IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002683

First-tier Tribunal No: DC/50246/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

2nd October 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

TONE SHPELLA
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Jafar, instructed by Norton Folgate Solicitors LLP
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 20 September 2023

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the decision to deprive her of her British nationality under section 40(3) of the British Nationality Act 1981.

2. The appellant is currently a British citizen, originally of Albanian nationality. She entered the UK clandestinely on 28 October 1999 with her two children and applied for asylum, having previously been refused entry to the UK to join her husband, Mark

Shpella, who had claimed asylum in the UK. The appellant's husband had entered the UK on 19 June 1998 and had claimed asylum as a Kosovan national. He was subsequently recognised as a refugee and granted indefinite leave to remain. The appellant's application for entry clearance was made on the basis of family reunion, giving her place of birth as Lluke, Decan in Kosovo, and stating her husband's nationality as Albanian/ Kosovan. The appellant's status was considered under the family reunion policy once her husband was granted refugee status, and she and her children were granted indefinite leave to remain, with entry clearance authorised. The appellant applied for a travel document on 22 August 2000, giving her place of birth and that of her two children as Skeneraj, Kosovo, and was issued with a travel document on 24 October 2000. On 19 July 2004 she submitted an application Form AN to apply to naturalise as a British citizen, giving her place of birth as Decan, Kosovo and stating that her husband and parents were Yugoslavian and that she and her husband were married in Llahush on 25 November 1984, and she completed the Good Character Requirement section confirming her good character.

3. The appellant was issued with a certificate of naturalisation and attended her naturalisation ceremony on 5 April 2005 to become a British citizen.

4. The appellant's deception became apparent to the Status Review Unit of the Home Office on 18 July 2022, following an investigation into her son's status evidence which included a family certificate from Tirana showing the appellant's genuine identity and place of birth as Oblike, Shkoder, Albania. An investigation letter was sent to her on 25 July 2022, 18 August 2022 and 12 September 2022, but she did not reply.

5. The respondent, in a decision dated 8 November 2022, concluded that the appellant's British citizenship had been obtained fraudulently and that she should be deprived of that citizenship under section 40(3) of the British Nationality Act 1981. The respondent noted that the appellant had entered the UK and claimed asylum as a Kosovan national and had used as a sponsor her husband who had also attained his status as a result of a fraudulent identity. The respondent considered that the appellant's deception was material to her grant of leave in the UK and her acquisition of British citizenship and that it was reasonable and proportionate to deprive her of her British citizenship. The respondent considered that there was no breach of Article 8 in so doing.

6. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981, claiming that there was insufficient evidence to establish a condition precedent. The appellant claimed that she had described her husband as Albanian/ Kosovan and had therefore informed the respondent of his true nationality. It was also claimed that she had not carried out any deception herself as she had diminished responsibility and suffered from PTSD after her father murdered her mother in 2001, and that her son held power of attorney and had completed the paperwork for her. It was also said to be relevant that the appellant had lived in the UK for over 20 years, that she was a seriously vulnerable person who was reliant upon the NHS for her medication, regular home visits and round the clock care, and that she was immobile and bedridden due to her mental health issues and chronic back pain, and that deprivation would lead to the withdrawal of her critical care and devastate her private life.

7. The appellant's appeal was heard on 4 May 2023 by First-tier Tribunal Judge Aldridge. The appellant did not give evidence but her son gave evidence via video link from their home, stating that the appellant was mostly bedridden, that she was on heavy medication and had tried to commit suicide and needed someone around her,

and that she was reliant upon the NHS for mental health visits and pain management. He stated that she had been in that state for the past six to seven years. His evidence was that the appellant and his father were separated but he was in touch with his father who had had no contact from the Home Office regarding his nationality. He stated that the appellant had worked in the UK until her mental health had deteriorated around 2004 and she was mainly supported by himself and her other son. It was argued on behalf of the appellant that there was no causative link between the deception and the grant of entry clearance as the appellant's husband had not been shown to have acted fraudulently and there had been no indication by the Home Office of an intention to take action against him in relation to his citizenship. It was not accepted that the appellant had made false declarations as all the forms had been completed by her son who had power of attorney. It was submitted that deprivation would be in breach of Article 8 as the appellant had been in the UK for 25 years with her children and would lose her entitlement to essential NHS treatment if she lost her citizenship.

