



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000687
First-tier Tribunal No:
DC/50301/2021
LD/00104/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 August 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

Secretary of State for the Home Department

Appellant

and

Elvis Kurtaj
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr T Lindsay, Home Office Presenting Officer
For the Respondent: Mr G Mavrontonis, instructed by Evolent Law

Heard at Field House on 1 August 2023

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but nonetheless for the purposes of this decision we will refer to the Secretary of State as the respondent and Mr Kurtaj as the appellant.
2. The Secretary of State applied, with permission granted by Upper Tribunal Judge Bruce, against the decision of First-tier Tribunal Judge Chong (the judge) who allowed the appellant's appeal against deprivation of citizenship.
3. The appellant is an Albanian national born on 27th February January 1985. He entered the United Kingdom at the age of 15 years on 16th October 2000 (although he claimed he was 14 years with a date of birth of 27th February 1986) and applied for asylum claiming to be a Kosovan national born in Kosovo in Prisheve. His claim for asylum was refused on 15th October 2001 but he was granted exceptional leave to remain on 16th October 2001. On 9th September 2005 he applied for Indefinite Leave to Remain with the same false details and then, on 14th December 2006 at the age of 21 years, he

applied for naturalisation. A decision to deprive the applicant of citizenship was issued on 19th November 2021.

The deprivation decision (“the decision letter”)

4. We have set out the deprivation decision at length to demonstrate the omissions which the judge made in her decision when addressing the detailed reasons given by the Secretary of State for removing the appellants British citizenship. In essence the Secretary of State asserted that the appellant had submitted an Indefinite Leave to Remain application (2005) when an adult, in which he lied, and gave false information and in his naturalisation application (2006) he did the same and he also concealed information about his good character.
5. In her decision letter the Secretary of State set out section 40 of the British Nationality Act 1981 and made reference to the Nationality Instructions Chapter 55 in relation to false representations and concealment of any material fact. When making his application for Indefinite Leave to Remain (Annex L mistakenly referred to as Exceptional Leave to Remain although the date confirms to which form is referred), he repeated the details given and also stated that he had ‘continued fear’ of returning to the country from which he sought asylum (Kosovo). The letter confirmed that he signed the declaration in the Indefinite Leave to Remain application on 9 September 2005 *‘which clearly states that it is an offence under the Immigration Act 1971 to make a statement or representation which you know to be false or not believe to be true, or to obtain or to seek to obtain leave to remain in the United Kingdom by means which include deception (Annex L Page 15). You were 19 years of age at the time of this application. On 26th October you were granted Indefinite Leave to Remain.’*
6. The letter noted at [19] that on 14th December 2006 he submitted an application for naturalisation claiming to be a Serbian national (born in Presevo (Prisheve), Serbia). The letter specifically states at [20] *“when asked whether you have engaged in any other activities which might be relevant to the question of whether you are a person of good character, you tick the box to answer “no”...Finally, you ticked the boxes to confirm you had read and understood the guide Naturalisation as a British Citizen a guide for applicant’ (“AN”) but you understood that a certificate of citizenship may be withdrawn if it is found to have been obtained by fraud, false representation or concealment of any material fact...You signed the declaration on the 30th of November 2006 at the age of 20.”*
7. The decision letter identified that the applicant then sponsored his spouse’s application for leave to remain in August 2016. On the 23rd of April 2021 a referral was received by the Status Review Unit from Her Majesty's Passport Office which alleged the appellant had obtained his British citizenship through the use of fraud and had provided a false identity when entering the UK and applying to naturalise as a British national. Further evidence was provided that showed the British embassy in Tirana had completed birth verification checks with the Kosovan and Albanian authorities. Official documentation showed the Albanian National Register with the appellant’s and his parents’ details but that there was no national registered on the Central Civil Status Register of Kosovo or Serbia with the details provided by the appellant. In response to a further information

letter and investigation, the appellant solicitors accepted that the appellant was an Albanian national and provided mitigation asserting that he made a claim as a vulnerable and unaccompanied minor when applying for asylum and misguided by some of the people he met. He provided a copy of his genuine Albanian personal certificate which confirmed his genuine details.

