



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

Appeal Number: DC/00034/2015

THE IMMIGRATION ACTS

**Heard at: Field House
On: 2 May 2018**

**Decision Promulgated
On: 08 May 2018**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SIVA NADARAJAN

Respondent

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Mr D Bazini of Jein Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Nadarajan's appeal against the decision of 9 November 2015 to deprive him of his British nationality under section 40 of the British Nationality Act 1981.
2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Nadarajan as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a national of Sri Lanka, born on 1 October 1980. He arrived in the UK in August 2001 and claimed asylum. His asylum claim was refused on 4 February 2002 and his appeal against that decision was dismissed on 22 June 2002. On 17 September 2002 his representatives applied on his behalf for exceptional leave to remain in the UK.

4. The appellant was advised in a letter dated 11 June 2003 that he had been granted indefinite leave to remain and he was subsequently issued with a certificate of naturalisation as a British citizen on 15 January 2008. On 12 May 2009 the appellant was advised that the Secretary of State had reason to believe that he had obtained his status as a British citizen as a result of fraud and that the grant of indefinite leave to remain had been fraudulently obtained. On 9 June 2009 the respondent made a decision to deprive him of his British nationality under section 40 of the British nationality Act 1981. In the absence of any response by the appellant the case was closed, but was subsequently re-opened in November 2014 following the determination of various other similar appeals.

5. On 5 February 2015 a letter was sent to the appellant advising him that the Secretary of State had reason to believe that he had obtained his status as a British citizen as a result of fraud and he was invited to make representations. A similar letter was sent on 11 May 2015. The appellant did not respond and on 9 November 2015 the respondent gave notice of her decision to make an order to deprive the appellant of his British citizenship under section 40 of the British Nationality Act 1981.

6. The respondent gave details, in that letter, of a widespread fraud perpetrated by a Home Office caseworker who had been arrested in 2008 and subsequently committed suicide. The respondent provided reasons why it was considered that the appellant was a beneficiary of that fraud and was complicit in the fraud. As a result of the fraud the appellant was issued with an illegitimate grant of status, which in turn led to his naturalisation as a British citizen. It was accordingly considered that he had concealed a material fact which led to the grant of citizenship and obtained naturalisation by misrepresentation and the respondent considered that deprivation as necessary.

7. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981 and the appeal was heard on 2 February 2018 by First-tier Tribunal Judge Metzger. Judge Metzger noted that the appellant denied complicity in the fraudulent grant of indefinite leave to remain and considered that the respondent had failed to supply any evidence to back up the assertions in the refusal letter. He found that the respondent had failed to establish that the appellant had obtained indefinite leave to remain and British citizenship fraudulently and he allowed the appeal.

8. Permission to appeal was sought by the respondent on the grounds that the judge, in finding there to be no evidence to support the respondent's

assertions, had completely ignored a supplementary decision letter of 2 March 2016 with attached appendices of evidence which had been produced for the appeal.

9. Permission was granted on 28 February 2018.

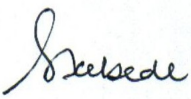
10. Having heard submissions from both parties at the hearing, I concluded that Judge Metzger's decision could not stand and that remittal of the case to the First-tier Tribunal was inevitable. It was plain that, aside from the brevity of his conclusions arising from the refusal decision of 9 November 2015, the judge had not considered at all the respondent's supplementary refusal letter of 2 March 2016 together with appendices. There could be no doubt from correspondence before me that the letter had been served on the Tribunal, as well as on the appellant's representatives, well in advance of the hearing before Judge Metzger. Given that Judge Metzger's decision was made on the basis of a lack of supporting evidence from the respondent, and that evidence had been produced by the respondent with the letter of 2 March 2016, the matter had clearly to be considered de novo by another judge so that full and proper findings could be made on the evidence.

11. The appropriate course, therefore, is for the matter to be remitted to the First-tier Tribunal to be heard afresh.

DECISION

12. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed and the decision is set aside.

13. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Metzger.

Signed: 
Upper Tribunal Judge Kebede
May 2018

Dated: 2