IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003914
First-tier Tribunal No:
DC/50041/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 June 2023

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

The Secretary of State for the Home Department

Appellant

and

A M
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr T Melvyn, Senior Home Office Presenting Officer
For the Respondent: Mr P Nathan, Counsel instructed by Oak Solicitors

Heard at Field House on 15 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. Although the appellant in these proceedings is the Secretary of State, I continue to refer to the parties as they were before the First-tier Tribunal ("FtT").

2. On 24 October 2018 the Secretary of State made a decision to deprive the appellant of his British citizenship on the basis that he had obtained that citizenship fraudulently.

3. The further background to the appeal is that the appellant came to the UK on 22 August 1999, claiming to be Kosovan. His claim for asylum was refused in a decision dated 16 January 2001. The appellant appealed that decision and his appeal came before Adjudicator E. Martins who allowed the appeal in a decision promulgated on 30 December 2003.

4. Following that decision, the appellant was issued with a certificate of naturalisation as a British citizen on 26 May 2005.

5. However, on 4 October 2013 he was convicted of being knowingly concerned in the supply or production of drugs and received a sentence of seven years' and one month imprisonment on 23 December 2013. On 16 April 2018 the respondent wrote to the appellant notifying him that information had come to light via the British Embassy in Tirana to the effect that he was someone of Albanian nationality (rather than Kosovan). It is said that the appellant did not receive this correspondence and it was returned to the respondent in the post.

6. It appears that the first time that the appellant became aware of the respondent's view as to his true nationality, and therefore his British citizenship, was when he was trying to fly from Montenegro to London. Immigration officials told him that his British passport had been revoked. When the appellant finally returned to the UK his solicitors obtained his file from the respondent via a subject access request.

7. The appellant's appeal against the 24 October 2018 decision to deprive him of his British citizenship came before First-tier Tribunal Judge M. H. D. Cohen at a hearing on 26 May 2022. She allowed the appeal, concluding that the respondent had not established that the condition precent for depriving the appellant of his British citizenship was met. At issue before the FtJ was whether he did obtain his British citizenship by fraud.

The FtJ's decision

8. The FtJ identified the documents that she had before her. She referred to the argument on behalf of the appellant, contained in the skeleton argument, that he had established that he was a member of the Ashkali minority in Kosovo in respect of which he had relied primarily on official documentation issued by the United Nations Mission In Kosovo (UNMIK).

The appellant's submission was that the respondent had failed to give any consideration to Adjudicator Martins' findings in the allowed appeal, and the evidential basis for those findings. In support of the appeal the appellant also provided a copy of a Kosovan passport.

9. At [14] the FtJ said this:

> "14. At the commencement of the hearing Ms Davies, for the Respondent, acknowledged that the Respondent had not grappled with the ASA [appellant's skeleton argument] and the recently supplied documents including the Appellant's Kosovan passport. Ms Davies stated that it was not appropriate to adjourn to allow the Respondent to verify the passport due to a lack of resources in the verification department. Ms Davies stated that the Respondent had no particular issue with the documents."

10. In evidence the appellant said that he obtained his Kosovan passport on 4 September 2019. It was issued by the Kosovan authorities and handed to him a week after that date.

11. The FtJ gave an appropriate self-direction on the burden and standard of proof and in relation to s.40(3) of the British Nationality Act 1981 which she quoted as follows:

> "(3) The Secretary of State may by order deprive a person of a 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."

12. Under the subheading "Findings and reasons" the FtJ referred to various authorities, including *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7 and *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769 in terms of the legal principles to be applied, and in the context of the decision of the Upper Tribunal in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC). The FtJ quoted a headnote from *Chiceri*.

13. At [23] the FtJ noted that Adjudicator Martins found firstly, that the appellant was from the Ashkali community in Kosovo, on the basis of which he feared return, and secondly that there was documentary evidence showing that the appellant's mother and brother had been killed in Kosovo, with their death certificates recording that they were killed by firearms.

14. She also noted that Adjudicator Martins made reference to evidence from UNMIK, some of which is in the Home Office bundle and refers to the

appellant as a member of the Ashkali minority group. She also noted that the UNMIK evidence was accepted by the Adjudicator. The FtJ correctly identified that the findings made by Adjudicator Martins must be her starting point.

