Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: UI-2021-001737
[DC/50087/2020]

THE IMMIGRATION ACTS

Heard at Field House

On 15 May 2023

Decision & Reasons Promulgated
On 14 September 2023

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

ASTRIT SEMAJ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bader, Counsel instructed by Gulbenkian Andonian Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal comes back before me following a hearing before Lang J and me on 25 October 2022 following which we decided that the First-tier Tribunal ("FtT") had erred in law in its decision promulgated on 17 November 2021 dismissing the appellant's appeal against a decision to deprive him of his British citizenship pursuant to section 40(3) of the British Nationality Act 1981.

2. The errors of law that we found (grounds 1 and 3) and which required the FtT's decision to be set aside, were in terms of its failure to undertake a

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proper assessment of the extent to which the respondent's decision would amount to a breach of the appellant's Article 8 ECHR rights and in its consideration of the impact of delay.

3. We were not satisfied that ground 2 (failure by the Secretary of State to disclose to the FtT that the appellant was issued with another passport in 2011) was made out.

4. It is useful to reproduce in the following paragraphs aspects of the initial, error of law, decision in order to provide further context.

5. On 23 March 1997 the appellant made an asylum claim in the false identity of Artan Berisha, and falsely claimed to be a refugee from Kosovo. He was recognised as a Kosovan refugee and granted indefinite leave to remain ("ILR") on 30 June 1999. Subsequently, on 30 November 2006, he changed his name by deed poll to his birth name of Astrit Semaj, sponsoring his ex-spouse for settlement in the UK in February 2008. As part of her application she provided the appellant's birth certificate, marriage certificate and family certificate which all declared the appellant's nationality as Albanian and the admission that he was in fact born in Albania.

6. In her findings the First-tier Tribunal judge ("the FtJ") noted that the appellant admitted that he claimed asylum in a false identity with a false nationality, and in which identity he also admitted making an application for British citizenship. She found that it was clear that the appellant did not complete that part of the form which required him to disclose any other identities and names by which he was known. He clearly did not disclose his true identity.

7. She concluded at [17] that the appellant had provided a false identity "which amounts to a false representation and concealment of material facts" and that he had not provided a plausible explanation for having done so. She said that if the appellant had had a genuine fear of returning to Albania he could have disclosed his true identity to the respondent prior to obtaining British citizenship.

8. She also found that details of the appellant's true identity were submitted with his ex-wife's settlement application in 2008 and that the appellant admitted to using a false identity during the hearing in respect of his ex-wife's appeal in November 2008. She rejected the argument that the incorrect information he gave was not material to his having been granted British citizenship. She concluded that the appellant was only granted ILR on the basis of an unequivocally fraudulent asylum claim, and that had the respondent been aware of his true identity as a national of Albania his application was likely to have been unsuccessful. That was the basis upon which the appellant was able to make his application for British citizenship, and in that his false account and false representations were material to his having been granted British citizenship.

9. She concluded that this was not a simple case of the appellant providing incorrect information; he provided an entirely false narrative to gain benefits and rights to which he was clearly not entitled. She said that he had maintained this false narrative for very many years. She also concluded that he would have failed the good character assessment when applying for ILR had the true facts as to his identity been known.

10. At [19] she noted that he did not notify the Home Office of his true identity when he changed his name by deed poll in November 2006. Notwithstanding that details of his true identity were disclosed as part of his ex-wife's application in 2008, he continued to utilise facts relating to the false identity, as shown on the birth certificates for his two children issued in 2016 and 2018, whereby he gave his nationality as Kosovan. That repeated use of the false identity over a lengthy period demonstrated the appellant's deliberate intention to deceive the Secretary of State.

11. At the re-making hearing before me, the appellant gave oral evidence. Below is a summary of that evidence.

The oral evidence

12. The appellant adopted his supplementary witness statement dated 12 May 2023 and his previous witness statements. In cross-examination he said that his wife assists him in running his business. They work together and she assists him with everything. She is allowed to work.

