Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DC/00014/2016**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 12 March 2018	**On 27 April 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

GZB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain, instructed by Immigration Advice Service
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, GZB, is a citizen of Eritrea who was born in 1974. A brief background to his appeal is set out in my error of law decision which was promulgated on 6 June 2017 and which I set out below:

> 1. The appellant, GZB, was born in Eritrea in 1974. He became a British citizen by naturalisation on 15 December 2012. On 26 June 2015, he was convicted at Leeds Crown Court for a number of offences including a sexual assault upon a 13-year-old female child. He was sentenced to three years imprisonment and was served with a sex offenders' register notice. On 12 November 2015, the respondent

served a deprivation investigation letter (DIL) on the appellant advising him that the Secretary of State was considering removing his British citizenship in the light of the offences which he had committed. The appellant replied on 24 December 2015 denying that he had been guilty of the offences for which he had been convicted. By a decision dated 8 August 2016, the respondent removed the appellant's British citizenship and the appellant appealed to the First-tier Tribunal (Judge Robson) which, in a decision promulgated on 19 January 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant appeared before the First-tier Tribunal on licence which had been granted to him on 4 November 2016. However, he attended without a professional representative. He applied for an adjournment explaining that he had been in prison and had not had the opportunity to find a solicitor. The application was opposed by the Presenting Officer who submitted that the appellant had been released on 4 November 2016 and had had, therefore, 5–6 weeks within which to find a legal representative. Judge Robson then determined the application for the adjournment:

Having heard the appellant and the Home Office Presenting Officer, I told the appellant I saw no reason why he should be prejudiced by the lack of representation and equally no reason why he could not explain his case himself and therefore there was no reason to grant an adjournment.

3. Despite not being represented at the hearing, the appellant now has a solicitor and he was represented by Counsel (Mr Hussain) before the Upper Tribunal. The grounds to the Upper Tribunal submit that the judge was wrong not to adjourn the hearing. The grounds further submit that the case involved a number of complex and indeed novel legal issues. I am told that the Eritrean Nationality Proclamation (No.21/1992) at Section 8 states that anyone who voluntarily acquires a foreign nationality after the publication of the proclamation "may be deprived of his nationality". The question arises, therefore, whether the naturalisation of the appellant as a British citizen had led to the appellant losing his Eritrean Nationality. Further, Section 40(4) the British Nationality Act 2002 provides that the Secretary of State may not make an order under subSection (2) if he is satisfied that the order would make a person stateless. Section 40(2)(c) of the 2002 Act provides that, "The Secretary of State may make an order depriving a person of citizenship … if the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory".

4. These legal issues were not considered at all by Judge Robson. Indeed, contrary to Judge Robson's belief that there was "no reason why [the appellant] could not explain his case himself" he was plainly unable, as a lay litigant, from bringing the provisions of Section 40 of the 2002 Act to the judge's attention. I have, however, considerable sympathy for the judge especially when he was told that the appellant had made numerous (the grounds of appeal indicate as many as fifteen) attempts to obtain a lawyer prior to the hearing. It is not surprising that the judge thought there was very little prospect of the appellant ever finding a representative should the case be adjourned. Equally, however, the judge should have been aware that deprivation

of citizenship is area of immigration law to detailed statutory provisions and, having decided to proceed in the absence of a professional representative, he should have made himself aware of the relevant provisions before hearing and then determining the appeal. The judge should have been aware that this was not simply a case in which a lay litigant could put forward his account of past events, in which the legal issues could be explained easily to the appellant and in which the difference which might have been made by professional representation was perhaps marginal. As it is, the judge has not engaged at all with the statelessness issues arising in the appeal.

5. I find that the judge has erred in law by failing to adjourn the hearing or, at the least, failing to consider the relevant law with a view to explaining this to the lay appellant and inviting his comments before determining the appeal. I am aware that there is not, at the present time, any removal decision but I do not consider that that fact excuses the Upper Tribunal from seeking to remake the decision on the deprivation matter in accordance with the law.

Notice of Decision

6. The decision of the First-tier Tribunal which was promulgated on 19 January 2017 is set aside. None of the findings of fact shall stand. The decision will be remade in the Upper Tribunal before a panel including Upper Tribunal Judge Clive Lane at Bradford on a date to be fixed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings."

2. This case was listed for a resumed hearing on 12 March 2018. The reason for the delay in listing the resumed hearing is unclear. I heard the oral submissions of both representatives before reserving my decision. Although I was given a number of case reports, I was not provided by either party's representative with a skeleton argument. I also note that, before the First-tier Tribunal, the appellant appeared in person and also that his grounds of appeal to the First-tier Tribunal (which are now the focus of the Upper Tribunal in remaking the decision) were prepared by the appellant or someone assisting him and appear in manuscript on the appeal form.

3. The grounds of appeal to the First-tier Tribunal concerning the decision of the Secretary of State to revoke the appellant's citizenship are as follows:

"I have lived, worked and paid tax in the UK since 2006. I have integrated well into the British society and obey the laws of the country. I was very proud to have been granted my British citizenship in 2012. I have always loved an offence-free life and to be convicted of a crime I did not commit is very frightening. I am maintaining my innocence for the offences I have been found guilty of and my appeal is due in due process. Whilst in prison I am making good use of my

> time by doing courses to improve skills such as literacy, numeracy, ICT etc. My prison record of behaviour is one to be proud of. I look forward to clearing my name and returning to live an offence-free life in this country I have come to know as home."

