Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00002/2015

THE IMMIGRATION ACTS

Heard at : Manchester Crown Court	**Determination Promulgated**
On: 18th March 2016	**On: 11th April 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

DEMONIQUE WESSEH WILSON

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Smith, instructed by Maya Solicitors
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 13 January

2015 to deprive him of his British nationality under section 40 of the British Nationality Act 1981.

2. The appellant was born on 14 January 1968 in Liberia. According to his own account, he left Liberia and went to the USA in August 1984 at the age of 16 years. From the papers before me I have managed, as best as possible, to ascertain the following chronology of events.

3. Between August and December 1988 the appellant committed several offences of armed robbery in the USA, for which he was arrested on 12 December 1988. Before his case came to trial, around the end of 1989, he escaped and left the USA. He claims, in his statement, to have returned to Liberia, but to have then travelled to the Netherlands in 1993. He was eventually located in the Netherlands, following his claim for asylum, and was arrested on 23 December 1993. He received psychiatric treatment whilst detained in the Netherlands. He was then extradited to the USA, where he stood trial for his previous criminal offences. He was convicted of several counts of armed robbery on 4 January 1995 and was sentenced to a term of 5-20 years imprisonment. He served several years in prison, at Ingham County Jail in Michigan, during which time he received psychiatric treatment, followed by two years in a detention centre. He was deported to Liberia in 2001.

4. In Liberia, in August 2001, the appellant changed his name from the name by which he was known in the USA and the Netherlands, Alexander Monla Wulu, to his current name, Demonique Wesseh Wilson. He then left Liberia and came to the UK, entering the UK on 19 October 2001 in his new identity. He claimed asylum the following day. His claim was refused on 21 December 2001 but, owing to the country situation in Liberia at the time, he was granted four years of exceptional leave to remain. On 11 October 2006 he was granted indefinite leave to remain and on 8 February 2007 he applied for British citizenship. A certificate of naturalisation as a British citizen was issued on 13 December 2007.

5. The appellant claims to have returned to the USA in November 2008 in order to bring his two eldest sons, who were living there with his parents, to join his family in the UK. He was stopped at the airport on arrival in New York, held in detention in the US for 7 months, and then returned to the UK. He claims to have been assisted by the Foreign and Commonwealth Office and the British Consulate whilst detained and claims that a British Consulate assistant worked together with his US attorney and the US immigration authorities during that period and further that his past conviction and change of name was disclosed in full to the British authorities at that time. He claims to have been returned to the UK in June 2009, on the order of a US Federal District Judge, and to have been accompanied by two US immigration officers who handed him over to the UK authorities at Heathrow Airport together with his British passport and files containing all of his case details. He claims that the US and UK immigration officers spoke to each other and went through his files and that the UK authorities retained the files and his passport. He claims to have been interviewed by a senior secret service police officer who advised him that he

was not a threat to national security and who then released him and handed back his passport. He was cleared through immigration.

6. The appellant claims to have written to the Home Office himself, in a letter dated 29 July 2009 (Annex I in the respondent's bundle), confirming his name and past convictions.

7. Following an incident in 2012, where the appellant claims that his house was burgled and he reported the matter to the police, he was arrested for making a fraudulent claim. He claims that the allegation of fraud was subsequently dropped. However the Greater Manchester Police (GMP) referred his case to the Home Office as a result of information about his previous convictions in the USA and it was as a result of that that the deprivation of his British citizenship was considered.

8. On 19 June 2014 UK Visas and Immigration wrote to the appellant advising him that deprivation was being considered and inviting a response.

9. The appellant's solicitors responded in a letter dated 9 July 2014, in which they submitted that the GMP referral had not been conducted in good faith. It was submitted that the referral had been motivated by the GMP's disappointment at having failed in the fraud allegation and that the GMP had withheld vital information including court hospital orders from the Netherlands and the USA relating to the sentence for psychiatric treatment which had run concurrently with the prison sentence in the USA. It was submitted further that the appellant had been advised by his former solicitors that he was not required to disclose his previous conviction because, as a Hospital Order, it was spent. Further, he had not been required to disclose his change of name because it had been effected through a court of law. Further, it was submitted that the Home Office was fully informed of the appellant's criminal conviction in the USA when he was returned to the UK in 2009 and in the appellant's subsequent letter of 28 July 2009.

