



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006637
On appeal from: DC/50199/2021
LD/00073/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 January 2024

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

KELMEND KAVAJA
aka
KLEMENT DEDEJ

(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Andrew Eaton of Counsel, instructed by Bureau for Migrant

Advice and Policy (BMAP)

For the Respondent: Mr David Clarke, a Senior Home Office Presenting Officer

Heard at Field House on 28 November 2023

DECISION AND REASONS

Introduction

1. The appellant challenges the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 1 July 2021 to deprive him of his British citizen status pursuant to section 40(3) of the British Nationality Act 1981.

2. The appellant is a citizen of Albania, who was naturalised as a British citizen in a false Kosovan identity.
3. **Mode of hearing.** The hearing today took place face to face.
4. For the reasons set out in this decision, I have come to the conclusion that the appellant's appeal must fail.

Background

5. The appellant came to the UK in 1998, entering clandestinely. He claimed asylum in 1999, asserting that he was an ethnic Albanian from Kosovo named Klement Dedej. He was treated as an unaccompanied minor and granted exceptional leave to remain until his majority, on 10 August 2003.
6. Before his 18th birthday, the appellant applied for further leave to remain. He did not disclose his real nationality but he is not to be held to account for that: he was still under age.
7. However, he was interviewed in September 2004, by which time he was 21 years old, and did not disclose his real Albanian nationality. On 6 October 2004, he was granted discretionary leave until 6 October 2007. In 2007, when he was 24 years old, he made an application for a travel document in the Kosovan identity. On 5 October 2007, he applied for indefinite leave to remain in the Kosovan identity, which was granted on 9 July 2008, outside the Rules, on the basis of the length of his UK residence.
8. In July 2009, the appellant applied for naturalisation, maintaining his Kosovan identity, although at section 1.7 of the application form, he omitted to reply to the question whether his name at birth was different from the name on the application, and at 1.8, where the question was whether he had been known by any other name. He made a 'good character' declaration. On 7 October 2009, the appellant was naturalised on the basis of that application.
9. On 8 October 2009, the appellant changed his name by deed poll to Kelmend Kavaja, which was his genuine name from his real Albanian identity. He then applied to renew his UK passport, which led to the respondent reviewing his status and making enquiries via the British Embassy in Tirana. The deed poll was included with the enquiry letter: the Embassy discovered that the appellant had given the correct date of birth but was in reality Kelmend Kavaja born in Elbasan Albania.
10. The appellant accepted that he had provided false information about his name and place of birth, both when he entered the UK and subsequently, including when he was no longer a minor. A stage one letter was sent to the appellant on 18 February 2021. The appellant, by his representatives, replied asserting that someone had told him to use a false name and to say he was Kosovan when he entered. The respondent was not satisfied with that explanation and on 1 July 2021, he decided to deprive the appellant of his British citizen status.

11. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

12. The First-tier Judge applied the *Begum* guidance and dismissed the appeal principally because: he considered it more likely than not that the appellant would not have been granted British citizen status had he not deceived the respondent as to his nationality; he accepted the respondent's evidence as to the relative brevity of any 'limbo period' between deprivation and the respondent's exercise of his discretion to grant further leave; that the Article 8 ECHR rights of the appellant and his partner would not outweigh the UK's right to control immigration; and that the respondent's exercise of discretion was lawful.

13. The appellant appealed to the Upper Tribunal.

Permission to appeal

14. The appellant raised two grounds of appeal:

- (i) That the First-tier Tribunal applied the wrong test as to whether he had acquired his British citizen status 'by means' fraud, false representation or concealment of a material fact;
- (ii) The First-tier Tribunal's approach to proportionality was incorrect in that the Judge erred by preferring the respondent's evidence as to the likely timeline to that relied upon by the appellant (the 'limbo period'); gave no weight to the interference with the appellant's ability to plan a family life, including the birth of children, with his partner; and failed to give weight to the fact that the initial deception occurred while the appellant was a minor.

15. Permission to appeal to the Upper Tribunal was granted principally because First-tier Judge Landes considered that the appellant's challenge to the Judge's finding on the limbo period was arguably wrong:

"2. I consider the second ground, about inadequate reasoning on the length of the limbo period, to be arguable. Whilst bearing in mind what was said in *Hysaj* about the limbo period, it is arguably a different consideration particularly when taking other factors into account, when the limbo period might be six months. Accordingly I consider if the judge were wrong in his approach, this would be, at least arguably, material. Whilst I do not consider the third ground arguably material on its own, in the sense I cannot see that it could possibly have made any difference to the proportionality analysis if the limbo period were eight weeks, it could just be material if the limbo period were significantly longer."

16. The grant of permission did not exclude the other grounds, but Judge Landes thought them unlikely to succeed.

Rule 24 Reply

17. There was no Rule 24 Reply to the grant of permission.

18. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

19. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal.
20. For the appellant, Mr Eaton reminded me that the appellant has done well educationally while in the UK and since 2021 has been a permanent employee of the UK Space Agency, before that worked as a contractor for two years with that body. His experience and expertise is highly valued on the National Space Strategy. He has a good crop of GCSEs, tertiary education to Masters Degree level, and a post-graduate Diploma. From 2009 to 2013, he volunteered with a Bengali community sports club, the London Tigers, helping to mentor and develop local young people.
21. The appellant should be regarded as having good character now, despite his deception. The decision on the limbo period was not open to the First-tier Tribunal given the response to a 2021 freedom of information request which found the period to be much longer at that time.
22. Mr Clarke relied on the respondent's review and the respondent's decision letter and made helpful submissions which it is not necessary to set out here.

Conclusions

23. I remind myself that the task of the First-tier Judge was to decide whether the respondent had made a public law error in his decision. It was unarguably open to him to find that such was not the case. The appellant's deception continued into his adult life and he did not disclose his true nationality until the respondent discovered it independently.
24. The appellant's contention concerning the limbo period is without arguable merit. The freedom of information response relied upon related to delays during the Covid-19 period not to the date of decision. Mr Eaton said that he thought there was a more up to date freedom of information response which had been relied upon in the First-tier Tribunal. He did not have it with him.
25. I gave leave to the appellant to upload any later freedom of information response on which he had relied before the First-tier Tribunal, by close of business on 28 November 2023, with a right of reply to the respondent the following day. Nothing has been received.
26. This appeal has no arguable merit. The First-tier Judge did not err in his approach to the decision of the respondent and he gave properly, intelligibly and adequately reasons for finding that it contained no public law error, and that the respondent's discretion had been lawfully

exercised. Anything beyond that would be a proleptic assessment, which the Tribunal was not entitled to consider.

27. There is no error in the Judge's approach to proportionality. The appellant and his partner have no children and are not married, although they cohabit. The Judge considered that not to be of significance in the balancing exercise and noted that 'no other detriment relating to the relationship has been identified'.
28. This appeal cannot succeed and I dismiss it.

Notice of Decision

29. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 8 January 2024