Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-000662
DC/00063/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 October 2022	**On 27 November 2022**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RASIM MUHARREMI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms A Nolan, Senior Home Office Presenting Officer
For the Respondent: Ms R Chapman, instructed by Oliver & Hasani Solicitors

DECISION AND REASONS

1. Although the Secretary of State is the appellant, I will refer to the parties as they were designated in the First-tier Tribunal.

2. By a decision promulgated on 8 August 2022 the Upper Tribunal set aside the decision of the First-tier Tribunal in this matter. I now re-make that decision.

Background

3. The appellant, an Albanian citizen born in 1987, is appealing against a decision of the respondent dated 15 June 2020 to deprive him of his British citizenship pursuant to Section 40(3) of the British Nationality Act 1981.

4. In 2000 (aged 13) the appellant entered the UK and claimed asylum on the basis of being Kosovan.

5. In 2001 he was granted ELR as a minor. In 2015, aged 17, he applied for ILR. In his application he stated he was born in Kosovo. ILR was granted in 2006 (when the appellant was 18).

6. In 2006 the appellant applied for British citizenship. In his application he stated that he was born in Kosovo.

7. In 2017 the appellant married an Albanian national. He has a son, born in Albania in 2018, who is a British citizen. His wife and son currently live in Albania.

8. On 1 April 2019 the respondent wrote to the appellant stating that she was considering depriving him of his citizenship on the basis of his having dishonestly claimed to be Kosovan when in fact he is Albanian.

9. The appellant's initial response to this letter was to maintain he was Kosovan. He went so far as to submit a false birth certificate to support the contention. However, on 1 January 2020 he accepted he is in fact Albanian.

10. On 15 June 2020 the respondent made a decision to deprive the appellant of his British citizenship pursuant to Section 40(3) of the British Nationality Act 1981 on the basis that he had acquired his nationality by means of fraud.

The Respondent's Decision

11. Two distinct frauds are identified in the respondent's decision. The first is that the appellant lied about his nationality when applying for asylum and ILR, and maintained the lie following the ensuing grants of leave. The respondent states that if the appellant's true nationality had been known it is unlikely that he would have been granted ELR or ILR. With respect to the appellant being a minor when the asylum and ILR applications were made, the respondent notes in the decision that by the time ILR was granted the appellant was an adult. It is stated that because he was an adult when ILR was granted Chapter 55.7.5 (concerning not depriving a person of citizenship if he was a minor when ILR was acquired) was not applicable.

12. The second fraud identified in the respondent's decision is that the appellant lied in the naturalisation application itself. In the application the appellant was asked if he had engaged in "any other activities" which

might be relevant to whether he is a person of good character and to confirm that he had read and understood "Guide AN" which relates to good character. It is stated that the appellant gave false and misleading information by answering in the negative the question of whether he had engaged in activities relevant to his good character.

13. The respondent's decision also refers to "Annex D to Chapter 18", a document which provides caseworkers of the respondent with instructions concerning the good character requirement in a naturalisation application. This states, inter alia, that an applicant would not be considered of good character if he has practised deceit in dealings with the respondent. It is stated that a caseworker following Annex D would have refused the nationality application had she been aware he had presented a false nationality.

14. After concluding that the appellant committed fraud which was material to the grant of citizenship, the respondent noted that the decision to deprive a person of citizenship is discretionary. The respondent stated that the decision to deprive the appellant of citizenship (a) did not equate to removal or deportation; (b) was reasonable notwithstanding any impact on the appellant's child; and (c) was reasonable even if it resulted in the appellant being stateless. It is stated that once the appellant has been deprived of his citizenship a further decision will be made quickly. At paragraph 34(b) of the respondent's decision it is stated that a further decision in respect of removal or to issue leave will, subject to any representations being made, be made within eight weeks of the deprivation order. It is concluded that depriving the appellant of citizenship is reasonable and proportionate.

The Concession

15. At the hearing before the First-tier Tribunal the respondent conceded that since the appellant was under 18 when he applied for asylum and ILR he was not responsible for any fraud in respect of obtaining ELR and ILR. The concession in respect of the grant of ILR was made despite the appellant being over 18 by the time ILR was granted.