4. The Upper Tribunal must now remake the decision on the basis of the appellant's grounds of appeal. Those grounds of appeal have not been amended and nor has permission been sought to amend them. Instead, at the resumed hearing before the Upper Tribunal, Mr Hussain made a number of oral submissions. Many of those submissions lay outside the scope of the grounds of appeal which I have set out *in extenso* above. Mr Hussain told me that the appellant, if deprived of his British citizenship, would be stateless, having been already deprived of his Eritrean nationality. Further, he had been granted international protection in the United Kingdom prior to being naturalised because he had left Eritrea illegally and is a Pentecostal Christian. Mr Hussain queried whether, if the appellant remained at Article 3 ECHR risk upon return to Eritrea, the removal of his citizenship was lawful.

5. Having been delivered in an evidential vacuum, these submissions were not particularly helpful. It was open to the appellant to adduce evidence before the Upper Tribunal remaking the decision at the resumed hearing. He and his representatives have chosen not to do so. Likewise, he has not chosen to amend the grounds of appeal. Further, whilst I am aware that the initial burden of proof rests on the Secretary of State to be satisfied that an order would not render the appellant stateless, the respondent has, in a detailed decision letter, set out clearly the reasons for depriving the appellant of his British nationality. In *Hashi* [2016] EWCA Civ 1136 the Court of Appeal considered the question of burden of proof at [23-24]:

> "No doubt the SS [Secretary of State] has the burden of showing that she was satisfied that her order would not make Mr Hashi stateless. That is a comparatively easy burden to discharge and Mr Hashi does not challenge that she was so satisfied.
>
> But Mr Hashi is entitled to and does assert that she was wrong to be so satisfied and on that question he must have the relevant burden of proof. If at the end of the day the court is left in genuine doubt whether a person who is to be deprived by his UK citizenship would be stateless, his claim to challenge the SS's decision will fail. Such cases will inevitably be rare since, if the challenge is a serious matter, there will have to be evidence of the relevant law as there was in this case. The court will then make up its mind on that evidence as SIAC did. In Al-Jedda v SSHD [2012] EWCA Civ 358 Richards LJ recorded (paras 122-3) that there was no dispute in that case that the burden of proof was on the appellant on the balance of probabilities. He expressed no surprise at that absence of dispute. Neither do I."

6. I am satisfied that the Secretary of State has discharged the burden of showing that she is satisfied that her order would not render this appellant stateless. The burden of proof thereafter passes to the appellant to show that the Secretary of State's is incorrect. Even at this very late stage, the appellant (who, I stress, has legal representation) has taken no steps whatever to adduce any evidence before the Tribunal. It is asserted that

the appellant will lose or has lost his Eritrean nationality but there is absolutely no evidence to show that that is the case. It is possible that the appellant's apparent state of denial arises out of his continued refusal to accept that he committed those offences against his daughter for which he has been convicted. The appellant has spoken throughout these proceedings of his intention to appeal against that conviction; there was no evidence whatever before the Upper Tribunal that he has successfully appealed conviction or sentence. I find that I cannot proceed on the basis of assumptions; it is for the appellant (as shown in *Hashi*) to discharge the burden on him. He has wholly failed to do so.

7. As regards Article 3 ECHR, there is no decision to remove the appellant from the United Kingdom following the deprivation of his citizenship. Section 40A of the British Nationality Act 1981 does not involve any statutory hypothesis that the appellant will be removed from the United Kingdom in consequence of the deprivation decision (*Deliallisi (British citizen: deprivation appeal: scope)* [2013] UKUT 00439 (IAC)). Further, whilst the Tribunal may be required to determine the consequences of deprivation including removal, I again cannot see why the Tribunal should do so in the absence of any evidence. Mr Hussain asserted that the appellant would be required to undertake military service in Eritrea and that he would face Article 3 ill-treatment on account of his religion. Tellingly, those factors do not appear anywhere in the grounds of appeal to the First-tier Tribunal. In the light of those unamended grounds of appeal, in the absence of any evidence from the appellant and given the fact that the appellant is not facing a removal decision, I find there exists no proper basis upon which I may address Mr Hussain's submissions. Put more bluntly, I find that there is no reason for the Tribunal simply to assume, in the absence of any evidence, that the appellant would face Article 3 ill-treatment if he were to be returned to Eritrea. Such a conclusion would require evidence and there is none.

8. Finally, returning to the grounds of appeal, I am not persuaded that the appellant has made any challenge to the legality of the decision to deprive the appellant of his citizenship. I am aware that the Secretary of State's policies confer a wide margin of appreciation on the decision-maker (*Ahmed (deprivation of citizen)* [2017] UKUT 00118 (IAC)). Moreover, the reasons for the deprivation are clearly set out in the refusal letter, in particular the consideration by the Secretary of State the appellant had dishonestly obtained naturalisation by failing to disclose that, at the time of his application, he was abusing his daughter. That and the other reasons given in the letter have never been properly addressed by the appellant it would seem because he refuses to accept that he was justly convicted of the offence against his daughter. However, I am reminded that the burden of proof rests on the appellant. He has wholly failed to discharge that burden. In the circumstances, his appeal against the deprivation decision is dismissed.

Notice of Decision

9. The appellant's appeal against the decision of the Secretary of State dated 8 August 2016 is dismissed.

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Signed Date 20 APRIL 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

As I have dismissed the appeal there can be no fee award.

Signed Date 20 APRIL 2018

Upper Tribunal Judge Lane