IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001210
UI-2021-001530

First-tier Tribunal No: DC/50056/2021
DC/50056/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

23rd February 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

IRFAN CELAJ
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Wilding, instructed by Marsh and Partners Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 19 February 2024

DECISION AND REASONS

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

2. The appellant is currently a British citizen, originally of Albanian nationality. He entered the UK on 3 January 2000 and applied for asylum in a false identity, as Irfan Halili, a Kosovan national born on 3 May 1984, whereas he was, in fact, Irfan Celaj born on 3 May 1982 in Albania. He claimed to be at risk of persecution in Kosovo and that the Serbian authorities had shot and killed his parents in March 1999 leading to him fleeing the country. His claim was refused on 16 February 2001 but he was granted exceptional leave to remain (ELR) until his 18th birthday, 3 May 2002, on the basis that he was an unaccompanied minor. On 28 February 2001 he applied for a Home Office travel document in his false identity and was issued with a document.

3. On 21 May 2002 the appellant applied for further leave to remain in his false identity and was interviewed about his application, claiming again to be at risk on return to Kosovo. His application was refused on 9 August 2004 and he appealed against the decision, maintaining the same false claim before the Tribunal. His appeal was dismissed on 18 November 2004.

4. The appellant's case was subsequently reviewed by the Case Resolution Directorate team within the Home Office and on 7 June 2011 he was granted indefinite leave to remain (ILR) outside the immigration rules, under the legacy cases programme, on the basis of his length of residence in the UK, in the same false identity.

5. On 20 May 2011 the appellant made an application on Form AN to apply to naturalise as a British citizen, in the same false identity, and completed the Good Character Requirement section confirming his good character. He was issued with a certificate of naturalisation on 31 January 2012, in the identity of Irfan Halili, born on 3 May 1984 in Kosovo.

6. In 2020 HMPO conducted an investigation into the appellant's true identity which indicated that he had claimed asylum and naturalised in a false identity. His true identity was confirmed through checks with the Albanian authorities as Irfan Celaj born on 3 May 1982 in Albania. On 11 March 2020 HMPO issued a letter to the appellant stating that they were revoking his British passport and advising him to contact the Status Review Unit (SRU) of the Home Office about his claim to British citizenship. On 3 April 2020 the appellant's legal representatives at that time contacted the SRU by letter and admitted his true identity, claiming that he was at risk in Albania and that he had been instructed by the agent who had taken him out of Albania to state that he was a Kosovan national.

7. A Home Office investigation letter was sent to the appellant on 15 May 2020, informing him that the Secretary of State had reason to believe that he had obtained his British citizenship as a result of fraud and was considering depriving him of his British citizen status under section 40(3) of the British Nationality Act 1981. The appellant was invited to respond. His solicitors did so on his behalf on 20 May 2020, giving the same reasons for the deception, and they provided his Albanian birth certificate and his Albanian family certificate.

8. The respondent, in a decision dated 2 March 2021, concluded that the appellant's British citizenship had been obtained fraudulently and that he should be deprived of that citizenship under section 40(3) of the British Nationality Act 1981. The respondent considered that, although the appellant was a minor when he entered the UK and was granted ELR, he was an adult when he was granted ILR and had the opportunity at that time to provide his genuine details, so that he was considered to be complicit in the fraud. The respondent considered that the appellant's application for naturalisation would have been refused if it was known that he had presented and maintained a false identity and did not accept that there was a plausible, innocent explanation for the misleading information he had given. The respondent concluded that the appellant's fraud was deliberate and material to the acquisition of British citizenship and that it was reasonable and proportionate to deprive him of his British citizenship. The respondent considered that there was no breach of Article 8 in so doing.

9. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981. His appeal was initially heard on 5 July 2021 by First-tier Tribunal

Judge Gibbs who considered that the limits to the Tribunal's jurisdiction, as set out in Begum, R. (on the application of) v Special Immigration Appeals Commission & Anor [2021] UKSC 7, did not apply in a case where the decision had been made under section 40(3). Judge Gibbs therefore applied a merits-based approach to the appellant's case and allowed the appeal.

10. Judge Gibbs' decision was, however, set aside by the Upper Tribunal in a decision promulgated on 11 July 2022, on the basis that she had erred in carrying out a merits-based review.