13. In the winter, when it is quiet, they look for other employment. This winter they worked for BK Plant Limited. In the summer their own work picks up.

14. If the decision to deprive him of his citizenship is upheld it would have a major impact on his life, emotionally and physically. His wife would be able to continue working. However, in the UK a limited company requires a person to have British citizenship and you cannot register a company without a British passport. He does not know if the business would be able to run without a British passport holder. He believes that the company may be forced into administration. He had friends who wanted to register their companies and could not because they did not have British passports.

15. His wife does not drive and relies on his ability to find work for both of them. If he is deprived of his British citizenship he knows for a fact that he would have to re-take his driving test. He knows this from his friends.

16. His children attend the local school and he is able to take them to school and collect them. They do receive child benefit.

17. As to why it still states on their birth certificates that he was born in Kosovo, at that stage he was emotionally and spiritually unable to do differently. He only had a British passport then and the civic centre would not register them if he had no proof. That is a totally different matter from when he renewed his passport in 2011. He had waited for months and

years for the Home Office to get back to him. He does admit that he is an Albanian citizen and was born in Albania. He admitted that in 2008 and was waiting for the Home Office to take action.

18. He does not have other family in the UK. He has lived at the same address for five years. As to whether he has friends in the local community, he has neighbours and he knows the teachers at the school.

19. He and his wife have £12,000 in savings. It was true that that could be used during the period between the deprivation of his citizenship and the decision made on any leave to remain but that money is needed for emergencies. His mother is 82 years old and is pretty ill in Albania so he needs the money for emergencies.

20. At BL Plant Limited his wife earnt about £3,300 per month. Their house costs about £2,700 per month to run. The rent is £1,350 per month and is soon to go up to £1,800. There is also council tax, utility bills and food to pay for. So the cost of running the house could be £2,700-800 per month.

21. In answer to questions from me, the appellant said that he has a brother that lives in Albania who does seasonal work in Germany. At the moment, his mother is on her own and, therefore, he is paying someone to look after her. He has two married sisters in Albania. One of them is unwell and has difficulty working. She goes to see their mother every now and then. She lives about an hour away from their mother, by bus, so she is not able to look after her. His other sister goes to see their mother about once a week and gives her a shower.

22. He pays about £360 for someone to look after her, who goes for one hour in the morning, afternoon, and evening.

Submissions

23. The following is a summary of the parties' submissions. I have also considered the skeleton arguments helpfully provided by the parties for this hearing.

24. Mr Melvin relied on the original decision letter and the findings preserved from the decision of the FtT. the appellant had admitted that he was not a Kosovan citizen and that the original asylum claim was false. The condition precedent was met, he submitted.

25. The next stage was to consider what were the reasonably foreseeable consequences of the decision to deprive the appellant of his citizenship. There is no removal decision so the relevant period is that between an adverse decision by the Tribunal and a decision as to whether or not to grant any form of leave to the appellant after a consideration of his family circumstances.

26. Latest Home Office policy was not to make any submissions as to whether leave would or would not be granted but it is the case that the status of the appellant's wife and children would not change.

27. It was submitted that there was no reason why in the interim period, before a decision is taken in relation to any grant of leave to remain, reliance could not be placed on the appellant's wife's earnings of around £3,300 per month that she had previously earned with BK Plant Limited. There was no reason that she could not be employed at the same sort of level. The family receive child benefit. Their outgoings are about £2,700-800 per month which includes the cost of care for the appellant's mother.

28. There was no evidence, other than the oral evidence, as to the appellant's wife's earnings or the family outgoings, or indeed that their rent would soon increase to £1,800 per month. It was submitted that the evidence did not establish that the family would face destitution in the 'limbo' period.

29. There was no reason why the appellant could not drop off and collect the children from school.

30. The respondent does not accept that the appellant is an honest witness. The children's birth certificates still say that he was born in Kosovo and he did not tell the Home Office of his correct place of birth when he renewed his passport in 2011.

