



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006730
First-tier Tribunal No:
DC/50207/2021
LD/00062/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 September 2024

Before

UPPER TRIBUNAL JUDGE LANE
UPPER TRIBUNAL JUDGE PINDER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ASTRIT BEQIRI
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr M Moriarty, Counsel instructed by Oliver and Hasani Solicitors

Heard at Field House on 11 September 2024

DECISION AND REASONS

1. I shall refer to the Appellant as the Respondent and to the Respondent as the Appellant, as they respectively appeared before the First-tier Tribunal.

Introduction

2. The Secretary of State appeals with permission to the Upper Tribunal a determination of First-tier Tribunal Judge Conrath ('the Judge'), promulgated on 12th of October 2022. The Judge allowed the Appellant's appeal against deprivation of citizenship on the grounds that the decision breached his Article 8 rights and that the breach of those rights was so compelling that the Secretary of State's discretion should

have been exercised differently. The Secretary of State's decision to deprive the Appellant of his British citizenship is dated 19th July 2021.

3. The Appellant is an Albanian national, although he had claimed to be Kosovan. The Appellant entered the UK in September 1999. He claimed asylum in March 2002, having claimed to have also entered in 2002, and did so in his real name but by providing false details as to his date and place of birth as well as his nationality, namely Kosovan instead of Albanian. Following a consideration of his asylum claim, the Appellant was granted asylum in May 2002. The Appellant was then naturalised as a British citizen on 1st October 2007, having maintained the same false identity details in that application.
4. Following on from checks undertaken by the Secretary of State in February 2019, the Appellant's false identity was discovered by the Secretary of State, who subsequently wrote to and notified the Appellant that the Secretary of State had reason to believe that the Appellant had obtained his British citizenship as a result of fraud and was considering depriving him of his British citizenship under s.40(3) British Nationality Act 1981. The Appellant responded with written representations, assisted by legal representatives. In those representations, the Appellant did admit to the deception and set out reasons why he should nonetheless not be deprived of his British citizenship. Following consideration of those representations, the Secretary of State issued and served upon the Appellant the Notice of Decision dated 19th July 2021 making the Order to deprive the Appellant of his British citizenship pursuant to s.40(3).
5. In his appeal in the First-tier Tribunal, the Appellant accepted that he had used deception in his asylum claim and naturalisation application. Neither did the Appellant dispute that such deception was material to the Secretary of State's decision to naturalise him as a British citizen in 2007. The Appellant focused his appeal on the impact that the Secretary of State's decision would have on the Appellant's family and private life established in the UK, and in particular that of his adult child. He submitted that ultimately this was an exceptional case, whereby the Secretary of State's discretion should have been exercised differently.
6. The core of the Appellant's case before Judge Conrath was that he is the sole carer of his disabled adult son, who is visually impaired, suffers from hearing loss and suffers from a personality disorder. The Appellant's wife passed away in 2015 from cancer.

The Judge's decision and findings – a summary

7. The Judge's conclusions are set out at paragraphs [30]-[51] and can be summarised as follows. In allowing the appeal, the Judge had regard at [43] of his determination to the length of the Appellant's residence in the UK, i.e. 23 years (at the time) since September 1999 and that following the best interests of children jurisprudence, a child should not

be blamed for that which he or she was not responsible, such as the conduct of a parent. At [44], the Judge found that any removal of the Appellant's citizenship is likely to have a considerable impact on the Appellant's child's way of life, creating a *"huge uncertainty in the lives of not only (the Appellant) but both his children, and is likely to impact on (his son's) mental welfare"*.

8. At paragraphs [45]-[48], the Judge also took into consideration that if deprived of his citizenship, the Appellant would lose his right to work, his right to rent and his right to a family life in the UK. The Judge noted that the Appellant would enter a period of 'limbo', when he would not be entitled to any benefits. We note at this juncture that this is the only reference in the Judge's conclusions to what is now commonly described as the limbo period.
9. The other findings reached concern the financial impact upon the welfare of the Appellant's son, including that the impact could result in the loss of their home. Furthermore, that the Appellant's son would worry about whether or not his father would be removed to Albania, which the Judge found is likely to harm the son's mental health and welfare. The Judge also found that as a consequence of the decision, the Appellant would not be able to travel abroad, which in turn would prevent him and his son, who depends on the Appellant, from seeing the Appellant's daughter who resides in Greece.
10. Lastly, in favour of the Appellant, the Judge had regard to the Appellant's claimed Roma origins and the claimed risks that he would face on return to Albania, which the Judge accepted at [34]. The Judge had regard to this factor at [48] whilst noting that this is not wholly relevant to the question of whether or not he should be deprived of his citizenship.
11. The only consideration of the public interest supporting the Secretary of State's decision to deprive the Appellant's citizenship is at [49]. There, the Judge approached the issue by asking himself the following question: *"(w)hat is to be gained by the Secretary of State in imposing such deprivation of British citizenship?"* The Judge answered this question in summary as follows:
 - (a) It cannot be said to be genuinely in the public interest to deprive the Appellant of his citizenship, with all that entails for the Appellant's son, and the risk that it puts him under of being returned to Albania;
 - (b) The only way that it could be said to be *"conducive to the public good"*, the test referred to by the Judge at [49], is in discouraging others from using such fraud to obtain entry to the UK;
 - (c) Concluding that the public interest is outweighed by the fact that the Appellant's fraud occurred some twenty years ago and that in

itself is not sufficient to outweigh the damage that the Secretary of State's decision would have on the welfare of the Appellant's family, in particular that of his son. The Judge finds that the son would be unduly punished for what his father did twenty years ago, when he claimed asylum in the UK.

The Secretary of State's appeal

12. In their appeal against Judge Conrath's decision, the Secretary of State advances four grounds. These submit that the Judge:
 - (i) Failed to consider the public interest or the weight the Judge gave to that public interest was perverse and/or a misdirection in law;
 - (ii) Materially misdirected himself in law by conducting a proleptic analysis of the merits of a future claim and/or gave inadequate reasons for treating the Appellant as a credible witness;
 - (iii) Failed to take relevant matters into account and/or gave inadequate reasons for finding that the Appellant committed the fraud 20 years ago;
 - (iv) Gave inadequate reasons for concluding that deprivation would have a significant financial impact on the Appellant's dependent child and/or failed to take relevant matters into account.
13. Permission to appeal was granted by First-tier Tribunal Judge Moon on 22nd November 2022 on the basis that it was arguable that the Judge had made an error of law in failing to acknowledge the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise in accordance with guidance given in *Ciceri (deprivation of citizenship appeals: principles) Albania (Rev1)* [2021] UKUT 238.
14. The matter now comes before us to determine whether the First-tier Tribunal Judge erred in law, and if so whether any such error was material and whether the decision of the First-tier Tribunal should be set aside.

The parties' respective submissions and our conclusions

15. We consider the Secretary of State's grounds of appeal each in turn, addressing also the Appellant's response. We are grateful to both parties' advocates for their helpful written and oral submissions.

Ground 1

16. Firstly, the Secretary of State argued that the Judge misdirected himself when considering the public interest and whether this is outweighed by the Appellant's particular circumstances at [49]. We find that the Judge has materially erred in this respect. At [49], the only passage in which

the Judge has set out the public interest and his reasons for finding that this is outweighed, the Judge also referred to the test of 'conducive to the public good'. This is a test that is included in s.40(2) but not set out at s.40(3), the relevant statutory provision in this appeal.

17. Furthermore, we are satisfied that the Judge has effectively reversed engineered the assessment that is to be carried out by asking himself what the Secretary of State is "*gaining*" from imposing the deprivation on the Appellant. This is also demonstrated by the Judge appearing to require that a decision be "*genuinely*" in the public interest. The Secretary of State has rightly acknowledged in the grounds of appeal that it is possible for a Tribunal to find, in appropriate cases, that there are matters, which are capable of outweighing the public interest but we conclude that at [49], the Judge does not properly identify what the public interest entails and does not confirm that heavy weight is to be placed on such an interest before considering whether the Appellant's circumstances are capable of outweighing this. The Appellant's submission that the public interest is not absolute in deprivation cases, relying on *Pham v Secretary of State for the Home Department* [2015] UKSC 19; [2015] 1 WLR 1591, [16] is correct but the difficulty is that, on any view, it cannot be said from [49] that the Judge has first evaluated the relative weight to be accorded to the public interest before considering the competing interests and considerations.
18. It was submitted on behalf of the Appellant that the Judge had given appropriate weight to the public interest because he had properly identified that the decision to deprive the Appellant of his citizenship would act as a deterrent to others using such fraud to obtain entry to the UK. We do not consider that this remedies the Judge's errors. We find that the Judge, in his consideration of the public interest, has limited this to deterrence: the Judge stated:

The only way, in my view, in which it could be considered to be "conducive to the public good" is in discouraging others from using fraud to obtain entry to the UK.
19. We are satisfied from this passage, and there being no other consideration by the Judge of the relevant public interest, that the Judge has effectively imposed his own view of what the public interest entails. For this reason and those above, the Judge's approach to the public interest is contrary to well-established case-law - *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 00128 (IAC), [110]; *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769, [80]; *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 00115 (IAC), [84]. Moreover, the Judge's limited consideration of deterrence is also vitiated by reference to the incorrect test of 'conducive to the public good', as already addressed.
20. We do not find that the Secretary of State's grounds amount to a mere disagreement with the Judge's approach to the competing public and

private interests. For the reasons above and considering the significance of the public interest in deprivation appeals generally, we are satisfied that the material errors of law, which we find to be made out under this ground, would be sufficient grounds to set aside the Judge's decision. We nonetheless consider, for completeness, the remaining grounds.

Ground 2

21. Secondly, the Secretary of State argued that the Judge materially erred in failing to take into consideration the Appellant's past deception, in the context of his asylum claim and subsequently maintained as part of his naturalisation application, when assessing the Appellant's evidence of having been ill-treated in the past in Albania. There is some force in the Appellant's submission that the Appellant was duly cross-examined at the appeal hearing by the Secretary of State and his evidence duly tested. Furthermore, that it does not appear from the Judge's record of the Secretary of State's submissions that these were matters in dispute. However, there is no indication at [34] that the Judge had regard to the Appellant's past deception and having no independent or documentary evidence of the Appellant's account, we find that it was incumbent of the Judge to do so.
22. Moreover, any suggestion from the Appellant that it was open to the Judge to accept the Appellant's evidence of past harm is further countered by the Secretary of State's submission, which we accept, that the Judge's assessment at [34] and finding at [48] amounts to a proleptic analysis of the merits of a future claim and of a decision not yet made. Whilst Mr Moriarty is correct in emphasising that the Judge noted at [48] that this is not wholly relevant to the question of whether or not he should be deprived of his citizenship, the Judge returns to this factor at the end of that paragraph, when stating the following:

This could be significant if, as a result of his losing his citizenship, he is at risk of being returned to Albania.
23. In addition, the fact that these matters may not have been disputed by the Secretary of State at the hearing, as noted by the Appellant in oral and written submissions, is likely to be in part because no such removal decision has been taken by the Secretary of State. The Judge recorded the Presenting Officer's submission at [23] reminding the Tribunal that if the Appellant lost his citizenship, it would not automatically result in his deportation (or indeed his removal) and if such deportation action was to be taken as a result of the loss of citizenship, the Appellant would have a right of appeal.
24. Lastly, Mr Moriarty submitted that the Judge was entitled to have regard to the impact that it would have on the Appellant's son, if the Appellant, and indeed his son, are worried about the risk of being returned and in turn, worried about the risks that the Appellant may face on any such

return. Thereby, seeking to distinguish the Appellant's and his son's worries from the likelihood of the Appellant being removed, with the Judge - it is submitted - being entitled to have regard to the former. In the second sentence of [49], the Judge stated the following:

It cannot be said, in my view, to be genuinely in the public interest to deprive him of his citizenship, with all that entails for his son, and the risk that it puts him under of being returned to Albania.

We do not accept this submission from the Appellant. We find it likely that the Judge was referring to the risks of the Appellant being removed, flowing from the deprivation decision. It is also clear that the Judge is referring to the Appellant, as opposed to the Appellant's son, when using the personal pronoun "him". The first 'him' is clearly attached to the deprivation of citizenship, which can only relate to the Appellant and whilst there is reference to the Appellant's son, there can be no suggestion that the Appellant's son would be returned to Albania.

25. We find it likely therefore that the Judge did have regard at [48] and [49] to the risk of the Appellant being removed, as a consequence of the deprivation decision. This goes beyond the analysis that the Judge was required to undertake - *Muslija (deprivation: reasonably foreseeable consequences) Albania* [2022] UKUT 00337 (IAC); *Ciceri v Secretary of State for the Home Department* [2021] UKUT 238 (IAC); [2021] Imm AR 1909. We find that this is what is most problematic within the submissions made under Ground 2.

