IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005383
First-tier Tribunal No:
DC/00013/2022
DC/50212/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 September 2023

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

XHEVDAT DACI
(AMONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Ms R Akther, instructed by Metro Law Solicitors

Heard at Field House on 14 August 2023

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as they were in the First-tier Tribunal. The appellant is a citizen of Albania born on 13 March 1981. His appeal against deprivation of citizenship was allowed by First-tier Tribunal Judge Cohen ('the judge') on 10 October 2022.

2. The Secretary of State appealed on 8 grounds:
   (1) The judge failed to properly apply Ciceri [2021] UKUT 238 in light of the reasoning in Begum [2021] UKSC 7;

(2) The judge's reliance on Sleiman [2017] UKUT 376 was misconceived;
(3-6) The judge's findings on delay, the 14-year policy, the disclosure of the fraud and complicity were perverse and/or inadequately reasoned;
(7) The judge's reliance on 276ADE was perverse and unreasoned;
(8) The judge misdirected himself under Article 8 and failed to give adequate reasons.

3. Permission was granted by First-tier Tribunal Judge Karbani on 16 November 2022 on the following grounds:

> "2. In summary, the grounds aver the Judge made a material misdirection in law or jurisdiction, in applying 'a further test of materiality' contrary to Ciceri, and there is no burden on the respondent to demonstrate that the condition precedent is made out. The Judge has failed to consider the respondent's alterative basis for refusing nationality on the basis of his character or conduct. Further the Judge's reliance on Slieman (sic) is misconceived, as it did not consider issues of character or conduct. The respondent disputes that the appellant's documents were submitted with the wife's application. It was perverse to find that the appellant would have benefitted from the 14 year policy when he would not have been eligible for it until 2012. There is no consideration of suitability precluding consideration under 276ADE.
> 3. There are arguable errors in the material facts found at [11-12] of the determination. The issues regarding the appellant's character and conduct have not been considered in determining the Article 8 issues. The grounds disclose arguable errors of law."

Respondent's submissions

4. Ms Cunha submitted the judge failed to adopt the public law approach in Begum and instead remade the decision and fettered the respondent's discretion at [11] and [12]. Ms Cunha relied on Chimi [2023] UKUT 115 and submitted the judge failed to follow the correct approach. Even though the appellant entered the UK as a minor and claimed asylum, he continued the deception as an adult when he applied for a travel document and in his application for naturalisation. The judge failed to consider the respondent's case that she would have refused citizenship on good character grounds. The judge had ignored the respondent's position and misapplied chapter 55 of the respondent's policy.

5. Ms Cunha submitted the judge erred in law in applying a test of materiality. It was the respondent's case that there was no chain of causation and the appellant was not of good character when he applied for citizenship. The respondent properly applied her own policy. Ms Cunha relied on Shyti [2023] EWCA Civ 770 and submitted the respondent's power was discretionary and she may grant citizenship if satisfied the appellant was of good character. The appellant had used deception in his application form for naturalisation which was material to the grant of citizenship. There was no error of law in the respondent's refusal to exercise her discretion in the appellant's favour because he had continued to deceive the respondent. The deception was operative and the judge wrongly applied Sleiman.

6. Ms Cunha submitted the judge had misapplied Hysaj [2020] UKUT 128. There was no delay in this case and Laci [2021] EWCA Civ 769 could be distinguished. The respondent only had evidence of the appellant's true identity in 2020.

7. The judge had erred in law in his assessment of the limbo period and had failed to give reasons for the impact on the appellant's family. The judge had erred in law in carrying out a proleptic assessment.

Appellant's submissions

8. Ms Akther submitted the grounds were misconceived. The judge had quoted relevant caselaw and applied it correctly. The judge found that the appellant had made false representations in his applications to the home office and in his application for naturalisation. The judge then went on to consider whether the deception was material to the grant of citizenship and properly applied the respondent's policy. Ms Akter submitted there had to be a chain of causation following Sleiman and Shyti could be distinguished because the appellant in that case was not a minor.

9. Ms Akther submitted the respondent had known of the deception since 2006 when the applicant's wife made an application for entry clearance. The respondent had delayed the decision to deprive the appellant of citizenship because she was awaiting the outcome of the nullity proceedings.

10. The judge made specific findings on these issues in reviewing the respondent's decision. The respondent accepted that the information in the wife's application was likely to be true and therefore the respondent had notice of the appellant's true identity. At [12] and [13] the judge considered the appellant's character and conduct and found the chain of causation was broken as in Sleiman.

11. The judge considered the reasonably foreseeable consequences of deprivation and therefore any errors of law in respect of grounds 1 to 7 were not material. The judge gave adequate reasons for the adverse impact on the appellant's family. The appellant was the sole breadwinner and had a successful car wash business. His family would suffer if the appellant was not self-employed. The judge heard and tested the evidence and his findings were open to him.

