Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00007/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 February 2020	**On 20 April 2020**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAMUEL SMITH (A.KA. PHILIP GYAMPOH)
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr Whitwell, Senior Presenting Officer
For the Respondent: Mr Krushner, instructed by Anchor Legal Solicitors

DECISION AND REASONS

1. In a decision which was sent to the parties on 28 November 2019, I set aside the decision of the First-tier Tribunal, which had allowed the appellant's appeal against the respondent's decision to deprive him of British Citizenship. I held that the FtT had erred in law in failing to deal adequately or at all with crucial aspects of the respondent's case which is, in basic summary, that the appellant has used the name Samuel Smith for the best part of two decades in order to hide the fact that he had thrice been refused entry clearance in his real name, Philip Gyampoh. Having set aside the decision of the FtT, I ordered that the matter would be retained in the Upper Tribunal for the decision on the appeal to be remade afresh.

2. The appeal was due to resume before me on 9 December 2019 but it was adjourned because there was a potential conflict of interest between the appellant and the solicitors with conduct of the matter at that stage. The appeal was adjourned to enable the appellant to secure alternative representation, which he duly did. It is for these reasons that there was something of a delay between the initial and the resumed hearings. With that short introduction to the history of the appeal, I turn to the factual background.

Factual Background

3. The appellant is a Ghanaian national who appeals against a decision which was made by the Secretary of State on 16 January 2019. By that decision, the respondent decided to deprive the respondent of his British citizenship, which had been obtained by way of naturalisation on 18 May 2011.

4. On 15 July 2003, in Accra, the appellant applied for entry clearance as a student. He gave his name as Philip Gyampoh. He said that he had been born on 27 March 1979 and that his parents were Kenneth Gyampoh and Loretta Afua Gyampoh. That application was refused on the same day.

5. On 12 August 2003, the appellant made a second application for entry clearance as a student. He gave the same personal details as before. That application was refused on 20 August 2003.

6. On 22 August 2003, the appellant made a third application for entry clearance as a student. He gave the same details as before, although his parents' names were spelt slightly differently. This application was refused on 26 August 2003.

7. On 12 November 2003, the appellant applied for a visit visa. He gave his name as Samuel Smith. He stated that his date of birth was 13 May 1968 and that his parents were Henry Kwabena Smith and Mary Adjowa Annan. This application was successful and the appellant was granted entry clearance which was valid for six months from 5 November 2003 to 5 May 2004.

8. The appellant duly entered the United Kingdom as Samuel Smith. He married a lady called [AY], who was in the UK as a Work Permit Holder. He was granted leave as her dependent on 7 July 2004, valid for three years. The appellant and Ms [Y] divorced, however, and he returned to Ghana.

9. On 14 September 2007, in Ghana, the appellant married a lady called [DW]. On 31 October 2007, he applied for entry clearance as her spouse. He gave his name as Samuel Smith, with the same date of birth and parents' names. That application was successful, and he entered the UK with entry clearance as a spouse which was valid from 24 January 2008 to 24 January 2010.

10. The appellant subsequently applied for Indefinite Leave to Remain ("ILR") as Ms [W]'s spouse. Once again, he provided the details I have set out [7] above in support of that application. The application for ILR was granted on 21 February 2010.

11. On 9 March 2011, the appellant applied for naturalisation as a British citizen. He completed Form AN in order to make that application. He was not represented at that time, and he completed the form himself. He gave his name as Samuel Smith and his date of birth as 13 May 1968. He gave his parents' names as Henry Kwabena Smith and Mary Adjowa Annan. At question 1.7 and 1.8 of the application form, the appellant was asked the following questions:

> 1.7 Name at birth if different from above. (If the names you have given are different or spelt differently from the name shown on your passport, please explain why on page 13).
>
> 1.8 If you are or have ever been known by any name or names apart from those mentioned above, please give details here.

12. The appellant made no entry in answer to these questions. At question 3.12, he was asked whether he had engaged in any other activities which might indicate that he may not be considered a person of good character. He ticked the box marked "No".

13. On 11 March 2011, the appellant was naturalised as a British citizen. On 2 July 2011, he was issued with a British passport.

14. On 12 January 2012, the appellant travelled to the United States to visit Samuel Gyampoh, who he has subsequently described as his uncle and his biological father. He was refused entry to the United States, however, and he returned to Heathrow airport on 13 January 2012. He attempted to pass through the automatic passport gates on arrival but was unable to do so and presented himself to an Immigration Officer.

