



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DC/00012/2017

THE IMMIGRATION ACTS

Heard at Field House on 12 February 2019
Case management hearing: 28 June 2019

Decision & Reasons Promulgated
On 13 September 2019

Before:

THE HON. MR JUSTICE LANE
UPPER TRIBUNAL JUDGE KOPIECZEK

Between:

BA
(ANONYMITY DIRECTION MADE)

Appellant

- and -

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Mr Z. Malik, counsel (instructed by R Spio & Co. Solicitors) for the appellant (12 February)
Ms. H Gore, counsel (28 June 2019)

Mr D Clarke, Senior Home Office Presenting Officer, for the respondent (12 February and 28 June 2019)

DECISION AND REASONS

1. This is the “open” decision in the re-making of the appellant’s appeal, following the earlier setting aside of the decision of the First-tier Tribunal. We are satisfied in the circumstances of this case that certain matters, including further details in respect of our reasons, cannot be given in this decision, lest it should lead members of the public to identify persons whom the Upper Tribunal consider should not be identified, on the basis that such disclosure would be likely to cause serious harm;

and that we are satisfied, having regard to the interests of justice, that it is proportionate to proceed in this manner.

2. The appellant was naturalised as a British Citizen in 2013. He had previously been granted an EEA residence card as a spouse of an EU national and, subsequently, permanent residence on that basis.
3. The respondent wrote to the appellant saying the respondent had received information that indicated that “prior to acquiring indefinite leave to remain and British citizenship in your true identity” the appellant had obtained, or attempted to obtain, numerous UK driver’s licences and British passports in various identities. Details were given in the letter.
4. The citizenship application of the appellant was received by the passport office in 2013. In response to the question in the application form: “Have you ever engaged in any other activities which might indicate that you may not be considered a person of good character?” the appellant had ticked the box indicating “no”.
5. The respondent’s decision to deprive the appellant of his British citizenship asserts that the appellant obtained that citizenship fraudulently and that he concealed a material fact.
6. The appellant states that he lived in the country of his birth until aged 23, when his father obtained for him a visa to travel to the United Kingdom. He subsequently arrived with an uncle, but lost contact with him. After sleeping rough, the appellant came into contact with the cousin of a friend, who introduced the appellant to people who gave him a name to use (“Name A”), together with a date of birth. The appellant became an “errand boy” for these individuals, receiving money in return.
7. The appellant was introduced to individuals, who said they would send him to a third country to collect a “parcel”. These individuals were said by the appellant to have helped him to “procure” a passport in a name other than that of the appellant (“Name B”), assisting him to complete the necessary forms and attending the passport office.
8. Upon arriving in the third country, the appellant was put up in a hotel and then taken to an apartment where he was told to wait for something, which he was to bring to the United Kingdom. The appellant panicked and eventually returned to the United Kingdom without bringing it. Upon his arrival, the appellant was scared because “the guys had given me money”. He decided to change his name in the passport to Name B in order avoid being traced. He went to the passport office to do this, but was arrested by the police.
9. He later applied for a passport in Name A and travelled to a third country, where he was subsequently arrested on the basis on being an illegal entrant. He was subsequently issued with a passport in Name A in order to make a second visit to the third country and then used this passport to return to the United Kingdom, accompanied by immigration officers of the third country, who handed him to the United Kingdom’s immigration officers.