15. At [26] the FtJ said that she had carefully considered the evidence referred to in the respondent's decision to deprive the appellant of his British citizenship, dated 24 October 2018. She said that the documents appeared to be copies but that they were in any event "extremely unclear". She said that it was not even possible to read the full names or remaining details clearly. She noted that it was said in the respondent's decision that "evidence came to light via the British Embassy in Tirana in relation to those documents but the FtJ said that there was no explanation as to what correspondence prompted those documents or the queries that were raised in the correspondence.

16. At [27] she referred to the appellant's witness statement in which he said that he had had sight of the documents provided by the Secretary of State but "does not recognise them". As to the apparent registration of him, his father and his brother in the Albanian records, the appellant stated that the dates of birth for his and his brother were incorrect. His father's date of birth was correctly recorded and in his witness statement the appellant accepted that it would be an incredible coincidence if this was another family.

17. The FtJ noted that in the appellant's witness statements he said that he could only assume that the registration of the male members of his family with the Albanian authorities may have been done either by his father or grandfather in relation to old trading systems that his family, as Ashkali, were involved with before he left Kosovo. That community, the appellant's witness statement said, dealt in trading livestock and going to markets throughout the Balkans. His explanation was that they were stateless people for many centuries and in the years before international borders trade would have taken place within all the large markets within the wider region. Once stricter borders were in place, in order to continue that trade and be able to access the relevant markets, it was quite possible that his father or grandfather may have registered them with the Albanians without the appellant knowing, the witness statement said, and indeed also with the Bulgarians or the Greeks, there having been no need at that time to register with the individual space of the former Yugoslavia, owing to the free movement at that time between States. In his witness statement the appellant also reiterated that the UNMIK documents were genuine and that he was born and raised in Kosovo.

18. The FtJ referred to the appellant's second witness statement in which he explained that *en route* to the UK, when he learned of the difficulties with his British passport, he stopped in Kosovo in order to obtain further proof of his Kosovan nationality. That resulted in his receiving a Kosovan passport following a completed application.

19. At [29] the FtJ said as follows:

> "It remains the case that the Respondent has failed to properly consider the relevance of the UNMIK evidence; Adjudicator Martins' determination; the Appellant's witness statements; and Kosovan passport, despite having been provided with ample opportunity to do so. I agree with Ms Davies that on the face of it, there appears to be no particular issue with the Appellant's Kosovan passport. Having considered the evidence relied upon by the Appellant and the Respondent I find that I prefer the Appellant's evidence for the reasons set out above."

20. At [30] she concluded as follows:

> "I therefore accept Mr Nathan's submission that the Respondent has consequently fallen into legal error of fact and law in reaching and maintaining her decision to deprive the Appellant of his British nationality. I conclude that the Respondent has made findings of fact which are based on a view of the evidence that could not reasonably be held. Accordingly, the Respondent has failed to satisfy the condition precedent; she has failed to demonstrate that the citizenship was obtained by fraud, misrepresentation or concealment of a material fact."

The Grounds and Submissions

21. The respondent's grounds are twofold, firstly it is said that the FtJ failed to make findings and resolve conflicts of fact, and secondly that she had made a perverse finding.

22. In relation to ground 1, the grounds refer to [29] of the FtJ's decision, in particular in relation to the Kosovan passport. It is said that the FtJ had failed to provide a reason why a passport obtained by application in 2019 would on its own undermine the respondent's case that the appellant employed deception whilst dealing with the respondent's officials. The grounds submit that the respondent had never disputed the appellant's ability "to <u>obtain official documents</u>" (sic) rather, her whole case is based on the appellant's ability to employ deception in order to obtain such documents.

23. At [3] of the grounds it is said that had the FtJ considered the evidence at page 2 of the appellant's witness statement she would have noticed that his account regarding his knowledge of the Secretary of State's revocation of his passport on 28 August 2019 was at odds with his explanation given for how he obtained the Kosovan passport. This, it is said, was followed by a failure to make a finding in respect of this factual conflict.

24. At [4] of the grounds there is an acceptance that "the documents are not clear in the bundle", although it is said that the appellant has not suggested by his evidence that they are not true. His evidence before the FtJ was that he does not "recognise" the documents. The grounds contend that there was no explanation given by the FtJ as to why she preferred the

appellant's evidence as to how the registration of family members with the Albanian authorities came about, as against the official documentation obtained by the respondent. It is further said that had the respondent's evidence been considered properly, the FtJ would have realised that what the appellant said in evidence before the FtJ was at odds with what he said in his 5 December 2003 witness statement in terms of his family being perceived as collaborating with the Serbs, and thus being persecuted by ethnic Albanians.