11. The case was then remitted to the First-tier Tribunal and the appeal came before First-tier Tribunal Judge Oxlade on 19 December 2022, who noted that the appellant had formed a relationship with an Albanian woman and had two children with her, R aged 7 and A aged 3 years. The judge rejected the argument made on behalf of the appellant that she could depart from the approach set out in Ciceri (deprivation of citizenship appeals: principles) Albania (Rev1) [2021] UKUT 238. She found that the condition precedent in section 40(3) had been met and that the respondent had lawfully exercised his discretion. The judge did not accept that the appellant's identity had been revealed to the respondent in 2003 when a visit visa application had been made and found the appellant to be an unreliable witness in his claim that it had. She therefore rejected the claim that the respondent had delayed in processing information about his true identity and concluded that the respondent had acted expeditiously. The judge considered the reasonably foreseeable consequences of deprivation during the 'limbo period' and concluded that it was proportionate to make the deprivation order. She accordingly dismissed the appellant's appeal.

12. The appellant sought permission to appeal to the Upper Tribunal, asserting that the respondent's decision to deprive the appellant of his British citizenship was unreasonable and procedurally unfair, since there had been a legitimate expectation that there would be no attempt to deprive him of his citizenship given the respondent's acquiescence in permitting him to remain as a British citizen for 15 years after becoming aware of his true identity in May 2005. Permission was refused in the First-tier Tribunal.

13. The appellant then renewed his application for permission to the Upper Tribunal, on three grounds: firstly, that the judge had failed to consider whether the deception had motivated the grant of deception and had failed to identify how the condition precedent was met; secondly, that the judge had made material mistakes of facts in relation to the Article 8 analysis; and thirdly, that the judge had given inadequate reasoning in her Article 8 analysis.

14. For the second ground, the appellant relied upon two new pieces of evidence which were the subject of a rule 15(2A) application. The first was the result of a subject access request made to the Home Office for the appellant's mother's Home Office records which confirmed that the appellant had sponsored his parents' visit to the UK in an application made on 11 May 2005 in his own name and nationality. The second was the result of a freedom of information request which confirmed that the mean average for a grant of temporary leave following a decision to deprive citizenship on grounds of fraud was 303 days and that the mean average for temporary leave being granted from the service of a deprivation order was 257 days.

15. Permission was granted by the Upper Tribunal on the following basis:

> "1. It is at least arguable that the judge failed to identify a public law error in the decision letter, in that the respondent potentially failed to take into account the appellant's disclosure of his real identity when his mother applied to visit him in 2005.
>
> 2. Grounds 1 and 3 are weaker. The decision letter at paragraphs 30 to 35 clearly set out why the appellant's failure to disclose his previous deception in the nationality application was material to the grant of British citizenship. Nevertheless, the potential failure of the respondent in paragraph one arguably may have been a factor relevant to the exercise of discretion.
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> 3. It will be for the appellant to explain why the length of delay between the order depriving of citizenship and the grant of temporary leave is material to the outcome of the Article 8 ECHR assessment.
>
> 4. All grounds are arguable"

16. The respondent produced a rule 24 response opposing the appellant's appeal and responding in detail to the grounds of challenge.

17. The matter then came before me for a hearing. I heard submissions from both parties and these are addressed in the discussion below.

18. It was accepted that the rule 15(2A) application and the grounds themselves were interlinked and that both should therefore be addressed in the submissions before any decision could be made. Accordingly, to the limited extent that I have considered the documents which are the subject of the rule 15(2A) application, the application to admit the documents is granted. However, for the reasons I give below I do not consider that they are relevant to Judge Oxlade's decision or that they disclose any errors of law in her decision.

Discussion

19. Since the case came before Judge Oxlade, the Tribunal's jurisdiction in deprivation cases has been clarified in Chimi v The Secretary of State for the Home Department (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115, which essentially sets out a slightly different approach to the order in which the various issues are to be considered than that set out in Ciceri. It was Mr Wilding's submission that, in line with the first two questions in Chimi, reflecting the guidance in Ciceri, the focus was on the lawfulness of the respondent's decision in relation to the condition precedent and the respondent's exercise of discretion, and that the results of the subject access request and the freedom of information request showed that the respondent had not made a lawful decision. Mr Wilding submits that that was because the respondent failed to act in accordance with his duty not to mislead and his duty of candour arising in what is essentially a pseudo-judicial review. He relied upon the cases of Nimo (appeals: duty of disclosure : Ghana) [2020] UKUT 88 and Secretary of State for Foreign & Commonwealth Affairs v Quark Fishing Ltd. [2002] EWCA Civ 1409 respectively in that respect, submitting that the respondent had been under a duty to disclose this information to the Tribunal and that the materials may have made a difference to the outcome of the appeal.