10. Following that return, the appellant, who said he was overwhelmed by “the whole experience” changed his name to Name C; using it to obtain a driving licence. He subsequently on several occasions misplaced the driving licence in that name and applied for replacements. Each time the appellant said he did so in the same name.
11. The appellant said that he had had no criminal convictions at the time he had applied for citizenship and had held an honest belief that there were no relevant facts that he needed to disclose. When he received the decision of 2017, revoking his citizenship, the appellant was in Africa.
12. The appellant said that his job required him to travel. His whole life would be affected if his passport was taken away from him. His children would also be affected but he did not want to bring them into the proceedings.
13. We had before us a statement from an officer of a public body, who recorded that the appellant had been arrested for deception when he attempted to obtain a United Kingdom passport and a false identity. Enquiries were made, which led to information that there was a possible further passport deception offence committed by the appellant several years earlier. However, as the appellant had fully admitted his criminality and dishonesty, and at that point had no previous criminal history, a decision had been made to dispose of the matter by way of a caution. That was authorised by a Police Inspector. The statement makes reference to the obtaining of a passport by the appellant in Name C.
14. In his oral evidence to us, the appellant adopted his witness statement, which described the incidents set out above. He was cross-examined upon it. So far as the application form for British citizenship was concerned, the appellant agreed that he might, in retrospect, have properly indicated “yes” rather than “no” to the relevant question. The appellant told us why he did not consider that he needed to do so. Part of the rationale advanced by the appellant is set out in our “closed” decision. The appellant also gave the reason why he did not want to expose his children. When pressed as to whether he had lied in the application form, the appellant repeated that he was trying to protect his children.
15. Asked by us why he had seen the need to apply to be a British citizen, the appellant said he had always wanted to be British for security and for the sake of his children.
16. So far as the application for driving licences were concerned, the appellant said these were for replacement licences, not new ones. If he reported his licences as missing, he would be given a replacement.
17. There was re-examination, which we deal with in the “closed” decision.
18. We then heard evidence from a witness, whose evidence can be described only in the “closed” decision.
19. In submissions, Mr Clarke submitted that the concealment of the material facts would have had an impact on the decision to grant the appellant citizenship. Mr Clarke relied upon Ivey v Genting Casinos (UK Ltd) t/a Crockfords [2017] UKSC67, which establishes that the test for the meaning of dishonesty does not differ in civil

law or criminal cases. The test for dishonesty is set out at [74] and is that the question of whether conduct was dishonest has to be determined by applying standards of ordinary decent people.

20. The appellant had come to the United Kingdom and within weeks had become involved with criminal elements, with whom he was associated for some years. He had travelled on a false passport, in connection with these activities.
21. Although the appellant had said he did not answer the relevant question in the affirmative because he did not wish to put his children at risk, the application for British citizenship had not, in fact, been necessary. The appellant already possessed a permanent right of residence and had the nationality of his native country. There had been no need for the appellant to become involved in fraud in terms of his naturalisation as a British citizen. Mr Clarke submitted that both “limbs” of Ivey applied. It was difficult to see how a reasonable person would not construe what the appellant had done as not being dishonest.
22. Although Article 8 of the ECHR was not pursued on behalf of the appellant, Mr Clarke said that, should the appellant be deprived of British citizenship, he nevertheless had a permanent right of residence in the United Kingdom.
23. Mr Clarke made further submissions, which we record in our “closed” decision.
24. For the appellant, Mr Malik submitted that the appellant was not dishonest in his application but that, if he had been, then this was an exceptional case whereby discretion should have been exercised differently. The decision to deprive him of citizenship had been based on his use of false identities and not what the appellant had done between certain dates. A decision had been taken not to prosecute the appellant for what had happened prior to his arrest. Although it was true that there was no evidence before the Tribunal in relation to the appellant’s children in support of his appeal, either in his witness statement or oral evidence, the Tribunal was invited to find credible the appellant’s explanation as to why he did not want them involved in these proceedings.
25. Mr Malik made further submissions, which we record in our “closed” decision.

DISCUSSION

26. Sections 40 and 40A of the British Nationality Act 1981 (“the 1981 Act”) so far as relevant, provides as follows:-

“40. Deprivation of citizenship

1. In this section a reference to a person’s “citizenship status” is a reference to his status as-

(a) British citizen,

....

(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 registration or naturalisation was obtained by means of:-

- (a) fraud,
- (b) false representation, or
- (c) concealment of a material fact.

(5) Before making an order under this section, in respect of a person, the Secretary of State must give the person written notice specifying -

- (a) that the Secretary of State has decided to make an order,
- (b) the reasons for the order,
- (c) the person's right of appeal under section 40A(1)...

...

40A. Deprivation of citizenship: appeal

(1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against that decision to the First-tier Tribunal.

..