10. In the decision of 13 January 2015 to deprive the appellant of his British nationality, the respondent referred to enquiries being made of the USA authorities following the referral of the case by the GMP and of information received about his previous identity and conviction for armed robbery. It was noted that the appellant, in his application for British citizenship, had failed to declare that he had a previous conviction and that, had he done so, his application for citizenship would not have succeeded. It was considered that he had used fraud to obtain British citizenship. The respondent rejected the appellant's claim in regard to the GMP having deliberately withheld information and rejected his claim to have been wrongly advised by his former solicitors. The respondent considered the appellant's claim as to the events in 2009 did not detract from the fact that he had failed to reveal his criminal past when he applied for citizenship. Accordingly the respondent gave notice, pursuant to section 40(5) of the British Nationality Act 1981, of her decision to make an order to deprive him of his British citizenship.

11. The appellant appealed against that decision under section 40(1) of the British Nationality Act 1981. Following two adjournments and two case management hearings at which directions were made for the respondent to obtain and serve any available material documents concerning the appellant's return to the UK in June 2009, the appeal was eventually heard on 1 July 2015 by First-tier Tribunal Judge Pickup.

12. At the hearing the judge was provided with a letter dated 30 June 2015 from the Home Office explaining that all attempts to obtain information about the appellant's arrival in the UK in 2009 had been unsuccessful. The letter explained that the USA authorities had been contacted again and had confirmed that the appellant was deported from the USA on 4 June 2009, but were unable to access their records. Obtaining such records would entail a formal request which would involve a long and protracted process and would not be possible. There was no evidence of the appellant having been interviewed by the UK authorities. The GMP had been contacted to establish if they held any records of the appellant's return but they did not. Checks made with the British Foreign and Commonwealth Office had also yielded no results.

13. Judge Pickup noted that the appellant's representative was not satisfied with the Home Office's response but he proceeded with the appeal. He did not accept the appellant's account of the UK authorities having been fully informed of his criminal convictions in 2009, but in any event found that that was not relevant since it did not detract from the fact that the appellant had not disclosed his conviction in his application in 2007. The judge noted that the appellant's account of his experiences in Liberia, as provided in his asylum claim, was contradicted by the fact that he was in prison in the USA at the relevant period of time, and concluded that he had fabricated a false history of his life in Liberia and that, as such, his credibility was seriously undermined. He rejected the appellant's claim to have been advised by a previous solicitor that he was not required to disclose his previous conviction in the USA. He rejected the appellant's claim that his sentence in the USA was a hospital order, or that he believed it to be a hospital order, such that the conviction would have been spent by the time he made his application for British citizenship. The judge did not accept the appellant's claim to have disclosed his criminal convictions, or that his convictions became known to the UK authorities, on his return to the UK in 2009, but in any event considered that the respondent was entitled to consider deprivation on the basis that such information had not been disclosed two years previously in his application. The judge found that the appellant had obtained his British citizenship by fraud and accordingly dismissed the appeal.

14. Permission to appeal was sought on grounds of the judge's conduct at the hearing and on the basis that the judge had misrepresented matters explained to him at the hearing and had erroneously taken into account matters which affected the appellant's credibility.

15. Permission was initially refused but was subsequently granted by myself, on 22 September 2015, on the grounds of arguable procedural unfairness arising from the absence of consideration of a letter from the appellant's MP

which had been sent to the Tribunal prior to the hearing but had not been before the judge. The grounds in the renewed permission application were accompanied by a statement from the appellant's representative in the First-tier Tribunal, Ms Talat Jabin of Maya Solicitors, setting out her views about the judge's conduct at the hearing.

16. In granting permission, I noted that the allegation made against the judge in relation to his conduct was the subject of further correspondence at the time. That correspondence was subsequently concluded with the judge's response, by way of written comments, to the appellant's representative's statement. Those written comments were before me at the hearing.

