IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001335
First-tier Tribunal Nos:
DC/50076/2021
LP/00289/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 February 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

LEK KRASNIQI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Karnik, Counsel, instructed by Eric Smith Law, Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 29 April 2022

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the respondent on 24 March 2021 to deprive him of his British nationality.

2. I mean no disrespect to Mr Karnik's presentation of the appellant's case when I say that there is much wisdom in Mr Clarke's submission that the best place to start is with the refusal letter and that is what I will do.

3. The letter begins by asserting that the appellant has two identities. There is his claimed identity, which is Lek Krasniqi who was born on 30 May 1983 in Gjakive

in Kosovo, and his "genuine identity" which is given as Anton Gjonaj born on 30 May 1982 in Burel in Albania. Nevertheless the letter is addressed to Mr Krasniqi.

4. This shows that on 18 July 2006 he was issued with a certificate of naturalisation as a British citizen. The letter then informed the appellant that the Secretary of State had decided that he had obtained his British citizenship fraudulently and that he should therefore be deprived of his British citizenship. The letter then referred to Section 40 of the British Nationality Act 1981 and its various amendments which set out the Secretary of State's powers to deprive a person of British citizenship. The summary is unhelpful because it outlines three quite different sets of circumstances in which a person can be deprived of their British nationality without actually indicating which of them is relevant to this appellant. By reading the papers as a whole I assume that the respondent relies on the appellant having acquired his citizenship after 1 January 1983 and having obtained it by fraud or false representation or concealment of any material fact. The letter then explained that false representation means representation made dishonestly not simply inaccurately, that "concealment of any material fact" means an operative concealment, that is something that had a "direct bearing on the decision to register or, as the case may be, to issue, a certificate of naturalisation" and that "fraud" encompasses either of the above "if the relevant facts, had they be known at the time of the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration". If all these circumstances are made out it is appropriate to consider deprivation.

5. The letter then asserts that length of residence would not normally be a reason not to deprive a person of citizenship obtained improperly, and that the standard of proof is the balance of probabilities.

6. Paragraph 8 of the letter is particularly important. The respondent says:

> "It is noted that you first entered the United Kingdom (UK) clandestinely on the 22 November 1999 and claimed asylum on the 8 March 2000 as Lek Krasniqi born 30 May 1983 in Gjakive, Kosovo, asylum application (Annex B). In your Statement dated 16 December 1999 (Annex A) you claimed that you were involved with the Kosovan Liberation Army (KLA). After being beaten by the Serbian police you then fled from your village towards the mountains where you were attacked by Serb soldiers and became separated from your family. After these events, you claimed that you after you left Kosovo and arrived in Albania you took a boat to Italy. You didn't claim asylum in Italy as you heard the Italians might send you back. You also said that the United Kingdom was safe for Kosovans so you made your way to the UK by lorry"

7. The application was unsuccessful. The appellant was refused asylum because it was considered he did not have a well-founded fear of persecution in Kosovo, but on 23 March 2000 he was granted four years' exceptional leave to remain.

8. On 23 May 2000 he applied for a Home Office Travel Document using his fabricated Kosovan identity and he signed the form in the appropriate place accepting that he knew it was an offence to make a representation or statement which he knew to be false or did not believe to be true.

9. On 4 March 2004 after the four years' exceptional leave to remain had expired or was about to expire he applied for further leave, again using the false name

and date of birth and place of birth that had succeeded before. He again signed a declaration accepting awareness that it was an offence to make a false representation. On 17 April 2004 he was granted indefinite leave to remain. On 6 June 2005 he applied for naturalisation, again in the false Kosovan identity and again signed a form indicating he understood it was a criminal offence to make a false statement.

10. The application was refused on 6 December 2005 "due to an outstanding criminal conviction".

11. On 22 February 2006 he reapplied for naturalisation, again using his false "Krasniqi" details. He was asked in the course of that application in the standard form if he had engaged in any other activity which might indicate he may not be a person of good character and he responded in the negative.

