

British citizenship can be lost

The recent case of *KB (para: 320(7A): "false representations") Albania* [2009] UKAIT 00043 demonstrates a typical situation in which a person may be deprived of British citizenship. In this context, reference is made to British citizenship obtained through naturalisation or registration.

The case involved an Albanian woman who applied for entry clearance to settle in the UK as the wife of her British husband. Her application was refused. She appealed to the Tribunal where her appeal was allowed. The Home Office sought and obtained an order for reconsideration.

The background facts were that the sponsoring husband was a naturalised British citizen but originally a national of Albania. He had come to the United Kingdom in October 1998. At that stage, he claimed that he was Kosovan, and claimed asylum.

By way of a brief background, refugees and asylum seekers from Kosovo began arriving in the UK in significant numbers from the beginning of the 1990s as a result of the Kosovo Conflict of the 1990s. The number of arrivals increased significantly towards the end of the decade, peaking in 1999-2000 when NATO bombarded Serbia during Operation Allied Force.

It is widely accepted that in that cacophony of war, the Kosovo situation was exploited by a large number of economic migrants from neighbouring Albania who adopted and relied on fake Kosovar identities to claim asylum in the UK.

The Home Office granted refugee status to a significant number of the arrivals from the Balkans, usually without undertaking any serious enquiry into their actual nationality, as in the present case.

The sponsor in *KB* was granted refugee status and after 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, Kosovo. He was granted British citizenship, and issued with a British passport in 2006.

He then travelled to Albania, met the Appellant and married her. The Appellant subsequently applied to enter the UK as the spouse of a British citizen.

That is when the facts relating to the sponsor's true nationality came to light. In her application for entry clearance, the wife gave the true details of her husband's birth, as 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 as being in Morin, Kosovo, on 7 April 1981.

The application was refused on 2 grounds, but for our purposes, the refusal was also for the submission of false documents.

The Immigration Judge who heard the appeal concluded that there was no basis for saying that false representations had been made. He therefore allowed the appeal. The Home Office applied and obtained an order for reconsideration.

At the re-hearing, the sponsor accepted that he had claimed asylum on an entirely false basis, being in fact Albanian, not Kosovan. He therefore had no need to seek British citizenship.

The Tribunal made reference to the 2002 amendment to the British Nationality Act which 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 Court of Appeal observed that the sponsor had indeed been granted British citizenship, and a genuine British passport but that this genuine document incorporated false information. The Court said that genuine documents containing false information are also caught by the provisions relating to the making of false representations and relying on false documents. A refusal under those provisions is mandatory.

At the hearing, right there in court, the Home Office Presenting Officer promptly served on the sponsor a Notice of Decision under s40 of the British Nationality Act 1981, depriving him of British citizenship.

The Court of Appeal observed that such a decision carries a right of appeal.

The *KB* case therefore underlines that;

- A refusal for using false documents or making false submissions is mandatory; there is no room for the exercise of discretion;
- The Home Office have power to revoke British citizenship, even after a number of years;
- Such a revocation is by way of a s40 notice.
- Section 40 notices to revoke citizenship may now be used a lot more by the Home Office where there may be doubt about the basis upon which Indefinite Leave to Remain or British citizenship was granted.
- There is a right of appeal against a decision to revoke British citizenship, (where depending on the individual circumstances, Article 8 arguments relating to family and private life in the UK may be deployed).

Anyone who thinks that their immigration status may be affected by this opinion should seek professional legal advice. At Genesis Law Associates, we specialise in all areas of immigration, asylum and nationality law.