



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DC/00018/2016

THE IMMIGRATION ACTS

Determined on the papers
at Field House
On 5th June 2017

Decision & Reasons Promulgated
On 9th June 2017

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

K J O
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

1. The appellant appealed against a decision of the Secretary of State dated 19 August 2016 to deprive him of his British Citizenship. The appeal came before the First-tier Tribunal which allowed his appeal but following an error of law hearing on 22nd March 2017, at which material legal error was found, I set aside the First-tier Tribunal decision and resumed the matter for final decision before me. I invited the parties, in the absence of any objection, to submit written representations. Neither party submitted any objection and both parties made written submissions, that is IMK Solicitors on behalf of Mr O and Mr I Jarvis on behalf of the Secretary of State.

2. The appellant was born in Ghana on [] 1967 and claims to have entered the United Kingdom in 1983. He was granted indefinite leave to remain in 2002 on the basis of his Ghanaian passport and stamps and on 11 October 2006 he was issued with a certificate of naturalisation as a British citizen. The appellant now has three children in the UK, aged 10, 14 and 15; they are British citizens and in full-time education. Sadly his wife died in 2015.

3. On 18 February 2009 the respondent wrote to the appellant to indicate that

“The Secretary of State has reason to believe that you obtained your status as a British citizen as a result of fraud. The Secretary of State has received information that indicates you have used fake immigration stamps in your passport to acquire leave.”

4. The appellant was advised that as a result of the information the Secretary of State was considering the deprivation of his citizenship under Section 40(3) of the British Nationality Act 1981.

5. A letter with the same content was sent again to the appellant on 23 February 2010 requesting evidence of the correct date of entry into the UK and proof of residence in the UK. There followed further correspondence but on 19 August 2016 the Secretary of State issued a notice of decision to deprive the appellant of his nationality considering that the appellant did in fact obtain his British citizenship fraudulently stating:

“On 11 January 2008 a department within the Home Office assessed a Ghanaian passport issued to K] O born on [] 1967 and found the following with regard to this passport:

- *The passport serial number was not commensurate with the alleged date of issue;*
- *The photograph contained on the passport did not suggest that the holder was the age they claimed to be;*
- *The registration of the perforated holes in the emboss impression over the photographs were incorrect;*
- *The quality of the Ghanaian issuing office ink seal was of poor quality;*
- *UK Immigration Officer’s stamp 541 dated 11/12/1983 issues at Heathrow Airport was of poor quality, there were errors with the font and registration of the text stamp”*

6. The appellant was advised of his right of appeal and that if the appeal was unsuccessful he would be served with a Deprivation Order but that subject to satisfactory checks he would be granted 30 months’ limited leave in recognition of the fact that he could not be removed at present because there were barriers to his removal.

7. The appellant did appeal under Section 40A(1) of the British Nationality Act 1981. There followed the decision from the First-tier Tribunal, allowing the appealing, but, in which I found an error of law on the basis that the judge failed to give weight to the Secretary of State's expert report, and which was set aside, I now proceed with my deliberations.

Conclusions

8. Section 40(3) of the British Nationality Act 1981 (as amended) states as follows:

(3)The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of –

(a)fraud,

(b>false representation, or

(c)concealment of a material fact.

9. The Secretary of State produced two reports from F M, employed by the Secretary of State, in relation to the appellant's passport and the entry stamps therein. The first report was dated 14th January 2008 stating it was in relation to document number 'Photocopy of A285709' - 'issued 06/10/1983 @ Accra'. At the close of the report the author recorded:-

'Additional information: I am unable to comment on the authenticity of the bio-data pages in the photocopy of the passport. However, I am able to conclude that the UK immigration Officer's stamp from LHR TN3 number 541 dated 11/12/1983 is counterfeit. There are errors with the font and registration within the stamp and it does not conform to expected standards of a genuine impression. It should therefore not be relied upon as evidence of lawful entry to the UK.'

