Upper Tribunal
(Immigration and Asylum Chamber)

Pirzada (Deprivation of citizenship: general principles) [2017] UKUT 00196 (IAC)

THE IMMIGRATION ACTS

Heard at Stoke	
On 24 November 2016	**Promulgated on** ....

Before

MR C M G OCKELTON, VICE PRESIDENT

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABDUL WAHEED PIRZADA

Respondent

Representation :

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer.

For the Respondent: Ms Kullar, Solicitor, instructed by S H Solicitors.

(i) The Secretary of State has two separate powers of deprivation, exercisable on different grounds, as set out in sub-ss (2) and (3) of s 40 of the British Nationality Act 1981.

(ii) The power under s 40(2) arises only if the Secretary of State is satisfied that deprivation is conducive to the public good.

(iii) The power under sub-s (3) arises only if the Secretary of State is satisfied that registration or naturalisation was obtained by fraud, false representation or concealment of a material fact. The deception referred to must have motivated the grant of (in the present case) citizenship, and therefore necessarily preceded that grant.

(iv) The separation of sub-ss (2) and (3) makes it clear that obtaining naturalisation by one of the means of deception set out in sub-s (3) cannot of itself amount to a reason enabling the Secretary of State to be satisfied that deprivation is conducive to the public good for the purposes of sub-s (2); but, in an appropriate case, there would appear to be no reason why the Secretary of State should not be satisfied that the conditions under both subsections exist.

(v) The restrictions on the rights of appeal imposed by s 84 of the 2002 Act do not apply to appeals against a s 40 decision: therefore, any proper ground of appeal is available to an applicant. The grounds of appeal are, however, limited by the formulation of s 40 and must be directed to whether the Secretary of State's decision was in fact empowered by that section. There is no suggestion that a Tribunal has the power to consider whether it is satisfied of any of the matters set out in sub-ss (2) or (3); nor is there any suggestion that the Tribunal can itself exercise the Secretary of State's discretion.

DETERMINATION AND REASONS

1.
This is the Secretary of State's appeal against a decision of Judge R R Hopkins in the First-tier Tribunal. The decision primarily in question was made by the Secretary of State on 8 October 2015 and is a decision that the claimant should be deprived of his British citizenship.

2.
The facts are as follows. The applicant was born in 1962. He is or was a national of Afghanistan. He arrived in the United Kingdom in June 2001 and claimed asylum. His claim was refused because the Secretary of State did not think that he had given a truthful account of his immigration history. Nevertheless, he was granted leave to remain, and it appears that he had such leave until 23 March 2006. Just before the expiry of that leave he applied for indefinite leave to remain, and that was granted. On 7 February 2008 he applied for naturalisation as a British citizen. The application was granted and a certificate of naturalisation was issued on 14 May 2008. Since that date, therefore, he has been a British citizen.

3.
The applicant's history before he arrived in this country is far from clear. He evidently spent some time in Russia, apparently studying medicine. He has a diploma indicating his graduation with a medical degree from St Petersburg University in 2000, which is thought to be genuine. Certainly, in other proceedings which we shall shortly mention, he has relied upon it. He has apparently worked at some stage in Pakistan. The fact that he was in St Petersburg, presumably for a considerable period of time ending in 2000, incidentally demonstrates that the account he gave of his history when claiming asylum was not the truth. He has no qualification entitling him to practice medicine at any level in the United Kingdom.

4.
From 2004 onwards he was working in the United Kingdom in various medical contexts. In that year he obtained a job at the PAK Medical Centre in Birmingham as a part-time practice nurse. That employment continued at least until 2011. In 2011 he obtained further employment as a physician's assistant at the Al-Shafa Medical Centre in Birmingham. In addition, for a short period in 2010 he worked as a locum at the Oakwood Surgery, also in Birmingham.

