Upper Tribunal
(Immigration and Asylum Chamber)

Sleiman (deprivation of citizenship; conduct) [2017] UKUT 00367 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 May 2017	………………………………

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

MOHAMMED SAID SLEIMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Mr C Yeo, Counsel

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

In an appeal against a decision to deprive a person of a citizenship status, in assessing whether the appellant obtained registration or naturalisation "by means of" fraud, false representation, or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship.

DECISION AND REASONS

1.
The appellant is a citizen of Lebanon , born on 5 May 1985. He claimed asylum in May 2004, using his correct name but with a date of birth of 9 March 1987. He was refused asylum but granted discretionary leave to remain ("DLR"), as an unaccompanied minor, until 8 March 2005.

2.
Before the expiry of his DLR he made an application for further leave to remain. That application was outstanding for five years, according to the respondent's latest decision dated 1 December 2015, which also states that because the application was outstanding for that period he was granted

indefinite leave to remain ("ILR"). That grant of ILR was on 4 May 2010, apparently under the 'Legacy' scheme. On 19 July 2011 he was granted British Citizenship.

3.

Again, according to the respondent's decision of 1 December 2015, in 2013 the appellant travelled to Hong Kong where he was arrested on suspicion of money laundering and his British passport was surrendered. It is not necessary to recite further the circumstances surrounding those events. Suffice to say, according to the appellant's representatives at the time, the appellant then travelled to China and contacted the British embassy. He provided a copy of his Lebanese passport which had the different, and now claimed, date of birth of 1985. He obtained an emergency travel document and then came back to the UK .

4.

It was during the course of those events that his correct, and the previous incorrect, date of birth was discovered, or as the appellant would say, volunteered by him.

5.

The 1 December 2015 decision was a decision to deprive the appellant of his British Citizenship on the basis that it was obtained fraudulently, the appellant having relied on the incorrect date of birth at the time.

6.

The appellant appealed against the decision and his appeal came before a First-tier Tribunal Judge ("the FtJ") at a hearing on 23 September 2016, whereby the appeal was dismissed.

7.

The appeal before the Upper Tribunal was originally listed to be heard on 23 March 2017 but was adjourned to allow for the appellant's representatives to amend the grounds of appeal to include reliance on a Home Office file note that referred to the appellant having given two dates of birth but stating that his age was irrelevant to the grant of ILR under the Legacy scheme. The further background to the appeal is best illustrated with reference to the FtJ's decision.

The decision of the FtJ

8.

In terms of the applicable legal framework, the FtJ said that it was clear from the decision in Deliallisi (British Citizen: deprivation appeal: Scope) [2013] UKUT 439 (IAC) that the Tribunal must consider whether the discretion exercised by the respondent should have been exercised differently, including involving considerations relating to Article 8 of the ECHR. He stated that removal of the appellant is not an automatic consequence of deprivation of citizenship, but the reasonably foreseeable consequences of deprivation should be considered. He also stated that he took into account that even though the appellant previously had indefinite leave to remain, he would not automatically be entitled to that status again if his citizenship was revoked.

9.

The FtJ also referred to the cases of Arusha and Demushi (deprivation of citizenship – delay) [2012] UKUT 80 (IAC) and Secretary of State for the Home Department v RK (Algeria) [2007] EWCA Civ 868, the latter decision dealing with the issue of delay in decision-making.

10.

In his findings, he assessed the respondent’s assertion that had the appellant not misled the respondent as to his age, there was likelihood that he would never have been granted British Citizenship. He noted at [34] that it was not in dispute but that the appellant provided a date of birth of 9 March 1987 and confirmed that date of birth at all material times. It was accepted by the parties that his correct date of birth is 5 May 1985.

11.
He summarised the respondent’s case as being that if the appellant had given his correct date of birth, that would have made him 22 months older and accordingly, he would not have been granted DLR in response to his asylum claim. He would have been subject to removal to Lebanon . The appellant had later re-confirmed his date of birth in his application for British Citizenship.

12.
The FtJ found that the respondent was correct to conclude that if the appellant’s real date of birth had been known when his asylum claim was refused, he would not have been granted DLR. That was because he was, in reality, not a child but an adult. The “clear reality” was that the appellant had been able to ‘upgrade’ his leave to ILR.

