Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00003/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
26 September 2014	**10 October 2014**

Before

LORD BOYD OF DUNCANSBY
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EGEGBARA ANTHONY OKERE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation

For the Appellant: Mr Duffy, Home Office Presenting Officer
For the Respondent: Ms Hamid K&S @ Law, Solicitors

DETERMINATION AND REASONS

1. We will refer to the Secretary of State, the appellant in these proceedings, as the Secretary of State and to the respondent, Mr Okere, as the appellant for ease of reference. This is an appeal against the decision by the Secretary of State to deprive the appellant of British nationality under Section 40A of the British Nationality Act 1981.

2. The appellant originally entered the UK some time around 1991 using a false name, namely Nicholas Olajide, with a date of birth of 10 October 1958. He was granted leave for six months and thereafter remained in the UK, having submitted a number of applications for leave under the Immigration Rules. He was married using the name Nicholas Olajide and a further application for leave to remain on the basis of his marriage was made on 10 August 1994 and granted until 10 August 1995. Eventually he was granted naturalisation on the basis of his residence on 27 February 2009, again in the identity of Nicholas Olajide.

3. The appellant's real name is Egegbara Anthony Okere. Using that name he applied for and obtained a residence permit on 22 November 2002 until 10 March 2008. He also applied for a transfer of conditions on to a new passport. On 27 February 2008 he made an application for permanent residency which was lodged with the Home Office. That was initially refused but then granted on 28 September 2009. On 16 February 2012 he was naturalised in the identity of Anthony Egegbara Okere with a date of birth of 10 July 1959. In making this application for naturalisation he failed to disclose in paragraph 1.8 of the application that he already held British citizenship in the name of Nicholas Olajide. He also failed to disclose that he had previously been known to immigration authorities in that name. The explanation that was given by the appellant was that his father had died in Nigeria on 24 May 1990 and his uncle had started to threaten him over an inheritance. Believing his life was at risk he managed to obtain a Nigerian passport in the false name of Nicholas Olajide and subsequently obtained a visa in that name.

4. The Secretary of State in the decision letter dated 18 March 2004 gave consideration to the guidance which was in force at that time, namely chapter 55.7.2.6 of the Nationality Staff instructions. The guidance states:

> "Although the Secretary of State will not normally deprive someone of their British citizenship where they have more than 14 years' residence in the United Kingdom (long residence), circumstances in which the Secretary of State may still proceed to deprive of British citizenship include, but are not limited to, where:
>
> > 'Deception has been used more than once in individuals dealing with the UKBA e.g. multiple frauds using different identities, rather than repeat episodes of the same factual deception at different immigration stages'."

At paragraph 10 the Home Office letter states:

> "Due to the nature of your client's case and the fact that your client has been involved in major immigration fraud since 1991 when your client was granted Entry Code 5N as a visitor with valid LTE until 12/01/1992 and eventually overstayed and has now been naturalised as a British citizen in two identities, it is considered appropriate to take deprivation action against your client regardless of the length of your client's residence."

5. Judge Herbert in his determination at paragraph 58 considered that this was not a case of using multiple false identities or using false or bogus claims or relatives to obtain leave to enter or remain in the United Kingdom. He found as a matter of fact that while the appellant's conduct was extremely serious and clearly fraudulent it did not amount to multiple frauds using different identities "but rather instead as a repeat episode of the same fact of deception at different stages of the immigration process unusually at this point where it is repeated to regularise his stay in his legitimate identity".

6. The Secretary of State's grounds of appeal effectively narrate two alleged errors of law.

7. The first related to the way in which Judge Herbert had considered the Article 8 submissions and whether he had taken into account in the determination the possibility of the appellant being removed from the UK. If he had it was said that this was irrelevant.

8. The second was that he had misapplied the guidance.

9. In submissions Mr Duffy, the Presenting Officer, said that he was relying on the second of those – the misapplication of the guidance. His point was a short one: that there were at least two instances of fraud - the applications to the immigration authorities which arguably constituted a continuing act of deception and the separate application for British citizenship. This in effect amounted to multiple frauds.

10. Ms Hamid, for the appellant, on the other hand submitted that there were only two instances of fraud. "Multiple", according to the Oxford English Dictionary meant numerous, that is to say more than two. The decision was in accordance with the guidance. There was no error of law.

11. We note that the reason given by the Secretary of State at paragraph 10 of the letter of 18 March 2014 relies on the length of time during which the deception was maintained, since 1991, and the fact that he was now naturalised in two separate identities. In our view there must have been more than two fraudulent applications (even assuming that there was one course of fraudulent conduct to the immigration authorities between 1991 and his application for citizenship under the name of Nicholas Olajide) including the application to the registrar in respect of his marriage, the application in respect of his citizenship in the name of Nicholas Olajide and the misrepresentations when he submitted his application for citizenship in his real name.

12. The guidance which pertained at the time was to the effect that a person, such as the appellant who had long residence (more than 14 years) would not normally be deprived of their citizenship. It then states that the Secretary of State may still deprive such a person of citizenship in circumstances which include <u>but are not limited</u> to a situation where deception has been used <u>more than once</u> in dealings with UKBA (our emphasis).

13. We are satisfied that the evidence shows that there was more than one instance of fraud or deception carried out over a period of many years. Accordingly there is an error of law. The appeal must be allowed and Judge Herbert's decision set aside.