5.
Those activities and some others form some basis of criminal charges brought against him in the autumn of 2011. On 26 April 2012 he pleaded guilty to charges 1, 3 and 4 on an indictment, those charges relating to the activities we have set out above. As we understand it, the charges were on the basis of obtaining the employment and the relevant salary by fraud: these were not charges of pretending to be a registered practitioner under the Medical Act 1983 or similar legislation. The claimant was sentenced to a total of 17 months imprisonment for the three offences to which he had pleaded guilty.

6.
After making enquiries of the claimant, the Secretary of State made a decision to deprive him of his British nationality on 3 April 2014. The claimant appealed against that decision and the appeal was allowed by Judge Andrew in the First-tier Tribunal on the ground that the decision was not in accordance with the law and thus could not stand. That decision was dated 27 July 2015. The Secretary of State made a new decision on 8 October 2015. It was against that decision that Judge Hopkins determined the appeal. We shall examine the Secretary of State's decisions and the judges' decisions in due course, but it is convenient first to set out the relevant legislation.

7.
The provisions enabling the Secretary of State to deprive a person of citizenship are in s 40 of the British Nationality Act 1981. At the dates of the decisions and appeals under examination, the relevant provisions were as follows:

"40. Deprivation of citizenship

…

(2)
The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

(3)
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.

(4)
The Secretary of State may not make an order under subsection (2) if he

is satisfied that the order would make a person stateless.

(4A) [This sub-section came into force on 28 July 2014]. But that does not prevent the Secretary of State from making an order under subsection (2) to deprive a person of a citizenship status if –

(a)
the citizenship status results from the person's naturalisation,

(b)
the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory, and

(c)
the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory."

8.
Section 40(5) requires the Secretary of State to give a notice in writing of her intention to make an order under s 40, and s 40A confers a right of appeal to the First-tier Tribunal upon a person who is given such a notice. Section 40A(3) provides that certain sections of the Nationality, Immigration and Asylum Act 2002 shall apply to such an appeal as they apply in relation to an appeal under s 82 (or ss 83 and 83A before their appeal) of the 2002 Act. We do not need to set that provision out, save to say that s 84, which both before and after amendment by the 2014 Act, sets out the possible grounds of appeal, is not a section that is made applicable to appeals against deprivation of citizenship.

9.
We draw the following conclusions from the statutory provisions.

A.
The Secretary of State has two separate powers of deprivation, exercisable on different grounds, as set out in sub-ss (2) and (3) of s 40.

B.
The power under s 40(2) arises only if the Secretary of State is satisfied that deprivation is conducive to the public good.

C.
The power under sub-s (3) arises only if the Secretary of State is satisfied that registration or naturalisation was obtained by fraud, false representation or concealment of a material fact. The deception referred to must have motivated the grant of (in the present case) citizenship, and therefore necessarily preceded that grant.

D.
The separation of sub-ss (2) and (3) makes it clear that obtaining naturalisation by one of the means of deception set out in sub-s (3) cannot of itself amount to a reason enabling the Secretary of State to be satisfied that deprivation is conducive to the public good; but, in an appropriate case, there would appear to be no reason why the Secretary of State should not be satisfied that the conditions under both subsections exist.

E.
The restrictions on the rights of appeal imposed by s 84 of the 2002 Act do not apply to appeals against a s 40 decision: therefore, any proper ground of appeal is available to an applicant. The grounds of appeal are, however, limited by the formulation of s 40 and must be directed to whether the Secretary of State's decision was in fact empowered by that section. There is no suggestion that a Tribunal has the power to consider whether it is satisfied of any of the matters set out in sub-ss (2) or (3); nor is there any suggestion that the Tribunal can itself exercise the Secretary of State's discretion.

10.
We may take the history of the earlier appeal as set out by Judge Hopkins in his decision:

“13. On 3 rd April 2014 the Secretary of State made a decision to deprive him of his British nationality. A copy of the notice of decision has been provided. The Appellant appealed against that decision. There is before me a copy of the notice of appeal and the grounds of appeal.

