



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

Appeal Number: DC/00011/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 7 December 2017**

**Decision & Reasons
Promulgated
On 11 December 2017**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**DANY IBRAHIM
aka
DANY TAAN IBRAHIM
[NO ANONYMITY ORDER]**

Respondent

Representation:

For the appellant: Mr Ian Jarvis, a Senior Home Office Presenting Officer

For the respondent: Ms Celia Record of Counsel

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision under section 40(6) of the British Nationality Act 1981 to deprive the claimant of citizenship of the United Kingdom, because she considers that the claimant is, and at all material times was, a citizen of Lebanon.

Chronology

November/December 2000: British Protected Person application ('the BPP application')

2. On 30 November 2000, the claimant applied at the British Embassy in Beirut for British Protected Person (BPP) status by descent, based on his father's status as a person born in the former British Protectorate of Sierra Leone. The claimant's father was granted BPP status on that basis, which has never been revoked. The claimant was 27 when he made the BPP application.
3. There is no copy in the bundle of any covering letter accompanying the BPP application, but the Secretary of State's records indicate that the claimant supplied copies of pages from a Lebanese passport in the name of Dany Taan Ibrahim, his father Taan Ibrahim's birth certificate, and a certified extract of the birth record in the district of Kenema in the Western Area of Sierra Leone purporting to show that Taan Ibrahim's birth was registered at Kenema, Sierra Leone, in November 1936. The claimant's father is described on that document as the male child of the claimant's grandfather Dibe Ibrahim, a Lebanese citizen, and his grandmother Haidar Ibrahim, also a Lebanese citizen.
4. On 4 December 2000, the claimant was granted the status of a British Protected Person (BPP) and issued with a British passport.

August- December 2004: British citizenship application (the 2004 application)

5. On 26 August 2004, the claimant applied for British citizenship, pursuant to section 4(B) of the British Nationality Act 1981, which provided for registration as a British citizen for 'certain persons without other citizenship'. The 2004 application contained a warning that 'to give false information on this form knowingly or recklessly is a criminal offence' pursuant to section 46(1) of the British Nationality Act 1981. The claimant signed a declaration that 'to the best of my knowledge and belief, the information given in this application is correct'. At section 8 of the 2004 application form, which deals with current nationality, the claimant said that he was a BPP by ancestry (because of his father's status) and confirmed by ticking a box that he had never held, nor did he hold, any other citizenship or nationality.
6. The application was accompanied by:
 - (a) a copy of the claimant's birth certificate, showing him as born on September 25 1973 to Taan Ibrahim and Zeinab Ibrahim (with the correct date of birth for each of them), in Beirut, Lebanon, where his mother was living;
 - (b) a letter from the Sierra Leonean authorities dated 16 March 2004, stating that 'According to our records, [the claimant] has never applied for nor has he been issued with a Sierra Leonean passport'.

7. On 4 December 2004, the claimant was granted British citizenship and on 2 December 2004, he was issued with a British passport, expiring 2 September 2015.
8. The claimant then married and started a family in the United Kingdom. His wife and children are all British citizens.

September 2015: Application to renew claimant's British passport

9. The claimant's passport expired on 2 September 2015, and at the end of 2015, he applied to renew his passport, triggering further investigation into his status and entitlement to BPP and thus British citizen status. There was a delay, while the Secretary of State made her enquiries.

