IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005014

First-tier Tribunal No: DC/50022/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 1st of October 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

BLEDAR BREGU
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr D Jones, counsel instructed via Direct Access
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 25 September 2024

DECISION AND REASONS

Introduction

1. Following an error of law hearing which took place on 20 February 2024, the decision of the First-tier Tribunal was set aside with no preserved findings. The appeal was retained in the Upper Tribunal for remaking. This decision should therefore be read in conjunction with the error of law decision issued on 10 March 2024.

Anonymity

2. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

3. The appellant is a national of Albania who arrived in the United Kingdom approximately twenty-four years ago and applied for asylum, falsely claiming to be a national of the Federal Republic of Yugoslavia, that he was called Bledar Tahiri and that he was aged 16. At the time the appellant was aged 17. That claim was refused but ultimately the appellant was granted indefinite leave to remain in the Tahiri identity in 2009. On 12 May 2011, the appellant applied to naturalise as a British citizen and was subsequently granted a naturalisation certificate.

4. On 15 December 2021, the appellant applied to amend his naturalisation certificate and disclosed his deception. On 1 November 2022, the appellant was informed that the Secretary of State was considering depriving him of his nationality and invited him to provide information. On 27 February 2023, the Secretary of State notified the appellant that a decision had been taken to deprive him of his nationality under section 40(3) of the British Nationality Act 1981. The reason given was that the appellant had provided false information with the intention of obtaining a grant of status and/or citizenship. The Secretary of State declined to exercise discretion in the appellant's favour and concluded that it was reasonable and proportionate to deprive him of British citizenship.

The remaking hearing

5. The hearing was attended by representatives for both parties as above. The appellant gave evidence as did an acquaintance of his, Mrs G. Both representatives made submissions and the conclusions below reflect those arguments and submissions where necessary. A bundle was submitted on behalf of the appellant containing, inter alia, the core documents in the appeal, including the appellant's and respondent's bundles before the First-tier Tribunal. In addition, a skeleton argument and authorities' bundle was filed by the appellant.

6. Briefly, Mr Parvar argued that the appellant had not given a credible account of his reasons for leaving Albania; that there was no public law error in the decision concerned and that it was a proportionate response to the appellant's conduct. For his part, Mr Jones conceded that the condition precedent requirement was met, but argued that the respondent had not exercised discretion lawfully and that the decision to deprive the appellant of citizenship breached his rights under Article 8 ECHR. At the end of the hearing, the parties were informed that the appeal was allowed on the basis that the Secretary of State's exercise of discretion was unlawful. Reasons are provided below.

Discussion

7. In the context of the appellant coming clean about his real identity, representations were sent to the respondent dated 15 December 2021 which explained, for the first time, the circumstances which had resulted in the appellant coming to the United Kingdom and adopting a false identity. Enclosed with those representations was a witness statement from the appellant dated 13 August 2021. In short, the appellant was manipulated into working as a drug runner for an organised crime group (OCG) while still at school. The appellant informed his parents of what was happening and went into hiding to avoid the gang. Ultimately he left Albania during the year 2000. The appellant's brother

was targeted in his place and stabbed to death during 2006. His brother's killer was sentenced to a prison term but that sentence was quashed after two years and he was released from prison. No issue was taken with the credibility of this account either in the decision to deprive nor the Respondent's Review carried out prior to the hearing before the First-tier Tribunal.

8. Nonetheless, Mr Parvar cross-examined the appellant robustly regarding his account of events in Albania. The appellant responded in detail, without hesitation and without any inconsistencies emerging. His account is supported by reliable evidence of the violent killing of his brother and is further fully consistent with the background country material on Albania. Considering all the points made by Mr Parvar in his submissions, it is, nonetheless, accepted that the appellant is a witness of truth regarding all aspects of his claim, including that he came to the adverse attention of an OCG in Albania.

9. Section 40(3) of the 1981 Act states as follows.

> 40. Deprivation of citizenship
> (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

10. In R (*Begum*) v Secretary of State for the Home Department [2021] UKSC 7, the approach of the Supreme Court set out at [71] was that judicial review principles applied when considering a section 40(2) deprivation decision, as follows

> …can assess whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight, or has been guilty of some procedural impropriety.

