Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00057/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 November 2020	**On 17 November 2020**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

FLAMUR FERIZOLLI
[NO ANONYMITY ORDER]

Respondent

Representation:
For the appellant: Mr David Clarke, a Senior Home Office Presenting Officer
For the respondent: Ms Helen Foot, Counsel instructed by Oliver and Hasani Solicitors

DECISION AND REASONS

Decision and reasons

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision on 20 March 2019 to deprive him of his British citizen status, which was obtained on the basis that he was a Kosovo citizen.

2. The claimant is a citizen of Albania and his British citizenship was obtained by fraud.

Background

3. The claimant was born in Kükes, Albania in May 1972. He arrived in the United Kingdom in September 1998, claiming to be a Kosovan citizen with the same name, but born in Skenderaj, Pristina in June 1969. The claimant was granted exceptional leave to remain in August 1999. His asylum claim, made promptly, was suspended for 12 months pursuant to a policy for exceptional leave to remain for the large number of asylum claimants arriving from Kosovo at the time.

4. The claimant applied for further discretionary leave to remain in August 2000, when his initial exceptional leave to remain expired, and in July 2001, he attended his asylum interview. He maintained his false identity for both the application and the interview. On 7 July 2004, the Secretary of State refused him international protection.

5. The claimant did not make any further application, nor did he admit his actual nationality and date of birth. He remained in the United Kingdom without leave until in December 2007, he completed a questionnaire seeking indefinite leave to remain under the legacy scheme, a backlog exercise to deal with asylum seekers and others who had remained in the United Kingdom for a long time. He gave a different date of birth, in July 1969 not June 1969, but maintained his Kosovan identity.

6. The legacy application was successful. The claimant was granted indefinite leave to remain on 25 February 2010, and on 23 March 2010, he applied for a travel document, using the June 1969 birth date and continuing to assert his false Kosovan nationality.

7. The claimant applied for British citizen status, signing the nationality declaration on the form in the false Kosovan identity. On 23 July 2012, he was issued with a certificate of naturalisation.

8. A copy of the claimant's British citizenship application is provided. He gave false details of his own and his parents' nationality and place of birth, as well as a false date of birth for himself. In Section 3 of the application, Good Character Requirement, the claimant at 3.12 asserted that he had never engaged in any activities which might indicate that he may not be considered a person of good character. In the box for further details, he did not admit his nationality fraud. At question 1.9 in Section 1 (Personal Information) he said his nationality was Kosovan. At 1.23 and 1.28, he said his father and mother were born in Pristina, Kosovo. In the section on residence requirements, he said he had travelled to Albania for a holiday twice in 2010, and once in 2011, visiting relatives. He had also visited Podgorica, Montenegro, in 2010.

9. Copies of the entry clearance application for his father and his mother showed that they recorded both their own and their son's nationality as Albanian, not Kosovan as his British citizen application stated.

10. The Secretary of State also produced the response on 2 August 2019 from the British Embassy in Tirana, Albania, to her request for nationality information about this claimant. It says that there is an Albanian national registered on the National Civil Register of Albania, to whom no Albanian biometric passport or identity card had yet been issued. That person was born in Vranisht, Kükes, Albania. His present registered address remained Vranisht.

11. The claimant never volunteered to the Secretary of State that he had relied on a false nationality. The fraud came to light in August 2019 when the Secretary of State carried out checks with the Albanian Ministry of the Interior through the British Embassy in Tirana, which found no person in that name and date of birth born in Kosovo, but an individual with the date of birth in 1972 and his name, born in Albania. His parents' entry clearance applications also stated that the claimant was Albanian.

12. The claimant accepts that he used a false identity for 12 years after arriving in the United Kingdom but contends that his misrepresentation was immaterial to the decision to grant him British citizen status.

13. The Secretary of State wrote to the claimant on 4 February 2020, advising him that she was considering deprivation of citizenship. He was given an opportunity to respond, which he did not take. However, the day after the Secretary of State's letter, the claimant applied for a British passport giving his place of birth as Kükes, Albania.

