



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

Appeal Numbers: DC/00003/2013
DC/00010/2013
DC/00004/2013

THE IMMIGRATION ACTS

Heard at Field House

On 17th June 2014

Determination

Promulgated

On 3rd July 2014

Before

**LORD MATTHEWS
DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

Between

**MISS MAYADA SULAIMAN
MR NASEER (HUSSEIN) SULAIMAN
MR HASSAN SLEIMAN**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Halstead, Counsel
Mr Ian Macdonald QC

For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are naturalised British citizens who had been granted British overseas passports on the basis that their father was born in Nigeria in 1929 at a time when Nigeria was a British colony. They appeal against the decision to deprive them of their British citizenship under Section 40A of the British Nationality Act 1981.
2. The judge of the First-tier tribunal found that on a balance of probabilities the Appellants and each of them acted fraudulently or at the very least made a false representation and/or concealed a material fact and that the decision to deprive them of their citizenship was rightly made.
3. Permission to appeal was granted and thus the matter came before us. A Rule 24 notice was lodged, in brief terms, opposing the Appellants' appeal and stating that the judge had directed himself appropriately.
4. Mr Macdonald QC directed us to various documents lodged on the Appellants' behalf. With reference to paragraphs 31 and 32 of the determination we were invited to find that the judge had failed to apply the high standard of proof required as set out in Khawaja v SSHD [1984] AC 74. The standard of proof was on the Respondent and it was the civil standard of a balance of probabilities "to a high degree". The judge did not apply that standard in paragraph 32 finding only against the Appellants on a "balance of probabilities". The judge had said that to "tell an Entry Clearance Officer that you are Lebanese and then to tell the Secretary of State that you have never had any other nationality other than that of a BOC (British Overseas Citizen) was totally inconsistent. "
5. However, as Mr Macdonald explained, this was a false antithesis. At that time all three Appellants did have Lebanese passports. There had been no attempt to conceal that. There was a time lag between the two events. It was quite clear that their father had been Lebanese at one point. The Appellants had simply continued using their passports. In addition, contrary to what the judge had said, he had been provided with witness statements which gave an explanation as to what had happened. When the judge said that they must have had their passports reissued to them once in their lifetime (paragraph 31) that might or might not be correct but there was no information on that. In any event, there was no evidence that the Appellants had applied deception of any kind and it was certainly not proved to the particular standard required. We were asked to conclude that there was an error of law, to set the decision aside and remake the decision allowing the appeals.
6. For the Home Office, it was said that, while the judge had mentioned the wrong standard of proof, his reasoning did not reflect that. It was a complicated story. The judge was entitled to make the findings he did make. On any view the Appellants clearly had a close relationship with the Lebanon. The narrative was not clear. When the judge said that the witnesses "could have provided witness statements" it was accepted that

he was wrong to conclude that they had not as they were on file and were available to the judge at the hearing. However, even looking at those statements they did not offer any explanation of how the Appellants became Lebanese.

7. We reserved our decision.
8. Plainly the standard of proof is an important factor in a case of this nature. The judge set out the standard at paragraph 3 of his determination noting that the Respondent “bears the burden of proving on a balance of probabilities that the Appellant in each case obtained citizenship by fraud...” We note he went on to say that the Appellant in each case bore the burden of proving on a balance of probabilities that deprivation would constitute a disproportionate interference with their Article 8 rights. He found “on a balance of probabilities” that the Appellants and each of them had acted fraudulently or had at least made a false representation. We were told by Mr Macdonald that the judge was referred to Khawaja but he does not mention it nor does he, more importantly, state that the burden was on the Respondent to the standard mentioned but to a high degree. In our view, looking at the language used by the judge, he was not applying the distinct standard of proof that he was bound to apply. Not to apply the correct standard of proof was a material error in law. Furthermore, when the judge said that “they could have provided witness statements” the parties before us were agreed that he did have three witness statements, the terms of which he unfortunately appears to have overlooked. This is important as when one looks at the terms of those statements they are all consistent with the proposition that the Appellants did *not* act fraudulently. The judge was duty bound to consider the explanations given and assess their weight but for whatever reason did not do so, which is undoubtedly a further material error in law. Finally, we should also note what the judge said in paragraph 31, namely that in respect of the passports issued to them as children they “must” have expired at least once in their lifetimes, which means that they had made applications for new passports which had been granted. We think this is a small point but in fact there is no evidence that the Appellants “must” have made applications for new passports and as such, absent any reference to appropriate background material, the judge was speculating and his conclusion was also an error in law.
9. Given these errors it is necessary to set the decision aside, which we do, and we have decided that we can remake the decision on the basis of the evidence presented to us.
10. What is not in doubt is that the three Appellants were issued with Lebanese passports. Holding such a passport very much indicates that the Appellants are Lebanese. The point made by the Appellants in this case is that they genuinely believed that to be so - see the terms of their statements. It was only at a later date that they obtained legal advice that this was not the true position and that they should lodge an application for registration as a British citizen. The terms of their statements portray the

Appellants as acting entirely innocently and reasonably throughout and Mr Macdonald referred us to the terms of the interview with the second Appellant when he was asked whether he had ever held a British passport or travel document. He answered that this was the first time he was applying for a British passport and that he held a Lebanese passport. He explained he travelled on a Lebanese passport. He gave further family details. None of these details appear to us to be inaccurate.

11. In fact the account of the three Appellants is straightforward enough – they used Lebanese passports to which they considered they were entitled and as such there was no deception by them before the Entry Clearance Officer. It was after that, on legal advice, that they lodged their application.
12. From what we have been told the account of the Appellants may well be true. However, that is not the test we have to apply. It is up to the Respondent to show that the Appellants have acted dishonestly to a high degree of probability. In our view, by a wide margin, the Respondent has failed to show any dishonesty and therefore has failed to discharge that burden.
13. It follows that these appeals must be allowed.

Decision

14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
15. We set aside the decision.
16. We remake the decision in the appeals by allowing them.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald