



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002041
First-tier Tribunal No:
DC/00075/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 June 2023

Before

THE HON. MR JUSTICE LAVENDER
UPPER TRIBUNAL JUDGE LINDSLEY

Between

BLERINA NIKSHIQI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Jesurum, of Counsel, instructed by Kilby Jones Solicitors

For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

Heard at Field House on 24 May 2023

DECISION AND REASONS

(1) Introduction

1. The appellant, Blerina Nikshiqi, appeals against the decision of First-tier Tribunal Judge JR Krish, in a determination promulgated on 21 February 2022, to dismiss her appeal against the Secretary of State's decision of 3 July 2020 to deprive her of her British citizenship, pursuant to section 40(3) of the British Nationality Act 1981 ("the 1981 Act"), on the basis that she had obtained her naturalisation by fraud.
2. For the reasons set out in its decision of 17 January 2023, which is annexed to this decision, this Tribunal:

- (1) found that the First-tier Tribunal had erred in law in relation to its assessment of the question whether the Secretary of State had been entitled to decide that the appellant had obtained her naturalisation by fraud, which was a condition precedent to depriving her of her citizenship; and
- (2) directed that the First-tier Tribunal's decision should be remade; but
- (3) decided that the First-tier Tribunal was entitled to conclude that, if the condition precedent was met, the Secretary of State's decision to deprive the appellant of her citizenship was proportionate under Article 8 ECHR; and
- (4) directed that this latter part of the First-tier Tribunal's decision would be preserved unless (as did not happen) a Rule 15(2A) application to adduce further evidence was made and granted.

(2) Background

3. The appellant is a citizen of Albania. She was born on 11 May 1985 in Lezhe in Albania. On 21 June 2005 she married Astrit Nikshiqi, who was also a citizen of Albania and who had also been born in Lezhe, on 28 June 1973.
4. Mr Nikshiqi entered the United Kingdom clandestinely on 3 May 1995. His application for asylum was refused and an appeal against that refusal was dismissed, but the Immigration Appeal Tribunal allowed his appeal, accepting his false claim that, although he was an ethnic Albanian, he had been born in Gjakova in Kosovo.
5. Mr Nikshiqi went on to:
 - (1) apply for a Home Office Travel Document on 13 September 1996, again falsely claiming that he had been born in Kosovo;
 - (2) be granted indefinite leave to remain on 25 January 2001;
 - (3) apply for a further Home Office Travel Document on 26 February 2001, once again falsely claiming that he had been born in Gjakova, Kosovo;
 - (4) apply on 17 June 2004 for naturalisation as a British citizen, yet again falsely claiming that he had been born in Gjakova, Kosovo; and
 - (5) be issued on 2 November 2004 with a certificate of naturalisation as a British citizen.
6. As for the appellant:
 - (1) She applied on 30 June 2005 for a visa to enter the United Kingdom as Mr Nikshiqi's wife, stating in her application form that Mr

Nikshiqi's nationality was "Albania" and submitting both her marriage certificate and Mr Nikshiqi's genuine birth certificate, each of which correctly stated his place of birth as Lezhe.

- (2) She was granted leave to enter the United Kingdom and a visa was issued to her on 16 September 2005.
 - (3) She applied on 12 September and 11 October 2007 for indefinite leave to remain, stating in her application form that Mr Nikshiqi's nationality was British. She was granted indefinite leave to remain on 11 October 2007.
 - (4) She applied on 1 June 2009 for naturalisation as a British citizen. She stated that Mr Nikshiqi's nationality was British, but she said that his place of birth was Gjakova. On 13 October 2009 she was issued with a certificate of naturalisation.
7. The appellant and Mr Nikshiqi remained in the United Kingdom and had two children, who were British citizens. The appellant and Mr Nikshiqi separated in 2016.
 8. Mr Nikshiqi's true identity was discovered as a result of checks made for HM Passport Office by the British Embassy in Tirana with the Albanian Ministry of the Interior. On 2 March 2020 the Secretary of State decided to deprive Mr Nikshiqi of his British citizenship.
 9. Meanwhile, on 20 January 2020 the Home Office wrote to the appellant to indicate that the Secretary of State was considering depriving her of her citizenship. The appellant's solicitors replied on 10 February 2020, stating, inter alia, as follows:

