IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000490
FtT No: DC/50267/2021
LD/00230/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 December 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

Secretary of State for the Home Department

Appellant

and

ALTIN RAMAJ also known as ALTIN MUCAJ
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Cunah, Senior Presenting Officer
For the Respondent: Mr Wilding

Heard at Field House on 2 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.

2. The appellant is a male citizen of Albania born on 7 February 1982. On 15 October 2022 the Secretary of State issued notice of a decision to deprive the appellant of his British nationality by reference to s.40(3) British Nationality Act because he had obtained British citizenship by means of fraud, false representation or concealment of a material fact.

3. The appellant appealed to the First-tier Tribunal which, in a decision dated 1 January 2024, allowed the appeal. The Secretary of State now appeals to the Upper Tribunal.

4. The grounds of appeal sets out briefly the factual background to the appellant:

> The A had in his previous applications to the SSHD provided his identity as a Kosovar born on 07 February 1984 in Kosovo, a fact which the A accepted was false [9]. The A was granted ILR on 03 October 2005 outside the rules as a dependent of another family member in his false identity. This was subsequent to an application made under the Family ILR concession on 21 June 2005 where the A was a dependent and declared falsely as a minor and Kosovan national.

The grounds of appeal quote the refusal letter, which, in turn, quotes from the relevant Home Office guidance:

> However, Chapter 55.7.8.3 states that where a minor on reaching the age of 18 does not acquire ILR or other leave automatically and submits and 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 Z8, Section 55.7.8.3). Your application for Family ILR was submitted when you were 23 years old and hence you were complicit in the false representations submitted with the Family ILR application. Chapter 55.7.8.5 states that all adults should be held legally responsible for their own citizenship applications, even where this is part of a family application. Complicity is therefore assumed unless sufficient evidence in mitigation is provided by the individual in question as part of the investigations process (Annex Z8, Section 55.7.8.5). 97. Even though your application for ILR was a family application, you are still considered complicit as you were an adult at the time the application was submitted. Therefore, your complicity is assumed.

5. As Upper Tribunal Judge Macleman noted, the grounds of appeal are not very clearly expressed. A helpful summary of the grounds is contained in the decision of Judge Grant-Hutchison, sitting in the First-tier Tribunal, to refuse permission to appeal:

> It is submitted that the Judge has erred in law (a) by finding that the Respondent has not shown that the Appellant was involved in the fraudulent application due to the involvement of representatives and therefore considered it unreasonable that the appellant ‘should’ be considered complicit in the deception when reading sections 55.7.8.3 to 55.7.8.5 of the Deprivation and Nullity of British Citizenship guidance. It is clear that fraud continued into adulthood and involving representatives does not remove the assumption of complicity and that complicity should therefore be assumed and (b) by disposing of the issue of naturalisation on the basis that the Respondent had erred in finding that the condition precedent had been satisfied as the Respondent had not established that the misrepresentations were material to the acquisition of British citizenship. Paragraph 99 of the Respondent’s decision letter considered the naturalisation application with particular reference to the issue of non-declaration previous deception and dishonesty under the ‘good character’ assessment which refers in particular to the fact that it is irrelevant whether the deception was material to the grant of leave or not which has not been addressed by the Judge in coming to his decision.

Complicity

6. By reference to her own guidance, the Secretary of State asserts that that the appellant should be considered complicit in the deception perpetrated in the ILR application fraud. I agree with the submissions of Mr Wilding that there has been no challenge to the findings of fact of the First-tier Tribunal that the Secretary of State had produced no evidence to show that the appellant was complicit. The assertion in the refusal letter that 'Complicity is therefore assumed unless sufficient evidence in mitigation is provided by the individual in question as part of the investigations process (Annex Z8, Section 55.7.8.5). 97' effectively purports to reverse the burden of proof, compelling the appellant to provide 'evidence in mitigation.' The First-tier Tribunal was, in my judgment, entitled to depart from that guidance and to apply the standard legal approach to assertions made in the course of proceedings, namely that he who asserts must prove. Moreover, even if he had adopted the guidance ('*complicity should therefore be assumed'*), it would have remained open to the judge to find, on the evidence, that complicity had not been proved. I do not accept (nor, indeed, does the Secretary of State expressly argue) that the Home Office guidance should have acted as a straightjacket on the Tribunal affording no alternative outcome to dismissal of the appeal. At [56-57], the judge has reached rational findings available to him on the evidence notwithstanding the guidance:

> 56. The SSHD had ample reason from his knowledge of the history of Sabah's asylum claim to doubt any claim by the Appellant to be a Kosovar. However, the reasons given for rejecting the Appellant's first two applications for naturalisation related only to him being recently subject to immigration conditions at the time of the first application and in the second application his failure to show he had passed the Life in the UK test: see paragraphs 35 and 44 of the decision letter. The SSHD has failed to provide a copy of any minute made prior to approval of the Appellant's naturalisation. Such minute would have been required to state the reasons why the decision to grant naturalisation had been made. Consequently, the Tribunal has to rely on the decision letter. It has not been shown that the Appellant's naturalisation was approved other than on the evidence available to the SSHD at the time which would have included the history of the Appellant's claim as a dependent of Sabah. The Appellant did not have a criminal record and met the minimum length of indefinite leave and other requirements for naturalisation. There is no evidence that the Appellant's misrepresentation of his nationality and date of birth were material to or motivated the SSHD's decision to permit his naturalisation as a British citizen. The SSHD materially erred in law when he decided the pre-condition in s.40(3) was satisfied. As an aside, it appears that it was not until 2018 when the Appellant's father applied for entry clearance that the SSHD made investigations.
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> 57. The decision letter failed to take into account adequately or at all that the Appellant had not actively given any information to the SSHD until his first application for naturalisation. The decision does not reflect the SSHD's own refusal of Sabah's asylum application and rejection of his claim to be a Kosovar or the Tribunal's subsequent dismissal of his appeal. It does not address why the reasons for the rejection of the Appellant's first two naturalisation applications were limited to technical grounds Thereafter, it

> does not address squarely the matter of the exercise of the SSHD's discretion. The SSHD materially erred in law in whether or how he decided to exercise discretion to deprive the Appellant of his British citizenship.

I agree with Mr Wilding (and, indeed, the First-tier Tribunal judge at [58]), for the reasons advanced in his skeleton argument and for the reasons I give above, that the judge's findings at [56-57] effectively resolve this appeal in favour of his client, the appellant.

The Naturalisation Application

7. As the Upper Tribunal made clear in *Pirzada (Deprivation of citizenship: general principles)* [2017] UKUT 196 (IAC), 'the deception referred to must have motivated the grant of … citizenship, and therefore necessarily preceded that grant.' The statutory test requires the Secretary of State to show that the nationality was obtained "by means of" fraud, deception or material omission. In so far that the Home Office guidance is at odds with the statutory test and this legal principle, then the guidance (or the Secretary of State's application of it in this appeal) is misdirected. The First-tier Tribunal judge found as a fact that the appellant was not complicit in any of the applications for leave made by his family members.

8. I also agree with Mr Wilding that, in so far that the more recent decision of the Upper Tribunal in *Onuzi (good character requirement: Sleiman considered) Albania* [2024] UKUT 144 (IAC) fails to deal with *Pirzada,* it should be read with caution; it remains the case that false information or material omission must have <u>motivated</u> the grant of nationality. I note also that the relevant good character guidance [bundle: 470] refers to false or misleading information which has been 'deliberately' provided to the Home Office and indicates that refusal on grounds of deception is discretionary.

9. Mr Wilding's skeleton argument concludes as follows:

> The effect of the Judge's findings are that the SSHD knew the background to the appellants case, knew that the appellant's family had not been accepted or believed as being from Kosovo, granted him ILR and subsequently nationality in knowledge of that backdrop, and as such could not show any basis for coming to the conclusion that the nationality was obtained by deception.

I agree with that summary. The First-tier Tribunal judge has carried out a thorough examination of the issues and the evidence in this appeal. He reached findings which were available to him on the evidence. The respondent's arguments in the grounds of appeal to the effect that the judge's findings are contrary to relevant jurisprudence or should have been constrained by her guidance are, in my judgment, wrong in law and amount to no more than a disagreement with those findings. Accordingly, the Secretary of State's appeal is dismissed.

<u>Notice of Decision</u>

The Secretary of State’s appeal is dismissed

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 20 November 2024