15. The appellant was interviewed and stated materially as follows. His name was Samuel Smith and he had not previously used a different name. He had come to the UK in 2003 and he named his first wife as Ms [Y]. They had no children and they divorced in 2007. He returned to the UK in 2008 after marrying his second wife, Ms [W]. They had a daughter together in 2008. They had divorced in 2011 but they cared jointly for their daughter.

16. At question 27, the appellant was asked if he had used any other names before coming to the UK. He stated that he had not. The Immigration Officer put it to him that he had told US Immigration that he had changed his name to Sam Smith in 2000 but he said that words had been put into his mouth and they were not listening to him. They had listened to his uncle, and he was not privy to that conversation. At question 30, the appellant was asked who Philip Gyampoh was. He said:

> It is not me. I don't know. They were putting words in my mouth.

17. The appellant was asked where the US authorities had got the name Philip Gyampoh from and he said that his uncle had said it. He had apparently told them that the appellant was not Sam Smith. He was not satisfied with the way he had been interviewed by US Immigration and he had not even understood what they were saying. Asked about his uncle in the US, he said that his name was Samuel Gyampoh and that he was married to his mother's sister. He did not know why Mr Gyampoh had made up a story. The appellant stated that his biological father was Henry Kwabena Smith.

18. The Immigration Officer also interviewed a woman called [MA]. She stated that she was a friend of the appellant's. She had known him for five years. She was asked what the appellant's full name was. She stated that it was Samuel Smith. Asked "How do you know him as Philip?", she stated that this was his other name.

19. The appellant was interviewed again on the same date. He was asked again whether he had applied for a UK visa in a different identity. He said that he had not. He was asked directly whether he had been known as Philip Gyampoh before. He said that he was not, and that he was sure of that. He was then shown a record of the entry clearance application made by Philip Gyampoh in July 2003. He said "That is me", before asking to speak to his solicitor. He was asked who Philip Gyampoh is. He said that he had used the name for his application but that it was not his real name. He was reminded that it was an offence to lie in an immigration interview, following which he said that he did remember something about making an application for a visa in the identity of Philip Gyampoh. He could not remember any more about it. He gave no answer when asked why he had changed his name. He said that he was Samuel Smith.

Pre-Decision Correspondence

20. On 26 October 2017, the Secretary of State put her concerns to the appellant's then solicitors, Quality Solicitors Orion of Hounslow. This letter elicited a letter in response dated 17 November 2017. At [1]-[4] of that letter, the following admissions were made:

> [1] Samuel Smith was born Philip Gyampoh in Accra Ghana. In August 2003 he applied for entry clearance in Ghana to study in the UK. The application was refused. Later that year his wife who was working as a Nurse in Ghana applied to work in the UK as a Nurse. Our client states that he was anxious to come to the UK with his wife as a dependent spouse. Fearing that if he made a dependent application in his name it would be refused, he consulted a visa agent who suggested he change his name. He changed his name by statutory declaration from Philip Gyampoh to Samuel Smith.

> The agent submitted an entry clearance application and the couple were granted a work permit visa on which our client and his wife arrived in the UK in 2003.
>
> [2] In 2006, following the breakdown of his marriage our client met a British woman of Ghanaian ancestry with whom he fell in love. The couple returned to Ghana in 2007 and got married in Ghana. On the basis of his status as a spouse, Mr Smith was granted entry to the UK in 2008. He subsequently qualified for the grant of ILR. ILR was granted in the same year. He naturalised the following year and was issued a British passport.
>
> [3] Our client admits that he changed his name because he feared that if he used his original name there was a risk that he would be refused the visa to accompany his wife to the UK. He felt he would be bereft of his wife's companionship for the period of time she was in the UK. He confirms that the dependent application to travel with his first wife was completed by an agency in Ghana. He has used the name Samuel Smith throughout his stay in the UK. He confirms that he has no criminal record either under the name Philip Gyampoh or Samuel Smith in Ghana or the UK.
>
> [4] In 2012 our client decided to go and visit his father in the United States. On disembarking at Boston International Airport in the USA, he was questioned by an immigration officer who was not satisfied as to his identity. During the interview, he panicked and gave misleading answers fearing that he would be detained in the USA. He was refused entry and returned to Heathrow where he was detained and interviewed by Home Office officials. Following the interview the British passport was seized.

21. The letter then made reference to the appellant's ties to the UK. He had divorced his second wife and was in a relationship with Mary Amarteifio (who had been interviewed at the airport). He had two children by his former wives and was a good father to them. He had been in regular employment and had done charity work too. He admitted 'behaving foolishly in changing his name so as to improve the chances of getting entry clearance to the UK in 2003. He accepted that he had practised deception and expressed contrition and regret for that. In light of his ties to the UK, however, the Secretary of State was urged to be proportionate in any sanction imposed.