31. It was submitted that there was no substance to any argument in relation to delay. The present case is not a nullity case, but all decisions on citizenship were delayed pending the decision of the Supreme Court in *R (Hysaj) v. Secretary of State for the Home Department* [2017] UKSC 82. *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769 was not authority for the proposition that delay in itself is sufficient. In that case the appellant was found to be an honest witness.

32. Although the appellant had been in the UK for many years, had worked and paid taxes, there was a considerable public interest in the decision to deprive him of his citizenship.

33. As regards the exercise of the Secretary of State's discretion, it was submitted that it could not be said that the Secretary of State acted in a way that she ought not to have done. There was no procedural irregularity and she did not take into account matters that she ought not to. There was no public law error in the decision.

34. The target time for a decision to be made on whether to grant leave to remain stated in the decision letter is about eight weeks although the period may be a little longer, but not years or anything like it. Mr Melvin suggested that a letter inviting representations from the appellant would be sent.

35. Mr Badar submitted that the likely time period for a decision on leave to remain would be 303 days, according to a reply to the freedom of

information request, dated 31 August 2021, referred to in his skeleton argument. There was no more recent evidence before the Tribunal.

36. Mr Badar referred to *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC). The appellant disclosed his true identity in 2008. The decision of the Court of Appeal in *Hysaj* was in 2015. If the appellant had received a nullity decision after 2008 he would not have been able to raise the issue of delay. However, there was no nullity decision here. The Immigration Judge said at [8.1] in the determination of the appeal of the appellant's ex-wife's appeal in 2008 that he was informed by Mr. Jarvis representing the Secretary of State that, although no steps had then been taken, the Home Office would be considering proceedings intended to deprive the appellant of his British citizenship. That is what the appellant understood would be happening. However, no proceedings were instituted.

37. The appellant in *Laci* was given a letter and asked if there was anything that he wanted to say about deprivation. That appellant had replied but nothing was heard from the Secretary of State afterwards. There is a parallel with the case of this appellant in that it was in 2008 that he disclosed his true identity and nothing was heard from the Secretary of State.

38. Mr Bader submitted that the appellant had given credible evidence before me and had not attempted to exaggerate his situation at all.

39. I was referred to various facets of *Laci* in support of the delay argument. Mr Bader referred to paragraph PL5.1(a) of the Immigration Rules ("the Rules") in relation to the '20-year rule'. It was accepted that the public interest would come into play in that respect but the appellant has been in the UK for over 20 years. As in *Laci*, he is married; and has two young children.

40. At [3] of his latest witness statement he states his earnings. He truthfully disclosed that he had worked for BK Plant Limited and referred to the money that he needs for his mother's support. It is evident that he is not living in luxury.

41. If deprived of his citizenship, as a matter of law he would not be able to work and stands to lose his driving licence. His wife's employment is based on the appellant being able to drive her to employment. She would be the only breadwinner and would not be able to provide for the family. Other than child benefit they would not be eligible for state benefits such as universal credit.

42. It was submitted that in all the circumstances the decision to deprive the appellant of his citizenship is disproportionate.

Assessment and conclusions

43. It was agreed between the parties that, pursuant to the directions given in the error of law decision, the following findings of fact made by the FtT can be preserved, with paragraph numbers of the FtT’s decision in brackets.

a). The Appellant admits that he claimed asylum in a false identity with a false nationality in which identity he admits he also made an application for British nationality. The appellant acknowledges that he provided incorrect information in support of his application for leave [14].

b). In examining the appellant's application for British citizenship, it is quite clear that he did not complete that part of the form which required him to disclose any other identities and names by which he was known. He clearly did not disclose his true identity [15].

c). The appellant clearly provided a false identity which amounts to a false representation and concealment of material facts. The appellant had not provided a plausible explanation for having provided a false identity and if he had genuinely feared returning to Albania he could have disclosed to the respondent his true identity prior to obtaining British citizenship in his false identity [17].