8. The judge concluded that the appellant had obtained her ILR on the basis of false information and had provided false representations as to her nationality and place of birth in her naturalisation application. He found that she had deliberately misled the respondent and he did not accept the assertion that she had made no false declaration. He did not accept that she was suffering from mental health issues at the time the applications were made which precluded her from being aware of or understanding the nature of her fraudulent claim and he did not accept that she was not complicit in the deception. The judge found that there was nothing in the evidence to show that there had been any adverse impact on the appellant since the decision was made or that the period of immigration status limbo between the deprivation of citizenship and a decision on removal would tip the proportionality balance in the appellant's favour. He concluded that the respondent was entitled to exercise discretion against the appellant and that it was in the public interest to deprive her of her British citizenship. The judge accordingly dismissed the appeal.

9. The appellant sought permission to appeal to the Upper Tribunal on five grounds: firstly, that the judge had erred by finding that the appellant's nationality was material to her acquisition of nationality when her ILR had been obtained under the family reunion policy; secondly, that the judge's reasoning and findings on the law were muddled and he appeared to have applied the standard of review to his consideration of Article 8; thirdly, that the judge had given weight to immaterial matters, namely the appellant's lies; fourthly, that the judge had failed properly to consider the effects of withdrawal of citizenship, in particular the loss of her access to NHS treatment; and fifthly, that the judge had undertaken a flawed proportionality balancing exercise and had exaggerated the public interest factors.

10. Permission was granted by the First-tier Tribunal and the matter then came before me for a hearing. Both parties made submissions.

11. Mr Jafar submitted that the judge failed to turn his mind to the causal link between the deception/ fraud and the grant of leave and to the fact that leave had been granted under the family reunion policy, under which nationality was irrelevant. He relied upon the case of Sleiman (deprivation of citizenship: conduct) [2017] UKUT 00367 in that respect and submitted that the judge had failed to turn his mind to the mechanism by which the appellant gained citizenship. Mr Jafar submitted that the judge had failed to apply the binding principles in Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 in regard to the adverse effect of the withdrawal of the appellant's rights and benefits as a British citizen and his failure to

consider the fact that the appellant would be unable to access medical treatment on the NHS, as made clear in Balajigari v The Secretary of State for the Home Department [2019] EWCA Civ 673. He submitted that the judge had unlawfully reduced the weight to be given to relevant factors as against the public interest, including the fact that the deception was not material to the grant of leave, that there was a single deception with no other incidents of dishonesty or fraud, that the appellant had led a "a blameless and productive life" in the terms expressed in Laci at [53] and that the appellant had lived in the UK for over 20 years which was relevant to a consideration under paragraph 276ADE(1) of the immigration rules. He submitted that the judge's comment at [31] about length of residence not being a reason to deprive made no sense. Further, it was not clear what was the purpose of deprivation in the appellant's case when she was bedridden and suicidal. Mr Jafar submitted that the judge's finding that the engagement of Article 8 was minimal was perverse and that there had been no consideration of the compassionate human factors in this case.

12. Ms Cunha submitted that, in making the deprivation decision, the Secretary of State had not just relied upon the appellant's entry clearance application in relation to the deception, but upon the subsequent applications she had made, for a travel document and for naturalisation, where she had used her false Kosovan nationality and where, most importantly, she had confirmed that she was of good character. Ms Cunha submitted that it was in that context that the judge had been looking at 'good character'. She submitted that, whilst the appellant was relying upon the decision in Sleiman, that case had been overtaken by the recent case of Shyti [2023] EWCA Civ 770, whereby it was relevant whether there had been a continued deception and a declaration of good character, rather than a chain of causation. Ms Cunha submitted that the judge had followed the requirements in Chimi v The Secretary of State for the Home Department (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 and had properly concluded that the Secretary of State's decision was a reasonable one on the evidence available when the decision was made. She submitted that the judge had not erred in law in relation to the deception. As for the judge's findings on Article 8, the judge looked at the 'limbo' period as he was tasked to do, had proper regard to the question of delay as discussed in Laci, and properly found there to be no breach of the appellant's human rights during that period.

13. In response Mr Jafar reiterated the points made previously and submitted again that the judge had failed to consider what part the appellant's deception had played in her application for indefinite leave and British citizenship and had made no reference to the 'good character' declaration as being of relevance. He submitted that Shyti did not reduce the necessity for causation and that that case differed from the appellant's case because it was considering the relevance of a grant of leave under the legacy programme where the deception had been material to the grant of leave, which was not relevant in the appellant's case. Mr Jafar submitted again that the judge had given no good reason for giving the factors in Laci no weight and had failed to undertake a proper assessment of the appellant's circumstances.

