IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004071
First-tier Tribunal No:
DC/50229/2021
LD/00055/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 April 2023

Before

THE HON. MRS JUSTICE THORNTON DBE
UPPER TRIBUNAL JUDGE KEITH

Between

ANGELA HENRY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. D Balroop, instructed by VH Lawyers Ltd
For the Respondent: Mr. D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 21 February 2023

DETERMINATION AND REASONS

Introduction

1. The Appellant, Ms. Henry, appeals against the decision of the First Tier Tribunal (FTT), promulgated on 6 June 2022, dismissing her appeal against the decision of the Respondent Secretary of State, dated 25 August 2021, notifying her that the Respondent was depriving her of her British citizenship pursuant to section 40(3) of the British Nationality Act 1981.

Background

2. The background is set out in the FTT decision so only a summary is provided here.

3. The Appellant entered the United Kingdom as a visitor on 29 October 2002. She was given leave to remain as a visitor until 2 May 2003. She was subsequently given leave to remain as a student, with repeated extensions, until 30 June 2008.

4. On 30 November 2006, the Appellant submitted an application for a passport in the name of Angella Henry, which was a different spelling from her previous applications for leave to remain. The application was accompanied by a counterfeit birth certificate. The application was refused on the basis of fraud. A letter was sent to the Appellant to invite her to attend the Passport Office for an interview, but she did not respond.

5. On 25 March 2008, the Appellant applied successfully for further leave to remain as the spouse of a British citizen. On 29 March 2010, she applied successfully for indefinite leave to remain as the spouse of a British citizen.

6. On 29 November 2012, she was issued with a certificate of naturalisation/registration as a British citizen.

7. In November 2019, her case was referred to the Home Office unit tasked with investigating removal of immigration status.

8. On 12 February 2020, the Respondent wrote to the Appellant indicating that deprivation proceedings were being considered. The decision to this effect was issued on 25 August 2021.

The Secretary of State's decision letter

9. The Respondent's decision letter says the following about the 2006 passport application:

> '*13. Despite not holding British Citizenship at the time, you submitted an application for a UK passport to Her Majesty's Passport Office (HMPO) on 30 November 2006*
>
> *…*
>
> *14. To accompany your HMPO UK Passport application …, you provided counterfeit birth certificate … The birth certificate stated your details as Angela Henry, born 5 November 1967 in Lewisham Hospital. In January 2007, a check on the birth certificate was conducted by HMPO with the Office of National Statistics and the results confirmed that there was no trace of a birth registered in the details Angella Henry, date of birth 5 November 1967, place of birth Lewisham UK. As a result of the findings, your application for a British passport was refused by HMPO.'*

10. The letter went on to state that the Appellant's representatives could offer no explanation on the Appellant's behalf about the fraudulent application on the basis that the Appellant said she had no recollection of it happening.

11. Reference was made to '*the seriousness of the fraud perpetrated and the fact that you were willing to go to the lengths of obtaining a counterfeit birth certificate to attain a UK Passport to which you were not entitled'.* Concealment of a material fact was said to have led directly to the grant of citizenship on the basis that it denied the Secretary of State the opportunity to accurately assess the Appellant's character:

> '*40. You have knowingly submitted a fraudulent HMPO UK passport application and 4 official Home Office applications over 6 years and on each occasion have, under your name and signature, declared that you were a person of good character. You would not have been considered of good character had the extent of your dishonesty been known to the caseworker considering your naturalisation application.'*

12. The letter referred to relevant guidance (Chapter 55: Deprivation and Nullity of British Citizenship (55.7.1, 55.7.2) and the Guide AN (Naturalisation as a British Citizen – a guide for applicants) and Chapter 18 (Nationality Instructions).

The decision of the First Tier Tribunal Judge

13. The FTT judge identified two primary issues: firstly; whether the Appellant had applied for a passport using a counterfeit birth certificate in 2006 and secondly; whether she had concealed the fact in subsequent applications.