22. The appellant subsequently instructed BWF Solicitors of Tottenham, who wrote to the Secretary of State 29 October 2018 to provide an update on the situation and to submit that no action should be taken in relation to the appellant's British citizenship. Their letter cited the Upper Tribunal's decision in Sleiman [2017] UKUT 367 (IAC) and submitted that the appellant's deception was not material to the acquisition of citizenship.

Under the heading "compassionate circumstances, it was submitted as follows:

> Our client changed his name to Samuel Smith and date of birth as he was advised by his representative at the time of his entry clearance application to the UK that it would increase his chances of his application being successful.
>
> Our client did not in any way impersonate another person, misrepresent his age so he could be treated as minor [sic], conceal any criminal offence or change his nationality. He applied for entry clearance using the name Samuel Smith and was granted leave to enter so he could join his previous wife who was granted a visa to work as a nurse in the UK. Any false representation should therefore be seen as irrelevant and not material to the acquisition of citizenship.

The Respondent's Decision

23. The Secretary of State issued her decision to deprive the appellant of his British citizenship on 16 January 2019. Having rehearsed the history and the relevant law in some detail, she concluded that the appellant had made three entry clearance applications in his true identity and had adopted the identity of Samuel Smith in order to circumvent the entry clearance process: [28]. The appellant had secured entry clearance, ILR and citizenship in a false identity: [29]. His deception was relevant to each one of his applications and he had failed to declare his true identity since 2003: [30]-[33]. His applications would have been unsuccessful if he had told the truth: [36]. The Secretary of State considered a decision to deprive the respondent of his citizenship was in accordance with Article 8 ECHR and section 55 BCIA 2009: [38]-[41]. The Secretary of State considered that she was under no obligation to consider whether the respondent would be rendered stateless by a decision under s40(3) of the British Nationality Act 1981 but, in any event, she considered that it would be reasonable and proportionate to take that decision.

The Resumed Hearing

24. At the outset of the resumed hearing, I confirmed with Mr Krushner that the appellant continued to rely on the evidence filed by BWF Solicitors, and that there was no further material which I would be asked to consider. Mr Krushner confirmed that to be the case. He stated that he would be calling the appellant, his wife and a friend (Mr [A]) to give oral evidence.

25. I asked Mr Whitwell whether the respondent continued to rely on the bundle filed for the FtT hearing. He confirmed that there was no further material upon which the respondent relied. He reminded me that there had been some concern expressed in my first decision about the question of whether the appellant would be rendered stateless by a decision to revoke his British citizenship but it had subsequently been

agreed that Ghana permitted dual citizenship and that the appellant would retain his Ghanaian citizenship in the event that he was no longer British.

26. I then heard oral evidence from the appellant and his two witnesses. I do not propose to rehearse that evidence in this decision. It was recorded in full and I will refer to it insofar as is necessary to explain my findings of fact.

Submissions

27. Mr Whitwell relied on the decision under appeal and submitted that it was extremely clear. He reminded me that the respondent had acted under section 40(3)(b) or (c) of the British Nationality Act 1981 in depriving the appellant of his British citizenship.

28. Mr Whitwell submitted that I should disbelieve the appellant and his witnesses. He submitted that there had been a high degree of dissembling and dissociation in their evidence. The appellant claimed not to recall or not to have said a number of things which were subsequently relied upon by the respondent.

29. The appellant claimed that he had changed his name in either 1998 or 2000 but it remained the case that there was no contemporaneous documentary evidence which showed that he had done so. The appellant claimed that various individuals had been unable to assist him with obtaining this evidence but there was a copy of a statutory declaration made in 2012, which made reference to the change of name. Oddly, however, that document had not been provided to the Secretary of State when the appellant came to make his application for naturalisation.

30. The appellant had made three applications for entry clearance as a student in the Philip Gyampoh identity. That was accepted on all sides. The appellant now stated that he had no input into these applications but this was merely a convenient means of avoiding the truth. It was highly unlikely that the appellant would be so badly served by an agent in Ghana, only to be equally badly served by two different firms of solicitors in the United Kingdom.

31. The appellant had been asked the clearest possible question in Form AN; whether he had a different name at birth. He had been asked in cross-examination and from the bench why he had failed to give an answer to that question and there was still no response. He had been asked equally clear questions about the date of his first arrival to the UK and his good character, and he had failed throughout to reveal his full dealings with the Home Office and the Foreign and Commonwealth Office. The appellant had plainly understood these questions, and had signed a declaration in which he accepted that his citizenship might be revoked in the event of misrepresentation.