Discussion

14. The judge's decision is certainly not the clearest and most comprehensive one and the second ground, asserting that the judge's reasoning and findings on the law are muddled, is not without some arguable merit. However it seems to me that, when looked at as a whole, the judge's decision addressed the relevant issues, it followed the approach set out in Ciceri (deprivation of citizenship appeals: principles) Albania (Rev1) [2021] UKUT 238 and it was consistent with the principles in Chimi. It is relevant to note that the Upper Tribunal in Chimi had a slightly different approach to

the order in which the various issues were to be considered than that set out in Ciceri and it is therefore understandable that there may have been some lack of clarity in the judge's own approach, with there being some understandable overlap between matters relevant to Article 8 and the respondent's exercise of discretion. Ultimately it is clear that the judge carried out the relevant and appropriate assessment, examining the respondent's conclusions on the condition precedent in section 40(3) and the exercise of discretion on public law principles, having regard to the submissions made on behalf of the appellant on the lawfulness of the respondent's conclusion on the appellant's misrepresentations, considering the evidence before the Secretary of State when the decision was made and providing reasons for concluding that the respondent's decision was reasonable and lawful in all respects, and having then considered the reasonably foreseeable consequences of deprivation respondent's decision in the context of a full merits-based Article 8 proportionality assessment, as consistent with the caselaw. Accordingly, whilst the judge could arguably have expressed himself in clearer terms, it seems to me that he nevertheless followed the correct legal approach and applied his mind to the relevant issues.

15. It was Mr Jafar's principal submission that the judge had failed to undertake a proper assessment of the causative link between the appellant's actions and the deprivation decision. He argued that the judge had failed to explain how the information provided by the appellant about her nationality was material to the grant of leave and that he had failed to consider the fact that leave had been granted under the family reunion policy whereby nationality was irrelevant. He submitted that the judge had merely relied upon the fact that the appellant had lied but went no further in assessing the question of causation leading to her grant of leave.

16. In making that submission Mr Jafar relied upon the decision in Sleiman where the appellant's deception about his age had led to him being able to remain in the UK and then obtain indefinite leave to remain under the legacy programme, and where it was found by the Tribunal that his deception was immaterial to the grant of citizenship. However, as Ms Cunha properly argued, the decision in Sleiman has since been clarified and distinguished in the recent case of Shyti, for the reasons given at [78] and [87] of the decision in Shyti. It was recognised by the Court in Shyti that the Secretary of State's decision in Sleiman had relied solely upon the appellant's deception in claiming to be younger than his real age when he initially claimed asylum, and that it was in that context that the Upper Tribunal in Sleiman had held that the appellant's deception about his date of birth was immaterial to the grant of citizenship. It was material, the Court found, that the Secretary of State had not gone on, in the case of Sleiman, to consider whether the appellant's continued deception about his age had influenced the decision on his naturalisation application and that there had been no suggestion by the Secretary of State that the appellant would have failed to show that he was of good character if she had known of his false date of birth when he applied for citizenship. The situation in Shyti was considered to be entirely different, since the Secretary of State in her decision in that case *had* relied upon the appellant's continuing deception and the false statements made, not only in his initial application, but also in his further applications and in his naturalisation application form where he had claimed to be of good character.

17. So too, in this case, the Secretary of State had, after considering the appellant's false declarations in her family reunion application, at [10] to [13], then gone on to consider her continuing deception in her travel document application form and in her application for naturalisation, at [14] to [17] of her decision, including her confirmation of being of good character. As Ms Cunha properly submitted, it was in that context that the judge had himself considered the appellant's good character declaration. I agree

with Ms Cunha that an assessment of the relevance of the appellant's nationality to the grant of leave to enter and remain in the UK under the family reunion policy was, in the circumstances, largely immaterial and I reject Mr Jafar's submission that the principles in Shyti did not apply to the appellant's case. I also reject Mr Jafar's submission that the judge had not referred to or considered the good character declaration. That was something the judge referred to at [5] when summarising the respondent's reasons for concluding that the condition precedent was satisfied and it is clear that that was what he was considering at [21] to [23], as Ms Cunha submitted.