October 2016 - January 2017: deprivation of citizenship

10. On 10 October 2016, the Secretary of State wrote to the claimant say that she was reviewing his case and was considering depriving him of his British citizen status and right of abode because she had received information suggesting that he provided non-genuine documents as part of his BPP application in 2000, and further, that she was in possession of documents attesting to his Lebanese nationality, including a copy of his Lebanese passport, which he had submitted to the British Embassy in Beirut in 2000.
11. The letter stated that the claimant must reply in writing, within 21 days, with the following information:
 - (a) Evidence that the claimant was entitled to a passport as a BPP;
 - (b) An explanation as to why the claimant in the 2004 application claimed not to hold Lebanese nationality;
 - (c) Any information the claimant wished to be taken into account regarding the reasons for his false representations;
 - (d) Any family ties the claimant had in the United Kingdom;
 - (e) Any relevant compassionate circumstances which the claimant wished the Secretary of State to take into account; and
 - (f) Details of any human rights issues which the claimant wished to have taken into account.
12. On 13 October 2016, 3 days later, the claimant replied personally, saying that 'with all respect to your decision, I do not agree to the contents mentioned in your letter dated 10 October 2016'. No particulars regarding to the matters set out above were provided.
13. On 28 or 29 December 2015, the claimant's father died in Beirut. The question whether he was entitled to BPP status and/or British citizenship based thereon died with him.
14. On 31 January 2017, the Secretary of State decided to revoke the claimant's British citizenship on the basis that he was, and always had been, a Lebanese citizen because both his father's parents were Lebanese, and he was entitled to Lebanese citizenship by virtue of his birth to a Lebanese

father. There being no evidence that the claimant had lost his Lebanese citizenship, the Secretary of State was satisfied that the certificate of naturalisation had been obtained by means of fraud, false representation or concealment of a material fact, which pursuant to section 40(3) of the 1981 Act entitled her by order to deprive him of the citizenship status acquired in 2004.

First-tier Tribunal decision

15. First-tier Tribunal Judge Davidson recorded that the Home Office Presenting Officer was unable to confirm how the claimant's Lebanese passport came into her possession. He found, on the balance of probabilities, that the claimant had indeed furnished this passport as part of his 2000 BPP application but that the Secretary of State had nevertheless granted him first BPP and later British citizen status, apparently in the knowledge that there was a Lebanese passport in existence.
16. The Judge also found that the Secretary of State had not challenged the BPP status of the claimant's father, overlooking the fact that he had been deceased since the end of 2016. He preferred the evidence of the father's birth in Sierra Leone rather than in Lebanon and found that the birth certificate from Sierra Leone was likely to be genuine.
17. The Judge allowed the appeal against deprivation of citizenship.

Permission to appeal

18. The Secretary of State appealed, arguing that the First-tier Tribunal Judge had erred in law in failing to engage with the argument in the refusal letter that the claimant knew that he had Lebanese nationality, in 2000 before he made the BPP application, and then failed to disclose that citizenship in the 2004 application. She considered that to be at least a failure to disclose a material fact, based on which she was entitled to deprive him of his British citizenship.

Rule 24 Reply

19. The claimant's Rule 24 Reply sets out section 4B of the 1981 Act and acknowledges that in order to be registered as a British citizen, the claimant was required to show that he was not a citizen either of Sierra Leone or Lebanon. The claimant maintains that he never submitted the Lebanese passport on which the Secretary of State relies, and that the passport is that of another person, who renewed their passport in Rio de Janeiro, in 1998. He says he has never been to Rio de Janeiro.
20. The claimant relies on the First-tier Tribunal's finding of fact that the Secretary of State had not explained how the Lebanese passport was in her or the claimant's possession, and that there was no reference to submission of any such passport on the BPP application form in 2000. He asserts that the pages from the Lebanese passport did not accompany any of his applications, though he recognises that the First-tier Tribunal Judge found to

the contrary. The claimant in his Rule 24 Reply denies fraud, but does not engage with the other section 40 bases for deprivation of citizenship (false representation or concealment of a material fact).

21. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

22. At the Upper Tribunal hearing, Mr Jarvis for the Secretary of State took me through the history of the claimant's various applications and assertions thereon. The Secretary of State was not required to challenge the BPP status of all members of the family: it remained open to her to challenge only that of the claimant, if she chose to do so. In any event, the claimant's father was deceased at the date of decision.

23. He asked me to prefer the version of the Lebanese Civil Register obtained by the Secretary of State directly from the Lebanese authorities, which stated that the claimant's father was born in Lebanon, to those presented by the claimant. Mr Jarvis noted that there was no cross-appeal against the finding that the claimant had indeed provided the Lebanese copy passport pages to the British Embassy in Beirut in 2000.

