

ASYLUM AND IMMIGRATION TRIBUNAL

THE IMMIGRATION ACTS

Heard at: Prosession House

Date of Hearing: 8 September 2009

Before:

**Mr C M G Ockelton, Deputy President of the Asylum and Immigration Tribunal
Senior Immigration Judge Storey**

Between

KB

Appellant

and

THE ENTRY CLEARANCE OFFICER, TIRANA

Respondent

Representation

For the Appellant:

Mr Alfred Qinani (the sponsor)

For the Respondent:

Ms M. Tanner, Home Office Presenting Officer

A genuine document may contain a false representation. If it does, refusal under para. 320(7A) is lawful.

DETERMINATION AND REASONS

1. The Appellant is a national of Albania. She applied to the respondent for entry clearance with a view to settlement in the United Kingdom as the wife of the sponsor. Her application was refused. She appealed to the Tribunal, and an Immigration Judge allowed her appeal. The respondent sought and obtained an order for reconsideration. Thus the matter comes before us.

2. The sponsor is a British citizen, and, apparently, also a national of Albania. He came to the United Kingdom in October 1998. He said that he was Kosovan, and claimed asylum. Apparently without any very serious enquiry into his nationality, the Secretary of State granted him refugee status. After he had had that status for a number of years he applied for British citizenship. In doing so, he repeated the falsehood about his nationality, stating that he had been born in Morin, in Kosovo. Again apparently without any very serious enquiries as to his nationality he was granted British citizenship, and a British passport was issued to him on 16 March 2006 recording his birth in Morin.
3. The sponsor then travelled to Albania, met his wife and married her.
4. The sponsor's history does not appear to be an unusual one. Although the Tribunal and hence the public tend to hear about cases in which applications to the Secretary of State are refused, it is usually said wrongly, it appears that the result in many successful applications may be equally wrong. Section 4 of the Nationality, Immigration and Asylum Act 2002 substitutes a new s40 in the British Nationality Act 1981. Subsection (3) of that section enables the Secretary of State to deprive a person of "a citizenship status which results from his registration or naturalisation" if it was obtained by fraud, false representation, or concealment of a material fact. The decision to deprive a person of his citizenship in this way carries a right of appeal to this Tribunal. In the only such cases of which the Tribunal has previously been aware, the Secretary of State proposed to prove the fraud or false representation by means of a reminiscence of a telephone conversation between an unspecified British official and an unspecified Albanian official. There was to be no verification of the latter's status or knowledge, and, other than the British official's assurance, no evidence that the interlocutors were talking about the same person. The Secretary of State's decisions were in due course withdrawn.
5. In the present case, the facts came to light in the appellant's application, because she gave what the sponsor admits are the true details of her husband's birth, in Kukes, Albania on 7 April 1978. She produced his birth certificate as evidence of that. She also, however, supported her application with a copy of the sponsor's British passport, showing his birth in Morin, Kosovo, on 7 April 1981. The respondent considered the facts before him and, on the evidence, was not satisfied that the appellant and the sponsor had established that they intended to live together permanently as husband and wife, as required by paragraph 281(iii) of the Statement of Changes in Immigration Rules, HC 395. The application was refused for that reason, as well as under para 320 (7A), which provides as follows:

"320.... The following grounds for the refusal of entry clearance or leave to enter apply:

Grounds on which entry clearance or leave to enter the United Kingdom is to be refused

....

(7A) Where false representations have been made or false documents have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge) or material facts have not been disclosed, in relation to the application."

6. The Immigration Judge heard evidence from the sponsor. He concluded that at the date of the decision the appellant and the sponsor did indeed intend to live together permanently as husband and wife. He thus found that the requirements of para 281(iii) were satisfied. On para 320 (7A), he recorded the sponsor's evidence as follows:

"At the time he made his application for asylum in the United Kingdom, he did not speak good English. He said his father had been working in Kosovo at the time and he came here from Kosovo where he had been helping his father. He says this is where the error arose from. He had then successfully claimed asylum in this country."

