Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00018/2017

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 20th September 2018	**On 13th February 2019**

Before

MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

RASHID SHARIF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Unrepresented.
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appealed to the First-tier Tribunal against the decision of the respondent on 6 July 2017 giving notice that the Secretary of State had decided to make an order under s 40(3) of the British Nationality Act 1981. The effect of such an order would be to deprive the appellant of his British citizenship on the ground that his registration or naturalisation was obtained by means of fraud, false representation, or concealment of a material fact.

2. The appellant entered the Netherlands in 1993, overstayed his permission to be there and apparently lived unlawfully in the Netherlands for about eight years. He then moved to Portugal, entering unlawfully, but soon thereafter obtaining a work permit. Whilst he was in Portugal he met and married [MF]. A few weeks later she moved to the United Kingdom. The appellant joined her in the United Kingdom as her husband in November 2004. In March 2005 Ms [F] made an application for a residence document as an EEA National, and included the appellant in her application as her husband.

3. In 2009 the appellant applied for permanent residence as Ms [F]'s family member, on the basis of having completed five years residence under the EEA Regulations. That application was granted on 2 February 2010. On 18 February 2011 the appellant applied for naturalisation as a British citizen. The application was granted on 11 May 2011. On 2 July 2012 the appellant's marriage to Ms [F] was dissolved. In 2013 [SR] was granted entry clearance to the United Kingdom as the appellant's spouse. Subsequent investigation revealed that the appellant had married her in Pakistan on 13 December 2002 and had four children by her, born on 8 October 2004, 29 July 2006, 10 November 2008 and 13 December 2010. Further, [SR] had applied for entry clearance to the United Kingdom on 1 June 2006, with the eldest child and, as can be seen from the date, heavily pregnant with the second. The application was refused. The sponsor was not named as the appellant but as a person who was said to be [SR]'s cousin.

4. The Secretary of State invited the appellant to explain why he had, throughout his previous dealings with the Home Office, including the grant of citizenship, failed to mention his wife and children in Pakistan. The Secretary of State was not satisfied with the responses and took the view that the appellant had deliberately withheld information about his wife and children in Pakistan from the Home Office, in order to enable him to obtain naturalisation as a British citizen. That was the basis of the decision to deprive him of his British citizenship.

5. The appeals to the First-tier Tribunal and, subsequently, to this Tribunal, have raised a number of issues that may be regarded as not entirely central to the determination of the appellant's case. It is convenient to start with the central issues. In her decision, reached after a hearing on 13 April 2018, at which both parties were represented, the appellant by Mr Robertson, Advocate, Judge J C Grant-Hutchinson reviewed the evidence before her and reached findings which were in almost all respects adverse to the appellant. Amongst the documents in the appellant's inventory of productions is a certificate of the registration of his marriage to [SS] on 13 December 2002. There is also a certificate of his marriage to [SR] on 20 February 2013. (It is perhaps worth pointing out that in the latter certificate, the appellant's age is misstated, and his and his wife's marital status is entered as "virgin" although by then they had had four children together.) There was evidence before the judge about the nature of rukhsati and the date of the rukhsati following the marriage in 2002. The

judge rejected the appellant's account that his relationship with [SR] was simply "a physical relation for sexual enjoyment and just pass my time when I visit in Pakistan". She concluded that there was no doubt that he was married to [SR], and had been since 2002, and that they had genuine relationship including the begetting of children, whom the appellant said that he loved and was responsible for and involved in their upbringing, and that when the appellant was in Pakistan he lived with them. The judge reached the clear view that the appellant was seeking to distance himself from his relationship with [SR] for his own purposes in the course of the appeal, and that his evidence purporting to explain that he had not mentioned his marriage to [SR] to the Home Office because he did not regard it as a proper marriage, or did not regard it as a marriage that had been registered, or did not regard it as anything other than a temporary sexual relationship, was not to be believed. Her conclusion was that the appellant was married to more than one woman at the same time and that if that evidence had come to light he would have been refused permanent residence on the basis of his marriage to Ms [F] and would have been refused naturalisation. The judge concluded as follows:

> "In terms of Section 40(3) of the British Nationality Act 1981 I find that the Appellant has for the reasons given concealed the fact that he was married to two women at the same time. The Appellant would not have met the requirements for naturalisation as a British citizen."

