



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003922
First-tier Tribunal No: DC/50040/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

20th February 2024

Before

THE HON. MRS JUSTICE HILL DBE
UPPER TRIBUNAL JUDGE GLEESON

Between

URIM HAFUZI
(NO ANONYMITY ORDER)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr P Georget, Counsel, instructed by Malik & Malik Solicitors

For the respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 18 January 2024

DECISION AND REASONS

Introduction

1. The appellant is an Albanian national, born on 1 July 1987. He posed as a Kosovan citizen to obtain leave to remain and in due course British citizenship. He appealed the decision of First-tier Tribunal Judge Abdar, promulgated on 25 May 2022, which dismissed his appeal against the respondent's decision dated 4 November 2020 to deprive him of his citizenship, pursuant to the British Nationality Act 1981 ("BNA"), section 40(3).

2. By a decision sent to the parties on 3 February 2023, we set aside the decision of the First-tier Tribunal. By a further decision sent to the parties on 8 November 2023 we concluded that the decision was of a kind that could properly be re-made in the Upper Tribunal. The issues were considered at a further oral hearing on 18 January 2024. This is our decision re-making the decision of the First-tier Tribunal.

The factual background

3. The appellant was born on 1 July 1987. He came to the UK on 17 December 2002. He claimed asylum in the identity of Urim Hafuzi, a Kosovan citizen, saying he had been born on 15 June 1988 in Mitrovica, Kosovo. The appellant's asylum application was refused. However on 21 January 2003 he was granted exceptional leave to remain ("ELR") as an unaccompanied minor until 14 June 2006. On 1 April 2003 he applied for a travel document in his false identity.

4. On 31 May 2006, the appellant applied for indefinite leave to remain ("ILR"). On 7 February 2008 he submitted a questionnaire under the "legacy" programme. On 28 June 2011 he was granted ILR. On 19 July 2011 he applied for a travel document. On 16 August 2012 he applied for naturalisation. On 13 November 2012 he naturalised as a British citizen. All of these applications were made in his false identity, after his 18th birthday.

5. During 2019 the respondent carried out checks with the Kosovan authorities, and the appellant's real identity was discovered. On 29 April 2020 the respondent informed the appellant of her investigation into his identity and gave notice of her intention to deprive him of his citizenship under section 40, on the grounds that his citizenship was obtained by fraud. On 16 May 2020 the appellant responded. On 4 November 2020 the respondent made the decision to deprive the appellant of his citizenship. He appealed that decision.

The procedural history

6. In his witness statement for the hearing before the First-tier Tribunal the appellant accepted the respondent's chronology as summarised above, including that he had adopted a false identity following his arrival in the UK. He did not give evidence. The appellant argued that he was granted ILR on the basis of all the circumstances, as a legacy programme grant, and these included the respondent's delay in dealing with his application. He submitted that his use of a false identity had no bearing on the respondent's decision to grant him citizenship. Further, the respondent's delay in instituting the deprivation proceedings diminished the public interest in such deprivation, making the decision disproportionate and in breach of his rights under Article 8 ECHR.

7. The First-tier Tribunal found at [26] that the condition precedent was established. The Judge found that Article 8 was engaged. The judge concluded at [38]-[39] that the decision to deprive was proportionate and the respondent's discretion had been lawfully exercised. The appellant appealed.

There was no application to admit further evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

8. The appellant's Ground 1 contended that the First-tier Tribunal had erred in law by failing to properly address Sleiman (deprivation of citizenship: conduct) [2017] UKUT 367 IAC. Although the First-tier Tribunal's decision set out the submissions on the materiality issues at some length, the judge's consideration of them was limited to one short paragraph: [26]. We concluded that the judge was required to explain not only which case he was accepting but why, at least in brief terms. In our assessment, [26] of the decision did not do so. We therefore set aside the First-tier Tribunal decision on the basis that the judge erred by failing to give adequate reasons for his findings on the materiality issue. The Appellant's Ground 1, and this his appeal, therefore succeeded.

9. The appellant's Ground 2 asserted that the respondent had failed to discharge the burden of proof in respect of the consequences of the alleged deception. Mr Georget submitted that the respondent was under a duty to disclose the decision granting the appellant ILR as this was relevant. As Mr Georget accepted that this ground was "parasitic" on the main element of Ground 1, it was not necessary for us to determine Ground 2. We noted that the appellant has been able to advance his case on the materiality issue on the face of the respondent's record and observed that we were not confident that sight of the ILR decision-making process would assist.