d). Details of the appellant’s true identity were submitted with the application for entry clearance made by his ex-wife in 2008 and he also admitted to using a false identity during the hearing in respect of his ex-wife’s appeal following the refusal of her application for entry clearance [18].

e). The appellant was only granted leave on the basis of an unequivocally fraudulent asylum claim and had the respondent been aware of the appellant’s true identity as a national of Albania his application is likely to have been unsuccessful [18].

f). The grant of asylum in the false identity and on a false premise was the basis upon which the appellant was able to make his application and acquire British citizenship [18].

g). The appellant falsified (narrative) accounts, and false representations were material to his acquiring British citizenship. This was not a simple case of the appellant providing incorrect information but he provided an entirely false narrative to gain benefits and rights to which he was clearly not entitled [18].

h). He maintained this false narrative for very many years. The appellant would have failed the good character assessment when applying for indefinite leave had the true facts of his identity been known [18].

i). The appellant changed his name to his true identity by deed poll in November 2006 but did not notify the Home Office of his true

identity at this time. Notwithstanding that details of his true identity were disclosed as part of his ex-wife's application in 2008, he continued to utilise facts relating to false identity as shown on birth certificates for his two children issued in 2016 and 2018 when giving his nationality as Kosovan [19].

j). The repeated use of the false identity over a lengthy period of time demonstrates the deliberate intention by the appellant to deceive the Secretary of State [19].

k). The decision does not affect the status of the appellant's wife and children, and the decision does not render the appellant stateless [21].

l). It is clear that the appellant's conduct was known to the respondent in 2008 at the time of the appellant's ex-wife's application for entry clearance when details of his true identity were disclosed [23].

m). The appellant married his current wife in July 2019 in Albania although she appears to have been present in the United Kingdom as both their children were born in the United Kingdom in 2016 and 2018 respectively [23].

n). The appellant could have had no doubt that the respondent would be likely to refuse any application for settlement by his wife from Albania given the refusal of the application for entry clearance by his ex-wife. It is more than likely that there have been some proceedings in respect of the appellant's wife's status following their marriage in 2019, (although evidence of his wife status was not submitted), that has led the respondent to review the appellant's citizenship [23].

44. As was pointed out in the error of law decision, following *R (Begum) v Special Immigration Appeals Commission & Anor* [2021] UKSC 7 in deprivation of citizenship appeals the tribunal is required to determine, amongst other things, whether the decision is compatible with the appellant's ECHR rights. It is not contended on behalf of the appellant that the condition precedent for deprivation of citizenship has not been established.

45. *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC), provides further guidance on the principles to be applied in deprivation of citizenship appeals. In particular for the purposes of this appeal, the reasonably foreseeable consequences of deprivation must be considered, and that is the real focus of this appeal.

46. The appellant relies on delay on the part of the Secretary of State, being the period from the disclosure in 2008 of his real identity to the decision of the respondent on 17 December 2020 to deprive him of his citizenship.

The respondent actually notified the appellant by letter dated 4 November 2020 that she was considering depriving him of his citizenship because of his use of deception in acquiring citizenship. We said in the error of law decision that the delay was an "admittedly significant delay".

47. As part of the context one must consider the findings of fact that are preserved from the decision of the FtJ. In particular, the FtJ found that details of the appellant's true identity were submitted with the application for entry clearance made by his ex-wife in 2008, and that he admitted to using a false identity during the hearing in 2008 in respect of his ex-wife's appeal following the refusal of her application for entry clearance.

48. However, she also found that he continued to utilise facts relating to the false identity as shown on the birth certificates for his two children issued in 2016 and 2018, when giving his nationality as Kosovan.

49. It is also to be remembered, and the appellant relies on the fact, that he had his British passport renewed in 2011. In his witness statement dated 28 December 2021 he said that he lost the original that had been issued in his real name.