14. In a section headed "Findings of fact" the judge said as follows:

> *'36. It is not in dispute, and I find, that a counterfeit birth certificate in the name of Angella Henry, born on 5 November 1967 at Lewisham Hospital was submitted with the passport application.*
>
> *…*
>
> *39. I find as a fact that the Appellant did not disclose the 2006 passport application in any of her subsequent applications to the Home Office for leave.'*

15. In a section headed 'analysis', the judge said:

> *'40. I did not find the Appellant to be a credible witness. …*
>
> *42. The Appellant was not able to give a credible explanation as to why she was able to recall detailed information about the application and the involvement of Mr Phillip Dacres by November 2021, when she stated in July 2021 that she had no recollection of the application.*
>
> *…*
>
> *47. I conclude on all the evidence that it is more likely than not that the Appellant fabricated the involvement of Phillip Dacres,*

and that the Appellant made the fraudulent application in the knowledge that a counterfeit birth certificate was used.

48. The Appellant also claims that she did not receive the letter issued by the Passport Office in 2007, asking her to attend in relation to her application. The Appellant made numerous applications over the years and has not given evidence to suggest that she had any other difficulties with postal delivery of documents. I find it more likely than not that she received the letter in 2007 asking her to attend the Passport Office, but chose not to respond because she knew that the application was fraudulent.

49. I find that the condition precedent is satisfied because the Appellant's naturalisation was obtained by means of concealment of a material fact, namely that she had made a fraudulent application for a British passport.

...

53. I pay due regard to "the inherent weight that will normally lie on SSHD's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct": Ciceri para. 38(4).

54. I accept that the Appellant has a private life in the United Kingdom. I do not accept that she has a family life in the United Kingdom. Although she submits that she has taken on a maternal role in relation to her niece, Shareefa, following the death of her sister-in-law, she has submitted no supporting evidence such as financial contributions, confirmation from Shareefa's church and/or school. I note also that Shareefa has the support of her father, Derrick Henry. I do not accept on all the evidence that the Appellant's role in Shareefa's life has changed from that of aunt. The Respondent is not proposing to deport the Appellant, and the deprivation of citizenship will not affect their family ties.

...

57. Mr Balroop submitted that there had been delay in the Appellant's case, and relied on the decision in Laci, in which the Respondent's delay in making a deprivation decision in a case which was similar on the facts to the Appellant's case, was considered to have rendered disproportionate the decision to deprive.

58. However, I find that the case of Laci may be distinguished from the Appellant's case. In Laci, the Respondent had begun the process of taking deprivation action and had invited representations from the Appellant but had then done nothing for nine years. That is not the case for this Appellant. The

evidence in the Respondent's bundle shows that the Respondent notified the Appellant's current legal representative by letter in February 2021 that she was considering depriving the Appellant of her British citizenship. Representations were made on behalf of the Appellant in July 2021. The Notice of a Decision to Deprive was then dated 25 August 2021. Accordingly, the delay was approximately six months, and is not unreasonable.

59. Taking into account all of the evidence I find that the reasonably foreseeable consequences of deprivation are not such as to constitute a violation of the Appellant's rights under Article 8 Decision.'

The Law

16. The legal framework was common ground and may be stated shortly.

17. The Secretary of State may deprive a person of a citizenship status which results from her registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of fraud; false representation, or concealment of a material fact (Section 40(3) of the British Nationality Act). The Tribunal must first establish whether the conduct (which in the present case is concealment of a material fact) has taken place. The principles to be applied by the Upper Tribunal in reviewing the Secretary of State's conclusion in this regard are largely the same as those applicable to judicial review. Having done so, the Tribunal must decide for itself, on the evidence before it, whether depriving the appellant of British citizenship would constitute a violation of rights under the European Convention of Human Rights (usually Article 8) (Begum v SIAC [2021] UKSC 7, Ciceri (deprivation of citizenship appeals: principles [2021] UKUT 00238)).

18. Any delay by the Secretary of State in making a decision may be relevant to the question of whether the decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in EB (Kosovo) v Secretary of State for the Home Department [2009] AC 1159 (Laci [2021] EWCA Civ 769).

