**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DC/00013/2018

**THE IMMIGRATION ACTS**

| **Heard at Birmingham Civil Justice Centre** | **Decision & Reasons Promulgated** |
|---|---|
| **On 28 May 2019** | **On 31 July 2019** |

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**M A T**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms E Rutherford, Counsel instructed by TRP Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

## DECISION AND REASONS

1. For the reasons given below I have decided to allow this appeal. Although this is not a protection case and no decision has been made to remove the appellant, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant has shown that he is a gay man from Iran and publishing his name might create a risk to his safety in the event of his return. Publicity could mean that the appellant could not be returned to Iran even if I am wrong to allow this appeal.

2. This is an appeal by a citizen of Iran against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State on 22 March 2018 to deprive the appellant of his British citizenship.

3. As the First-tier Tribunal Judge explained correctly at the start of his decision and reasons:

> "The appellant is a national of Iran, born on [~] 1970, and now 48 years old. It is not in dispute that he has previously used the name 'Hamed T-----' and date of birth of 20 June 1973, and that he used this name when he applied for, and was granted, British citizenship on 10 January 2007. It is the use of this name and date of birth which is the subject of the issues in this appeal."

4. The name "Hamed" might be thought to be a shortened form of the very common Iranian name "Mohamed". The surname used by the appellant when he was given British nationality might be based on his birth surname but is two letters shorter.

5. The appellant entered the United Kingdom illegally in a lorry in February 2000. He claimed asylum on arrival. It was his case that he was gay and he suffered persecution in Iran because of his sexuality. It is not entirely clear how that application was determined but it is clear that sometime around June 2003 the appellant, through his representatives, enquired about his immigration status and was told that he did not qualify for asylum but he was then told he had been given exceptional leave to remain from 30 November 2000 until 30 November 2004 on the basis that he was gay and could not return to Iran.

6. On 13 September 2004 the appellant applied for indefinite leave to remain which was granted on 29 July 2005 on the basis that had he resided in the United Kingdom with exceptional leave for a period of four years. On 7 September 2005 he applied for a travel document which was given relying in part on a declaration from a retired magistrate about the appellant's identity.

7. On 11 August 2006 he applied for British citizenship. The application was supported by two referees who claimed to have known him personally for five years. At that time he worked as a forklift truck driver. He had passed the "Life in the United Kingdom" test and criminal record checks had been undertaken. He became a British citizen on 10 January 2007.

8. The First-tier Tribunal emphasised, correctly, that throughout the appellant's dealings with the respondent until 24 February 2012 (see below), the appellant had provided documentation in which he was identified as H T who was born on 20 June 1973. What is now understood to be his given name, Mohammad Ali T who was born on 19 September 1970, did not feature in the paperwork.

9. On 24 February 2012 the Coventry Refugee and Migrant Centre wrote to the respondent informing him that the appellant had applied for citizenship in a wrong name and using a wrong date of birth and asked the respondent to amend the name and date of birth on the certificate of naturalisation. It was asserted then that the appellant's name had been "wrongly spelt" and his "date of birth incorrectly recorded". The letter was supported with the appellant's Iranian passport giving the name and date of birth now said to be correct. The passport was issued in April 2007. The passport was

accompanied with a date of birth confirming the details and an affidavit from the appellant declaring what he said were his correct details.

10. The Secretary of State was not pleased. Initially he decided to treat the acquisition of citizenship as a nullity but then withdrew the decision to treat it as a nullity and accepted that the appellant remained a British citizen. On 12 January 2018 the respondent notified the appellant that he would consider depriving him of his citizenship under Section 40 of the British Nationality Act 1981.

11. Having considered matters raised in response the respondent did deprive the appellant of his British citizenship on 22 March 2018.

12. It is instructive to look carefully at the respondent's Notice of Decision to Deprive British Citizenship Under Section 40(3) of the British Nationality Act 1981. This is dated 22 March 2018. This is where the respondent explains his decision and informs the appellant of his rights of appeal. At paragraph 3 the respondent says:

> "Following our investigation, and on the basis of the evidence presented, the Secretary of State has decided that your British citizenship was obtained fraudulently. The Secretary of State has decided that you should therefore be deprived of British citizenship for the reasons outlined below."