"Mrs Nikshiqi's instructions are that she genuinely made a mistake in relation to her husband's nationality when completing her form to be naturalised as a British citizen and that she had no intention to provide false details in relation to her husband's nationality taking into account that when her entry clearance application was made, she produced her marriage certificate as well as her husband's Albanian birth certificate both clearly stating her husband's real details."
 10. The solicitors' letter also contained submissions to the effect that it would be unfair and unreasonable for the Secretary of State to exercise her discretion to deprive the appellant of her British citizenship. The matters relied on in that context were the appellant's long residence in the United Kingdom and the position of her two minor children.
 11. However, the solicitors' letter did not contain the claim, which the appellant was subsequently to make in her evidence before the First-tier Tribunal, that Mr Nikshiqi had filled out the application form for her and, in particular, that he had written Lezhe as his place of birth, which she failed to notice when she signed the form.

(3) The Law

12. Section 40(3) of the 1981 Act provides as follows:

“The Secretary of State may by order deprive a person of citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of-

- (a) fraud,
- (b) false representation, or
- (c) concealment of a material fact.”

13. Section 40(5) of the 1981 Act provides as follows:

“Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying—

- (a) that the Secretary of State has decided to make an order,
- (b) the reasons for the order, and
- (c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).”

14. Section 40A(1) of the 1981 Act provides as follows:

“A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to the First-tier Tribunal.”

15. The correct approach to be adopted by a tribunal hearing an appeal against a decision to deprive an appellant of citizenship pursuant to section 40(3) of the 1981 Act was considered by this Tribunal in *Chimi (Deprivation Appeals: Scope and Evidence: Cameroon)* [2023] UKUT 115 (IAC). Following a careful review of the relevant authorities, the Tribunal summarised its conclusions on the law as follows, in paragraph 75 of its decision:

“(1) A Tribunal determining an appeal against a decision taken by the respondent under s40(2) or s40(3) of the British Nationality Act 1981 should consider the following questions:

- (a) Did the Secretary of State materially err in law when she decided that the condition precedent in s40(2) or s40(3) of the British Nationality Act 1981 was satisfied? If so, the appeal falls to be allowed. If not,

(b) Did the Secretary of State materially err in law when she decided to exercise her discretion to deprive the appellant of British citizenship? If so, the appeal falls to be allowed. If not,

(c) Weighing the lawfully determined deprivation decision against the reasonably foreseeable consequences for the appellant, is the decision unlawful under s6 of the Human Rights Act 1998? If so, the appeal falls to be allowed on human rights grounds. If not, the appeal falls to be dismissed.

(2) In considering questions (1)(a) and (b), the Tribunal 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.”

(3) In considering question (c), the Tribunal may consider evidence which was not before the Secretary of State but, in doing so, it may not revisit the conclusions it reached in respect of questions (1)(a) and (b).”

16. In the present case, we are only concerned with questions (1)(a) and (b).

(4) The Secretary of State’s Decision

17. The Secretary of State dealt in paragraphs 8 to 14 of her decision letter with the appellant’s immigration history, noting that in her 2005 application form she gave her husband’s nationality as “Albania” and provided both their marriage certificate and his birth certificate, each of which stated that his place of birth was Lezhe.

18. Paragraphs 15 to 19 addressed the appellant’s 2009 application form, the accompanying Guide AN and the relevant Nationality Staff Instructions, noting that the form contained not only the statement that Mr Nikshiqi’s place of birth was Gjakova, but also:

(1) The answer “No” to the following question:

“Have you ever engaged in any other activities which might indicate that you may not be considered a person of good character?”

(2) A declaration by the appellant that:

“... to the best of my knowledge and belief, the information given in this application is correct. I know of no reason why I should not be granted British citizenship.”

19. Paragraph 20 of the decision letter stated as follows:

“It is evident that you would have been refused British citizenship under S2.1 and S9.1 had the Nationality caseworker been aware that you had continued your husband’s deception to the Home Office in order to avoid arousing suspicion regarding his status with the aim of securing your own British Citizenship. However, your deception resulted in the Nationality caseworker making the decision to grant you British citizenship. ...”

20. Paragraph 21 of the decision letter stated as follows:

“Your deception became apparent to the Status Review Unit after information was received regarding your husband’s genuine identity and his dishonesty throughout the immigration process. This was discovered following checks conducted with the Albanian Ministry of the Interior through the British Embassy in Tirana. ...”