14. On 20 March 2020, the Secretary of State wrote to the claimant depriving him of his British citizen status, on the basis that his application for naturalisation would have been refused under section 2 (character generally) and section 9 (deception) of her Nationality Instructions.

15. The Secretary of State said that the misrepresentation was material because the initial grant of exceptional leave to remain would not have been made had she known he was Albanian and thus all the residence accrued thereafter would not have occurred, and the claimant would have been unable to meet the mandatory residence requirements.

16. The claimant appealed to the First-tier Tribunal.

First-tier Tribunal decision

17. The claimant gave oral evidence to the First-tier Tribunal. At [26], the judge found that his misrepresentation as to his place of birth was material to the decision to grant him exceptional leave to remain under a policy specifically for persons from Kosovo. The claimant's asylum claim and application for further leave to remain were both outstanding when the legacy claim was made and considered.

18. The First-tier Judge considered the Secretary of State's policy and the core of his reasoning is at [38]-[39] of the decision:

> "38. I accept Ms Foot's submission that many people whose claims to remain had been refused, even where they have been found to be completely untruthful, were granted indefinite leave to remain under the legacy exercise.
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> 39. I find that the grant of indefinite leave to remain was not made as a consequence of the grant of exceptional leave to remain. While I accept that had the [Secretary of State] known that the [claimant] was from Albania, she would not have granted him exceptional leave to remain, and he would have been *liable* to be removed, there is no guarantee that the [Secretary of State] would have in fact removed him, either then or at any point up until she granted him indefinite leave to remain. This is supported by the fact that the need for the legacy exercise arose directly as a result of the large number of unresolved cases/large numbers of people whose initial claims had been refused, but who remained in the United Kingdom. Moreover, the [Secretary of State] was unable to remove the [claimant] while any application/asylum claim was pending. I have already set out the origin of the legacy scheme above. Many of the people who were eventually granted indefinite leave to remain under the legacy exercise, where they had been refused asylum or other leave, even where their claims were completely false."

19. The judge considered *Sleiman (deprivation of citizenship: conduct)* [2017] UKUT 00367 (IAC), noting that the impugned behaviour must be directly material to the decision to grant citizenship. He considered that the claimant's circumstances were similar to those of Mr Sleiman, who had lied about his age. The judge found that the misrepresentation was not material to the grant of indefinite leave to remain and hence the grant of naturalisation.

20. The First-tier Judge allowed the claimant's appeal. The Secretary of State appealed to the Upper Tribunal.

Permission to appeal

21. On 29 July 2020, First-tier Judge Chohan granted permission on the basis that the assertion in the grounds of appeal that the judge had erred in finding that the claimant's deception was immaterial to the grant of indefinite leave to remain and subsequent naturalisation, 'must be explored further' and that it was open to argument that the judge might have erred in his approach.

Rule 24 Reply

22. On 3 November 2020, significantly out of time, Ms Foot filed a Rule 24 Reply to the grant of permission. Counsel observed that no directions had been received 'requiring a Rule 24 response to be filed and served by any particular date'. Ms Foot appears unaware of the 1-month time limit in Rule 24(2)(b) in the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended): no additional direction is required.

23. On this occasion, I have admitted the submissions made, not as a Rule 24 Reply but by as a skeleton argument for the hearing.

24. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

25. For the Secretary of State, Mr Clarke confirmed that this was a 'single identity' deception. The question of nullity had never arisen. He asserted that the fraud was relevant to the grant of citizenship, relying on the Secretary of State's policy underpinning the grant of both indefinite leave to remain under the legacy scheme and on her policy on the grant of citizenship. The claimant would not have been granted either, had the Secretary of State been aware that he was Albanian, not Kosovan.