27. In accordance with the guidance we have previously given in this appeal, we must first be satisfied that the relevant condition precedent exists for the exercise of the Secretary of State's discretion to deprive the appellant of British citizenship. That means, to summarise, that the appellant's British citizenship was obtained by means of fraud, false representation or concealment of a material fact.
28. Neither party before us argued that on the facts of this case there was any legal issue to be determined in terms of whether the appellant's conduct (which the respondent contends led to his wrongly being granted citizenship) amounted to fraud, false representation or concealment of a material fact. The arguments advanced by the parties characterise the factual question to be determined variously in terms of "deception" or "dishonesty". As we have already noted, the respondent's decision of 2017 stated that the appellant obtained his British citizenship "fraudulently" and that when he applied for that citizenship, he "concealed a material fact". Again, noting that neither party sought on the facts of

this appeal to make any distinction between the conduct set out at section 40(3)(a)-(c), it is nevertheless important to frame our decision according to the words of the statute. We also observe that neither party suggested that fraud, false representation or concealment of a material fact are mutually exclusive. Thus, conduct which amounts to a false representation or concealment of a material fact may also be fraudulent. However, in the absence of argument on that point, we express no conclusion on that issue.

29. It is true that the respondent's decision does not rely on the appellant's involvement in the activities mentioned above (more particularly described in our "closed" decision) as a basis for depriving him of his citizenship. The appellant argues that the respondent is not now entitled to rely on that activity. However, the appeal is to be determined by reference to the evidence adduced to the Tribunal, whether or not the same evidence was before the Secretary of State when she made her decision to deprive the appellant of his citizenship. The information in relation to the appellant's involvement in the activities in question was provided by the appellant to explain his use of false documents.
30. The appellant does not dispute that he applied for a passport in Name A and that the passport was issued to him. So far as the subsequent passport application in name C is concerned, the appellant's case is that he actually changed his name to that other name.
31. We describe in our "closed" decision our assessment of the matters relating to the passports.
32. In relation to the driving licences, the respondent's decision refers to a number of driving licence applications made by the appellant in a false name between 2002 and 2012. The appellant said he remembered losing or misplacing his driving licence a few times and applying for replacements. He asserts that he did not use multiple names in applying for them but used the same name.
33. Looking at the witness statement of the named individual from the DVLA Operational Fraud and Investigation Team, it does appear that after the initial issuing of the licence in the name in question, the subsequent licences were renewals. However, what neither parties mentioned is that what appears to be on at least two occasions, those renewal licences were provided after disqualification. What that disqualification was for is not stated. The appellant does not reveal any driving offences under the name in question which led to disqualification and no PNC printout in that name has been provided. Because the issue of driving convictions in that name was not canvassed at the hearing before us and is not apparently relied on behalf of the respondent, we make no findings on that issue.
34. However, what is apparent from the witness statement from the DVLA is that for some years the appellant was actively using a driving licence in the name of BA. He applied for a provisional licence in that name and a licence was issued. He passed a "category (B)" driving test in that name and a replacement licence was issued. Later an application was made for a provisional "vocational" licence which was subsequently issued. In relation to Name C, a provisional licence was issued

many years earlier. A category B was test passed two years later in that name and renewal licences were issued twice in a particular year and once in a subsequent year.