Grounds 3 and 4

26. There is a degree of overlap between Grounds 3 and 4 and so we address these two grounds together. The Secretary of State argued that the Judge failed to take into consideration the continuing exercise of deception undertaken by the Appellant when stating at [49] that the fraud occurred some twenty years ago. Whilst the Appellant's oral and written submissions are correct to note that the Judge had carefully noted the instances of deception at [31] and when recording the background at [3]-[5] and the Secretary of State's reasons for the decision at [14], the Judge's characterisation of the Appellant's deception at [49] does appear to omit the continued nature of the deception.
27. The Appellant had arrived in the UK in 1999 and the false identity details were repeated at several instances during the Appellant's asylum application procedure and again in 2007 when applying for naturalisation. It is trite to note that these details would have been repeated again on any British passport application of the Appellant's and throughout the Appellant's daily life in the UK and overseas when providing his identity details, whether in a personal or official capacity.
28. It was submitted on behalf of the Appellant that the Judge would have been plainly aware of the benefits that the Appellant was able to accrue

as a result of the fraud over a sustained period of time since this formed the core of the Secretary of State's decision and invoking of s.40(3). However, coupled with the material errors of law we have found in relation to the Judge's assessment of the public interest, we are satisfied that the Judge has failed to take relevant matters into consideration, including the sustained nature of the Appellant's deception. This is a material error since it is clear from [49] that the passing of twenty years was a weighty consideration in the Judge's conclusion that the public interest was outweighed by the Appellant's particular circumstances, such that the Secretary of State's discretion should have been exercised differently.

29. Under Ground 4, the Secretary of State challenged the Judge's consideration of the Appellant's financial circumstances. The Secretary of State argued that the Judge's findings that the Appellant and his son could lose their home and the Appellant his carer's allowance, are wholly unreasoned. Further, that the Judge failed to take into consideration the Appellant's savings and that his son, as an adult, who has been assessed as disabled, would remain entitled to the benefits and social housing that he currently enjoys.
30. The Judge is correct to note at [45] that the Appellant would lose his right to work and rent but we find that the Judge materially erred in failing to consider that the Appellant's son is an adult. Whilst he is disabled and has his own physical and mental health needs, which the Appellant continues to assist with, it is likely that the Appellant's son will remain entitled to social housing and to the benefits that he is eligible for and receives. There does not appear to have been any evidence before the Judge to say otherwise and so coupled with the Appellant's savings, we consider that the Judge has erred in this respect by failing to take relevant matters into consideration and/or by failing to give adequate reasons for the findings reached at [45]-[46].
31. This is also where Ground 4 overlaps with Ground 2. There is only one fleeting reference in the Judge's conclusions to the limbo period - at [45], where the Judge records correctly that the Appellant will enter a limbo period. However, the Judge otherwise had regard to numerous factors and their impacts, which span significantly beyond any such limbo period. For instance, his having regard to any difficulties that the Appellant and his son might experience in travelling abroad at [47] and the loss of the Appellant's and his son's home, which was not open to the Judge on the evidence before him as addressed at paragraph 30 above.
32. In addition, we are satisfied that the Judge fell into error contrary to the guidance in *Muslija (deprivation: reasonably foreseeable consequences) Albania*, which includes at paragraph 19d. the following:

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.

The Judge had no medical or expert evidence setting out the impact on the Appellant’s son of a period of uncertainty as a result of the limbo period – the Judge noted at [37] that it was unfortunate that there was not a full medical report before him. For the reasons above, we are not satisfied that the Judge had properly identified what other factors arise in this appeal that are capable of tipping the proportionality balance in favour of the Appellant.

33. For the reasons above, we find that all of the Secretary of State’s grounds of appeal are made out leading us to conclude that the decision of the First-tier Tribunal must be set aside. In light of the errors of law concerning the Judge’s approach to the public interest and his failures to properly identify and assess the reasonably foreseeable consequences of the Secretary of State’s decision, no findings should be preserved.

Decision

34. The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand.
35. The Appeal is remitted to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*, before any Judge of the First-tier Tribunal, other than Judge Conrath.

Sarah Pinder

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17th September 2024