as follows:

“The phrase ‘direct bearing’ suggests that in cases where the fraud etc. only has an indirect bearing on the grant of citizenship, deprivation action would not be appropriate. This, it seems to me, is consistent with the phrase ‘by means of’ in s.40 (3). Furthermore, under the ‘Definitions’ in the NI’s, ‘Concealment of any material fact’ (although s.40 (3) itself reads ‘concealment of a material fact’), is described as meaning ‘**operative** concealment i.e. the concealment practised by the applicant must have had a direct bearing on the decision to register or, as the case may be, to issue a certificate of naturalisation’ (emphasis as in original).”

Those comments are made in relation to the Respondent’s nationality instructions (NIs) in force at that time. I will come to the Respondent’s guidance as it applies to this appeal below.

19. In response to the argument founded on Sleiman, Mr Clarke relied on the case of R (on the application of Matusha) v Secretary of State for the Home Department (revocation of ILR policy) [2021] UKUT 175 (IAC) ("Matusha"). He accepted that Matusha was a judicial review and not directly on point as it concerned revocation of indefinite leave to remain and not deprivation of citizenship. As such, the guidance there given is not relevant.
20. Mr Clarke relied on the decision however in relation to what it had to say about leave obtained via the "legacy programme" which was under consideration in that case and in Sleiman. He drew to my attention [20] to [23] of the decision which set out the policy which applied to such leave and [24] to [27] which summarised the basis of decision-making as follows:

"24. Negative factors relating to a person's immigration history might range in scale and seriousness. At the lower end of the scale a person might enter the UK with leave to enter, overstay their visa, but not carry out any other unlawful activities. Further up the scale a person might enter illegally and work without permission using false documents. Others may deliberately abscond. Others may actively falsify information and documents to support an application for leave to remain. Even more serious are those who become involved in fraud and serious criminality relating to the immigration system or who are convicted of other criminal offences.

25. Similarly, a range of circumstances might occur when considering the case of a failed asylum seeker. At the lower end of the scale might be a genuine claim which fails because the evidence shows that the person does not have a well-founded fear of persecution. Another person might come from a refugee producing country with the core of a genuine claim but embellish certain aspects of their account in a misguided attempt to improve their chances of protection. Others may gloss over the manner in which they travelled to and entered the UK because it involved a journey through a safe third country or assistance from organised criminal networks.

26. At the more serious end of the scale are those who deliberately put forward what they know to be a false protection claim in a fraudulent attempt to obtain leave to remain in the UK. This might include a fabricated account, but could include lies about a person's nationality or age. The reason why this type of behaviour is so serious is because it exploits provisions designed to protect the most vulnerable and those in need of protection. A knowingly false claim to be a national from a refugee producing country undermines the integrity of the Refugee Convention and other international protection mechanisms. If false nationality claims are made in large numbers it might give rise to suspicion of genuine applicants from that country, making it more difficult for them to obtain protection. Policies and public services designed to support UASC are undermined by those who lie about their age to gain a greater level of support or a period of limited leave to remain to which they are not entitled. Public resources are wasted investigating and processing fraudulent claims.

27. In light of the above we find that Ms Naik's suggestion that the Legacy Programme was a 'concessionary scheme' is inaccurate. The

operational objective was to resolve the large backlog of cases involving outstanding asylum claims and failed asylum seekers. When an assessment under paragraph 395C was focussed through that objective, in many cases less weight was given to certain acts of non-compliance and more weight may have been given to the length of time a person had been in the UK than usual. However, the character and conduct of a person was still a relevant factor in assessing a case under the Legacy Programme. The programme did not operate as a general amnesty regardless of a person's behaviour. The nature and extent of any negative factors were relevant to the exercise of discretion. Although many people who were liable to removal were granted leave to remain, the respondent retained discretion to refuse to grant leave under paragraph 395C in appropriate cases.”

EVIDENCE AND FINDINGS

Factual Summary

21. The Appellant is accepted to be a Bangladeshi national. However, at the heart of this appeal is a dispute about his true identity. The Appellant claims to be Mr Sany Chowdhury, a national of Bangladesh born in Sylhet on 5 May 1980 and whose parents are Maruf Chowdhury and Mrs Jahanara. He claims that he entered the UK in 2001 with a passport in his true identity but bearing a work permit visa which he accepts was false. He says that he has never left the UK, at least not in the period until after he obtained indefinite leave to remain (“ILR”).
22. The Respondent however says that the Appellant is Mr Somrat Ahmed, born 22 August 1981 in Sylhet. The Respondent claims that the Appellant in the identity, Somrat Ahmed, did not enter the UK until 23 May 2004, travelling on a passport in the Somrat Ahmed identity bearing the Appellant’s photograph and with a work permit visa obtained also in the Somrat Ahmed identity bearing the Appellant’s photograph on 4 May 2004.
23. There is no dispute that the Appellant used a passport in the identity of Mr Somrat Ahmed in 2004/2005 as he was arrested in that identity by the police for shoplifting and convicted in that identity for that offence. The Appellant has also been prosecuted and convicted in that identity since for the offence of rape against his ex-wife for which he was sentenced to a term of five years in prison. That is not directly relevant to the issues before me as that offence post-dated the obtaining of citizenship. It is marginally relevant in relation to an issue of delay and in relation to the way in which the use of the two identities was discovered.
24. It is common ground that the Appellant applied for ILR on 26 February 2007 in the Sany Chowdhury identity. He did so on the basis of exceptional circumstances including his period of residence in the UK which was accepted to be unlawful due to the use of the

falsely obtained work permit (on his case). The Appellant was also required to complete a method of entry questionnaire which he did on 23 April 2007. I will come to the detail of the application and questionnaire below.