26. Mr Clarke drew the Tribunal's attention to the Secretary of State's guidance on the Good Character part of the citizenship application, and in particular, the instructions as to how paragraph 3.12 should be completed:

> "3.12 You must say whether you have been involved in anything which might indicate that you are not of good character. You must give information about any of these activities, *no matter how long ago it was*. Checks will be made in all cases and your application may fail and your fee will not be fully refunded if you make an untruthful declaration. If you are in any doubt about whether you have done something, or it has been alleged that you have done something, which might lead us to think that you are not of good character, you should say so.
>
> *You must tell us if you have practised deception in your dealings with the Home Office or other Government Departments (e.g. by providing false information or fraudulent documents).* This will be taken into account in considering whether you meet the good character requirement. If your application is refused, and there is clear evidence of the deception, any future application made within 10 years is unlikely to be successful. …"
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> [*Emphasis added*]

27. The claimant would have known full well that he had lied in his legacy application, and in his naturalisation application, but the judge had not taken account of these answers at [15] of his decision nor set out the falsehoods in the British citizen status application which amounted to deliberate misrepresentation.

28. The judge had erred in applying *Sleiman* to this appeal. That appeal had turned on whether a person's age was relevant to a legacy application, and delay had been a deciding factor in the appeal. In *Sleiman,* the Secretary of State had not argued that the naturalisation itself was tainted by the deception as to the appellant's age.

29. In the present appeal, the First-tier Tribunal had accepted that the claimant's fraud was material to the grant of exceptional leave. The claimant had then been granted indefinite leave to remain, and that gave him the attributes to apply for British citizen status. The claimant had been refused asylum in 2004 but had not been removed and his legacy claim, made in 2007, ensured that he was not removed until it was decided.

30. The Secretary of State would rely on *RN (Sri Lanka) v Secretary of State for the Home Department* [2014] EWCA Civ 938. The legacy scheme was not an amnesty, but an administrative device to deal with a large backlog. It did not confer rights. In *Hakemi v Secretary of State for the Home Department* [2013] EWHC 1967 (Admin) at [6],

the court noted that caseworkers were required to take into account paragraph 395(c)(iv) of the Rules and that character was always in play.

31. As to ground 4, the instructions to caseworkers began by saying that the Secretary of State's policy was to remove those who entered the United Kingdom unlawfully, save for certain exceptions. They were required to take into account deception, or attempts to frustrate the process. It was irrelevant to consideration of the claimant's status whether he would in fact have been removed at any particular time.

32. The First-tier Judge at [39] was therefore wrong in both fact and law: the claimant would not have been granted indefinite leave to remain under the legacy programme, had he told the truth about this nationality. The Secretary of State would rely on *HB (Ethiopia) v Secretary of State for the Home Department* [2006] EWCA Civ 1713 for what it said about delay.

33. In conclusion, Mr Clarke asserted that there was a direct causative link between the claimant's asserted fraudulent nationality and the grant of both indefinite leave to remain and British citizen status. The Upper Tribunal should set aside the decision and remake it by dismissing the appeal.

34. For the Upper Tribunal hearing, Ms Foot's instructing solicitors served a skeleton argument (the out of time Rule 24 Reply) and copies of three decisions: *Sleiman* (deprivation of citizenship: conduct) [2017] UKUT 00367 (IAC); *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296; and *Hakemi and others v Secretary of State for the Home Department* [2012] EWHC 1967 (Admin).

35. In the Rule 24 reply, Ms Foot for the claimant argued that the Secretary of State's grounds of appeal are no more than an attempt to re-argue the substantive case before the First-tier Tribunal and do not meet the threshold for a decision that the First-tier Tribunal decision should be set aside: see *AA (Nigeria)*.

36. Ms Foot argued that the claimant's deception, which he does not dispute, was not material to the grant of indefinite leave to remain or citizenship to him and that therefore his citizenship as not obtained 'by means of fraud' as required by section 40(3) of the British Nationality Act 1981.

37. The claimant continued to rely on *Sleiman,* accepting that his deception was indirectly relevant, since character and conduct were relevant to the legacy criteria. Deception 'bought' the claimant his indefinite leave to remain under the legacy scheme. The good character requirement for naturalisation was not addressed in the *Sleiman* decision but the claimant maintained that it was not directly relevant to the grant of citizenship, having regard to the character guidance in force at the date of decision.