10. The second report was also from F M of the National Document Fraud Unit in Liverpool and dated 7th January 2016 and which found on examination of the documentation that the passport was counterfeit. The author of both reports confirmed that since 2009 he was employed as a Specialist Document Examiner by the National Document Fraud Unit of UKBA. Prior to that from October 2006 he had been employed as a Document Examiner by the Managed Migration Forgery Team. He had received specialist training in passport and ID card production processes in the UK and abroad, had, inter alia, been trained by Frontex (the European Unions Agency for Joint Border Guard Operations) and in September 2012 was awarded a post graduate Diploma with Distinction in 'questioned document examination' (FSSocDip) by the Forensic Science Society in association with the University of Strathclyde.

11. The author or rather, expert in document fraud, himself has provided training on security documents and in forgery detection techniques for UKBA, HMRC, the Police and the Criminal Records Bureau.
12. He confirmed in his 2012 report that he examined the photocopy passport of the appellant

'based on my examination upon my experience of Ghanaian passports of this type, my experience of UK Immigration Stamps and information held locally. I also made use of a specimen impression of Heathrow airport arrival stamp 541 from terminal 3'.

13. As he was in the employ of the Secretary of State, I am not persuaded that the lack of declaration is significant. This expert clearly has extensive training and expertise having worked in relevant fields such as document forgery which make him unusually well qualified to give a report in such a specialist area. He had previously worked for the Managed Migration Forgery Team. His identity is clear; his name is given (although I have redacted it) and the date is given at the conclusion of the report. He also identifies that he has received specialist training in the field of document examination from the National Document Fraud Unit. The report emanates therefore from someone highly trained in the specific and technical area of document forgery.
14. Such a specialist and comprehensive report as cited in detail below, should not be lightly dismissed. Even in the face of the challenge I find can be relied upon. It was previously noted that the observations in the final report from the expert differed from those in the original short report and the conclusions of Section 5(ii) of the last paragraph were not part of the Forgery 2008 Report. It was also argued that this report had been re-written and there were no original notes and no production of the original report. That there was previously a more detailed report composed does not undermine the existence of the report composed by the same author. As the new report stated it superseded all previous reports. In the circumstances it was irrelevant whether the evidence was based on the comparative analysis of the stamp in 2008 and 2016. The reports produced are not inconsistent.
15. Not least the expert confirmed that the passport was not issued by a competent authority as evidenced by the serial number of the passport issued. The serial number has not changed and the one used not been challenged. That evidence stands whether the document scrutinised is a copy or not.
16. The fact that it was a photocopy of the stamp does not make a material difference because *the passport* itself was considered to be a fake; indeed the stamp was also concluded to be deficient because of its registration details. The expert produced a comprehensive report, which was cognisant of the fact that a photocopy was being assessed and because of his expertise it is reasonable to assume that he would declare if there was insufficient evidence, on which to base his judgment if that were the case, and to assess the genuineness of the passport and stamp. Although the photocopy may hinder some observation the font is not such that would alter by

photocopy – that too was criticised. Cumulatively the expert found the stamp to be false.

17. I do not have the expertise to proffer a different opinion on the report author's observation of the genuineness' of the passport and stamp and no further expert evidence was produced on behalf of the appellant. The written submissions from the appellant's representative asserted that the author of the report needs to prove how he knows that Ghanaian passports are issued sequentially. I consider his qualifications to have made that clear: as an expert as indeed he made reference in his '*experience of Ghanaian passports of this type*'. The expert also has clearly stated that the passport number is not commensurate with the purported date of issue and I conclude this is also within his knowledge.
18. It is correct that the original passport for the appellant was not available as it had been lost. This, the Secretary of State argues 'beggars belief' as it was lost immediately after the appellant became aware that she intended to deprive him of his nationality. However, at paragraph 5(i) the report states:

"Upon examination of the questioned photocopy Ghanaian passport A285709 I made the following observations:

(i) that the passport serial number was not commensurate with the purported date of issue of 6 October 1983 in Accra. To the best of my knowledge Ghanaian passports are issued sequentially." (see paragraph 10 below). That the photograph of the passport holder did not have the appearance of being a 15 year old child. That the registration of the perforated holes in the two linear emboss impressions over the photograph was incorrect – they were not aligned to a straight edge as they should be. That the quality of the Ghanaian issuing office ink seal on pages 1 and 4 was very poor'

(ii) that the purported UK Immigration Officer Heathrow airport terminal 3 stamp 541 dated 11/12/1983 on page 6 was of poor overall quality , it did not conform to the expected design or layout of the specimen impression an contained errors with the font and registration of the text with the stamp/.

In the light of the points made above, I conclude that the item used to make the above detailed reproduction of passport A 285709 contained a counterfeit UK immigration officer's stamp 541 on page 6. The photocopy should not be relied upon as evidence of the holder's lawful entry to the UK in 1983. Because I was not furnished with the original passport, I and am unable to definitively conclude on the overall authenticity of the passport itself. However, I find that on balance on the balance of probabilities that it was not issued by the competent authorities charged with the issuance of Ghanaian passports i.e. the same scenario described in paragraph 10.

Pausing there, at paragraph 10 the expert also states:

"In addition to my examination described at paragraph 5 above on 11/01/2008 I examined a second Ghanaian passport under my reference MMFT/2008/290. the Ghanaian passport in question was A286061 issued at Accra on 10/05/1983 held by one

A O B (married name O) the spouse of K J O. Upon examination I found passport A286061 not to have been issued by the competent Ghanaian authorities and to also contain a counterfeit Immigration Officer's stamp 541 from Heathrow Airport Terminal 3 dated 21/05/1983 on page 6. Aside from the different date of arrival, the counterfeit stamp is identical to that examined in paragraph 5 above in the passport of K J O: Passport A286061 remains in my possession."

19. That the appellant had lost his own passport was the root cause for only being able to assess the copy. There is no doubt that the expert was aware that he received a monochrome photocopy of the passport which he was asked to examine.
20. Furthermore the expert, as demonstrated by paragraph 10, of the report, considered the Ghanaian passport and stamp of the appellant, which was a photocopy, in the light of the wife's passport which was not a photocopy. He also examined the passport of the wife which evidently had not been lost. It was open to the expert, with his field of technical knowledge, to find that that passport was also not issued by the competent Ghanaian authorities and stamp within that passport was also counterfeit. That was an original passport and stamp and that finding does not appear to have been challenged. I therefore take into account that the original stamp in the original passport of the deceased wife was produced but that too was considered to be a forgery. There was no element of photocopying in that instance.
21. Owing to the expertise of the author of the report and reference in the report to the serial number, the stamp and the wife's stamp, I am persuaded that the passport and stamp of the appellant were not genuine. This was sufficient, on the balance of probabilities, which is the correct legal standard, following **B (Children)** [2009] UKSC, to pass the evidential burden to the appellant.
22. There was absolutely no rebuttal evidence from the appellant save for a general assertion by the appellant recorded in the oral evidence before the First Tier Tribunal on 25th November 2016, that he disputed the passport and stamps were fake and he merely maintained they were genuine.
23. In oral evidence before the First-tier Tribunal the appellant claimed that he had been standing next to the Immigration Officer who had given him the stamp but his evidence was that he had lost his passport about eight years ago which was around the time the Home Office told him about its concerns and it was submitted that the passport was lost deliberately. The appellant's bald assertion, without more, is insufficient to discharge the burden of proof which clearly has shifted to the appellant. As such I find that the Secretary of State has discharged the legal burden upon her.
24. I conclude that the passports and stamps of the appellant and his wife were not genuine and were obtained by fraud. As such the Secretary of State is entitled apply Section 40(3) of the BNA 1980.
25. I must also consider the point taken in relation to the exercise of discretion of the Secretary of State as to discretionary deprivation. Further to **Arusha and Demushi**