50. In the appellant's skeleton argument dated 29 August 2022 it asserts that it was very clear in 2008 (ex-wife's appeal hearing) and 2011 (passport renewal) that the respondent could not have been under any misapprehension as to the appellant's true identity and that she "consciously *elected*" not to take any action.

51. I accept that there is some parallel between the appellant's case and that of the appellant in *Laci*, including that the appellant's passport in that case was renewed. However, it is significant to note that the appellant in *Laci* was regarded as an honest witness ([43] and [51]). In the present case there is more of a mixed picture. The FtJ found that the appellant continued to utilise facts relating to false identity as shown on birth certificates for his two children issued in 2016 and 2018 when giving his nationality as Kosovan. This was during the period of the delay that is relied on.

52. In the appellant's skeleton argument dated 20 August 2022 it is accepted at [26] that his incorrect identity was used on his children's birth certificates but asserts that given that he had given his own correct identity in his own passport renewal application it cannot be said that his intent was to continue to mislead. Having looked at those birth certificates, however, the acceptance in the skeleton argument of "incorrect identity" on the children's birth certificates seems to me to be misplaced and that that is not what the FtJ said, if one reads carefully what she did say: "continued to utilise facts relating to false identity as shown on birth certificates". It appears to me that what she was referring to was that the appellant's place of birth given on the birth certificates is Kosovo.

53. I also note that in the renewed passport in 2011 the appellant gives his place of birth as Gjakove, which is in Kosovo, which is not where he now says he was born (as can be seen from various other documents in the appellant's bundle).

54. Although, therefore, the appellant did give his correct name for the passport renewal in 2011 and on the birth certificates, he continued to give false details as to his place of birth.

55. In *Laci*, the appellant was asked to provide representations as to why his citizenship should not be revoked and he did so about two months after the request from the Secretary of State. There was then a nine-year delay. The situation in the present case, however, is different albeit that the appellant changed his name by deed poll in 2006, disclosed his true identity in 2008 and had his passport renewed in 2011. The difference is nuanced but real. During the period of delay relied on, the appellant did not offer representations to the Secretary of State as to why his citizenship should not be revoked.

56. I do not accept the proposition advanced on behalf of the appellant that the respondent "consciously elected" not to take any action. That puts it too high. It was more than mere *inaction* (as in *Laci* [51]), but I do not consider that the evidence reveals that the Secretary of State *elected* not to take action to deprive him of his citizenship.

57. Whilst *Laci* is undoubtedly a significant case on delay, it is a case that ultimately turns on its own facts. At [83] Underhill LJ said this:

> "I should emphasise that this decision should not be interpreted as meaning that an indulgent view can be taken towards migrants who obtain British citizenship on the basis of a lie. On the contrary, in all ordinary circumstances they can expect to have it withdrawn. It is only because of the exceptional combination of circumstances in the present case that the FTT was entitled to come to the decision that it did."

58. At [80] the Court also quoted with approval what was said by a Presidential panel of the Upper Tribunal in *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 00128 (IAC) where at [110] it said that:

> "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."

59. The delay in this case is material to the proportionality exercise but it is by no means determinative of it. Nor is the fact that there are some parallels between this case and that of the appellant in *Laci*.

60. It was submitted that the 'limbo' period, as it has been called in some cases, between the actual deprivation of citizenship and a decision on granting any period of leave, would be 303 days, according to a reply to a freedom of information request dated 31 August 2021. The skeleton argument dated 20 August 2022 at [17] gives the period as 257 days on average, according to a different FOI request. The respondent's decision refers to a period of about eight weeks, but Mr Melvin accepted that it may be longer than that, but not years.

61. The best evidence of the 'limbo' period would seem to me to a period of between 257 and 303 days, therefore. The difference in those two periods is not significant. It is a period of about 10 months at the outside, taking the longest period in the appellant's favour.