13.
He further found that the appellant may or may not have been removed to Lebanon , but he would have been liable to removal to Lebanon as an adult who was a failed asylum seeker. The FtJ noted that it was not contended by either party that at the time of the refusal of asylum there was any policy in place whereby citizens of Lebanon were granted leave because of their nationality and the circumstances in Lebanon . He found that whether or not the appellant would have been removed was a matter of conjecture which was not relevant to his findings in that connection.

14.
At [36] the FtJ referred to the appellant having said that he had had an intention to take action to correct his date of birth, but the reality was that he did not do so. He had had the opportunity to bring to the UK authorities’ attention the fact of his incorrect date of birth at any time after he was initially granted status, but did not.

15.
He said that he found it particularly significant and serious that in applying for British Citizenship the appellant took no action to correct the date of birth he had previously given, although at all stages he knew that he had given an incorrect date of birth. He noted section 1 of the application form for naturalisation, signed by the appellant and dated 28 April 2011, in which he once again stated his date of birth to be 9 March 1987. That incorrect date of birth, he said, perpetuated a significant incorrect detail in relation to the appellant.

16.
The FtJ went on to conclude that in failing to bring to the respondent’s attention the fact that he had previously given an incorrect date of birth, the appellant had continued to mislead the respondent. Having initially misrepresented his date of birth, which as an adult at the time he had no reason to do, it would appear that he had taken no action to correct the record when he was granted ILR. The key act of deception and fraud on the part of the appellant was when he made his initial claim. He did not accept that he picked that date of birth “at random”, particularly as to the year. He found that the appellant had deliberately sought to portray himself as a minor in the belief that that would have reduced the likelihood of his return to Lebanon if his asylum claim was unsuccessful.

17.
At [38] he stated that he took into account the circumstances as they existed at the time of the hearing before him. He accepted that the appellant was in a relationship with a partner, from whom he heard evidence and whose evidence he found to be credible. He found that the appellant's partner is a British Citizen and they are a family unit.

18.
He went on to state however; that there are no removal directions in place and accordingly it was not appropriate to consider Article 8 in terms of potential removal. He concluded that the foreseeable consequences of deprivation of citizenship would not make the decision disproportionate.

19.
The FtJ referred at [39] to the respondent's Nationality Instructions (NI's) in particular at paragraph 55.7. He concluded that the false representations had had a direct bearing on the grant of citizenship, the appellant having portrayed himself as being younger than he was. He found that had the correct date of birth been provided on the citizenship application form the respondent would have been entitled to "take a view" on the decisions previously taken. He regarded it as "highly significant" that the appellant had been able to make his citizenship application because he had been obtained ILR. That status was a consequence, he said, of the original decision to grant the appellant DLR on the basis that at the date of the asylum decision he had been a minor.

20.
The FtJ did not find therefore, that the respondent's discretion should have been exercised differently and there was no breach of the appellant's human rights.

The grounds and submissions

21.
The grounds of appeal in relation to the FtJ's decision, to summarise, contend that the appellant's deception was not material to the grant of ILR and therefore, the grant of citizenship. The appellant was granted ILR on the basis that his was a 'Legacy' case. The vast majority of migrants granted leave under the Legacy scheme are thought to have been without leave and to have been failed asylum seekers.

22.
In addition, it is asserted that the FtJ erred at [38] of his decision in failing to consider the reasonably foreseeable consequences of the decision to deprive the appellant of his citizenship. Unlike in Deliallisi, no assurance was given to the appellant that he would be permitted to remain and the assumption must be therefore that he is to be removed. The fact that removal directions had not been set is said to be irrelevant.

23.
The appellant's skeleton argument refers to the NI's at Chapter 55 to suggest that the behaviour must be directly material to the decision to grant citizenship. Likewise, in relation to the words of section 40(3) of the British Nationality Act 1981 ("the 1981 Act").

24.
The respondent had conceded that the appellant's age was irrelevant to the grant of ILR and that the grant was because of Home Office delay. Even if the correct approach is a "but for" approach, the

appellant’s appeal should succeed because it is not at all clear that he would have been removed, and/ or that the age he claimed materially assisted in his remaining in the UK.