14. Having decided to allow the appeal and to set aside the decision we then heard submissions in relation to the re-hearing.

15. Mr Duffy referred us of the case of Deliallisi (British citizen: deprivation appeal: scope) [2013] UKUT 00439 (IAC) which made it clear that the appeal is at large and it is for us now to make the decision anew.

16. Mr Duffy gave us the new updated guidance in chapter 55 and referred us in particular to paragraphs 55.7.3 and 55.7.5, both of which he said were in point. He also pointed to the fact that the power to deprive a person of their citizenship comes from the terms of Section 40A of the British Nationality Act 1981 and relates to fraud, misrepresentation and the concealment of material facts amongst others. All of these applied in this case.

17. We asked Mr Duffy in particular about a section of Judge Herbert's determination at paragraph 68 where he said that the appellant's daughter would also be deprived of her UK citizenship through no fault of her own. Mr Duffy told us that he did not have any information in relation to any move by the Secretary of State to deprive the child of her citizenship. However, in our view, nothing turns on this point. The guidance that we have seen suggests that such an action should not be taken against a child. In any event, if it was, it would be dealt with separately. A British citizen cannot be deprived of nationality by implication in a process to which he or she is not a party.

18. For the appellant Ms Hamid initially questioned whether we should be looking to the new guidance rather than the guidance that was in force when the original decision was taken. In relation to the new guidance she submitted the Secretary of State should have exercised her decision differently. She should have borne in mind that the appellant had remained in the UK for some 23 years. She took us in particular to paragraphs 55.7.10.1 of the new guidance: the caseworker should consider whether deprivation would be seen to be a balanced and reasonable step to take, taking into account the seriousness of the fraud, misrepresentation of concealment, the level of evidence for this and what information was available to UKBA at the time of consideration. While accepting that the appellant had been involved in a fraud she said that this was limited to the false name given on two occasions and for that reason the reasonable test could not be met.

19. She also submitted that the caseworker would have had to take into account paragraph 55.7.11.6 in relation to the impact of the deprivation on the individual's human rights under the European Convention on Human Rights. In particular the caseworker is directed to consider whether deprivation and/or removal would interfere with a person's private and family and, if so, whether such action would nevertheless be

proportionate. In some cases it might be appropriate to remove citizenship but allow the person to remain in the UK. In such case the case worker should consider granting leave in accordance with the guidance on family and private life. Ms Hamid made two points in relation to this:

- First, she submitted that the Secretary of State should have granted indefinite leave to remain or at least leave to remain in accordance with the guidance of family and private life and should have done so at the same time as removing citizenship.

- Secondly she submitted that the appellant's Article 8 rights would be infringed. In particular she said that these rights under Article 8 he would be able to pass on his status through those who have derived blood ties through him . There is the risk she submitted that the child would be deprived of her British nationality.

Accordingly she said the Article 8 rights are affected by his being deprived of his citizenship and that was wrong.

20. It is clear that the appellant engaged in a course of fraud and deception over a considerable period of time. He used a false identity to enter this country illegally. He submitted applications on numerous occasions to remain in the UK using the same false identity. He then made an application in the false identity of Nicholas Olajide for naturalisation. That was followed by another application for naturalisation using his true identity which failed to disclose the fact that he had already obtained naturalisation under a false identity and failed to disclose the fact that he had dealt with immigration authorities using that false identity.

21. British citizenship carries with it important rights and privileges. There is an important public interest in maintaining the integrity of the status which citizenship confers on an individual and the process by which it is obtained. Removal of citizenship where that integrity is infringed is an important factor in maintaining public confidence and providing a deterrent against fraud and deception.

22. We note in the appellant's favour the fact that he has been in this country for 23 years, the fact that so far as is known he has otherwise been of good behaviour in this country and that he has established a family life here.

23. So far as Article 8 is concerned we note that this is not a decision to remove the appellant from the UK. Any infringement that there may be in depriving the applicant of citizenship is minor. We accept that they may greater if the Secretary of State were to take a decision to remove the appellant from the UK but we cannot say that such a decision is an inevitable consequence of this decision.

24. The relevant parts of the new guidance can be found in chapter 55. Article 55.7.1 provides that had the relevant facts been known at the time the application was considered it would have affected the decision to grant citizenship the caseworker should consider deprivation. Article 55.7.5 sets

out the circumstances in which the Secretary of State will not consider deprivation; none of them apply here. Article 55.7.6 states that length of residence in the UK alone will not normally be a reason not to deprive a person of their citizenship. The caseworker should be satisfied that an intention to deceive was deliberate (55.7.7.1).

25. It is clear that there was a deliberate and sustained deception. Had it been known at the time of the application we do not doubt the application would not have been granted. We note the length of time that the appellant has been in the UK but consider that does not provide a reason not to deprive the appellant of citizenship. We have considered whether a decision to deprive the appellant of citizenship would be reasonable and balanced and we are satisfied that it is. There are no other mitigating factors.

26. For completeness we should add that our decision would be the same if we were considering the matter anew but applying the guidance in force at the time of the original decision.

27. Accordingly, we have come to the view without any great difficulty that we should allow the appeal by the Secretary of State. The consequence is that the appellant will be deprived of his citizenship under Section 40A of the British Nationality Act 1981.

LORD BOYD OF DUNCANSBY
Sitting as an Upper Tribunal Judge
(Immigration and Asylum Chamber)