62. The appellant relies on his and his family's likely circumstances in that limbo period in support of the contention that the decision to deprive him of his citizenship would breach his Article 8 rights. I must consider the rights of those likely to be affected by the decision, in particular his two British citizen children. The children's best interests are a primary consideration. Their daughter was born on 6 November 2016 and their son on 5 November 2018. I take into account what the appellant said in his email response to the notice of intention to deport him in November 2020, at paragraph 11 of that response, referring to his life in the UK and what he says would be the consequences for his family, in particular his two children, and the consequences for his business.

63. The children would continue to live with the appellant and his wife, and in that respect their situation would remain unchanged. There is no reason to conclude that they would be materially affected by a decision depriving the appellant of his citizenship until a decision is made on any grant of leave to remain.

64. In that context, and more widely, the appellant says that he would not be permitted to work in that limbo period. I accept that that would be the case as he would be without any leave.

65. However, I do not accept that his wife would not be able to work, as has been asserted. The appellant says that he would not be able to drive his wife to work or to look for work because his driving licence would be taken from him. However, no evidence to support that assertion was put before me. In any event, the appellant's wife would not have to rely on the appellant to drive her to any place of employment or potential employment. There is no reason to suppose that she would not be able to use public transport, as necessary.

66. The appellant relies on what he says in his supplementary witness statement dated 12 May 2023 in relation to the effect of depriving him of his citizenship in terms of his wife not being able to be the only breadwinner given that they both run the family business. I note the evidence from the appellant about the family's expenses and the likely

increase in rent. That his rent may increase is a matter that I accept as a possibility given what is common knowledge in relation to the cost of living, for individuals including landlords no doubt.

67. I do not, however, accept the appellant's assertion in evidence that his business may have to go into administration because he could not be the owner of the business if his British citizenship is taken away. No supporting evidence of that assertion has been provided in circumstances where it may very easily have been. Nevertheless, as already indicated, I accept that he would not be permitted to work which would include not being able to work in his own business. It may well be that his wife would not be able to run the business on her own but as I have already found, there is no reason that she could not obtain other work.

68. I accept that the appellant's and his family's financial circumstances are likely to be adversely affected in the limbo period with only the appellant's wife being able to work. However, I cannot see that their likely reduced financial circumstances would be so significant, alone or in combination with any other factor, as to make the respondent's decision disproportionate in Article 8 terms. I bear in mind in this respect that the appellant's evidence is that they have about £12, 000 in savings. Those funds could be deployed to mitigate the effects of the appellant's lost employment in the limbo period. They would continue to be eligible for child benefit.

69. The children's best interests are not likely to be affected by their reduced financial circumstances, or at least not significantly so.

70. Reliance is placed on the length of the appellant's residence in the UK, and understandably so. In particular I was referred to paragraph PL5.1(a) of the Immigration Rules ("the Rules"), Appendix Private Life, which replicates the former long residence rule in terms of 20 years' residence potentially meriting a grant of leave. However, as I suggested to Mr Badar, the appellant would be confronted with the suitability requirements of the Rules in terms of his deception. It is not likely, therefore, that he could meet the requirements of the Rules in terms of long residence.

71. His length of residence is, nevertheless, relevant but regard must be had to the fact he secured his residence in the UK by means of deception, although I accept that his family and private life will have become more deeply rooted during the time that he his lengthy residence.

72. In assessing the proportionality of the decision I have reflected on all the relevant factors to which I have referred, including the delay which I have considered in detail above.

73. I am not satisfied that the reasonably foreseeable consequences of the decision would be any significant material change in the appellant's or his family's circumstances such as to make the decision one that is disproportionate in Article 8 terms. In coming to that conclusion I have

balanced the appellant's and his family's circumstances against the significant public interest involved in maintaining the integrity of British nationality law in the face of attempts to subvert it by fraudulent conduct.

74. In summary, I am not satisfied that the respondent's decision amounts to a breach of the appellant's Article 8 rights.

Decision

75. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the decision is re-made, dismissing the appeal.

A. M. Kopieczek

Upper Tribunal Judge Kopieczek 13/09/2023