18. In so far as Mr Jafar submitted that there was a lack of any proper analysis by the judge of how the appellant's deception motivated the grant of citizenship, it is clear that such an analysis was undertaken by the judge, at [21] to [23] and [26]. In those paragraphs the judge considered the false representations made by the appellant at each stage leading up to her naturalisation application, including the application leading to her initial grant of leave, but also, significantly, her continuing deception and failure to provide her genuine details after being granted leave and the false information provided in her application for citizenship. The judge considered, at [23], whether the appellant was aware of, and complicit in, those false representations, concluding that there was nothing in the evidence before him to support a claim that her mental health precluded her from understanding the nature or effects of her fraudulent claim. Accordingly, and contrary to Mr Jafar's submission, the judge provided detailed reasons for concluding that the appellant's deception was material to the grant of citizenship and for concluding that the respondent's decision was therefore a reasonable one.

19. Turning to the challenge to the judge's Article 8 assessment, Mr Jafar submitted that the judge, when considering the impact of deprivation on the appellant and the factors weighing in her favour, had erred by disregarding the principles in Laci simply because the appellant had lied, when it was always the case that there were lies in deprivation cases. The judge seems to have been referring to the Court's observation at [58] of Laci that the appellant was to be held responsible for his own actions when lying when he was an adult. In any event the judge clearly had regard, at [29], to the factors relied upon in Laci from [51] to [58] and considered whether any of the redeeming features in that case applied to the appellant, concluding for the reasons given in the preceding paragraphs and at [30], [31] and [33], that they did not. In those paragraphs the judge considered the extent of the appellant's deception, the uncertainty caused by the notification of intended deprivation of British nationality (which is what I assume the judge meant at [24]), the period of limbo between the deprivation order and the decision on her immigration status and the particular consequences for the appellant of the loss of her British citizenship including the loss of rights and privileges associated with British citizenship and the impact on her private and family life. Mr Jafar criticised the judge's findings in regard to the appellant's loss of NHS services, submitting that he failed to have regard to the references in that regard at [81] in Balajigari v The Secretary of State for the Home Department [2019] EWCA Civ 673, as referred to at [56] of Laci. It is relevant to note that those references were in fact submissions made by the appellant's representatives rather than findings of the Court, and that the relevant findings were made by the Court at [80], to which Ms Cunha referred. In any event the judge clearly considered that matter and made appropriate findings at [25], noting the extent of care required by the appellant and the alternative sources of such care. In so far as Mr Jafar relied upon the medical evidence produced for the appellant, that evidence was clearly considered in detail by the judge when observing, at [23], the limitations of the evidence. As Ms Cunha submitted, the judge's assessment was entirely consistent with the approach in Laci.

20. It was Mr Jafar's submission, in relation to the final ground of appeal, that the judge unlawfully reduced the weight accorded to factors in favour of the appellant and exaggerated the public interest in deprivation. In so far as he submitted that the judge failed to explain why the appellant's case was so different to Laci that it justified a different outcome, Ms Cunha properly pointed out that Laci was a case about delay and the respondent's decision-making process and it was only on that specific issue that the case had succeeded. That was not a relevant issue in the appellant's case. As for his submission that the judge failed to give weight to the fact that the appellant had not carried out a deception which was material to the grant of status, that has already been discussed above. The same can be said for the assertion in the grounds that the deception was a singular one. As for the appellant's reliance on the fact that no deprivation action had been taken against her ex-husband when he was the person who initiated the deception, that was a matter which the respondent and the judge had considered and which was relevant to the question of the exercise of the respondent's discretion which the judge properly found to have been lawfully exercised. As for the other matters relied upon in the final ground including the appellant's length of residence in the UK, her family and private life ties to the UK, her medical condition and the compassionate circumstances in this case, those are matters relevant to the question of removal which, at this point, has not been suggested as a likely event by the respondent and would involve the type of proleptic assessment which the relevant authorities consider to be inappropriate at this stage. In the circumstances it seems to me that the judge's Article 8 assessment and his balancing exercise took account of all relevant considerations and followed the correct approach.

21. For all these reasons the challenges made in the grounds are not made out. The judge considered all relevant matters and reached a conclusion which was fully and properly open to him on the evidence before him, applying the relevant legal principles. There are clearly compassionate elements to the appellant's case but she is reminded that this case is not about her entitlement to remain in the UK or a requirement to leave the UK. It is simply about her entitlement to British citizenship and that was a matter which the judge properly determined. In the circumstances I uphold his decision.

Notice of Decision

22. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 September 2023