38. The claimant contended that the First-tier Judge's conclusion was open to her and resulted from careful consideration of the relevant law and guidance, applied to the facts of the claimant's case and that the decision should be upheld.

39. In her oral submissions, Ms Foot argued that the Secretary of State's grounds of appeal disclosed no material error of law in the First-tier Judge's decision. She accepted that the claimant's case was not on all fours with *Sleiman,* but argued that it was analogous. Ms Foot reminded me of the threshold for interference in *AA (Nigeria)* at [32]: the Upper Tribunal should not interfere with findings of fact by the First-tier Judge merely because it might have made a different decision. The Secretary of State was asking the Upper Tribunal to reopen findings of fact. There was no perversity in the First-tier Judge's reasoning and the grant of permission was at the lowest possible level: 'this issue must be explored further'. Mere complexity was not sufficient.

40. It was important to recall that the question was not whether the claimant's past deception was material to the legacy criteria, which plainly it was, but whether it was *directly* material, hence the analogy with *Sleiman* in which also the deception was maintained in the application for citizenship, following which there was a delay of 5 years. If Mr Clarke's submissions were correct, then *Sleiman* was wrongly decided. This claimant had long residence, and his past deception was not determinative.

41. The First-tier Judge's analysis was open to her and was not legally erroneous. There was no misdirection, and she engaged with all relevant facts and matters. In *Hysaj,* there had also been nationality fraud leading directly to the grant of indefinite leave to remain.

42. The judge was entitled to find in this case that the deception was factually immaterial to the grant of leave and that she failed to engage with the argument before her about the relevance of fraud to character.

43. In response, Mr Clarke acknowledged that the claimant had no criminal history, but that the Secretary of State had not been given the opportunity to take into account the factors which mitigated against the effect of his fraud, because the claimant had maintained his fraud in the citizenship application. The claimant had lied on both the legacy and naturalisation applications. Such fraud or misrepresentation should count heavily against him in consideration of the naturalisation application.

The statutory framework

44. Section 40(3) of the 1981 Act gives the Secretary of State the power to deprive a person of citizenship in certain circumstances:

> "40. … (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."

45. The claimant's misrepresentation of his date and place of birth, and his nationality, and of his parents' place of birth and nationality, can be characterised as fraud and

false representation, but also as concealment of a material fact, his real Albanian nationality.

***RN (Sri Lanka) v Secretary of State for the Home Department* [2014] EWCA Civ 938**

46. In *RN,* Lord Justice Maurice Kay, with whom Lord Justice Floyd and Lady Justice Sharp agreed, said at [24] that the Legacy Scheme 'did not confer additional substantive rights on the Legacy cohort. Its purpose was administrative and organisational. It bore no resemblance to an amnesty. …'. One would expect, therefore, that full disclosure of all relevant circumstances would be made in an application under the Legacy Scheme.

***Hakemi v Secretary of State for the Home Department* [2013] EWHC 1967 (Admin)**

47. In 2012, in *Hakemi and others,* Mr Justice Burton set out extracts from Chapter 53 of the Secretary of State's Enforcement Instructions and Guidance, including the following material passages:

> **"53. Extenuating circumstances**
>
> It is the policy of the Agency to remove those persons found to have entered the United Kingdom unlawfully, unless it would be a breach of the Refugee Convention or ECHR or there are compelling reasons, usually of a compassionate nature, for not doing so in an individual case. …
>
> (ii) Residence accrued as a result of non-compliance by the individual
>
> Where there is evidence of an attempt by the individual to delay the decision making process, frustrate removal or otherwise not comply with any requirements imposed upon them, then this will weigh against the individual. …"

48. The judgment goes on to consider the Secretary of State's delay in enforcing removal in that case, and delays in the legacy process.

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

49. In 2017, in *Sleiman,* Upper Tribunal Judge Kopieczek gave the following guidance in the judicial headnote:

> "*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.*"

50. The appellant in *Sleiman* had given a false date of birth, making himself three years younger than he actually was, and had been granted discretionary leave to remain as a unaccompanied asylum-seeking child, to expire the day before his presumed 18th birthday. The appellant made an in-time application for further leave to remain, which the Secretary of State did not deal with for 5 years. His situation was then examined under the Legacy Scheme and he was granted indefinite leave to remain, and in due course, British citizen status, both based on the incorrect date of birth.

