IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002278

First-tier Tribunal No: DC/50050/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 November 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MYRTEZA HILAJ
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Rashid instructed by Whitfield Solicitors.
For the Respondent: Ms Simbi, a Senior Home Office Presenting Officer.

Heard at the Nottingham Justice Centre on 11 November 2024

DECISION AND REASONS

1. Following a hearing at Field House on 18 June 2024 Upper Tribunal Judge Linsley set aside the decision of the First-tier Tribunal which allowed the Appellant's appeal against the decision of the Secretary of State to deprive him of his British citizenship on the basis it had been obtained fraudulently.
2. A judicial transfer order has been made and the matter comes before me today for the purpose of substituting a decision to either allow or dismiss the appeal.
3. The Appellant is a citizen of Albania born on 30 May 1973 who arrived in the UK and claimed asylum on 18 July 1999, claiming to be Myrteza Hilaj born on 30 May 1973 in Prush, Gjakove, a Kosovan national.
4. During his asylum interview the Appellant was asked what nationality he was to which he answered "Kosovan". It was even put to him that he was Albanian and not Kosovan but he repeated the claim to be Kosovan.
5. The Applicant claimed asylum on the ground that his home had been destroyed and he had no family in Kosovo. The Appellant signed the interview record stating this was an accurate record of his claim. Whilst the claim he had no

© CROWN COPYRIGHT 2024

family in Kosovo was likely to be correct, as he is Albanian, the rest of his assertions were not.

6. The claim was refused on 24 January 2000 because the Secretary of State considered the threat of persecution no longer prevailed given the changed circumstances in the region and because the claim was not considered credible, since the Appellant had not attempted to claim asylum in either Macedonia or France when he had the chance.
7. The Appellant made a further statement in support of his claim in which he claimed to have been detained and tortured by Serb forces. That was deemed not to be credible since he would have mentioned that in his initial interview if it was, which he failed to do.
8. The Appellants appeal against the refusal of his asylum claim was heard on 9 October 2000, in which he continued to claim to be a citizen of the Federal Republic of Yugoslavia and that he had been detained and tortured at the hands of the Serb forces. The appeal was dismissed.
9. On 10 August 2004 the Appellant sponsored his parents' entry clearance application. In their application forms they both state the Appellant is Albanian. Although the Secretary of State's skeleton argument notes the Appellant made no reference to this in his mitigation, Mr Rashid did before me which is discussed below. The Respondent's position is, in any event, that it is not accepted that the Home Office was in possession of the knowledge of the Appellant's genuine identity from this date on the basis the information was disclosed to a separate government body and it would have required them to disclose this information to the Home Office, which they did not, and so she and could not have acted any sooner regarding this than she did.
10. The Appellant continued to claim to be Kosovan in future applications.
11. The Appellant then applied for leave to remain under the Case Resolution Directorate (CRD) Legacy Programme by completing the required CRD Questionnaire. This was received by the Home Office on 06 June 2008. In his application the Appellant repeated his claim to be Myrteza Hilaj, born 30 May 1973, a Kosovan national. He stated a Human Rights application was made in 2000 by his representatives although the Secretary of State had no record of that on file. The Appellant claimed he continued to fear a return to Kosovo and signed the declaration stating the information in the form was true and acknowledging false information may lead to a prosecution. On the basis of this, he was granted Indefinite Leave to Remain (ILR) on 19 September 2008 because of his length of residence in the UK.
12. On 01 December 2008 the Appellant applied for a Home Office Travel Document. In that application he stated he is Myrteza Hilaj, born 30 May 1973, a Kosovan national, although it is noted in the Secretary of State's skeleton argument he left blank his place of birth. The Appellant stated he could not obtain a passport from his national authorities because there was no Kosovan Embassy in the UK.
13. The Appellant filed his application for naturalisation as a British citizen on 21 January 2013. In his application he again stated he is Myrteza Hilaj, born 30 May 1973 in Prush, Gjakove, Kosovo and was a Kosovo national. The Appellant stated his father was Gani Hilaj, born 29 November 1951 in Prush, Gjakove, Kosovo and his mother was Xhevahire Hilaj (nee Isufaj), born 16 May 1951 in Petkaj, Gjakove, Kosovo. The Appellant stated he had travelled outside the UK five times during the previous five years, on four occasions to Albania, three times as a holiday and once to visit relatives, totalling 82 days in Albania.
14. Section 3 of the naturalisation application dealt with the good character requirement. Question 3.6 asked, "*Have you ever engaged in any other activity which might indicate that you may not be considered a person of good*