13. The "reasons outlined below" are not clear. There is reference to the three routes to deprivation under Section 40 of the British Nationality Act 1981. They are set out in section 40(3) and comprise fraud, false representation or concealment of a material fact but it plain from section 40(3) that neither fraud, false representation nor concealment of a material fact on their own justify deprivation. Deprivation is permissible when the respondent is satisfied that "registration or naturalisation was obtained by means of" (in this case) fraud. The Notice does not explain why the alleged fraud is said to be relevant to the decision to deprive the appellant of his acquired nationality.

14. There is then a reference to a definition of "false representations" and an indication that the appropriate standard of proof is the balance of probabilities.

15. There is then a summary of the appellant's history in the United Kingdom. He claimed asylum in the now known to be false identity of Hamed T born on 20 June 1973. He maintained that false identity in several dealings with the Secretary of State over the twelve year period and only explained the true position after he had been naturalised.

16. The Secretary of State noted medical evidence that the appellant had been suffering from anxiety and depression since 2006 and that the appellant claimed to have been "sectioned" under Section 2 of the Mental Health Act 1983.

17. In 2007, that is some seven years after arriving in the United Kingdom, the appellant obtained a valid Iranian passport.

18. The Secretary of State noted that it had been the appellant's case that several interpreters had misinterpreted information given.

19. Paragraph 14, interestingly, sets out the questions that were asked of the appellant. The appellant was required to sign a declaration which read:

> "To the best of my knowledge all the answers I have given are truthful and complete."

20. It then refers to his being interviewed in Farsi and having signed another declaration which read:

> "I have had my name(s), nationality and date of birth read back to me and I declare that this information is true."

21. There was a further declaration stating:

> "I am aware that it is an offence under the Immigration Act 1971, as amended by the Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002, to make to a person acting in execution of any of those Acts a statement or representation which I know to be false or do not believe to be true, or seek to obtain leave to remain in the United Kingdom by means which include deception."

22. The letter then deals with medical evidence about the appellant's claim to have been diagnosed with post-traumatic stress disorder.

23. The letter then rejected any contention that the appellant was entitled to leave on human rights grounds. There was no plan to remove him. Any interference with his "Article 8" rights was said to be proportionate.

24. The First-tier Tribunal Judge found that the appellant had been dishonest and was unimpressed with the medical evidence.

25. He directed himself at paragraph 62 that he must "determine if the appellant's false representations were material to the decision to grant citizenship".

26. The next two paragraphs are interesting and are criticised in the grounds. The judge said:

> "63. In doing so, I accept Mr Pipe's submission that the appellant was granted ELR, which led to ILR, on the basis that he was accepted as a homosexual and could not be returned to Iran. This is made clear in the Home Office minute (page 109 of the appellant's bundle). I accept, therefore, that the appellant's false representations had no bearing on the decision to grant ILR, which was the subsequent pathway to enable him to seek citizenship. Had his true identity been known, his homosexuality will still have led to him being granted leave.
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> 64. However, when it comes to the application for citizenship, the respondent asserts that it is the appellant's deliberate conduct, in providing false information with the intention of obtaining citizenship, which was the 'operative' concealment in this matter, and so that it was material to the decision. In other words, citizenship would not have been granted had he disclosed the true position."

27. I can find nothing in the Notice of Decision to Deprive British Citizenship Under Section 40(3) of the British Nationality Act 1981, dated 22 March 2018, that sets out the explanation that British citizenship was obtained by reasons of the "operative concealment" identified by the First-tier Tribunal Judge.

28. The First-tier Tribunal Judge found that the appellant had been dishonest both in regard to his name and in regard to his date of birth and further found that the respondent was entitled to deprive the appellant of his citizenship of the United Kingdom. The First-tier Tribunal found that the appellant had obtained his citizenship by deception.

29. Ms Rutherford relied substantially on grounds settled by Mr Adam Pipe of counsel who presented the appellant's case in the First-tier Tribunal.

30. These complained that the First-tier Tribunal Judge erred in various ways.

31. I begin with the contention that he misdirected himself about the medical evidence. That is not made out. This is not a case that ought to succeed on Article 8 grounds. The appellant is not that poorly.

