Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00038/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 December 2021	**On 24 January 2022**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ERION SHYTI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr A Mackenzie, counsel instructed by TRP Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Sharma, promulgated on 15 December 2020. Permission to appeal was granted by First-tier Tribunal Judge Beach on 19 March 2021.

Anonymity

2. No direction has been made previously, and there is no obvious reason for one now.

Background

3. The respondent applied for asylum by post on 9 August 1999, claiming to be from Kosovo. He failed to attend his first asylum interview and was unresponsive during the second interview. The respondent was granted indefinite leave to remain in the UK under the legacy scheme on 2 July 2010. He was issued with a certificate of naturalisation on 27 June 2013. In 2017, the respondent was convicted of an offence related to illicit drugs and sentenced to 10 years' imprisonment. The Secretary of State informed the respondent that it was believed that he had obtained his citizenship by fraudulent means on 21 November 2019, after identity checks indicated that he was an Albanian national with a different name and date of birth. The respondent accepted that he was an Albanian national.

4. The Secretary of State decided to deprive the respondent of his citizenship by way of a letter dated 4 March 2020. Essentially, it was not accepted that the respondent's fraudulent claim to be from Kosovo was immaterial to the decision to grant settlement status because it was "highly likely" that he would have been removed had it been known that he was an Albanian national. Nor was it accepted that there was a plausible, innocent explanation for the misleading information. The respondent had continued to provide false information as part of his application under the legacy scheme as well as in his application for nationality. It was considered reasonable and proportionate to deprive the respondent of British citizenship.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appeal proceeded by way of submissions alone. On behalf of the respondent, it was argued that his case was on all fours with that of the appellant in *Sleiman (deprivation of citizenship; conduct)* [2017] UKUT 00367 (IAC). The Secretary of State's representative informed the judge that he had not read *Sleiman* and declined the judge's offer of time to consider that authority. The judge also took into consideration that the Secretary of State's case record sheet gave the issues of long residence and strength of connections as the reasons for a grant of ILR and that there was a lack of explicit reference to the previously claimed nationality. The judge rejected the argument that the respondent would have been removed to Albania had his true nationality been known as being speculative, applying *Sleiman*. The appeal was allowed.

The grounds of appeal

6. In the grounds it is argued that, the First-tier Tribunal materially misdirected himself, gave inadequate reasons and failed to make findings. The following points were made.

7. The Secretary of State's case which was advanced in *Sleiman* was of limited scope and did not include an assertion that the application would have been rejected if the fraud in that case had been known. By contrast, in this appeal, the Secretary of State had expressly raised character and conduct in the decision letter. The judge had relied on the submissions of the respondent's counsel which had not addressed the limited scope of the Secretary of State's case in *Sleiman*. The judge failed to make any findings as to whether the grant of ILR or citizenship fell to be refused had the Secretary of State known of the fraud or character and conduct issues. The respondent committed fraud within his citizenship application by indicating that he was of good character and that was not considered by the judge. This factual matrix was not considered in *Sleiman*. Fraud was not irrelevant to the legacy scheme and this matter was not considered in *Sleiman*. Considerations under the legacy scheme took into account character and conduct with reference to paragraph 395C of the Rules and Chapter 53 of the policy guidance which advised case owners to take account of deception. The judge erroneously applied *Sleiman* and failed to consider whether the respondent would have been refused ILR or citizenship had the fraud come to light.

8. Permission to appeal was granted on the basis sought.

9. The respondent filed a Rule 24 response following the grant of permission, opposing the appeal on the following basis. The grounds failed to identify any error of law and the appeal should have been allowed in any event, for different reasons. At best the respondent's deception had an indirect bearing on his grant of citizenship. The Secretary of State did not advance an argument that citizenship would have been refused owing to the respondent's false statement as to his nationality, despite being invited to do so during the hearing. The aforementioned issue had been addressed in the respondent's skeleton argument however the Secretary of State did not respond to that submission in her Respondent's Review or during oral submissions.

10. It was not agreed that the Secretary of State's case which was advanced in Sleiman was of "incredibly limited scope," rather than materially the same argument advanced in the respondent's case. The Secretary of State was not entitled to make different submissions before the Upper Tribunal. The judgment in *Begum* [2021] UKSC 7 was not relevant because the Secretary of State did not argue that the fraud played a direct role in the grant of citizenship in that case. In the alternative, if the Tribunal were to conclude that the First-tier Tribunal erred in relation to the citizenship application, the matter would need to be reconsidered and the Secretary of State's exercise of discretion might need to be considered, following *Begum*.

The hearing

11. Both representatives made submissions expanding on their written arguments, which are set out in my note and which I have taken into

consideration in reaching this decision. In addition, Mr Clarke saw no need to apply to amend the grounds of appeal because he felt that he could address the existing grounds in light of *Begum*. Mr Mackenzie indicated that he would not have objected to such an application.

12. At the end of the hearing, I concluded that the First-tier Tribunal had made a material error of law owing to a failure to consider the false statements made by the appellant in his citizenship application.

Decision on error of law

13. It is unnecessary to explore *Sleiman* in any detail owing to the clear material error of law in relation to the second ground.

14. The fact that the respondent's fraud regarding his nationality continued in his application for citizenship was not a matter taken into consideration by the judge at any stage in his decision and reasons. It is obvious from the Secretary of State's decision that reliance was placed on this issue. Indeed, at paragraph 20 of the decision letter, the following is stated.

> "Again, you persisted with the deception in your naturalisation application and ticked the box to indicate that you had not done anything to suggest you were not of good character and used the same fabricated place of birth. Had you told the truth in your naturalisation application it is highly likely that you would have been refused citizenship on good character grounds…"

15. That the Secretary of State placed strong reliance on the respondent's continued deception was also apparent from paragraph 15 of the decision letter where the respondent's answers to questions about his identity are set out. In addition, there is reference to Chapter 55 of the Deprivation of British Citizenship guidance as well as the Nationality Staff Instructions in paragraphs 18 and 19 of the decision. The relevant sections of both of these instructions formed part of the Secretary of State's bundle before the First-tier Tribunal at annexes R and S. While the judge was not adequately assisted by the Secretary of State's representative in relation to *Sleiman*, there was no concession that any part of the decision letter was withdrawn, and the judge ought to have considered it in full along with the accompanying guidance. Accordingly, Mr Mackenzie's argument that the Secretary of State failed to indicate either in advance of or during the hearing whether a separate argument regarding fraud in the citizenship application was being advanced, is rejected. It was plain on the face of the decision letter that the Secretary of State was relying on this matter, and it cannot be said therefore, that the judge properly reviewed the decision under appeal.

16. Following the decision in *Begum*, the correct approach to deprivation of citizenship appeals is to be found in the first two head notes in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC):

> *The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the*

> *appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.*
>
> *If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.*

17. There was some discussion as to the venue of the remaking in view of the different approach to this appeal now required, following *Begum*. In deciding whether to retain the matter for remaking in the Upper Tribunal, I was mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010. Taking into consideration the nature and extent of the findings to be made as well as that the parties have yet to have an adequate consideration of this appeal at the First-tier Tribunal, I reached the conclusion that it would be unfair to deprive the parties of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Birmingham, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Sharma.

Signed: T Kamara Date: 30 December 2021

Upper Tribunal Judge Kamara