



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DC/00021/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27 March 2018

Decision & Reasons Promulgated  
On 23 May 2018

Before

THE HONOURABLE MR JUSTICE EDIS  
DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SAVAS DILEK  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr P. Duffy, Senior Home Office Presenting Officer.

For the Respondent: Mr G. Denholm, of Counsel, instructed by Ahmed, Rahman, Cart Solicitors.

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Cameron promulgated on 2 February 2018. By that decision the judge allowed an appeal by Mr Dilek, who is the respondent to this appeal, against a decision by the Secretary of State given by a letter of 28 July 2017. The respondent's decision was a

decision to revoke Mr Dilek's nationality under Section 40 of the British Nationality Act 1981.

2. The history of the matter is not entirely clear from the documents which are available to us. However, the basis of the decision under appeal before the First-tier Tribunal was that the application for British citizenship which was completed by Mr Dilek in 2007 fraudulently failed to disclose the fact that he had been convicted of the murder of his sister and some associated firearms offences and had been sentenced to a significant term of imprisonment, some of which remained to be served. Some years before the application for citizenship was made and granted Mr Dilek had successfully applied for asylum. That application appears to have been processed in or about 2003. In 2010 the Turkish authorities applied to extradite him in 2010 so that he could be returned to Turkey to serve the outstanding term of imprisonment. Evidence of the Turkish convictions had been placed before the Secretary of State when considering that application.
3. The application for extradition was ultimately dealt with in the Westminster Magistrates' Court by a decision of District Judge of the Magistrates' Court, John Zani, on 11 December 2012. The District Judge found that when he made his application for asylum Mr Dilek had deliberately failed to disclose the Turkish convictions which by now had come to light. That was a finding of fact that was open to the District Judge in those extradition proceedings and was one based on the evidence before him. What gives rise to the argument before us is the fact that although it is agreed that both the application form for asylum and the application for naturalisation include a request for information from the applicant about any convictions recorded against him anywhere the relevant section was not completed by Mr Dilek in either case. It was on that basis that the Secretary of State took her decision to revoke.
4. When the matter came before the First-tier Tribunal the argument focused on a note on the Home Office file which appears to be dated from 2003. The record of that note which was before the First-tier Tribunal reads as follows:

"There is a file minute from AC11 – the then workflow team for asylum – noting that they had received a telephone call from the police stating that whilst investigating Dilek's brother in the UK, they had come across a possible warrant for him in relation to his sister's murder. This does not appear to have been followed up by the Caseworker who made the decision on the case. However, this does not detract from the fact that Dilek omitted to inform the Asylum Caseworker dealing with his application about the conviction for the murder of his sister and the related firearms issues. The onus remained on Dilek to provide all relevant information for the consideration of his asylum claim."
5. The history was further summarised by an SEO when on 17 February 2017, making a final recommendation that the respondent be deprived of citizenship. In a series of bullet points, what she said about that note is as follows:

"Although the British police brought attention to the murder conviction in Turkey during the asylum process (this was overlooked by the decision-maker),

the onus still remained on Dilek to provide the Home Office with all relevant information when making his asylum application.”

6. The contemporaneous documentation from the asylum file and indeed contemporaneous documentation from the naturalisation application have not been placed in evidence and accordingly like the First-tier Tribunal we have to proceed on the basis of the evidence which we have just set out. The overall impact of that appears to be this. There is evidence on the Home Office file dating back to the asylum claim which contained information provided by the police to the Home Office which related to the murder of Mr Dilek’s sister. Precisely what that information was is not entirely clear but plainly that, if properly considered, would have put the decision-maker on enquiry so as to find out what the position actually was. That did not happen. It appears to have been overlooked altogether and there is no evidence that it was actually available to the person making the decision on the naturalisation claim. However, we consider that we should proceed on the basis that detailed scrutiny of the file, perhaps not even requiring a great deal of detailed analysis, would have revealed that note both in 2003 and in 2007. That is an assumption which the First-tier Tribunal made and which we also make.
7. On that factual basis the First-tier Tribunal was required to evaluate the decision on the revocation of citizenship according to the legal framework established by Section 14 of the British Nationality Act 1981. Section 40, sub-Section (iii) states:
 

“The Secretary of State may by order deprive a person of their 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 ...