51. The correct date of birth was discovered when the appellant got into difficulty in China, having had to surrender his British passport in Hong Kong. He contacted the British Embassy and produced his Lebanese passport with his correct, older date of birth in it. There was a Home Office file note recording the two dates of birth but stating expressly that his age was irrelevant to the grant of indefinite leave to remain under the Legacy Scheme.

52. At [53], Judge Kopieczek said this:

> "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."
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> [*Emphasis added*]

53. At [62]-[65], Judge Kopieczek explained why Mr Sleiman's age was irrelevant to the grant of exceptional leave to remain under the Legacy Scheme, and thus to the grant of citizenship:

> "62. The appellant was granted ILR 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. …
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> 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.
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> 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."

54. Properly understood, *Sleiman* therefore requires a First-tier Judge to make a finding of fact as to whether there was a link between the grant of leave under the Legacy Scheme and/or the grant of British citizen status, and the deception. In *Sleiman,* the Secretary of State's file note stated that there was no link. That is not the case in this appeal.

***AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296**

55. In *AA (Nigeria)* the Upper Tribunal is warned to be cautious of interfering in the findings of fact and credibility of a First-tier Judge who has seen and heard an appellant give evidence. Lord Justice Popplewell, with whom Lord Justice Moylan and Lord Justice Baker agreed, said this at [41]:

> "41. … This appears to me to be a case in which the Upper Tribunal has interfered merely on the grounds that its members would themselves have reached a different conclusion. That is impermissible. I appreciate that under the tribunal system, established by the Tribunals Courts and Enforcement Act 2007 Act, the Upper Tribunal is itself a specialist tribunal, with the function of ensuring that First-tier Tribunals adopt a consistent approach to the determination of questions of principle which arise under the particular statutory scheme in question by giving guidance on those questions of principle: see per Lord Carnwath JSC in the tax context in *HMRC v Pendragon Ltd* [2015] UKSC 37 at [48] and Baroness Hale PSC in the immigration context in *MM (Lebanon) v Secretary of State for the Home Department* [2017] 1 WLR 771 at [69] to [74]. However it is no part of such function to seek to restrict the range of reasonable views which may be reached by FTT Judges in the value judgments applied to the many different private and family life circumstances which make almost all cases in this area different from each other. It is emphatically not part of their function to seek conformity by substituting their own views as to what the outcome should be for those of first instance judges hearing the evidence. As Baroness Hale PSC observed in the latter case at [107]:
>
> > "107. It is no doubt desirable that there should be a consistent approach to issues of this kind at tribunal level, but as we have explained there are means to achieve this within the tribunal system. As was said in *Mukarkar v Secretary of State for the Home Department* [2007] Imm AR 57 , para 40 (per Carnwath LJ):
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> > > "It is of the nature of such judgments that different tribunals, without illegality or irrationality, may reach different conclusions on the same case … The mere fact that one tribunal has reached what may seem an unusually generous view of the facts of a particular case does not mean that it has made an error of law … Nor does it create any precedent, so as to limit the Secretary of State's right to argue for a more restrictive approach on a similar case in the future. However, on the facts of the particular case, the decision of the specialist tribunal should be respected." "

56. I remind myself also of the guidance in *R (Iran) v Secretary of State for the Home Department* [2—5] EWCA Civ 982, Lord Justice Brooke (with whom Lord Justice Chadwick and Lord Justice Maurice Kay agreed), set out the narrow circumstances when it is permissible for the Upper Tribunal to interfere in the fact found by a First-tier Judge, at [90.2]-[90.3]:

> "90. … 2. A finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the Wednesbury sense, or one that was wholly unsupported by the evidence.

> 3. A decision should not be set aside for inadequacy of reasons unless the adjudicator failed to identify and record the matters that were critical to his decision on material issues, in such a way that the IAT was unable to understand why he reached that decision."

