



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

Appeal Number: DC/00047/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 18 March 2020**

**Decision & Reasons
Promulgated
On 29 April 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AGUIE [M]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms S Jones, Senior Home Office Presenting Officer
For the Respondent: Ms C Simpson, Counsel instructed by Stewart & Co Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal to allow the appeal of the respondent (herein after “the claimant”) against a decision of the Secretary of State on 2 May 2019 to deprive her of her British nationality. The claimant was given a certificate of naturalisation on 14 January 2011 having satisfied the Secretary of State that she was an Italian national who had lived lawfully in the United Kingdom for some years. The decision to deprive her of her citizenship was based on a subsequent discovery that she was not, in fact an Italian national.

2. Appeals to the Upper Tribunal concern alleged errors of law. It is necessary to look very carefully at the First-tier Tribunal's decision. The First-tier Tribunal Judge, rightly, directed his attention precisely to the way the Secretary of State had put her case. At paragraph 2 of his decision and reasons the First-tier Tribunal Judge directed himself, correctly, in the following terms:

"The basis of the decision, as set out in Section 40(3)(a) BNA 1981, was that the [claimant] had fraudulently obtained her British nationality. The false representation needs to be knowingly made. An innocent mistake does not give rise to a power to order deprivation of nationality."
3. The fundamental difficulty in the claimant's case is that she did support her application for British nationality with a document identifying her as an Italian citizen but that document later deemed unreliable. The First-tier Tribunal Judge, correctly, found that the document was a genuine document in the sense that it was issued from the identified registry in Italy but was also satisfied that it gave false information and that the claimant was not in fact an Italian national. As the First-tier Tribunal Judge noted the Secretary of State does not appear to have made any further enquiries about the origin of that document, how it came to be prepared, who prepared it and on what information.
4. The short point is that there was nothing before the First-tier Tribunal that persuaded the judge that the claimant was tainted by the unsatisfactory nature of that document. It had been provided to her, she had said consistently, by her parents.
5. There are elements in this case which would trouble anyone experienced in nationality and immigration law. For example, the claimant has never had an Italian passport and when she first entered the United Kingdom she did so with entry clearance which would have been inappropriate if she were then an Italian national because it would not have been needed. Then appellant also had an Italian national identity card identifying her as a citizen of Cameroon.
6. However, I do not know when the claimant was said to have acquired Italian nationality. It is the claimant's case that she was born in 1986 and went to Italy when she was aged 4. Italy is the country where she grew up. There is nothing intrinsically incongruous about claiming to be an Italian national. Indeed, as the First-tier Tribunal Judge noted, it is the feature of the case that if she was not an Italian national she may well have been able to have obtained Italian nationality by reason of the length of residence in Italy. The point is that when the deficiencies in the case are considered they have to be set against the fact that it is not inherently unbelievable that she had gained Italian nationality. It is also right to say that the document on which the Secretary of State's case depends was sufficiently plausible to satisfy the Secretary of State that she was a citizen of Italy and to grant her nationality as a result.
7. It was clearly the First-tier Tribunal Judge's view that the Secretary of State has not investigated this case adequately and had jumped to the conclusion that the claimant must herself have been dishonest but had produced little or no evidence to persuade him that the conclusion was well founded.
8. I will go through the grounds.

9. The essence of ground 1 is that the First-tier Tribunal Judge “fails to take into account A’s parents’ involvement and therefore fails to explain how A could have been unaware prior to the application to the Italian Registrar, that she was not Italian.”
10. This makes little or no sense. The judge was perfectly aware of the claimant’s parents’ involvement. It is possible (I emphasise I make no finding on this point) that there was some dishonesty involving members of the claimant’s family without in any way involving her. It is possible (again I make no findings on this point) that the claimant was herself knowingly deceptive but the fact that someone else had provided her with an authentic looking certificate of her nationality does not prove that the claimant was dishonest and the First-tier Tribunal was perfectly entitled to reach the conclusion that it did not. Indeed in my judgment I find it hard to see how any other conclusion could have been reached.
11. The second ground criticises the First-tier Tribunal Judge for describing the claimant as “essentially a child at the direction of her parents”. The point is made that the claimant was born in January 1986 and was therefore 18 at the date of her EC applications and 24 at the date of her application for nationality. However, this misses the point. The claimant was 18 years old when she applied for entry clearance. It is her case that her father is in fact a lawyer and that she relied on his advice. As indicated above if it were the case that the claimant were well versed in nationality law and immigration law applying for an entry clearance when she could have entered as of right seems strange but it does not follow that it should have seemed strange to an 18 year old young person. There is nothing perverse or otherwise unlawful in the First-tier Tribunal Judge accepted that the claimant relied on her parents when she first entered the United Kingdom.
12. There is no significance in her age when she produced the unreliable document. If she had known that it was an unreliable document she would be at fault but there was no evidence before the Tribunal that she knew.
13. Ground 3 criticises the judge for having some regard to an earlier unsuccessful decision by the Secretary of State to deprive her of citizenship that was withdrawn. I do not understand the Secretary of State’s complaint here. The decision was indeed withdrawn because it was made wrongly. The judge observed that there was no real change since the earlier decision was withdrawn. It is said that the judge erred by saying that this somehow undermined the Secretary of State’s case. It does not and the judge did not think it did. The Secretary of State’s case is problematic because there is no evidence to support it.
14. The fourth ground complains that the First-tier Tribunal Judge erred in that he:
“Failed entirely to have any regard to the underlying fraud as set at RFRL 11 in that A “*applied for naturalisation as a British citizen on 6 September 2010 (Annex E) and in that application form AN, you stated that your nationality was Italian (form AN, Section 1.9)*”.”
15. The grounds then criticise the First-tier Tribunal Judge for finding that the claimant had relied on an apparently genuine document but she did. The judge

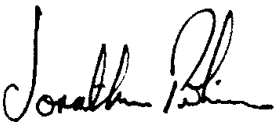
did not ignore the “underlying fraud” but rather found that if there was an underlying fraud the claimant had not been shown to have been involved.

16. The criticism in ground 4 that the judge was wrong to say that the “appellant has had no part in producing the document” is misconceived. It is the claimant’s case that she asked her father to obtain the document but that is not any kind of admission that the claimant asked her father to do anything improper. The simple truth is we do not know how that document came to be written.
17. This is an unsatisfactory case but the difficulty is not with any alleged deficiency by the First-tier Tribunal. The difficulty is that having discovered that the document was unreliable the Secretary of State leapt, without consideration, to the conclusion not only that somebody had been dishonest (which has not been made out) but that the claimant had been dishonest. It was quite obvious to the First-tier Tribunal Judge that that claim was not sustainable. The First-tier Tribunal Judge did not err in law. I will go further. The First-tier Tribunal made the only decision permissible on the evidence disclosed. If there is anything unsatisfactory about the decision the Secretary of State needs to look at her procedures rather than criticise an experienced First-tier Tribunal Judge for exposing their deficiencies.

Notice of Decision

The Secretary of State’s appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 15 April 2020