8. Consideration was given to the materiality of the fraud employed and reference made to chapter 55 of the nationality instructions. It was noted that at no point did the appellant provide the Secretary of State with the true circumstances and this allowed him sufficient residency to naturalise as a British citizen. Had the caseworker known at the point of considering his application that he was not entitled to his grant of indefinite leave to remain his application would have been refused. Chapter 55.7.7.1 confirms that an innocent error or genuine omission should not lead to deprivation, but a deliberate abuse of immigration or nationality application processes may lead to deprivation. The applicant had ample opportunity during his applications and process is to provide the Secretary of State with his genuine details but chose not to and instead provided a fabricated identity.
9. In the case of an adult the fact that an individual was advised by another person to give false information does not indicate they were not complicit in the deception and adults are held legally responsible for their own citizenship applications (Chapter 55.7.11.5).
10. Additionally, when the appellant signed his naturalisation application, he confirmed that he had read and understood the guide 'Naturalisation as a British citizen'. This also specified that to be of good character he should have shown respect for the rights and freedoms in the UK and observed its laws and further he must say whether he had been involved in anything which might indicate that he was not of good character. He must give information about any of these activities no matter how long ago this was. Should he have any doubt about whether he had done something that might lead the Secretary of State to consider that he was not of good character he should say so. (Annex AN).
11. Chapter 18 Annex D gave guidance to the caseworker regarding the good character requirement. The guidance states that the Home Office should normally accept that an applicant is of good character if there is no information on file to cast serious doubts on the applicant's character and if any of the factors at paragraph 1.2 were not met, or it is obvious from the papers that the applicant is unsuitable for naturalisation, the Home Office should consider refusing the application 'without further ado'. At paragraph 38 the decision maker referred to paragraph 2.1 of this guidance such that the Home Office would not normally consider applicants to be of good character if there was information on file to suggest they had practised deceit in their dealings with the Home Office. Had the caseworker known he had used deception to acquire a grant of indefinite leave to remain his application would have been refused. Concealment of information must raise doubt about an applicant's truthfulness and if the deception involved was serious and deliberate the application should normally be refused.
12. It was considered that the concealment of his true identity on all applications with Home Office was deliberate and this damaged his good character. Had the caseworker known he had concealed relevant

information pertinent to his naturalisation application he would not have met the good character requirement and the application would have been refused. He had given fraudulent identity details in all his dealings with the Home Office from his original asylum claim to and including his application for naturalisation which was evidenced by his Albanian personal certificate and Albanian family certificate. This was done in order to subvert the immigration system and gain settled status to which he was not entitled. His fraudulent representations regarding his place of birth and nationality meant he was able to accrue a significant period of residence in the UK which was the reason he was granted indefinite leave to remain. His deception was therefore material to the grant of settled status necessary to apply for citizenship. He continued this deception when naturalising; clearly, he had no intention of revealing the truth of his own volition until 14 years later for his own gain. He signed the declaration on his naturalisation form after making false representations and ignored the warning that this was a criminal offence. All of this raised serious questions as to his good character. Had the caseworker been aware of these details there is no doubt his application would have been refused both because of his deception was material and because of questions about his good character. It was not accepted that there was a plausible innocent explanation. His applications would have been unsuccessful had he told the truth.

Grounds of appeal

13. The Secretary of State 's grounds of appeal were as follows:
14. Ground (i) The judge's finding that the grant of citizenship was not influenced by false nationality claims and the condition precedent was not met, was based on speculation and was contradicted by the evidence in the respondent's bundle. In his ILR application the appellant confirmed he still maintained a fear of the country from which he sought asylum, and it is clear from the document that if that was not the case the appellant should not have been making a claim for ILR using the form he did. It was accepted that the appellant had no fear of return to Kosovo and therefore abundantly clear that he continued to claim to be a Kosovo national and in fear of return, and that had a material bearing on his grant of leave as he would have been required to make a claim for ILR in a different form with separate requirements if he did not maintain that fear. The respondent was denied through the appellant's continued deception an opportunity to consider his case as an individual who did not have fear of return to the country he claimed asylum from. It was simply not open to the judge to conclude that as ELR was granted after his asylum was refused it must have been in the form of a concession not affected by his nationality as the judge found at [31]. The judge impermissibly speculated as to how the appellant was granted his further leave and assumed it was as a result of a concession. At no point did the respondent refer to the appellant having been granted leave under any form of concession. And it was not open to the judge to conclude so.
15. Ground (ii). The judge failed to address the grounds of refusal in their entirety. The deprivation was made not only on the basis of deception used in his applications but also on the grounds of the use of deception in relation to his good character. Section 40(3) (c) BNA 1981 refers to deprivation

owing to concealment of material fact and Section 6 of the BNA 1981 requires the appellant to be of good character before considering whether to grant citizenship. The judge however made no findings on any of these grounds. The respondent was entitled to seek deprivation on this basis alone.