25. The Appellant was granted ILR following a consideration of his circumstances under paragraph 395C of the Immigration Rules which concerns exceptional circumstances. The consideration is broadly that which applied in cases under the so-called “legacy programme”. The Appellant was granted ILR in the Sany Chowdhury identity on 9 September 2009.
26. Having obtained ILR, the Appellant applied to the Bangladeshi High Commission in the UK for a Bangladeshi passport in the Sany Chowdhury identity. He did so, relying on documents obtained in the UK, namely the grant of ILR. Thereafter on 1 October 2009, the Appellant applied for a no time limit (NTL) stamp to be placed in that passport.
27. The Appellant made a (second) application for naturalisation as a British citizen on 8 June 2012 (the first having been refused for failure to meet residence requirements). The application was made in the Sany Chowdhury identity. The Appellant was naturalised on 2 October 2012. He obtained a UK passport issued on 16 November 2012 in the Sany Chowdhury identity. Thereafter, he married his ex-wife in Bangladesh on 28 December 2013 and sponsored her entry to the UK. As noted above, the Appellant was convicted of her rape and the marriage has since come to an end.
28. It was in the context of the arrest for rape, in October 2015, that the use of the two identities by the Appellant was discovered. He was convicted of that offence on 1 December 2017 and sentenced to five years in prison. The Respondent initiated enquiries beginning in February 2022. The Appellant responded to the request for information in March 2022. The decision under appeal was taken on 15 July 2022.

THE RESPONDENT’S DECISION

29. Mr Clarke relied in his oral submissions on the reasons given by the Respondent for deprivation. If my task is only to review the Respondent’s decision then, clearly, that reasoning is crucial to my determination. The Respondent’s decision letter is at [RB/3-14].
30. Reference is made in the decision letter and by Mr Clarke in his submissions to Chapter 55 of the Nationality Instructions (“the NIs”). The parts of the Nis potentially relevant to this case are as follows:

“55.4 Definitions

- 55.4.1 **‘False representation’** means a representation which was dishonestly made on the applicant’s part i.e. an innocent

mistake would not give rise to a power to order deprivation under this provision.

55.4.2 **'Concealment of any material fact'** means **'operative'** concealment i.e. the concealment practised by the applicant must have had a direct bearing on the decision to register or, as the case may be, to issue a certificate of naturalisation.

55.4.3 **'Fraud'** encompasses either of the above.

...

55.5 Timing

55.5.1 There is no specific time limit within which deprivation procedures must be initiated. A person to whom s.40 of the 1981 Act applies remains indefinitely liable to deprivation on the terms outlined above.

...

55.7 Material to the Acquisition of Citizenship

55.7.1 If the relevant facts, had they been known at the time of 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.

...

- 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 ...: 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 false information provided to the Home Office was not used to conceal criminality or other information relevant to an assessment of their character.

...

55.7.6 Length of residence in the UK alone will not normally be a reason not to deprive a person of their citizenship.

55.7.8 **Complicit**

...

55.7.8.4 In the case of an adult, the fact that an individual was advised by a relative or agent to give false information does not indicate that they were not complicit in the deception.

55.7.8.5 All adults should be held legally responsible for their own citizenship applications, even where this is part of a family application. Complicity should therefore be assumed unless sufficient evidence in mitigation is provided by the individual in question as part of the investigations process.”

31. Reliance is placed by the Respondent on the following factors (references are to paragraphs in the decision letter):
- (a) The obtaining of the passport and work permit in the name of Somrat Ahmed in 2004 and entry to the UK in May 2004 ([8]).
 - (b) The use of the Somrat Ahmed passport when charged and convicted of theft in 2005 ([9]).
 - (c) The making of the ILR application in 2007 in the name of Sany Chowdhury and in particular the failure to declare the criminal conviction in 2005 or the use of the other identity of Somrat Ahmed. Further, the failure to disclose the holding of a passport in that identity or to produce it ([10]).
 - (d) The information contained in a statement which accompanied the 2007 application about how and when the Appellant claims to have entered the UK. In particular, the assertion that the Appellant had been in the UK since 2001, had never been in trouble with the authorities and had always been law-abiding ([11]).
 - (e) The completion of a method of entry questionnaire also claiming to have entered the UK in 2001 and asserting that the facts set out in that questionnaire were true ([12]).
 - (f) The provision of further information in support of the ILR application in 2009 in support of the facts on which the Appellant relies and the repeated assertion by the Appellant’s solicitors that the Appellant was of very good character ([13]).
 - (g) The application for NTL stamp in 2009 in the name of Sany Chowdhury stating that the Appellant was not also known by any other name and again asserting to be of good character ([14]).
 - (h) The application for citizenship repeating the facts on which the Appellant continues to rely, ticking no to having any criminal convictions and no to there being any other activities which might cast doubt on the Appellant’s good character ([15]).
32. Based on those factors, the Respondent found that the Appellant had materially deceived the Home Office by relying on the Sany Chowdhury identity when his real identity was that of Somrat Ahmed. The Appellant’s account about the use of that identity (set out below) was not accepted. Associated with that, the Respondent did not accept that the Appellant was of good character.
33. It is asserted in terms at [20] of the decision letter that, when considering the application for ILR, “[i]f the caseworker at the time had discovered that you were, in actual fact, using a different identity to that you had entered the UK in, that you had only been in the UK since 2004, less than two years as an overstayer, and that

you were known to the police, they would have concluded that you had employed false representations in order to conceal material facts from them and would have refused your application for ILR on good character grounds alone”([20]). Although the caseworker accepted that the criminal conviction of itself would not have been a ground for refusal, the use of another identity to prevent the Home Office from carrying out checks to discover the conviction would have made a difference ([24]).