character?" The Appellant answered "*No*". Question 3.17 asked for details regarding any positive answers which he left blank. The Appellant confirmed he had read and understood the Guide AN and Booklet AN and signed the declaration confirming the information he gave in the application was true, after the warning that to provide false information "*knowingly or recklessly*" was a criminal offence. On the basis of the information in his application the Appellant was naturalised as a British citizen on 05 June 2013 in the identity Myreteza Hilaj, born 30 May 1973 in Prush, Gjakove, Kosovo.

15. On 29 December 2017 the Appellant's case was referred by another government department after investigation had discovered his genuine identity was Myrteza Hilaj, born 30 May 1973 in Kukes, Albania. As part of the referral the Home Office was provided with the Appellant's Albanian birth certificate, his Albanian family certificate, and the results of the checks carried out by the British Embassy in Tirana with the Albanian and Kosovan authorities.
16. That evidence revealed the Appellant's previous claims in relation to his place of birth and nationality were all lies.
17. The Appellant was notified by the Secretary of State that she was considering depriving him of his British citizenship on 10 May 2018 because of evidence that he is not Kosovan as he had claimed but was in fact Albanian.
18. The Appellant responded through his representatives on 25 May 2018 in which he claimed that he was "*not aware of the procedures of the country*" and was "*very scared and nervous*" when he first made his claim because he was not guided by his solicitors and regretted not telling the truth. The Appellant claimed it was because of the stress he was under that he gave his nationality as Kosovan instead of his genuine nationality of Albanian. The rest of the letter dealt with his Article 8 rights under the European Convention on Human Rights on the basis of his family and private life and length of residence in the UK. The Appellant's representatives concluded by stating that he "*never intended to cause harm or mislead the Home Office at any point in his life. This was an honest mistake made by a man when he was of a young age and was suffering the trauma of having to give up his homeland*".
19. The Respondent did not accept the explanation as when he first entered the UK and applied for asylum and claimed he was Kosovan and gave details of the mistreatment he and his family suffered at the hands of the Serbian authorities, even if it was accepted that this would have been a stressful process and that he may have been scared, it was not credible this would have caused the Appellant to forget his nationality and believe he was from a different country. Likewise, a lack of knowledge of the processes in the UK would not have caused him to believe he was Kosovan instead of Albanian, especially as he had been born and lived in Albania for 26 years.
20. The Respondent's position is that the Appellant's solicitor would not have advised him to misrepresent himself, thus stating that he was not guided by his solicitor only reinforces the fact that the decision to deceive the Secretary of State was made by the Appellant alone. The deception was maintained by the Appellant in his application for a travel document and in his naturalisation form. The Appellant could have brought to light the discrepancy and his true nationality if he wished to do so, but he did not. Further, he fabricated his and his family's history when making his asylum claim and then maintained this deception even when appealing the refusal decision. For these reasons the Respondent does not accept the Appellant made "*an honest mistake*", but rather a deliberate choice to misrepresent himself as a Kosovan national.
21. No claim of a fear on return to Albania was made and the Appellant made a number of trips to Albania prior to naturalising. The Respondent states that any "*trauma of having to give up his homeland*" was a choice made by the

Appellant freely and that any pressure or stress he felt is more reasonably attributed to the fear of being discovered in his deception.