32. The appellant's lack of truthfulness had continued in the interview at Heathrow Airport. He said today that he was stressed and tired but he had signed many of the pages of that interview. It was clear that he had maintained a denial that he was in any way associated with Philip Gyampoh until he was confronted with the entry clearance applications in that name. If it was to be asserted, as appeared to be the case, that an Immigration Officer had falsified the record of interview, that had not been asserted before and should be rejected.

33. Two different firms of solicitors had made admissions after taking instructions over the course of two interviews with a qualified solicitor. There had been no complaint made to the solicitors or to the SRA. It was to be noted that the detailed letter from Quality Solicitors Orion was accepted to be correct in every other respect. The appellant also attempted to distance himself from the letter from BWF Solicitors, in which similar admissions were made but it was not credible that the appellant would have been so badly served by two different firms. In sum, the appellant had either made false representations or had concealed material facts from the Home Office's Nationality Department when he applied for British citizenship.

34. As for Article 8 ECHR, Mr Whitwell submitted that the proper course was clear from the authorities. It was for the Tribunal to consider the likely effect of the appellant being deprived of his British citizenship. In the appellant's case, there would be no interference with his relationships in the UK as a result of any such deprivation. The next step, instead, would be for the respondent to take a decision to remove the appellant, against which course there would be an opportunity to make representations on human rights grounds. It was not presently suggested by Mr Whitwell that the refusal of any such claim could be certified under section 94 of the Nationality, Immigration and Asylum Act 2002, so the appellant would be likely to have a right of appeal to the FtT.

35. Mr Krushner submitted that I should accept that the appellant had given a truthful account to the Home Office and to the Tribunal. The legal parameters were agreed, and were set out in the skeleton argument filed by Mr Malik of counsel on the previous occasion. The tests applicable in relation to deprivation and Article 8 ECHR were not in dispute between the parties. The operative issue was the credibility of the appellant's account. The burden fell on the respondent to establish that the appellant had attempted to mislead. That burden had not been discharged. The appellant had explained that he changed his name in 1998 because his mother had remarried a man called Mr Smith and he had wanted to adopt his surname for a variety of reasons, including out of respect. The appellant had also explained in oral evidence why he had chosen the name Samuel; it was a biblical name. It had not been possible to locate the Deed Poll records relating to the change of name but what was clear was that he had been able to change his name to Samuel Smith. Had that not been the case, the appellant would not have been issued a passport in that name. There had only been a short time between the unsuccessful applications in the Gyampoh name and

the successful applications in the Smith identity. The agent who assisted with the Gyampoh applications had subjected the appellant to one extended let down, making the same applications with the same details time after time.

36. The appellant was granted entry clearance and was in the United Kingdom from 2003 to 2007. He had then applied for further entry clearance when he wished to return to the UK. This behaviour demonstrated compliance on his part, and suggested that he would not have engaged in the deception suggested by the respondent. The respondent had failed to produce the SET (M) form which the appellant would have completed when he applied for ILR. The appellant had filled in Form AN himself. It was accepted that he could have been more careful when he completed that form but was it necessarily the case that he had been dishonest?

37. The appellant had been to visit his father in the USA and this was corroborative of his account of having been adopted and changing his name. There was no evidence from his father in the USA but that was explicable by reference to the lack of a close relationship. The appellant's answers at interview were to be examined in their proper context. He had flown to the USA and returned immediately upon being refused entry. He was then subjected to an interview of the utmost significance. There was a clear clash between what he is recorded to have said in parts of that interview and the account he now gives. I was invited to accept that the appellant lacked recollection of the answers given after such a long period of time, and to note that he had refused to sign the final few pages of the transcript.

38. The representations made by Orion Solicitors clearly missed the point raised by the Secretary of State. The letter from the second firm – BWF Solicitors – was in the same format and had probably just been copied from the first, as suggested by the appellant. Mr Krushner invited me to accept what the appellant said in that respect. It was to be noted that the appellant's current wife was interviewed at the same time, and she had given his correct name and date of birth to the Immigration Officer. When asked questions at the hearing, the appellant's witness had also stated that the appellant's age corresponded with that given in the Smith identity.

39. There had been a significant delay in this case, between 2012 and 2019, which was relevant to Article 8 ECHR. A certain stigma would attach to the removal of British citizenship and there were young British citizen children involved. The appellant would be unable to work in the event that he was deprived of his nationality. Nor would he be able to access state resources. The appellant suffered two types of prejudice as a result. Firstly, there was procedural prejudice as to the age of the interview. He was obviously in difficulty in responding to those records now. Secondly, the children were now aged 11 and 7, and were old enough to appreciate the consequences of the current process. The respondent had failed to explain why this was not dealt with in the

intervening years. In all the circumstances, it was disproportionate to deprive the appellant of his nationality.

Analysis

40. The respondent's decision was taken under section 40(3)(b) and (c) of the British Nationality Act 1981, which provides that she 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 (fraud), false representation or concealment of a material fact. The appellant's appeal against that decision is brought under section 40A of the 1981 Act.

41. The proper approach to such appeals has been defined in a line of authority which began with Arusha & Demushi [2012] UKUT 80 (IAC) and continued with Deliallisi [2013] UKUT 439 (IAC) and AB (Nigeria) [2016] UKUT 451 (IAC). In BA [2018] UKUT 85 (IAC), the Upper Tribunal held that the Tribunal's first task in such a case was to establish whether the conditions precedent in section 40(2) or 40(3) were present. In a s40(3) case such as the present, the Tribunal must consider whether British citizenship was acquired by means of fraud, false representation or concealment of a material fact. The burden is on the respondent, to the civil standard, and the Tribunal may consider evidence which was not before the Secretary of State.

42. In relation to Article 8 ECHR, the guidance given by the Upper Tribunal in the cases mentioned above was considered by the Court of Appeal in Aziz & Ors v SSHD [2018] EWCA Civ 1884; [2019] 1 WLR 266. The single full judgment was given by Sales LJ, as he then was. At [27]-[29], he stated that a Tribunal considering an appeal such as the present should not conduct a proleptic analysis of whether the appellant would be likely to be removed or deported at a later stage, and should confine its analysis to the impact of deprivation upon the appellant and his family. Sir Stephen Richards and the Master of the Rolls agreed.

43. In considering the first question posed by section 40(3) BNA 1981, I remind myself that it is necessary for the respondent to establish that the appellant was dishonest in his application for British citizenship, whether by making representations which were positively untrue or by intentionally concealing material facts: Balajigari [2019] EWCA Civ 673; [2019] 1 WLR 4647. In considering any such question, it is appropriate to use the three stage approach discussed in cases such as Majumder [2016] EWCA Civ 1167; [2017] 3 All ER 756. The Tribunal should ask itself, firstly whether the respondent has adduced sufficient evidence to discharge the evidential burden. Secondly, it must be considered whether the appellant had discharged the burden upon him, which again is merely evidential, of adducing an innocent explanation. Thirdly, if so, the Tribunal must consider all of the evidence to decide whether the respondent has discharged the legal burden upon her.

44. I have no difficulty in concluding that the respondent has adduced sufficient evidence to discharge the initial evidential burden upon her.

Her bundle contains records of the entry clearance applications which the appellant made in the identity of Philip Gyampoh. It also contains, amongst other documents, the application form which he completed in order to apply for naturalisation, in which he failed to declare that he had a different name at birth. The bundle also contains the records of interview with the appellant at Heathrow Airport, during which he is recorded to have denied ever using the Gyampoh identity, only to change his account when he was confronted with the entry clearance applications in that name. There is plainly more than enough here to require an answer. In fairness to Mr Krushner, who said all that could be said in support of the appellant, he did not attempt to submit that there was simply no case for the appellant to answer.

45. In respect of the second stage, when confronted with the core elements of the respondent's case, the appellant has either failed to provide any explanation or has failed to provide an explanation with a basic degree of plausibility. The appellant was a poor witness, who was quite properly described by Mr Whitwell as a man who had engaged in a high degree of dissembling and dissociation when he thought that it would further his cause. The following are the most notable difficulties with his case.

46. Firstly, the appellant has failed to provide any remotely adequate reason for his failure to disclose that he was born Philip Gyampoh when asked the most direct of questions at 1.7 and 1.8 of Form AN (as reproduced at [11] above). He has used the English language throughout his life. He completed this form himself. The warning at the end of the form is especially clear, as one would expect, that there can be the most serious consequences if it is filled out incorrectly. The appellant was asked by Mr Whitwell about the absence of an answer to question 1.7 on the form. He said that he thought he should give the name by which he was known in the United Kingdom. Referred again to the precise question he had been asked in the form, he said that he had changed his name (to Samuel Smith) and he thought that this was the name he should give. When I sought clarification from the appellant at the end of his evidence, he said to me that he should 'put the name I was using here' and that it was 'the right thing to do'. But there is no conceivable way that the question could be read in that way; it is the simplest of questions and would have been entirely otiose had it simply sought the name by which an individual is known in the UK.