25.

The NI’s at paragraph 55.7.4 are relied on, given that it was said to have been the delay on the part of the Home Office which led to the grant of ILR under the Legacy scheme, and thus to citizenship.

26.

It is further contended in the appellant’s skeleton argument that the previous cases on nullity or deprivation under s.40 (3) of the 1981 Act (and under s.20 of the British Nationality Act 1948), to which reference is made, all involve direct causation rather than a ‘but for’ approach.

27.

Even on a ‘but for’ approach it is suggested that it is not clear that the appellant’s misrepresentation led to the grant of citizenship. The appellant may or may not have remained in the UK but for his misrepresentation as to his age. Relevant considerations are said to include the fact that it was unlikely in practice that the appellant would have been removed given the small number of removals: in 2004 it is said that there were 18 removals to Lebanon and 146 claims from Lebanese nationals. Further, the appellant’s misrepresentation as to his age “bought” him a short period of leave between 30 June 2004 and 8 May 2005. The appellant had applied to extend his leave on 1 March 2005 and his application should have been refused within a reasonable time of the application having been made. The appellant qualified under the Legacy scheme because of the delay by the Home Office, and the Legacy exercise was intended to grant status to failed asylum seekers with long residence, lawful or unlawful.

28.

It is argued therefore, that the respondent’s delay “broke the chain of causation”. Reference is also made to the respondent’s file notes to the effect that the reason for the grant of ILR was the delay on the part of the Home Office and that the appellant’s claimed age was irrelevant.

29.

As to ‘foreseeable consequences’, the FtJ’s approach was contrary to authority. Removal directions are not a precondition to a consideration of Article 8. The appellant remains a British Citizen as no deprivation order had as yet been made or served. The respondent’s decision was a notice of intention to make a deprivation order. No removal directions could be set until a deprivation order had been made.

30.

Mr Yeo’s oral submissions were to like effect. Although it was submitted that it is not clear from the respondent’s decision whether it is fraud, false representation or concealment of a material fact (under s.40(3)(a), (b), or (c)) that is relied on, it was confirmed that no point was taken on that issue.

31.

It was repeated that the case notes and the deprivation notice state that age was irrelevant to the decision to grant ILR. In Deliallisi , the level of deception was much worse and the deception led directly to naturalisation. Other cases are nullification cases in respect of which there was an important distinction.

32.

The 2004 decision letter (refusing asylum) was predicated on the asylum claim being true. It is not the case that his claim was found to be fraudulent. It was concluded that he could in any event return to Lebanon .

33.
The respondent's written submissions rely on the 'rule 24' response. It is argued that the FtJ's decision was free from any error of law. He had been entitled to conclude that had the appellant not deliberately misled the respondent as to his date of birth he would not have been granted DLR and would have been liable to removal to Lebanon; likewise, that the appellant deliberately attempted to mislead the respondent in the application for further leave to remain and in the application for British Citizenship.

34.
The appellant's naturalisation was obtained by means of fraud or false representation given that he deliberately misled the respondent into granting him leave as a minor. That allowed him to make a further leave to remain application instead of being removed as a failed adult asylum seeker. The application for naturalisation also contained the misrepresentation as to his date of birth. Thus, the naturalisation was obtained by false representation.

35.
In relation to what seemed to be an argument to the effect that the appellant's level of deception was not severe enough to justify deprivation of his citizenship, the evidence suggested that the appellant had been and would have continued to be untruthful in his dealings with the respondent had he not been caught out by his "questionable" dealings in Hong Kong. Those activities led to him being imprisoned and being required to submit his Lebanese passport to the authorities there.

36.
Mr Melvin also relied on the written arguments. It was submitted that the original asylum claim did not engage the Refugee Convention. Furthermore, without the initial deception he would not have been able to make the application for further leave to remain. It may be that there are cases where the deception is much worse but there was nevertheless deception in this case.

37.
As to the statistics in relation to removals to Lebanon in 2004, this is a matter that the FtJ had considered at [35]. The 'but for' argument falls away on the facts of this case.

38.
As to the 'foreseeable consequences' argument, the decision Ahmed and Others (deprivation of citizenship) [2017] UKUT 118 (IAC), in particular at [31], suggests that it is not an error of law for a judge not to take into account human rights considerations. Even if the reasonably foreseeable consequences of deprivation of citizenship do need to be looked at, that would not involve a full Article 8 assessment.

