



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002455
First-tier Tribunal No:
DC/50230/2021
LD/00015/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 March 2023

Before
THE HON. MRS JUSTICE HILL
(sitting as a Judge of the Upper Tribunal)
and
UPPER TRIBUNAL JUDGE LINDSLEY

Between

Secretary of State for the Home Department

Appellant

and

Dritan Dauti
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer

For the Respondent: Ms K Reid of Counsel, instructed by Marsh and Partners

Heard at Field House on 17 January 2023

DECISION AND REASONS

Introduction

1. The respondent is a citizen of Albania born on 21st December 1987. He arrived in the UK on 2nd October 2001 and claimed asylum as a minor from Kosovo, he was granted exceptional leave to remain, and then indefinite leave to remain on 25th October 2005. He was naturalised as a British citizen on 27th February 2007. On the 27th August 2021 the Secretary of State made a decision to deprive him of his British citizenship under s.40(3) of the British Nationality Act 1981 on the basis that he obtained his citizenship through a false claim to be Kosovan. His appeal against the decision was allowed by First-tier Tribunal Judge Lucas in an appeal heard on 14th April 2022.
2. The Secretary of State appeals that decision. It was found by the First-tier Tribunal that the condition precedent for deprivation of citizenship of fraud was satisfied at paragraph 34 of the decision. The First-tier Tribunal went on to allow the appeal because it was found that the decision was exceptionally not proportionate. It is relation to these findings that the decision is said to err in law.
3. Permission to appeal was granted by Upper Tribunal Judge Rimington on 2nd November 2022 on the basis that it was arguable that the First-tier judge had erred in law in making an error of fact as to the disclosure of the respondent's true identity; and that there were inadequate reasons given in relation to the issues of delay and proportionality as the respondent was a minor when he entered but was an adult when he applied for further leave to remain and British citizenship.
4. The matter came before us to determine whether the First-tier Tribunal had erred in law; and if so to determine whether any such error was material and the decision needed to be set aside and remade.

Submissions - Error of Law

5. The Secretary of State argues in her grounds of appeal, skeleton argument and oral submissions from Mr Clarke in summary, as follows.
6. Firstly, it is argued that the finding that the respondent should be given credit for having "come clean" and disclosed the original fraud is inaccurate. In reality, it is argued, he simply supplied a genuine birth certificate, giving his place of birth as Kukes in Albania, with his wife's application for entry clearance without further explanation.
7. Secondly, it is submitted that the respondent cannot benefit from any argument based on delay as the stated policy of the Secretary of State is that persons remain indefinitely removable under s.40 of the British Nationality Act 1981, and unlike in cases such as EB Kosovo v Secretary of State for the Home Department [2008] UKHL 41, where the migrant has no status and so the individual and state are automatically aware of their removability, this will depend on the individual facts in a

deprivation case. The cases where delay has played a part in finding that the deprivation may not be proportionate are ones where the respondent has notified the Secretary of State and there have been long years of inaction, such as Laci v SSHD [2021] EWCA Civ 769 and Ciceri (deprivation of citizenship appeals; principles) Albania (Rev 1) [2021] UKUT 238. It is argued that in this context the decision is insufficiently reasoned.

8. Thirdly, reference is made to the fact that in Laci at [80] with reference to Hysaj the Court of Appeal found as follows: "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. That deprivation will cause disruption in day-to-day life is a consequence of the appellant's own actions and without more, such as the loss of rights previously enjoyed, cannot possibly tip the proportionality balance in favour of his retaining the benefits of citizenship that he fraudulently secured." It is argued in light of this guidance from the Court of Appeal that the First-tier Tribunal misdirected itself in law in finding a family and private life established in the UK itself suffices to make the deprivation of citizenship disproportionate. Further, it is argued, the fact of the respondent being a minor only plays a role in relation to his initial asylum claim, and not the grant of indefinite leave to remain and his British citizenship when he was an adult.
9. The respondent argues in his Rule 24 response/skeleton argument and oral submissions from Ms Reid that it was the fact of the marriage certificate which was submitted with the appellant's wife's entry clearance application which led to the Secretary of State finding that the appellant had previously made false representations of his nationality. The refusal decision itself made clear that this was the case. It was highly relevant that there had been a previous decision of the First-tier Tribunal in 21st November 2016, in the respondent's wife human rights appeal, which was allowed by Judge Aziz. Judge Aziz made a clear finding that the appellant had voluntarily disclosed his earlier false representation in 2010, and First-tier Tribunal judge Lucas was correct to take this finding as the starting point, in accordance with Devaseelan v Secretary of State for the Home Department [2002] UKIAT 702, [2003] Imm AR 1. There was no factual or legal error in this regard. Ms Reid noted that the Secretary of State did not take issue with the judge's finding that the appellant repeated his admission of having used a false identity through his solicitor's representations in 2014.
10. She submitted that it was implicit in the judge's decision that it was made on Article 8 human rights grounds rather than that the decision was unlawful.
11. As to the arguments with respect to delay and the public interest, she referred to the fact that the Secretary of State had been aware of the appellant's falsehood since 2010 and taken no action until 2020, some