22. The Respondents position in her skeleton argument is that the deception was clearly perpetrated to benefit from immigration rules put in place to aid those fleeing the conflict in Kosovo and gain a status in the UK that the Appellant was not entitled to. He has never made any claim to be fleeing Albania for any reason covered by the Refugee Convention. As such it can be presumed that had the Appellant told the truth about his Albanian nationality when he first entered the UK, any asylum claim would have been refused and he would have been returned to Albania. This in turn would have meant he could not have accrued the length of residence in the UK that was the reason for his grant of ILR, the status necessary to naturalise.
23. The Secretary of State, having considered Chapter 55 of the Nationality Instructions, which provides guidance on when deprivation is appropriate, concluded that it is clear that deprivation is justifiable, since the Appellant's deception was deliberate and resulted in the grant of status necessary to naturalise.
24. In his witness statement dated 16 November 2021 the Appellant admits that he incorrectly stated his nationality to be Kosovan and not Albanian when he came to the UK and submitted his asylum application. He claims he was young and naïve and made a mistake in stating his incorrect nationality and states he was scared to amend the mistake for fear of being returned to Albania. The Appellant claims he understands now it would have been better if he had told the truth from the beginning. He apologises for the mistake.
25. At [16] the Appellant again states he understands he has made a mistake and should not have wrongly stated he was a Kosovan national and should have told the truth. He goes on to talk about his family life in the UK. The Appellant claims that the only thing he did that was wrong was to incorrectly state his nationality and that he has never been involved in any other criminal activity during his time in the UK. That is, of course, a historic statement, as the Appellant is currently serving a sentence of imprisonment as noted below.
26. The Appellant claims that when he came to the UK as a young boy did not know right from wrong, but that does not explain why he continued to maintain the deception as an adult when he had ample opportunity to tell the truth. The Appellant accepts at [17] that he had such opportunity but claims he was frightened that if he told the truth he will be returned to Albania which he claims is not an option for him.
27. The Appellant claims that he considered it unfair for his citizenship and ILR to be revoked and refers to the fact he has been granted Discretionary Leave to Remain in the UK valid to 22 March 2024 after which he will have to submit a fresh application.
28. The statement by the Appellant's wife Mrs Enkeleta Hilaj, dated 16 November 2021, confirms the family relationships, records the Appellant having told her that he regrets not changing his nationality, and speaking of the effect of the proceedings on the family as a whole.
29. The Appellant's skeleton argument before the First-tier Tribunal stated there were four relevant issues to be determined being:

    a) Whether the deception found to have been used by the Appellant and his Legacy application for leave to remain motivated the grant of Indefinite Leave to Remain and/or British citizenship;
    b) Whether, and if so, how far, the nature and degree of the fraud is relevant to the exercise of discretion to deprive him of his British citizenship;
    c) Appellant's immigration status on deprivation, i.e. whether he would revert to ILR or be left without any leave;

d) The reasonably foreseeable consequences of deprivation in so far as they engage Art 8 ECHR and/or inform the exercise of discretion more broadly.

30. Upper Tribunal Judge Lindsay, in her error of law finding, states at [14 – 15]:

> 14. I find therefore that it was not rationally open to the First-tier Tribunal to conclude that the accepted (by all parties) lies told by the claimant about his being Kosovan not Albanian when applying for asylum and indefinite leave to remain which he maintained, and did not disclose, when applying for British citizenship were not material to that grant of citizenship in light of the policy of Secretary of State, as set out above, or that the deprivation decision was not supported by evidence in this case. The decision of the First-tier Tribunal therefore errs in law and must be set aside.
>
> 15. I set aside all of the findings of the First-tier Tribunal bar the agreed position of both parties that the claimant intentionally committed an act of deception in claiming to be a Kosovan rather than Albanian citizen in his asylum application and maintained this untrue position in all communications with the Secretary of State including his indefinite leave to remain application and application to naturalise as a British citizen.

31. The Tribunal is grateful for the assistance provided from the clerk at the Nottingham Justice Centre, the advocates, and staff at Field House, in resolving a situation that occurred in that despite the Appellant being brought to HMP Nottingham for the purpose of being produced for the hearing and Field House making the necessary arrangements for him to be produced, no transport arrived to bring him from the prison the short distance to the court, a distance of around 2 miles.
32. Fortunately, Mr Rashid was able to take instructions from his client on the telephone meaning we were able to proceed in his absence, in the presence of his family members who attended, by way of submissions only.
33. I reserved my decision which I now give with reasons.

<u>The law</u>

34. Section 40 of the British Nationality Act 1981 ('the BNA') empowers the Secretary of State to deprive a person of their British citizenship in certain circumstances:

> (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".

35. The criteria in section 40(2) and (3) operate as a condition precedent to the Secretary of State's exercise of her power to deprive a person of their citizenship.