12. His naturalisation was approved on 18 July 2006.

13. The letter explains that in his application for naturalisation he confirmed that he had read and understood the "Guide AN Naturalisation as a British Citizen" and sections 1.7 and 1.8 of the guide asserted in terms: "If you were called something different from the names you have been given in sections 1.4 and 1.5 when you were born, then give the names you were known by when you were born and give your present nationality". The appellant did not respond to this invitation to tell the truth about his name and nationality.

14. The letter points out that section A4 of the guide widely drawn and says:

> "You must say whether you have been involved in anything which might indicate that you are not of good character. You must give information about any of these activities no matter how long ago it was. If you are in any doubt about whether you have done something or it has been alleged that you have done something which might lead us to think that you are not of good character you should say so".

15. Paragraph 16 of the letter refers to instructions to caseworkers and then says:

> "Had it been known that you had provided a false detail, you would not have met the good character requirement as per these caseworker instructions and your application would have been refused."

16. On 29 September 2014 his then representatives, Turpin & Miller, wrote to the Status Review Unit and included a signed statement confirming that the appellant had deliberately "altered" his name, date and place of birth in order to gain leave to remain in the United Kingdom and revealed that his true name is Anton Gjonaj, date of birth 30 May 1982 and he is in fact of Albanian nationality.

17. He said he had been advised to claim to be from Kosovo when he sought asylum to avoid deportation. He stated that he realised he had "made a mistake" and had chosen to let the authorities know the true position. He had obtained an Albanian passport and submitted copies and he asked the Home Office to amend the details to reflect his true Albanian identity.

18. He was then told by his representatives that his citizenship would become null and void.

19. On 21 August 2015 he provided a further signed statement asking for compassion for the sake of his children and pointed out that he was remorseful for misconduct that was now seventeen years in the past.

20. The Secretary of State delayed because of legal developments but on 20 January 2021 he was informed of the Secretary of State's decision to deprive him of his British nationality. He was invited to present any other mitigating circumstances that he wished to be considered. The letter then said the Secretary of State had considered letters dated 29 September 2014 and 8 February 2021 but had concluded that deprivation would be both reasonable and proportionate.

21. The appellant appealed the decision.

22. A skeleton argument was prepared for the First-tier Tribunal signed by Mr Jonathan Holt of Counsel dated 14 July 2021. I have considered it.

23. The First-tier Tribunal's Decision and Reasons appropriately begins by setting out the appellant's immigration history including his admission of dishonesty and his concern for his relationship with his children.

24. Paragraph 8 of the Decision and Reasons is confusing. The judge noticed that the appellant has had two partners in his time in the United Kingdom, who are British citizens, and he is the father of four British citizen children. The eldest was over 18 and did not feature much in the considerations. The judge found that the appellant was separated from the mother of his eldest daughter but they shared a parental relationship and that the appellant was then living with another partner who is Albanian. They have two children born in 2011 and 2018 respectively. The present partner is Albanian and her leave to remain is dependent on his being a British citizen. The judge did say, confusingly, that both partners were British citizens and that the current partner is Albanian. I do not know if the judge thought that the present partner is a third partner but it seems clear that she is not a British citizen.

25. The Secretary of State's case before the First-tier Tribunal is that the appellant had perpetrated a material fraud. He had lied when he was a minor. More importantly he had adopted a lie as an adult. Identity is fundamental to decisions to grant British citizenship.

26. The Secretary of State considered Section 55 of the Borders, Citizenship and Immigration Act 2009 and made the point that deprivation of citizenship rather than removal or deportation will not have a significant effect on the best interests of the children.

27. Mr Karnik's first point before the First-tier Tribunal was that the respondent had not shown that the appellant's concealment of his identity in 1999 was operative in relation to the decision to grant indefinite leave to remain. There had been no records produced to explain why he was granted exceptional leave to remain and why his asylum case was rejected. It was the grant of indefinite leave to remain that led to his citizenship in accordance with published policy. The operative deception was when the appellant was a child and there was no additional deception thereafter. The fact it had taken six and a half years to make the deprivation decision indicated something about the degree of importance the Secretary of State attached to the case and tended to show that the decision to

deprive was disproportionate. He was also said there were exceptional features so that discretion should have been exercised differently and it was foreseeable that the decision would impact on Article 8 rights.

