



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006680
First-tier Tribunal No:
DC/50135/2021
LP/00012/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 May 2024

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZAK SULA
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr M Parvar, Senior Home Office Presenting Officer
For the Respondent: Mr R Toal of Counsel, instructed by Wilson Solicitors LLP

Heard at Field House on 29 April 2024

DECISION AND REASONS

1. The Secretary of State for the Home Department appeals with permission against the decision of First-tier Tribunal Judge Wilsher promulgated on 25 February 2022, in which Mr Sula's appeal against the decision to deprive him of his British citizenship dated 18 May 2021 was dismissed. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with Mr Sula as the Appellant and the Secretary of State as the Respondent.
2. The Appellant is a national of Albania, born on 6 September 1967, who entered the United Kingdom illegally in November 1995 and claimed asylum on the basis that he was a Kosovan national at risk on return there. He was granted indefinite leave to remain as a refugee on 25 May 1999 and subsequently naturalised as a British citizen on 27 February 2002.

3. The Respondent notified the Appellant on 15 February 2021 that he was being investigated for fraudulently obtaining his British citizenship on the basis that having claimed originally in his asylum claim (including in interview and subsequent correspondence) and in his application for citizenship made on 27 November 2000 that he was a Kosovan national, there was reason to believe he was an Albanian national. Ultimately this was accepted by the Appellant, although he made representations against the deprivation of his citizenship partly on the basis that there were truthful representations made to the Respondent as to his nationality in applications for entry clearance by his wife and his father and partly on human rights/discretionary grounds.
4. The Respondent decided to deprive the Appellant of his British citizenship on 18 May 2021 pursuant to section 40(3) of the British Nationality Act 1981. The Appellant accepted that he had used deception knowingly in 1995 and following as to his nationality and the Respondent found that he had therefore obtained his citizenship by fraud, using false details on his original application, an application for a travel document and his application for citizenship. The deprivation of his British citizenship was considered to be reasonable and proportionate in all of the circumstances and would not entail a breach of Article 8 of the European Convention on Human Rights.
5. Judge Wilsher allowed the appeal in a decision promulgated on 22 May 2022 in which it was not disputed that the Appellant obtained his British citizenship by deception which was maintained until 2019. The Respondent's starting point was considered reasonable but the appeal was allowed for two main reasons. First, the Respondent had not considered an exercise of overall common law discretion, having only specifically considered in the decision Article 8 of the European Convention on Human Rights; section 55 of the Borders, Citizenship and Immigration Act 2009 and whether the Appellant would be rendered stateless by the decision but failed to properly consider the needs of the Appellant's disabled son and his best interests, including that savings were for his future care. Secondly, there was a difference between the likely limbo period between the deprivation decision and a new decision on leave, the Respondent saying this would be 8 weeks but a freedom of information request showing an average of 303 days and there was a failure to properly consider the impact of such a lengthy delay, particularly on the Appellant's son. These were matters that were also relevant to the exercise of general discretion.

The appeal

6. The Respondent appeals on four grounds as follows. First, that the First-tier Tribunal erred in law in failing to give adequate reasons and/or reaching a perverse finding that there was no exercise of common law discretion by the Respondent which was due to a failure to have proper regard to the substance of the Respondent's decision and guidance on the use of discretion. Secondly, that the First-tier Tribunal erred in law in failing to make necessary findings, failing to take material matters into account and misdirecting itself in law as to the exercise of the Respondent's discretion which was only challengeable on rationality grounds. Thirdly, that the First-tier Tribunal erred in law in misdirecting itself in law and taking into account irrelevant matters in relation to its consideration of the Appellant's claim about his savings being needed for his son's future care, evidence which was not before the Respondent and the criticism of the weight given to matters relating to the Appellant's son went beyond the scope of review on public law grounds as set out in R (Begum) v

Special Immigration Appeals Commission [2011] UKSC 7. Finally, that the First-tier Tribunal erred in law in misdirecting itself, considering irrelevant matters and making a perverse decision about the possible limbo period between decisions and failed to consider this on rationality grounds.

7. At the oral hearing, Mr Toal indicated on behalf of the Appellant that it was accepted that the first three grounds of appeal established errors of law by the First-tier Tribunal such that the First-tier Tribunal decision should be quashed and remitted for a de novo hearing.

Findings and reasons

8. In this appeal, the Appellant had very properly conceded that there was a material error of law in the First-tier Tribunal decision for the reasons set out in the first three grounds of appeal by the Respondent. I entirely agree that the First-tier Tribunal erred in law for the reasons identified and it is not necessary to give any further detailed reasons given the agreement between the parties on this and the agreement at the hearing that there needed to be a de novo hearing of the appeal. It is not necessary to separately consider the final ground of appeal which is immaterial in light of the need to set aside the decision of the First-tier Tribunal in any event.
9. After the hearing, on 30 April 2024, correspondence was received from the Appellant's solicitors indicating that the Appellant no longer wished to pursue his appeal and filed a notice of withdrawal. The Respondent consented to this on the same day. The Upper Tribunal has no objection to the withdrawal and as a result, no further action will be taken on this appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The Appellant has withdrawn his appeal.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5th May 2024