36. In R (Begum) v Secretary of State for the Home Department [2021] UKSC 7 at [63]-[72], the Supreme Court held that the appellate role of SIAC in an appeal against a decision under section 40(2) of the BNA is confined to one correlating with conventional public law review standards.
37. The Court's position in respect of section 40(2) of the BNA is read across to apply to section 40(3) (see [32];[37]-[40] of Begum). As such the appellate role of this Tribunal is to review the legality of its decision-making process, and not the merits of the decision under appeal (see [68]-[72] & [124] of Begum).
38. Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 00115 (IAC) is a decision of a Presidential panel of the Upper Tribunal, the headnote of which reads:

> 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).

39. A recent decision of the Upper Tribunal is Onuzi v Secretary for the State Home Department [2024] UKUT 00144 (IAC), the headnote of which reads:

> 1. Each case is fact sensitive. In the absence of a statutory definition of 'good character', the starting point is for the Secretary of State to decide, subject to general principles of administrative law, whether a person is of good character for the purpose of granting citizenship under section 6(1) and Schedule 1 of the British Nationality Act 1981 ('BNA 1981').
>
> 2. Any negative behaviour that might cast doubt on whether a person is of good character is likely to be directly material to the assessment of the statutory requirement, whether it played a role in the application for naturalisation itself or took place before the application.
>
> 3. In the majority of cases where negative behaviour that might cast doubt on whether a person is of good character has been dishonestly concealed from the Secretary of State, the fact that the negative behaviour might not have been directly relevant to an earlier grant of leave is unlikely to make any material difference to the assessment under section 40(3) BNA 1981. It is for

the Secretary of State to decide, subject to general principles of administrative law, whether the negative behaviour might have made a material difference to the assessment of good character under section 6(1) BNA 1981 had the information been known at the time.

4. The omission of a fact that might have cast doubt on whether a person is of good character when they applied for naturalisation is likely to be material to the question of whether a person 'obtained' citizenship by the dishonest concealment of a material fact for the purpose of section 40(3) BNA 1981.

5. The concept of a chain of causation being broken is only likely to be relevant in cases where there was full disclosure and the Secretary of State exercised discretion to grant leave to remain or naturalisation while in full possession of the facts.

6. The decision in Sleiman was based on limited argument and should be read in the full context of the statutory scheme and other relevant case law.

Discussion and analysis

40. During the course of his submissions Mr Rashid referred to dishonesty and to Secretary of State "covering up" the evidence relating to the Appellant's parents visit visa applications. Insofar as he is suggesting a deliberate act and an element of criminality or breach of the duty of candour, I find none of these made out. The Secretary of State provides a plausible explanation for why the statement by the Appellant's parents in their visa application in relation to his nationality as an Albanian was not brought to their attention, which is an issue discussed further below.
41. Although not raised in mitigation, as noted above, Mr Rashid also submitted the chain of causation had been broken as the 2004 Visa application made by the Appellant's parents, of which he was the Sponsor, and in which they stated that his nationality was Albanian, meant the Secretary of State was aware of that fact at that time.
42. The Appellant's parents visa applications were made to the post in Tirana on 10 August 2004. In the visa applications the Appellant's parents state they are Albanian nationals. The details of the sponsor appear on that form in which the Appellant is named and his relationship described as their son. In the section headed nationality and immigration status the word Albanian appears in capital letters. The same details appear on the application forms for both the Appellant's mother and father.
43. It is important not to lose sight of the structure of the decision-making process relating to Visa applications in 2004. At that time the responsible body was the Immigration and Nationality Directorate (IND) which was part of the Home Office but which had its own headquarters in Croydon in London and a wide range of responsibilities for inward migration, asylum applications and recognition of refugees, nationality and citizenship and the removal and deportation of immigration offenders. That body was replaced on 1 April 2007 by the Border and Immigration Agency which later became the UK Border Agency on 1 April 2008 and UK Visas and Immigration in 2013.
44. The visa application was made to a foreign post and would have been considered by an Entry Clearance Officer (ECO) locally. Entry clearance staff were drawn from either the Foreign and Commonwealth Office or Home Office and given initial training. The operational means of the post is important, as in October 2000 the Home Office devolved the authority to grant leave to enter the United Kingdom from ports of entry to Visa issuing posts overseas. There was also a rise in number of Visa applications during that time including 2004 –

2005. I have not been referred to any publication which shows that an application made in post at a visa processing stations in Tirana in 2004 would have come to the notice of the Secretary of State for the Home Department, such that a decision maker making a decision upon the applications made by the Appellant could be taken to have actual or deemed knowledge of the same.

