IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000426

First-tier Tribunal No: DC/50085/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 May 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

KM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Badar of Counsel
For the Respondent: Mr A Tan, Home Office Senior Presenting Officer

Heard by remote video at Field House on 3 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant, a national of Albania, has been granted permission to appeal to the Upper Tribunal the decision of the First-tier Tribunal (Judge Clarke) promulgated 24.10.22 dismissing his appeal against the respondent's decision of 21.4.22 to deprive him of British Citizenship pursuant to s40(3) of the British Nationality Act 1981.

2. The appellant claims to have entered the UK in 1997. Having falsely declared that he was a national of the Federal Republic of Yugoslavia, an ethnic Albanian

born in Kosovo, he was recognised as a Kosovan refugee and granted asylum, followed in 1999 by a grant of Indefinite Leave to Remain (ILR), and a Home Office travel document in 2000.

3. In January 2003, the appellant applied for naturalisation, again confirming his claim to have been born in Kosovo and to be a national of Yugoslavia. On the basis of that information, the appellant was issued with a Certificate of Naturalisation as a British citizen on 6.1.04 and passports were subsequently issued to him, in 2014 and 2018. The respondent's case is that his true identity as born in Albania and an Albanian national was not discovered until much later, when a referral was made to the Home Office in 2016, warning that the appellant may have used a false identity. This referral ultimately led, after some delay, to the deprivation of citizenship proceedings in 2022.

4. The First-tier Tribunal found as a fact that the appellant obtained his British citizenship by fraud and/or by falsely representing his nationality; that had he disclosed his true nationality he would not have been granted naturalisation; that he would not have succeeded on the basis of the 14-year rule as he would not have met the suitability requirements; and that in all the circumstances the respondent was entitled to exercise her discretion to deprive him of British citizenship. The Tribunal also found that the reasonably foreseeable consequences of deprivation did not breach the appellant's human rights under article 8 ECHR.

5. In summary, the grounds assert that the First-tier Tribunal erred in finding that there was no public law error in the respondent's decision, the judge having allegedly ignored the fact that the respondent failed to disclose evidence in relation to events in 2006; erred in consideration of the delay by assessing the delay as having started in 2016 rather than 2006; made irrational findings in relation to whether deprivation would lead to the needs of the appellant's children not being met; and made irrational findings regarding his length of residence.

6. In the appeal process, the appellant sought disclosure of the entry clearance application made in 2006 by the appellant's father and the referral from 2016, at which time the appellant alleges his Albanian birth certificate was submitted. The Home Office has stated that they only have the first page of the 2006 application and do not accept that he disclosed his true identity at that time. At [68] of the decision, the judge accepted that the respondent did not disclose which government department made the 2016 referral, to the effect that the appellant may have used a false identity, to the Home Office's Status Review Unit (SRU) in 2016. However, the judge considered this to be immaterial as the appellant admitted that he did not reveal his true identity. The grounds assert to the contrary that it is material.

7. Paragraph 10 of the grounds asserts that the respondent's duty of disclosure ought to exceed that in Nimo (appeals: duty of disclosure) [2020] UKUT 00088, that it should have been the heightened duty of candour, and that *Wednesbury* reasonableness principles should have been applied. It is argued that the respondent ought to have but failed to disclose the events in 2006 and full details of the referral in 2016, and that, contrary to the judge's consideration, this was material as it relates to the rationality of the impugned decision.

8. In granting permission to appeal, Judge Perkins stated, "*I am concerned lest the respondent has not dealt properly with a request for disclosure that might support the appellant's contention that his dishonesty in claiming Kosovan*

nationality was not known to the respondent as long ago as 2006. I am doubtful that the other points in the grounds are material but all grounds may be argued."

9. The respondent's Rule 24 reply of 12.4.23, relying on Nimo, argues that as the Tribunal is governed by a statutory regime which does not make provision for general disclosure, there is no general requirement of disclosure of all relevant data in asylum appeals and the rules relating to civil litigation do not apply. It is submitted that the duty on the respondent was no higher than that she must not mislead and before she could be said to reach that position, she must know or ought to have known that the material which it is said he should have disclosed materially detracts from that on which she has relied (R v Secretary of State ex p Kerrouche No 1 [1997] IAR 610).

10. As noted at [11] of the decision, the appellant claimed that he had disclosed his true identity in 2006, "*when he submitted his Albanian birth certificate to sponsor his father coming to the United Kingdom*." The point being made by the appellant is that had the respondent issued deprivation proceedings in 2006, he would have benefited from the 14-year long residence provisions that then applied (removed in 2014).

