



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

Appeal Number: UI-2023-003958
DC/50178/2022
LD/00028/2023

THE IMMIGRATION ACTS

**Heard at Field House
On 30 November 2023**

**Decision & Reasons
Issues:
On 18 December 2023**

Before

**THE HONOURABLE MRS JUSTICE THORNTON
UPPER TRIBUNAL JUDGE RIMINGTON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SRIYANI CHANDRALATHA PAHALA YAMANNALE GEDARA
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr J Martin, instructed by Nag Law

DETERMINATION AND REASONS

Introduction

1. The Secretary of State, appeals against the decision of the First Tier Tribunal, promulgated on 14 August 2023 upholding Ms Gedera's appeal against the decision of the Secretary of State, dated 13 August 2022, notifying her that the Secretary of State was depriving her of British citizenship, pursuant to section 40(3) of the British Nationality Act 1981.

Immigration history

2. Ms Gedara is a national of Sri Lanka, born on 12 June 1979. She entered the UK on 21 September 2001 having been granted entry clearance as the minor child of her mother, who was by then present and settled in the UK. The date of birth given on her entry clearance application was 14 March 1985, misrepresenting her as 16 years old when she was in fact 22 years old.
3. In November 2002, Ms Gedara's mother submitted an application for her own naturalisation as a British citizen, and named Ms Gedara in that application as a child under 18 years old who wished to apply for British citizenship, thereby maintaining the previous deception as to her date of birth. The application was successful and Ms Gedara was subsequently registered as a British citizen.
4. On 1 March 2019 Ms Gedara's case was referred to the Secretary of State's Status Review Unit after enquiries were made of the Sri Lankan authorities by HM Passport Office. The outcome was confirmation that her entry clearance to the UK had been obtained using a false birth certificate and false passport, both giving her date of birth as 14 March 1985.
5. On 11 February 2021 the Secretary of State wrote to Ms Gedara informing her she had reason to believe her British citizenship had been obtained by fraud and required a response. On 28 February 2021, Ms Gedara's representatives replied, providing various documents, information and making submissions.
6. On 8 June 2022, the Secretary of State wrote to Ms Gedara's representatives giving notice of her decision to deprive the Appellant of her British citizenship. That decision was subsequently withdrawn on the basis the information provided by Ms Gedara's representatives had not been considered in the making of that decision.
7. On 12 August 2022, the Secretary of State gave further notice to Ms Gedara of her decision to deprive the Appellant of her British citizenship under section 40(3) of the British Nationality Act 1981. Ms Gedara appealed the decision to the First Tier Tribunal.

The decision of the First Tier Tribunal judge

8. The judge set out the legal framework for the decision making, as to which no challenge is made. The framework comprises s40(3) of the British Nationality Act 1981. Caselaw includes Chimi (deprivation appeals;

scope and evidence) [2023] UKUT 00115 (IAC) and Begum [2021] UKSC 7. The judge also cited extracts from Chapter 55 of the Secretary of State's Nationality Instructions titled "Deprivation and Nullity of British citizenship", which provides guidance to decision makers on deprivation on grounds of fraud, false representation or concealment of material fact.

9. The judge directed herself to the following question: did the Secretary of State materially err in law when she decided that the condition precedent in s40(2) or s40(3) of the British Nationality Act 1981 was satisfied?
10. At paragraphs 25 - 31 of the decision the judge summarised Ms Gedera's evidence. This included Ms Gedera's explanation that she had suffered from sexual abuse as a child which led to a decision by her male relatives to send her overseas, which was handled by them, despite her being 22 years old at the time. When given a passport by her uncle she noticed her date of birth was wrong, asked her uncle about it, and was told it was the only way to get her out of the country. Once settled in the UK, her mother was helped to make a naturalisation application by a lawyer, as her English was not very good either. She was named in that application as a child under 18 who wished to apply for British citizenship. She has since seen a copy of that application in the Home Office bundle sent to her solicitors, and can see the same incorrect date of birth was given in that application form. The form was signed by her mother. She did not complete or sign that form, and had never seen it before until receiving the Home Office bundle from her solicitors.
11. The judge then directed herself as follows (paragraphs 51 and 52):
 - 51 My role is not to conduct again the exercise of deciding whether the condition precedent in section 40(3) is met, but to consider whether the Respondent has, in concluding it is met, made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held, and to do so considering only evidence which was before the Respondent or which is otherwise relevant to establishing a pleaded error of law in the decision under challenge.
 - 52 The Respondent made various findings of fact as to the activities of the Appellant: "she perpetrated a fraud," "she applied to be registered as a British citizen," and she "provided information with the intention of gaining citizenship." These findings are at odds with facts the Respondent has accepted and evidence she has not challenged, including that the Appellant's uncle procured the false passport and entry clearance for her, and her mother completed and submitted her own naturalisation application, including the Appellant on that application without the Appellant's involvement. They are therefore findings unsupported by the evidence.
12. Having addressed the evidence the judge reached the following conclusion:

58 It is clear that false representation has taken place here, in the form of the wrong date of birth on the Appellant's entry clearance application and on her mother's naturalization application. It is also clear that false presentation was material to the Appellant's acquisition of British citizenship. However, the conclusions that this false representation was dishonestly made by the Appellant, and that there was an intention by the Appellant to deceive, are not supported by the evidence and are based on a view of the evidence that could not reasonably be held.

59 In light of the foregoing, the condition precedent in section 40(3) is not met, and the appeal is allowed on that basis.

Legal framework

13. Section 40(3) of the 1981 Act provides as follows:

'The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—

(a) fraud,

(b) false representation, or

(c) concealment of a material fact.'

Analysis

14. Section 40(3) of the British Nationality Act entitles the Secretary of State to consider the exercise of discretion to deprive a person of citizenship if satisfied that naturalisation was obtained "by means of" fraud, false representation or concealment of a material fact. It is apparent from the phrase "by means of" that the Act does not require the fraud, false representation or concealment to have been done, or committed, by the person who subsequently obtained the citizenship, before the Secretary of State is entitled to consider the exercise of discretion. It is sufficient that the naturalisation has been obtained by means of fraud or false representation.

15. In the present case it was not disputed that a fraud or a false representation had been perpetrated by Ms Gedera's family members, on the basis of which Ms Gedera obtained citizenship. The judge found as such ('It is clear that false representation has taken place here'(58)). Accordingly, the judge erred in concluding that the so called 'condition precedent' in section 40(3) was not met (See Chimi (deprivation appeals: scope and evidence [2023] UKUT 000115 (IAC)).

16. It is apparent that there was considerable debate before the First Tier Tribunal as to the circumstances in which the false representations were made and in particular the extent to which Ms Gedera could be considered responsible for the conduct given her personal circumstances,

which were said to include coercion and control. Those matters may be relevant to how the Secretary of State exercises his discretion to deprive Ms Gedera of citizenship. As a matter of statutory construction they are not, however, relevant to the entitlement to exercise that discretion.

17. Counsel for Ms Gedera pointed to the definitions of false representation and fraud in Chapter 55 of the Secretary of State's guidance and submitted they supported the judge's construction of the statute. Any such definitions cannot, however, alter the construction of section 40(3).
18. Counsel also sought to submit that any error of statutory construction by the judge was not material because the judge had, in effect, conducted a review of the exercise of the Secretary of State's discretion and concluded that the discretion had been exercised irrationally for the reasons explained in the decision. The difficulty with the submission is that the judge does not grapple with section 55.7.11.2 of the Secretary of State's guidance which was relied on by the Secretary of State in his decision letter. The section of the guidance explains that all adults are expected to take responsibility for the information they provide on acquisition of citizenship and sets out examples of conduct which will not be regarded as mitigating the fraud or false representation. The examples include: where the applicant claims that a family member acted on their behalf; where the applicant claims that a representative advised them to provide false details and where an applicant claims that she was coerced into providing false information or concealing a fact, but has since had the opportunity to advise the Home Office of the correct position but failed to do so. All three examples appear pertinent to the facts of the present case and the omission of their consideration was a material error of law. Accordingly, the appropriate course of action is for the decision to be set aside and the matter to be remitted to the First Tier Tribunal, to be considered afresh by another judge.
19. On behalf of the Secretary of State, Mr Melvin made submissions that the judge had erred in taking into account evidence that post-dated the decision of the Secretary of State to deprive Ms Gedera of her citizenship. On behalf of Ms Gedera, Mr Martin disputed that the evidence in question was not before the Secretary of State. Given the conclusions reached above in relation to statutory construction, we have not found it necessary to address the evidential points.

Decision

20. The decision of the First Tier Tribunal is set aside. The matter is remitted back to the First Tier Tribunal, to be considered afresh by another judge.
21. No anonymity order was sought and none is made.

Signed:

Date:

Mrs Justice Thornton

12/12/23