14. The Appellant has a wife, Saeed Hameeda, who is a Pakistani national. On 10 th December 2014 the Respondent refused to grant her further leave to remain in the UK as the spouse of the Appellant. This decision was made on the basis that the Appellant was not present and settled in the UK. She also appealed to the First-tier Tribunal. The two appeals were set down to be heard together on 23 rd July 2015. Prior to the hearing SH & Co wrote to the Presenting Officers’ Unit inviting the Respondent to withdraw the decision in respect of the Appellant. It would seem this approach was partly prompted by the fact that the Appellant had by now completed a period of 14 years in the UK and the Respondent’s guidance at the time was that she would not normally deprive someone of their British citizenship where they have had more than that length of residence. But the decision was not withdrawn and the appeal proceeded to the hearing.

15.
The appeals were heard by Judge C Andrew. I have been supplied with a copy of her decision dated 27 th July 2015. She allowed the Appellant’s wife’s appeal outright, as the Appellant had not, as at the date of the hearing, been deprived of his British citizenship. As regards the Appellant, she allowed his appeal to the limited extent that it was not in accordance with the law. This was because the refusal letter was confused. It referred only to section 40(3) of the British Nationality Act 1981 but it seemed to suggest that he should be deprived of his citizenship under section 40(2). If the Respondent was relying upon that provision, she should have gone on to consider section 40(4) and (4A) and her own policies, but she had not done so.”

Although no issue was taken on the matter, it appears that Judge Andrew may have erred in thinking that s 40(A) applied to the decision because it was not in force at the time that that decision was taken.

11.
The new decision, taken, as we have said, on 8 October 2015 and contained in a letter on that date, sets out the Secretary of State’s thinking in the following way:

“4. West Midlands Police advised that through their investigations into your activities in the United Kingdom, specifically in relation to your work in the medical profession, you were charged with several counts of fraud and deception offences relating to your medical qualifications. You pleaded guilty to the charges and on 27 September 2012 you were sentenced to 17 months imprisonment for 3 offences of committing fraud by false representation. The Judge at your court hearing dismissed your claim that you are a qualified doctor.

5.
Your legal representatives, SH & Co Solicitors, responded to the proposed deprivation action on your behalf via their letter of 29 December 2013. You advised your legal representatives that the police had deliberately withheld evidence to discredit your case. You claim that a Detective Constable made enquiries with the General Medical Council (GMC) about the University you claim to have obtained your qualifications from. The Witness Statement (WS) made by the Detective Constable advised that your claims were correct and accurate. You claim the WS was dated 15 November 2011, but it was not disclosed until 24 August 2012, as such you claim this was a deliberate attempt by the police to conceal evidence and to discredit you.

6.
You have not supplied any evidence to support your claim that the WS was deliberately withheld by the police. It is common practice for a WS to be drafted in advance of a court hearing, this does not mean it was withheld for any unscrupulous reasons and the fact that it would have been disclosed would suggest that the basis of the statement was not detrimental to your case.

7.
You also claim that your previous employers made you a “Scapecoat” when they were questioned about your role at the Pak Medical Practice where you worked between 2004 – 2010. The Staff at the practice and the doctors in particular, distanced themselves from you when you were faced with criminal proceedings. However, no evidence has been provided that would support this claim. The fact that the Judge found you had not undertaken the work you did for sinister or financial reasons does not add weight to your claim that your employers had turned their back on you once criminal proceedings had begun.

8.
It is noted that whilst you admit what you had done was relevant to the decision to deprive you of your British citizenship, you believe that your actions were not so serious to warrant deprivation action. This is not considered to be the case because of the fraud and deception you used could have had serious consequences if medical advice you were giving was incorrect. Therefore it is not accepted that your actions are not so serious that deprivation should not be taken.

9.
It is also noted that when you applied for British citizenship in 2008, you were already engaged in the medical profession but you did not mention on your naturalisation application from that you were not a fully qualified doctor. By deliberately withholding such information your application succeeded. However, had it been known that you were not a fully qualified medical practitioner, but still engaged in medical practices, you would have failed the good character requirements that must be met to be granted British citizenship.