21. The Secretary of State addressed the appellant’s representations in paragraphs 24 to 27 of the decision letter.

22. Paragraph 24 stated as follows:

“Your representations state that you made a mistake in relation to your husband’s nationality when completing your form to be naturalised, especially in light of you providing your husband’s genuine details in your application for entry clearance (...). Whilst it is not disputed that you provided the correct details in your initial application, it is not credible that you would make such an obvious error especially as you and your husband are both from the same country, were married there and were both even born in the same town. There is no reasonable explanation for a completely different nationality to be entered onto such an important form.”

23. Paragraph 27 stated as follows:

“For the reasons given above it is not accepted there is a plausible, innocent explanation for the misleading information which led to the decision to grant citizenship. Rather, on the balance of probabilities, it is considered that you provided information with the intention of obtaining a grant of status and/or citizenship in circumstances where your application(s) would have been unsuccessful if you had told the truth. It is therefore considered that the fraud was deliberate and material to the acquisition of citizenship.”

24. Paragraph 28 dealt with the Secretary of State’s discretion, as follows:

“It is acknowledged that the decision to deprive on the grounds of fraud is at the Secretary of State’s discretion. In making the decision to deprive you of citizenship, the Secretary of State has taken into account the following factors, which include the representations made by your legal representative in their letter

dated 10 February 2020 and concluded that deprivation would be both reasonable and proportionate.”

(5) Submissions

25. In his admirably clear and focused submissions on behalf of the appellant, Mr Jesurum advanced five principal submissions:

- (1) Causation is a hard-edged question of logic for the Court, and the appellant’s nationality was not obtained by means of deception, because the Secretary of State already knew the true position, having been told by the appellant in 2005.
- (2) The Secretary of State failed properly to consider the question of causation, in particular the fact that the appellant had told the Secretary of State the true position in 2005.
- (3) The Secretary of State materially misdirected herself on character and, in particular, ought not to have found that the appellant had “continued” her husband’s deception.
- (4) The Secretary of State failed adequately to consider her guidance as to “deliberate” deception, i.e. paragraph 55.7.7.1 of the Secretary of State’s Caseworker Guidance, which stated that:

“The caseworker should be satisfied that there was an intention to deceive: an innocent error or genuine omission should not lead to deprivation. ...”

- (5) The Secretary of State failed adequately to consider whether deprivation was a “balanced and reasonable step”, in accordance with paragraph 55.7.10 of the Caseworker Guidance, which stated that:

“55.7.10.1 The caseworker should consider whether deprivation would be seen to be a balanced and reasonable step to take, taking into account the seriousness of the fraud, misrepresentation or concealment, the level of evidence for this, and what information was available to UKBA at the time of consideration.

55.7.10.2 Evidence that was before the Secretary of State at the time of the application but was disregarded or mishandled should not in general be used at a later stage to deprive of nationality. However, where it is in the public interest to deprive despite the presence of this factor, it will not prevent the deprivation.”

26. For the Secretary of State, Mr Whitwell submitted that there was no public law error in any part of the Secretary of State's decision.

(6) Decision

27. We consider the Secretary of State's decision in three stages, i.e. her decisions that: (a) the appellant deliberately made a false statement; (b) she obtained her citizenship by means of fraud; and (c) it was appropriate for the Secretary of State to exercise her discretion to deprive the appellant of her citizenship.

(6)(a) Deliberate Falsehood

28. Contrary to Mr Jesurum's fourth submission, the Secretary of State did consider the question whether the appellant deliberately made a false statement in her application form. That is clear from paragraphs 24 and 27 of the decision letter. It was not necessary for the Secretary of State to make express reference to paragraph 55.7.7.1 of the Caseworker Guidance.
29. We note that the appellant's solicitors' letter said, in terms which were reflected in paragraph 24 of the decision letter, that the appellant's instructions were that she had made a mistake in relation to her husband's nationality when completing the application. In fact, the false statement concerned his place of birth, rather than his nationality, but it is clear from earlier parts of the decision letter that the Secretary of State was aware that the false statement was that concerning his place of birth, rather than his nationality.
30. Mr Jesurum frankly accepted that it was difficult to say that the Secretary of State was not entitled to reject the explanation offered in the appellant's solicitors' letter, i.e. that she had made a mistake. We consider that the Secretary of State was entitled to reject that explanation. In that context, we note that it was not in dispute that the appellant submitted an application form which contained a statement (i.e. that Mr Nikshiqi's place of birth was Gjakova) which was not only untrue, but was also the same false statement which Mr Nikshiqi had made in support of his applications for asylum and for naturalisation.
31. The Secretary of State did not have to consider the appellant's claim that Mr Nikshiqi had filled out the form for her, because, as we have noted, she did not make that claim until after the Secretary of State had made her decision. The evidence which she provided on this issue to the First-tier Tribunal is irrelevant, for the reasons given in paragraph 75(2) of the decision in *Chimi*.
32. Having rejected the only innocent explanation which the appellant had offered for the making of the false statement about her husband's place of birth, the Secretary of State was entitled to conclude that the

statement was deliberately false and, consequently, that she also made false statements in the form:

- (1) when she said that she had never engaged in any other activities which might indicate that she may not be considered a person of good character; and
 - (2) when she declared that, to the best of her knowledge and belief, the information given in the application was correct.
33. Mr Jesurum submitted that the Secretary of State was obliged, when considering whether or not the appellant had deliberately made a false statement, to consider the fact that the appellant had disclosed the true position in 2005. However, it is clear that the Secretary of State did just that. That appears from the words “Whilst it is not disputed that you provided the correct details in your initial application” in paragraph 24 of the decision letter.
34. Moreover, despite Mr Jesurum’s third submission, we consider that the Secretary of State was entitled to conclude that the appellant was “continuing” her husband’s deception. As we have said, she was repeating the very same false statement which he had made in support of his applications for asylum and for naturalisation.
35. Mr Jesurum referred to paragraph 55.7.14.1 of the Caseworker Guidance, which contains two examples as illustrations of the following proposition:
- “A caseworker should consider depriving a spouse or civil partner of their British citizenship if the fraud under consideration was also material to his or her application for naturalisation.”
36. Neither of the examples was on all fours with the facts of the present case, but it is clear from paragraph 27 of the decision letter that the Secretary of State considered the question whether the appellant’s fraud was material to her own application for naturalisation. In paragraph 27, the Secretary of State expressly stated that it was her view that the appellant’s fraud was material to her application for citizenship. See also paragraph 20, where the Secretary of State set out her view that the appellant continued her husband’s fraud “in order to avoid arousing suspicion regarding his status with the aim of securing [the appellant’s] own British Citizenship.”

(6)(b) Causation

37. Turning to the issue of causation, we do not accept Mr Jesurum’s submission that this is an issue which an appellate tribunal can determine for itself. That would be contrary to the guidance given in *Chimi*.
38. Mr Jesurum’s first and second submissions were both based on the proposition that, when considering the appellant’s application for

naturalisation, the Secretary of State already knew the true position, as a result of the documents provided by the appellant in 2005, and that the false statement about Mr Nikshiqi's place of birth cannot therefore have had any causative effect. We do not accept this:

- (1) It cannot simply be assumed that the caseworker considering the appellant's application for naturalisation was aware of documents provided to an entry clearance office four years earlier in support of a different application.
- (2) Indeed, it is clear from paragraph 21 of the decision letter that the appellant's fraud was not discovered until much later.
- (3) The Secretary of State was entitled to conclude, as she did in paragraph 20 of the decision letter, that the appellant would have been refused British citizenship if the relevant caseworker had been aware of her fraud.
- (4) It was a significant feature of the appellant's application in 2009 that, as the Secretary of State concluded, the appellant made a deliberately false statement in that application. Nothing in relation to the 2005 application took away from that fact.

(6)(c) Discretion

39. The Secretary of State dealt with the exercise of her discretion in paragraph 28 of the decision letter. This paragraph was brief, but it made clear that the Secretary of State had taken account of the appellant's representations in arriving at her decision. Although she did not refer to paragraph 55.7.10 of the Caseworker Guidance, the Secretary of State considered whether deprivation would be reasonable and proportionate and concluded that it would be.
40. Mr Jesurum submitted that paragraph 55.7.10.2 applied in this case, but we do not consider that it did:
 - (1) The documents provided by the appellant in 2005 were not "evidence that was before the Secretary of State at the time of the application" made in 2009.
 - (2) Nor is there any evidence that they were "disregarded or mishandled" by the caseworker considering the appellant's application for naturalisation.
 - (3) Overall, paragraph 55.7.10.2 appears to be addressed to a different situation from that which applied in the present case.
41. Mr Jesurum submitted that the Secretary of State should have considered at this stage of the decision-making process the fact that the appellant had in 2005 provided documents which disclosed her husband's true place of birth. However:

- (1) That was not a matter relied on by the appellant's solicitors in the relevant part of their representations on the appellant's behalf.
- (2) Nevertheless, the Secretary of State recognised in paragraphs 8 to 10 of her decision letter what the appellant had done in relation to her 2005 application.
- (3) Moreover, as noted above, nothing in relation to the 2005 application took away from the fact that, as the Secretary of State concluded, the appellant made a deliberately false statement in her 2009 application.