47. Secondly, there are the admissions made by two different firms of solicitors in the UK. I have set the admissions out in full above. When the appellant was asked about these admissions, he stated that the solicitors in question must have made a mistake. The plausibility of that suggestion is to be assessed with reference to the remainder of the letters, and the circumstances in which they came to be produced. The first letter in particular is well written and very detailed. The appellant accepted in his oral evidence that all of the detail in that letter is accurate, including his professional and personal relationships and the other aspects of what might otherwise be described as mitigation. The letter came to be written in response to a letter from the respondent

dated 26 October 2017. In that letter (a full copy of which was only provided at the hearing), the respondent invited the appellant to provide a response to the developing case against him, which was that he had failed to disclose his previous identity of Philip Gyampoh in his dealings with immigration officials.

48. The appellant explained in his evidence how the response to the respondent's letter was compiled by Quality Solicitors Orion. He had dealt with a solicitor at that firm named Mr Agyemang. He thought he had had two meetings with him at the Hounslow branch of the firm. The meetings had been between half an hour and an hour. Following these meetings, Mr Agyemang had written a letter in which he had provided entirely correct information, supported by relevant documentation (as itemised therein), but he had erred when he stated that the appellant had changed his name "because he feared that if he used his original name there was a risk that he would be refused the visa to accompany his wife to the UK." The appellant was unable to explain why the solicitor, who had otherwise created a perfectly good response to the respondent's enquiry, had erred in this fundamental respect.

49. As Mr Whitwell noted in his submissions, it was not only Quality Solicitors Orion who were said to have erred so fundamentally. The firm who previously represented the appellant in his appeal – BWF Solicitors – had also written a letter in similar terms, containing the same admission. The appellant suggested in his oral evidence that BWF Solicitors had merely copied this from the previous solicitors. That is inherently unlikely, given the gravity of the admission and its likely consequences. It is even more unlikely when considered in the context of the rest of the appellant's evidence. He stated in answer to further questions that he had gone to BWF Solicitors because he had become frustrated at the amount of time it had taken the respondent to come to a decision. He had taken the case from Mr Agyemang and instructed BWF, after which he had had 'two or three meetings' with them, each of which he thought was around 35 to 40 minutes in length. He said in his oral evidence that he had been asked questions during these meetings about why he had come to the UK, why he had gone to the USA and the matters which had led to the seizure of the passport. The appellant's account of the questions asked by both firms is precisely in accordance with what one would expect of a solicitor representing an individual faced with allegations such as those contained in the respondent's letter of 26 October 2017. At the end of the interviews with BWF Solicitors, that firm produced a letter in which it was accepted that the appellant had changed his name because 'it would increase his chances of his [entry clearance] application being successful.'

50. Mr Whitwell submitted that it was inherently unlikely for two separate solicitors to represent the same man so ineptly that they made wholly unwarranted admissions which went directly to the question of whether his British citizenship should be the subject of a deprivation order. I agree. Parellels are perhaps unhelpful but it is equivalent to two separate solicitors wrongly admitting that a man committed a criminal offence or accepting that a pivotal term in a contract was introduced

orally. These are not likely to be matters on which mistakes are made, and they are certainly not likely to be mistakes which are made by two separate professionals, one after the other.

51. There is a further point, which was also quite properly raised by Mr Whitwell. If, as appears to be the case, the appellant states now that he was so poorly represented by these individuals that his citizenship is under threat partly as a result of their negligence, there is no evidence of any complaint having been made. In BT (Nepal) [2004] UKIAT 311 and other cases, the Tribunal has explained that it is very easy to blame such matters on a previous representative but that decision makers should be slow to accept such an account in the absence of a complaint to the firm and/or the professional body. That must be correct; the appellant asks me, in effect, to accept that two separate solicitors have been wholly unprofessional in taking his instructions or in putting those instructions to the respondent. The credibility of that account is seriously undermined, in my judgment, by his failure to give the solicitors in question any opportunity to answer such a serious allegation.

52. As Mr Whitwell also noted, however, this is not a case in which the appellant must rely on lightning striking the same place only twice. It is not only solicitors in the UK who he states have let him down in the most serious of ways. He also makes that allegation in respect of the man who supposedly assisted him with the first three application for entry clearance. He said in oral evidence that he and this man, Scott Kojo, had known each other as children. The appellant stated that Mr Kojo was an unregulated immigration adviser who he had paid to help him with the application forms. He said that he had not seen Mr Kojo for a number of years before he 'helped' him with the application forms. The consequence of this, the appellant maintained, was that Mr Kojo had called him 'Philip' when they met, although on the appellant's account he had changed his name to Sam Smith by this stage. I asked the appellant to explain to me whether he had allowed Mr Kojo to continue calling him Philip, or whether he had explained to him that he had changed his name. The appellant stated that he had not only corrected Mr Kojo immediately; he had also then provided him with a copy of the Deed Poll certificate to confirm the change of name. It was after these exchanges of information, the appellant maintained, that Mr Kojo had submitted three applications for entry clearance for the appellant in the Gyampoh identity, supported by a passport in that identity.