10. We concluded that this was a decision that could properly be re-made in the Upper Tribunal because the extent of judicial fact-finding needed to remake the decision would be very limited. The overarching issue at the heart of this appeal has already been considered by the First-tier Tribunal and relevant facts found, on the basis of the appellant's admission of deception. We therefore found that neither of the scenarios set out in paragraph 7.2 of the *Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal* applies. On that basis, the "normal" approach set out in paragraph 7.3, of re-making the decision in the Upper Tribunal rather than remitting it, applied.

The statutory framework

11. Section 6(1) of the BNA provides that:

"If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen".

12. Schedule 1 sets out requirements that must be met for an applicant to be granted citizenship. Under Schedule 1(1)(b) the applicant must be "of good character". Under Schedule 1(1)(a) sets out "residence requirements" which are detailed further under Schedule 1(2), namely that (a) the applicant was in the UK for 5 years (subject to allowed absences under (b)); (c) has no

restriction on the period in which he might remain in the UK in the previous 12 months; and (d) has not been in the UK in breach of immigration law in the last 5 years.

13. Section 40(3) of the BNA provides 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”.

The issues

14. As a preliminary point, Mr Georget contended that Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238 (IAC); [2021] Imm AR 1909 and Chimi (deprivation appeals, scope and evidence: Cameroon) [2023] UKUT 00115; [2023] Imm AR 1071 were wrongly decided; and that R (Begum) v SIAC [2021] UKSC 7; [2021] Imm AR 879 did not, correctly read, have the impact on the Tribunal’s approach that had been identified in those cases.

15. We consider it appropriate to follow the guidance given by two Presidential panels in both Ciceri and Chimi. Accordingly our task in re-making the decision of the First-tier Tribunal is to review the respondent’s decision that the condition precedent of fraud under s.40(3) was met, “using conventional public law tools, rather than by subjecting it to a full merits reconsideration”: Chimi at [43].

16. Mr Georget distilled the substantive issues thus:

(1) Has the respondent established that if the decision-maker had known the appellant was actually from Albania and had instead assessed him in his true identity, the decision-maker would not have granted him ILR or citizenship (“**the materiality issue**”)?; and

(2) Has the respondent established that if the decision-maker had known about the appellant’s previous lies in his immigration dealings (whether those lies were material to the grant of ILR or not), the appellant would have been refused ILR or citizenship on character grounds (“**the good character issue**”)?

(1): The materiality issue

17. At the relevant time the respondent's policy guidance on deprivation of citizenship was set out in 'Chapter 55: Deprivation and Nullity of British citizenship'. This provided that when considering deprivation, the respondent had to look back to the date of naturalisation and form a view as to whether a fraud - if it had been known at that time - would have affected the application for naturalisation. The parts of the guidance relevant to this case were as follows:

"55.7 Material to the acquisition of citizenship

55.7.1 If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration, the caseworker should consider deprivation.

55.7.2 This will include but is not limited to:

- ...False details given in relation to an immigration or asylum application, which led to that status being given to a person who would not otherwise have qualified, and so would have affected a person's ability to meet the residence and/or good character requirements for naturalisation or registration.

55.7.3 If the fraud, false representation or concealment of material fact did not have a direct bearing on the grant of citizenship it will not be appropriate to pursue deprivation action.

55.7.4 For example where a person acquires ILR under a concession (e.g. the family ILR concession) the fact that we could show the person had previously lied about their asylum claim may be irrelevant. Similarly, a person may use a different name if they wish...unless it conceals criminality, or other information relevant to an assessment of their good character, or immigration history in another identity it is not material to the acquisition of ILR or citizenship. However, before making a decision not to deprive, the caseworker should ensure that relevant character checks are undertaken in relation to the subject's true identity to ensure that the false information provided to the Home Office was not used to conceal criminality or other information relevant to an assessment of their character.

55.7.5 In general the Secretary of State will not deprive of British citizenship in the following circumstances:

- Where fraud postdates the application for British citizenship it will not be appropriate to pursue deprivation action.