Decision:

1. There was no error of law in the Secretary of State's decisions:
 - (1) that the condition precedent in section 40(3) of the 1981 Act was satisfied; and
 - (2) to exercise her discretion to deprive the appellant of British citizenship.
2. Accordingly, we dismiss the appeal.

Nicholas Lavender

Sitting as a Judge of the Upper Tribunal
Immigration and Asylum Chamber

5th June 2023

Annex: Error of Law Decision

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Albania born on 11th May 1985. She naturalised as a British citizen on 13th October 2009, but on the 3rd July 2020 the respondent took the decision to deprive her of her British citizenship under s.40(3) of the British Nationality Act 1981 because it was said that she had obtained it by fraud. Her appeal against the decision was dismissed by First-tier Tribunal Judge JR Krish in a determination promulgated on the 21st February 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge Komorowski on 19th April 2022 on the basis that it was arguable, as set out in the appellant's ground four, that the First-tier judge had erred in law in confusing the appellant's alleged conduct with deceptions practised by her husband in obtaining his citizenship, without proper evidence of any complicity of the appellant with the actions of her husband. As a result of this ground being arguable it is found ground one is also arguable.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and the decision should be set aside and remade.

Submissions – Error of Law

4. In the grounds of appeal, skeleton argument and oral submissions from Mr Jesurum, for the appellant, it is argued, in summary, as follows.
5. Firstly, it is argued that the case of Ciceri (deprivation of citizenship – principles) 2021 [UKUT] 238 is wrongly decided to the extent that it decides that only public law principles apply to the assessment by the Tribunal of the decision of the respondent in a human rights appeal. Begum was not a human rights appeal, and this appeal is one, and so Ciceri should not be followed as this is to fail to follow other higher precedents such as the judgment of the House of Lords in Huang v SSHD [2007] and the Supreme Court in MS (Pakistan) v SSHD [2020] 1 WLR 1373 which hold that the Tribunal must make its own assessment of the facts in a human rights appeal and not simply decide if the respondent's view is rational and supported by some evidence. It is notable that as per MS (Pakistan) the Tribunal remained the decider of the facts in a human rights appeal even though the decision relating to trafficking belonged to the Secretary of State. Ciceri erred in following Begum which was a decision in the context of the non-justiciable issue of national security rather than the justiciable issue of dishonesty. SIAC did determine questions of fact for itself in the case of U3 v SSHD [2022] UKSIAC SC/153/2018 in the context of a substantive deprivation appeal heard after Begum. Further, even if the level of assessment

applicable is based on public law principles only, it is still necessary for the Tribunal to establish the precedent facts, which in turn means that the appellant must be given an opportunity to adduce evidence in rebuttal and give oral evidence as per R (Balajigari v SSHD) v SSHD [2019] 1 WLR 4647. This would essentially amount to a non-public law based assessment as the Tribunal would then have to determine the facts for itself. Further to adopt the Ciceri approach would be to deny the Article 8 procedural protections contrary to the decision of the Court of Appeal in Gudanaviciene v Director of Legal Aid Casework [2015] 1 WLR 2247.

6. In the context of the decision of Circeri being legally wrong and in contradiction to higher authority, the First-tier Tribunal erred in law by finding itself bound by Ciceri, particularly as Upper Tribunal decisions are only binding on the First-tier Tribunal when starred. As a result, it is argued, the First-tier Tribunal erred by failing to enquire into the facts relied upon by the respondent and in failing to make its own findings on the constituent parts of s.40(3) of the British Nationality Act 1981.
7. In the alternative, if contrary to the above arguments Ciceri must be followed, it is contended that the First-tier Tribunal erred by making adverse findings against the appellant on new material rather than considering the validity of the basis of the respondent's deprivation decision and whether this decision is vitiated by public law error. In this context, it is argued, that the policy guidance of the respondent (the Chapter 55: Deprivation and Nullity of British Citizenship, the examples being at 55.7.14), which were at J13 of the respondent's bundle before the First-tier Tribunal, give support to the contention that the respondent did not follow her own guidance in finding an appellant who only joined her husband after all his deceptions were complete should be found to have obtained her status by deception. As a result, it is argued, that the error by the First-tier Tribunal in failing to conduct a public law analysis of the decision of the respondent amounts to a material error of law.
8. Secondly, it is argued, that the First-tier Tribunal failed to properly examine witness evidence and make a clear finding as to whether the appellant had in fact completed the part of the application form herself which contained the falsehood that her husband was born in Kosovo in the context of information about her being five months pregnant and having been told of possible abnormalities in the baby a few days before hand, and so plausibly having been in a distressed state. It was essential that a clear finding be made on this issue to determine whether she had perpetrated a deception as it was clear that she had previously disclosed that her husband was Albanian and his correct Albanian place of birth in her entry clearance application.
9. Thirdly, it is argued, that the First-tier Tribunal failed to give adequate reasons going to the appellant's full state of knowledge as to the entry into the naturalisation form of the dishonest place of birth of her husband given that it is accepted that the appellant's husband completed most of the naturalisation form at paragraph 49 of the