34. In relation to the citizenship application, the Respondent relied on the deceit as outlined above but also that the Appellant had ticked no to having any criminal convictions and whether he had been engaged in activities which might cast doubt on his character ([23]).

The Appellant’s Case and Evidence

35. I heard oral evidence from the Appellant. In the course of that evidence and submissions, I was also taken to the important documents in the bundles. I refer only to the oral and documentary evidence which is relevant to the Respondent’s decision under appeal and to my alternative merits-based assessment of the Appellant’s case.
36. The Appellant has provided one statement dated 4 October 2022 which is at [AB/3-6]. The Appellant’s witness statement is very short on detail about the issues I have to decide. Much of it is concerned with the strength of his life in the UK which would be relevant to Article 8 ECHR but is not an issue which I have to decide. As such, I also have regard to his oral evidence and to the statement which the Appellant provided to the Respondent in February 2007 when seeking indefinite leave to remain ([RB/37-40]).
37. In general I found the Appellant to be an unimpressive witness. He frequently said that he had forgotten matters which might have been explained by the passage of time if one were considering what he said now and what he said historically but that loss of memory does not explain him claiming to forget events which happened about two years prior to assertions and claims he has made over the years. He also frequently sought to explain discrepancies on the basis that he is a simple man and was merely following the advice of others. Even if I accept that he is uneducated and a “simpleton” as he claimed, that does not explain the inconsistencies and implausibility in his case for the reasons I give below.
38. I begin with the Appellant’s claim that he entered the UK in 2001 in the identity of Sany Chowdhury. He says that he was helped to do so by an agent.
39. There is an inconsistency in the Appellant’s evidence about his entry to the UK. In his witness statement, he says that he entered with an

agent, that he was not questioned on arrival in the UK, that he “later learnt” that the work permit he was using was false and that the agent “had later fled” with his passport.

40. In his oral evidence, the Appellant said that the agent took away his passport in the Sany Chowdhury identity, that he had worked without identity documents and that this led him to obtain the passport in the Somrat Ahmed identity in 2004. He said that the agent who had helped him come to the UK had taken a payment of five lakh taka for the passport and work permit. The Appellant did not know that he would have to return the passport. He said that when they entered, the agent “went the other way”. He repeated that this was just after they had come through immigration control.
41. This account is inconsistent with what the Appellant had said in his statement at [RB/38]. Having referred to the payment made to the agent to bring him to the UK, the Appellant said this about the circumstances of his arrival:

“He also stated that he would accompany me to the UK to ensure I do not encounter any problems. He then arranged our journey, we travelled by plane from Bangladesh to the UK, and we had no problems on our journey. I arrived in the UK in April 2001 with Mr Miah. I was promised that it would be a permanent job with a good salary.

After arriving in the UK we stayed at a house that Mr Miah took me to, I can’t remember the address. I was told that I would be placed in employment and that I had to be patient. Mr Miah insisting on taking responsibility of my passport, I had a lot of trust in Mr Miah therefore I did not question his intentions of retaining my passport.

I was then introduced to a restaurant in Kent to work as a kitchen assistant. I was delighted to be working, this was as far as Mr Miah was able to support me and I was grateful for all he had done for me. He then returned to Bangladesh with my passport.”

42. I raised this inconsistency with the Appellant in the course of his oral evidence by way of clarification. He confirmed that Mr Miah was the agent. When the above extract from the statement was read to him, he said only that there must have been a misunderstanding. The detail in this statement might be capable of being consistent with the Appellant’s witness statement which said only that the agent had “later” left him following arrival, but it is entirely at odds with the Appellant’s oral evidence. Both are detailed explanations but are incapable of being reconciled.
43. As Mr Clarke also pointed out, if the Appellant were telling the truth about when the passport was taken, he would not have known as he says now is the case that the work permit in that passport was false. The Appellant’s answers to questions about this were evasive. He first simply repeated his account. When he finally answered the question, he said that it had to be false as otherwise he would have had a job and employers would have taken him.