- If a person was a minor on the date at which they applied for citizenship we will not deprive of citizenship.
- If a person was a minor on the date at which they acquired indefinite leave to remain and the false representation, concealment of material fact or fraud arose at that stage and the leave to remain led to the subsequent acquisition of citizenship we will not deprive of citizenship. However, where it is in the public interest to deprive despite the presence of these factors they will not prevent deprivation”.

18. The arguments on the materiality issue in this case were rather diffuse and overlapping, but can be distilled into the following themes.

19. First, Mr Georget took issue with the respondent’s conclusion that while the appellant was not culpable for his fraud as a minor, had the truth been known when he arrived in the UK, as a matter of fact, he would have been removed to Albania, thus:

“47. It is accepted that you entered the UK as a minor, however when you entered the UK you advised the immigration officials that you were Kosovan. Had the Home Office known that you were actually from Albania and had known the whereabouts of your parents, efforts for family tracing would have been made and you would have been returned to Albania, thus meaning that you would not have received the grant of ELR, which ultimately allowed you to accrue sufficient residency in the UK to secure a grant of ILR outside the immigration rules”.

20. He contended that this conclusion was not one that was reasonably open to the respondent. It was not based on any evidence and was entirely speculative. It was not for the appellant to provide evidence to show that the conclusion was irrational. Rather the respondent had known throughout the course of this litigation that the appellant took issue with this finding and had still not provided any evidence to support it. The finding should not be taken at face value. The respondent’s decision therefore contained a public law error in the form of illegality or irrationality.

21. We cannot accept this submission. A reasonable starting-point is that the respondent’s decision-maker was aware of the practice the respondent had adopted at the material time with respect to arrangements for removals and reception involving Albania; and thus was aware of the likelihood or probability of the appellant’s return there. The decision-maker can also be taken to be aware of the duty on the respondent to trace the families of unaccompanied asylum-seeking children as prescribed by Article 19.3 of the Reception Directive, as considered by the Court of Appeal in KA (Afghanistan) and others v Secretary of State for the Home Department [2012] EWCA Civ 1014; [2013] 1 WLR 615.

22. We consider that it is incumbent on an appellant to provide some basis for asserting that a conclusion of this kind was unsupported by evidence or irrational. Here, the appellant has provided no such evidence.

23. Further, even if the appellant were correct on this issue, as we explain below, the focus of the respondent's decision was the appellant's actions while he was an adult. For this reason, the conclusion as to whether the appellant would have been returned to Albania was not material to the overall decision.

24. Second, Mr Georget appeared to contend that the respondent had acted irrationally in taking into account the fact that the initial fraud was perpetrated by the appellant when he was a minor, when there is a general policy not to do so (if that is the sole fraud).

25. We do not consider that this assertion is borne out by the decision-letter. In various places the letter acknowledged that the initial fraud took place when the appellant was a minor. However it made abundantly clear that the respondent was primarily concerned with the appellant's actions after he passed the age of 18.

26. The letter highlighted that the appellant had had plenty of time as an adult to admit his fraud, but instead perpetuated it. It was accepted that there had been a significant delay in dealing with his application for ILR, but the respondent highlighted that the delay including the time taken to send the two pre-action protocol letters had given him "a great deal of time" to provide his correct details, but he did not do so and kept his true identity concealed: [55].

27. The letter placed specific reliance on the fact that the appellant's "deception as a minor continued through to adulthood"(see [55]) meaning that he was treated as complicit in the fraud perpetrated as a minor. This was consistent with the respondent's policy. As a key passage in the letter explained:

"58. It is accepted that when you acquired your first grant of leave in the UK you were a minor, and you have stated that you were told to provide false details by an interpreter. However Chapter 55 is clear that 'where a minor reaching the age of 18 does not acquire ILR or other leave automatically and submits an application for asylum or other form of leave which maintains a fraud, false representation or concealment of material fact which they adopted whilst a minor they should be treated as complicit' (Annex AC15 Chapter 55.7.8.3). At the point you submitted your ILR application, still maintaining your false identity, you were held complicit in any fraud. Furthermore, all adults should be held legally responsible for their own citizenship applications (Annex AC15 Chapter 55.7.8.5)".

28. The appellant committed a series of frauds while he was an adult. As well as his completion of an application for ILR, he had completed the legacy

questionnaire and his application for citizenship in his false identity, and also sent various the pre-action protocol letters and other letters chasing progress.

