IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002758

First-tier Tribunal No:
DC/50138/2021
IA/06403/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 January 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Ismet Lela
(NO ANONYMITY ORDER MADE)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr B Hawkins, instructed by Qualified Legal Solicitors Ltd
For the Respondent: Ms Rushforth, Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 8 November 2023

DECISION AND REASONS

1. This appeal was resumed in the Upper Tribunal following an error of law being found in a First-tier Tribunal decision which was set aside on 28th July 2023.

2. The appellant is an Albanian national born on 18th January 1985. The chronology in relation to his applications for leave and British citizenship is

recorded in the deprivation decision dated 12th May 2021 which, I detail below and where relevant, with references to the paragraphs in the deprivation decision.

The deprivation decision ("the decision letter")

3. The decision recorded that the appellant entered the United Kingdom as a minor at the age of 14 years in 1999 and claimed asylum on 18th August 1999, asserting he was a Kosovan national born in Kosovo in Prizren. He provided a statement for his asylum claim dated 14th September 1999 [9]-[13]. His claim for asylum was refused on 24th February 2000 but he was granted exceptional leave to remain ('ELR') owing to his age and nationality [15]. At this point the appellant was 15 years old. On 13th June 2000 he applied for a travel document repeating the claim to be Kosovan, [16]. On 18th February 2004, when legally represented and aged 19 years, he applied for Indefinite Leave to Remain again with a Kosovan nationality [18]. He signed a declaration confirming he was aware it was an offence under the Immigration Act 1971 to make a statement or representation which he knew to be false.' [20].

4. On 24th August 2005 he was granted Indefinite Leave to Remain [21] and on 10th October 2006 he made an application for naturalisation again claiming to be Kosovan [22]. He confirmed that he was of good character [23] and confirmed that he had understood the guide for naturalisation ('AN') and that he understood that a certificate of citizenship may be withdrawn 'if it is found to have been obtained by fraud, false representation or concealment of any material fact' [23]. On 30th July 2007 he was provided with his certificate of naturalisation.

5. On 9th May 2017 the appellant requested a new certificate of naturalisation to reflect his genuine place of birth as Prizen in Albania and disclosed that his previous nationality was Albanian, [25].

6. The decision letter records 'you were referred to the Status Review Unit as the Secretary of State had reason to believe you had obtained British citizenship through false representations' [25]. On 1st December 2020 the Home Office wrote to the appellant to outline the allegations made against him and to request further information and evidence to determine his genuine identity.

7. On 3rd February 2021 his representatives wrote with further mitigation in response to the investigation letter asserting that 3 years delay was of great significance.

8. The decision letter referred to Chapter 55 of the Nationality Instructions such that, fraud encompasses, false representation and concealment (55.7.1) and 'concealment of any material fact' means 'operative concealment (55.4.1) and that there is no specific time limit within with deprivation procedures must be initiated and a person to whom Section 40 of the 1981 Act applies remains indefinitely liable to deprivation (55.5.1).

Further length of residence alone would not normally be a reason not to make a deprivation decision.

9. The decision letter acknowledged that the appellant would not have been aware of the ongoing investigation until the Home Office initially wrote to him on 1st December 2020, [29]. Although his representatives asserted that there was no explanation for the delay on behalf of the Secretary of State, it was explained by the Secretary of State that [s]he 'had to gather the necessary information needed to ensure the correct decision is made' [30]. Secondly there was no specific time limit to initiate deprivation procedures [30] and thirdly, 'once the information was gathered, the Home Office contacted yourself in a timely fashion and provided you with the opportunity to inform the Home Office of your genuine identity' [30]. In response, the appellant was unable to show that he was Kosovan at the time he applied to the Home Office for naturalisation, [32]. Checks were completed with the British Embassy in Tirana (Albania). These confirmed the appellant's genuine Albanian personal certificate [32] –[34].

10. The deprivation decision identified that it was clear that the appellant would have been refused British citizenship had the nationality caseworker been aware he had presented a false identity to the Home Office and that he had continued to use that identity throughout his immigration history, Chapter 18 (The Good Character requirement), [35]. When applying for Indefinite Leave to Remain the appellant claimed still to have a fear of returning to Kosovo and the evidence showed he had perpetrated material fraud in order to acquire status and citizenship [36]. His residence would not have been acquired had he not been granted ELR as a Kosovan national, [37]. Although a minor when the appellant made his application for ELR, he was an adult when he applied for Indefinite Leave to Remain ('ILR'), [37]. The Secretary of State was satisfied that there was an intent to deceive. Had the true details been known he would not have met the residence requirements needed to naturalise [38]. The fraud was deliberate, and the appellant had provided information with the intent to gain status in circumstances where his application would have been denied had he told the truth.

11. At [40] the Secretary of State confirmed that in exercising her discretion she had taken into account various factors which included the representations and factors in relation to Article 8.

The hearing

12. The hearing proceeded by way of submissions only and the interpreter was, with the consent of Mr Hawkins, released.

13. Ms Rushforth submitted that the approach taken by the Secretary of State was in accordance with caselaw, specifically Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 (IAC). She relied on the deprivation decision and submitted that on review of that

decision it was clear there was no public law error in approach to the condition precedent question or in relation to the exercise of discretion.

14. The appellant accepted that he deceived the Secretary of State and he fell foul of both the residence and good character requirements as detailed in the decision. The Secretary of State applied her Guidance in Chapper 55 which confirmed that there was no time limit to initiating deprivation proceedings. The length of residence in the UK in this case was not relevant. In relation to article 8 this was not a removal decision and I was only to consider the import of the 'limbo' between the deprivation of decision and any further decision on leave to remain ('LTR'). There was a strong public interest in depriving those granted citizenship where it had been obtained by fraud. As explained in Muslija (deprivation: reasonably foreseeable consequences) **[2022] UKUT 337 (IAC)** at headnote 4 exposure to the limbo period 'without more' would not tip the proportionality balance in favour of retention of citizenship.

15. It was further submitted there was no updated documentary evidence and no evidence that the family would be plunged into financial problems. It was clear from the documentation supplied by the appellant that the partner could work and support the family financially and there would be financial implications but none came close to outweighing the nationality laws. The impact on the children would be limited.

16. Mr Hawkins referenced the extensive caselaw but reminded me that each case turned on its particular facts. There were unusual elements to this case. The appellant had never misrepresented his name and there was only a minor difference in his date of birth and that was not operative. He was only 14 years old when he came in 1999 and that was 24 years ago. On 9th May 2017 the appellant, some 10 years after entry, the appellant had adopted the procedure to apply to the Secretary of State to amend his details. There was no confirmation of what the appellant had stated but Mr Hawkins suggested that it was implicit in his application that he had voluntarily declared his true information. Further there had been delay of 3 years and 7 months on the part of the Secretary of State before any warning was given. Had the appellant not brought the matter to the Secretary of State's attention nothing else would have flagged the issue. The appellant was fully integrated and if the matter was decided on paragraph 276(1) ADE the appellant would have crossed the benchmark of long residence albeit illegal. Even if the appellant failed the first condition precedent question there were factors relevant to 1 (b) under Chimi, that is the appellant's heroic action at a petrol station (for which Mr Hawkins submitted a press article) showing the appellant had prevented someone from committing suicide at a petrol station by setting himself on fire. In some countries, Mr Hawkins submitted, this act of heroism would have been rewarded with a grant of citizenship. Mr Hawkins did accept that this piece of material was not before the Secretary of State but nonetheless he submitted that the matter was relevant to article 8 considerations.

17. The public interest ordinarily bore a heavy weight but that was lessened in this case and question 1 (c) of Chimi was relevant. Mr Hawkins relied on the factors highlighted above and the best interests of the appellant's two sons. There was a question mark over whether the appellant could be a director of his business or not although no documentary evidence was produced. Both the children were British citizens and that should be given weight. In all other respects the appellant had been very well behaved. In this instance the weight of public interest should be lessened and the appeal allowed because deprivation would be disproportionate.

Conclusions

18. The only further documentation from that previously supplied was (i) a press article dated 20th October 2011 relating to the appellant's undoubtedly valiant act of preventing suicide and further injury damage at a petrol station and (ii) the documentation in relation to the partner which showed she had leave until December 2024.

19. The British Nationality Act 1981, in so far as is relevant states. At Section 40

> ***40Deprivation of citizenship.***
>
> *(1)In this section a reference to a person's " citizenship status " is a reference to his status as—*
>
> *(a)a British citizen,*
>
> *(b)a British overseas territories citizen,*
>
> *(c)a British Overseas citizen,*
>
> *(d)a British National (Overseas),*
>
> *(e)a British protected person, or*
>
> *(f)a British subject.*
>
> *(2)The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.*
>
> *(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.

20. In R (Begum) R (Begum) v Special Immigration Appeals Commission [2021] UKSC 7 the Supreme Court particularly [71] clarified the obligations of the Tribunal when dealing with an appeal against a decision under Section 40(2) as follows:

> *"71. Nevertheless, SIAC has a number of important functions to perform on an appeal against a decision under section 40(2). First, it can assess whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight or has been guilty of some procedural impropriety. In doing so, SIAC has to bear in mind the serious nature of a deprivation of citizenship, and the severity of the consequences which can flow from such a decision. Secondly, it can consider whether the Secretary of State has erred in law, including whether he has made findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held. Thirdly, it can determine whether the Secretary of State has complied with section 40(4), which provides that the Secretary of State may not make an order under section 40(2) 'if he is satisfied that the order would make a person stateless. Fourthly, it can consider whether the Secretary of State has acted in breach of any other legal principles applicable to his decision, such as the obligation arising in appropriate cases under section 6 of the Human Rights Act. In carrying out those functions, SIAC may well have to consider relevant evidence. It has to bear in mind that some decisions may involve considerations which are not justiciable, and that due weight has to be given to the findings, evaluations and policies of the Secretary of State, as Lord Hoffmann explained in* Rehman *and Lord Bingham reiterated in* A*. In reviewing compliance with the Human Rights Act, it has to make its own independent assessment"*,

21. As confirmed in the headnote of Ciceri, when considering the condition precedent under Section 40(3):

> *'(1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in*

Begum, which is to consider 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."

(2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.'

22. Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 (IAC) confirms:

(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. Insofar as Berdica [2022] UKUT 276 (IAC) suggests otherwise, it should not be followed.

(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).

23. The Secretary of State unarguably lawfully applied Section 40 (3) of the BNA. The appellant accepted that he had concealed relevant information in relation to his claim for asylum and his subsequent applications for leave and then British citizenship. Although the appellant was a minor when he made his first application, I have set out at length the detail in the Secretary of State's deprivation letter showing the ongoing applications made when the appellant was an adult and even legally represented, and which included his application for ILR on 18th February 2004 when the appellant was 19 years old, and for naturalisation on 10th October 2006 when the appellant was 21 years old. At various junctures he was legally represented.

24. The Secretary of State explained the materiality in the decision in that had the appellant from the outset or at the very least when he applied for ILR advanced that he was in fact from Albania rather than Kosovo he would not have been granted at the very least ILR. His deception was ongoing and thus material to the ultimate grant of citizenship both because leave had been previously granted on the basis of his alleged emanation from Kosovo but also because, as the decision explains, the appellant represented himself in his citizenship application as being of 'good character'.

25. The appellant in his application for citizenship had not declared his residence in Albania or made truthful submissions on good character. As stated at [23] of the decision the appellant ticked a box to confirm he 'had not engaged in any other activities which might be relevant to the question of whether you are a person of good character' and had the Secretary of State known the true position, citizenship would not have been granted.

26. The condition precedent under Section 40(3) was clearly and properly addressed by the Secretary of State in the deprivation decision having taken into account the relevant factors and lawfully approached the evidence. In the finding of condition precedent in the decision under challenge I am not persuaded that there is any public law error. The Secretary of State's findings on representations on Kosovan nationality and concealment of the appellant's true nationality were indeed operative to the grant of Indefinite Leave to Remain and the conclusions on representations of good character were similarly open to the Secretary of State.

27. That the appellant was initially a minor does not assist the appellant; he was not obliged to continue the deception. The decision took this factor into account and unarguably the decision was within the range of reasonable and rational responses.

28. The Secretary of State when exercising her discretion, at [40] in the decision, unarguably takes into account relevant factors. It is clear that the Secretary of State again considered the relevant matters when coming to her decision. The Secretary of State specifically references the

representations made by the appellant's legal representatives, and in relation to the appellant's family. The Secretary of State was aware of the appellant's long residence, his family and business issues and factored those into the overall decision.

29. Mr Hawkin initially argued that the issue of saving a man's life at a petrol station should have been considered but then agreed that this evidence was not before the Secretary of State when she made her decision. Information that was not before the Secretary of State cannot rationally be used to undermine the deprivation decision. It can also be seen from the decision which I have detailed above that the Secretary of State unarguably followed the correct policy referencing Chapter 18 and 55 of the Nationality Instructions.

30. On the question of delay the appellant received no decision of his request on 9th May 2017 for his citizenship certificate to be changed. He was in fact served with a stage 1 investigation letter on 1st December 2020 to which the appellant responded neither confirming nor denying fraud. As a result, the Secretary of State approached the British Embassy in Tirana on 11th March 2021 and their reply led to the deprivation decision being served on 12th May 2021. This cannot arguably be described as delay and even so, not only does the decision letter reference the ongoing investigation by way of explanation but this delay was only for 3 years and 7 months and not a delay as in Laci [2021] EWCA Civ 769, of 9 years from the date of that appellant's admission and which was described as extraordinarily long. By contrast with this matter, in Laci the delay was described as 'unexplained' and that it was '*a case where she [the then Secretary of State] started to take action and invited representations, but then, having received those representations, did nothing for over nine years. Indeed it goes beyond mere inaction...*'. That is not the case here.

31. The delay in Ciceri, and which was not considered sufficient to undermine the Secretary of State's decision, was longer (4 years and 5 months). I accept these markers are not fixed in stone but the Secretary of State considered the individual factors of the appellant's case and explained the time between the appellant's application for amendment of his certificate and the warning letter. Not only did the appellant, as an adult, sign the relevant declarations cited above identifying his awareness that he may be deprived of citizenship if he gave false information, which he did, but the Secretary of State also followed her own Chapter 55 policy which identifies when deprivation when considering delay that:

> *55.5 Timing*
> *55.5.1 there is no specific time limit within which deprivation procedures must be initiated. A person to whom s40 of the 1981 Act applied remains indefinitely liable to deprivation on the terms outlines above.*

32. The information the appellant provided on his application for alteration of his certificate was referred to the Status Review Unit as the Secretary of State had reason to believe he had obtained citizenship though false representations. The decision letter referenced that 'no evidence was produced' to explain the contradiction with the former details albeit the appellant was given the opportunity. Additionally, no amended certificate was issued. The appellant knew of the fraud and received no confirmation that his application had been sanctioned. The decision letter confirms that the Secretary of State had to gather information needed to ensure the correct decision and once the information was gathered the appellant was contacted. At that point the appellant neither denied nor admitted the fraud.

33. R (KV) [2018] EWCA Civ 2483 confirmed that it will be an unusual case in which the applicant can legitimately complain of the withdrawal of the rights that he acquired as a result of naturalisation because the withdrawal of those rights does not more than place him the position as if he had not been fraudulent. Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 128 (IAC) at [110] confirmed there was a heavy weight to be placed on the public interest in maintaining the integrity of the system by which foreign nationals are naturalised. Hysaj at [118] notes that where statelessness was not in issue, it is likely to be only in a rare case that the ECHR or some very compelling feature will require an appeal to be allowed. That deprivation will cause disruption in day-to day life is a consequence of the appellants' own actions and without more, such as the loss of rights previously enjoyed, cannot tip the proportionality balance in favour of the appellant. In effect there needed to be some very compelling feature to the case and I am not persuaded that there is here

34. In relation to Article 8 as set out at headnote 4 of Muslija (deprivation: reasonably foreseeable consequences) [2022] UKUT 337 (IAC)

> *(4) Exposure to the "limbo period", without more, cannot possibly tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship. That means there are limits to the utility of an assessment of the length of the limbo period; in the absence of some other factor (c.f. "without more"), the mere fact of exposure to even a potentially lengthy period of limbo is a factor unlikely to be of dispositive relevance.*

35. Although much was made of the best interests of the children and Section 55 this is a question the Secretary of State considered. Both children are British citizens. I stress there is no decision to remove the appellant from the UK and thus from the family unit. Both children have ongoing access to education and health care in the United Kingdom. That is not being disrupted. There were no statements from either the partner nor the children detailing how the removal of citizenship would either directly or indirectly affect them. There were assertions that their

lives would be affected and that as British citizens their rights should be respected but nothing was set out in detail. The information provided did not suggest that the appellant's family would be plunged into financial problems should the appellant be unable to work.

36. It was submitted that there was a question over the ability of the appellant to remain a director of his companies should he be deprived of citizenship. This was not detailed in any way either and there was insufficient evidence to conclude that the appellant would be unable to retain his directorships. The appellant did not give evidence but and there was no up to date financial information. There was a tax return in relation to the appellant to April 2019 showing £19,644 taxable profits and bank statements from TSB Account number ending ***466 relating to the partner showing an account balance of £8,061.50 on 8th March 2020 and a Barclays account statement ending ***081 for the appellant with a balance of £4087.14 8 on 22nd April 2020 . Another Barclays account for the appellant ending ***852 held a balance of £587.68 on 24th April 2020. It is evident that the appellant bought a property in Bristol in 2017 but there was no evidence in relation to any inability to maintain mortgage payments and thus financial constraints in keeping a roof over the head of the appellant his partner or children. From the payslips and information provided from 2019-2020 the partner has been working and no indication that she has ceased work.

37. I have already made the point that I consider there was no delay on the part of the Secretary of State and there was no such delay to act as a 'tipping' factor in the Article 8 assessment. The appellant's actions in 2011 in preventing the suicide in a petrol station no doubt prevented serious injury of other individuals and property and were indubitably laudable. There was, however, no evidence before me that the United Kingdom awards citizenship on the basis of heroic acts. As indicated the public interest carries a heavy weight and even if it could be lessened to acknowledge the bravery of the appellant, I do not accept that this is sufficient to tip the balance in the Article 8 assessment when considering the circumstances in the round. I consider the impact of the limbo period between the date of application for further leave and the possible grant of such leave but do not consider, as Mr Hawkins urged, this case discloses rare, compelling or exceptional features either individually or cumulatively and particularly in view of the limited evidence provided. In my view, the public interest is not diminished, when taking all factors into consideration, to the extent that the appeal should be allowed on article 8 grounds.

38. I dismiss the appeal.

Notice of decision.

The appeal of Mr Lela is dismissed.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber
20th December 2023