11. *Ciceri* (deprivation of citizenship appeals: principles) [2021]UKUT 238, established that the approach set out in Begum was applicable to section 40(3) decisions to deprive.

12. In *Chimi* (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 00115 (IAC)) three questions were identified which had to be considered in turn. The main contention in this appeal is the second question in the headnote of *Chimi*;

> (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…

13. In addressing that question it is instructive to set out the section of the respondent's decision which dealt with the exercise of discretion. The first 25 paragraphs of the decision letter address the condition precedent question, whereas paragraphs 27-38 concern the decision on Article 8 and rights of appeal. It was only in paragraph 26 that the respondent states why she declined to exercise her discretion in the appellant's favour.

> It is acknowledged that the decision to deprive on the grounds of fraud is at the Secretary of State's discretion. In making the decision to deprive you of citizenship, the Secretary of

State has taken into account the following factors, which include the representations made by you and your legal representative in their letter dated 15 December 2021 and 1 November 2022. and concluded that deprivation would be both reasonable and proportionate.

14. The aforementioned passage is woefully inadequate in supplying an explanation as to why the discretion was not exercised in the appellant's favour. It is obvious from the brevity of this explanation that no real consideration was given to any aspect of the appellant's case. It follows that it is likely that relevant considerations were not taken into account. The most marked omissions are explored below.

15. The appellant was a minor on arrival in the United Kingdom, according to his correct age yet this fact was not taken into account either in the paragraph addressing discretion nor elsewhere in the decision.

16. Perhaps because the appellant's minority was overlooked, there is also no reference to the relevant section of the Nationality Instructions, namely Chapter 55: Deprivation and Nullity of British Citizenship

55.7.8 Complicit

55.7.8.1 If the person was a child at the time the fraud, false representation or concealment of material fact was perpetrated, the caseworker should assume that they were not complicit in any deception by their parent or guardian.

55.7.8.2 This includes individuals who were granted discretionary leave until their 18th birthday having entered the UK as a sole minor who can not be returned because of a lack of reception arrangements. Such a minor may be granted ILR after they reach the age of 18 without need to succeed under the Refugee Convention or make a further application but the fraud was perpetrated when the individual was a minor.

55.7.8.3 However, where a minor on reaching the age of 18 does not acquire ILR or other leave automatically and submits an 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

17. The appellant's evidence was that he was instructed to put forward the false identity when he arrived in the United Kingdom by those who had facilitated his illegal entry. In view of his age and that he was under the control of others, it could not be said that he was complicit in the original deception. Once that initial claim was refused, the appellant did not pursue the matter and between 2001 and 2009 nothing happened in relation to his immigration status. In that intervening period, the appellant did not come to the attention of the United Kingdom authorities and was otherwise law abiding.

18. It is acknowledged that the appellant was an adult at the time he responded to the Secretary of State's enquiries in connection with the Legacy scheme but that is not a complete answer to the complicity point given what is said in 55.7.8.2 regarding former UASCs granted settlement as adults. While 55.7.8.3 refers to an applicant for leave who maintains the fraud being complicit, it is the case that the appellant did not make an application for settlement but responded to an invitation made in 2009 to complete a questionnaire. At the time of that invitation the appellant was still grieving for his brother, indeed it was apparent from his evidence at the hearing that he is still intensely affected by his brother's

killing. In these circumstances, it is perhaps understandable that the appellant did not come clean about his dientity at this stage.

19. None of the foregoing points were acknowledged let alone engaged with. Taking into consideration what was said in *Matusha* (revocation of ILR policy) [2021] UKUT 0175 (IAC) at [24], the appellant's conduct is at the more serious end of the scale of deception yet the fact that the appellant was a minor at its inception could have had a material and favourable impact, if taken into account.

20. The appellant, at the time of his presentation in the United Kingdom was a child who was particularly vulnerable owing to his experiences in Albania as well as his separation from his family and country and this was a matter which bore upon his conduct and the weight to be attributed to it.