25. At [6] of the grounds, it is asserted that the appellant does not dispute the respondent's evidence that his mother and sibling are alive and that his sibling lived with him in the UK from 2005. However, the FtJ made no findings in that respect, the grounds say.

26. The culmination of this ground is that the failure by the FtJ to make findings in respect of key factual disputes between the parties amounts to an error of law such that the respondent is left without knowing why the appeal against her decision was "dismissed" (but presumably this should read 'allowed').

27. Ground 2 takes issue with [29] of the FtJ's decision in relation to the evidence from UNMIK and Adjudicator Martins' determination. It is asserted that the FtJ was wrong to say that the respondent did not engage with Adjudicator Martins' determination in her decision to deprive the appellant of his citizenship. In particular, the respondent referred to evidence demonstrating that the appellant's real identity contradicts the claim he made before the Adjudicator. Adjudicator Martins' decision was based on a document which could easily have been obtained.

28. Finally, it is said that although perversity is a high threshold, the FtJ made a finding that no reasonable judge would make in the light of the evidence before her.

29. In oral submissions Mr Melvyn relied on the grounds of appeal and referred to the grant of permission in respect of the FtJ's decision. He submitted that simply preferring the evidence of the appellant was not sufficient.

30. Although it was true that perversity was a high threshold, Adjudicator Martins decided the appeal before her to the lower standard of proof, but assessing documents as before the FtJ, required a higher standard to be applied.

31. As regards the respondent's assertion that there was evidence that the appellant's brother and mother were in fact alive, contrary to his claim before the Adjudicator, Mr Melvyn admitted that there was no Presenting Officer's minute revealing what was said at the FtT and there was nothing else in terms of evidence in relation to the assertion by the respondent in the April 2018 decision letter about his mother and brother in fact being alive.

32. In his submissions, Mr Nathan argued that there was in fact no evidence that the appellant's mother and brother were alive or that his brother lived with him in the UK, as asserted in the respondent's letter of April 2018. There is no evidence to support the respondent's position in the subject access disclosure obtained by the appellant's legal representatives. In addition, nothing was said by the Presenting Officer at the hearing before the FtJ in that regard.

33. Mr Nathan also referred to [14] of the FtJ's decision where it was said on behalf of the respondent that there was "no particular issue with the documents". In particular, that referred to the appellant's Kosovan passport.

34. It was submitted on behalf of the appellant that it simply could not be said that the FtJ failed to reach conclusions on the evidence. There was no evidence to support the respondent's assertion that the appellant's mother and brother were in fact alive.

35. As regards [5] of the grounds, which asserts that had the evidence provided by the Secretary of State been properly considered the FtJ would have realised that the appellant's account was inconsistent in terms of his 5 December 2003 witness statement saying that his family were perceived to be collaborating with the Serbs, it is not clear what the alleged conflict in the evidence is supposed to be.

36. Likewise, the assertion at [3] of the grounds in terms of inconsistency in his account in relation to his knowledge of the respondent's revocation of his British passport on 28 August 2019.

37. It was submitted on behalf of the appellant that the FtJ did indeed make findings of fact on the relevant issues. Furthermore, the appellant's evidence at the hearing before the FtJ was unchallenged. It was submitted that the FtJ's conclusions at [29] at [30] are entirely rational.

38. Ground 2 is really a subset of ground 1, it was submitted. There is no perversity in the FtJ's conclusions or in her assessment of the evidence.

39. Mr Melvyn, in reply, conceded that [4] of the respondent's grounds accepts that the documents in the bundle before the FtJ were not clear. However, he submitted that those documents were resubmitted onto the CCD platform at the time of or prior to the hearing before the FtJ.

40. Furthermore [6] and [7] of the respondent's pre-hearing review advances submissions on the UNMIK documents relied on by the appellant, in particular the submission that little weight should be attached to that documentation because it is not known what process was followed by UNMIK in verifying the appellant's identity or what identity details he gave to the UN.