Appeal hearing and submissions

17. In regard to the first ground of appeal, the allegation made about the judge's conduct at the hearing, Ms Smith relied upon the case of Alubankudi (Appearance of bias) [2015] UKUT 542 and in particular upon the test set out at [7] in relation to the appearance of bias. She submitted that there was perceived bias in the judge's conduct, in relation to his interruption of the appellant's evidence and his representative's submissions and in regard to his demeanour, the cumulative effect of which was to give to a fair-minded observer the appearance of bias. In response to my queries, Ms Smith confirmed that no formal complaint had been made against the judge and, further, that Ms Jabin's comment at [21] of her statement was an allegation of racism and discrimination. With regard to the second ground, Ms Smith submitted that the judge, in disbelieving the appellant, erroneously took account of irrelevant matters. He rejected the appellant's claim that his sentence in the USA was a hospital order, whereas the appellant had claimed that he believed it to be a hospital order and that, as such, his conviction was spent by the time he applied for British citizenship. He also erroneously proceeded on the basis that there was no evidence of the events which took place on the appellant's return to the UK in June 2009, whereas it was not a case of no evidence existing, but of no evidence having been obtained. With regard to the basis upon which permission was granted, Ms Smith submitted that Judge Pickup did not have the MP's letter of 26 June 2015 before him, but that letter supported the appellant's account of events in June 2009.

18. Ms Johnstone submitted that the respondent did not accept that there was any evidence of bias on the part of the judge. She relied upon the reference in the rule 24 response to the contemporaneous attendance note of the presenting officer before the First-tier Tribunal. She submitted that there had been no challenge to the judge's finding that the appellant had lied in his previous claim and that the judge was entitled to find that he had. What happened in 2009 was irrelevant as the only issue was what the appellant did in 2007 when he made his application for citizenship, but in any event it was the respondent's case that the Home Office was not told of the appellant's criminal convictions in 2009. There was no material error in the fact that the MP's letter was not considered.

19. Ms Smith, in response, submitted that the judge's conduct differed to that in Alubankudi as it was a case of persistent misconduct throughout the hearing. Cumulatively the judge's conduct led to the perception of bias. She reiterated the points previously made.

Consideration and findings.

20. The first ground of appeal raises serious allegations against the judge, including allegations of "blatant bias" in favour of the Home Office, "open, blatant discrimination", rudeness and aggression. The allegations set out in the initial application for permission made to the First-tier Tribunal were properly rejected by Judge Verity on the basis that they consisted of generalised statements. In response, the grounds in the renewed application were refined and were accompanied by a statement from Ms Jabin, to which I have given careful consideration. I have, likewise, given careful consideration to the judge's written response of 10 February 2016.

21. At [9] to [13] of her statement Ms Jabin addresses the way in which the judge dealt with a preliminary issue. That issue consisted of an objection to the Home Office's response, in the letter of 30 June 2015, to the directions requiring them to produce any available evidence of the events of June 2009 when the appellant returned to the UK from the USA and a request for an adjournment in order that further enquiries be made. At [10] she states that the judge decided to proceed despite her submissions and goes on at [12] and [13] to state that the judge did not allow representation on the matter and completely disregarded the appellant's evidence without even attempting to explore the matter, simply rejecting the appellant's account as a lie. The judge responds to this allegation at paragraph 5 of the first page of his written comments, explaining his reasons for refusing to adjourn the proceedings and recalling that Ms Jabin was not happy with his ruling and expressing his belief that that may have affected her attitude during the rest of the case.

22. It seems to me, from reading the judge's decision at [11] and [17] that, far from disregarding the evidence and refusing to hear any representations, the judge gave careful consideration to Ms Jabin's concerns but made a decision that further evidence could not reasonably be obtained and that the appeal should therefore proceed. It may be that he was not prepared to engage in further discussion of the matter, and whilst Ms Jabin may not have been happy with the ruling, I do not consider that to be anything other than a judge carrying out the overriding objectives of the Tribunal Procedure (Upper Tribunal) Rules 2008 in dealing with the case justly and fairly and in a timely manner.