16. Before me, Ms Nolan applied to withdraw the concession. She argued that the concession was inconsistent with, and based on a misunderstanding of, the respondent's policy in respect of minors, as set out in Chapter 55, as the policy does not mandate that a person will always not be held responsible for fraud committed as a child and, in this case, the appellant was an adult when ILR was granted. Ms Nolan submitted that the Presenting Officer in the First-tier Tribunal was wrong to make the concession.

17. I can agree to the concession being withdrawn if it is in the overall interest of justice to do so, having regard to all of the circumstances of the case. I am not satisfied, having regard to all of the circumstances, that in this case it would be in the overall interests of justice to allow the concession

to be withdrawn. I agree with Ms Nolan that there was no need for the concession to be made and that it would have been consistent with Chapter 55 to not make it. But that does not mean that the Presenting Officer misunderstood Chapter 55 or that it was improper to make the concession. Having made a choice to make the concession, I am not now prepared to allow the respondent to withdraw from it.

Relevant Law

18. Section 40(3) of the British Nationality Act 1981 provides:

> *(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*

19. The headnote to *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC) provides as follows:

> *Following KV (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 2483, Aziz v Secretary of State for the Home Department [2018] EWCA Civ 1884, Hysaj (deprivation of citizenship: delay) [2020] UKUT 00128 (IAC), R (Begum) v Special Immigration Appeals Commission [2021] UKSC 7 and Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 the legal principles regarding appeals under section 40A of the British Nationality Act 1981 against decisions to deprive a person of British citizenship are as follows:*
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> *(1) 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.*
>
> *(2) 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.

(3) In so doing:

(a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and

(b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).

(4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in EB (Kosovo) v Secretary of State for the Home Department [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs 13 to 16 of EB (Kosovo).

(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).

(7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good.

Analysis

20. In his application for citizenship the appellant lied by giving a false place of birth (Kosovo) and by seeking to portray that he was Kosovan when in fact he was Albanian. This was plainly a false representation.

21. The false representation was material to the grant of citizenship because had the respondent been aware that the appellant had lied in the citizenship application, citizenship would not have been granted. This is clear from the directions given to caseworkers, as set out in "Annex D to Chapter 18" where it is stated:

> "2.1 We would not consider applicants to be of good character if, for example, there is information on file to suggest:
>
> ...
>
> - they had practised deceit, for example, in their dealings with the Home Office ..."

22. Although the appellant would not have seen Annex D to Chapter 18, the need for him to be honest in his citizenship application was made clear to him in the application form itself, where in the Declaration section, immediately below where the applicant inserted his name, it states that the applicant declares that "to the best of my knowledge and belief, the information given in this application is correct".

23. On the same page, a tick is placed next to paragraph 7.6 where it is stated:

> "I understand that a certificate of citizenship may be withdrawn if it is found to have been obtained by fraud, false representation or concealment of any material fact, or I engage in conduct which is seriously prejudicial to the public good".

24. The appellant signed the declaration in the citizenship application despite knowing that he had provided a false country of birth in the application. For this reason alone, I am satisfied that the respondent's conclusion that the appellant obtained citizenship by means of fraud was supported by the evidence and is based on a reasonable view of the evidence: it is a conclusion that, in my view, was plainly open to her.

25. I also agree with Ms Nolan that it was open to the respondent to conclude that the appellant committed fraud by denying that he engaged in "any other activities" which might relate to whether he was a person of good character. At paragraph 4.11 of the naturalisation application the appellant was required to answer the following question "Have you engaged in any other activities which might be relevant to the question of whether you are a person of good character?" If he was in any doubt as to what constitutes "good character" for these purposes, it was necessary for him to review the naturalisation guide. In the application form, at paragraph 7.2, the appellant ticked the box confirming that he had "read and understood the guide Naturalisation as a British Citizen". In the guide

there is a section headed “Section 3 – Good Character”, where “good character” is described. It is stated in paragraph 33 that an applicant should disclose “any information which may be relevant” to the question of good character. Examples are then given, which are convictions, civil judgments, payment of tax and national insurance contributions, and “other activities which may indicate that you are not a person of good character”. The “other activities” are set out in paragraph 40 where it is stated:

> “You must say here whether you have been engaged in any activities which may indicate that you are not a person of good character. You must give this information no matter how long ago this was. If you are in any doubt about whether something you have done or are alleged to have done would be regarded as relevant to whether you are a person of good character, you should mention it”.

