Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DC/00104/2019 (V)**

THE IMMIGRATION ACTS

Heard at: Field House
On: 26 February 2021

Decision & Reasons Promulgated
On: 09 March 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

Kujtesa Ismajli

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr O Sobowale, instructed by Samad & Co Immigration
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant claims to be a national of the Republic of Serbia born on 14 January 1978. She arrived in the UK on 3 September 2001 and claimed asylum a few days later as an ethnic Albanian from Preshevo in Serbia and attended an interview on 11 October 2001. She claimed that her father, a supporter of the KLA, was killed in 1998, that her mother died shortly thereafter, that she and her sister were brutally raped by Serbian soldiers and

that her sister died from her injuries, that the family home was burned down, that she fled and went into hiding at her aunt's house in Macedonia and that she feared returning to Preshevo.

3. The appellant's claim was refused on 24 October 2001 and she appealed against that decision. At her appeal hearing, on 23 January 2003, her evidence was that she had become pregnant since coming to the UK and that the father played no part in the child's life. She claimed that she could not return to Preshevo as she had nowhere to live and no family or other contacts and would be treated as an outcast and rejected because of having had a child out of wedlock. She would be persecuted by the Serbian authorities if she returned to Preshevo. The appellant's account was accepted by the Tribunal and her appeal was allowed on the basis that she was a vulnerable single mother with a child born out of wedlock and with no support and nowhere to live and who would be at risk of being trafficked into prostitution if she returned to Serbia.

4. On 20 February 2003 the appellant was granted indefinite leave to remain as a refugee. On 14 May 2003 she applied for a Refugee Convention travel document in the same identity and she was issued with a travel document on 8 August 2003. On 19 March 2007 she made an application for naturalisation as a British citizen, again in the same identity, stating that her parents were Yugoslav nationals born in Preshevo, Serbia.

5. On 25 July 2007, an application was made at the British Embassy in Tirana by Fred Hila, born on 2 September 1972 in Shkoder, Albania, accompanied by written representations from Rai Braitch Solicitors dated 27 June 2007, in which it was stated that he wished to enter the UK to join his spouse, Kujtesa Ismajli, whom he had first met in Birmingham in November 2001 and married on 4 August 2003. It was stated that their relationship started shortly after they met and that they had resided together in Birmingham from May 2003 to August 2005 whilst they were both claiming asylum until he was returned to Albania in August 2005, and subsequently whenever the sponsor visited him in Albania in 2005 and 2006. They had a son together, Mario Ismajli. It was stated further that Mr Hila had applied for asylum in the UK under a different name, as Victor Marku, and therefore the marriage certificate was in that name. When Mr Hila was interviewed, however, he stated that his wife was from Albania and he produced an Albanian marriage certificate showing that he had married Mirela Hila on 31 May 1999 in Albania, together with an Albanian birth certificate for Mirela Hila showing that she was born on 14 January 1978 in Shkoder, Albania.

6. As a result, the respondent contacted the appellant by letter on 28 July 2008, and then again when there was no response, on 25 September 2008, advising her that information they had received from the British Embassy in Tirana showed that she was Mirela Hila born in Shkoder, Albania, and that she had therefore obtained settlement in the UK, and British citizenship, as a result of false representations. The appellant was advised that the respondent was considering depriving her of her British citizenship under section 40(3) of the British Nationality Act 1981 and she was invited to make representations in response.

7. The appellant responded in a letter dated 9 October 2008 maintaining her claimed identity, denying that she was Mirela Hila and claiming that her husband had given false information to the Embassy. In a letter dated 16 October 2008 the respondent requested that the appellant provide her birth certificate to confirm her claimed identity, together with evidence of previous residence in Serbia.

8. On 8 February 2018 the respondent wrote to the appellant again, stating that Victor Marku had claimed asylum on 19 July 2002, that his application was refused on 11 September 2002 and that she had then sponsored his application for leave to remain application in 2004 which was subsequently refused on 22 July 2005. He was removed from the UK on 4 August 2005 and was later sponsored by the appellant in a subsequent application for entry clearance in his true Albanian identity, Fred Hila, in June 2007. The respondent noted from comparing photographs that Viktor Marku and Fred Hila were one and the same person. Reference was made to the respondent reviewing her case and again considering depriving her of her British citizen status.