The hearing

16. Mr Lindsay accepted that a section of the grounds, which was addressed by paragraph 23 of Mr Mavrontonis' Rule 24 notice, was not sustainable in relation to the submissions made to the judge because there was no detail on that point. That, however, had no affect on the content of the remaining grounds. The judge's findings were not connected to reality. There was no evidence that the appellant had been granted leave as an UASC (a minor). In effect the judge's findings were not capable of showing the Secretary of State's decision was perverse which was the relevant test under **Begum** [2021] (UKSC) 7. An inferential decision at [32] was not capable of reaching the standard to found a conclusion that the Secretary of State was not capable of reaching her decision. Missing from the analysis was that the appellant had also pretended to be younger than he was. A false date of birth may also be relevant to a grant of citizenship. If the Secretary of State had been aware at the time of the grant of ELR, she may not have been satisfied he was under 18 at all. Where at [26] the judge finds the Secretary of State had taken into account an irrelevancy such as place of birth and nationality, the judge herself omitted to identify that the date of birth may have been relevant. The judge had found that the matters on which the appellant was dishonest were not relevant, but the test was that of review of rationality.
17. In relation to ground (ii) the judge only dealt with half the case. The applicant made false representations in his application for naturalisation and further this was set out in the deprivation decision. The question was whether the Secretary of State was entitled rationally to form the view she did on knowing he practised deception and there was only one answer to that question.
18. Further the question on good character detailed in the decision letter was not addressed. Additionally, there was evidence of adverse immigration history contrary to the judge's findings at [31].
19. At the hearing Mr Mavrontonis relied substantially on his Rule 24 response. Much of the litigation history was accepted. The appellant turned 18 on 27th February 2003 and made his applications for ILR and naturalisation as an adult. He submitted the grounds of challenge were a disagreement and Judge Chong was best placed to make relevant findings. Paragraph 26 was not raised in the grounds of appeal and there was no challenge to the fact that the appellant was granted ELR because he was an unaccompanied minor. The false information needed to have a direct impact on the grant of citizenship not the leave to remain. The Secretary of State had not accepted the appellant's version of events put forward in his asylum claim and that was relevant and her finding that ELR was granted as a concession was open to her. He was a child on entry whatever the date of birth now

accepted. The judge considered **Begum** and had a detailed skeleton argument from counsel. There was a detailed analysis of the evidence by the judge. There were no findings on article 8 at all and Mr Mavrontonis submitted that should we find an error of law the matter should be remitted to the First-tier Tribunal.

Analysis

20. In relation to ground (i) the test the judge had to address was that as set out under **Begum**, which was whether the *'Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held'*. There was indeed a specific challenge in the grounds to the fact that the ELR was granted owing to a concession. There was no indication in the papers that the grant of ELR, made when the applicant was a minor was simply on the basis he was an unaccompanied asylum seeking child as stated by the judge at [26] and [29], and, as Mr Lindsay submitted, it is clear that the applicant not only lied about his place of birth and nationality in his claim for asylum but also his date of birth. That, the judge did not appear to appreciate in her conclusions on the Secretary of State's findings. We agree that the judge speculated that a concession was made in relation to for example age, when the ELR was granted, because there was no evidence of that, and that remains the case even if it was clear that the Secretary of State did not accept his asylum claim.
21. As indicated the real question was whether the Secretary of State was entitled to the view she adopted or made findings unsupported by any evidence. The judge did not properly grapple with those questions. Although the judge states at [33] that she applied the test in **Begum**, the preceding paragraphs indicate that in fact the analysis the judge carried out was a remaking. The applicant had made an application for a travel document again expressing fear of return to his country and with false details, and as an adult for ILR in 2005 (although confusingly the ILR application was on a form entitled ELR) in which he again gave false information on his place, date of birth and nationality. It was that which gave the foundation to his application for citizenship in 2006. His deception flowed and was evidently, as set out in the deprivation decision letter, material.
22. The guidance to which the applicant was referred made clear that false information given in an application for British citizenship may give rise to deprivation. The appellant had to tick the box stating that he had read that guidance and did so.
23. In relation to ground (i) we conclude that the judge did make unsubstantiated findings, failed to take into account detail in the decision letter and evidence in the Home Office bundle when making conclusions on the Secretary of State's reasons and digressed from the test of rationality advocated in **Begum**. The errors of law were material.
24. We have no hesitation in finding an error of law in relation to ground (ii). The judge stated at [31] 'The respondent also did not raise any issues relating to the good character of the appellant, apart from the issue in this appeal arising from his false identity'. That was a generalisation which

simply overlooked the points raised in the deprivation decision which was detailed and comprehensive (as cited above). The judge engaged with none of the points in relation to 'good character' and the relevant declarations made by the appellant. That was an evident and fundamental error of law. We do not agree, as Mr Mavrontonis submitted in his Rule 24 notice, that ground (ii) of the challenge was dependent on ground (i). They are separate arguments entirely. Although it was said the judge was provided with a skeleton argument that in itself did not appear to engage with the further points of deprivation raised in the refusal letter and which founds the second ground of challenge.

Notice of decision.

The Judge erred materially for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

All further evidence and skeleton arguments should be filed and served at least 14 days prior to the hearing de novo listed in the First-tier Tribunal.

Helen Rimington

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9th August 2023