26. Ms Chapman argued that none of the specific examples relating to good character in the guide cover dishonesty in previous applications and therefore the appellant fell into a vague category of “other activities”. She submitted that it is far from clear that dishonesty in a previous application would fall within “other activities”. I am not persuaded by this argument. The wording in paragraph 40 makes it plain that anything potentially relevant needs to be disclosed. It is stated that if an applicant is in any doubt the activity in question should be mentioned. Given the breadth of this, it was, in my view, reasonably open to the respondent to take the view that the appellant’s failure to disclose previous falsehoods fell within the category of “other activities” that needed to be disclosed in his application and that he acted dishonestly by not making the disclosure in the application.

27. Ms Chapman, relying on several recent authorities, argued that *Ciceri* was wrongly decided, and that I should undertake a full reconsideration of whether the appellant engaged in fraud. It is unnecessary to address this argument because had I undertaken a full assessment based on the merits I would have reached the same conclusion as the respondent. That is, I would have found that, on the balance of probabilities, the appellant’s citizenship was obtained by false representation because:

    (a) he lied on his application form about his place of birth with the plain intention of deceiving the respondent into believing he was Kosovan rather than Albanian; and

    (b) he stated that he had not engaged in “any other activities” relevant to his good character when he had, in fact, over a prolonged period, including as an adult, maintained that he was Kosovan when in fact he was Albanian.

    Either of these reasons, taken alone, is sufficient to establish that the condition in Section 40(3) is met.

28. I now turn to the question of whether depriving the appellant of British citizenship would violate Article 8 ECHR. This requires a balancing exercise where I consider the reasonably foreseeable consequences of the appellant's deportation but without conducting "a proleptic assessment of the likelihood of the appellant being lawfully removed from the UK": see paragraph 3(a) of the headnote to *Ciceri*.

29. On the respondent's side of the scales is the public interest in maintaining the integrity of British nationality law. I attach significant weight to this, in line with paragraph 30(4) of *Ciceri*. See also the headnote to *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 00128 (IAC) where it is stated:

> *7. There is a heavy weight to be placed upon the public interest in maintaining the integrity of the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship. Any effect on day-to-day life that may result from a person being deprived of British citizenship is a consequence of the that person's fraud or deception and, without more, cannot tip the proportionality balance, so as to compel the respondent to grant a period of leave, whether short or otherwise.*

30. On the appellant's side of the scales are the following factors:

    (a) It is reasonably foreseeable that, as a consequence of being deprived of UK citizenship, the appellant will be unable to bring his wife to the UK and that, consequently, he will be unable to enjoy family life with his wife and child in the UK. I accept that it is reasonably foreseeable that in order to reside with his wife and child it is likely that the appellant will need to move to Albania, where he has not lived for very many years. He has a very significant private life in the UK, where he has worked, been educated, and purchased property. In order to enjoy family life with his wife and child he will need to leave this behind, and relocate to Albania.

    (b) It is reasonably foreseeable that the appellant will lose his employment following a deprivation decision because there is likely to be a period (between the deprivation decision and the subsequent decision in respect of his immigration status) where he will be in the UK without a right to work.

31. I accept Ms Chapman's submission that the adverse consequences to the appellant of the deprivation decision are very significant. However, they are not, in my view, sufficient to tip the proportionality balance in his favour, given the heavy weight to be placed on the public interest in maintaining the integrity of British nationality law.

Notice of Decision

The appellant’s appeal under Section 40A(1) of the British Nationality Act 1981 against the respondent’s decision to deprive him of his British citizenship, pursuant to Section 40(3) of that Act, is dismissed.

Signed

D. Sheridan
Upper Tribunal Judge Sheridan

Dated: 20 October 2022