7. He noted that the grounds of appeal alleged that the discrepancy was "nothing more than an administrative error made with respect to the details of his place and date of birth, without the sponsor's knowledge, when he claimed asylum in the United Kingdom." The Immigration Judge went on to say this:

"15. It seems to me that paragraph 320 (7A) must be founded on allegation of a false representation, or a deliberate omission to disclose facts. Its effect is to impose a mandatory refusal on the application even if the misrepresentation was not material to the application. It follows that the decision-maker must be satisfied to a high standard that false representations have been made or, false documents or information have been submitted, or material facts have not been disclosed.

16. The appellant in this case did not, in my view, make any misrepresentation herself she gave her husband's date of birth, as she knew it, as 7th April 1978. The respondent's case is essentially that the sponsor's British passport is false. However there is no allegation that it is a forgery, and no dispute that it relates to the sponsor. Although a genuine document can be fraudulently obtained and could therefore fall within the ambit of the rule, it would require more by way of proof than a bare assertion, to establish that it had been fraudulently obtained. With respect to the passport in order to declare it fraudulently obtained, it would have to be shown that misrepresentations were made to the Home Office on application. The allegations on which the decision is based would have to be formulated in a much more specific and detailed manner taking into account assertions made by the sponsor in the past as well as any applications he has made. The implications here is that the sponsor fraudulently obtained, refugee status, indefinite leave to remain, naturalisation and a passport. Much more was needed to sustain this allegation. Moreover, if the intention is to impugn his immigration and national status in its entirety, this is far too serious to be done by implication, which, essentially, is the effect of adopted the criteria of paragraph 320 (7A). The implications of the use of paragraph 320 (7A) in this instance are that appellant could never succeed in her application where she adduces her

marriage certificate and a copy of her husband's passport. This is, in effect, a permanent bar to her entry into the United Kingdom. Yet there has been no attempt to declare that the sponsor is not in fact settled in the United Kingdom for purposes of paragraph 281. It seems to me that where an allegation of such profound consequence is made it is necessary that the allegation should be fully supported by the evidence adduced by the respondent. "

8. The Immigration Judge thus concluded that there was no basis for saying that para 320 (7A) applied to the case. In view of his findings on para 281, he therefore allowed the appeal. The grounds for reconsideration are that the Immigration Judge materially erred in law in his interpretation of para 320 (7A).
9. Before us the sponsor showed us his passport. He repeated the account he had given to the Immigration Judge, adding that he had been represented by solicitors both at the time he claimed asylum and at the time he applied for British citizenship, although he told us he could not remember who either firm had been. He told us that the original mis-statement as to his place of birth had been an accident and that he had merely continued it involuntarily. As we understand the matter, however, he accepts that he claimed asylum on an entirely false basis and that he had no need to seek British citizenship; to that extent it is difficult to see how the perpetuation of the falsehood could be described as in any sense involuntary.
10. It does not appear to us that there is any doubt about the facts in this case. There is also no doubt that British citizenship was granted to the sponsor, and that the passport is a genuine document. But it is a genuine document which incorporates false information. Para 320 (7A) is widely drafted, and in our view it is perfectly clear that as well as applying to false documents, it applies to genuine documents containing false information. The Immigration Judge erred in reading para 320(7A) as though it applied only to false documents. The falsity of the information contained in the passport produced in support of the application is amply sufficient to justify the invocation of para 320 (7A).
11. For those reasons, the Immigration Judge materially erred in law. Refusal under para 320(7A) is mandatory, and we accordingly substitute a determination dismissing the appellant's appeal.
12. Before us, Ms Tanner served on the sponsor a Notice of Decision under s40 of the British Nationality Act 1981, depriving the sponsor of his citizenship. We advised the sponsor to seek legal assistance in connection with it.

C M G OCKELTON
DEPUTY PRESIDENT