6. In her preparation for the hearing, the judge had appreciated that the appellant, whose solicitors were by then Marks & Marks Solicitors of Harrow, had complaints about his previous solicitors, R. H. Solicitors of Glasgow. R. H. Solicitors had represented the appellant in the period leading up to the decision under appeal, and had set out, in letters to the Home Office, why the appellant thought that he did not need to mention his Pakistani marriage to his Portuguese wife. Marks & Marks had raised a number of questions with R. H. Solicitors during March 2018, following notice to the Tribunal on 20 February 2018 that they now represented the appellant. The correspondence between the two firms of solicitors shows that Marks & Marks had taken the view that R. H. Solicitors should provide an explanation to the Tribunal about their conduct of the appellant's affairs, and, in particular, the source of some of the information that they had included in letters and Witness Statements prepared for the appellant. It then became apparent that, a member of the firm of R. H. Solicitors being present in the Hearing Centre that day, the appellant's representatives proposed to call him as a witness. The judge decided to convene a meeting of the parties' representatives before the hearing proper, at which she could explain that it was not the role of the Tribunal to deal with complaints against solicitors, and to attempt to narrow down the issues to those which properly belonged in the appealed hearing. There was no complaint about the fact that that meeting took place, nor indeed could there properly be any complaint: it was obviously an appropriate way of dealing with the circumstances that arose. We shall have to look in some more detail at some of what is said to have happened at the meeting.

7. Following the meeting, the hearing took place. The appellant gave oral evidence and was cross examined. There was no other witness: [SR] did not attend the hearing. There were submissions from both parties and, shortly after the hearing, the judge issued her written decision dismissing the appeal.

8. The application for permission to appeal has grounds drafted by the appellant himself, supported by a letter from Graham Robertson, the Advocate, to a member of the firm of Marks & Marks solicitors. The grounds make various assertions about the judge's use of documents. The assertions in the grounds are not entirely coherent, and are closely tied in with the appellant's complaints about R. H. Solicitors. The letter from Mr Robertson, dated 25 April 2018 and bearing a signature which is typed, not written, responds to what was evidently a request from the solicitor to provide information about what happened at the hearing. After setting out the preliminary meeting, the letter continues as follows:

> "2. When the case commenced proper it emerged that two documents had not been given sight of to the Appellants representative. These were, a) Mr Sharif's interview of 2007, and b) Mr Sharif's wife's refusal document of 2006. We were then given an opportunity to consider and discuss both documents with Mr Sharif. We did so in a separate consultation room.
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> 3. The hearing recommenced and Mr Sharif gave evidence. He accepted that his 20 page statement was true and accurate and had been prepared by the present Solicitors. He was asked very few questions by the Judge and nothing of a controversial nature emerged. He was then cross-examined by Mr Clark a Home Office presenting officer. He was not re-examined by myself.
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> 4. We were not given Mr Sharif's statement of 4/1/2018 or the expert report. Both of these documents had been prepared and requested by his previous Solicitors. They had not been provided to us at all. We did not have sight of them. Mr Sharif was not asked, to my recollection at all, whether he accepted the contents of either of these documents and whether he had ever considered them. The only document by way of statement that he accepted was his 20 page statement prepared by his present Solicitor Mr Malik.
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> 5. It appears to me that the Judge has come to a decision on the basis of important documents that were not properly introduced into evidence. His present representative had not been given sight of these documents. To compound the difficulty serious criticisms lay at the heart of these documents as was made plain in Mr Sharif's 20 page statement and the lengthy correspondence between his present and his previous Solicitors which was documented in the Appellants bundle. These criticisms of the previous Solicitor and their implications was the reason why the Judge wished to have a preliminary meeting as in paragraph 1 above."

9. Permission to appeal to this Tribunal was granted on the following grounds:

> "1. The grounds seeking permission to appeal complained that the FtTJ relied on two documents (a witness statement, dated 4 January 2018, and an expert report) which were not provided to the appellant. The appellant's complaint on this score receives support from the letter prepared by Mr Robertson, his advocate at the hearing. There is therefore an arguable issue about procedural fairness.
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> 2. I also note that, whilst she considered the evidence with great care and thoroughness, the FtTJ directed herself that the burden of proof rested on the appellant. The respondent had the burden of showing fraud under section 40(3) BNA 81.
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> 3. The grounds seek to open the issue of whether the appellant is stateless as a result of the deprivation of citizenship. That does not appear to have been raised at the hearing and I do not consider the point arguable."