20. However, I reject the assertion that the principles in those cases extends to circumstance such as in this appellant's case and I agree with Ms Isherwood that there was no attempt to mislead by the respondent and no breach of his duties in that respect. In so far as this appeal is a statutory appeal, the Upper Tribunal in Nimo made it clear that "*there is no general requirement for disclosure of all relevant data held by*

the Home Secretary". At [35] of the judgment the Upper Tribunal made it clear that the possibility that a piece of information might lie within a certain document is not a reason to require its automatic production "*any more than there ought, for such a reason, to be a general duty of disclosure on the respondent in respect of all internal communications leading to any decision in the immigration field, which may be appealed to the First-tier Tribunal*". In so far as Mr Wilding relies upon the judgment in the Quark Fishing case, in relation to judicial review proceedings, and the "*high duty on public authority respondents*" as referred to at [50], I find nothing in the respondent's decision-making to be contrary to that duty.

21. With regard to the evidence which is the subject of the public access request, there is nothing in the principles set out in those cases that could possibly require the respondent to have searched for, and produced, any applications that may be related or linked to the appellant and which emanate from different governmental departments. It is relevant to note that the visa application form was in the name of the appellant's mother, which was a different name to that given by the appellant for his mother under his false identity. Indeed the claim he had made was that his parents were dead. Although there was mention, in the letter from the appellant's solicitors of 3 April 2020 to the SRU, of the appellant having sponsored a visitor visa application for his parents, that was said to have been in 2003. I agree with Ms Isherwood that there was no real reason for the respondent to link the application made in 2005 to the appellant. It was only when the full details of his alias were provided to the Home Office in the subject access request that the names were inevitably linked and the information became available. In so far as Mr Wilding submits that the respondent has still failed, in response to the subject access request, to disclose all the information provided in 2005, which the appellant claims included his birth certificate, that is simply speculation. Likewise, with regard to the information provided as a result of the freedom of information request, there is nothing in the principles set out in those cases that could possibly require the respondent to provide statistical information in each case from an evolving, live operational database, as described in the 31 August 2021 freedom of information letter. The fact that such information was not produced by the respondent of his own volition at the hearing before the Tribunal cannot possibly be considered as tantamount to the respondent misleading the appellant or the Tribunal. To require the respondent to do so would put an impossible burden upon his department.

22. I have to agree with Ms Isherwood that the submissions made in this regard are essentially an attempt by the appellant to "have another bite of the cherry", having changed his legal representatives, his previous representatives not having advanced such an argument before the First-tier Tribunal. There is no reason why the appellant could not have sought, and produced, evidence of his mother's visa application at that time, either by way of a subject access request or otherwise, but he did not do so and it is not now open to him to rely upon evidence produced subsequent to that hearing to argue an error of law on grounds of unfairness or otherwise. The same can be said of the information produced as a result of the freedom of information request.

23.In any event, I do not consider that anything material arises from this further evidence, either in relation to the respondent's decision itself or the judge's decision.

24.With regard to the documents relating to the appellant's mother's visa application, I do not consider that the absence of any specific mention of that application by the respondent impacts in any material way on the lawfulness of the deprivation decision. As already mentioned, there was no real reason for the respondent to link the application made in 2005 to the appellant, but in any event it cannot possibly be said

that that amounted to a full and frank disclosure by the appellant of his true identity and it cannot be argued that the respondent was therefore aware of his true identity at that time. The fact that the appellant's details were provided in an application made by his mother to an entirely different governmental department cannot in any way detract from the fact that he continued to deceive the respondent and to use a false identity for 15 years after that application was made, when his case was being reviewed by the Home Office with a view to granting him ILR, following the grant of ILR, and of particular importance, in his application for naturalisation where he again used his false identity and confirmed that he was of good character. It was not until 2020 when he was confronted by the SRU that he admitted his use of a false identity and provided his genuine details. The respondent therefore properly took that date as the date of full disclosure when exercising his discretion to deprive the appellant of his citizenship.

25.That was precisely the point made by Judge Oxlade at [9], [21] and [22] of her decision. Mr Wilding, relying upon the judge's comments at [21], submits that had the evidence of the visit visa application been available to the judge her decision may have been different. However, that is a misreading of what the judge was actually saying at [21]. It was not the judge's finding that there would be a difference in her decision if such an application had simply been shown to have been made, but rather that there may have been a difference in the event of a full disclosure at that time of the appellant's true identity and his adopted alias. That is clear from what the judge said at [21] and [22]. As already mentioned, the evidence certainly does not suggest that there was a full disclosure at that time such that the respondent would have been aware of the deception, and the judge properly noted at [22] that the appellant continued to use his false identity after that time. It is relevant to note, in any event, that a disclosure at that time was unlikely to have assisted the appellant in his argument about delay, given the distinction made in the judgment in Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 between mere inaction and material delay by the respondent once alerted to the fraud, as I pointed out to Mr Wilding. In the circumstances the documents produced as result of the subject access request are of no materiality to the outcome of the appeal.

