Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00048/2018

<u>THE IMMIGRATION ACTS</u>

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 7 May 2019	**On 7 June 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

<u>Appellant</u>

and

MR ANNAS [B]

<u>Respondent</u>

<u>Representation</u>:
For the Appellant: Ms Young, Senior Home Office Presenting Officer
For the Respondent: Ms Shanghard, JM Wilson Solicitors

<u>DECISION AND REASONS (given ex tempore)</u>

1. The Secretary of State for the Home Department ('SSHD') has been granted permission to appeal against a decision of the First-tier Tribunal ('FtT'), which allowed Mr [B]'s appeal against a decision dated 4 September 2018, in which the SSHD deprived him of his British citizenship under section 43 of the British Nationality Act 1981 ('the 1981 Act').

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Background

2. The appellant was born in the Gambia and entered the United Kingdom ('UK') on 26 October 2001. His wife is also a Gambian citizen but was born in Sweden. She entered the UK at the same time as her husband. They had married in Gambia prior to their arrival in the UK, but had their first child ('A') in the UK. A was born in Manchester in July 2002. On 20 February 2003 Her Majesty's Passport Office ('HMPO') received a first-time child passport application for A, signed and submitted by Mr [B]. The application was accompanied by a short-form birth certificate that did not show his or his wife's place of birth. Mr [B] gave his place of birth as London and his nationality as Gambian. He gave his wife's place of birth as London and her nationality as British. For present purposes, it suffices to state that the SSHD relied upon, *inter alia*, Mr [B]'s contention within that application that his wife was British as amounting to a false or dishonest representation. Although references have been made to places of birth, and there was a degree of confusion regarding those, they did not form the subject of the grounds of appeal relied upon by Miss Young.

3. On 27 January 2009 Mr [B] submitted a naturalisation application for himself, in which he signed the standard declaration. On 23 October 2010 Mr [B] submitted a passport renewal application on behalf of A. Again he claimed that his wife was British. That passport renewal application came after Mr [B]'s application for naturalisation, and after the successful naturalisation decision itself on 28 March 2010. Mr [B]'s wife made an application for naturalisation on 13 April 2012. In a statement prepared for the FtT hearing Mr [B] said this:

   > "I confirm that again this was under the mistaken belief that because my wife was born in Sweden had been residing in the UK that she was British it was only sometime later when we realised she was not British and proceeded to make an application for her to be naturalised as a British citizen. If we had known this sooner we would have made a joint application. Again I confirm that I did not make dishonest representations in support of my daughter's application and the error relating to my wife's nationality was a genuine mistake which we only later realised."

4. I was also told that Mr [B] applied for a further renewal of A's passport in 2015. This was rejected on the basis that she was not entitled to British citizenship because at the time of her birth her mother was not British. That of course is self-evident from the mother's 2012 application to be naturalised as a British citizen. The child was however registered as a British citizen under section 1(3) of the 1981 Act on 20 January 2016.

The FtT findings

5. The FtT heard evidence from Mr [B] who was cross-examined by the Home Office Presenting Officer, Miss Edwards. The FtT accepted much of Mr [B]'s evidence but in particular found that only one of the SSHD's impugned submissions predated Mr [B]'s own application for naturalisation i.e. the only relevant matter that Mr [B] could have been dishonest about when making his 2009 naturalisation application was his daughter's 2003 passport application, in which he stated that A's mother was British (when she was not). The 2010 renewal application on behalf of A post-dated that application. With that in mind, the FtT made the following findings:

> "55. Only one of the impugned applications predates the appellant's own application for naturalisation and so is the only alleged fraudulent misrepresentation which can possibly have had a direct bearing on the decision to issue the appellant with a certificate of naturalisation.
>
> 56. Contrary to the respondent's notice to the appellant he did not misrepresent any information about himself. He did however give incorrect details about his wife.
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> 57. The appellant claims that he mistakenly put a place of birth of London because they had recently moved from London. In fact it would appear from the application form that the family moved to Manchester on 24 July 2002. I note also that the appellant gave his wife's correct place of birth on subsequent applications and I am satisfied that this was an innocent mistake.
>
> 58. The appellant claims that he stated that his wife was British because he believed that she was entitled to British nationality on the basis that she was born in Sweden and was living in the United Kingdom. I note that the appellant claimed that his wife was British again in the renewal application in 2010. It was only in 2012 that Mrs [B] applied to be naturalised as British. I accept on balance that the couple were labouring until 2012 under a genuine misapprehension as to Mrs [B]'s entitlement to British citizenship.
>
> 59. I considered it also relevant that no application was made to register Aisha as a British citizen until 21 October 2015 after the appellant was informed that she was not already a British citizen. A naturalisation application could have been made any time after the appellant's own naturalisation (Section 1(3A)) or at least at her 10th birthday (Section 1(4)). I accept on balance that no earlier application had been made because the couple believed that Aisha was already entitled to British citizenship through her mother.
>
> 60. In any event the appellant was not asked in his naturalisation application whether he had submitted any prior fraudulent applications. His application was in no way dependent on his daughter already having British citizenship. The general declaration signed by the appellant cannot in my judgment require him to confess undetected crimes. As