39.
In reply, Mr Yeo referred to [41] and [42] of Ahmed and Others . Although it is said in the guidance at (v) of that decision that the Secretary of State's deprivation of citizenship policy confers a wide margin of appreciation on the decision maker, it was submitted that such is not clear from the decision itself.

40.

Although the FtJ expressed a conclusion on the consequences of deprivation in this case, there was no weighing up of the relevant factors, for example the length of the appellant's residence, his family links or the inherent importance of citizenship.

Conclusions

41.

The decision to deprive the appellant of his British citizenship was made under s.40 of the 1981 Act. S.40 provides as follows:

" 40. Deprivation of citizenship

(1) In this section a reference to a person's 'citizenship status' is a reference to his status as –

(a) a British citizen

(b) a British overseas territories citizen,

(c) a British Overseas citizen,

(d) a British National (Overseas),

(e) a British protected person, or

(f) a British subject.

(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.

(5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying –

(a) that the Secretary of State has decided to make an order,

(b) the reasons for the order, and

(c) the person's right of appeal under section 40A (1) or under section 2B of the Special Immigration Appeals Commission Act 1997.

(6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status 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 .”

42.
The essential rationale for the respondent’s decision to deprive the appellant of his British citizenship can be seen from the following paragraphs of the decision letter:

“19. Your FLR application was granted under legacy due to the length of time the application was outstanding; your age was irrelevant, however, you were only able to make the FLR application as you had been granted DL on the basis of a fraudulent asylum claim. The subsequent grant of ILR LOTR enabled you to make an application for naturalisation as a British Citizen.

20. The crux of this deprivation argument is, if you had not deceived the Home Office by making yourself appear to be a minor when you applied for asylum, you would have been returned to Lebanon when your asylum was refused and you would not then have been in the United Kingdom to submit a FLR application, and would not have met the requirements to naturalise as a British Citizen.

21. This deception was directly material to you being grante d DL, ILR LOTR and subsequent B C and as such deprivation of your British citizenship is appropriate on these grounds.

22. Although you have suggested your rights under Article 8 of the European Convention on Human Rights will be breached if you are deprived of citizenship, this cannot be the case in the absence of a decision or directions for your removal from the UK .”

43.
Chapter 55 of the NI’s is headed “ Deprivation and Nullity of British citizenship ”. Paragraph 55.7 states as follows:

“55.7 Material to the Acquisition of Citizenship

55.7.1 If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation.

55.7.2 This will include but is not limited to:

Undisclosed convictions or other information which would have affected a person’s ability to meet the good character requirement

A marriage/civil partnership which is found to be invalid or void, and so would have affected a person’s ability to meet the requirements for section 6(2)

False details given in relation to an immigration or asylum application, which led to that status being given to a person who would not otherwise have qualified, and so would have affected a person’s ability to meet the residence and/or good character requirements for naturalisation or registration

55.7.3 If the fraud, false representation or concealment of material fact did not have a direct bearing on the grant of citizenship, it will not be appropriate to pursue deprivation action.

55.7.4 For example, where a person acquires ILR under a concession (e.g. the family ILR concession) the fact that we could show the person had previously lied about their asylum claim may be irrelevant.

Similarly, a person may use a different name if they wish (see NAMES in the General Information section of Volume 2 of the Staff Instructions): unless it conceals criminality, or other information relevant to an assessment of their good character, or immigration history in another identity it is not material to the acquisition of ILR or citizenship. However, before making a decision not to deprive, the caseworker should ensure that relevant character checks are undertaken in relation to the subject's true identity to ensure that the false information provided to the Home Office was not used to conceal criminality or other information relevant to an assessment of their character.

44.
I should also refer to the following paragraph which appears under the subheading "Complicit":

"55.7.8.3 **However** , where a minor on reaching the age of 18 does not acquire ILR or other leave automatically and submits an application for asylum or other form of leave which maintains a fraud, false representation or concealment of material fact which they adopted whilst a minor, they should be treated as complicit."

