



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003966

First-tier Tribunal No: DC/50123/2022

Extempore Decision

THE IMMIGRATION ACTS

Decision & Reasons Issued:

21st December 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

The Secretary of State for the Home Department

Appellant

and

Khalil Ibrahim
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer

For the Respondent: Ms S Record, Counsel

Heard at Field House on 17 November 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State. However, for convenience I will refer to the parties as they were designated in the First-tier Tribunal.
2. The respondent is appealing against a decision of Judge of the First-tier Tribunal Singer (“the judge”), promulgated on 2 August 2023, allowing the appellant’s appeal against a decision dated 10 June 2022 (“the deprivation decision”) depriving him of his British nationality under Section 43 of the British Nationality Act 1981. The judge allowed the appeal because he accepted the appellant’s argument that the respondent materially erred in law by deciding that his British citizenship was obtained by fraud and false representations.

The deprivation decision

3. The appellant obtained his British citizenship under Section 4B of the 1981 Act. One of the conditions under Section 4B is that an applicant under this route must not have citizenship of another country. The respondent decided to deprive the appellant of citizenship on the basis that he is a citizen of Lebanon and had lied about this. The deprivation decision includes several reasons why the respondent considered the appellant to be Lebanese. These are:
 - (a) He had a Lebanese passport, a copy of which had been provided to the respondent and it was not accepted that this had been obtained fraudulently by the appellant's uncle, as claimed by the appellant.
 - (b) The appellant's children are Lebanese and Lebanese citizenship is only "passed down" to children via a Lebanese father. The deprivation decision (at paragraph 23) sets out an extract of Lebanese Citizenship Law, which states:

Citizenship

Specific requirements:

Children born to Lebanese fathers are entitled to Lebanese citizenship.

Birth

Specific requirements:

The marriage of parents should have first been registered with the Lebanese Civil-Acts Register in Lebanon or one of the Consulates.

By birth: Birth within the Republic of Lebanon does not confer citizenship.

Children born to Lebanese fathers are entitled to Lebanese citizenship only if entered in the Civil Acts Register in Lebanon."
 - (c) The appellant had worked in Lebanon without a Lebanese work permit and if he was not Lebanese he would have required such documentation.
 - (d) The appellant submitted a certificate from the Lebanese authorities concerning his education, which referred to him being a Lebanese national.
4. The respondent also decided that depriving the appellant of citizenship would not be disproportionate under Article 8 ECHR.

The Decision of the First-tier Tribunal

5. After setting out the three step framework in *Chimi (deprivation appeals; scope and evidence)*[2023] UKUT 00115 (IAC), the judge addressed the first question under *Chimi*, which is whether the respondent materially erred in law when deciding that the condition precedent in Section 43 of the British Nationality Act was satisfied.
6. The judge found that the respondent materially erred by inferring from the appellant's children being Lebanese that the appellant must be Lebanese so as to have passed on his citizenship to them. The judge found that the extract of law cited in the deprivation decision did not go so far as to establish that the only route to Lebanese citizenship was through having a Lebanese father. The judge stated in paragraph 29(i) that the evidence referred to in the deprivation decision:

“does not remotely establish that citizenship can only be passed to children through the father in Lebanon”.

7. The judge was also critical of the respondent relying on an extract of nationality law as a basis for asserting what Lebanese law stipulates.
8. In addition, the judge found that there was an absence of evidence to support the respondent’s assertion in the deprivation decision that if the appellant was not a citizen of Lebanon he would have needed a permit to work.
9. A further finding made by the judge was that the respondent had acted unfairly by not putting the issue of the children’s nationality to the appellant prior to the decision being made. The judge stated that the appellant had no notice that the respondent was proposing to make an inference from the children’s nationality that was adverse to his case.

The Grounds of Appeal and Submissions

10. I heard clear and focused submissions from both Ms Cunha and Ms Record, for which I am grateful.
11. Ground 1 argues that the judge misunderstood the point the respondent was making about the significance of the children being Lebanese. As was succinctly argued by Ms Cunha at the hearing, the respondent did not state in the deprivation decision that the only way the appellant’s children could have obtained Lebanese citizenship was by descent from the appellant as it was recognised that there are routes to citizenship other than by descent. Rather, the point made by the respondent was that citizenship by descent in Lebanon is from the father rather than the mother, and therefore the children being Lebanese is a strong indicator that the appellant is Lebanese.
12. Ground 2 argues that the judge was mistaken to find that the deportation decision is undermined by procedural unfairness. Ms Cunha argued that the respondent acted in a procedurally fair way by putting the appellant on notice and giving him an opportunity to respond. She also submitted that there was no need for every single specific point to be put to the appellant when the gist of the case against him was clear.
13. A further issue, that I raised with parties at the hearing, was whether it was inconsistent with *Hussein and Another (Status of passports: foreign law)* [2020] UKUT 00250 (IAC) for the respondent to rely on an extract of a Lebanese statute as a basis for asserting the current law in Lebanon.

Analysis

14. If the respondent intended to rely on Lebanese law to support his reasoning in the deportation decision, then the Lebanese law in question needed to be properly identified and explained. It was not sufficient to merely set out a portion of a Lebanese statute and assume that this accurately stated the current legal position.
15. The problem with relying on a foreign statute without an expert explaining its context, including matters such as how it has been interpreted by case law, amended over time and affected by other statutes and laws, was discussed in *Hussein*, where paragraph 9 states:

Those grounds cannot be accepted. First, foreign law is a matter of fact and must be proved by evidence. It is not sufficient to produce Tanzanian statutes and assert that the statute represents the whole of the law on the subject. A moment's consideration shows why that is so: it is absurd to suggest that a person who had access to the Queen's Printer's copy of the British Nationality Act 1981 would be able to deduce reliably from it the status of any postulant for nationality: it has been subject to numerous amendments, and it says nothing about the operation of policy or prerogative. Foreign law needs to be proved by expert evidence directed precisely to the questions under consideration, so that the Tribunal can reach an informed view in the same way as anybody taking advice on an unfamiliar area of law. It is surprising that this well-known principle has apparently escaped the notice of the appellant's professional advisers: if authority is needed it can be found in CS [2017] UKUT 00199 (IAC).; see also R(MK) v SSHD [2017] EWHC 1365 (Admin) at [5]-[8]. There is no evidential basis in the present case for any of the arguments about Somali, Kenyan or Tanzanian law that were made before the First-tier Tribunal or in the grounds.

16. In this case, one of the main reasons given in the deportation decision for not believing the appellant's claim to not be Lebanese is that his children are Lebanese and Lebanese citizenship passes by descent only through the father. This reason is unsustainable because there was an insufficient evidential basis to assert that Lebanese citizenship law only passes by descent through the father. As explained in *Hussein*, it is not good enough - in fact, it is absurd - to set out an extract from a foreign statute and assume that this accurately describes the current law in a foreign country. To state the obvious, although the extract of a statute included in the deportation decision indicates that citizenship by descent in Lebanon passes through the father, we have no way of knowing whether this has been modified by other statutes, legal provisions, cases, or anything else, so that citizenship can also pass to a child through a mother, or indeed whether, under Lebanese law, this statute has itself been interpreted as allowing descent through the mother in some or all circumstances.
17. Accordingly, one of the main reasons given by the respondent for not believing the appellant lacked an adequate evidential foundation and therefore was not open to the respondent. This is an error that materially undermines the respondent's assessment of section 40(3). Consequently, the judge was entitled to find - and did not err in finding - that the respondent materially erred - and made a public law error - when deciding that the condition precedent in section 40(3) was satisfied. The judge's decision therefore stands.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 December 2023