Analysis

57. The core factual matrix in this appeal is not disputed. The claimant does not deny that he used a false date and place of birth (but his real name) to enter the United Kingdom in 1998 and that he maintained that falsehood through the grant of exceptional leave to remain, through the legacy consideration from which he obtained indefinite leave to remain, and when he was granted British citizen status.

58. The claimant's nationality fraud was exposed only when the Secretary of State of her own motion caused the British Embassy in Tirana to verify his date and place of birth with the Albanian authorities and when she realised that the claimant's parents had each made separate applications for entry clearance in which they referred to him as an Albanian citizen and gave a different place of birth and residence for him, and for themselves. The claimant then admitted his fraud.

59. The legal question, on which the appeal turns, is the materiality of that continued falsehood to the grant of indefinite leave to remain under the legacy exercise, and then the grant of citizenship, and whether the First-tier Judge erred in law in finding that on the facts, the grant of citizenship to this claimant was not obtained 'by means of fraud' as required by section 40(3) of the 1981 Act.

60. At [26], the judge made a finding of fact that the misrepresentation as to the claimant's place of birth was material to the grant of exceptional leave to remain. But for his claim to be Kosovan, that leave would not have been granted.

61. The judge found that when the legacy exercise was being considered, the claimant had an outstanding asylum claim in his Kosovan nationality, and also an application for further leave to flow from the exceptional leave to remain. He did not abscond, and he attended his substantive asylum interview. The judge found that the grant of indefinite leave to remain under the legacy exercise was not tainted by the misrepresentation which led to his being granted exceptional leave to remain. That may be a generous finding, but it was (just) open to the judge on the facts as he stated them, having regard to the number of persons with totally false claims who also received leave to remain under the Legacy Exercise.

62. It is when the judge came to apply *Sleiman* that she erred in law. In *Sleiman,* the eventual decision turned on the facts: the Secretary of State produced, late in the day, a file note which said expressly that the misrepresentation as to Mr Sleiman's age was not relevant to the decision to grant him exceptional leave to remain under the Legacy Exercise, or citizenship. The same statement was made in the deprivation decision.

63. There was no such file note or statement in this appeal. The First-tier Judge's assertion at [42] that in this appeal she had placed 'significant weight on the

[Secretary of State's] file note as set out above' cannot be matched to any file note in the documents before me of the type considered in *Sleiman,* nor to anything 'above' in the First-tier Judge's decision.

64. The naturalisation application form provided an opportunity for the claimant to declare his previous deception to give the Secretary of State an opportunity to consider it and exercise discretion in his favour. He did not take that opportunity: he left the box blank and did adjusted his own and his parents' nationality and place of birth to make it seem that they were all Kosovan.

65. Accordingly, the circumstances of this claimant are much closer to example A, cited in the First-tier Judge's decision at [44], than to example B, where indefinite leave to remain was granted under a Family Concession unrelated to his misrepresentation of an applicant's nationality, thereby interrupting the chain of causation from the fraud to the grant of naturalisation as a British citizen .

66. I remind myself that at [53] in *Sleiman,* Judge Kopieczek said this:

> "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. …"

67. The claimant in this appeal committed just such an obvious fraud. On his application for citizenship, he misstated his own place and date of birth, his nationality, and the matching details for both his parents. The fraud here was clearly operative in the Secretary of State's decision to grant citizenship, and just as clearly intentional: the claimant altered only his date and place of birth and the matching details for his parents, while leaving his visits to Albania and Macedonia for holidays in the application uncorrected (perhaps because he knew that they could be verified).

68. The First-tier Judge's decision contains a material error of law as to the application of the *Sleiman* decision to the facts of this appeal and cannot stand. The causative link here is established. If *Sleiman* is correctly applied, there is only one possible outcome: the claimant's appeal must be dismissed.

DECISION

69. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the claimant's appeal.

Signed *Judith AJC Gleeson* Date: 12 November 2020
Upper Tribunal Judge Gleeson