> Judge Hopkins said in Pirzada in an approach approved by the Upper Tribunal the privilege against self-incrimination is an established principle of law supported by Article 6 ECHR.
>
> 61. Therefore even if Aisha's first passport had been procured by fraud that fraud was not operative on the appellant's application for naturalisation as a British citizen and so Section 43 is not made out. Consequently I allow the appellant's appeal."

Grounds of appeal

6. In three grounds of appeal the SSHD challenged the FtT's findings. In her oral submissions before me Ms Young confirmed that ground 3 did not add anything of substance and she focused entirely upon grounds 1 and 2. Ground 1 submits that the alternative finding that any fraud was not material was an error of law and ground 2 submits that the FtT provided inadequate reasoning for finding that the assertion that the wife was British was an innocent mistake and failed to give reasons for accepting the couple's claim that they only realised this in 2012.

7. Permission to appeal was granted by FtT Judge EB Grant who made this observation:

> "It is arguable that the judge has erred in law by misapprehending the evidence placed before him in particular failing to take into account the passport fraud relating to the appellant's daughter which led to the appellant's daughter being granted a British passport after which the appellant sought his status based on hers. Not only is it arguable that material evidence has not been taken into account by the judge but it is arguable that the judge has given inadequate reasons for his findings at paragraphs 44 to 61."

8. For the avoidance of doubt it has not been submitted that Mr [B]'s naturalisation application was based upon his daughter's British passport. Ms Young made it clear that the SSHD submitted that in providing false information regarding the A's mother's citizenship that reflected adversely upon Mr [B] such that he could not meet the good character provisions and that was the reason he was deprived of his nationality. During her submissions, Ms Young quite rightly focused first of all on ground 2, i.e. the failure to provide or the alleged failure to provide adequate reasons for the finding that the reference to the child's mother in the 2009 passport application and the 2010 renewal application were innocent mistakes.

Discussion

9. I turn to ground 2 first because that reflects the FtT's primary findings of fact. As I have already indicated the FtT heard evidence from Mr [B]. That was accompanied by a detailed witness statement which sought to explain why he stated within his daughter's 2009 passport

application that her mother was British. This is referred to expressly by the judge at [58] where the judge summarises Mr [B]'s misapprehension that his wife was entitled to British nationality because she was born in Sweden, that is within the EU, and was living in the UK. The judge noted that this mistake was repeated in the renewal application in 2010 but accepted that it was only in 2012 that the wife applied to be naturalised as British. The question that is asked rhetorically on behalf of the SSHD is why did the wife have this sudden 'epiphany' in 2012 that she was not entitled to British citizenship, when the family had maintained that she was in 2009 and 2010. The answer to that question can be found in Mr [B]'s witness statement evidence and in his evidence provided to the FtT. That evidence was considered by the FtT and on balance the FtT accepted "*that the couple were labouring until 2012 under a genuine misapprehension as to Mrs [B]'s entitlement to British citizenship*". In short, the FtT heard evidence regarding the specific and discrete point in dispute and preferred Mr [B]'s evidence to the SSHD's analysis or construction of that evidence. Although the FtT's reasons are brief they are in my judgment adequate.

10. Ms Young also drew my attention to the submission that Mr [B] had not explained what prompted the 2012 application by his wife or explained why the mistake had been made in 2009 and 2012. I reject those submissions because in my judgment the short explanation for both those matters can be found within the witness statement that he relied upon which the FtT was entitled to accept.

11. I now turn to the first ground of appeal which relates to the alternative finding that even if Mr [B] had perpetrated some sort of fraud or relied upon a false representation when completing his daughter's passport application in 2009, that was not material to his own application and could not be said to be operative when he made his own application in 2010. Although this ground raises some interesting legal issues, in my view it is unnecessary to deal with it in this decision because on the FtT's findings of fact, the appeal was bound to succeed and it would not be helpful to go into those additional arguments in the circumstances of this case.

Notice of decision

12. The FtT decision does not contain a material error of law and I do not set it aside.

Signed: *UTJ Plimmer* Date: 20 May 2019

Upper Tribunal Judge Plimmer