45. There is also the point that notwithstanding what was said by the Appellant’s parents in 2004 regarding his and their own nationality, the chronology shows the Appellant made a number of subsequent applications in which he maintained the fiction that he was a national of Kosovo. I also find it relevant to note the very specific development recorded above that in his naturalisation application in January 2013 the Appellant not only misrepresented his own nationality but also that of both his parents whom he also claimed to be Kosovan.
46. I do not find it made out that the statements made by third party applicants in their Visa applications in 2004 in relation to their own nationality and that of their son, the Appellant, was sufficient to fix the Secretary of State with notice of the Appellant’s true nationality when he, as the first party applicant, was making a clear statement which he confirmed by signing a declaration of truth, that he was a citizen of Kosovo, as were the same third-party nationals.
47. Reference was also made to the certificate of naturalisation issued by the Home Office on 5 June 2013 confirming that the Appellant had been naturalised as a British citizen from the date of that certificate. It was submitted by Mr Rashid that the endorsement appearing in the top right-hand corner of that document shows that the Secretary of State was fixed with notice of the Appellant’s true nationality. That endorsement reads:

> According to documentary evidence produced to the Home Office the place of birth of the certificate holder should read KUKES, ALBANIA.
>
> H. Edwards.
>
> For Head of Nationality Directorate.
> 18 January 2023.

48. That document does not confirm the Secretary of State is fixed with notice at any particular time but rather records the need for caution as a result of information that had come to the notice of the Home Office as clearly indicated in the Secretary of State’s chronology and in the decision to revoke the Appellants British citizenship.
49. In relation to the first issue raised by Mr Rashid, I find the chain of causation was broken as it is not a case where there was a full disclosure of all the relevant facts to the Secretary of State, meaning the Secretary of State was unable to exercise discretion whilst in full possession of those facts.
50. I do not find it made out that it is reasonable to expect the Secretary of State to have been aware of and be deemed to have had notice of the content of the application considered by the ECO, when undertaking the required deprivation assessment on the facts of this case. I find the 2004 visa application by his parents is too remote and was, in any event, contradicted by direct evidence from the Appellant in relation to himself and his parent’s nationality.
51. The second point raised by Mr Rashid related to the issue of materiality in which he submitted that the Appellant had been naturalised as a result of the length of period he had been in the UK following the grant of ILR and not as a result of his deception. I find no merit in this claim. The Secretary of State’s position, which is a position rationally open to her, is that the chain of events leading to

the grant of British citizenship has its foundation in the Appellants lies and deception in relation to his nationality. Had the deception not occurred it is a rationally sustainable argument by the Respondent that the Appellant would have been removed to Albania. Although Mr Rashid submitted there was no evidence that was the case, there was a material difference at the relevant time for those who had Kosovan nationality in light of the problems that were being experienced in Kosovo and the Secretary of State's policy of allowing such individuals to remain in the UK, and the position of Albanians in relation to whom there was no need to grant leave to remain unless an individuals circumstances warranted the same. The Secretary of State clearly records that the Appellant made no claim that he had suffered any harm in Albania or anything to indicate a credible real risk of the same if he was returned. I find it is a rational conclusion of the Secretary of State that if she had known the Appellant was Albanian, he would have been returned to Albania. On that basis he would not have been entitled to leave under the Legacy scheme, there was no evidence he would have been entitled to any other grant of leave to remain, would not have been able to acquire ILR, and would therefore not have been in the UK for the necessary period required for naturalisation. I therefore find the deception to be material.

52. Returning to the four issues raised by the Appellant in his previous representative's skeleton argument:

    a) Whether the deception found to have been used by the Appellant and his Legacy application for leave to remain motivated the grant of Indefinite Leave to Remain and/or British citizenship;
    b) Whether, and if so, how far, the nature and degree of the fraud is relevant to the exercise of discretion to deprive him of his British citizenship;
    c) Appellant's immigration status on deprivation, i.e. whether he would revert to ILR or be left without any leave;
    d) The reasonably foreseeable consequences of deprivation in so far as they engage Art 8 ECHR and/or inform the exercise of discretion more broadly.