10 years later. The judge was aware of EB (Kosovo) having been referred to it by the appellant. The delay in this case was and continued to be “unexplained” and its length meant that the judge was entitled to find it “egregious”. For the purposes of the approach set out in Laci at [80]-[81] the judge had clearly identified factors other than delay and the limbo period, namely that the respondent had brought the falsity to the attention of the Secretary of State, the findings of fact made by Judge Aziz, the respondent’s lengthy residence in the UK and the fact that he was a minor when the falsehood was perpetrated. This case was “on all fours” with Laci: indeed the delay here (10 years) was longer than in Laci (9 years) and the respondent had continued to build his private life in the UL during that time. The Secretary of State’s reliance in the appeal on paragraph 55.5.1 of her policy, stating that there is no time limit within which a deprivation decision must be made, appeared to be a new point and in any event does not provide an explanation for the 10 year delay or undermine the judge’s finding that the delay was unreasonable. It is also relevant that Judge Aziz had found the delay (at that point, 6 years) significant.

12. Finally Ms Reid submitted that the judge had not erred in attaching significance to the fact that the respondent was a minor when the fraud was perpetrated and given insufficient weight to the fact that he was an adult when applying for indefinite leave to remain and citizenship. The judge made clear at [41] that he was only attaching weight to the respondent being a minor when the falsity was “first deployed” and he was entitled to do so, consistently with Judge Aziz’s findings. Accordingly there was no error of law in the judge’s approach to the public interest issue.

Conclusions – Error of Law

13. As set out in the grounds the First-tier Tribunal (at paragraphs 33 and 34 of the decision) finds that the respondent employed deception until 2010 in relation to his place of birth, and that this was therefore instrumental in his obtaining his exceptional leave to remain, indefinite leave to remain and British citizenship. The First-tier Tribunal also observes that it is appropriate that the Secretary of State take action against those who use deception to obtain citizenship.
14. At paragraphs 11 to 15 of the decision the First-tier Tribunal sets out the key findings of Judge Aziz. This included the finding at paragraph 74 of Judge Aziz’s decision that the respondent and his wife had brought the true place of birth to the Secretary of State’s attention, and that the respondent had been a minor advised to lie about his place of birth on arrival by adults. The current First-tier Tribunal correctly takes these findings as a starting point, correctly directing itself as per Devaseelan. We do not find it inaccurate for the First-tier Tribunal to state at paragraphs 37 and 41 of the decision that the respondent brought the true fact with respect to the place of the respondent’s birth to the Secretary of State’s attention in 2010; that he was advised to make the

original deception whilst a minor by adults; that this was the subject of representations through a solicitor made in 2014; and that the deprivation proceedings against the respondent were commenced in 2021. There is no error of fact in this respect, particularly as there had been a previous appeal relating to the respondent's wife which would have drawn the attention of the Secretary of State to the matter again. We therefore consider that the First-tier Tribunal was entitled to take the delay into account

15. We agree with Ms Reid that it is clear from reading the decision as a whole that the First-tier Tribunal judge made the decision on Article 8 human rights grounds.
16. The judge was taken to the cases of Laci and Ciceri by both parties (see paragraphs 23-29 of the decision) and made the decision in the context of these authorities. The judge specifically noted the heavy emphasis placed by the appellant on the "paramount" public interest and took this into account in the decision.
17. The delay here was very substantial and in fact longer than that in Laci, such that the judge was justified in considering it "egregious". It remains unexplained other than by reference to the policy which gives an open-ended timescale.
18. However it is clear that the judge had taken into account factors other than the delay. These included the findings of Judge Aziz. Further, the judge referred to the fact that the appellant had brought the falsehood to the attention of the Secretary of State on more than one occasion (in both 2010 and 2014). The respondent's private and family life is similarly developed to that in Laci. We also note that Judge Aziz found in 2016 at [90] of the decision that it would not be reasonable to expect the respondent's daughter to leave the UK. The judge was entitled to give some weight to the fact that the respondent was a minor when the falsehood was perpetrated, albeit clearly understanding that he was an adult when applying for indefinite leave to remain and citizenship.
19. In these circumstances we do not find any error of law in the way in which the judge considered the issues of delay and the public interest. The approach taken in the decision was in accordance with the key authorities and the decision reached was a one the judge was entitled to make.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. We uphold the decision of the First-tier Tribunal allowing the appeal.

3. This appeal is dismissed.

Mrs Justice Hill

Sitting as a Judge of the Upper Tribunal
Immigration and Asylum Chamber

23rd January 2023