44. That brings me on to inconsistencies in the Appellant's evidence, oral and documentary, in relation to his work in the UK between 2001 and 2004.
45. The Appellant's case in relation to the acquisition of the passport in the Somrat Ahmed identity is that he acquired the passport in 2004 from an agent. The passport (which is at [RB/15]) bears a photograph which the Appellant accepts is his. He says he gave the agent that photograph.
46. The Appellant says that he needed that passport because he had no paperwork showing that he was entitled to work in the UK. That does not of course explain how he was able to work between 2001 and 2004. On either of the Appellant's varying explanations as to when his passport was taken from him by the agent, it was either taken immediately after he arrived (in which case it is difficult to explain how he got work) or after he had started work (in which case he would not have had the paperwork to change jobs).
47. Mr Clarke drew attention to letters from former employers. He did so to suggest that the letters from former employers were not genuine as they had not been produced with the Appellant's application for indefinite leave to remain in 2007. I deal with that below when I come to that application. As I understand it they were produced when the Respondent sought more information in 2009.
48. Those letters however also undermine the Appellant's case about what he was doing in the period 2001-2004 and his need for the Somrat Ahmed passport in 2004.
49. The letters at [RB/60-61] purport to be from persons who knew the Appellant in the period 2001-2004. The first, Mr Karim Ahmed, lives in Kent and says that he knew the Appellant from when he first arrived when he came to work in his restaurant. The second, Mr Jaman Choudhury, says that he has known the Appellant since 2003 when the Appellant lived and worked with him in Luton. Of course, those can be reconciled on the basis that the Appellant changed jobs between 2001 and 2003 but undermine the Appellant's case that he needed to obtain a passport in 2004 in order to work. I observe in passing that the letter dated 5 May 2004 from Mr A Miha (Miah?) ([RB/64]) to which Mr Clarke referred is consistent with Mr Choudhury's letter regarding the Appellant working in Luton in 2004 albeit Mr Choudhury says that the Appellant was a kitchen porter whereas Mr Miha describes him as a tandoori chef.
50. I accept that the letters from employers at that time are consistent with the Appellant's 2007 statement at [RB/39] that he has worked continuously in the Indian catering industry since his arrival until 2007. It is however worthy of note that he says in this statement

that he did this with advice from the Bengali community because that industry “require[s] little documents”. That undermines the Appellant’s case regarding the need to obtain another passport in 2004.

51. I also asked the Appellant for clarification about his work in this period given what he had said about the need for the passport for work. The Appellant said that he had one job but then needed paperwork for another one.
52. That explanation is undermined by a letter from a Mr Abdul Ali dated 10 January 2005 ([RB/65]) which refers to knowing the Appellant from 2002 and to the Appellant working in his takeaway in 2005. He refers to the Appellant as Sany Chowdhury even though, according to the Appellant, he would have been using the passport in the name of Somrat Ahmed for work at that time. Of course, if Mr Ali knew the Appellant already at that time, he might refer to him as Sany Chowdhury. However, if he knew the Appellant as such, it would make no sense for him to require or be prepared to rely on paperwork in a different identity.
53. I turn then to the obtaining of the passport in 2004. The Respondent relies on documents at [RB/15-20] which he has obtained from his own records. At [RB/15] is the passport, number V0191747 in the name of Somrat Ahmed, date of birth 22 August 1981.
54. As the Respondent points out, it is difficult to understand why the Appellant would have obtained a passport in an identity other than his own having asked an agent to procure one (on his case). The Appellant answered only that he could not get work without papers. As above, that is not consistent with other evidence but in any event did not answer the question asked. When he did finally answer the question, he said only that “the agent did it”. He also said that the agent had only asked for one photograph.
55. The Appellant admits that this is the passport which he says he obtained in Aldgate in 2004. He accepts that the photograph on the passport is him. As I come to below, he also accepts that this is the passport which he provided to the police when he was arrested in 2004 and under which name, he was prosecuted then and on a later occasion.
56. At [RB/16-19] is an entry clearance application also in the name of Somrat Ahmed. The passport number is the same as the passport at [RB/15]. The Appellant was unwilling to admit that the photograph on the entry clearance application was of him. He would say only that it looked like him but that he had not given the agent a photograph except for the one used on the passport.

57. As I understood Mr Raza's submission, he was prepared to accept that the photograph probably was of the Appellant, but he said that this did not prove that it was the Appellant who had made the application rather than an agent. Nor he said did it show that the Appellant had been in Bangladesh at that time. I do not have expert evidence from a facial recognition expert but the similarities between the photographs at [RB/15] and [RB/16] are obvious. The photographs at [RB/15] and [RB/16] are virtually identical. If, as is the case, the Appellant accepts that the photograph at [RB/15] is of him and provided by him, I am unable to accept his case that he did not also provide the photograph at [RB/16]).
58. I turn then to the entry clearance application. It is worthy of note at this stage that the names given for the applicant's mother and father on the application details are similar to those which the Appellant gives for his parents - Mr Ahmed Maruf and Mrs Aktar Jahanara (the Appellant says his parents are Mr Maruf Chowdhury and Mrs Jahanara). The date of birth given is different from that given by the Appellant in the Sany Chowdhury identity but consistent with the passport at [RB/15] (as would be expected).
59. The visa sought is for a work permit. Although the Respondent has not relied on these points, it is worthy of note that the application form refers to an interview and that the visa was delivered in person. Of course, if the entry clearance officer had a person in front of him for interview who was not the person making the application, then the visa would not be granted. Similarly, if the entry clearance was delivered in person, unless that were to an agent making the application then the visa would not be handed over.
60. As I say, those points further undermine the Appellant's case but were not relied upon by the Respondent. When this was raised in the course of evidence, Mr Raza pointed out that no interview notes have been disclosed. I accept that is so but it is difficult to read what is said on the entry clearance application details as being other than that an interview was processed and the visa delivered to the applicant in person.
61. The entry clearance application is also consistent with the landing card at [RB/20]. This shows that Somrat Ahmed entered the UK on 23 May 2004 as a work permit holder. The work permit was issued on 4 May 2004. The landing card shows the same date of birth as on the entry clearance application. The date of issue of the work permit and date of entry is chronologically connected. I accept that this shows that the individual named Somrat Ahmed to whom the work permit was issued on 4 May 2004 entered the UK on 23 May 2004.
62. The Appellant has been unable to give a satisfactory explanation in response to these documents. I accept that if he were telling the

truth he would not know how the passport bearing a visa which he claimed to have bought in Aldgate were obtained.

