IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Case No: UI-2022-001683

First-tier Tribunal No:
DC/00040/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 December 2022	**On 8 March 2023**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PETRIT OMERAJ
(AKA ARBEN BHARAMI)
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Mr T Wilding, Counsel, instructed by J McCarthy Solicitors

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge N M Paul which allowed Mr Omeraj's appeal against a decision dated 17 April 2019 to deprive him of British citizenship.

2. For the purposes of this decision I will refer to the Secretary of State for the Home Department as the respondent and to Mr Omeraj as the appellant, reflecting their positions before the First-tier Tribunal.

3. The appellant is a national of Albania, born on 1 September 1979.

4. The appellant came to the United Kingdom on 14 June 1998. He claimed asylum in a false identity, that of Arben Bharami and gave a false date of birth of 20 March 1981. He also maintained that he was a citizen of Kosovo. On the basis of that false identity the appellant was granted refugee status on 8 May 1999. Still using the false identity, he applied to be naturalised as a British citizen and this was granted on 8 January 2004.

5. The appellant's true identity became apparent on 17 November 2007 when he sponsored his wife's entry clearance application. The entry clearance application identified that he had used a false identity and confirmed his correct identity. The entry clearance application was refused and proceeded to an appeal before the First-tier Tribunal. The appellant gave evidence at the appeal hearing and confirmed his true Albanian identity. The appellant's wife's appeal for entry clearance was allowed by an Immigration Judge on 25 September 2008.

6. The respondent's electronic records show that on 8 January 2009, by then aware of the appellant's true identity and use of a false identity when obtaining nationality in 2004, the respondent considered whether to proceed to deprive him of his nationality. An entry on the electronic record for 11 May 2009 and 12 May 2009 shows that the respondent recommended that no deprivation proceedings should take place.

7. The respondent considered deprivation again in 2014 . A file note on the electronic records from November 2014 states:

> "Subject has been naturalised but a deprivation of citizenship case is still open. I spoke to IT IO (redacted) who advised notes state that he was not eligible for revoking citizenship".

8. In addition, it is common ground that the appellant changed his name by deed poll in 2014 to his correct name and using that correct name applied for a British passport which was issued by the respondent in 2014.

9. On 12 February 2019 the respondent wrote to the appellant to advise him that she was considering depriving him of nationality. On 17 April 2019 she made a decision to deprive him of his nationality under Section 40(3) of the British Nationality Act 1981 as it was her view that the appellant had used fraud when obtaining his British citizenship.

10. The appellant appealed against the deprivation decision. The appeal came before First-tier Tribunal Judge Paul on 15 November 2021. The core issue before the First-tier Tribunal was whether the decision to deprive the appellant of British nationality amounted to a disproportionate breach of

his rights under Article 8 ECHR because of the delay from 2007 to 2019 in commencing deprivation proceedings.

11. The appellant's case was set out in paragraph 18 of the decision. Mr Wilding's submission before the First-tier Tribunal was that the appeal fell to be allowed in line with the ratio in the case of Laci v Secretary of State for the Home Department [2021] EWCA Civ 769. Mr Wilding maintained that the respondent:

> "… made a conscious decision not to deprive the appellant of his nationality, before some years later for no apparent reason pursuing it. He submitted that the significant 12-year delay is egregious. Finally, the respondents made no effort to justify the decision or on the change of circumstances, or in fact in comparison with other cases brought to her attention".

12. In paragraph 19 of the decision Judge Paul referred to EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41 which concerned the correct approach to delay by the respondent in a case concerning the lawfulness of the removal of unsuccessful asylum seekers. Judge Paul noted:

> "19. Reliance is placed on the case of **EB (Kosovo)**, which dealt with the consequences of delay. In summary, the Court observed there that: '*Once it is accepted that unreasonable delay on the part of the Secretary of State is capable of being a relevant factor then the weight to be given to it in a particular case was a matter for the tribunal*'".

13. The appellant's submission was set out further in paragraph 20 of the First-tier Tribunal decision, to the effect that:

> "20. It is therefore submitted that the combination of the delay, lack of proper analysis as to why that delay occurred, and the fact that quite obviously – in the intervening years – the appellant has settled with his wife and children and has established a very substantial private life here. This means that the decision now to make the deprivation is disproportionate".

14. First-tier Tribunal Judge Paul went on to consider a number of cases concerning deprivation of nationality and in paragraph 29 of the decision set out extracts from the case of Laci on the correct approach to lengthy periods of delay by the respondent in cases of deprivation of nationality. The extracts cited from Laci showed that, as here, there had been an extensive period of delay in taking action after the use of a false identity had become known to the respondent. In Laci the respondent had invited representations from the appellant but did nothing further for 9 years after receiving Mr Laci's response. She had also, as here, during the period of delay, issued a passport.