21. The respondent does not claim that the appellant would have certainly been refused settlement and/or naturalisation had his true identity been known, as can be seen from paragraph 24 of the decision;

> Had the truth been known at the time it is likely you would not have been granted ILR, meaning you could not have met the mandatory requirement to possess settled status for the purpose of naturalisation. You persisted with the deception in your naturalisation application and ticked the box to indicate that you had not done anything to suggest you was not of good character. Had you told the truth in your naturalisation application it is highly likely that you would have been refused citizenship on character grounds,…

22. There was no engagement by the Secretary of the State with the appellant's account of fleeing Albania owing to being targeted by an OCG engaged in the supply of drugs and that his brother was killed by a hitman from that group. As indicated above that account was not rejected by the respondent in the decision and this Tribunal has found that the appellant has provided a truthful account.

23. The respondent's review dated 6 August 2023 similarly lacked any engagement with the representations sent on the appellant's behalf when it came to the question of discretion.

24. Mr Parvar pointed to paragraphs 15-18 of the decision letter as being evidence that the aforementioned points were considered. There is no consideration here, rather the facts of the appellant's case are merely reproduced from the representations sent on his behalf, without commentary.

25. Mr Jones referred to background evidence which supported the appellant's account of events, however Mr Parvar rightly submitted that none of this evidence was enclosed with the representations sent to the Secretary of State. I have considered whether the respondent ought to have had regard to her own CPIN reports but conclude that the respondent did not err in failing to take into consideration material which was not enclosed nor referred to by the appellant's previous legal representative.

26. Nonetheless, owing to the respondent's lack of engagement with the appellant's experiences in Albania, the respondent did not consider whether there were the mitigating factors referred to in 55.7.11.3. The most relevant factor in the appellant's case being;

> Where there is evidence of some form of coercion that indicates that the subject was not able to make independent decisions at the time the material fraud took place

27. The same mitigating factor appears in the respondent's guidance Deprivation of British Citizenship, v2.0 published on 02 October 2023. Repeating what has been said above, the appellant was in hiding in Albania from the OCG and his family facilitated his exit in an irregular manner for his safety. The appellant was advised to hide his identity to avoid being traced and in addition told to put forward a false identity by those who brought him to the United Kingdom. This account certainly indicates that the appellant was not in a position to make independent decisions at the time of entry.

28. Regarding the maintenance of the false identity in the Legacy questionnaire it is relevant to note that the appellant's brother had been killed on behalf of the OCG six years after the appellant left Albania, thus indicating a continued adverse interest in the appellant. At this point, it is worth mentioning that the appellant gave a powerful account of members of the OCG approaching his parents at the funeral of his brother and thus removing any doubt as to the involvement of the OCG in his brother's death. Therefore, it is understandable that the appellant would perceive a need to continue to hide his true identity and this amounts to a credible explanation for the continued deception.

29. A further relevant material consideration not addressed by the respondent is the passage of time. That consideration concerns the time which has passed since the last incident of deception as well as the time spent by the appellant residing in the United Kingdom.

30. The appellant's naturalisation application was made in May 2011, over thirteen years ago. Since then there have been no concerns as to his conduct by way of criminality or financial impropriety. On the contrary, the appellant applied to the respondent to rectify the personal details on his naturalisation certificate.

31. The appellant's twenty-four year residence in the United Kingdom ought to have been taken into account in light of Appendix Private Life PL5.1(a) of the Immigration Rules as regards the accumulation of twenty years residence. A related matter also not considered was that the appellant had acquired fourteen years residence as of May 2014 and according to 55.7.5 of the Nationality Instructions in place at that time, deprivation action would not normally be pursued in these circumstances.

32. The matters set out above were relevant to the lawfulness and rationality of the decision to deprive the appellant of citizenship and as such the respondent's exercise of discretion is flawed because it was arrived at without consideration of material facts or engagement with the respondent's guidance.

33. Following the guidance in headnote (1) of Chimi, the appeal is allowed on the basis that the Secretary of State materially erred in the exercise of her discretion. There is, therefore, no need to consider whether the appeal should be allowed on human rights grounds.

Notice of Decision

The appeal is allowed.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 September 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email