28. Mr Karnik recognised that part of the delay was attributable to the Secretary of State's concern that there was uncertainty in the law and it may be that the grant of citizenship was a nullity so deprivation was wholly inappropriate. However, it was said the Secretary of State should have known by 2017 that the "nullity" argument was misconceived and should have made the decision to deprive if that is what she wished to do before 2021 or at least to have explained the delay. The appellant had used the time to strengthen his roots in the United Kingdom. The main points making deprivation disproportionate was the appellant's immaturity when the operative deception was made, the strength of his private and family life and the fact that it was his conduct that had drawn it to the attention of the authorities. It was said that save for the deception his conduct had been exemplary as a British citizen.

29. It is the appellant's case that the decision in **R (on the application of Matusha) v Secretary of State for the Home Department** (revocation of ILR policy) [2021] UKUT 00175 (IAC) was not of assistance. In **Matusha** the impugned behaviour was operative because the deception related to the grant of indefinite leave to remain under the Legacy Programme. In the instant case the appellant was granted exceptional leave to remain and no reason was given, it was not obviously to do with his nationality. If he had told the truth and given his correct age he may have qualified as a minor.

30. The judge set out in full the guidance given in the judicial headnote in **Ciceri (deprivation of citizenship appeals; principles) [2021] UKUT 00238**.

31. Perhaps importantly the judge said at paragraph 35:

> "After the conclusion of the substantive hearing the Upper Tribunal's decision in Ciceri was reported. Mr Karnik had made representations that Begum was not applicable to appeals pursuant to section 40(3) and the guidance issued in KV was relevant. In light of Ciceri I do not accept that submission and I have proceeded on the basis of the guidance issued in Ciceri".

32. The judge then appeared to work his way through the points identified in **Ciceri**. Clearly false representations were made. It is very likely that these whole proceedings exist because the appellant wrote to the respondent and said that false representations had been made. The judge was clearly entitled to conclude that false representations were made.

33. The judge then asked if the fraud was material to the grant of naturalisation. The judge noted Mr Karnik's argument that the respondent had not established why the appellant had been granted exceptional leave to remain. The judge read the letter granting exceptional leave to remain. She noted that the Secretary of State was not satisfied that the appellant had a well-founded fear of persecution in Kosovo but said "in the light of the particular circumstances of your case, the Secretary of State has exceptionally decided to grant you four years' leave to remain". The grant was clearly because of the "particular circumstances". The appellant had told the respondent that he was a Kosovan aged 16. The judge

found that these false representations were material to the grant. It was not a grant under the Legacy Scheme but on the specific facts of the case.

34. It was then said that the respondent had not explained why indefinite leave to remain was granted. The letter had not been produced but the application form had and this showed the repeat of the false names and date of birth. It was argued that there was not ongoing operative deception.

35. The judge found that the appellant was granted exceptional leave to remain on the basis of false information provided to the Home Office and that was repeated when the time came to seek indefinite leave to remain and citizenship.

36. There is a policy that a person who adopted a fraud committed while they were a minor should be treated as complicit. That policy, if complete in that form, might be rather harsh if there were evidence that the appellant were not complicit but this is not the case here.

37. The judge found that the appellant made false representations and that was material to the grant of citizenship. The judge then considered how the respondent had exercised discretion and said at paragraph 44:

> "In doing so I have considered whether the Respondent acted in a way in which no reasonable decision-maker could have acted; has taken into account some irrelevant matter; has disregarded something to which she should have given weight; or has erred on a point of law. I am satisfied that the Respondent correctly exercised her discretion."

38. This was plainly a "judicial review" test. The judge did not purport to exercise his or her own judgment on the point.

39. The judge did go on to balance the strong public interest in depriving a person of a benefit to which he should never have received with the particular facts of the case. The judge noted the appellant was a minor when he came to the United Kingdom, that he was vulnerable to the advice of older Albanian men and that he had followed that advice. The judge also noted that he maintained the deception as an adult because he was "seeking custody of his son". The point is the appellant had separated from the child's mother and the child was placed into the care of social services so the appellant sought custody. It would not be allowed until his immigration status was decided and he decided to prioritise his son. He was granted custody of his son. He understood that telling the truth would have led to considerable difficulties in pursuing the claim for custody of his son and chose to lie.

