



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DC/00020/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 24 April 2017**

**Decision & Reasons  
Promulgated  
On 4 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE C MARTIN  
UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**RAHDAKRISHAN VEERAI AH  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr P Deller, Senior Presenting Officer

For the Respondent: Ms M Malhotra, instructed by Chris & Co Solicitors

**MEMORANDUM AND DIRECTIONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Turnock promulgated on 21 November 2016, allowing the respondent's appeal against a decision made on 2 September 2016 to make an order depriving him of his British Citizenship pursuant to section 40 of the British Nationality Act 1981.
2. The Respondent arrived in the United Kingdom on 14 December 2000 and claimed asylum. That application was refused on 28 February 2001. No appeal was lodged against that decision.

3. The respondent's case is that he was granted Indefinite Leave to Remain ("ILR") on 30 April 2004. He later applied for naturalisation as a British Citizen which was granted on 30 January 2008.
4. On 21 August 2014, the Secretary of State wrote to the respondent stating that she was conducting a review of older cases, stating that her records showed he had been granted ILR on 25 February 2003 and that there was no evidence of his status letter; she also requested a copy. The respondent eventually replied that he no longer had a copy of that letter; it had been stolen in a burglary at his house on 24 June 2013.
5. On 2 September 2016, the Secretary of State wrote to the respondent, stating that she was satisfied that he had obtained his grant of British Citizenship fraudulently, and that he should be deprived of his citizenship [3]. The reasons given are that: -
  - (i) The caseworker who had issued the alleged grant of ILR, K Sannagouder had been investigated and arrested following suspicions raised that he was manipulating computer and paper records within the Home Office; that he had committed suicide [6];
  - (ii) The Home Office systems showed a conspicuous lack of evidence that he had applied for further leave after his asylum claim had been refused, noting in particular that no attempt had been made to query the outcome of his asylum claim, even though there had been no activity on his case until 5 January 2007 when Mr Sannagouder had altered the record, computer system audits showing he had backdated entries made on that date [7]; and, that Mr Sannagouder had apparently known the respondent's address at Albany Road 6 months before he had notified the Home Office of this on 27 July 2007;
  - (iii) The responses to the Secretary of State's enquiries were unsatisfactory, it being reasonable to assume he would have chased the decision on his asylum claim, yet had not done so [9];
  - (iv) The Secretary of State was satisfied that he was aware that he had not been granted ILR by the Home Office; and;
  - (v) His citizenship had been obtained by misrepresentation in that he had claimed to have ILR when he could not reasonably believe this to be the case [10]
6. The judge noted [27] the respondent's evidence that he had been granted ILR on 30 April 2004, a copy of that letter being produced in the bundle provided by the Secretary of State. He also noted [37]

and [38] that the Secretary of State had produced screen shots of the respondent's records from the Home Office computer, that [37] there had been no witness statement explaining their significance. He found, however that the screenshots were not self-explanatory.

7. The judge found that:

- (i) The entries on the record showing that the respondent's appeal had been allowed on 20 June 2001 and that he had subsequently been granted ILR on 25 February 2003 in consequence were clearly not correct as no appeal had been lodged [39];
- (ii) It was unclear why the records were being altered in 2007, long after the letters in 2003 and 2004 were issued, it being possible that there were errors on the part of the Home Office or deliberate fraud, in which case it would need to be proven that the respondent was aware of this [44];
- (iii) The letters sent to the respondent on 15 January 2004 was addressed to the address in Albany Road, indicating that address had been notified to the respondent before 5 January 2007 [49];
- (iv) While there were unexplained aspects of the case, and the chronology was puzzling, there was no evidence from the Secretary of State challenging the authenticity of letters apparently sent by her; and, that the application in 2007 (for transfer of the ILR stamp) was presumably checked and found to be in order [53];
- (v) It had not been shown that any fraud or deception on the part of the respondent was involved.

8. The Secretary of State sought permission to appeal on the grounds that the judge had erred in failing to have regard to material matters, and had reached a decision which was arguably perverse: -

- (i) In attaching weight to the date of the letters of the allegedly fraudulent letters of 25 February 2003 and 30 April 2004, the suspicion being that they had been manufactured in 2007 by Mr Sannagouda, the judge thus not understanding the nature of the allegation;
- (ii) By indicating at [37] that he did not understand the case, and that the Presenting Officer would have been in a position to explain the CID printouts, and the evidence he did not understand;

- (iii) The apparent grant of ILR out of the blue (and when it had been agreed that there had been no appeal of the refusal of asylum) should have been a significant indicator that it had not been genuinely granted, given the involvement in the case of a known corrupt official.
9. On 12 January 2017 First-tier Tribunal Judge M J Gillespie granted permission on all grounds.
10. The appeal then came before the President of the Upper Tribunal on 14 March 2017 when it became apparent that it was unclear what documents had been put before the First-tier Tribunal. Directions were given for further documents to be provided which was done. The matter then came before us by way of a transfer order

### **The Law**

11. The Secretary of State's power to revoke citizenship is set out in section 40 of the British Nationality Act 1981: -

#### **40 Deprivation of citizenship**

(1) In this section a reference to a person's "citizenship status" is a reference to his status as—

- (a) a British citizen,
- (b) a British overseas territories citizen,
- (c) a British Overseas citizen,
- (d) a British National (Overseas),
- (e) a British protected person, or
- (f) a British subject.

(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

(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.

12. The Secretary of State's case as set out in the refusal letter is unclear, as Mr Deller accepted, it does not with any sufficient clarity set out the nature of the allegation or the Secretary of State's case.

13. There are two letters which, on their face, state that ILR is being granted to the respondent; one is dated 25 February 2003, the other is dated 30 April 2004. It appears from the stamp on the former that it was this letter which was presented to Secretary of State in order to obtain naturalisation.
14. As was accepted by Mr Deller, the judge bore in mind that the burden of proof was on the Secretary of State and, taking that at its highest, concluded that it was not made out on the evidence presented. Mr Deller did not, in the event, seek to persuade us to the contrary; it is not at all clear from the screenshots provided what they are supposed to show, nor is it evident that the copies presented to the First-tier Tribunal were properly legible.
15. In all the circumstances, and given Mr Deller's concessions, we consider that the judge was entitled to find that the Secretary of State had not made out her case. That is not a conclusion that we reach with any enthusiasm whatsoever.
16. It is surprising that in this case, where some six years had elapsed between the uncovering of Mr Sannagouder's activities and the initial request made to the respondent, that the Secretary of State did not adduce evidence in the form of report into the caseworker's activities, nor any witness statement from an official explaining the relevance of the screenshots, how they were obtained, the nature of any audit trail of entries or any other basis on which it had been determined that the grant letters were false, not least as both bore numbers IND stamps.

### **SUMMARY OF CONCLUSIONS**

1. The decision of the First-tier Tribunal did not involve the making of an error of law and we uphold it.

Signed:

Date: 27 April 2017



Upper Tribunal Judge Rintoul