45.
As can be seen from s.40(3) of the 1981 Act, the three 'contenders' that form the basis of a decision to deprive a person of their citizenship are fraud, false representation or concealment of a material fact. The NI's provide a definition of them as follows:

" 55.4.1 **"False representation"** means a representation which was dishonestly made on the applicant's part i.e. an innocent mistake would not give rise to a power to order deprivation under this provision.

55.4.2 **"Concealment of any material fact"** means **operative** concealment i.e. the concealment practised by the applicant must have had a direct bearing on the decision to register or, as the case may be, to issue a certificate of naturalisation.

55.4.3 **"Fraud"** encompasses either of the above. "

46.
In relation to the c ases to which I was referred, R v Secretary of State for the Home Department , E x parte Parvaz Akhtar [1981] 1 QB 46 was a decision under s.20 of the British Nationality Act 1948 (deprivation of citizenship obtained by fraud) , and involved a challenge to the legality of detention. The applicant had claimed to be the son of a British Citizen, but an immigration officer concluded that he was in fact the son of someone else, who was not a British Citizen. It was accepted that the Secretary of State had reasonable grounds for believing that the applicant was an illegal entrant, and the applicant had failed to prove that he was the person identified who was entitled to be registered as a British Citizen.

47.
Similarly, in R v Secretary of State for the Home Department , Ex Parte Sultan Mahmood [1980] 3 WLR 312 CA, the applicant had secured registration as a British Citizen in the name of someone who had died and his British citizenship was found to be a nullity.

48.
Arusha and Demushi concerned deprivation on the basis that the main appellant had obtained British citizenship by fraud, the Secretary of State contending that he was Albanian rather than Kosovan as he claimed.

49.
In Hysaj & Ors v Secretary of State for the Home Department [2015] EWCA Civ 1195 the court said the following:

“57. Mr Knafler submits that the implied fraudulent impersonation limitation upon the Secretary of State's power to grant citizenship, assuming it exists, does not have application in relation to the appellants' cases. This is because when they applied to be naturalised as British citizens they did so by relying principally on their identity as persons with valid ILR status. Mr Knafler says that it was this that was the effective cause of their obtaining naturalisation, since it was the fact of having ILR which enabled them to satisfy the condition in paragraph 1(2) (c) of Schedule 1 to the 1981 Act when they applied for naturalisation. He contends that there was no mistake regarding the relevant identity of the appellants when they were granted British citizenship: they really were the people who held the ILR status on which they relied to support their applications (admittedly, in the case of Mr Bakijasi, in a name other than his true name).

58. I reject this argument as well. It involves a wholly unpersuasive focus on one narrow aspect of the case for naturalisation put forward by each appellant when he applied to the Secretary of State and ignores both the fraudulent impersonation by the appellants to acquire ILR in the first place and the continuation of that fraudulent pretence which they perpetrated in order to induce the Secretary of State to grant them citizenship.

1.
As I have already explained, the implied limitation identified in Sultan Mahmood reflects the general presumptions in statutory interpretation reviewed in Welwyn Hatfield BC , including the presumption that Parliament does not intend a criminal fraudster to be able to benefit from his fraud. The implied limitation cannot sensibly be read as concerned only with a narrow focus on how to identify the person applying for naturalisation simply by reference to whether they have ILR as an identifiable individual.

2.
The appellants were only in a position to seek naturalisation as British citizens because they had first obtained a necessary status through fraudulent impersonation of the requisite seriousness and materiality. They sought to benefit from that original fraud by taking the fruit of it (the grant of ILR) and relying on that in their applications to the Secretary of State for naturalisation. That is itself a relevant form of fraudulent impersonation for the purposes of the implied limitation upon the Secretary of State's powers, as the Puttick case shows. In that case, it was the fraud of the claimant in obtaining the status of being married to a United Kingdom citizen which enabled her to apply to the Secretary of State for naturalisation and which was found to be the reason that she was not entitled to be registered as a citizen herself. This is not a surprising result: in both Puttick and the present cases there was and is a direct link between the fraudulent impersonation to obtain the status which was then relied upon to seek to obtain citizenship by naturalisation by the Secretary of State.