24. For the claimant, Ms Record argued that when the claimant's father was born in 1936, there was no such country as Lebanon, since the area now known as the Republic of Lebanon was then part of the Ottoman Empire. There was no clarity as to whence the disputed passport pages had emerged, nor had the Secretary of State discharged the burden upon her of showing that the claimant had used fraud, false representations, or concealed any material fact. The claimant's position remained that he never had any other nationality, nor a Lebanese passport, and that the First-tier Tribunal Judge had not erred in allowing his appeal.

Relevant legal framework

British Nationality Act 1981

25. Section 4B sets out the circumstances in which a person who is a BPP may acquire British citizenship, on or after 4 July 2002 (unless they are a British Overseas Citizen, in which case the applicable date is 19 March 2009):

"4B Acquisition by registration: certain persons without other citizenship

(1) This section applies to a person who has the status of . . .
(c) British protected person...

(2) A person to whom this section applies shall be entitled to be registered as a British citizen if—

- (a) he applies for registration under this section,
- (b) the Secretary of State is satisfied that the person does not have, apart from the status mentioned in subsection (1), any citizenship or nationality, and
- (c) the Secretary of State is satisfied that the person has not after the relevant day renounced, voluntarily relinquished or lost through action or inaction any citizenship or nationality

(3) For the purposes of subsection (2)(c), the “ relevant day ” means—
...(b) ... 4th July 2002.”

26. Section 40 of the 1981 Act sets out the circumstances in which a person may be deprived of acquired British citizenship:

“40 Deprivation of citizenship.

(1) In this section a reference to a person’s “citizenship status” is a reference to his status as—

- (a) a British citizen, ...
- (e) a British protected person, ...

(3) 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. ...

(6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status 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.”

27. That is the legal framework under which this application falls to be considered.

Discussion

28. The claimant was not entitled to apply for British citizen status until after 4 July 2002. The finding of fact by the First-tier Tribunal that the claimant probably did supply copies from a Lebanese passport for the BPP application in 2000 was open to the Judge, on the evidence before him. The claimant’s challenge to that decision is in the nature of a disagreement and a reassertion of his own version of events, rather than a cross-appeal on the facts. There is nothing in the claimant’s challenge which comes close to meeting the *R (Iran)* standard for interference with a finding of fact.

29. The Judge did fall into an error of law in his application of that fact. It is not sufficient to say that in the 2004 application the claimant committed no fraud. If it was the claimant who submitted the Lebanese passport in the BPP application in 2000, then by ticking a box saying he had never had any nationality, the claimant arguably concealed a material fact and the First-tier Tribunal Judge erred in law in not engaging with sub-sections 40(6)(b) and (c).
30. The decision of the First-tier Tribunal on the law must be set aside. It is not necessary to remit the appeal for a further hearing in the First-tier Tribunal, as the section 40(6) questions turn on the evidence and documents.

Remaking the decision

31. The Secretary of State asserts, and the First-tier Tribunal Judge found, that it was likely that the claimant's application in 2000 at the British Embassy in Beirut was accompanied by his Lebanese passport issued in Beirut on 17 March 1993, expiring after 5 years, on 17 March 1998. A copy of that passport is in both the Secretary of State's and the claimant's bundle: it states that the claimant's name is Dany Taan Ibrahim, that his mother's name is Zeinab, and that he was born in Beyrouth (Beirut) in 1973. The passport bears a stamp from the Lebanese Consulate in Rio de Janeiro, which is otherwise illegible, as is the photograph of the holder.
32. I am not persuaded by the submission made at the hearing today that this is another person's passport. The details are sufficiently close to those of the claimant, the Judge found that the claimant submitted the passport, and I have rejected Ms Record's assertion that such a finding was not open to the First-tier Tribunal Judge. It is a mystery, which now will not be resolved, as to why the claimant was then granted BPP status but that is not determinative of this appeal in his favour.