Conclusions and reasons

12. It is not in dispute that the appellant entered the UK illegally as a minor and claimed asylum using a false name, false date of birth and false place of birth, namely Kosovo. The appellant maintained his false identity throughout his asylum claim and subsequent grant of indefinite leave to remain as a refugee. The appellant applied for a travel document in 2000 and naturalisation as a British citizen using the same false identity in 2004. The appellant remained in the UK under the same false identity until 2020 when steps were taken to deprive the appellant of citizenship.

13. The judge found that the appellant made false representations in his applications to the home office, gave false details on arrival, repeated these false details in his successful asylum claim and in his application for naturalisation in 2004. At [9], the judge stated:

> "The appellant has admitted that he made false representations by giving a false nationality and date of birth and so the first test in Ciceri is satisfied. He stated, "The appellant made false representations which is one of the grounds which the respondent may make an order to deprive and the appellant of citizenship, applying section 40(3) of the [British Nationality Act ('BNA') 1981]."

14. I find the judge concluded the condition precedent in section 40(3) BNA 1981 was met and the respondent may exercise her discretion to deprive the appellant of citizenship. In considering the exercise of discretion the judge considered whether the deception was material to the grant of citizenship.

15. In my view the judge fell into error at this point in failing to adopt the approach set out in Begum. At [11] and [12] the judge failed to consider whether the respondent's findings of fact were based on a view of the evidence which could not reasonably be held.

16. It was the respondent's case that she was not aware of the appellant's true identity until 2020 notwithstanding she acknowledged the birth certificate submitted with the appellant's wife's application for entry clearance in 2006 was likely to be true at [29] of the respondent's decision. I find the judge erred in law in failing to consider the respondent's position set out in the decision of 2 August 2021. The judge made findings of fact which were not open to him on the evidence. The judge's finding at [11] that the appellant could have benefitted from the 14 year policy was perverse given the appellant would not have accrued 14 years until 2012.

17. The appellant's date of birth is 13 March 1981 and he was 18 years old in March 1999. He acquired indefinite leave to remain ('ILR') on 24 May 1999. The judge's finding at [12] that, had the appellant disclosed his true identity prior to the grant of ILR, it would have had no effect given the inefficiencies of the respondent's department at that time was not supported by the evidence before the judge.

18. The judge compounded this error in misapplying chapter 55 of the respondent's policy (55.7.8.5) which stated that adults should be held responsible for their own citizenship and complicity should be assumed unless sufficient evidence in mitigation is provided. It was accepted the appellant made false representations in his application for a travel document in 2000 and in his application for naturalisation in 2004. The judge erred law in failing to consider whether the respondent position that the appellant should have corrected the record was one which was reasonably open to her on the evidence before her.

19. I find the judge erred in his application of Sleiman post Begum. He failed to review the respondent's consideration of the appellant's character and conduct by reference to chapter 55 of the respondent's policy. There is no further test of materiality and the Tribunal in Sleiman did not deal with issues of character and conduct.

20. I am not persuaded by Ms Akther's submission that the respondent was aware of the deception in 2006 and delayed deprivation action pending ongoing nullity proceedings. This in contrary to the respondent's position set out in the decision of 2 August 2021. The judge erred in law in failing to review the respondent's decision making process following Begum. The appellant's case can be distinguished from Laci.

21. I also find that the judge erred in law in his consideration of Article 8 and failed to give adequate reasons for his conclusions. The judge failed to make findings on the reasonably foreseeable consequences of deprivation and failed to properly conduct the balancing exercise. The judge's findings at [13] merely state there will be an adverse effect on family life without identifying the reasonably

foreseeable consequences. In addition, the judge wrongly refers to and takes into account paragraph 276ADE of the immigration rules:

> "The decision letter referred to paragraph 55.7.6 which provides that length of residence in the UK alone is not sufficient reason not to deprive citizenship. However, the appellant has been in the UK for a very long time, some twenty-two years, being ten years longer than the 12 years to establish private life under paragraph 276ADE. I am satisfied that the appellant has a family life in the UK and that the deprivation of his citizenship would have an adverse effect on his family life. I am satisfied that, while materiality is the main reason for allowing this appeal, the appellant's established family life stands as a secondary reason for allowing the appeal."

22. Accordingly, I find there are material errors of law in the decision dated 10 October 2022 and I set aside the judge's findings at [10] to [13]. The respondent's appeal is allowed. I have considered paragraph 7 of the Practice Statements of 25 September 2012 and adjourn the appeal to be reheard before the Upper Tribunal.

Notice of Decision

The Secretary of State's appeal is allowed

J Frances

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 August 2023