IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005330
First-tier Tribunal No:
DC/50166/2022
LD/00040/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 22 August 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
UPPER TRIBUNAL JUDGE O'BRIEN

Between

ARTAN DEDA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Metzer KC, instructed by Mayfairs Law Solicitors
For the Respondent: Mr Terrell, Senior Home Office Presenting Officer

Heard at Field House on 25 July 2024

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Burnett who, in a decision and reasons promulgated on 4 October 2023, dismissed the appellant's appeal against the respondent's decision dated 27 July 2022 to deprive him of his British citizenship.

2. At an error of law hearing on 19 January 2024, Upper Tribunal Judge Perkins and Deputy Upper Tribunal Judge Mahmood (as he then was) found that Judge Burnett had erred as follows:

    a. He had misapplied **Chimi v SSHD [2023] UKUT 115 (IAC)**.

    b. He had been inadequately critical of poor-quality documents relied on by the respondent.

c. He had failed to give adequate consideration to untranslated documents provided by the appellant.

A copy of the error of law decision is annexed to this decision.

3. The panel set the decision aside for remaking in the Upper Tribunal. Directions were given for a case management hearing today. However, having applied successfully to rely on additional evidence, the appellant provided a bundle of documents on 25 April 2024 including evidence to establish that the respondent had mistaken the identity of the appellant with an Albanian individual with the same name and nearly the same birth date.

4. On receipt of that evidence, the respondent conducted her own investigations and on 24 July 2024 wrote to the Tribunal and the appellant with the results of that investigation, confirming the appellant's position, and giving notice that she had withdrawn her deprivation decision. Of course, unlike in the First-tier Tribunal, withdrawal by the respondent of the underlying decision does not give rise to any presumption that the appeal itself will be treated as withdrawn in the Upper Tribunal. Instead, this Tribunal remains seized of the appeal. See **SM (withdrawal of appealed decision: effect) Pakistan [2014] UKUT 64 (IAC)**. Both parties agreed that it would be appropriate in the situation for us to deal substantively with the appeal at this hearing, with the appellant inviting us to allow it.

5. The approach to be taken by the Tribunal when considering appeals against the decision to deprive an individual of British citizenship is set out in **Chimi (Deprivation Appeals: Scope and Evidence) Cameroon [2023] UKUT 115 (IAC)**. In short, the Tribunal should first consider whether it was open to the respondent to conclude that the appellant satisfied the condition precedent for deprivation (in this case by the use of fraud), if so whether it was open to the respondent to exercise her discretion to deprive the appellant of his British citizenship, and if so whether the reasonably foreseeable consequences of deprivation would be unlawful under section 6 of the Human Rights Act 1998. When considering the first two questions, the Tribunal has to apply public law principles, and must only consider evidence which was before the Secretary of State or which is otherwise relevant to establishing a pleaded error of law in the decision under challenge.

6. In **E v SSHD [2004] Q.B. 1044**, the Court of Appeal said at [66]:

> 'In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area. Without seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of the Criminal Injuries Compensation Board case. First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not been have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the tribunal's reasoning.'

7. Both parties now agree that the appellant has been a victim of mistaken identity. The individual identified by the respondent when she undertook her inquiries into the appellant was not in fact the appellant himself (thereby confirming that the appellant had not lied about his nationality and so had not obtained British citizenship by fraud) but was another individual: an Albanian with the same name and almost the same birth date.

8. Had the respondent asked the Albanian authorities to provide a copy of the data page of the identified individual's passport, as she now has done, it would have been readily obvious that there had been such a mistake. The deprivation decision was taken on 27 July 2022; however, the information we have now been provided with of the Albanian Mr Deda, including details from a biometric passport issued on 17 December 2019 (in particular his photograph), would have established him to be a different individual to the appellant. In other words, there was uncontentious and objectively verifiable evidence available at the date the decision was taken of the mistaken identity. The appellant and his advisors were not responsible for the mistake. The mistake was decisive in the decision-maker's decision. Consequently, we are satisfied that the deprivation decision was unlawful by reason of fundamental mistake of fact.

9. Even if the Tribunal were prohibited by authority from consider the evidence now available when reviewing the respondent's decision on the use of fraud, we are entitled to consider it when assessing the impact of the deprivation decision under s6 of the Human Rights Act 1998.

10. The foreseeable consequences of deprivation on the appellant include but are not limited to being unable to work, restrictions on banking and financing and the stigma of being found by the respondent to have been dishonest. These are not trivial interferences with the appellant's right to private life. However, these are all interferences predicated on an admitted case of mistaken identity. It cannot be right to say in those circumstances that they are proportionate. Consequently, even if we had upheld on public law grounds the respondents' conclusion that the appellant had obtained British nationality by fraud and her exercise of discretion to deprive him of his British citizenship, we would nevertheless have found that the consequences were unlawful under s6 of the 1998 Act with specific reference to Article 8 ECHR.

11. For the reasons given, we remake the decision today and allow the appeal

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
2. We remake the decision under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, allowing the appeal.

Sean O'Brien

Judge of the Upper Tribunal
Immigration and Asylum Chamber

ANNEX – Error of Law Decision

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005330

First-tier Tribunal Nos: DC/50166/2022
LD/00040/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

Artan Deda
(no anonymity order made)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr T Metzer, KC instructed by Mayfairs Law Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 19 January 2024

REASONS FOR FINDING ERROR OF LAW

(extempore)

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appeal of the appellant against the decision of the Secretary of State depriving him of British citizenship that had been awarded to him. The short point is that there is a dispute about his identity; it is his case that he was a Kosovar, but there are reasons to think that that is wrong.

2. We have been assisted this morning by an entirely realistic approach from Mr Walker and we find, as it is contended in ground 1, that the First-tier Tribunal erred in its application of the decision in **Chimi v SSHD [2023] UKUT 115 (IAC)** and that is of itself sufficient to make the decision completely unsound.

3. We also find that the First-tier Tribunal erred by not being more critical of documents of poor quality that were provided by the Secretary of State in support of his case where the quality of the documents really needed some sort of judicial consideration to see if they were of any value at all.

4. Slightly ironically, we also find the judge erred by not showing more regard to documents provided by the appellant, but rather writing them off completely because they were not translated. The absence of translation clearly diminishes their value but they can still be considered with the other evidence and they should have been.

5. These points are sufficient to make the decision unsatisfactory. There may be more criticisms to be made, but we see no point. We set aside the decision of the First-tier Tribunal.

6. This is a case where Mr Metzer, on instructions, has advised us that it may be that further evidence will be available in the near future that will be exceedingly interesting and possibly determinative of the appeal. Clearly this is only a possibility, although we are, of course, confident that it was advanced in good faith.

7. We therefore direct that this appeal is not relisted for a period of at least two months.

8. We see no need for further directions, except to say that it will remain in the Upper Tribunal. Decisions concerning the most suitable tribunal for a rehearing are finely balanced, but we find, after taking everything into account, that this is a case that is suitable to the retention here and Mr Metzer did not argue against this.

Notice of Decision

9. We find the First-tier Tribunal erred in law. We set aside its decision. We direct the case be redetermined in the Upper Tribunal and we direct it be not listed until at least two months after the date of this decision.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 January 2024