(deprivation of citizenship: delay) [2012] UKUT 80 (IAC) the judge has power to consider the discretion exercised and not just review that exercise. The Tribunal has to ask itself “does the evidence in the case establish that citizenship was obtained by fraud”. If it does then it has to ask “do the other circumstances of the case point to discretionary deprival”? This must include consideration of the public interest. As set out in **Arusha** the appellant can raise general human rights grounds but they must be framed to deal with the breach alleged to be caused by the decision to deprive the appellant of his nationality and giving effect to that decision and not framed to deal with the fiction that the appellant would be removed.

26. As set out in **Deliallisi (British citizen: deprivation appeal: scope) [2013] UKUT 439 (IAC)** and **AB (British citizenship: deprivation; Deliallisi considered) Nigeria [2016] UKUT 451** in an appeal under section 40A of the British Nationality Act 1981, the Tribunal is required to determine the reasonably foreseeable consequences of deprivation. Although neither representative referred me to the case of **Pirzada (Deprivation of citizenship: general principles) [2017] UKUT 00196 (IAC)**, I follow the approach taken by the previously decided case of **Deliallisi**. The analysis in **Pirzada** would suggest that Section 40 (3) is otiose. By way of addition the Home Office Policy Chapter 55 on Deprivation and Nullity of British Citizenship does not consider that Sections 40(2) and 40(3) are to be read together. Further, **Deliallisi** clearly envisaged the Tribunal being in a position to consider the exercise of discretion. As can be seen from the decision letter the Secretary of State clearly considered the appellant’s representations before exercising her discretion, indeed she refers to Section 40(5) (as amended) in her refusal letter.
27. The reasons for refusal letter clearly stated discretionary leave would be granted if his appeal was dismissed because of the barriers to his removal.
28. I take into account that there have been very sad circumstances in respect of this appellant. Subsequent to the decision his wife had died in October 2015 and the appellant was left looking after three young children which must entail significant compassionate factors.
29. In assessing the foreseeable consequences, I consider the best interests of the children, B 15 years old, P 14 years old and Pe aged 10 years old, as a primary consideration under Section 55 of the Borders Citizenship and Immigration Act 2009 and with reference to **Ahmed and Others (deprivation of citizenship) (Pakistan) [2017] UKUT 118**. The best interests of the children are clearly to remain in the UK in a stable environment and to continue with their educational and social links as they have done to date. Following the sad death of their mother their best interests must lie in remaining with their father, their sole remaining parent.
30. I am not persuaded that the appellant advanced any firm evidence that deprivation of his citizenship and in place the mere grant discretionary leave for 30 months, would hinder the children’s social, educational or familial welfare in any way or seriously affect their best interests. Clearly the transgression in the fraud of obtaining leave by their father should not be visited on the children but there was no

indication that their citizenships would be questioned and it is a matter for the appellant whether or not he advises his children of his ongoing immigration status.