decision. It is argued that it was not enough that the appellant knew he was born in Albania but that it had to be clearly found that she acted dishonestly in making the application, and not simply that she knew that her husband had acted dishonestly in his dealing with the respondent in respect of his place and country of birth/nationality in the past.

10. Fourthly, it is argued, that in any case any dishonest assertion on the form did not cause the appellant to become British. It is argued that the appellant became British because she was married to a British citizen (even if he got that citizenship dishonestly, it had not been revoked at that point and there was no discretion to delay a decision on her application), and, it is noted, that she would have also been entitled to become British very shortly anyway because of her own period of residence. It is argued that the public interest is reduced as the appellant is not the primary perpetrator of the untruth. Further the respondent had not revoked the appellant's husband's British citizenship when she had previously told the entry clearance officer that he was Albanian - and it is argued that this should be seen as breaking the chain of causation. It is argued that the assessment of the First-tier Tribunal was insufficiently rigorous and that acquiescing in the dishonesty of another, namely the appellant's husband, and failing to "shop" or disclose the wrong doing of her husband to the respondent, did not suffice to show causation particularly when the appellant had in fact disclosed her husband's true nationality and place of birth on entry to the UK - a fact which is not properly considered by the First-tier Tribunal.
11. Fifthly, it is argued that the decision with respect to proportionality errs in law because it fails to consider delay which is a pertinent matter, and it is argued the respondent did not properly consider the historic delay from entry in the decision to deprive the appellant of her citizenship.
12. Relying upon a skeleton argument, the Rule 24 notice and oral submissions Mr Clarke, for the respondent, argued that there is no error of law in the decision of the First-tier Tribunal, in summary, for the following reasons.
13. The first ground is not arguable because the First-tier Tribunal considered this matter in the alternative: firstly, finding correctly that the principles in Ciceri should be followed, and then proceeding in the alternative to an assessment by the First-tier Tribunal, as argued for by Mr Jesurum. As such there can be no material error of law as per ground one, as the approach advocated for by Mr Jesurum was followed and the appeal dismissed. It is argued that Ciceri is correctly decided and consistent with the decision of the Supreme Court in Begum, and that both permit the First-tier Tribunal to make its own findings of fact and come to its own conclusion when considering Article 8 ECHR. It is argued that there is a different legal framework operative here to that in Balajigari, as under the 1981 Nationality Act parliament empowered the Secretary of State to exercise a discretion under s.40 and not the courts, whereas in Balajigari there was no primary legislation at large that singularly empowered the Secretary of State to exercise discretion.