63. However, his case makes no sense when confronted with these documents. As I explored with Mr Raza during his submissions, the only way in which the Appellant's version could be true is if he had given multiple photographs to an agent who had used them to obtain a passport for the Appellant in a false identity but had gone to the trouble of then also obtaining a genuine visa in that identity using the Appellant's photograph. Even if that possibility (which stretches credulity) were accepted, it would not explain how a person using that identity and with a work permit had come to the UK after the visa had been issued if that were not the Appellant. An agent could change the photograph on a passport but could not change the photograph on an entry clearance application which would be held by the Respondent's entry clearance officer in Bangladesh. Moreover, there is every indication that the visa was issued in person and would not have been issued to anyone other than the person shown on the visa application.
64. The foregoing evidence is extremely damaging to the Appellant's case and his credibility, as the Respondent has concluded. I find, consistently with the Respondent's view, that the person who made the application for a visa in Bangladesh in 2004 was indeed the Appellant, and that he used the passport including the visa to enter the UK on 23 May 2004.
65. The use to which this passport was put thereafter is relied upon by the Respondent as reason why the Appellant did not volunteer details of the Somrat Ahmed identity (whatever is in fact his true identity).
66. The Appellant was arrested for shoplifting and convicted of that offence on 9 February 2005 (PNC report at [RB/108]). He gave the police the Somrat Ahmed passport. He accepts that he gave what he says is a false passport to the police. It might be thought surprising if this were a false passport that the police did not recognise it as such. However, that is not something relied upon by the Respondent (although of course the Respondent's case is that the passport is genuine and is in the Appellant's true identity).
67. On 26 February 2007, the Appellant made the ILR application ([RB/24-36]). The application was made in the name of Sany Chowdhury. The Appellant gives his date of entry as April 2001 (consistently with his case now). Under section 5 when asked about whether he has any criminal convictions in the UK, the Appellant has ticked the box "No". Mr Clarke asked the Appellant why he had not declared his conviction for theft. He said that he "did not realise it". He then said that he had forgotten about it given the passage of time but of course when he completed this application, it was less

than two years after his conviction. Of course, the Appellant could not have admitted to the conviction without disclosing that he was using a different identity.

68. The passport number to be completed on the application is left blank. It is the Appellant's case that by this time he had the Somrat Ahmed passport. When asked why he had not provided the passport to the Respondent in 2007 (as he had provided it to the police in 2005), the Appellant again said he had forgotten about it. It is not credible that, on his own account, the Appellant was regularly using the Somrat Ahmed passport to obtain work, had provided it to the police in 2005 but had forgotten about it in 2007 when he made the ILR application. I find that the Appellant did not provide or mention the passport in order to cover up his use of the Somrat Ahmed identity and prevent the Respondent from making criminal record checks in that identity which would have disclosed the 2005 conviction.
69. At [5.6] of the form, the Appellant was asked whether there was anything which he wished to declare which might cast doubt on his good character. He answered no. As Mr Clarke pointed out, even on the Appellant's own case, he had used an identity to which he was not entitled, had used a false document (the work permit in the Chowdhury identity) in order to work and had been convicted of theft. The Appellant's only response was that by this time he had been convicted only of theft and not rape. When the question was repeated, he said only that he had to use the passport when arrested as otherwise he would have had no identity document. That was not an answer. The Appellant avoided answering the question.
70. In the Appellant's 2007 statement, the Appellant asserts that he had no evidence of his stay in the UK, did not have a national insurance number and had not attempted to obtain one by deception.
71. I deal firstly with the letters from Mr Miha and Mr Ali at [RB/64-65]. Those are dated 5 May 2004 and 10 January 2005 respectively. As Mr Clarke pointed out, both were, if genuine, in existence at the time of the ILR application and yet the Appellant asserted in the application that he had no evidence of his stay. The Appellant was unable to offer a satisfactory response. He first said that he "had no idea about it" and then that he "did not know". When asked again, he asked to see the letters and said that he had provided those letters because "they (possibly his solicitors) were asking for evidence". There is nothing to show why, if these letters were in existence in 2007, they were not submitted by the Appellant's solicitors (who are the same solicitors as represent him now). I also observe in passing that neither of these gentlemen nor indeed any of the others who have provided references for the Appellant has provided a witness statement in this appeal.