40. The judge accepted that the appellant was seeking to act in the best interests of his son. The judge still regarded it as a lie leading to naturalisation and gave little weight to the points made. The judge did give some weight to the appellant choosing to volunteer information about his dishonesty but following guidance from the Court of Appeal decided this should not be given much weight. The judge also accepted that the appellant's behaviour had been exemplary since he became a British citizen. He had been responsible for his son as a single parent and had continued to pay maintenance towards his eldest daughter after separating from her mother and had established his own business. The judge described him as a "productive member of society".

41. The judge also noted 21 years' residence in the United Kingdom and thought the appellant had an "extremely strong Article 8 claim based on his family life". This was expanded on lines obvious to anyone familiar with this area of work. The judge also regarded it as highly probable that the Secretary of State would give him some leave on Article 8 grounds.

42. The judge recognised there would be a period of limbo but did not attach much weight to that.

43. The judge noted the partner's status was dependent on the appellant being a British citizen so that would have to be looked into again. She is, however, the mother of two British citizen children and again the judge thought there was a strong claim for her on Article 8 grounds. The appellant's eldest son is an independent adult and getting on with his life. The decision will not impact on him. There would be some impact on the younger children. There would be emotional fallout but they were British citizens and the judge found nothing of great import in the decision that was relevant. The judge attached considerable weight to the importance of maintaining immigration control. The judge did look specifically at the six years' delay in making the decision. The judge directed herself following the decision in **EB (Kosovo) v SSHD [2008] UKHL 41** that delay might reduce the weight that would otherwise be attached. The judge did not consider this was a weighty matter. The judge concluded the decision was proportionate and dismissed the appeal.

44. The grounds challenging the decision are settled by Mr Karnik who was given permission to appeal on each ground. I consider in summary the points that he makes. It was said that the First-tier Tribunal did not apply properly the decision of the Supreme Court in **R (Begum) v SSHD [2021] UKSC 7**. This decision was considered in **Ciceri** which the judge at least attempted to apply. Mr Karnik said that the judge was wrong in five respects. First, it was not shown that the deception was operative. It was clear law that deception for these purposes is only relevant if it was the reason for the grant and that had just not been shown. It is not obvious. Neither the name nor age were operative deceptions. The appellant arrived as a child and his claim failed. Only if the Secretary of State can show that she would have given leave to a Kosovan child but not an Albanian child is the only point to be made.

45. Second, it was said that the decision failed to address the fact that the only reason for the matter being before the Secretary of State was a self-disclosure. It should have been treated as relevant.

46. Third, it was said that there had been no regard for the "chilling effect on others". The others' point was that more weight should be given to self-disclosure.

47. Fourth, it was said there was insufficient regard to the children in the instant case.

48. Fifth, it was said that in circumstances where the Tribunal is not permitted to exercise its own discretion it should be rigorous in its examination of the Secretary of State's exercise of discretion and this was not the case here. The skeleton argument asserted that "anything less deprives an appellant of the public law remedy that *Begum* recognises".

49. It was further said that the whole approach to Article 8 was wrong. The judge had relied on an "unjustifiably harsh" yardstick but that is proscribed by statute in the case of removals and this is not such a case. Further, the apparent complete discount of the exemplary conduct is wrong. The maintenance of the integrity of the British nationality system has been regarded as a trump card and that cannot be right.

50. Further, when addressing the question of deception in relation to striking a fair balance the First-tier Tribunal accepts that the ongoing deception was to ensure the best interests of a child and that was an important point that should objectively have been given considerably more weight. Telling the truth would have made his immigration status uncertain and would have been harmful for the child.

51. The Secretary of State had produced a Rule 24 notice which I have read but see no need to comment in detail. It made it clear that the appeal was opposed.

52. In his oral submissions Mr Karnik having adopted his grounds, also argued that the First-tier Tribunal erred in regarding it as "highly likely" that the appellant would be granted leave to remain if he made a human rights application. This was said to be not part of the balancing exercise.

