Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DC/50021/2021
[UI-2022-001766]; IA/03530/2021

THE IMMIGRATION ACTS

Heard at : Field House
On : 8 August 2022

Decision & Reasons Promulgated
On : 27 September 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MEDI DAUTI

Respondent

Representation:
For the Appellant: Mr T Wilding, instructed by Marsh and Partners Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Dauti's appeal against the decision of 27 January 2021 notifying him of the intention to deprive him of his British nationality under section 40(3) of the British Nationality Act 1981.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Dauti as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is currently a British citizen. He is of Albanian nationality, born on 20 September 1974 in Albania. He entered the UK illegally on 25 July 1998 and claimed asylum on 10 November 1998 in his own name but with a date of birth of 21 September 1974 and as a Kosovan national. He claimed that he was born in Gjakova, Kosovo, that his parents were both nationals of Kosovo and that he was at risk on return to Kosovo from the Serbian police due to his suspected involvement with the Kosovo Liberation Army (KLA). On 15 June 1999 he was granted indefinite leave to remain as a refugee.

4. On 13 May 2004 the appellant applied for naturalisation as a British citizen in the same identity, giving his nationality as Yugoslavian. He gave his wife's details as Lavdije Kraja, an Albanian national born in Albania, and his date and place of marriage as 10 February 2001, Albania. He signed a declaration of truth. The application was granted, and the appellant was granted British citizenship on 7 March 2005. In June 2005 the appellant sponsored his wife's application to settle in the UK. His wife was interviewed by an Entry Clearance Officer in Albania on 30 August 2005 and was subsequently granted entry clearance to join him in the UK.

5. Further to investigations conducted by Immigration Enforcement at the British Embassy in Tirana in response to an information request of 11 December 2019, confirmation was provided on 24 January 2020 that the appellant was a national of Albania and not Kosovo. The appellant's details were then referred by HMPO to the Status Review Unit and his birth certificate, issued on 24 December 2019 in Albania, was enclosed with the referral.

6. On 19 October 2020 the appellant was issued with a Home Office investigation letter, notifying him that consideration was being given to deprive him of his British citizenship under section 40(3) of the British Nationality Act 1981. His legal representatives responded on 5 November 2020, stating that he was an Albanian national and that he had been told by the solicitor and interpreter, at the time of his entry to the UK, to claim to be a national of Kosovo. They stated further that his place of birth was close to the Kosovan border and that he had experienced effects of the civil war, that his family had provided protection to Kosovan refugees and that he feared being persecuted or killed if he returned to Albania. It was stated further that the appellant had sponsored his wife to come to the UK following their marriage, providing the British Embassy with his Albanian birth certificate and as such he had not misled the Embassy. He had been settled in the UK for over 20 years, had lived here for nearly half his life and had two children with his wife who were settled here and at university/ in full-time education. The appellant hoped that his British nationality would not be revoked as it would have a devastating effect on his family and would involve a breach of Article 8 of the ECHR if the family were split as a result.

7. The respondent, in a decision dated 27 January 2021, did not accept the appellant's explanation as a justification for the deception and concluded that his British citizenship had been obtained fraudulently and that he should be deprived of his British citizenship under section 40(3) of the British Nationality Act 1981. The respondent noted that the appellant had confirmed travel to

Albania on four occasions between 23 December 1999 until 10 January 2004 for a total of 99 days and that he had travelled to Albania six months after being granted asylum in the UK, concluding that he would not have travelled to Albania if he had genuinely feared for his life. Had the respondent been informed at the time of the application in 2005 that the appellant was an Albanian national, deprivation consideration would have been commenced then. The respondent considered that the appellant had misled the Home Office throughout his immigration history, noting that he had stated in his naturalisation application that he had married his wife in 2001 and not in 2005 and that he had been in Albania at the time. The respondent considered that the appellant's circumstances fell within the terms of Chapter 55 of the Deprivation & Nullity of British Citizenship guidance and that his grant of British citizenship had been obtained as a result of fraud. The respondent conclude that it was reasonable and proportionate to deprive the appellant of his British citizenship.

8. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981. His appeal was heard on 17 January 2022 by First-tier Tribunal Judge Bunting. The judge was satisfied that the appellant had perpetrated a very serious deception and that the deception was material to the grant of refugee status. He noted, however, that the appellant was the main breadwinner in the family and that the family would not be able to make ends meet without his income, that the appellant had lived a law-abiding and hardworking life aside from the deception, and that the removal of his British citizenship would have an impact on the family's life. The judge considered that the appellant had not repeated the untruth about his nationality after being granted British citizenship and noted that his wife had stated his true nationality at her interview in 2005 in relation to her entry clearance application. Whilst the respondent argued that it could not be said that the appellant had disclosed his true nationality at that time, the judge found that he had, and that the subsequent delay by the respondent was significant and unexplained. He found that that was a significant point in the appellant's favour in the Article 8 proportionality balancing exercise and that, taken together with the development of the appellant's family life in the UK, it resulted in the deprivation of citizenship being disproportionate. He allowed the appeal.

9. Permission to appeal was sought by the respondent on the grounds that the judge's approach to the question of delay was unlawful since he had made findings which were speculative and had erred in fact by finding that the respondent was aware of the possible deception in 2005; and that the judge's approach to proportionality was unlawful and was inconsistent with the approach set out in Laci v Secretary of State for the Home Department [2021] EWCA Civ 769.

10. Permission was granted on 5 April 2022 in the First-tier Tribunal.

11. The matter then came before me for a hearing and both parties made submissions.

Hearing and Submissions

12. Mr Tufan relied on the grounds and made further submissions. With regard to the first ground, he referred to the marriage interview which took place on 30 August 2005 and submitted that the judge, at [97], had modified the appellant's wife's response to the question at the interview about her husband's nationality, adding his own words, namely that her husband had been registered as a Kosovan "in the United Kingdom", and had reached an irrational conclusion as to what she had said. He submitted further that the judge's reasoning on the respondent's knowledge of the appellant's deception was irrational and inadequately reasoned, and that mere delay was not enough since it had also to be shown that the delay was a result of illegality or maladministration. As for the second ground, Mr Tufan submitted that mere economic hardship was not sufficient to make the deprivation decision disproportionate. If the appellant's wife did not have enough funds to support the family without the appellant's income, the social services would step in to assist.

13. On the second ground, Mr Wilding submitted that it was open to the judge to conclude that it was reasonably foreseeable that the deprivation decision would have an impact on the family's income as the appellant would no longer be permitted to work and his wife's income was insufficient to meet the monthly household bills. He relied upon the Home Office response to a freedom of information request which confirmed that the average time it took the Status Review Unit to grant temporary leave following an earlier decision to deprive citizenship on grounds of fraud was 303 days, and submitted that the respondent had misled the First-tier Tribunal by arguing the case on the basis of a limbo period of only eight weeks. Mr Wilding submitted that the respondent had failed to identify anything the judge had done materially wrong and was merely disagreeing with the decision. He added further that the respondent's decision to deprive was unlawful as there had been no section 55 consideration by the respondent and no disclosure of the correct limbo period. As for the first ground, Mr Wilding submitted that there had been a clear disclosure to the respondent at the marriage interview in 2005 and it had been open to the judge to read the response to the interview question in the way that he did. The judge was entitled to find that the respondent had knowledge from that time and to rely on the delay in taking deprivation action. In any event it was not clear, on the respondent's own account, of when she was notified of the deception.

14. Mr Tufan responded by reiterating the points previously made and adding further that the period of time identified in the response to the freedom of information request was merely a snapshot at that time, during the pandemic, and in any event was not sufficient to make the deprivation decision disproportionate.

Discussion and conclusions

15. This is a case where, in my view, there is a fine line between a disagreement with the judge's decision and an actual error of law in the decision. Mr Wilding submits that the grounds are simply a disagreement and that there was nothing unlawful in the judge's decision, whereas Mr Tufan

submits that the decision was unlawful. Both have presented persuasive arguments. It seems to me, ultimately, and after much consideration, that this is a question of disagreement with what is perhaps a rather generous decision that could have been made another way by a different Tribunal, but that it cannot be said that there is anything unlawful or irrational about the decision.