3.
Further, in the present cases the causative relevance of the original fraudulent impersonation is underlined by the way in which the appellants necessarily had to, and did, maintain the fraudulent pretence that they were refugees from Kosovo through to the time when they applied for naturalisation as citizens. If, when they applied for naturalisation, they had then told the truth and revealed their earlier lies, the Secretary of State would have rejected their applications on the

grounds that they could not show that they were of good character: see para. 1(1) (b) of Schedule 1 to the 1981 Act. ”

50.

In Deliallisi , the appellant had obtained refugee status on the basis that he was Kosovan, whereas he was in fact from Albania . He then obtained indefinite leave to remain and then British Citizenship, and in his citizenship application maintained that he was from Kosovo. The Tribunal decided that the Secretary of State’s discretion should not have been decided differently and that it was appropriate to deprive the appellant of his citizenship.

51.

In the more recent case of AB (British Citizenship: deprivation; Deliallisi considered) Nigeria [2016] UKUT 451, the appellant claimed asylum in a false identity and claimed to be an Ivorian national, whereas she was in fact Nigerian. In that case however, the question of whether the appellant’s British citizenship was obtained “by means of” fraud, false representation or concealment of a material fact, was not in issue.

52.

Lastly, in Ahmed and Others , the decisions to deprive the appellants of citizenship were made on the basis that deprivation was conducive to the public good, as a result of the appellants’ convictions for serious sexual offences.

53.

In the cases of obvious fraud, such as in relation to identity or nationality, it is much easier to see the causative link between the conduct of the appellant and the granting of citizenship. In other cases the link may be less clear. Hence, in the NI’s at 55.7.13 a number of hypothetical examples are given, described as ‘Case Studies’, in relation to whether or not consideration should be given to action to deprive of citizenship.

54.

It is not the case, as was submitted on behalf of the appellant before me, and as advanced in the skeleton argument at [13], that the 2004 decision on the appellant’s asylum claim was predicated on the basis of the claim being true, or that the facts were assumed to be true. In fact, that decision dated 30 June 2004 states at [10] that the claim that the police in Lebanon wanted to arrest him was “not believed”, and was “not considered credible”, and the claim was refused “as a result”.

55.

It should not be thought therefore, that internal relocation or sufficiency of protection were the reasons for rejecting the claim, although those matters were raised in the decision as additional reasons for rejecting the claim.

56.

Furthermore, although no point was taken on this on behalf of the appellant, it does seem to me that the deprivation of citizenship decision does in fact identify the basis of the decision in terms of the options of fraud, false representations or concealment of a material fact. The decision states at [3] that “the Secretary of State had decided that you did in fact obtain your British citizenship fraudulently”.

57.

S. 40(3) of the 1981 Act permits the Secretary of State to make a deprivation decision where the registration or naturalisation was obtained “by means of” fraud etc. Clearly therefore, there must be some causative link between the action(s) or omission of the appellant and the obtaining of citizenship. In Hysaj & Ors , there is reference to a “direct link” at [60], and at [61] to “causative relevance of the original fraudulent impersonation ”.

58.
The NI’s are by no means determinative in relation to a question of whether the citizenship was obtained “by means of” fraud or false representation, or concealment of a material fact, but they indicate the approach of the Secretary of State. The NI’s at 55.7.2, on one view, would suggest that this appellant’s citizenship was obtained by that means, referring to “ False details given in relation to an immigration or asylum application, which led to that status being given to a person who would not otherwise have qualified, and so would have affected a person’s ability to meet the residence and/or good character requirements for naturalisation or registration”. The appellant in this case was granted a period of leave (“DLR”) that he would not otherwise have been granted.

59.
On the other hand, whilst this appellant was granted a period of leave as a minor to which he was not entitled, he was not granted a defined status. In addition, 55.7.3 states that i f the fraud, false representation or concealment of material fact did not have a “ direct ” bearing on the grant of citizenship, it will not be appropriate to pursue deprivation action .

60.
The phrase “direct bearing” suggests that in cases where the fraud etc. only has an indirect bearing on the grant of citizenship, deprivation action would not be appropriate. This, it seems to me, is consistent with the phrase “by means of” in s.40 (3). Furthermore, under the “Definitions” in the NI’s, “Concealment of any material fact” (although s.40 (3) itself reads “concealment of a material fact”), is described as meaning “ **operative** concealment i.e. the concealment practised by the applicant must have had a direct bearing on the decision to register or, as the case may be, to issue a certificate of naturalisation” (emphasis as in original).