23. At [17] to [18] of her statement, Ms Jabin states that the judge interrupted the appellant and intimidated him into admitting that he had lied in his asylum claim, However the judge's handwritten record of proceedings indicates that the presenting officer asked the appellant various questions about his asylum claim and the appellant was able to give full responses to the questions asked. It is clear from the record of the appellant's evidence that he was seeking to

distance himself from the obvious inconsistency between his account of his experiences in the Liberian army and the fact that he was in prison in the USA at the same time, by blaming his solicitors, whereas there could be no doubt that he had lied in his asylum claim. The judge, at [24] of his decision, recorded that the appellant was unwilling to give straight answers and was prevaricating and, in his written comments in response to the allegations of bias, refers to the difficulties he faced in that regard. Again, it seems to me that the judge's conduct was no more than robust case management which was required in the face of a difficult witness.

24. Likewise, with regard to the issues raised by Ms Jabin at [20] to [24] of her statement in relation to what she perceived as intimidation during her submissions, it appears from the judge's explanation at page 2 of his written comments that he had to engage in robust case managing in order to focus her arguments. The judge's handwritten record of proceedings shows that he took a careful note of Ms Jabin's submissions, that the submissions were lengthy and that he had to enquire about the relevance of parts of the evidence to which she was referring. His recollection, as set out in his written comments, is that Ms Jabin objected to being deflected from reading out lengthy pre-prepared submissions including passages from the documentary evidence, and that, when he tried to focus her arguments, she did not seem willing to engage in discussion. That is in fact consistent with the contemporaneous note from the presenting officer, set out at [7] of the rule 24 response.

25. As to the comments made by Ms Jabin at [21] and [23], she appears to suggest that the judge was discriminating against her because she was a Pakistani woman wearing a headscarf and that he also discriminated against the appellant. These are very serious allegations which need to be properly substantiated but plainly have not been. In the face of such serious allegations it is surprising that no formal complaint has been made against the judge. No justification has been given by Ms Jabin as to why she considers the judge to have racially discriminated against her. There is no support for her allegation by the other party present at the hearing, namely the presenting officer. Other than to confirm that Ms Jabin's comment at [21] was an allegation of racism, Ms Smith did not take the allegation any further in her submissions, and I consider that she was right not to have done so.

26. Ms Smith's submission, in relation to the question of bias, was not so much whether there was actual bias, but whether there was a perception of bias, in terms of the relevant test set out in Alubankudi:

> " *The question is whether the fair minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was bias.*"

27. In line with the approach taken in that case, I have considered the matter as a hypothetical observer. The hypothetical observer would, in this case, note that the judge had given the appellant an opportunity to respond to the questions put to him in cross-examination, would note that the appellant's

representative chose not to re-examine him on any of the points that had arisen in cross-examination, and that both parties had been given a full opportunity to present their submissions in the case. It is clear that Ms Jabin disagreed with the judge's ruling on the preliminary issue, whereas he was entitled to take the approach that he did. It seems to me that what Ms Jabin perceives as bias is simply her disagreement with the judge's approach. What she states is intimidation is simply a judge having to employ robust case managing in order to obtain direct answers from an evasive witness and in order to focus the submissions of his representative. There is no basis for the assertion that the judge had already decided the case against the appellant, but it is clear that the judge was entitled to approach the appellant's evidence with caution given his undoubted, and admitted, fabrication of his previous asylum claim. Accordingly I find no merit in the challenge based on bias and discrimination.