72. The Appellant's evidence in relation to not obtaining a national insurance number was also unconvincing. When asked about this, he said that he did not have any paperwork so questioned how he could have applied for one. That is of course inconsistent with his case to have obtained the passport in the Somrat Ahmed identity and a visa in that name. Having gone to such lengths, on his case, he has offered no satisfactory explanation as to why he would not then have gone on to apply for a national insurance number in order to continue working. As Mr Clarke put to the Appellant and I accept, the reason why the Appellant would have said this (and why his solicitors would have repeated it in the covering letter) was to suggest to the authorities that he was a law-abiding citizen.
73. The Respondent's considered the ILR application on 14 August 2009 pursuant to paragraph 395C of the Immigration Rules (relating to exceptional circumstances) ([RB/70]). The decision-maker ticked the box to show that the Appellant's application had been outstanding for two years, that there had been no decision from the Home Office and that in that time the Appellant had built up a significant private and family life because of that delay. However, the consideration goes on to say that a grant of leave would normally be appropriate if all three of those criteria are met "unless there are reasons such as character or conduct which make a grant of leave inappropriate". I deal with the arguments regarding whether the Appellant would have been granted ILR if he had declared the true position at that time in the discussion which follows.
74. Having obtained ILR on 9 September 2009, the Appellant applied for a Bangladeshi passport in the name of Sany Chowdhury. That was issued in the UK on 30 September 2009 ([RB/71-78]). The Appellant was asked about the obtaining of that passport. He confirmed that the documents used to get that passport were generated in the UK (namely his ILR). When asked why he had not used documents from Bangladesh in what he said was his true identity, he said only that he had given the High Commission "whatever they wanted". He said they had asked for paperwork from the Home Office. When he was asked again why he had not used Bangladeshi documents he agreed that he had not had paperwork from Bangladesh between 2001 and the obtaining of ILR.
75. The Appellant also said that he had been asked a lot of questions at the High Commission which he had answered. When Mr Raza asked what those were, he said that he had been asked for his name, his father's name, his date and place of birth and his general knowledge of Bangladesh. None of that would have been difficult for the Appellant to answer whether he was Sany Chowdhury or Somrat Ahmed.

76. Having obtained the Bangladeshi passport in the Sany Chowdhury identity, the Appellant made the NTL application on 1 October 2009. He again answered no to the question whether he had any criminal convictions. He again gave the unsatisfactory explanation that he had forgotten about the theft conviction. On this occasion, he submitted a passport being the one he had just obtained in his Sany Chowdhury identity.
77. The Appellant applied for citizenship on 8 June 2012 in the Sany Chowdhury identity ([RB/86-100]). At [3.6] he again answered no to the question whether he had any criminal convictions. That was obviously untrue. He also answered no to the question at [3.12] whether he had engaged in any activities which would cast doubt on his good character.
78. The Appellant relies on a birth certificate in support of his claim to be Sany Chowdhury ([RB/135]). It is shown as issued on 6 February 2022. I have no evidence about how it was issued or based on what documentation. By this date, the Appellant had his Bangladeshi passport in the Sany Chowdhury identity. In response to the question why the birth certificate had not been issued earlier, the Appellant said that this was when records were digitalised. I accept that may well be true. However, he also said that there would be original handwritten records, but he has produced no handwritten version of his birth certificate. I can place no weight on this document as showing that the Appellant is Sany Chowdhury as he claims.
79. The Appellant also relies on having a biological sister (Shanti Begum Chowdhury). There is a letter dated 6 March 2022 ([RB/196]) which is said to be signed by that person. There is no statement from her. She was not called to give evidence. The Appellant says that she would have attended if he had been asked. He is legally represented. It is surprising to say the least given the nature of the factual dispute that she was not asked to provide a statement and to attend to give evidence.
80. As it is her letter says little of substance and if anything casts even more doubt on the Appellant's case. It merely claims that she is the Appellant's younger sister, that their father died when she was aged one year (not mentioned in the Appellant's statements) and that the Appellant acted as her guardian thereafter. She makes no mention of the Appellant having been in the UK, on his account for the previous twenty-two years. She does not confirm when he left Bangladesh. The letter is also somewhat inconsistent with the Appellant's earlier statement at [RB/37] where he says that he has three brothers and one sister "who are permanently settled in Bangladesh". Whilst I accept that the earlier statement was made in support of the ILR application in 2007 and circumstances might have changed between then and Ms Chowdhury's letter, the fact of her

being settled in Bangladesh in 2007 and the Appellant being her legal guardian since the age of one when he had been in the UK on his case since 2001 cannot both be true. I accept that this point was not explored with the Appellant but it does cast further doubt on this letter and on the Appellant's reliance upon it.

81. I can place no weight on this letter in relation to the other disputed issues which I have to consider because the letter simply does not deal with them.
82. Having made the findings about the evidence above, I turn to assess the Respondent's case regarding deprivation and to carry out my own assessment (as I am invited to do in the alternative) whether the Appellant should have been deprived of citizenship in the exercise of the Respondent's discretion.

DISCUSSION AND ASSESSMENT

83. I begin with the issue whether the Appellant has made false representations and/or concealed material facts.
84. Whether I am considering this on the basis of review of the Respondent's decision or my own assessment, I find that the Appellant has made false representations. He did so when applying for ILR and when applying for citizenship. On both applications, he failed to mention the use of another identity (whichever is his true identity) and failed to disclose that he had a criminal conviction.
85. I have considered whether the Respondent's evidence can be reconciled with the Appellant's case. I queried with Mr Clarke in the course of his submissions whether the Respondent was saying that the Appellant had not been in the UK in 2001 to 2004 as he claimed or whether that might be accepted but it was the Respondent's case that he had returned to Bangladesh in 2004 and made the entry clearance application disclosed by the Respondent's evidence.
86. In the event, however, I have decided that the two versions of events cannot be reconciled for the following reasons.
87. First, it is not the Appellant's case that he came to the UK in 2001 but returned in 2004 to Bangladesh and made the application for entry clearance in a different identity and, if so, why he might have done that.
88. Second, as I have identified when dealing with the Appellant's evidence about events between 2001 and 2004, there are inconsistencies in his evidence and even the corroborative evidence upon which he relies includes discrepancies which are unexplained. I simply do not accept as credible therefore, the Appellant's

evidence that he came to the UK in 2001 using his real identity and worked using that identity between 2001 and 2004. Nor do I accept therefore as credible that he acquired the Somrat Ahmed identity in the way which he claimed in 2004.