41. As regards [3] of the grounds, that relates to the differences in the appellant's witness statements and that there was no assessment by the FtJ of how the UNMIK documents were verified.

42. It was, however, accepted that it was not clear precisely what point was being advanced in relation to [5] of the grounds.

43. Finally, it was submitted that evidence of the appellant's family being registered in Albania is difficult to reconcile with the appellant saying that he was born in Kosovo.

44. Mr Nathan invited me, as a matter of law, to consider that the proposition that clearer copies of documents were uploaded to the CCD platform is not something that is advanced in the respondent's grounds in support of the application for permission to appeal and has not been raised previously. There has not been an opportunity for the appellant to consider that matter.

Assessment and conclusions

45. At the conclusion of the hearing I announced my decision that I was not satisfied that there is any error of law in the FtJ's decision. My reasons are as follows.

46. Above, I have summarised the FtJ's decision and quoted parts of it. As a broad, general observation, in my view it is clear that the FtJ did evaluate the evidence before her, and did so in a careful and methodical way.

47. She very properly observed that the findings by the Adjudicator were to be her starting point. As regards the respondent's reliance on evidence obtained from the British Embassy, the FtJ said that she had considered that evidence carefully, and indeed that is what she appears to have done. She noted that the documents appeared to be copies, but that they were in any event extremely unclear. She explained why, for example, it was not even possible to read the full names on the documents or the remaining details clearly. She referred to the respondent having said that in relation to those documents "evidence came to light via the British Embassy in Tirana", but pointed out that there was no explanation as to what correspondence prompted those documents or the queries that were raised in any such correspondence.

48. As regards the clarity of the documents, Mr Melvyn submitted that clearer copies were uploaded to the CCD platform. However, this belies the acknowledgment in the respondent's grounds of appeal to the UT that "the documents are not clear in the bundle". In addition, as submitted by Mr Nathan, this appears to be the first time the suggestion that clearer copies of the documents had been uploaded has been made. It is not apparent that the FtJ was asked to consider any further, or clearer, documentation and no submission appears to have been put before her in relation to the availability of clearer documents. The FtJ dealt with the appeal on the basis of the evidence that was put before her.

49. The appellant provided an explanation for how it could be that the correct details for his father are recorded in Albanian records, acknowledged as being correct by the appellant in evidence. The FtJ was entitled to accept the appellant's explanation, in particular in the absence of any apparent challenge to it at the hearing before her.

50. Although at [29] the FtJ said that the respondent had failed properly to consider the relevance of the UNMIK evidence, there is in fact some consideration of that evidence in the respondent's review. The proposition there is that little weight should be attached to the UNMIK evidence because of a lack of knowledge as to what process UNMIK followed "in verifying identity and what identity details the A gave the United Nations". However, the FtJ was entitled to take into account that in the respondent's actual decision letter dated 24 October 2018 there was no consideration of the UNMIK documents. Furthermore, the FtJ at [29] said that she agreed with the respondent's representative before her that "there appears to be no particular issue with the Appellant's Kosovan passport". This reflected what the respondent's representative said, as recorded at [14] of the FtJ's decision.

51. Furthermore, aspects of the respondent's grounds before me could not be explained, for example [5] of the grounds.

52. As regards [3] of the grounds, it may be, although it is not clear, that the assertion being made is that the appellant's witness statements are inconsistent in that in his first witness statement before the FtJ he did not mention that he went to Kosovo to obtain proof of his Kosovan nationality, thereby obtaining a Kosovan passport. This is surmise on my part because what is said at [3] of the respondent's grounds is not clear. If it does relate to inconsistency, the appellant gave an explanation for that inconsistency in the second witness statement, and the FtJ referred to that aspect of his second witness statement at [28].

53. In my judgement, the respondent's appeal in relation to the FtJ's decision reflects nothing other than mere disagreement with the FtJ's analysis of the evidence. As regards the suggestion of perversity, the high threshold for establishing perversity is far from being met in this case.

54. The FtJ was entitled to conclude that the respondent had failed to establish that the condition precedent is met in terms of the allegation that the appellant's citizenship was obtained by fraud, false representation or concealment of a material fact. Accordingly, the FtJ's decision stands.

Decision

55. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to allow the appeal, therefore, stands.

Case No: UI-2022-003914
First-tier Tribunal No: DC/50041/2020

A.M. Kopieczek

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5/06/2023