53. I obviously accept that immigration advisers are not regulated in West Africa as they are in the UK, just as I accept that some roguish conduct might be attributed to such advisers, even where that conduct is unsolicited by the client. The appellant's explanation need only be considered for a moment to realise how absurd it is, however. On the appellant's account, Mr Kojo had been provided with all that he needed to make a legitimate application for entry clearance for a man who had changed his name to Samuel Smith. Instead of doing that, however, the appellant would have me believe that Mr Kojo made three applications in the appellant's former identity, supported by a passport in the former

identity, supposedly sourced by Mr Kojo. He also suggested in answer to questions from Mr Krushner that Mr Kojo had manufactured all of the family details given in each of the student entry clearance applications in the Gyampoh identity. This is not roguish conduct; it is a man going out of his way to make his own life, and that of his client, considerably more difficult for no reason whatsover.

54. In a further attempt to distance himself from documents relied upon by the respondent, the appellant claimed before me that aspects of the interviews at Heathrow had been inaccurately transcribed by the Immigration Officers, or that he had no recollection of giving the answers recorded. In evaluating that claim, I will state immediately that I accept that the appellant would have been very tired and very stressed when he gave those interviews. He had travelled to the USA, only to be refused entry, whereupon he returned, only to be interviewed at some length by Immigration Officers in the UK. Mr Krushner asked a number of very detailed questions of the appellant about those interviews. Amongst other answers from which he sought to distance himself, the appellant did not accept that he had stated that he had used the name Philip Gyampoh 'but this is not my real name'. Nor did he accept that he had said that Henry Smith was his real father. The insinuation was – just as it was in respect of his former solicitors and his entry clearance agent – that other people were responsible for errors and that it was those errors which had placed the appellant in his present predicament. The allegations against the Immigration Officers were not made in his statement before the FtT, however and they had every hallmark, in my judgment, of false exculpatory statements made long after the event.

55. The reality of this appeal is that the respondent has presented potent evidence that the appellant relied on false representations and concealed material facts when he made his application to naturalise as a British citizen. He failed to declare in that application that he had been known by another name at birth. The appellant has manifestly failed to raise an innocent explanation of the *prima facie* case of deception established against him. The true position was revealed by the two solicitor's letters to which I have referred. In my judgment, those letters were not the product of incompetent representation, as the appellant suggested. Those letters properly reflected the appellant's instructions at the time. He changed his name after he had been refused entry clearance on three occasions and he acquired a passport in the second identity in order to conceal those applications for entry clearance. I do not accept that he did so for some reason connected to his family; his clear motivation was as stated in the solicitors' letters: to conceal the fact that he had been refused entry clearance on three previous occasions.

56. The appellant made two successful applications for entry clearance in the second identity and he subsequently acquired ILR in that identity. When he applied for naturalisation, he knowingly and dishonestly failed to disclose his birth name, knowing that disclosure of that information would link him to the refused applications and potentially undermine his status in the United Kingdom throughout. He attempted to maintain

that deception in his interviews at Heathrow and before the FtT and the Upper Tribunal. The only glimpse of the true position has been provided by the letters from his former representatives.

57. It follows that I need not progress to the third of the issues I described at [43] above. The appellant having failed to discharge the evidential burden upon him at the second of those stages, the Secretary of State succeeds in establishing both of the conditions precedent to the deprivation of citizenship under s40.

58. Mr Krushner did not attempt to rely on an argument which has featured previously in this appeal, which was that any deception on the appellant's part was not material to the appellant's naturalisation. He was sensible to abandon that submission. The appellant's deception was obviously material to the acquisition of British citizenship, and the circumstances are readily distinguishable from those considered by UTJ Kopieczek in Sleiman [2017] UKUT 367 (IAC). In this case, the respondent would inevitably have refused the application for naturalisation if she had known that the appellant had changed his name in order to conceal the fact that he had been refused entry clearance on three previous occasions. Subject to consideration of the ECHR, therefore, I conclude that the respondent was entitled to deprive the appellant of his British citizenship.

59. Both advocates properly confined their Article 8 ECHR submissions in accordance with the decision of the Court of Appeal in Aziz. The material question, if I can be forgiven for summarising what was said by Sales LJ, is whether the deprivation itself, as opposed to any subsequent administrative decisions which might be taken against the appellant as a foreign national, is contrary to Article 8 ECHR.

