



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003649

First-tier Tribunal No:
DC/50200/2021
LD/00193/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

20th December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FLUTURA KAVAJA
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms J. Isherwood, Senior Home Office Presenting Officer

For the Respondent: Ms G. Loughran, Counsel instructed by BMAP

Heard at Field House on 6 December 2023

DECISION AND REASONS

Introduction

1. In these proceedings the Secretary of State for the Home Department is the Appellant but in order to ensure consistency with the decision of the First-tier Tribunal, the parties are designated as they were at that hearing.
2. The Respondent appeals against the decision of First-tier Tribunal Judge M L Brewer (hereafter "the Judge") who, in a decision dated 19 June 2023, allowed the Appellant's appeal against the Respondent's decision to seek to

deprive her of her British citizenship under s. 40(3) of the British Nationality Act 1981 (“the BNA 1981”), made on 15 June 2021.

The relevant background

3. In summary form, as the parties are fully aware of the relevant factual matrix, the Appellant entered the United Kingdom illegally with her two minor children (at that time) on 26 October 2000.
4. On 1 November 2000, she claimed asylum in a false name that being ‘Flutra Berisha’ and with a false place of birth: Bilach in Kosovo. In the asylum claim, the Appellant claimed that her family had been targeted by Serbian police in Kosovo and that she feared persecution if she returned.
5. Sometime later, the Appellant was reunited with her husband who, by that stage, had been granted Indefinite Leave to Remain (“ILR”) is a recognised refugee on 26 May 1999. This led to the Appellant’s legal representatives at the time writing to the Respondent to confirm that the Appellant was withdrawing her asylum claim (on 23 January 2001).
6. The representatives also requested that the Appellant and her children be treated as dependents on her husband’s asylum claim.
7. On 23 April 2002, the Appellant was granted asylum status and given ILR.
8. On 27 June 2006, the Appellant applied to change her name by deed poll to her current title: ‘Flutura Kavaja’.
9. On 22 March 2007, the Appellant applied to be naturalised as a British citizen. In completing the application, the Appellant relied upon the same false details (date and place of birth) that she had provided in her asylum claim; she was issued with a certificate of naturalisation on 20 June 2007.
10. At some point in January 2021, the Respondent received information from the Albanian authorities that the Appellant was a registered Albanian citizen; that her two eldest children were born in Albania not Kosovo and that she and her husband were married in Albania and are Albanian citizens.
11. In response to the Respondent’s initial letter dated 23 February 2021, the Appellant confirmed that she had fabricated her claim for asylum but asserted that she did so because she felt scared and vulnerable at the time. The Appellant also referred to her studies in the United Kingdom and her chronic illnesses including fibromyalgia and type II diabetes.
12. Having considered those representations, the Respondent nonetheless decided to seek to deprive the Appellant of her British citizenship. In reaching that decision, the Respondent decided the following:
 - a. If the Respondent had known that the Appellant had used false information in her application for naturalisation it was questionable whether the Appellant would have been considered as a person of

good character, para. 16.

i. In deciding this, the Respondent made reference to section 9 of annex I: chapter 18, the good character requirement, para. 17.

b. At para. 19, he contended that the Appellant's asylum claim and subsequent grants of ILR and British citizenship had been based on falsified information. The decision-maker continued that if the truth had been known it was highly unlikely that the Appellant would have been granted refugee status in 2002 because at that time Albania was not considered unsafe and the Appellant received refugee status due to the Respondent's country policy regarding Kosovo nationals in place at that time.

13. At para. 20, the Respondent summarised the incidents of alleged fraud being relied upon:

a. The fabricated claim for asylum in a different nationality.

b. The Appellant's declaration that she was a Kosovan national made during her application for a Travel Document.

c. The Appellant's use of deception during the making of the application for naturalisation as a British citizen.

The Judge's decision

14. At §3, the Judge cited the approach to be taken by the Tribunal as described by the Upper Tribunal in Chimi v The Secretary of State for the Home Department (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 (IAC), ("Chimi"), albeit that the Judge did not specifically refer to this authority by name.

15. At §5, the Judge records an important submission made by the Presenting Officer:

a. It was now accepted that the Appellant had been granted ILR in line with her husband as his dependent. Although it was asserted that at the time of the decision to grant the Appellant, the caseworker would have contemplated the facts underlying the Appellant's own asylum claim, the Respondent was not able to provide any evidence of the Respondent's consideration at that time, i.e. a file minute or any other evidence, §5(i).

16. At §25, the Judge addressed the first consideration: that being the condition precedent question.

17. The Judge correctly identified that this question requires a public law assessment. In making her findings, the Judge directed herself to a number of relevant facts arising at the material times (§26): (a) the Appellant had already withdrawn her asylum claim by the time the Respondent decided to

grant her ILR as the dependent of her husband; (b) the Appellant's husband was already a recognised refugee and the Respondent had failed to provide any contemporaneous consideration minute to corroborate the assertion that he had specifically considered the facts asserted in the Appellant's own asylum claim when reaching that decision; (c) the Respondent had not directed the Judge to any published policy or practice indicating that such a consideration would be deployed in a dependency claim.

18. As a consequence, at §27, the Judge concluded that the Respondent had not provided sufficient evidence to show that the Appellant's grant of ILR in 2002 was decided on the basis of her own asylum claim and that, on the civil standard, her grant of ILR was parasitic on her husband's.
19. In public law terms, the Judge concluded that this meant that the Respondent had proceeded on a material mistake of fact at paragraph 11 of the reasons for deprivation letter: namely that the Appellant had been granted refugee status because of her own claim when she had in fact been treated as a dependent of her husband's claim, §28.
20. At §29, the Judge also concluded in the alternative that the Respondent had further erred in public law terms because the Respondent had failed to factor into his consideration in respect of the exercise of discretion the fact that the Appellant was granted ILR on the basis of her husband's claim. The Judge concluded that this error was material by reference to the Respondent's policy which she purported to have quoted earlier at §16.
21. It is clear that this paragraph reference is an error and I have read this finding as relating to §17 of the Judge's decision in which she quoted from the Respondent's 'Deprivation of British citizenship guidance' (version 1.0, 10 May 2023). In the part quoted, the policy indicates that the use of fraud, false representation or concealment of a material fact might not always be good reason to deprive a person of British citizenship, for instance where such deception did not have a direct bearing on the grant of ILR.
22. I should, for completeness, also note that there appears to be a mistake in the quotation. The last sentence of the 10 May 2023 policy in fact reads: "*It might therefore **not** have been material to the grant of citizenship*", (my emphasis).
23. The Judge went on to also find that the Respondent's review (dated 14 February 2022) failed to provide evidence to support the assertion that the Respondent's caseworker had taken into account the Appellant's own asylum claim when deciding to grant her ILR as a refugee in 2002.
24. On that basis, the Judge allowed the appeal, concluding that the Respondent had failed to show that the error was not material.

The Respondent's challenge

25. The Respondent's challenge is a straightforward one. The Respondent asserts that the Judge materially erred by failing to make any findings in

respect of the Respondent's point in the deprivation letter that the Appellant had used deception by failing to use her own identity and nationality in the naturalisation application form.

26. The Respondent referred to the reasons for deprivation letter and the Respondent's review, (at paragraphs 10 to 13 of that document).

The error of law proceedings

27. In her submissions, Ms Isherwood reiterated the point made in the grounds of appeal and referred the Upper Tribunal to the Respondent's good character guidance which is in the Respondent's bundle.

28. In concise submissions for the Appellant, Ms Loughran asserted that the Judge had correctly applied the Upper Tribunal's guidance in Chimi and that accordingly the Judge had made clear public law findings at §§28 & 29 of the decision. Ms Loughran contended that the Judge had done enough by identifying these material errors and that she had shown awareness of the Respondent's point in respect of the false details in the naturalisation application form made in 2007, at §11.

Findings and reasons

29. Having considered the competing submissions carefully, I have concluded that the Judge did materially err in her conclusion that the Respondent had failed to lawfully make out the condition precedent, i.e. that the Appellant had deployed deception relevant to the exercise of discretion in s. 40(3) of the BNA 1981.

30. Ultimately, the Appellant has not been able to provide any real response to the Respondent's criticism that the Judge failed to make any findings in respect of the contention that the false details given by the Appellant in her naturalisation application form were, of themselves, sufficient to amount to material deception.

31. As I have explained above, I have decided that the Judge's reference (at §29 of her decision) to §16, should be read as a reference to her own §17 in which the Respondent's policy lays out examples where he might not seek to deprive a person of British citizenship where there has been previous deception.

32. However, although the Judge also quoted part of the Respondent's deprivation policy in respect of the good character requirement (at §18), the Judge notably did not go on to say anything more about it other than to reiterate that concealing the truth could count heavily against the applicant, (§19).

33. The relevant part of the deprivation policy quoted by the Judge at §18, states:

"Changes to the good character policy now mean that, where there is

evidence that someone has employed deception either during the citizenship application process or in a previous immigration application within the last 10 years, they are not normally considered to be of good character. You must consider the guidance on good character when the person obtained their citizenship.”

34. In my judgement, on the basis of the arguments before me, I conclude that the use of deception (as accepted in this case) during the making of the application for naturalisation is in itself a distinct issue which *could* have made out the condition precedent in its own right. The Judge therefore materially erred by concluding that the mistake of fact identified by her at §28 was material without also making any relevant findings about the accepted deception used in the naturalisation application itself (read with the good character requirement and policy).
35. I take the same view in respect of the Judge’s finding about the materiality of the issue identified at §29.
36. In my view it was incumbent upon the Judge to fully grapple with this issue as it was plainly raised as a distinct allegation of deception in the Respondent’s reasons for deprivation letter and again in the 2022 review.

Notice of Decision & Remittal

37. I therefore find that the decision of the Judge should be set aside. Both representatives were of the view that if the Respondent established that the Judge had materially erred that the error would impact upon all of the findings made by the Judge and therefore require a full rehearing of the appeal in the First-tier Tribunal.
38. Acting with an abundance of caution, I have decided to follow the joint view of the parties and set aside the entirety of the decision.
39. The rehearing of the appeal shall therefore take place in the First-tier Tribunal before a judge other than Judge M L Brewer.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 December 2023