35. The appellant accepts that he obtained a driving licence in Name C. The effect of the evidence in relation to driving licences is that whilst the appellant held a driving licence in Name C from 2002 which he was obviously using until 2012, he was also actively using a driving licence in name BA, from 2007 to 2014. Nothing in his account of events explains his overlapping use of driving licences in different names. That is so, even if the appellant, did at some unspecified time, change his name by deed poll from BA to Name C.
36. The “activities” in which the appellant was involved were as set out in the closed judgment, and including his active use of and obtaining a driving licence in two names.
37. We are firmly of the view that that activity, individually and cumulatively, constituted activities which might indicate that he may not be considered a person of good character. In answering the question on the form, the appellant claimed that he did not have to agree with any hypothetical assessment of his character. However, the question on the application form was clearly framed in a way that leaves the assessment of his character to the Secretary of State or his officials. Thus, it asks whether his activities “might” indicate that he “may” not be considered of a person of good character.
38. We note in this context the appellant’s explanation for not having disclosed such activity. Part of that explanation is recorded in our “closed” decision. To summarise, he was worried about the risk to himself and his family. That explanation, however, could not have absolved the appellant from answering the question truthfully. It was for the Secretary of State to assess any information provided by the appellant in relation to his activities, not for the appellant to withhold the information.
39. We do not suggest that it was necessary for the appellant to say very much at all in his application about matters that are described in our “closed” decision.
40. In any event, the appellant has accepted not being truthful on his application form. There is a handwritten letter from him to the Home Office, quoted verbatim in the decision of the First-tier Tribunal. The letter is undated. It states that the appellant is “wholly heartedly sorry for not being absolutely truthful with my answers” and refers to being worried about exposing certain matters. The appellant refers to having been very young at the time of “these misdeeds” but refers to his then age and his children. The appellant goes on to state that at the time of “these identity problems” he had no status in the United Kingdom and it was hard to live without documentation. All that led him to try to find a way to live and survive in the United Kingdom. He said he was very sorry that he had to do things the wrong way. He apologises for the inconvenience of his “not telling all in the past”.

41. In the context of this appeal, the central question to be answered is whether the appellant was dishonest in his application for British citizenship. Both parties were in agreement that that was the central question. We are satisfied that the appellant was dishonest on his application form in answering question 3.16. As to the meaning of dishonesty, in the context of this appeal we need do nothing other than quote from [74] of Ivey as follows :-

“... When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest”.

42. We are thus satisfied that a relevant condition precedent does exist for the Secretary of State’s exercise of discretion to deprive the appellant of his British citizenship. We are satisfied that his naturalisation was obtained by means of false representation and concealment of a material fact. We are satisfied that the answer that the appellant gave on the form for naturalisation as a British citizen, stating that he had not engaged in any activities which might indicate that he may not be considered a person of good character was both a false representation and a concealment of material facts. In both respects the appellant was dishonest, applying the test in Ivey.
43. We are satisfied that the deception motivated the grant of citizenship as held in Pirzada (Deprivation of Citizenship: General Principles) [2017] UK UT 00196 (AIC). In other words, in the words of s.40(3) of the 1981 Act, the naturalisation was obtained by means of false representation or concealment of a material fact.
44. It is argued on behalf of the appellant that the respondent’s discretion should have been exercised differently. Nevertheless, it is not argued that there is any viable article 8 claim such that the foreseeable consequences of deprivation of citizenship would amount to a breach of the appellant’s human rights.
45. We have noted elsewhere that other than in terms of a breach of human rights, in practice the Tribunal can allow the appellant’s appeal only if there is some exceptional feature of the case which means that the discretion should have been exercised differently. In that context we bear in mind all the circumstances and the submissions advanced on part of the appellant in this regard. That includes submissions as to matters with which we deal in our “closed” decision.

46. Mr Malik submits that the evidence showed that years earlier, a decision was taken not to prosecute the appellant for what happened prior to his arrest (in connection with the attempt to obtain a passport in Name B). That may be so. Nevertheless, the fact of the appellant's involvement in serious criminality remains. We do not consider the fact that he was not prosecuted as a material point in his favour in terms of the exercise of discretion.
47. We deal in our "closed" decision with a further matter advanced by Mr Malik on behalf of the appellant.
48. It is also relevant to note that the appellant chose to apply for citizenship. We do not accept his evidence that he was compelled to do so as a result of his immigration and/or socio-economic position at the time. This throws into focus our finding above regarding the appellant's alleged worries about risk to himself and his family from third parties not absolving him from answering the question on the application form truthfully. Having made his decision to apply, the appellant could and should have taken steps to enable him to give honest statements to the respondent for the purposes of the application.
49. We are not satisfied that the appellant has established that the Secretary of State's discretion to deprive him of his citizenship should have been exercised differently. Accordingly, the appeal must be dismissed.

DECISION

50. The decision of the first-tier Tribunal involved the making an error on a point of law. This decision having been set aside, we re-make the decision by dismissing the appeal.

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

Unless and until a Tribunal or court directs otherwise, the appellant and the officer mentioned in paragraph 13 above are granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.