10.
In the Nationality Instructions, Annex D Chapter 18 it states that a person’s good character would be in question if, for example, there was information to suggest: they did not respect and were not prepared to abide by the law (i.e. were, or were suspected of being, involved in crime.

11.
In addition, an applicant’s good character would also be called into doubt if they had practised deceit, for example, in their dealings with the Home Office, Department for Work and Pensions (DWP) or HM Revenue & Customs. In view of the fact that you were willingly undertaking employment within the medical profession, when you were not a fully qualified medical practitioner, suggests that if this had been known you would not have passed the good character requirement.

12.
You were not abiding by the law of the United Kingdom because you were passing yourself off as a medical practitioner when not licensed to do so, which under the law of this country means you were engaged in criminality by doing so. Apart from concealing your lack of qualifications with the Home Office it is also considered to be the case that you were deceiving DWP and HM Revenue & Customs. You were not entitled to work within the medical field in the manner you did and it is reiterated that had this fact been known you would not have been successful in obtaining your British citizenship.

13.
At the time you lodged your application for British citizenship you were fully aware that the employment you had undertaken was not an avenue of work that was open to you. You were not a fully qualified doctor and you were not permitted to act as though you were such a professional. If you had misdiagnosed a patient's health problem this could have had a major impact on their wellbeing and could have caused severe problems."

12.
Judge Hopkins heard evidence from the claimant, and submissions. He set out his assessment of the case in relation to s 40 in paragraphs 26 to 34 of his decision. He noted first that, although there is clear reference to s 40(3), a great deal of the tone of the decision appears to be directed not to the identification of some deception by means of which citizenship was obtained, but to general issues of bad character, which might be relevant to s 40(2) but are not relevant to s 40(3). He noted that, if s 40(2) is in play, there remains the difficulty, identified by Judge Andrew, that sub-s(4) is also relevant, because there is no evidence that the applicant's previous nationality would not be lost on his acquisition of British citizenship. And, as Judge Hopkins put it, he could not "just assume" the matter in the Secretary of State's favour without any evidence or indeed any indication that the matter had been considered. Further, sub-s(4A) was also certainly now potentially in force in relation to a decision under s 40(2).

13.
Looking then at s 40(3), Judge Hopkins noted the applicant's history of offending, but also that only one of the charges related (in part) to a time before his naturalisation as a British citizen. The curriculum vitae he had provided was, as Judge Hopkins remarked, "almost entirely a work of fiction"; and the convictions left no doubt that he had deceived his employers. After considering further the question whether, in truth, the applicant had sufficient qualifications to work at the PAK Medical Centre, Judge Hopkins said this:

"32. However, the issue for me is not whether he is a person of good character: it is whether he obtained his British citizenship by means of fraud, false representation or concealment of a material fact. I have some concern that in his earlier application for indefinite leave the statement from his solicitors indicated he was a practising GP, which, of course, was untrue. But it is not clear that this representation in fact led to the grant of leave and that, but for it, he would not have qualified. The decision letter dated 8 th October 2015 makes no mention of that application or the representation made in it. He did not repeat in his naturalisation application the statement that he is a practicing doctor: he described his occupation as that of a Clinical Assistant at Pak Health Centre. I accept this was a true statement. I do not find that there has been any fraud or false representation in relation to the naturalisation application.

33. I turn to the question whether the Appellant has concealed a material fact. This depends, it seems to me, upon whether there was information he was under a duty to reveal. I note that the indefinite leave application form included a general question in which he was asked if he had engaged in any activities which might be relevant to the question whether he was a person of good character. It may be there was a similar question in the naturalisation application form, but, since only part of this form has been provided to me, I cannot be sure how he answered it. However, it is doubtful that he would have said something like "I have obtained my current employment by fraud but I have now been found out". In any event, I am not convinced that he was expected to confess to criminal behaviour which had not yet been detected. Privilege against self incrimination is an established principle of law and it is supported by Article 6 of ECHR: Heaney & McGuiness v Ireland [2000] ECHR 684. It might have

been different if at the time of the application he had been under police investigation, since this would have been a material fact which he could have told the Home Office about without having to make any admission of guilt. In the circumstances I do not find that he obtained his citizenship by concealment of a material fact.