11. However, the respondent asserts that she did not become aware of the use of the false nationality until the referral to the SRU on 28.9.16. The respondent does not accept that the true identity had been disclosed in 2006, pointing to the fact that HM Passport Office issued passports on the appellant's application in 2014 and again in 2018, both recording his declared nationality as Kosovan. As stated above, the judge concluded, for the reasons set out in the decision, including between [55] and [60], that the appellant had not disclosed his true nationality in 2006, reasoning that he must have continued to claim to be Kosovan in both passport applications.

12. The judge accepted that the respondent was unable to provide the full copy of the 2006 application form submitted to the British Embassy in Tirana but noted that no referral was received by the Home Office from the embassy, which might have been expected. At [59], after considering the appellant's submissions and those of the respondent, the judge concluded that the appellant did not provide his Albanian birth certificate with the 2006 entry clearance application. The judge considered it inconsistent with his claim to have "*come clean*" about his nationality that he did not seek to rectify the nationality declared in the two passports issued to him. Effectively, the appellant persisted in the fraud through his passport applications. At [83], the judge found no credible evidence that the appellant sought to correct his nationality on his passport and found that he allowed the fraud to continue but accepted that there had been a delay of 5 years and 5 months before the allegation was put to the appellant on 17.2.22.

13. I am grateful to Mr Badar and Mr Tan for their succinct and helpful submissions, narrowing the issues.

14. The issue of the duty of disclosure on the respondent and the standard to be applied is a largely sterile argument. Whatever standard of disclosure is applied, it does not help the appellant. The appellant cannot gainsay the respondent's case that only the first page of the 2006 application has been retained; there is no more that can be disclosed. In relation to the 2016 application, Mr Badar accepted that the delay between 2016 and 2022 does not assist the appellant. However, he submitted that disclosing where the 2016 referral came from may assist if it confirms that the appellant disclosed his true identity in 2006, as claimed. However, even on the standard of a duty not to mislead, it cannot be argued sensibly that the respondent has any information within the 2016 referral

to confirm that disclosure of true identity was made in 2006, to conceal that would be patently perverse and there is no evidence to support such a speculation. It follows that I can only proceed on the basis that there is nothing in the 2016 referral that can materially assist the appellant in relation to 2006. However, Mr Badar took a rather different tack in relation to the 2006 disclosure, arguing that as the respondent cannot provide the whole of the application it cannot properly discharge the burden of proof that no true identity disclosure was made in 2006; asserting that the burden was on the respondent when it made a positive assertion that no such disclosure of true identity was made. However, that assessment was well within the province of the First-tier Tribunal Judge, who considered the evidence in the round, including that the appellant applied for and received two passports in 2014 and 2018 in which his nationality is stated as Kosovan and he did nothing to correct that material inaccuracy. I am satisfied that the judge was entitled for the cogent reasons provided in the decision to conclude that the appellant did not disclose his true identity in 2006. It follows that no error of law is disclosed by this ground.

15. Mr Badar accepted that the second ground would fall if the first ground fails. The second ground is no more than a reframing of the first, arguing that the starting date for the delay should be 2006 and not 2016, which the appellant seeks in order to claim 14 years presence in the UK by 2012. As stated above, there was and is no evidence that the respondent has anything more to disclose in relation to 2006. As only the first page of the application form was scanned and nothing else is known, there is nothing more that can be disclosed. This is not the case of a wilful refusal to disclose material from 2006 and a delay in actioning that disclosure of true identity to commence deprivation of citizenship proceedings. The judge had to make and finding of fact as to whether and if so when the appellant made any attempt to correct the deliberate falsehood he perpetrated by claiming to be of Kosovan nationality. Unarguably, the judge was entitled to reach the findings made; they are within the range of findings reasonably open to the Tribunal on the evidence. It follows that the appellant cannot take advantage of the then applicable 14-year rule for status arising from long residence.

16. In relation to the third ground and article 8 ECHR, Mr Badar relied primarily on the appellant's financial support of his three children, two from a previous relationship and one from his current relationship. He is effectively supporting two households and would not be able to do so as he would not be able to work if deprived of British citizenship. However, it was open to the judge to note that deprivation did not mean removal from the UK and that even if the appellant's financial support is lost, as the judge noted at [101] of the decision, this did not mean that the children would not be provided for, as the families and children are entitled to support of the state and both current and ex-partners are in employment. I cannot agree with the submission that this finding crosses the high threshold to demonstrate irrationality, even taking into account the long residence of the appellant. In reality, the third ground arguing irrationality is no more than a disagreement with the findings made and an attempt to reargue the appeal. As explained in MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC), "A judge considering an application for permission to appeal to the Upper Tribunal must avoid granting permission on what, properly analysed, is no more than a simple quarrel with the First-tier Tribunal judge's assessment of the evidence." The ground is very weak and not made out.

17. In all the circumstances and for the reasons explained above, I am satisfied that no material error of law is disclosed by any of the grounds.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involved an error of law.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

DMW Pickup
DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 May 2023