14. Mr Clarke argued that the part of ground one which contends that no public law assessment of the respondent's deprivation decision under s.40(3) was carried out by the First-tier Tribunal is compromised by the fact that Mr Jesurum had accepted it would be very difficult to succeed on such an assessment. He also argued for the respondent that the examples in the respondent's guidance at paragraph 55.7.14 are only with respect to the residence requirements being satisfied and not with respect to the issue of character and conduct which is dealt with at Chapter 18 of the guidance. Mr Clarke argued that the deprivation decision of the respondent is unimpeachable and in line with her policy, and so contains no public law errors, as there were two causative frauds: the perpetuated false Kosovan place of birth which appeared on the application form and the fact that it was evidence of bad character to capitalise on the known deceptions of the appellant's husband to try to obtain British citizenship.
15. With respect to the second and third grounds it is argued by Mr Clarke that the evidence, including that with respect to the appellant's pregnancy and foetal scan, with respect to whether the appellant had acted dishonestly and whether the identified false statement on the form was causative of acquiring citizenship was considered in detail at paragraphs 37 to 51 of the decision. It is noted that the evidence was different from the extremely limited evidence before the Secretary of State which indicated the appellant had simply made a mistake. As per the respondent's guidance all adults are responsible for their own applications and so will be found to be complicit if a family member or adviser commits fraud, and the appellant ought to have known that her husband was likely to use false details as she accepted that she was aware that he had done this in the past, and further the First-tier Tribunal noted that the appellant had also changed another detail indicating that she had read the application form before signing. In these circumstances, having considered all of the evidence, it was open to the First-tier Tribunal to conclude that the appellant was a willing party to the deception and that it was material to her obtaining citizenship.
16. With respect to the fourth ground of appeal it is argued by Mr Clarke that the arguments of the appellant are properly dealt with by the First-tier Tribunal, and that there was causation as clearly the appellant would not have had the opportunity to naturalise were it not for the deceit with respect to place of birth of her husband. It is argued that the Secretary of State refused the appellant on account of her character and conduct because she knowingly continued/ perpetuated the deception of her husband with respect to his being born in Kosovo in order to avoid arousing suspicion regarding his status and to obtain citizenship for herself, and that the First-tier Tribunal did not err in law therefore in finding that the deception as to place of birth was material in her becoming a British citizen.
17. The fifth ground is not arguable because the First-tier Tribunal found that there was no significant delay whatsoever in the deprivation process,

and the ground is not properly particularised as to why the non-inclusion of an insignificant delay of 7 months means that the proportionality exercise under Article 8 ECHR errs in law.

18. At the end of the hearing before the Upper Tribunal we informed the parties that we were reserving our decision as to whether the First-tier Tribunal had erred in law and would be sending our decision in writing.

Conclusions - Error of Law

19. With respect to the first ground of appeal we find as follows. We thank the parties for their erudite submissions on the decision of Ciceri and whether it is correct or not, but, with respect, this is not the question that we must answer. We must consider whether the First-tier Tribunal erred in law by deciding to follow this decision of an Upper Tribunal Presidential Panel. It was clear that the extent of the role of the First-tier Tribunal was in dispute between the parties in the light of the decision in Ciceri. Having reviewed the various legal authorities the First-tier Tribunal decided to follow Ciceri, particularly as it was determined by a panel of the President and Vice-President of the Upper Tribunal (IAC). We do not find that the First-tier Tribunal can be said to have erred in law by following Ciceri. Indeed, for the reasons given in Berdica (deprivation of citizenship: consideration) [2022] UKUT 276 (where it was held: “Decisions of the Upper Tribunal are binding on the First-tier Tribunal, not only in the individual case by virtue of section 12 of the Tribunal, Courts and Enforcement Act 2007, but also as a matter of precedent.”) the first Tier-Tribunal acted entirely properly. It may be, as is indicated by the First-tier Tribunal at paragraph 34 of the decision, that Ciceri does not sit easily with other decisions of the higher courts such as Balajigari and that the ultimate correct legal path will have to be determined by the Court of Appeal and/or Supreme Court, but that certainly does not mean that the First-tier Tribunal erred in law by following Ciceri. Further, as Mr Clarke has submitted, the First-tier Tribunal went on to make its own findings in the alternative, so the decision could not materially err even if Mr Jesurum were right in arguing that Ciceri should not have been followed, although we emphasise that we find the First-tier Tribunal was correct in its primary decision that Ciceri should be followed.
20. However, we do find that there is merit in the last part of ground one. We find that the First-tier Tribunal, having decided to consider the s.41(3) decision by way of a public law assessment following Ciceri did not actually provide a reasoned decision on this basis. Although Mr Jesurum accepted, as recorded at paragraph 35 of the decision, that it would be very difficult for the appellant to succeed on a challenge on this basis, he did not concede the point. We find that to say simply as the First-tier Tribunal judge did at [35]: “I am satisfied that the SSHD’s findings of fact, on the material available to her, were not unsupported by any evidence, or irrational” was not, in our assessment, sufficient, particularly in light of the submissions before the First-tier Tribunal with respect to causation. We have sympathy with the First-tier Tribunal Judge who in the context of Mr Jesurum’s submissions decided to

determine the case in the alternative by looking at further material and making her own mind up on whether the appellant had obtained her citizenship by fraud, but ultimately this was not the task she had correctly decided was her duty to perform.