31. The appellant gave evidence that he owned his own home but since the death of his wife he had to rely on public funds and if he only had leave to remain he may not be entitled to this and it would affect his ability to travel with his children to see extended family if he did not have a British passport.
32. Indeed no decision had been made by the Secretary of State as to recourse to public funds, or whether the appellant would be able to claim benefits for the purpose of tax credit. It cannot be the case that the children's welfare would not be taken into account on that decision. In **AB** the question of benefits and accommodation was considered, and, it was concluded, that legislation had been framed to ensure that the United Kingdom did not breach the human rights of those with accommodation and care needs and that the Care Act 2014 gives a Local Authority power to meet a person's care and support needs. There was no indication that the appellant would be in the United Kingdom with no leave and as set out in **AB** mechanisms exist for the receipt of accommodation and care following the deprivation of citizenship. As such I am not persuaded that the best interests of the children would be undermined. As indicated in the Error of Law hearing by the Secretary of State because the grant of leave would be dealt with by the Secretary of State post appeal, any decision as to recourse to public funds in that respect would be dealt with at that point. Any such decision would be influenced by the existence of the children. The grant of discretionary leave does not affect the availability of the children's father to them.
33. The nationality of the father would not make him unable to promote the children's educational needs or provide for their welfare. I can understand that the father's status would be less secure but no firm reason has been given why the father not having British citizenship would significantly affect the children. The children had bereavement counselling and he had been prescribed medication for anxiety and depression but there is no indication that any of the family would be precluded from accessing the National Health System. I do not accept that discretionary leave is likely to interfere with travelling as the appellant can apply for travel documents. That the appellant will not be able to travel during 'renewal periods' of his leave is rather an inconvenience than an uncertainty for the children. It is up to the appellant to organise his travel accordingly and this logistical difficulty is just that; it does not undermine the Secretary of State's decision to deprive him of his British citizenship. The welfare of the children is a primary feature in this appeal but their best interests are not undermined as a foreseeable consequence by the deprivation of their father's citizenship and the grant of limited leave instead.
34. The children's interests are not a 'trump' card as to the status to be granted. The Policy at Chapter 55: Deprivation and Nullity of British Citizenship. This clearly envisages that the appellant may be deprived of his citizenship on the basis of fraud and nothing indicated that the Secretary of State failed to follow the correct processes. The Secretary of State's decision was in accordance with Paragraph 55.7. The appellant is not a minor and his length of residence will not prevent the

deprivation. It was clearly decided that there was an intention to deceive and all adults should be held responsible for his or her citizenship applications. In this case there was no mental or physical impairment at the date of the application and no coercion suggested. The circumstances of the appellant that is the children were considered as part of the consideration under the Human Rights Act.

35. The Secretary of State has also followed her own 'Asylum Policy Instruction, Discretionary Leave' August 2015. As set out in that policy at 3.1 discretionary leave only applies 'to those who provide evidence of exceptional compassionate circumstances or there are other compelling reasons to grant leave on a discretionary basis'. That in itself is a concession but nothing further and analogous to the examples set out in the Policy indicate that the leave should be anything other than limited.
36. As set out at 5.1, 30 months Discretionary Leave should be granted unless the UKBA made a written commitment that a case would be considered either before 20th July 2011 or 9th July 2012 and failed to do so or where there has been reconsideration of a decision made before either of those dates. Neither of those scenarios applies. Even then the recommendation is that Indefinite Leave to Remain should be granted. The Policy continues

'If the caseworker considers that there are other exceptional, compelling reasons to depart from the policy of granting 30 months DL, the case must be referred to a senior caseworker for further consideration. In all other cases 30 months (2.5 years) DL is normally the appropriate period of leave to grant'.

As I have found above, there are no other or further exceptional compelling reasons in addition to those granting limited leave to justify a departure from the Policy such that the appellant should retain citizenship.

37. The Secretary of State has demonstrated with cogent evidence that this appellant has perpetrated a fraud to obtain his citizenship. There is a clear public interest in depriving those who exercise a fraud on the immigration system, which is a criminal offence, with the consequent benefits not least access to the welfare system and the National Health Service. In the circumstance the appellant cannot be removed for his criminal behaviour rather he has been granted leave albeit limited. He will be under an obligation to apply for further leave but ultimately it is open to him to apply for settlement after 10 years limited leave. His status will be kept under review and on these facts that is justified. I have considered all the evidence provided by the parties and consider that it was open to the Secretary of State to exercise her discretion as she did and to proceed to deprive the appellant of his citizenship.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of

their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made because there are minors involved.

The appeal of KJO is dismissed on all grounds.

Signed

Helen Rimington

Date Signed 5th June 2017

Upper Tribunal Judge Rimington