61.
On the basis of the above, I would agree with Mr Yeo’s submission that the impugned behaviour must be directly material to the decision to grant citizenship. Was it directly material in this case, is then the question.

62.
The appellant was granted ILR was on 4 May 2010 under the ‘Legacy’ scheme. The deprivation decision states that “ Your FLR application was granted under legacy due to the length of time the application was outstanding; your age was irrelevant ” (quoted in full at [42] above). Mr Yeo, understandably, focuses on the asserted irrelevance of age to the respondent’s decision to grant ILR. A counter argument however, could be that whilst his age was irrelevant to the grant of ILR under the Legacy scheme that does not mean to say that the deception as to age was similarly irrelevant. Indeed, the decision letter states that the deception was directly material to the decision to grant of “DL, ILR LOTR”.

63.
That potential counter argument however, was not advanced on behalf of the respondent, and there is some validity to the argument on behalf of the appellant to the effect that grants of leave under

Legacy were made in cases where individuals had no right (otherwise) to be in the UK, and no doubt included many whose asylum claims were false.

64.

It should be said that the skeleton argument that was before the FtJ does not refer to the ‘age irrelevant’ point, and it seems the argument was not advanced in submissions before him either. That matter seems to have come to the fore when the Home Office file note, referred to at [7] above, was discovered. After referring to the false date of birth in the asylum application, and that it was not thought appropriate that his citizenship should be considered a nullity because the only change in detail was his date of birth, the file note states that the false date of birth allowed the appellant to claim asylum as a minor. It then states, materially, that “his ELR application was granted under legacy due to the length of time the application was outstanding. The subject’s age was irrelevant”. In its context of a consideration of the false date of birth, this could be taken to suggest or imply that in fact the false date of birth was itself irrelevant to the decision to grant ILR.

65.

Furthermore, it is not suggested by the respondent that had the false date of birth been known by her at the time of the citizenship application, the application would have been rejected on the ground that the appellant had not shown that he was of good character.

66.

It is said in the respondent’s decision at [20] that had the appellant not deceived the Home Office by making himself appear to be a minor when he applied for asylum he would have been returned to Lebanon when his asylum claim was refused, and thus would not have been in the UK to submit an application for further leave to remain. However, on behalf of the appellant it is said that in 2004 there were only 18 removals to Lebanon and 146 asylum claims from Lebanese nationals (the weblink is given in the skeleton argument). But those bare figures do not reveal how many of the asylum claims were accepted, and thus what proportion of those claiming were returned, and it does not appear that that information was put before the FtJ, he having raised the issue of returns to Lebanon (see [13] of his decision).

67.

Nevertheless, the contention that the appellant would have been returned to Lebanon when his asylum claim was refused is, it seems to me, a speculative assertion.

68.

The FtJ was entitled to find as he did at [36] and [37] in relation to the credibility of the appellant’s evidence about his intention to inform the respondent as to his correct date of birth and in relation to his having deliberately sought to portray himself as a minor when he claimed asylum, and that he had perpetuated that deception in the process of applying for citizenship.

69.

However, having concluded that the behaviour (fraud etc.) must be directly material to the decision to grant citizenship, I do not consider that the evidence in this case justified the FtJ’s conclusion that the appellant’s deception as to his date of birth was directly material to the decision to grant citizenship; in the language of s.40 (3), that the appellant’s citizenship was obtained “by means of” fraud, false representation or concealment of a material fact. In holding otherwise, I am satisfied that the FtJ erred in law, such as to require his decision to be set aside.

70.

In the light of that conclusion, it is not necessary to go on to consider the appellant's second ground of appeal in terms of the reasonably foreseeable consequences of deprivation.

71.
The appropriate course is for the decision to be re-made, and in re-making it the appeal must be allowed because the respondent has not established that the appellant's citizenship was obtained by means of fraud, false representation or concealment of a material fact.

D ecision

The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision to dismiss the appeal is set aside, and the decision is re-made, allowing the appeal.

Upper Tribunal Judge Kopieczek 17/07/17