



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00010/2020**

THE IMMIGRATION ACTS

**Heard at Bradford (via Teams)
On the 21st July 2021**

**Decision & Reasons Promulgated
On the 03rd August 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SM

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Howells, Senior Home Office Presenting Officer

For the Respondent: Mr Pipe

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1974. She appealed against a decision of the Secretary of State dated 8 January 2020 to give notice of an intention to deprive the appellant of her British citizenship under section 40(3) of the British Nationality Act 1981. The First-tier Tribunal, in a decision promulgated on 2 February 2020, allowed her appeal. the Secretary of State now appeals, with permission, to the Upper Tribunal.

2. There are four grounds of appeal. However, Mr Howells, who appeared for the Secretary of State at the Upper Tribunal initial hearing, made submissions only in respect of Grounds 1 and 3, although he did not formally withdraw Grounds 2 and 4.
3. Ground 1: The appellant, who has been resident in the United Kingdom since about 1995, became a British citizen on 24 January 2007. In her application for naturalisation, she did not disclose that she had used two false identities during the period of her residence prior to 2006 when she submitted her application. Section 40(3) of the British Nationality Act 1981 provides:

‘The Secretary of State 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—

- (a) fraud,
- (b) false representation, or
- (c) concealment of a material fact.’

The First-tier Tribunal judge found at [16] that ‘I accept that the [appellant] did not feel the need to consult the guidance document in order to answer the questions appropriately.’ In a series of boxes on the form at Q 7 and ticked by the appellant, she confirmed that she had ‘read and understood the guide Naturalisation as a British Citizen’. That guide tells applicants, *inter alia*, that ‘you must tell us if you have practised deception in your dealings with the Home Office ... this will be taken into account in considering whether you meet the good character requirement.’ The relevant question in the form appears at 4.11; ‘Have you engaged in any other activities which might be relevant to the question of whether you are a person of good character?’

4. The respondent submits that the judge has not referred to the fact that the appellant had ticked the box, indicating that she had read the guidance, in reaching her finding that the appellant lacked the *mens rea* for the use of deception [17].
5. It is the case that the judge makes no specific reference to the appellant’s answer to Q 7.2. However, in my opinion, the judge has not fallen into material error of law. First, the judge states categorically [14] the she had ‘considered the form [completed and signed by the appellant]’. She will, therefore, have seen the appellant’s answer to Q 7.2 and made her subsequent findings as to *mens rea* in that knowledge. The judge was not obliged to set out in detail each and every part of the completed form which she had taken into account in reaching her findings. Secondly, I do not consider that, even if she had dealt in terms with Q 7.2, the judge would have reached a different conclusion. Having read the form and the guidance, I consider that the judge would have made the same observations which she makes at [14]; whilst not exactly misleading, the questions at section 4 are poorly drafted if the intention is to indicate

clearly to applicants that the use of false identities should be stated. Question 4.11 ('have you engaged in other activities...') follows directly on from questions about crimes against humanity, war crimes and terrorism which are all 'activities' rather different in kind from the adoption of a false nationality. As the judge says, the use of a false identity hardly falls into the same category 'as terrorism and genocide.' Thirdly, it is, frankly, highly likely (and likely that the judge would have found) that the appellant has ticked the declaration that she had read the form having not actually done so. The form was, as the judge observed, 'fairly straightforward' and it was open to the judge to find that the appellant assumed she knew what the guidance was likely to tell her (so therefore did not bother to read it). These observations all reinforce the judge's finding that the appellant did not possess the *mens rea* to perpetrate a deception in this instance. That finding is not perverse, indeed, it was patently open to the judge and I see no good reason to interfere with it. As the House of Lords observed in *SSHD v AH (Sudan)* [2007] UKHL 49 [30], 'Appellate courts should not rush to find such misdirections [as to the law] simply because they might have reached a different conclusion on the facts or expressed themselves differently.'

6. Ground 3: The Secretary of State also complains that the judge failed to deal with the matter of the appellant's true nationality. The appellant completed the naturalisation form stating that she is Burundian. She had, however, also claimed to be Tanzanian and, when she had entered the United Kingdom, Ugandan.
7. I agree with Mr Pope, who appeared before both the First-tier Tribunal and the Upper Tribunal for the appellant, that the determination of the appellant's true nationality was not a precedent fact which the judge need to find in order to deal with the appeal before her. The decision to deprive was based on the use of false identities in previous applications and the failure to declare this when applying for naturalisation. The question of the appellant's true nationality was also not, as Mr Pope submits, any part of the basis upon which the Secretary of State put her case to the First-tier Tribunal.
8. I shall not, in the circumstances, address Grounds 2 and 4 save to say that I agree with the submissions made by Mr Pope in his R24 statement dated 16 July 2021 (see [11] and [15-16]).
9. The judge did not err in law such that her decision falls to be set aside. Accordingly, I dismiss the Secretary of State's appeal.

Notice of Decision

The Secretary of State's appeal is dismissed.

Signed
2021
Upper Tribunal Judge Lane

Date 22 July

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

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