



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000544
First-tier Tribunal No:
DC/00038/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued
On the 19 July 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

The Secretary of State for the Home Department

Appellant

and

Mr Ramzi Soufan
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Ms L Longhurst-Woods, Direct Access

Heard at Field House on 7 June 2023

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Shiner, promulgated on 25 January 2023, allowing Mr Soufan's appeal against the decision of the Secretary of State made on 4 August 2022 to deprive him of his British citizenship pursuant to Section 40(3) of the British Nationality Act 1981 ("the 1981 Act").

Background

2. This is an unusual case in that it concerns registration as a British Citizen under the 1981 Act. The appellant was born on 28 August 1967 in Jwaya, Lebanon. It is his case that despite being born in Lebanon he did not acquire Lebanese citizenship either through birth there, or through his parents, or through his marriage to a Lebanese national. He was a British Overseas Citizen, was not entitled to any other nationality and thus was

entitled to register as a British citizen under Section 4(B) of the 1981 Act on the basis that he held no other citizenship or nationality in addition to being a British overseas citizen.

3. The appellant has a brother, Khodor who is seven years younger than him and was born in Kano, Nigeria in 1976.
4. On 12 February 2021, Mr Soufan's case was referred to the state's review unit by HM Passport Office alongside that of his brother, Khodor. That was because copies of Khodor's Lebanese passports issued prior to the grant of British citizenship came to light indicating that he had been a Lebanese national prior to registering under Section 4B. This led the Secretary of State to consider that the appellant, as his brother, and sharing the same parents, was also Lebanese and had misled the Secretary of State in that, contrary to what he had declared when applying for registration, he held another nationality at that time.
5. During the investigation process, Mr Soufan is recorded as having told the Secretary of State that he did not have a brother. His position on that changed, following further correspondence and Mr Soudan explained how he had, when asked in 2020, said that he did not have a brother.
6. The Secretary of State considered that, on the balance of probabilities, as Mr Soufan's brother had held Lebanese nationality prior to registration as a British citizen, Mr Soufan is also a Lebanese national; and, was aware of this prior to registration as a British citizen on 3 February 2010.
7. The Secretary of State considered that other factors indicated he is Lebanese. These include that Mr Soufan's birth was registered in Lebanon on 2 September 1967, and had a Lebanese marriage certificate. It was observed that although he said that his marriage actually took place in Nigeria, he had not provided evidence that the marriage took place there.

The proceedings before the First-Tier Tribunal

8. Mr Soufan appealed, accepting that he has a brother but that he was unaware of the details of the brother's deprivation of citizenship [8]; that situation with regard to the brother was not relevant to any deception perpetrated with a view to obtaining citizenship; and, that he had no recollection of ever applying for a visa to enter the United Kingdom or as having travelled on his British passport [10].
9. He explained [14] that his father had held an honorary Guinean passport he was granted for his work to the Guinean economy, that it was not a deception and he maintained that his father was, as shown, born in Lagos.
10. It is averred also [16] that because Mr Soufan's father was born in Nigeria before it obtained independence and did not acquire Nigerian citizenship at that point, he acquired British overseas citizenship which he has passed down to Mr Soufan. It is submitted also [17] that British overseas

citizenship was granted to citizens of former UK colonies, which Guinea was not [17].

11. It was submitted also that registration of Mr Soufan's birth was a mere formality and did not confer to citizenship on him, the registration of the certificate being from his Lebanese mother's status record not from his father who has none. As Lebanese women cannot pass on their citizenship to their children, this corroborates his case that he had not acquired Lebanese citizenship by birth.

12. The appeal before the First-tier Tribunal was determined on the basis of the papers only, both parties having consented to this. The judge directed himself as to the law [11 to 16].

13. At paragraph [26] the judge noted:

26. The SSHD further relies, amongst other matters, in support of the assertion that the Appellant is a Lebanese citizen, upon

(1) The SSHD's conclusion that Khodor Soufan is a Lebanese citizen.

(2) The Appellant has a Lebanese birth certificate registered on the 2nd September 1967,

(3) The Appellant has provided no evidence of a visa used to enter the Lebanon on his visits (when requested to provide such evidence),

(4) The Appellant was married and so would have needed permission to marry if he was a foreigner, and has not produced such documentary evidence nor evidence that he married in Nigeria as claimed.

(5) The Appellant's parents would have been required to register their marriage in the Lebanon for the Appellant's birth to be legitimate - a reference I took to the absence of evidence in this regard.

(6) The Appellant has failed to provide his father's birth certificate or evidence of his nationality.

(7) The SSHD asserts that the Brother was able to obtain Lebanese passports even though he was born in Nigeria.

14. The judge directed himself that he would follow Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238 (IAC) [32] to [33]. The judge found that:-

(i) Mr Soufan does have a brother Khodor, rejecting the claim that he was estranged from him when he spoke to a counter fraud investigator in December 2020, doing so as he wished to distance himself from the brother due to the investigation [36];

(ii) there was no documentary or other evidence relating to Khodor or his circumstances and the bare assertion to that effect, if it were true, would only take it "as some very light inference in showing that the

Appellant was also Lebanese - noting their age difference of 8 ½ years”;

- (iii) relying on an IRBD report, it was “practically impossible for anyone who is not born to a Lebanese male to obtain Lebanese citizenship”, the assertion that citizenship can only be acquired paternally was not challenged by the Secretary of State nor was there evidence that only Lebanese citizens can obtain Lebanese birth certificates, this indicating only that he was born there;
- (iv) there was nothing that the Secretary of State had submitted to suggest that retaining documentation for some 50 years in respect of past visas, permission as a foreigner to marry in Lebanon and the evidence that the registration of his birth in Lebanon was unrealistic;
- (v) Mr Soufan’s birth certificate showed that he was registered under the mother’s name and not the father’s suggesting it was done so because the father did not have a civil status record, it not being reasonable to assume that the appellant’s father was Lebanese because the birth was registered there, there being no challenge to the documentary evidence as to the father’s birth certificate;
- (vi) it was not unreasonable for Mr Soufan to have failed to produce documentation relating to how he was able to get permission to marry in Lebanon [41] and had failed to show documentary evidence such as visas permitting him to enter Lebanon [42];
- (vii) Mr Soufan had not held Lebanese nationality at the time he made his application, the Secretary of State not having made good the assertion by production of Khodor’s Lebanese passport, or other documentary evidence to confirm that;
- (viii) there was very little evidence to establish that Mr Soufan had or has Lebanese nationality and that there was almost no evidence of his brother’s Lebanese nationality, nor would such a finding count against the appellant in light of the age gap between the two, Khodor being the younger, there being no argument as to why a younger brother having a nationality would suggest any more than an inference that the older brother would also share nationality without evidence in the circumstances of each acquisition of nationality by both; that birth in Lebanon was of limited evidence as it is getting married in the country.

15. The Secretary of State applied permission to appeal on several grounds, submitting that the judge had erred:-

- (i) in accepting the appellant’s background evidence, in particular the report from the Immigration Refugee Board (“IRB”)of Canada, without anxious scrutiny; and, that had he done so he would have realised there were provisions permitting non-Lebanese nationals to acquire citizenship. Given that the appellant’s father could have obtained

Lebanese citizenship, the judge should have factored that into account, not just one aspect which favoured the appellant and that the judge had made a mistake of fact regarding the brother's citizenship, amplified by the mistakenly based findings that the brother been able obtain citizenship due to his claims regarding his father's status and the age difference between the brothers;

- (ii) when addressing a legal issue such as citizenship, in which Mr Soufan advanced propositions about foreign law, he should have adduced expert evidence to that effect;
- (iii) when assessing the birth being registered against the mother's civil status record in the he had not considered whether Mr Soufan had the ability to access citizenship which on the face of it he did in the form of a curtesy residence permit and subsequent demand for naturalisation, the IRB report calling into question the letter relied upon by Mr Soufan states there was no basis which he could have obtained Lebanese citizenship;
- (iv) that whilst it was accepted the judge did not have the appellant's brother's passport, he should have requested that from his appeals on the papers, he should have requested the Secretary of State to produce the document; or, in the alternative, given there was no challenge by the appellant to this brother's citizenship, he had accepted it outright;
- (v) in failing as matter of fairness to hold an oral hearing, it being unclear what the judge meant [38] that the Secretary of State did not actively challenge the position on the difficulty obtaining citizenship and that unfairness had arisen;
- (vi) in concluding that the Secretary of State was not challenging the fact that the appellant is a British overseas national, it being asserted that the basis of the refusal letter is a direct challenge to his acquisition of British overseas national status, there being on concession to that effect;
- (vii) in failing to have regard to material evidence, having found his credibility was adversely affected and did not assess the reliability of the Mr Soufan's evidence and the lack of the challenge the judge should have ordered an oral hearing
- (viii) in failing to give adequate reasons as to why, on the assumption that the brother was Lebanese, he had only taken it as a light inference that the appellant was also Lebanese and that the judge had turned to his mind as to whether it was **Wednesbury** unreasonable for the Secretary of State to deem the appellant to be Lebanese given the vintage of the passport and that they claimed to have the same parents and alleged lack of access to Lebanese nationality;