(c) concealment of a material fact.”
8. Therefore the question for the First-tier Tribunal was whether the Secretary of State was properly entitled on the evidence to which we have referred to be satisfied that the naturalisation of Mr Dilek in 2007 was obtained by means of concealment of material facts.
9. The First-tier Tribunal referred to the decisions of the Upper Tribunal in **Pirzada (deprivation of citizenship: general principles)** [2017] UKUT 00196 (IAC) and **Sleiman (deprivation of citizenship: conduct)** [2017] UKUT 00367 (IAC). These authorities do not, it would seem to us, greatly elucidate the plain meaning of the statutory provision to which we have already referred. Neither, in our judgment, does the guidance on which the respondent relied in Chapter 55 which says that the concealment of material fact means “operative concealment i.e. the concealment practised by the applicant must have had a direct bearing on the decision to register or, as the case may be, issue a certificate of naturalisation”. The statute makes it clear that the right to deprive a person of citizenship only arises if the Secretary of State is satisfied that naturalisation was obtained by means of concealment of material facts.
10. The judge approached that question on the basis that he was satisfied that Mr Dilek did not disclose either at the time of his asylum claim or at the time of his naturalisation

application the criminal convictions that he had received in Turkey. As it happens in the second of those applications in 2007 Mr Dilek also failed to disclose a criminal conviction for common assault in the United Kingdom. The judge observed that that conviction did not appear to have played any part in the consideration of whether or not he should be deprived of citizenship. That is apparent from the terms of the decision letter.

11. Having found that Mr Dilek did not disclose his criminal convictions the judge was then prevailed upon to find that this was not an operative concealment. He said that the reason why it was not an operative concealment was that the Home Office Respondent already knew about the conviction from the note in 2003. It was not therefore an operative concealment. He said this in paragraphs 59 to 61:

“59. The fact of course is that the respondent was aware at the time of the asylum application that there was a criminal conviction in relation to murder but for one reason or another ignored that particular information. The respondent cannot therefore be said not to have known about a fact which they clearly did know about and it would be disingenuous of them to then seek to say that they would not have made the same decision had they known about that fact.

60. The respondent there did know about the murder conviction when they granted the appellant asylum. The respondent cannot be said not to know a fact simply because it is not then further disclosed on later applications.

61. There is no doubt that the appellant did not disclose the murder conviction or the conviction in relation to fire arms offences in his application for naturalisation. In fact, the whole section was just simply crossed out. Although Judge Zani made a specific finding at paragraph 63 and 84 [of his decision in the extradition proceedings] that the appellant deliberately chose not to give details of the murder and firearms convictions in relation to the asylum claim this is of course not now borne out by the minute disclosed by the respondent which clearly indicates that the asylum decision maker was advised of those convictions.”

12. With respect to the judge in the First-tier Tribunal we consider that he was drawn into error in acceding to the submissions which had been made by Counsel. The statutory question is not whether the respondent knew or might have been able to discover recent information. The statutory question is whether the grant of naturalisation was in fact obtained by means of concealment. The failure to disclose the convictions on the application form was plainly a concealment. The convictions by that failure to disclose were hidden from anyone reading the form. They ought not to have been hidden. They ought to have been disclosed. The decision maker in our judgment plainly did not know about the murder conviction and associated offences in Turkey. It appears to us highly unlikely that if the decision maker had known about those convictions the decision would have been made as it was. Whether that is right or not is an assumption as to the probabilities. The evidence in the case does not suggest that the decision maker in the naturalisation application knew of the information provided by the police four years before. The notes disclosed by the Home Office to the extent identified above suggest that the information was provided in 2003 and placed on the

asylum file. There is no indication anywhere in the papers that it was drawn to the attention of the decision maker in 2007 although, as we have said, we are prepared to assume that by further enquiry the decision maker may have been able to find that evidence.