Status of claimant's father

33. It is not disputed that the claimant's father was recognised as a BPP pursuant to section 38 of the 1981 Act, it being accepted at the time, and by the First-tier Tribunal, that he was born in 1936 in Sierra Leone to parents who both described themselves as Lebanese citizens. Sierra Leone was then a protectorate under the British Nationality Act 1948.
34. The claimant's father had BPP status when the claimant was born, and the Secretary of State has never challenged that status for his father. The claimant therefore was entitled to apply for status as a BPP by descent.
35. The Sierra Leone Citizenship Act 1973, a copy of which is in the bundle, specifies that every person born in Sierra Leone before 19 April 1971, or

who resided in Sierra Leone on 18 April 1971 and was not the subject of any other state, is deemed to be a citizen by birth but *only* if his father or grandfather was born in Sierra Leone and he is a person of 'negro African descent'. Neither of the provisos is applicable to the claimant's father, as the claimant confirmed at the hearing today: the claimant's paternal grandfather and great grandfather were not black Africans, as the Sierra Leonean constitution and the 1973 Act require, so his father is not of 'negro African descent' and cannot claim deemed Sierra Leonean citizenship under the 1973 Act. It is not suggested that the claimant's father was ever naturalised as a Sierra Leonean citizen.

36. Curiously, in the 2004 application, the claimant gave details of countries where he had lived for 5 years or more: he said that he had lived in Sierra Leone 'since he was born', although at the date of the application he was living in West London.

Lebanese citizenship and documents

37. Ms Record's submissions regarding whether in 1936 Lebanon remained part of the Ottoman Empire are chronologically inaccurate: in May 1926, under the French mandate, the Lebanese Representative Council approved a constitution and the unified Republic of Lebanon was declared. Lebanon became fully independent in 1944.
38. The records kept by the Lebanese authorities of births, marriages, and deaths, have been badly affected by the civil war which began in 1975. When investigating the claimant's status in 2015, the Secretary of State caused enquiries to be made of the Republic of Lebanon via the United Kingdom Embassy in Beirut, regarding the Civil Register for the claimant's family.
39. On 30 October 2015, the Ministry of Foreign Affairs and Expatriates of the Republic of Lebanon responded via the Embassy, enclosing a letter from the General Directorate of Civil Status dated 13 October 2015 and a copy of the Civil Register. That document showed the claimant's father as having been born on 10 November 1936, but in Ghobeiri, Lebanon, not Sierra Leone. The claimant was shown as born in Beirut, on the correct date in 1973, and married. All of the other family details were correct.
40. The claimant has since produced two further purported extracts from the Civil Register in Beirut, one apparently extracted on 14 January 2009, showing his father as having been born in 'Canama' in Sierra Leone on 10 November 1936, which is produced in translation but with no copy of the original, and one, obtained on 3 April 2017 from the Lebanese embassy in London, which records his father as having been born in 'Kenemar Sierra Leone 10 November 1936' and 'deceased in Beirut on 28 December 2016'.

41. On July 24 2015, using a microfilm copy of the Civil Register of residents in Achrafieh, Beirut for the year 1967, the Lebanese Civil Status General Department provided information regarding the marriage of the claimant's parents, which had been solemnised at the Shii Legal Court of Beirut on 3 November 1958, the husband being Taan Ibrahim, born November 10 1936 (no indication where) and the wife Zeinab Ibrahim born 15 May 1941. Those details have never been disputed. The Civil Status General Department regretted that:

“With reference to the microfilm of the register of residents of Achrafieh/Beirut, of the year 1967, register of the family no 79/Moslem Shii, it appeared the following record: ...

It is not possible to issue a true copy of the marriage certificate since it has been lost during war events. This attestation has been issued according to the microfilm kept at our department instead of the marriage certificate.”

42. It is necessary to decide which version of the Civil Register is to be preferred. Having regard to the existence of the Lebanese passport submitted (at least in part) with the BPP application in 2000, and to the source of the copy register obtained by the Secretary of State through the British Embassy in Beirut, I prefer the evidence therein and find that it is more likely than not that the claimant's father was born in Lebanon. To that extent, I vary the factual finding of the First-tier Tribunal, since I consider that the weight of the evidence is in favour of his father having been born in Lebanon. However, for the reasons I now set out, wherever his father was born, the evidence points to his having had Lebanese citizenship when the claimant was born.