21. We pause here to note that this case does not involve what might be termed the primary actor in the fraud: the appellant is the wife of a man who obtained his exceptional leave to remain, indefinite leave to remain and British citizenship by fraudulently pretending to be a Kosovan when he was in fact an Albanian citizen. He has been deprived of his citizenship and now has exceptional leave to remain in the UK. The appellant met and married her husband in Albania in 2005 after he had made all of his fraudulent statements to the respondent, and she told the truth about his Albanian birthplace and stated his nationality to be Albanian when applying for entry clearance to join him in the UK in the same year. It is accepted by all that her entry clearance application was granted on the basis of the truthful position as to her husband's place of birth and nationality. Further, it is our understanding, that the appellant told no lies in any application to the respondent at any point when obtaining leave to remain and indefinite leave to remain. The sole untruth the appellant put before the Secretary of State was the place of her husband's birth (which was stated as being Kosovo) on her naturalisation form, although she accepts that she was aware of her husband's deceit on the respondent throughout her time in the UK, and that he had put his place of birth as Kosovo when registering the births of their children.
22. We do not, at this stage, take a position as to whether this factual matrix suffices, in the context of what is said in the decision letter of the respondent, to rationally deprive the appellant of her citizenship on the basis of fraud, or whether the impugned behaviour was rationally found to be directly material to the grant of citizenship, but we set out these facts so that it is clear why we do not find that the outcome of a public law assessment would inevitably be that the decision of the respondent was rational, in accordance with the respondent's policy and sufficiently supported by evidence. We therefore find that this error suffices to mean that the decision of the First-tier Tribunal must be set aside and remade.
23. With respect to the second, third and fourth grounds we find that any errors are in any event immaterial, as the wider consideration of the facts taking into account material not before the respondent going to dishonesty and causation, and the making of findings on these issues, was not one which the First-tier Tribunal properly should have carried out. It was not for the First-tier Tribunal Judge to decide herself whether the appellant had been dishonest when submitting a naturalisation form with Kosovo as her husband's place of birth, or whether the placing of the false place of birth on her naturalisation form was properly causative of the appellant obtaining citizenship by deception. Instead, a review on public law principles of the overarching rationality of decision (including an examination of the relevant policies) and reasoning in the

decision letter on this issue was needed. The First-tier Tribunal erred in law by failing to do this, as we have found above, and we find that it is not productive to examine whether the First-tier Tribunal Judge's own reasoning on the issue of dishonesty or causation is legally flawed or not.

24. The fifth ground does not challenge the finding of the First-tier Tribunal, that the delay of the respondent was only a matter of seven months in the appellant's case, as set out in the reasoned findings at paragraphs 58 to 64 of the decision, and therefore we find that delay could not be a material factor in any proportionality assessment applying the principles developed in EB (Kosovo) v SSHD [2009] AC 1159. We therefore conclude that there was no material error of law for the First-tier Tribunal to have failed to place delay into the balance when conducting the proportionality assessment, and it follows that we find that the First-tier Tribunal Article 8 ECHR proportionality assessment is not vitiated by error of law.
25. We therefore preserve the findings of the First-tier Tribunal with respect to the proportionality of the decision to deprive the appellant of her British citizenship under Article 8 ECHR and the appeal will not need to be remade in this respect unless the appellant can provide evidence of a significant change of factual circumstances affecting this assessment. In which case a Rule 15 (2A) Tribunal Procedure (Upper Tribunal) Rules 2008 application must be made to adduce this evidence, which, if granted, will then result in this new evidence being placed in the balance with the other findings, and the final Article 8 ECHR balancing exercise being remade. If, however, it is found on remaking that the decision of the respondent depriving the appellant of her citizenship is flawed on public law grounds then the proportionality/ Article 8 ECHR decision will fall away as irrelevant and will not form part of the final decision of the Upper Tribunal.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. We set aside the decision of the First-tier Tribunal dismissing the appeal.
3. We adjourn the remaking of the appeal which will be confined to deciding if the relevant condition precedent specified in s.40(3) of the British Nationality Act 1981 exists for the exercise of discretion to deprive the appellant of her British citizenship by way of a public law assessment of the decision of the respondent, and will only go onto re-consider whether the appellant's Article 8 ECHR rights are interfered with disproportionately if the review of the s.40(3) decision finds that it is not flawed on a public law analysis and a Rule 15 (2A) application to adduce further evidence is made and granted.

Fiona Lindsley

Case No: UI-2022-002041
First-tier Tribunal No: DC/00075/2020

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23rd January 2023