



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

Appeal Number: DC/00035/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8 August 2017**

**Decision & Reasons Promulgated
On 27 September 2017**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE LINDSLEY**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MAHMUD MOHAMMED TABRINI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr I. Jarvis, Home Office Presenting Officer.
For the Respondent: Ms A. Nizami, instructed by Good Advice UK.

DETERMINATION AND REASONS

1. The Secretary of State appeals against the decision of Judge Malone in the First-tier Tribunal, allowing the appeal to the respondent, whom we shall call “the claimant” against the Secretary of State’s decision on 31 October 2016 to deprive him of his citizenship. We can deal with the matter quite briefly; we have heard submissions on the Secretary of State’s behalf from

Mr Jarvis; we have not needed to call on Ms Nizami for the claimant, who appeared before us, as she did before the First-tier Tribunal.

2. The difficulty which led to the Secretary of State's decision is that the claimant is a person whose photograph was attached to an application for a passport in the name of his brother Fuad, made in 2008. There is, it is fair to say, no doubt now that that was a fraudulent application and that the appellant's photograph was submitted as part of an application in the name of Fuad. The passport itself, of course, was not part of the process by which the claimant sought to obtain nationality. But in his application for citizenship the claimant answered, as he was required to do, question 3.12 on the form, seeking to know whether there was any reason of character or conduct why the Secretary of State might pause before granting him citizenship, if we may so express it. He said that there was not. The Secretary of State took the view that the claimant himself must have been involved in the obtaining of that passport in 2008, that the explanations he had given for his photograph being on the passport were unsatisfactory, and that he had therefore obtained his own citizenship by concealment of a material fact, that is to say, by not revealing his part in the production of that passport.

3. The statutory authority for a decision along those lines is in s. 40(3)(c) of the British Nationality Act 1981:-

"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 -

...

(c) concealment of a material fact."

4. Judge Malone heard oral evidence from the appellant and from his brother. He did not accept the entirety of the evidence of either of them. He reached a clear conclusion that the Secretary of State had not established that the claimant himself was complicit in the events of 2008. That decision appears to us to have been reached on the basis of the evidence he heard, and it is fully reasoned.

5. The Secretary of State's appeal as presented this morning by Mr Jarvis is along the following lines:

"The judge should have appreciated that it was the claimant and not his brother who had the chief motivation for there being a fraudulent passport containing the claimant's own photograph."

6. That may be so. Mr Jarvis is unable to point to any indication that that was specifically argued before the judge. There can, however, be no doubt that it was amongst the things that the judge had in mind when considering, as he did, with great care, the evidence and what has to be said, the perhaps unlikely story that he was presented with. His

conclusion was perfectly clear: the Secretary of State had not discharged the burden of proving any fraudulent conduct, deception, or concealment by the claimant. The Secretary of State's grounds, and argument, amount merely to disagreement with the judge's perfectly lawful conclusion. There is no basis in law for reversing or setting aside the judge's conclusion, which we shall therefore order to stand, and dismiss the Secretary of State's appeal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 12 September 2017