13. The question for the First-tier Judge was whether, there having been quite obviously a concealment, it resulted in the obtaining of the grant of citizenship. We have found that on the basis of the evidence before us and indeed on the evidence before the First-tier Tribunal Judge that there was no basis for making a finding fact that it was known to the decision maker in 2007 and indeed the probabilities are strongly to the effect that it was not known. That being so, it is an obvious factual conclusion to reach and one which the First-tier Tribunal Judge should have plainly come to, that the concealment did result in obtaining of the grant. If the convictions had been set out in the application form in the way that they should have, the decision maker would have plainly been aware and, in our judgment, having learned of the conviction for murder, would have been highly unlikely to grant the application at least without substantial further enquiry. In other words the application on the basis on which it was made would simply have failed.
14. For those reasons we consider that the First-tier Tribunal Judge did err in law in holding that the concealment of the convictions by Mr Dilek in his application form in 2007 was not a concealment because there was some information on the asylum file which might have put the decision maker on notice of the conviction had the decision maker actually been aware of it. To impute knowledge to all relevant personnel at the Home Office, however, of a piece of paper concerning Mr Dilek held by the Home Office is not only unrealistic but it is also one which is not warranted by the statute which is not concerned with whether the Home Office behaved negligently but is concerned with whether Mr Dilek behaved honestly: the possibility that the fact of Mr Dilek's criminal convictions might have been detected in 2003 and 2007 is irrelevant to the issue which the judge had to decide which is whether he obtained his grant of citizenship by means of concealment of material facts. That he plainly did and no other conclusion was properly open to the First-tier Tribunal. Therefore we find that there is an error of law and set aside the decision of the First-tier judge.
15. Mr Denholm has asked us to give directions so that a factual determination can be made on the basis of the submissions set out at pages 8 to 12 of the skeleton argument placed before the First-tier Tribunal dated 6 January 2018 as the First-tier Tribunal, having held that there was no concealment, did not need to go on to consider whether there was a proper basis for concluding that, as a matter of discretion, the citizenship of Mr Dilek should not be revoked. The material placed before the First-tier Tribunal in relation to that question was substantial and was not before the Secretary of State when she took the decision she did.
16. We consider that making factual assumptions in favour of Mr Dilek on that question would not, and should not have impacted on the citizenship decision. It appears to us that the Secretary of State when considering whether to revoke the citizenship would have taken into account the fact that this was a clear act of deliberate concealment,


perpetrated twice, which was brought to light only by the extradition application of the Turkish authorities. The appropriate course for Mr Dilek to take was to disclose the convictions and to put forward at that time any explanation of them which he wished the Secretary of State to consider. That he did not do. As things presently stand, Mr Dilek has protection because the extradition proceedings were dismissed and he was discharged from them by District Judge Zani on the basis that the judge found that he was at real risk of having his Article 3 rights breached in the event of his return to Turkey. That conclusion was based on material which was to a similar effect as some of the material on which Mr Dilek now seeks to rely in these proceedings. The effect of that is that unless something changes he is cannot be removed. In the event that any attempt is ever made to remove him he would be able to deploy the material to which we have referred together with any other material which may assist him and a decision will be made on the facts as they then stand. This is not a case where the revocation of citizenship is capable of resulting in the removal of Mr Dilek in the foreseeable future. That can only happen when the Secretary of State is satisfied that the protection which he currently enjoys is no longer required. If the Secretary of State were to be so satisfied because circumstances have changed then Mr Dilek would be able to challenge that decision.

17. For those reasons we consider that it is inappropriate for the Upper Tribunal to consider further Mr Dilek's case on the present claim on the suggested basis and in those circumstances we do not think that it is appropriate to order any further hearing. We consider that the appropriate result of this appeal is simply that the appeal Mr Dilek brought before the First-tier Tribunal should be dismissed.

### **Notice of Decision**

The decision of the Judge in the First-tier Tribunal is set aside and the appeal is dismissed.

No anonymity direction is made.

Signed   
Mr Justice Edis

Date: 17 May 2018