Lebanese citizenship

43. The claimant was asked to clarify the question of previous nationality, during the Secretary of State's consideration of the 2004 application. By a letter dated 27 September 2004, the Secretary of State asked the claimant's solicitors, ACS Solicitors, to provide 'Written confirmation from the Lebanese authorities stating that your client does not have nor has ever held Lebanese citizenship'.
44. The claimant and his solicitors did not provide such a document at any time. Instead, the claimant's solicitors furnished evidence that he had never had refugee status in Lebanon: they sent to the Secretary of State a copy of a letter dated 14 October 2004, from Lebanon's Ministry of Interior and Municipalities General Directorate of Political Affairs and Refugees, stating that:

“The General Directorate of Political Affairs and Refugees, after verification of its records, certifies that: Dany Taan Ibrahim, his mother Zeinab Ibrahim, is not registered in the Refugees records in Lebanon, therefore, he has not the right to obtain any personal document, belonging to the refugees registered in Lebanon, for him or for any member of his family. This attestation was delivered upon request of the concerned person.”

It had never been the claimant's case that he was a *refugee* in Lebanon and this is an oblique and unhelpful response to the question about Lebanese citizenship.

45. The evidence on Lebanese citizenship before me consists of the 1925 Decree No 15 on Lebanese nationality of the Republic of Lebanon (as amended in 1934, 1939 and 1960) , included in the claimant's bundle, and from the Secretary of State's bundle, a Response to Country of Origin request (the COI Response) regarding the transmission of Lebanese citizenship.
46. The 1925 Decree provides that the following categories of person are Lebanese citizens: every person born of a Lebanese father; every person born in the Greater Lebanon territory, who did not acquire a foreign nationality by birth or by affiliation; and every person who was born of unknown parents or parents of unknown nationality.
47. The COI Response confirms that children born to Lebanese fathers, within Lebanon or abroad, are entitled to Lebanese citizenship, subject, in relation to children born abroad, to a requirement to enter the birth in the Civil Acts Register in Lebanon. Lebanese citizenship is lost only by renunciation, by engaging in the service of a foreign state or by committing an offence against the security of the Lebanese state. Lebanon accepts the principle of dual citizenship: acquiring another nationality does not result in losing one's Lebanese citizenship.
48. If the claimant's father was born in Lebanon of Lebanese parents, he was Lebanese. If he was born in Sierra Leone, of Lebanese parents, he was a Lebanese citizen if his birth was registered. Additionally, it is plain from the Sierra Leonean legislation that the claimant's father was not a Sierra Leonean citizen, because he could not show 'negro African descent'.
49. All of the copies of the Civil Register which have been produced, whatever the place of birth, show that the claimant's father's birth was registered in the Civil Acts Register in Lebanon. Accordingly, to the ordinary civil standard of proof of balance of probabilities, I am satisfied on the evidence before me that the claimant's father was a Lebanese citizen and that means that the claimant, who was born in Lebanon of a Lebanese father, is a Lebanese citizen by birth.
50. It follows from all of this that the passport which the claimant produced in 2000 is likely to have been evidence of a past or current Lebanese citizenship and that such citizenship should have been declared on the 2004 application. Such a declaration would have been fatal to the 2004 application, since section 4B registration is available only for persons 'without other citizenship'.
51. I am satisfied that the evidence before me discharges the burden on the Secretary of State to show that the claimant had failed to disclose a material fact (his Lebanese citizenship) and made a false representation on the 2004

application form, when he ticked a box indicating that he had never held any other citizenship. On that basis, the Secretary of State was unarguably entitled under section 40(6) to exercise her power to deprive the claimant of his British citizenship.

52. There is no removal decision and the Secretary of State has taken no other steps which would affect the claimant's private and family life or the section 55 rights of any minor children.
53. I therefore substitute a decision dismissing the claimant's appeal against the Secretary of State's decision to deprive him of citizenship.

DECISION

54. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision.

I remake the decision in this appeal by dismissing the claimant's appeal against the Secretary of State's decision to deprive him of United Kingdom citizenship pursuant to section 40(6) of the British Nationality Act 1981.

Date: 8 December 2017
Gleeson
Tribunal Judge Gleeson

Signed **Judith AJC**
Upper