89. I think it much more likely that, as the Respondent says, the Appellant came to the UK first in May 2004 using the Somrat Ahmed with a visa which he obtained in Bangladesh and a passport which he himself acquired in Bangladesh.
90. I do not need to decide for the purposes of this aspect of the appeal whether the Appellant's true identity is Somrat Ahmed born on 22 August 1981 in Sylhet whose parents are Mr Ahmed Maruf and Mrs Aktar Jahanara or whether he is really Sany Chowdhury born in Sylhet on 5 May 1980 whose parents are Mr Maruf Chowdhury and Mrs Jahanara. I have already remarked on the similarity between his parents' names whichever is his true identity. It is also the case that whichever is the Appellant's true identity, he has made false representations when seeking ILR and when applying for citizenship and has concealed information namely his criminal convictions and the use of a second identity.
91. However, the Appellant also says that the information which he concealed was not material either to the grant of ILR or citizenship. For that purpose, and given one of Mr Raza's submissions, I consider it is incumbent on me to decide which is likely to be the Appellant's true identity.
92. The Respondent's case is that the Somrat Ahmed identity is the Appellant's real identity. Having considered the evidence, I agree with that analysis for the following reasons.
93. First, if, as I have found, the Appellant entered the UK in May 2004 using the Somrat Ahmed and that was in fact his first identity used on entry, that is more likely to be his real identity.
94. Second, I have found that this was the identity used to obtain a passport in 2004 and a visa based on that passport. Whilst I accept that the obtaining and use of false documents in Bangladesh is quite prevalent, I consider it likely that any fraud at that stage in the use of a non-genuine identity would be more likely to be discovered.
95. Third, and by contrast, the passport obtained in the Sany Chowdhury identity, was obtained from the Bangladesh High Commission in the UK using documents which had been obtained only in the UK by the Appellant's own assertions that he was Sany Chowdhury. There is no evidence that the Bangladeshi authorities made any checks of documents issued in Bangladesh before issuing that passport.

96. The same is true of the birth certificate. The Appellant's birth as Sany Chowdhury was only registered in 2022 following the obtaining by the Appellant of the passport in the UK on which, for the reasons I have given, I cannot place weight because it was obtained using documents obtained in the UK and based only on the Appellant's own evidence as to his identity.
97. Similarly, for reasons which I have already set out when dealing with the evidence, I cannot place weight on the letter emanating from the Appellant's sister. Nor can I place weight on the letters said to emanate from friends and former employers. In relation to those dealing with the period prior to 2004, I do not accept that those are evidence as to the facts stated in those letters (even if the letters do come from those who it is said wrote them). In relation to those dealing with the period after 2004, they do not assist as the Appellant has been using the Sany Chowdhury identity, probably since 2005 at the latest.
98. Finally, and flowing from that, I have considered why the Appellant might have wanted to change his identity. There is only one answer to that: he wanted to hide the criminal conviction from 2005.
99. That brings me on to Mr Raza's submission that, had the Appellant applied for ILR in what I have found to be his true identity in 2007 when seeking ILR, it is likely that he would have been granted ILR.
100. That submission could only assist the Appellant if he had not used a different identity. As Mr Raza says, if the Appellant had used his real identity throughout (on my analysis that of Somrat Ahmed), the Respondent would have been faced with an applicant who had come to the UK legitimately in 2004 using a visa which he had himself obtained and with a passport which was his own. The visa was for one year and therefore the Appellant would have been an overstayer but at the time of his application, he would only have overstayed for about two years. He would have a criminal conviction for theft, but the Respondent has accepted in his decision letter that this criminal conviction alone would not have reached the threshold to refuse him ILR.
101. However, as I pointed out to Mr Raza repeatedly on this issue, that is not the situation I or the Respondent have to consider. If the Respondent had discovered the true position at the time of the ILR application, he would have been made aware that the Appellant had come to the UK legitimately in one identity with permission to come here and work here. However, the Respondent would also have been made aware that, having been convicted of what is accepted to be quite a low-level criminal offence, the Appellant had assumed an identity which was not his own and had worked unlawfully in that

identity. He had also used that second identity to seek to disguise his true identity and to conceal the criminal offence.

102. I accept that based on the evidence of the caseworker consideration in 2009, the boxes ticked would still apply (namely that the Appellant had an application outstanding for two years, that the delay in resolving that application was the fault of the Respondent and that the Appellant had resided in the UK over that period and had built up a private life in that time). However, as is also clear from that consideration, the issue of character and conduct were also relevant to the decision to grant ILR. On the facts set out above, had those been discovered at that time, I am unable to accept that the Respondent would have concluded that the Appellant was of good character.
103. Of course, the exercise of discretion (particularly if the Begum approach applies) is one for the Respondent and not for me. On the basis of what is said in the decision letter, I am satisfied that the Respondent's conclusion that ILR would probably not have been granted in the circumstances set out is one which is not irrational.
104. Mr Raza relied on the case of Sleiman in support of his submission. The case is not on all fours with this one and I observe that, in Sleiman, the Tribunal was not provided with the detail of the "legacy programme". The way in which cases were considered under the "legacy programme" was, by contrast, dealt with at length in Matusha on which decision the Respondent relied.
105. The Appellant's case was probably not considered within the "legacy programme" as such as the Appellant was not a failed asylum seeker. However, the consideration of his case was based on paragraph 395C of the Immigration Rules and therefore the basis of the consideration is as outlined in Matusha. In light of what I say above, it is likely that the Respondent's conclusion, had he discovered the false representations at the time in 2007 would have been not to grant ILR.
106. Looking at what is said in Matusha at [24] of the decision (cited above at [20]), the Appellant would fall at the higher end of the scale as a person who has "actively" falsified information in his application to remain and, on my assessment and that of the Respondent, has done so with a view to covering up a criminal conviction. Even if that conviction alone would not have been grounds to refuse the Appellant's application for ILR, that coupled with the use of another identity to conceal the conviction would have been sufficient justification to refuse on character and conduct grounds.
107. Further, I am of course concerned with the false representations and concealment of facts in 2012 when the Appellant applied for citizenship. It is quite clear from the NIs that good character is an