16. The Secretary of State also made an application pursuant to Rule 15(2A) to adduce copies of Khodor's visa application interview, Lebanese passport and other documents, given on the basis that failure to do so would, following E and R [2004] EWCA Civ 49. It was submitted it was in the interests of justice to admit this documentation now although it was unclear why the evidence was not included in the bundle submitted.
17. I heard submissions from both representatives. Initially, Mr Clarke sought permission to adduce documents referred to above. He addressed me on the Ladd & Marshall test although accepting that there was difficulty with respect to limb one. He submitted that, nonetheless, despite misgivings there might be about the grounds of appeal, it was in the interests of justice to admit the documents.
18. In assessing whether to admit the documents, I have applied the principles set out in E & R v SSHD [2004] EWCA Civ 49 at [91] - [92] per Carnwath LJ:

91. In summary, we have concluded in relation to the powers of this Court:

- i) An appeal to this Court on a question of law is confined to reviewing a particular decision of the Tribunal, and does not encompass a wider power to review the subsequent conduct of the Secretary of State;
- ii) Such an appeal may be made on the basis of unfairness resulting from "misunderstanding or ignorance of an established and relevant fact" (as explained by Lord Slynn in *CICB and Alconbury*);
- iii) The admission of new evidence on such an appeal is subject to *Ladd v Marshall* principles, which may be departed from in exceptional circumstances where the interests of justice require.

92. In relation to the role of the IAT, we have concluded

- i) The Tribunal remained seized of the appeal, and therefore able to take account of new evidence, up until the time when the decision was formally notified to the parties;
- ii) Following the decision, when it was considering the applications for leave to appeal to this Court, it had a discretion to direct a re-hearing; this power was not dependent on its finding an arguable error of law in its original decision.
- iii) However, in exercising such discretion, the principle of finality would be important. To justify reopening the case, the IAT would normally need to be satisfied that there was a risk of serious injustice, because of something which had gone wrong at the hearing, or some important evidence which had been overlooked; and in considering whether to admit new evidence, it should be guided by Ladd v Marshall principles, subject to any exceptional factors.

19. I therefore asked:

- (i) Could the fresh evidence have been obtained with reasonable diligence for use at the hearing?
 - (ii) if given, would it probably have had an important influence on the result; and,
 - (iii) is it apparently credible although not necessarily incontrovertible?
20. The Secretary of State accepts in her grounds that there was a mistake in that the relevant documents, which she now ceases to rely, had not been submitted to the Tribunal. It therefore follows that the Secretary of State simply cannot make good the first limb of the test. The documents were available; she simply failed to submit them. That said, the documents would have made an important influence on the result. Further, the judge considered the matter in the alternative and proceeded on the basis, without making any express finding, that the brother had Lebanese citizenship.
21. I turn next to the principles set out in Akter (appellate jurisdiction; E and R challenges:) [2021] UKUT 272, at [39] and [40].
22. I am not satisfied that there are exceptional circumstances in this case, such a discretion should be exercised to depart from the principles set out in Ladd v Marshall. It was of course always open to the Secretary of State, given the complexity of this case, to request an oral hearing and it is unclear why she did not do so, given the consequences it had ability to defend her decision, bearing in mind that the burden was her, could be discharged.
23. Further, whether or not, the decision is otherwise vitiated by legal error is another matter to which I turn next.
24. As Mr Clarke accepted, there is no direct challenge to the fact that the judge undertook a merits-based approach in determining whether there had been deception. He accepted also that the drafter of the grounds appeared not to appreciate there was a difference between British overseas citizenship and the acquisition of British nationality by registration pursuant to Section 4B of the 1981 Act, which confuses the grounds to a significant extent. It makes the grounds somewhat difficult to follow.
25. I bear in mind in assessing this decision that an Appellate Tribunal should be reticent before interfering with a decision of the First-tier Tribunal, albeit that in this case, this is not one in which oral evidence was heard - see HA (Iraq) [2022] UKSC 22 at [71].
26. I reject the submission that the judge erred in not directing that the appeal be determined at an oral hearing. The Secretary of State was aware of material that had been supplied, yet at no stage requested an

oral hearing; on the contrary she agreed to the appeal being determined on the papers.