60. There was quite properly no suggestion on the part of Mr Krushner that the deprivation of citizenship would interfere with the appellant's right to a family life with his partner and children in the United Kingdom. What was submitted, instead, was that there would be a diminution in the scope of the appellant's private life as a result of the deprivation of citizenship, and that there would be an impact on the best interests of the appellant's children, aged seven and eleven.

61. I did not receive detailed argument on the rather elusive scope[1] of the concept of private life under Article 8 ECHR, and whether the appellant's ability to take employment and/or to receive state benefits fall within the scope of that Article. Nor did I receive detailed argument on the precise consequences to the appellant's children in the event that he is no longer a British citizen. For present purposes, I am prepared to accept that the appellant will not be able to continue in his employment or be able to receive state benefits in the event that he is deprived of his citizenship. I am also prepared to accept that the resulting financial consequences and the distress felt by the appellant and his partner are likely to have an impact on the best interests of his children from previous relationships. It would obviously be in the best interests of the

[1] Razgar [2004] 2 AC 368 refers

appellant's children that their father is able to continue working and provide support for them as he does at present. The best interests of the children are a primary consideration, however, and are not the paramount consideration in such an appeal. They may yield to countervailing considerations of sufficient strength.

62. In this appeal, I am entirely satisfied that the immediate consequences which will be felt by the appellant and his family are proportionate to the legitimate aim pursued by the respondent. I consider there to be a strong public interest in ensuring that people who are subject to immigration control are truthful in their dealings with the respondent, particularly as regards applications for naturalisation. In reaching that conclusion, I have borne in mind the submission made by Mr Krushner regarding the lengthy delay in the respondent taking the decision to deprive the appellant of his citizenship. The delay in this case is relevant in the first two ways identified by Lord Bingham at [14]-[16] of EB (Kosovo) [2008] UKHL 41; [2008] 1 AC 1159. Even taking full account of that delay, however, I do not consider that the severity of the consequences to the appellant and his family even begin to outweigh what remains a pressing public interest in deprivation.

63. I do not consider the delay to be relevant in the third way envisaged by Lord Bingham in EB (Kosovo). The delay was not the product of arbitrary or inconsistent decision making. In fact, the reason for that delay is well known to all those who practise in this field. As is clear from 2.96- 2.102 of the current edition of Macdonald's Immigration Law and Practice, the law in this area was in an uncertain and unsatisfactory state for some years. It was unclear whether an individual such as the appellant – who had dishonestly changed his own identity rather than impersonating another person – should be deprived of his citizenship under s40 of the BNA 1981 or whether the Secretary of State should instead treat the grant of citizenship as null and void. The test cases on the point were decided in favour of the respondent in March 2014 (R (Kaziu & Ors) v SSHD [2014] EWHC 832 (Admin)) and November 2015 (R (Hysaj & Ors) v SSHD [2015] EWCA Civ 1195) but the Supreme Court reached the opposite conclusion in December 2017, in R (Hysaj & Ors) v SSHD [2017] UKSC 82; [2018] 1 WLR 221. The state of the law following the Supreme Court's decision is summarised concisely at [2.102] of Macdonald's:

> If a person impersonates another real person, living or dead, to make an application for citizenship then the citizenship granted to the impersonator is a nullity. However, if a person creates for him or herself an identity which is false in some or all of its material particulars (eg as to name, date or place of birth) and successfully uses that identity to obtain citizenship then the citizenship is not a nullity but may be revoked by the Secretary of State as having been obtained by fraud.

64. The respondent placed a number of cases on hold whilst the litigation described above progressed slowly to the Supreme Court. That decision

placed individuals such as the appellant in a situation of uncertainty but there was a proper and proportionate reason for the respondent staying her hand whilst she awaited a final decision in the litigation. That decision having been reached, the respondent opted not to treat the appellant's citizenship as a nullity (that being the course she had been considering when she wrote to his solicitors in 2017) but to deprive him of citizenship under s40 BNA 1981. It would doubtlessly have been better for the respondent to write to the appellant to explain to him why it was taking so long for her to take a decision following the interviews which took place at Heathrow Airport. The suspension of decision-making in light of the Kaziu litigation was sufficiently well-known, however, that the appellant – who was professionally represented - might reasonably have been expected to know about it. Even if he did not, I do not regard the delay as unexplained or capricious; it was brought about as a result of a legitimate desire to achieve certainty on the applicable law.

65. In the circumstances, having taken full account of the severity of the consequences which follow directly from the deprivation of citizenship, I conclude that the public interest clearly outweighs those consequences.

Notice of Decision

Having set aside the decision of the FtT, I remake the decision on the appeal by dismissing the appeal.

No anonymity direction is made.

MARK BLUNDELL
Judge of the Upper Tribunal (IAC)

25 March 2020