34. I am not satisfied that the Respondent is entitled to deprive the Appellant of British citizenship under section 40(3) of the British Nationality Act 1981."

14.
Judge Hopkins went on to say that if the matter had depended on article 8 alone (which the claimant had pleaded), he would not have allowed the appeal.

15.
Before us, Mr Bates emphasised the danger which might have arisen if the applicant, as an unqualified person, had issued a prescription or undertaken work that should be performed only by a registered medical practitioner. As we observe, with the greatest respect, those fears might motivate a decision under sub-s 40(2), but cannot assist in relation to sub-s(3). As we also observed, the letter itself is to an extent unspecific. The heading is: "NOTICE OF DECISION TO DEPRIVE OF NATIONALITY UNDER SECTION 40A OF THE BRITISH NATIONALITY ACT 1981", but s 40A contains neither the power to deprive nor the requirement to give a notice. There is general reference to s 40 in para 17 but para 19 makes it clear that the order is to be under s 40(3). There is no reference to sub-s(2) in the decision.

16.
It therefore appears to us that Judge Hopkins was entirely right in looking to see whether the Secretary of State was entitled to conclude that the claimant's naturalisation had been obtained by conduct of the type set out in s 40(3). Evidence of the claimant's general conduct does not and could not do that. In order for the power under s 40(3) to be exercisable, there must be an identifiable deception, of the sort listed in that sub-section, which can be shown or properly assumed to have been operational in the grant of naturalisation. As Judge Hopkins remarked, it is difficult to see that a person ought, without any specific question, to be regarded as not disclosing relevant material if all that is said is that he may have committed a criminal offence but has not yet been charged with it. On its own terms, therefore, we think that Judge Hopkins' decision is unassailable. The decision-letter wholly failed to demonstrate any basis upon which the Secretary of State could properly say that s 40(3) applied to the claimant.

17.
As Judge Hopkins noted at para 33, however, only part of the naturalisation application form was available to him. We do not know why that was. The form was on the Home Office file and Mr Bates provided a copy to us without any difficulty. Section 3 begins as follows:

"Good character requirement.

In this section you need to give information which will help the Home Secretary to decide whether he can be satisfied that you are of good character. Checks will be made with the Police and possibly other Government departments, the Security service and other agencies."

18.
Question 3.6 asks about criminal convictions in the United Kingdom; question 3.7 asks whether the applicant has been charged or indicted inside or outside the United Kingdom with a criminal offence

for which he has not yet been tried in Court. That question is answered (correctly, so far as we know) “No”. There are then questions about international crimes of various sorts. Then there is this:

“3.11 Have you engaged in any other activities which might be relevant to the question of whether you are a person of good character?”

19.
The claimant has answered that question “No”.

20.
As distinct from the matters actually referred to in the notice of decision, it seems to us perfectly clear that that answer was a false representation. The claimant was a person who, at the time he answered that question, had for four years been engaged in fraud. We have little doubt that that answer would, in the circumstances of this case, have justified action under s 40(3). But, as we have said, it is not relied upon. Further, although that part of the application form might have generated the power under s 40(3), the discretion is the Secretary of State’s alone.

21.
It is in our view wholly unsatisfactory that, in making an important decision, the Secretary of State should apparently ignore material in front of her that might have justified the position and instead make a decision by reference to materials which could not justify it. The claimant’s case looks very much like one in which a decision of the sort against which he appealed would be not merely permissible but entirely justified. But we agree with the First-tier Tribunal Judge that no lawful decision has yet been made. We therefore dismiss the Secretary of State’s appeal.

C. M. G. OCKELTON

VICE PRESIDENT OF THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Date: 27 March 2017