29. In our assessment, the respondent did not unlawfully or irrationally focus on the initial fraud perpetrated when he was a minor. Rather the respondent relied on all of the appellant's actions while he was an adult, which involved adopting the earlier fraud and perpetrating further ones.

30. Third, it was argued that this case was on all fours with Sleiman. There, the appellant had been granted ILR under the legacy programme due to the length of his residence and other factors under paragraph 395C (now 353B) of the Immigration Rules. This much was clear on the face of the respondent's records. The fact that he had initially adopted a false identity had not therefore led to the favourable decision on citizenship..

31. We agree with, and respectfully adopt, the observations of Upper Tribunal Judge Canavan and Deputy Upper Tribunal Judge Symes in Onuzi (UI-2022-004897) (29 November 2023, unreported), at [36]-[44] to the effect that the principles outlined in Sleiman might need to be reviewed.

32. As explained in Onuzi at [37]-[39] the decision in Sleiman was very fact-specific. The respondent's case was a very limited one. The respondent contended that if the appellant had not made himself appear to be a minor when he applied for asylum, he would have been returned to Lebanon when his asylum application was refused and would not have then been in the United Kingdom to submit the further applications that led to him meeting the naturalisation requirements: Sleiman: [42]. This was, as Mr Clarke put it, a "singular fraud" about the appellant's date of birth. It was no part of the respondent's case that the appellant had engaged in any deception that was relevant to the applications for ILR or citizenship: Sleiman at [62]-[63] and [65]. Moreover, no arguments were advanced in Sleiman in relation to good character: Onuzi at [38]. Further, Sleiman was decided at a time when it was understood that the proper role of the Tribunal in case such as this was a full merits review.

33. In Shyti v SSHD [2023] EWCA Civ 770, the Court of Appeal considered similar arguments in another deprivation case. The appellant had made a false asylum claim but was granted leave to remain under the legacy programme. He contended that the grant of leave under the legacy programme broke the chain of causation, even though he had not disclosed a fraud at any point up to and including the application for naturalisation. The Court of Appeal noted that the process for applying for citizenship requires an applicant to disclose information that might be relevant to the assessment of good character: [11]-[16]. The respondent had argued before the Upper Tribunal that the submissions made in Sleiman were limited and sought to distinguish it. The Court of Appeal concluded that it was open to the Upper Tribunal to find that Sleiman was not decisive and could be distinguished.

34. The approach in Shyti provided further support for the Upper Tribunal's conclusion in Onuzi that "the effect of Sleiman is limited in nature". Further, the

finding in Sleiman that “the negative behaviour must have a ‘direct bearing’ on the grant of citizenship must be read in the context of the full statutory scheme, including the statutory requirement to be of good character before citizenship status will be granted”.

35. We consider that this case can also be distinguished from Sleiman given that the respondent did rely on a series of deceptions that were said to be relevant to the applications for ILR and citizenship; and did rely on the good character provisions. We therefore conclude that it does not provide the assistance to the appellant which Mr Georget sought to derive from it.

36. Fourth, Mr Georget contended that the appellant could not properly be required to incriminate himself by disclosing the initial fraud once he became an adult. With respect, this is misconceived. The privilege against self-incrimination is a privilege against being “compelled” to give self-incriminating evidence: see, for example, Walile (deprivation: self-incrimination: anonymity) [2022] UKUT 00017 at [32] and [35]. Here, there had been no compulsion: the appellant had voluntarily made the applications in the UK. In fact, the applicant was under a duty to disclose matters material to his ILR application, as was clear from the declarations he had to sign. His failure to disclose his true identity had precluded the respondent from considering his true circumstances.

37. The respondent’s overall position was that without the appellant’s outstanding ILR application, he would not have been able to accrue ILR under the legacy programme. All of these involved the appellant maintaining his false identity and concealing his previous frauds. The ILR led directly to the grant of citizenship.

38. Therefore, when considering 55.7.1 of the policy, as Mr Clarke highlighted, had the truth been known at the material time the appellant would have inevitably been considered to fall within rule 322(1A). This sets out a mandatory ground for refusal of ILR as follows:

“Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused

(1A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant’s knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application”.

39. Further, the respondent had been precluded from considering the appellant under the discretionary ground of refusal in section 322(2) which provides as follows:

“Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused

(2) making or false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of leave or in order to obtain documents from the Secretary of State or a third party required in support of the application for leave to enter or a previous variation of leave”.