The Appellant's Grounds of Appeal

19. The following grounds of appeal are advanced.

20. Ground One: The FTT made a material error of law in failing to properly assess the evidence when finding that the Appellant lacked credibility as a witness because she could not recall details about the passport application of 2006 in July 2021 but was able to do so by November 2021. Mr Balroop submitted that the passport application was 15/16 years ago, which meant that recollections were bound to be somewhat general after the passage of time. The FTT judge had, however, failed to take this into account when assessing the apparent inconsistency in the Appellant's accounts.

21. Ground Two: as developed by Mr Balroop on behalf of the Appellant during the hearing, the second ground comprises two elements. First, Mr Balroop submitted that there was no concealment of material fact by the Appellant. Her application for naturalisation was based on her marriage to a British national. She did not conceal the fact of her 2006 passport application because, so far as she was concerned, it was already known to the Secretary of State. This is because so far as the Appellant is concerned the passport section and the nationality section of the Home Office are one and the same. In oral submissions, he submitted that 'one cannot hide what is already known'. The second aspect of Mr Balroop's submissions on this ground was that the FTT judge erred in finding only 6 months of delay. He submitted that the delay had started in 2013 if not earlier and he pointed to a witness statement from an Executive Officer in the Identity and Passport Service, dated 16 October 2013, which indicated that investigations were then underway into the Appellant's passport application. It was said that the judge had not taken account of this delay which lessened the public interest in deprivation and the Appellant ought to be allowed the opportunity to make submissions on this. Mr Balroop submitted that the principle in Laci in relation to delay is applicable and the delay was considerable.

22. Ground Three: the FTT judge erred in her assessment of the Appellant's family life with her niece and in particular her role as de facto mother to her niece. Mr Balroop submitted that there was no cross examination of the Appellant and therefore the facts ought to be accepted i.e. that she was in effect a mother substitute for the niece. The judge should have looked at all the evidence and not just the family finances.

Discussion

23. At the hearing it transpired that the Tribunal did not have the most recent copy of the Appellant's grounds of appeal. On enquiry by the Tribunal, Mr Balroop confirmed that we could proceed with the hearing without sight of the document as the changes were not material. After the hearing we obtained the most recent copy of the Grounds and considered them prior to coming to our decision.

24. On behalf of the Appellant, Mr Balroop took ground 1 shortly, focussing his submissions on grounds 2 and 3.

25. In relation to ground 3, the Appellant also sought to make an application under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The evidence was said to relate to the Appellant's claimed family life with her niece and to be necessary for the Tribunal to 'fully understand the relationship between the Appellant, her brother and her niece. It comprises a witness statement from her brother explaining the death of his wife and the support provided by the Appellant; pictures of the Appellant and her niece; a letter from the Appellant's niece and some correspondence.

Ground 1

26. We are not persuaded that there is any merit in ground 1, which in our assessment amounts to an attempt to re-argue the merits and does not disclose any error of law.

27. As the Supreme Court said in HA (Iraq) v SSHD [2022] UKSC 22, it is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law… (72).

28. Having heard her give evidence, the FTT judge concluded that the Appellant was not a credible witness. She had given inconsistent evidence in relation to the 2006 passport application. The judge's reasons rely on a number of factors, which go beyond the Appellant's ability to recall the application process which forms the basis of this ground of appeal. The judge's reasons include the limited evidence provided to support the Appellant's account of the application process as well as the inherent implausibility of her account:

> *'I find it implausible that a solicitor would obtain a counterfeit birth certificate and pay for a passport application against the instructions of his client and for no financial reward.'* (43)

Ground 2

Concealment of material fact

29. As Mr Balroop conceded, the Appellant did not disclose the 2006 passport application on her application form for naturalisation. However, the Appellant confirmed in the application form that she had read and understood Guide AN which provides materially as follows:

> *'3.12 You must say whether you have been involved in anything which might indicate that you are not of good character. You must give information about any of these activities no matter how long ago it was. … If you are in any doubt about whether you have done something or it has been alleged that you have done something which might lead us to think that you are not of good character you should say so.*
>
> *You must tell us if you have practiced deception in your dealings with the Home Office or other Government Departments (eg by providing false information or fraudulent documents). This will be taken in to account in considering whether you meet the good character requirement.…'*
>
> (emphasis added).