9. In a letter dated 26 February 2018, the appellant once again denied being Mirela Hila from Albania and maintained her claimed identity as a Serbian national. She claimed that she was married to Victor Marku, an Albanian national, but she did not know why her husband was relying on false documents giving her name as Mirela Hila and only became aware that he had used the name Fred Hila after he was refused entry clearance to the UK. After that time, her second son was born and she had referred to Fred Hila as her husband in his birth certificate, but prior to that she had only ever known him as Viktor Marku. It was stated further that the marriage had since broken down and therefore the appellant was unable to comment further on the allegations made on the basis of Viktor Marku's previous applications. References were made to the appellant relying upon Article 8 as she was the primary carer of two British national children.

10. The respondent, in a decision dated 26 September 2019, did not accept the appellant's claim to have had no knowledge of her husband having used the name Fred Hila and considered that the appellant had provided a false account of her personal history. The respondent confirmed being in possession of information from the General Directorate of Civil Status Registry at the Ministry of Interior of Albania which showed that Fred Hila's family composition consisted of himself, Mirela Hila, now Ejlli, and his parents, and that the identifying particulars provided for Mirela Hila, including her parents' details, matched those provided on the birth certificate and marriage certificates provided by Mr Hila during his entry clearance application and contained the photograph of the same person naturalised as a British citizen as Kujtesa Ismajli, a Yugoslav national. The respondent considered that there was overwhelming evidence of the appellant's deception and false representations and rejected the appellant's attempts to explain the falsehoods in her application. The respondent considered that it was clear that the appellant would have been refused British citizenship had the nationality caseworker been aware that she had made false representations in an attempt to conceal the truth about her identity. It was not accepted that there was a plausible, innocent explanation for the misleading information which led to the decision to grant citizenship and it was considered that the appellant had provided information with the intention of obtaining a grant of citizenship in

circumstances where her application would have been unsuccessful if she had told the truth. The respondent therefore made a decision to deprive the appellant of her British citizenship under section 40(3) of the 1981 Act, concluding that it was reasonable and proportionate to do so.

11. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981. Her appeal was heard on 10 January 2020 by First-tier Tribunal Judge Lawrence. The appellant maintained the same claim during the appeal hearing, stating that she was a Serbian national and that she had met Viktor Marku in the UK, not knowing that his true name was Fred Hila. She denied having married him in Albania and refuted the genuineness of the documents submitted by Mr Hila in support of his entry clearance application, claiming to have married him on 4 August 2003 in the UK and to have only found out his true identity as Fred Hila during her visit to Albania in 2006. She denied any knowledge of Mirela Hila and claimed that her husband was relying on false documents. The appellant claimed in her statement before the Tribunal that she had visited her husband in Germany in October 2010 whilst he was waiting for a decision on his entry clearance application and their second son was conceived then and was born in the UK on 28 July 2011. Her relationship with her husband ended in 2015, because she could no longer live with someone who was relying on false documents to support his application.

12. The judge found that the burden of proving fraud had been met by the respondent. He considered that the most significant document showing the appellant's true identity was the birth certificate produced by Mr Hila, at T2 of the respondent's appeal bundle, which gave her date of birth and named her parents, and he rejected the appellant's claim that that was a false document. The judge considered that the appellant had failed to provide an innocent explanation and had failed to satisfy the minimum level of plausibility. He considered there to be no basis for finding that she was stateless, but concluded that she was and remained a national of Albania who had a husband and a home in Albania, who had returned there for a cumulative period of 128 days between August 2005 and September 2006 and who could return there now. The judge found that it was proportionate to deprive the appellant of her British citizenship and he dismissed the appeal in a decision promulgated on 30 January 2020.

13. Permission to appeal was sought by the appellant on the following grounds: first, that the judge had failed to give adequate reasons and wrongly considered the limited evidence given by the appellant's husband as sufficient to demonstrate deception on the part of the appellant; second, that there were inadequate reasons given for finding that the documents relied upon by the respondent were reliable; third that there was a failure to consider the appellant's challenge to the reliability of the birth certificate produced by her husband; and fourth that the judge had wrongly applied the burden of proof by effectively reversing it.