40. In any event as was confirmed in Matusha [2021] UKUT 0175, the appellant’s character and conduct would have been integral to any consideration under the legacy programme this was not an amnesty. The respondent had been precluded from applying either rule 395C or the Chapter 55 policy in the light of the appellant’s true circumstances.

41. For all these reasons we conclude that the respondent’s decision that the appellant’s fraud was material to the grant of citizenship, such that deprivation was appropriate, was not irrational.

(2): The good character issue

42. The respondent’s position was that even if the appellant’s fraud was not material to the grant of ILR (which was not accepted), his application would, in any event, have been refused on the basis of the good character requirements, in accordance with paragraphs 9.5.1 and 9.5.2 of the policy.

43. The respondent’s policy with respect to good character is addressed in Annex D of the ‘Chapter 18’ policy, the relevant parts of which are as follows:

“9. Deception

9.1 Caseworkers should count heavily against an applicant any attempt to lie or conceal the truth about an aspect of the application for naturalisation – whether on the application form or in the course of enquiries. Concealment of information or lack of frankness in any matter must raise doubt about an applicant’s truthfulness in other matters.

9.5 Evidence of fraud in the immigration and nationality process

9.5.1 Where there is evidence to suggest that an applicant has employed fraud either

- during the citizenship application process **or**
- in previous immigration application processes and

- in both cases the fraud was directly material to the acquisition of immigration leave or to the application for citizenship

caseworkers should refuse the application unless the circumstances in 9.5.2 apply.

9.5.2 Where deception has been employed on a previous immigration application and was identified and dismissed by UKBA or was factually immaterial to the grant of leave, caseworkers should not use that deception as a reason by itself to refuse the application under section 9.5.1”.

44. Mr Georget argued that the respondent was impermissibly seeking to rely on additional reasons which would have meant the application would have been refused on character grounds when this was not the way the decision had proceeded before the decision-maker. However the decision letter had specifically invoked the Chapter 18 policy at [67]-[70], concluding that “had the caseworker been aware of the details [of the previous fraudulent applications] there is no doubt your application would have been refused both because your deception was material and because of questions about your good character”.

45. He argued that the respondent’s “practice” of invoking good character arguments in this alternative way is ultra vires because it seeks to remove the requirement that citizenship was obtained “by means of” the act or omission and that it is only concealment of “material” facts which engages the section. It represents an impermissible expansion of the section 40(3) power because it means in principle that any misrepresentation or concealment, whether material or not, would lead to someone being deprived of their citizenship for the simple reason that such behaviour engages the character provisions.

46. This approach, he argued, also leads to absurd results which are inconsistent with the respondent’s own approach as set out in the relevant policy documents and some of the case studies given therein. For example, paragraph 55.7.13 sets out a case study, “Mrs E”. It is posited that she had lied on her application form for naturalisation by saying that she was married to a British citizen. If this was not directly material to her being granted citizenship, decision-makers were advised not to pursue deprivation action. Mr Georget contended that this example would make no sense if Mrs E’s application would have been refused on good character grounds in any event.

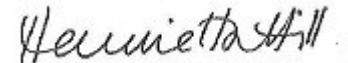
47. We cannot accept these submissions.

48. As Mr Clarke highlighted, good character is referred to in section 6 and Schedule 1 of the BNA: [11]-[12] above. The good character requirements are not necessarily an “alternative” to the residence requirements. Rather, paragraph 55.7.2 of the guidance makes clear that false details given in relation to an immigration or asylum application could have affected a person’s ability to meet the residence “and/or” the good character requirements for naturalisation.

49. Moreover the relevant parts of the Chapter 18 guidance as set out at [43] above specifically recognise that the materiality of any fraud is relevant to the good character issue. It makes clear that, generally, if a fraud is “directly material” caseworkers should refuse the application but if it was dismissed by UKBA, or was factually immaterial, they should not use this as a sole reason to refuse an application. It does not create a blanket rule that all fraud will lead to a conclusion that someone is of good character, irrespective of its materiality. Therefore we do not accept that the respondent’s approach is impermissible in the way alleged.

Notice of Decision

50. For these reasons we conclude that the appellant has not identified any public law errors in the respondent’s decision to deprive him of his citizenship. We therefore re-make the decision of the First-tier Tribunal by dismissing the appellant’s appeal.



Mrs Justice Hill DBE

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

19 February 2024