30. Guidance to caseworkers (Nationality Instructions Chapter 18 Section 2.1) instructs caseworkers that they should not normally consider applicants to be of good character if there is information to suggest they had practised deceit in their dealings with the UK Government.

31. The logic of Mr Balroop's submissions on this ground (that the Appellant did not disclose the 2006 application because, so far as she was concerned, there was no need to do so) is that an applicant need not answer questions on the application form which an applicant considers the Home Office ought to know about already. This would render the present system unworkable and runs directly counter to the extract from Guide AN cited above. In any event, whilst cloaked in the language of unlawfulness, Mr Balroop's submission relies on evidence not given by the Appellant as to her understanding of the inter-relationship between the passport and naturalisation sections of the Home Office.

Delay

32. The FTT judge was aware of the principle of delay because she addressed it in the legal framework and again in her analysis. We do not accept Mr Balroop's submission that delay must be taken to have run from 2013. As Mr Clarke pointed out, the 2013 statement relied on by Mr Balroop appears to have been prepared following a request from the Department of Work and Pensions, not the Home Office. Of itself therefore, the statement does not indicate the Home Office was investigating the Appellant's conduct at this stage. Further, as Laci [2021] EWCA Civ 769 and EB Kosovo v SSHD [2008] UKHL 41 make clear, the significance of delay in decision making is that an applicant's sense of the impermanence of her position fades. There is no suggestion that the Appellant was aware of the witness statement such that she might have been able to draw comfort from the lack of apparent action on the part of the Respondent as time passed. So far as the Appellant was concerned, her legal representatives were notified in February 2021 that deprivation was under consideration. The relevant policy guidance makes clear that there is no time limit for deprivation proceedings. We agree with the FTT judge that there are material distinctions between the case of Laci and the present case.

33. Ground 2 fails.

Ground 3

34. We are not persuaded that the judge made a material error in her assessment of family life. Even accepting the Appellant's case at its highest, that she is a mother substitute for her niece, the decision under scrutiny is a deprivation decision not a removal decision. The Appellant can continue to provide support and guidance for her niece irrespective of her precise citizenship status. Accordingly, we do not see how any impact on the niece (e.g. emotional impact) arising from deprivation could outweigh the inherent weight in the maintenance of the integrity of British nationality law. Mr Balroop expressed a concern that the FTT analysis of family life might prejudice the Appellant in any future decision on removal should that decision come to be made. However, the 'Devaseelan

guidelines' (on the hearing of second appeals) are not intended to be a straitjacket. It will be open to the Appellant to produce evidence in this respect at the appropriate time.

35. Dealing briefly with the Rule 15(2A) application to admit new evidence. We take the Ladd v Marshall principles as our starting point recognising that we have some flexibility beyond those principles ((Kabir v SSHD [2019] Civ 1162)). Nevertheless, there is no reason why the Appellant could not, with reasonable diligence, have made available more detailed evidence on family life to the FTT. We observe that the judge had before her letters of support from the Appellant's brothers and her niece. The email correspondence with the school raises questions which would require exploration (e.g. did the Appellant send emails of this nature prior to the FTT decision or in response to the comment in the judgment about the lack of evidence in this regard). The new evidence does not show a clear misapprehension of established fact on the part of the FTT. Nor is it evidence that would, in our judgment, have inevitably resolved the relevant issue in the Appellant's favour given the decision making under scrutiny. Accordingly, we do not permit the new evidence to be admitted.

36. Ground 3 fails.

Decision

37. The appeal is dismissed.

Signed: MRS JUSTICE THORNTON DBE Date: 21/03/2023

The Hon. Mrs Justice Thornton DBE