15. Judge Paul went on to find in paragraph 30 of his decision:

> "30. Given the basis upon which the appellant obtained his ILR and subsequent nationality it is accepted that the nationality was obtained by fraud. Thus the question is whether the deprivation order is disproportionate. The appellant has an established private and family life in the UK with his wife and children and due to the length of residence. I agree with the analysis offered by Mr Wilding. I consider that the case of **Laci** to be very helpful in identifying the relevant factors. Here there is a very significant delay combined with apparent decisions to take no action to deprive. To remove his nationality now and the uncertainty that brings with it would amount to a disproportionate interference with his Article 8 rights. The impact of the decision on the appellant, his wife and children will be significant as set out in his witness statement, the decision will have a direct impact on their ability to live and work in the UK".

The appeal was then allowed on human rights grounds.

16. The respondent appealed against the decision of Judge Paul and was granted permission by the Upper Tribunal on 27 October 2022.

17. The respondent's grounds maintained that the First-tier Tribunal made a material misdirection of law in the application of the ratio of Laci. The grounds indicated that the respondent accepted that she knew of the use of the false identity many years ago (although they incorrectly refer to this being in 2009 when it was, as above, in 2007). The grounds maintained, however, that the respondent was entitled not to initiate deprivation procedures for an extensive period as allowed for under her policy as set out in Chapter 55.5.1 of her "Deprivation and Nullity of British citizenship" guidance.

18. The grounds continued in paragraph 4:

> "4. In Laci the unexplained delay is with reference to the SSHD's decision to inform the Appellant of initiated deprivation proceedings in 2009, but then stalling such on receipt of representations for nine years. It is this delay, which the Court of Appeal consider was 'unexplained' at [40]–[51]. It was also the SSHD's inaction coupled with her decision to nonetheless renew the Appellant's passport, which led to the Court of Appeal's decision that such delay was unreasonable".

19. Ms Cunha indicated in her oral submissions that this was the core of the respondent's case, that there was a material difference between the facts of this appeal and those in Laci. Mr Laci knew that the respondent had considered depriving him of citizenship in 2009 because she had told him that this was the case and had invited representations. The appellant here did not know that the respondent had decided not to proceed with deprivation proceedings in 2009 or 2014. Where this appellant did not have the legitimate expectation that deprivation action would not be taken as had been the case in in Laci, the First-tier Tribunal had erred in finding the delay could outweigh the public interest in deprivation of nationality.

20. I did not find that the respondent's grounds had merit. I accept that this appellant was not notified of the initial "stage 1" intention to deprive him of his nationality which occurred in the Laci case. However, it is undisputed that the appellant did make full disclosure of his use of a false identity in his wife's entry clearance application in 2007 and in the ensuing First-tier Tribunal appeal proceedings in 2008. He sought and obtained a passport in his true identity in 2014. Judge Paul was entitled to take those matters into account when considering the respondent's conduct in taking deprivation action only in 2019, some 12 years after she knew of the use of a false identity and some 5 years after issuing the appellant with a passport in his correct identity, the change of name again bringing the earlier use of a false identity to the attention of the respondent. Further, the evidence before the First-tier Tribunal showed that the respondent took two positive decisions not to deprive the appellant of nationality in 2009 and 2014. There has never been any explanation as to why those decisions were made but the respondent still proceeded to commence deprivation proceedings in 2019. These matters showed that, as set out in paragraph 51 of Laci, this is not "simply a case where the Secretary of State could have taken action but did not do so." On full notice of the use of fraud, she made a positive decision not to deprive the appellant of nationality on two occasions, issued the appellant with a passport in his true identity and did not take action for 12 years after being put on notice of the use of fraud.

21. I noted the approach taken by the Court of Appeal in paragraph 81 of Laci when addressing whether the First-tier Tribunal was entitled to find that the delay was sufficient to outweigh the public interest:

> "81. On balance, and not without hesitation, I would accept that the FTT was entitled to regard the Secretary of State's inaction, wholly unexplained at the time and for so extraordinarily long a period, as sufficiently compelling, when taken with all the other circumstances of the case, to justify a decision that the Appellant should not be deprived of his citizenship. It may well be that not every tribunal would have reached the same conclusion as the FTT in this case. However, that is not the test. We are concerned here with the exercise of a judicial discretion, and it is inevitable that different judges will sometimes reach different conclusions on similar facts. Mr Gill reminded us of the frequently-cited observations of this Court in *UT (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1095: see para. 19 of the judgment of Floyd LJ and para. 38 of the judgment of Coulson LJ. In the present context, it is also relevant to quote the observation of Carnwath LJ at para. 25 of his judgment in *Akaeke v Secretary of State for the Home Department* [2005] EWCA Civ 947, [2005] INLR 575, (approved by Lord Bingham in *EB (Kosovo)* – see para. 16) that:
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> > "Once it is accepted that unreasonable delay on the part of the Secretary of State is capable of being a relevant factor, then the weight to be given to it in the particular case was a matter for the tribunal."

22. It is my conclusion that albeit other judges may have reached a different decision, there was sufficient material before the First-tier Tribunal here to reach the conclusion that the particular circumstances set out above were

such that the weight attracting to the public interest in favour of deprivation was outweighed. The judge was entitled to take notice of the very extensive delay and material events that occurred during that delay and find that on balance the appellant's circumstances outweighed the public interest in deprivation.

23. For these reasons I find that there is no error in the decision of the First-tier Tribunal and it shall stand.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

S Pitt
Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 January 2023