32. Further there is no evidence that the appellant was not competent to make the necessary decisions going to honesty at the relevant time.

33. This, I find, skirts around the point. Clearly the appellant has made representations that are not correct at least in regard to his date of birth. There is no obvious advantage to him in making the false representations that he did. Nothing seems to turn on his name and the false date of birth did not, for example, entitle him to a more generous regime of support.

34. I am not satisfied that there is any evidence that the appellant's use of a name other than his given name is dishonest. There is no evidence that the was ever asked if he had used any other name and without that additional information being sought and a false answer given, or evidence of advantage, I am not satisfied that a consistent use of name different from a birth name is capable on its own of supporting a finding of dishonesty.

35. I have no such reservations about the use of a false date of birth. Without more a person who gives as his date of birth a date which he knew to be different from his official date of birth appears to have been dishonest even if there was no obvious advantage in the falsehood.

36. The grounds further complain that there was a misdirection of law by not applying properly the test for dishonesty formulated in the Supreme Court in **Ivey v Genting Casinos (UK) Ltd (T/A Crockfords) [2017] UKSC 67**. Clearly the Supreme Court was looking at the meaning of dishonesty and gave a definition that the First-tier Tribunal was obliged to apply.

37. It is conceivable that a person with a genuine fear of return to Iran would give false information at some stage and it is conceivable that, if all the circumstances were made known, the falsehood would not be thought dishonest. Further, even if the conduct was dishonest, it is conceivable that there were reasons for it that would make it wrong to use the conduct as a reason to deprive the appellant of British citizenship.

38. I am not satisfied that there have been proper findings about the appellant's honesty in this case. However there is no need to embark on such a potentially tortuous analysis as there is nothing in the Notice to show that the falsehoods were material.

39. The grounds also contend that it was perverse for the First-tier Tribunal Judge to accept the false representations had no bearing on the decision to grant indefinite leave to remain but did apply in the subsequent grant of citizenship. This contention is made out. In my judgement the key to this case is the requirement, recognised by the Secretary of State and the First-tier Tribunal Judge, that the registration or naturalisation "was obtained by means of fraud, false representation or concealment of material fact".

40. There is no evidence for that. It was decided that because the appellant was gay he could not be returned safely to Iran. Neither his name nor date of birth had anything to do with that. There is nothing to show that the subsequent grant of further leave and then nationality depended on anything but his residence in the United Kingdom.

41. The appeal to the First-tier Tribunal was all about proof. The Secretary of State had the burden and simply failed to address the points that may well have led to the appeal being dismissed. The First-tier Tribunal can only rely on the evidence that is placed before it and I do not see anything that would justify the conclusion that any dishonesty that might be established was causative of the grant of citizenship.

42. The First-tier Tribunal Judge rather rowed away from the decision of this Tribunal in **Sleiman (depravation of citizenship; conduct) Lebanon [2017] UKUT 367 (IAC)** describing it as a case "based on facts which were particular to that case". It was not. It was intended to offer guidance in deprivation cases by reminding the parties, perhaps especially the Secretary of State, that where the Statute empowered the Secretary of State to do something where a benefit had been obtained "by means of" it was incumbent upon the Secretary of State to explain how the benefit was obtained by means of the fraud but the respondent did not discharge that burden.

43. This is not a particularly happy decision. Although the appellant has lived in the United Kingdom for many years and apparently has lived responsibility in most respects he did base his application on a name he did not normally use, and, and to my mind more pertinently, an entirely fictitious a date of birth. However although the Secretary of State has asserted that this is sufficient reason to deprive him of citizenship he has not explained the point.

44. The First-tier Tribunal came close to recognising this when it found that the respondent had not shown that the falsehoods impacted on the decision to grant leave. The Tribunal should have applied the same finding to the decision to grant citizenship.

45. I find that the First-tier Tribunal Judge should not have dismissed the appeal. The evidence points only in one way which is to allow the appeal.

**Notice of Decision**

46. The First-tier Tribunal erred. I set aside this decision and substitute a decision allowing the appellant's appeal.

Signed:
Jonathan Perkins
Judge of the Upper Tribunal

Dated 29 July 2019