14. Permission was granted in the First-tier Tribunal on 13 May 2020.

Hearing and Submissions

15. The matter then came before me for a remote hearing by way of skype for business and both parties made submissions.

16. Mr Sobowale relied on his grounds of appeal and expanded upon the grounds. He submitted that the judge had failed to address the burden of proof correctly and had given inadequate reasons as to why the documentary evidence from the respondent was reliable. The respondent relied upon a birth certificate and marriage certificate submitted by appellant's former partner, the former of which had a photograph of the appellant as a grown woman stapled to it and referred to the year as 1974 whereas the appellant's date of birth was said to be 1978 and was thus manifestly deficient. The appellant's former husband was known to have produced false documents previously and there was therefore no reason for the respondent to accept his evidence as reliable. With regard to the respondent's reference to the appellant failing to obtain her Serbian birth certificate, it had always been the appellant's case that her town in Serbia had been destroyed and therefore she could not obtain any documents. In any event the burden of proof lay upon the respondent and not the appellant. Furthermore, the respondent had failed to respond to the appellant's solicitors request for disclosure of the documents upon which she relied and the delay was therefore the fault of the respondent not the appellant. The respondent ought to have taken the documents produced by the appellant's former husband to the Albanian Embassy for verification. In accordance with the guidance in QC (verification of documents; *Mibanga* duty) China [2021] UKUT 33, the respondent had a duty to investigate as she was relying upon the birth certificate and marriage certificate as core documents. Had she done so, she would have established that the documents were not genuine. The respondent had therefore failed to meet the burden of proof.

17. Mr Melvin relied on the rule 24 response and submitted that the appellant's grounds had no merit. Contrary to the assertion made by the appellant, the respondent did place documents before the First-tier Tribunal and those, together the oral evidence and the appellant's flat denial of the Albanian identity without adducing supporting evidence was sufficient for the burden of proof to have been met by the respondent. The appellant had made no attempt to verify her Serbian nationality. The judge's findings were sustainable in law.

18. In response Mr Sobowale submitted that the respondent had tried to verify the contents of the documents but had failed to seek verification of the documents themselves. Comparable photographs were not available from the Albanian Embassy, from the TIMS system, yet the respondent had a photograph from the birth certificate and could have sent it to the Albanian Embassy to verify that it was the same person. The appellant's case was that the lady living in Albania with Fred Hila was someone else and not her.

19. Both parties agreed that, in the event of the decision being set aside by reason of an error of law, I could re-make the decision without further documentation or evidence.

Discussion and Conclusions

20. The sole issue in this case is whether the judge was entitled to conclude that the respondent had made out her case that the appellant was an Albanian national, Mirela Hila, the person claimed by Fred Hila to be his wife, rather than Kujtesa Ismajli, the person who had been recognised as a refugee from Serbia and subsequently granted British citizenship.

21. The case presented by Mr Sobowale was that the documentary evidence relied upon by the respondent was not sufficiently reliable to meet the burden of proof and that the judge was wrong not to have found as such. The reasons put forward by Mr Sobowale for so concluding were that the documents had been produced by a person who was known to have relied on false documents previously, that the documents had not been verified by the respondent with the Albanian Embassy as they ought to have been, that the birth certificate was deficient as it was based on a registration year of 1974 yet gave a date of birth in 1978 and was a handwritten, copied document which was accompanied by a photograph of the appellant as a grown woman.

22. However, the contents of the birth certificate produced by the appellant's former husband, which contained the same photograph as that attached to Kujtesa Ismaeli's application for naturalisation as a British citizen at M11 of the respondent's appeal bundle, were verified by the British Embassy in Tirana, in a letter dated 1 March 2018, at Annex D of the respondent's appeal bundle, as consistent with the guidance in QC (China). That letter was accompanied by a copy of the family certificate and a typed birth certificate for Mirela Ejlli (previously Hila) containing the same details as that provided in the handwritten birth certificate from the appellant's former husband. It is not entirely clear from the letter from the Embassy whether or not a photograph was attached - whilst the letter stated that a comparison photograph from the TIMS (Total Information Management System) was not provided, reference was also made to bio-data with a photograph of the subject. Nevertheless, it is clearly not the case, as Mr Sobowale submitted, that the respondent simply accepted the evidence from Mr Hila.