essential part of the consideration whether to grant citizenship. Had the Respondent been aware of the Appellant's use of a false identity in order to conceal (as I have found to be the case) his criminal conviction, the Respondent would have been entitled to refuse to grant citizenship and I find would have done so. It follows that the Respondent is entitled, I find, to deprive the Appellant of that citizenship due to the false representations made and the concealment of what I find are material facts.

108. When I asked Mr Raza what he said was irrational about the Respondent's decision to deprive the Appellant of citizenship (assuming the Begum approach applies), he said that the Respondent had failed to take account of the evidence from Bangladesh, in particular the passport, birth certificate and parents' names. There is no such failure. The Respondent refers at [24] of the decision letter to the obtaining of the Bangladeshi passport but points out that it was not obtained until the Appellant had obtained ILR in the Sany Chowdhury identity. The same point applies to the birth certificate, and I have already referred to why no weight can be placed on the letter which purports to come from the Appellant's sister (and that this letter undermines further the Appellant's case). I have already pointed out that the names of the Appellant's parents in the two identities in fact bear marked similarities.
109. Mr Raza also said that, whilst the evidence provided by the Respondent regarding the 2004 entry clearance application was "difficult logically to square" with the Appellant's case, there was no evidence "which categorically links the Appellant" with that evidence. I disagree for the reasons which I have already set out. On the balance of probabilities, as I have found, the Appellant is in fact Somrat Ahmed. That is based on the evidence put forward by the Respondent. It follows that the Respondent was entitled to rely on that evidence.
110. For those reasons, whether I adopt the Begum approach in relation to the condition precedent or a fact-finding merits review, I reach the same conclusion in relation to that issue. The Appellant made false representations and concealed facts which were material when obtaining citizenship.
111. The only other issue which the Appellant has raised is that the Respondent delayed in taking action to deprive the Appellant of citizenship.
112. The Appellant has not sought to rely on Article 8 ECHR but Mr Raza submitted that the delay was also relevant to the issue of discretion and he said was therefore material to the question of whether the Respondent's decision was irrational as it was not dealt with in the decision under appeal.

113. Of course, that approach is contrary to the Appellant's position that I should review his case on the merits. However, even assuming the Begum approach and accepting as I do that the Respondent did not consider any issue of delay, I conclude that there is no irrationality. The Respondent was entitled to exercise his discretion to deprive in any event for the following reasons.
114. First, the Respondent's exercise of discretion took into account the submissions made on the Appellant's behalf by his solicitors dated 22 February 2022 and 15 March 2022 (see [27] of the decision under appeal). Those submissions appear at [RB/125] and [RB/193] respectively. There is no reference to delay made in those submissions even though the Appellant's solicitors would have been well aware of the chronology.
115. Further, as Mr Clarke pointed out in his submissions on this point, and as is pointed out at [18] of the decision under appeal, the Appellant's deception came to light only in 2015 when the police referred the case to the Home Office following the Appellant's arrest for rape of his ex-wife. As Mr Clarke pointed out, this resulted in a conviction on 1 December 2017 and a prison sentence was imposed of five years. The Appellant was not released until 2020. As Article 8 ECHR was part of the Respondent's consideration, I accept that it would be reasonable for the Respondent to await the Appellant's release from prison following the criminal conviction before seeking to take deprivation action. Representations were requested in February 2022 to which the Appellant responded in February and March 2022. The Respondent's consideration of those submissions resulted in the decision under appeal dated 15 July 2022. There is no delay in that regard. Overall, I am satisfied that it cannot be said that the Respondent delayed in seeking to deprive the Appellant of citizenship. Nor on those facts can it be said to be irrational for the Respondent not to consider the issue of delay.
116. As Mr Clarke also submitted, the NIs make quite clear (55.5.1), there is no time limit in relation to deprivation action.
117. As it is conceded on the Appellant's behalf that he cannot claim that deprivation is a disproportionate interference with his Article 8 ECHR rights, I do not need to consider that issue.
118. In conclusion, whether the Begum review approach or a merits-based approach should be adopted, on a balance of probabilities, the Appellant has made false representations and concealed facts which were material both when applying for ILR and when applying for citizenship. It follows that citizenship was obtained by means of false representations and/or concealment of material facts and the Respondent was entitled to deprive the Appellant of citizenship applying section 40(3) BNA 1981.
119. For those reasons, the Appellant's appeal fails and is dismissed.

NOTICE OF DECISION

The Appellant's appeal is dismissed

L K Smith

Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 December 2023