26.The same can be said about the document produced as a result of the freedom of information request. The letter of 31 August 2021 indicates that the statistics at 31 December 2020 show the 'limbo period' from the deprivation order until the grant of temporary leave to be 257 days (36/37 weeks) rather than the 8 weeks referred to by the respondent at [49] of the deprivation decision. That was a statistic which varied, as the letter makes clear, and as I have said above I cannot see how that gives rise to any unlawfulness in the respondent's decision. That is particularly so when considering the guidance in Muslija (deprivation: reasonably foreseeable consequences) [2022] UKUT 337, and headnote 4: "*Exposure to the "limbo period", without more, cannot possibly tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship. That means there are limits to the utility of an assessment of the length of the limbo period; in the absence of some other factor (c.f. "without more"), the mere fact of exposure to even a potentially lengthy period of limbo is a factor unlikely to be of dispositive relevance.*". It is also particularly so when there is no evidence to suggest that that longer period of time detracts from the considerations otherwise made by the respondent at [42] to [48]. Neither can it be said that it makes any material difference to Judge Oxlade's decision, particularly when she observed at [24] that the 'limbo period' suggested by the respondent may possibly be longer. At [25] and [26] the judge gave consideration to the appellant's circumstances and how the loss of citizenship would impact upon him and his family during that period of limbo. The judge noted at [25] that there had not been full disclosure of the appellant's financial circumstances and so she was only able to make a decision on the evidence before

her. That evidence suggested that the family would continue to receive an income from the family business and that there would be no impact on the appellant's wife's and children's home circumstances for that limited period of time. Neither the appellant's grounds of appeal nor the submissions made before me suggest that a longer limbo period would materially change that situation.

27.For all these reasons I do not consider that the evidence produced with the rule 15(2A) application is of any material relevance to the respondent's decision or to the judge's decision. As already explained, no proper reason has been given as to why the documents should be admitted, having not been before the judge at the time of the appeal before her and there being no duty on the part of the respondent to have produced them. However, even if admitted and considered, the documents do not disclose any unlawfulness in the respondent's decision and neither do they disclose any error of law on the part of the judge, either on grounds of unfairness or otherwise.

28.As for the first ground, which Mr Wilding addressed last, I find that to be of no merit. That ground asserts that the judge failed to identify how the appellant's deception motivated the grant of ILR and citizenship, given that he was refused asylum as a Kosovan national and was therefore not granted status on the basis of his nationality, and given that he was granted ILR under the legacy programme because of his length of residence in the UK. In making that submission Mr Wilding relied upon the decision in Sleiman (deprivation of citizenship: conduct) [2017] UKUT 00367 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, the decision in Sleiman has since been clarified and distinguished. In the case of Shyti [2023] EWCA Civ 770 the Court found it material that the Secretary of State had not gone on, in the case of Sleiman, to consider the continued deception by the applicant in his naturalisation application and his good character declaration. In this case, as in Shyti, the respondent had, of course, gone on to consider the appellant's continuing deception, without which he may not have been granted ILR and would not have passed the good character test in his naturalisation application. That was precisely the reasoning followed by the judge at [19] where she properly concluded that the respondent was entitled to find that the condition precedent was met. It is of note, in any event, as recorded at [4] and [21], that the appellant admitted that the condition precedent was met and therefore it was not a matter of challenge before the judge. It is not now open to the appellant to argue the matter. In the circumstances the first ground is not made out.

29. The last ground, challenging the judge's Article 8 assessment of the reasonably foreseeable consequences of deprivation, was not particularised by Mr Wilding, other than by reference to the issues arising in regard to the 'limbo period' which I have addressed above. In any event there is no substance to the ground of challenge. The judge, having considered all relevant circumstances, was perfectly entitled to conclude that the reasonably foreseeable consequences of deprivation had not been shown by the evidence to be such as to make deprivation of citizenship disproportionate.

30. For all these reasons I find that none of the grounds are made out. The judge considered all relevant matters and reached a conclusion which was fully and properly open to her on the evidence before her, applying the relevant legal principles and following the correct approach as set out in Ciceri and, more recently, in Chimi. She concluded, for reasons properly given, that the respondent had not erred in law when deciding that the condition precedent was satisfied or when exercising his discretion to deprive the appellant of his citizenship and that there was no breach of Article 8. She

was entitled so to conclude. There are no errors of law in the judge's decision and I uphold the decision.

Notice of Decision

31. 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

21 February 2024