23. It was Mr Sobowale's submission, with regard to that verification process, that the respondent had verified the contents of the documents but that did not establish that the appellant was the person named in the documents. However, as noted by the judge at [15], the appellant, despite being asked twice, failed to provide any explanation as to why her previous husband would have submitted false documents at his entry clearance interview, when it was of no benefit to him to contradict the basis upon which she had secured British citizenship. Furthermore, there were clearly many other reasons for concluding that the appellant was the same person as named in the birth certificate produced by her former husband. Her husband also produced a marriage certificate, at page T3, which gave the same parents' names and date and place of birth for his wife as the birth certificate and gave the year of the marriage in Albania as 1999, as he had stated at his entry clearance interview, although the judge quite properly acknowledged at [18] that the weight that could be accorded to that document was limited, since it had not been translated.

24. In addition, the appellant had, since 2008, been repeatedly asked by the respondent to provide her Serbian birth certificate or other evidence of her Serbian nationality, but had failed to do so. The respondent produced evidence of facilities available from the Serbian Embassy in the UK for obtaining identity documents and evidence of nationality and, aside from claiming that her town had been destroyed in the fighting, the appellant did not make any attempt to support her claim, a point properly made by the judge at [20] and [21] of his decision. Mr Sobowale's submission in that regard was that it was the respondent who bore the burden of proof. However, as the judge properly found, the appellant bore the burden of providing an 'innocent explanation' in response to what was found to have been initially adequately demonstrated by the respondent. As the appellant was claiming to be a Serbian national it was clearly in her interests, given the serious allegation made against her, to at least make some efforts to seek evidence which could support her claim.

25. All of these were matters fully considered by the judge who directed himself properly on the burden and standard of proof and followed the correct approach, as is apparent from [5] and [16] to [22] of his decision. The appellant has done no more than assert that she is Serbian but has provided nothing further to rebut the significant evidence against her other than to deny the allegations made. On the basis of the findings made by the judge on the evidence I accept that he was entitled to reach the conclusions that he did and properly concluded that the respondent was entitled to pursue deprivation action.

26. However even if I were to find an insufficiency of reasoning in the judge's decision (which I do not), I would reach the same conclusions if I were to re-make the decision myself, as there are additional matters to which the judge did not specifically refer but which clearly undermine the reliability of the appellant's claim further.

27. At [26] of the refusal decision, the respondent identified that the appellant's denial of having knowledge of her husband's use of the identity Fred Hila prior to the refusal of his entry clearance application was contradicted by the representations made by her solicitors on 27 June 2007. That is indeed the case, and in fact the appellant's own statement of 7 January 2020, submitted for the appeal hearing, at [4], also contradicted that claim. The appellant has not sought to provide any proper response to that. I note further that the respondent also referred, in a letter dated 8 February 2018 at Z2 of the appeal bundle, to photographs of the same person, namely the appellant, sponsoring both the entry clearance application of Fred Hila in June 2007, but also an application for leave to remain for Viktor Marku in 2004, which was refused on 22 July 2005. In their response of 26 February 2018 the appellant's solicitors claimed to know nothing of Viktor Marku who was not their client, yet it was the same solicitors (albeit under a different reference number) who made the entry clearance application on 27 June 2007 referring to both Fed Hila and Viktor Marku.

28. Another matter which appears to have been overlooked is the fact that, aside from the issue of the appellant's identity and nationality, the basis upon which her appeal was allowed in the First-tier Tribunal on 29 January 2003 included the fact that she would be

treated as an outcast on return to Serbia, having produced a child out of wedlock, and that the father had played no part in the child's life and she would be returning as a single woman without any support. That was wholly contradicted by her subsequent evidence that she was in a relationship with Mr Marku/ Hila in the UK from October 2001 and was living with him at the time their son Mario was born on 14 July 2002 and at the time of the appeal in January 2003, until his return to Albania in 2005. Accordingly, the reliability of the appellant's claim before the First-tier Tribunal in January 2003 has to be viewed in the light of that further contradiction, which adds weight to the respondent's assertion that the entire basis of her claim in January 2003 was false.

29. Accordingly, there are additional reasons, beyond those identified by Judge Lawrence, for concluding that the respondent was entitled to pursue deprivation action against the appellant, but in any event I am satisfied that the judge was entitled to reach the decision that he did on the basis of his own findings.

30. The grounds made no challenge to the judge's decision on any other basis besides the allegation of deception and fraud and I consider that he was fully entitled to make the decision that he did. There are no material errors of law in his decision.

DECISION

31. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: *S Kebede* 1 March 2021
Upper Tribunal Judge Kebede