10. At the hearing before us the appellant was unrepresented. He had some language difficulties but coped well and we were confident that we were able to understand what he told us. He took us through the history of his representation. It was clear that he still had concerns about the way his previous representatives had treated him. In the interests of ensuring that we had given him the fullest opportunity to put his case we heard him on these issues. In relation to the points on which permission had been granted, he asserted that a Witness Statement dated 4 January 2018 and sent to the Tribunal by R. H. Solicitors did not represent his case or his evidence. He asked us to determine his case on the basis of the statement made, through the agency of Marks & Marks, shortly before The First-tier Tribunal hearing. He also referred to a comprehensive supplementary statement that he had made for the purposes of the hearing before us. In it, he repeats that he never accepted the contents of the statement dated 4 January 2018 and the expert report: "they do not belong to me and the IJ never asked me about" them. Mrs O'Brien referred to a response to the grounds which had been lodged under rule 24. A copy of the Presenting Officer's note of the proceedings was attached: we note that it has not been subject to any query or dispute since it was lodged. In relation to the burden of proof, Mrs O'Brien recognised that paragraph 10 of the decision, indicating that the burden of proof was on the appellant, posed some difficulties, but said that the judge's careful treatment of all the evidence before her and the conclusion she had reached meant that it was inevitable that the decision would have been against the appellant.

11. We consider first the allegation relating to procedural unfairness. It is extremely difficult to ally the assertions made by the appellant and by Mr Robertson on his behalf with the documentation that has been provided. The letters between Marks & Marks and R. H. Solicitors, which were put in evidence, demonstrate that Marks & Marks were aware of the Witness Statement dated 4 January 2018, because they ask questions about it

although they have not sought a copy of it. In these circumstances the suggestion that it was not available to the appellant's representatives before the First-tier Tribunal appears to us to be simply wrong. We appreciate that there might nevertheless be an argument that it was unfair for the judge to take it into account if the appellant's representatives did not know that she had it. That is not what is said; and it would also be wrong, because one of the complaints made by Marks & Marks (and indeed by the appellant himself) is that R. H. Solicitors had sent the appellant's bundle to the Tribunal in support of his case at a time which coincided very closely with a time when they withdrew their representation of him. In these circumstances there was of course every opportunity for Mr Robertson, who represented the appellant before the First-tier Tribunal, to make enquiries as to the contents of that bundle and as to the extent to which it fell to be taken into evidence. It does not appear that any such enquiries were made. In the circumstances, and bearing in mind that he or those instructing him knew about the Witness Statement and, at the very least, that it had been sent to the Tribunal apparently on behalf of the appellant, there is nothing in the ground relating to that document. There was no procedural unfairness in taking it into account.

12. The same appears to apply to the "expert opinion", which is also the subject of reference throughout the appellant's, and Marks & Marks' complaints about, and enquiries of, R. H. Solicitors.

13. In any event, the part that either of those documents played in the hearing before the First-tier Tribunal was minimal. The "export report" appears to have provided some information to the judge on Muslim marriage customs and on rukhsati. These were all matters upon which it would have been proper to proceed on the basis of judicial knowledge. The Witness Statement of 4 January 2018 is mentioned by the judge only in the context of a difference in the question of the appellant's surprise or otherwise at discovering his marriage had been registered: but that is not the point because in the more recent statement which he adopted in full before the Tribunal, he accepted that he was told about the registration in January 2004. Further, as the judge notes, his knowledge of the registration was not the issue anyway.

14. It is right further to look at the matter a little more broadly. The position is that, as the evidence, including in particular substantial evidence produced by the appellant demonstrates, he underwent a marriage to his Pakistani wife in 2002, a marriage which was a valid Islamic marriage with or without registration and with or without rukhsati, and during which four children were born. In his application for naturalisation he was specifically asked the question whether there were any marriages before that to Ms [F] and he did not disclose that there were. The documents to which reference is made in the grounds do appear to have been in the proceedings to the knowledge of the appellant's side; do not appear to have influenced the judge to any noticeable extent; and do not bear on any matter material to the determination of the appeal.

15. Once the fact of the appellant's marriage to [SR] is established, the only remaining question is whether he deliberately kept it from the respondent, so that it could be said that his obtaining of nationality was by deception. We agree with Mrs O'Brien that despite the judges misplacing of the burden of proof in paragraph 10, her determination as a whole shows that she was confident, on the material before her, that the concealment was deliberate. At no point does she suggest, by her wording or by her reasoning, that she regarded it as the appellant's job to demonstrate that it was not. We further take the view that, given that the appellant accepted that he was married, gave positive evidence about his relationship with his children, and had visited and had marital relationships with his wife and during the subsistence of his marriage to Ms [F], the suggestion that he was not aware that he should mention it as a marriage on his application for naturalisation verges on the absurd. Even if the judge had not specifically reached that view, it is difficult to see that any other view would be merited by the evidence.

16. That is sufficient to deal with the grounds upon which permission to appeal was granted. We do not need to say any more about the appellant's complaints about any of his previous representatives. The appeal to this Tribunal is dismissed.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 5 February 2019