53. His main point was that where discretion lies with the Secretary of State the discretion should be scrutinised and that is not what had happened here. It was accepted that it was not for the Tribunal to exercise discretion. What the judge appeared to have done was endorse an arbitrary approach by the Secretary of State rather than review it properly. He also emphasised the point taken in the grounds that more weight should have been given to the fact that it was a result of voluntary disclosure that had brought the matter to a head. He had made a clean breast of matters. The policy point was to encourage other people to be straightforward and this could not possibly have that effect. It could not be described as a proper exercise of discretion. He also emphasised that a strong point was that it could not be shown that the deception was operative. As far as could be ascertained from the skimpy information available the appellant was given exceptional leave to remain because he was a child and he was a child even if he had been untruthful about his date of birth and nationality and name. There was no reception facilities in Kosovo but there were none in Albania either. He further submitted that once the process had started the further deception and further grounds was not relevant. It was the existence of his status rather than the reasons for that that led to a further grant of leave.

54. Having accepted that he was acting in the best interests of his son in maintaining the deception the judge was wrong not to have given weight to that in the balancing exercise. It was for the Secretary of State to explain her case, not the judge to guess at it. If the judge had applied her mind properly to the Article 8 balancing exercise more weight would have been given to the fact that the appellant had volunteered the information that had led to the trouble and that a period of uncertainty would impact adversely on him and indirectly his family including minor children and the length of time that had passed made it less important. Mr Karnik then, helpfully, summarised his position. If I agree with his criticisms of ground 1 I should substitute a decision allowing the appeal, and if I did not but agree with his criticisms on ground 2 I should re-make the decision and, he said, allow the appeal.

55. Mr Clarke, understandably, put things differently.

56. Mr Clarke's first point, I find, can be made briefly to better effect than by detailed consideration of the minutiae of the points that he makes. The appellant did clearly materially misrepresent the position when applying nationality by concealing the fact that he had applied in a false identity. Probably more than the judge, the refusal letter explains that it goes not only to the identity but to the character of the appellant and although this perhaps was not picked up as much as it might have been by the judge there was plainly a false representation that mattered. The appellant was a liar and pretended that he was not a liar. It is impossible to say that this was not part of the continuing false representation. The judge gave adequate reasons for finding the Secretary of State's analysis adequate. The Secretary of State was clearly concerned that the appellant had told lies about his identity and found that material. There is nothing irrational about the primary decision. The weight to be given to the factors to be balanced is a matter for the judge.

57. The Article 8 exercise is not a removal case but that does not work to the appellant's advantage. The decision has not been made to remove him but to deprive him of the status to which he was never entitled. The children have been considered properly but the decision would have no great impact on them. The appellant has had plenty of time to organise his finances and the judge is entitled to have regard to what is likely to happen. It may well be that the appellant will be entitled to some leave on Article 8 grounds and the judge is entitled to have some regard to this just as much as she would be entitled to have regard to the fact that a person was highly likely to be removed but no decision has been made.

58. The important point is that the immediate decision just does not have a huge effect on the children and the others concerned are not entitled to that much weight. This is not an error of law point. This is a balancing exercise that has been carried out adequately. It is not deficient because the judge has borrowed language that comes from a case of removal. The judge was clearly looking at what had to be looked at and reached an entirely appropriate conclusion. Delay is also immaterial. The appellant has known perfectly well of the position in which he had placed himself and the delay is not extortionate. The proper thing now is for the appellant to accept the consequences of what he has done and if he wants to stay in the United Kingdom make an application on human rights grounds. The Secretary of State will make her own mind about any future application but the judge has given proper reasons for the decision that has been made.

59. I appreciate the care to which Counsel has gone to attack this decision but essentially it is a good enough decision upholding a good enough decision. There is no material error of law and I dismiss the appeal.

60. It is important to emphasise this is not a removal case. There is really no evidence that the judge ought to have found there is going to be some great impact.

Jonathan Perkins

Judge of the Upper Tribunal

Immigration and Asylum Chamber

31 January 2023