28. Neither do I find any merit in the other grounds. It is asserted that the judge made his adverse findings against the appellant on the erroneous basis that the appellant was alleging that his sentence in the USA was a hospital order, whereas he had stated only that that was what he had believed to be the case. Clearly that is a material matter, since the appellant's perception of his conviction and sentence, and thus whether or not it was spent at the time he made his application for British citizenship, was relevant to the question of whether he had deliberately deceived the British authorities in his citizenship application. However it is plain that the judge was fully aware of the appellant's evidence. At [24] and [25] the judge rejected the appellant's entire account of having been advised by his previous solicitor that he did not need to disclose his conviction because it was spent. He noted at [24] that the appellant had not disclosed his conviction, or his previous name, in his SEF when required to do so at sections 1.3 and 1.8, even though that form made no reference to exclusions for spent convictions. He gave detailed reasons at [26] and [29] for rejecting the claim that the appellant's sentence was a hospital order. At [31] his findings were clear and unequivocal – that the appellant had been sentenced to a term of imprisonment and not a hospital order, but also that he did not accept that the appellant *believed* that he was subject to a hospital order. Accordingly the challenge made on that basis is clearly misconceived. The judge gave full and detailed reasons for rejecting the appellant's explanation for having failed to disclose his conviction in his citizenship application form. He was entitled to reach the conclusions that he did.

29. The grounds assert further that the judge based his adverse findings about the events in June 2009 upon an erroneous understanding that there was no evidence to support the appellant's account of having been accompanied to the UK by US officials who handed over his files to the UK authorities, whereas the claim was that owing to time constraints such evidence, even if available, could not be obtained. However, again, the challenge is misconceived, as the judge was clearly fully aware of the claim made in regard to the availability of the evidence, which he set out at length and in detail at [11], [17] and [19]. The respondent's letter of 30 June 2015 made a clear distinction between evidence from the US authorities which, even if available, could not be

obtained because of time constraints, and evidence from the UK authorities which was simply not available. It was the appellant's case that his US case files were handed over to the UK authorities, that he had been interviewed by the UK authorities in regard to his previous US conviction and whether he posed a threat to national security, and that his passport had been handed back to him. It was his case that the UK authorities were aware at that point about his past convictions and that they ought to have acted upon them at that time rather than seeking to deprive him of his British nationality several years later. However the judge dealt with the appellant's claim in detail and addressed the question of unfairness raised by Ms Jabin at [19]. He considered the appellant's own letter dated 28 July 2009 at [33] and gave cogent reasons for according it no weight. Indeed it is to be noted that the letter includes details about the appellant's role in the Liberian army which have since been found to be a fabrication and clearly the judge was entitled to reject the letter as unreliable.

30. I turn finally to the basis upon which permission was granted, namely the letter from the appellant's MP, dated 26 June 2015. In granting permission, I was concerned that that letter had been submitted to the Tribunal prior to the hearing but had not been seen by the judge. Whilst it appears that that was the case, having had the opportunity to consider the letter in detail in the context of all the other evidence and the judge's findings on the evidence, it seems to me that nothing material arises out of a failure to consider it. The letter is not a contemporaneous account of events in 2009 but is simply a rehearsal of the appellant's account given to the MP shortly before his appeal before the First-tier Tribunal, in the same terms as the account given before the judge, and an expression of support from the MP on the assumption that the appellant's account were true. It does not take the appellant's case any further and I do not consider that any procedural unfairness has arisen as a result of the letter not having been considered by the judge.

31. Accordingly, the judge was entitled to reject the appellant's account of events in 2009 and to reject his claim that his previous convictions became known to the UK authorities in 2009. In any event, the judge properly found that that was not material to the question of the appellant's deception two years previously in 2007, when completing his application form, and he was entitled so to conclude. Having rejected the appellant's explanation for not having disclosed his conviction at that time, the judge was entitled to conclude that the appellant had obtained his British citizenship by fraud and to dismiss his appeal.

32. Contrary to the assertions made in the grounds, the judge's decision is a thorough and detailed one, giving full and careful consideration to all the evidence and to the submissions made by both parties. I find no merit in the grounds suggesting bias, discrimination or any other misconduct on the part of the judge. It seems to me that the judge conducted himself appropriately and carried out his duties in accordance with the procedural rules, having regard to the overriding objective of the rules. He dealt with the appellant's case in an

appropriate manner. For all of these reasons I conclude that the grounds of appeal do not disclose any errors of law in the First-tier Tribunal's decision.

DECISION

33. The appellant's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law, such that the decision has to be set aside. I do not set aside the decision. The decision to dismiss the appellant's appeal therefore stands.

Signed

Date

Upper Tribunal Judge Kebede