27. There is insufficient merit in ground 1. There is insufficient evidence to show that Mr Soufan would have come within the exception referred to at [2]. What the Secretary of State calls for is speculation, not anxious scrutiny. While it is correct that matters of foreign law are facts to be found by a Tribunal, it will only be necessary to call expert evidence when it is a point in dispute. Neither the grounds, nor Mr Clarke's submissions properly identify which proposition of law was in question, and the grounds at [5] err in suggesting that whether Mr Soufan might be able to access Lebanese citizenship which is not the issue. It is whether he was a Lebanese national, and this was averred [4] and [5] fail properly to identify an error of law.
28. With respect to requesting the brother's passport [6], it is not for a Tribunal to make a party's case for it. The Secretary of State could have adduced it. Further, and in any event, it is not clear that the judge ignored the fact of the brother's citizenship entirely, finding in the alternative that little weight attached to that.
29. With regard to ground 2, the Secretary of State was aware of the material submitted but did not challenge it. It is sufficiently clear from the decision at [38] that the judge meant that the proposition that Lebanese citizenship was acquired only paternally. In passing I note that is the position the Secretary of State takes in her CPIN on Lebanon from 2018 at 5.1.2 - 5.1.4. There is thus no merit in this point or the suggestion that there was any point of foreign law actively in dispute.
30. Ground 3 is problematic. The issue was British Citizenship acquired by registration, not British Overseas Citizenship; whether or not Mr Soufan had been entitled to that was not the issue.
31. Ground 5 is in reality a challenge to weight and is thus difficult to make out. Nonetheless, the judge fails adequately to explain why, if Mr Soufan's brother, who has the same parentage and was not born in Lebanon, had acquired Lebanese citizenship - something he accepts is very difficult to achieve - is not a matter which attracts weight. But, Khodor's citizenship was a fact to be proved, and thus this finding in the alternative is not one capable of affecting the outcome.
32. I turn finally to ground 4. The core of Mr Soufan's case is that he did not acquire Lebanese nationality because although his father was of Lebanese origin, he had not acquired Lebanese nationality and that it is not possible for that to be passed on through the maternal line. As Mr Soufan's Counsel submitted, the submissions with regard to foreign law is of limited assistance given that it is not appearing to be a matter of dispute between the parties, to any serious extent, that Lebanese citizenship was not passed through the mother.

33. But, much of the Mr Soufan's case relies on the veracity of what he has said about his father, his father's citizenship and why he had not acquired Lebanese citizenship. His counsel accepted that, owing to being born in Lebanon, the appellant would, if his father were Lebanese, also be a Lebanese citizen.
34. I bear in mind that the burden was on the Secretary of State. As was noted in DK & RK (ETS: SSHD evidence; proof) India [2022] UKT 112 at [52] the question is whether the party with the burden of proof has adduced sufficient evidence to enable a finding of fact in that party's favour.
35. The evidence relied upon here was the position of Khodor, and, also, Mr Soufan not telling the truth about having a brother. The judge found [35] that he has not told the truth when speaking to a counter fraud investigator, and [36] rejected the claim that they were estranged. He found that it was to distance himself from Khodor and that this credibility was undermined. The judge had therefore found that Mr Soufan had motive not to tell the truth.
36. I am not satisfied that the judge has properly explained why, having made such serious credibility findings against the appellant, he accepted the assertions regarding Mr Soufan's father's birth and nationality given that, as he was seeking to deflect queries about his brother, he had everything to gain by not telling the truth.
37. Further, in reaching this conclusion I note of course that the burden was on the Secretary of State. She had identified a number of matters which gave rise to concerns about the appellant's nationality, not least of which is that the parent would have registered their marriage in Lebanon for the appellant's birth to be legitimate.
38. Accordingly, for these reasons, I find the decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
39. In light of the complexity of this issue and given that there is no need, the fact that this was previously determined on the papers and it will now have to be determined by way of oral hearing, and may require the prosecution of expert evidence as to Lebanese nationality law insofar as it relates to Mr Soufan's father and possibly also evidence as to how the father (and Mr Soufan) could have acquired British overseas citizenship, I consider that the matter should be remitted to the First-tier Tribunal for it to consider afresh as an oral hearing is needed.

Notice of Decision

The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.

I remit it to the First-tier Tribunal which should direct an oral hearing.

Signed

Jeremy K H Rintoul

Judge of the Upper Tribunal