53. I find the answer to question (a) is that the deception found and accepted to have been used by the Appellant in his Legacy application for leave to remain motivated the grant of ILR and subsequently of British citizenship.
54. The answer to question (b) is that the nature and degree of the fraud was very relevant to the exercise of discretion to deprive him of his British citizenship as it was the central material factor in the chain of events that occurred.
55. The answer to question (c) is that on deprivation Appellant will not revert to having ILR. I have recorded above that he was granted a period of discretionary leave to remain and what will occur in the future will be a matter for the Secretary of State in light of a post deprivation decision conviction of conspiracy to facilitate unlawful immigration, having been found guilty by a jury, and being found by the Crown Court to have been an important facilitator involved in a lucrative criminal enterprise involving nine intercepted incidents of smuggling of immigrants from Albania.
56. In relation to question (d) the Appellant failed to make out that the reasonably foreseeable consequences of deprivation will impact upon his rights under the ECHR in a disproportionate way. It is not established there will be any unlawful interference in a protected right as the Appellant is in prison and is likely to there for some time. That will be as a result of his sentence not any action by the Secretary of State in depriving him of his British citizenship.
57. Mr Rashid made submissions regarding the weight to be given to the public interest, claiming the delay between the filing of the visit visa application with the ECO in 2004 and the deprivation decision was excessive, such that less

weight should be given to the public interest. As found above, there is no merit in fixing the Secretary of State with knowledge of the Appellant's correct nationality in 2004. The definitive evidence upon which it can be found the Secretary of State was fixed with such knowledge was in 2017 upon receipt of the information contained in the referral and originating from Albania. I do not find any period of delay from 2017 unreasonable or excessive such as to warrant a finding that less weight should be given to the public interest when considering human rights matters. There is a very strong public interest in protecting the credibility of a grant of British citizenship in light of the rights that confers on an individual, including the right to have a British passport, both nationally and internationally.

58. In any event, it is not made out that any period which the Secretary of State may take to make a decision on the Appellant's human rights position will result in a disproportionate impact on a protected right sufficient to amount to breach of Article 8 ECHR of either the Appellant or a family member.
59. In conclusion, I find it has not been established that the Secretary of State's conclusions in relation to whether the Appellant was able to satisfy the good character requirements have been shown to be rationally objectionable. The Respondent has shown they are rational. The Appellant continued to employ deception even after his initial asylum claim had been rejected and also relied upon further claims that lacked credibility. I find concealment of his deception around the use of a false identity had a material impact on the grant of citizenship. I find the decision to deprive the Appellant under section 40(3) of the British Nationality Act has not been shown to be rationally objectionable in that it does not contain a material legal error and the reasons for exercising such discretion are themselves rational.
60. I find the Secretary of State has established the Appellant has acted dishonestly when considering the guidance provided by the Court of Appeal in Ullah v Secretary of State the Home Department [2024] EWCA Civ 201. I find that the Appellants use of deception including his dishonest completion of the application forms referred to above, is sufficient to justify the deprivation decision. I find the Respondent has adduce sufficient prima facie evidence of deception by the Appellant claiming to be a Kosovan national, which is accepted by the Appellant; the first stage requirement. I find the Appellant has failed to discharge the burden upon him of raising an innocent explanation which satisfies the minimum level of plausibility; the second stage requirement, and that the third stage requirement does not arguably arise as the second stage burden has not been discharged by the Appellant. Even if it had, the Secretary of State had established on the balance of probabilities why the explanation was properly rejected; the third stage.
61. Taking into account only the material that was before the decision-maker in the deprivation decision, in accordance with headnote (2) and working through the three stages set out in Chimi, I find as follows (1) the Secretary of State did not materially erred in law when she decided that the condition precedent in section 40 (2) or 40 (3) of the British Nationality Act 1981 was satisfied, (2) the Secretary State did not materially in law when she decided to exercise discretion to deprive the Appellant of his British citizenship, and (c) when weighing the lawful determined deprivation decision against a reasonably foreseeable consequences for the Appellant, that the decision is lawful under section 6 of the Human Rights Act 1998.
62. I, therefore, find the Secretary of State's decision is lawful under public law principles and that, as there is no breach of the Human Rights Act, the appeal must be dismissed.

Notice of Decision

63. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 November 2024