16. The respondent's first ground was that the judge's approach to the question of delay was unlawful. Within that ground Mr Tufan submitted that it was irrational for the judge to interpret the appellant's wife's words at the marriage interview in August 2005 as he did at [97], namely that there was effectively an admission that the appellant was registered in the UK as a Kosovan national when he was in fact an Albanian national. The written grounds of appeal couch the asserted error in different terms, as a material mistake of fact, as being inadequately reasoned and as highly speculative, but it seems to me that they all are effectively a rationality challenge. However, there is a high threshold to be met to establish irrationality and perversity, and I do not consider that the judge's interpretation can be said to be irrational or perverse. That is particularly so when the appellant's wife's statement at the marriage interview did not stand alone, since, according to the evidence before the judge, the appellant's Albanian birth certificate was also provided to the Entry Clearance Officer in support of the entry clearance application.

17. In so far as the grounds rely upon the statements in the deprivation decision as evidence that the respondent was not aware of the deception until 2020, the judge noted at [99] that there was a lack of evidence to support that claim and to show when the respondent became aware of the deception. Indeed, the evidence before the judge in the form of a letter from the British Embassy in Tirana referred to enquiries being made in December 2019 and, as the judge said, it was therefore unclear what had triggered the enquiry. The judge was accordingly entitled to give little weight to the respondent's claim that she was not aware of the deception until 2020.

18. The assertion made in the grounds and by Mr Tufan was that the statement by the appellant's wife was, in any event, not sufficient to suggest that the respondent was aware of, and directly appraised of the matter in 2005, such that it could be argued that there was a delay in taking action to deprive the appellant of his British citizenship. Reliance was placed in the grounds on the findings in Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 in that regard in asserting that a period of delay could only be considered to have occurred in specific circumstances where it was clear that the Secretary of State was aware of the deception and, furthermore, where the appellant was notified of consideration being given to deprivation action, and that that was not the situation in the appellant's case. That is reflective of Lord Justice Underhill's findings at [51] of Laci, that:

> "… It is important to appreciate that this is not simply a case where the Secretary of State could have taken action but did not do so. Rather, it is a case where she started to take action and invited representations, but then, having received those representations, did nothing for over nine years."

19. The question, therefore, is whether, in light of that statement, the judge erred in law by concluding that there was a delay on the part of the respondent which was sufficiently significant to justify a decision that the appellant should not be deprived of his citizenship. In my view the judge did not err in law. It seems to me that, on balance, the judge was entitled to find as he did. I say that because his decision was made with the findings in Laci clearly in mind and that, at [101], he was clearly fully aware of, and acknowledged, the factual differences between this appellant's case and that of Laci v Secretary of State for the Home Department [2021] EWCA Civ 769, and he gave reasons why he nevertheless concluded as he did. Those reasons are set out at [98] to [100]. The judge's observations at [99], that there was an absence of evidence from the respondent to say whether the appellant's wife's disclosure had been recognised at that time, why nothing was done until 2020, and what it was that actually triggered the respondent's action at that time, were effectively a finding that the respondent's case was sufficiently unexplained and lacking in evidence to suggest that there may have been some maladministration on her part. Further, his findings at [98] and [100] plainly show that he considered it material that the appellant considered that he had "come clean" to the respondent, namely by his wife's disclosure, by submitting his birth certificate at that time and by making no attempt to hide his true nationality thereafter, so assuming with the passage of time that the respondent was not intending to take action against him. That of course reflected Lord Justice Underhill's findings in Laci at [51] that:

> "During that period the Appellant had accordingly come to believe that the Secretary of State had decided not to proceed with depriving him of his citizenship: the Judge does not say this in terms, but that had been the Appellant's evidence (see para. 8 above), and it was common ground that he was an honest witness. That understanding, on the part of a layperson, was hardly unreasonable …"

20. Accordingly, it seems to me that Judge Bunting's decision was not entirely inconsistent with Lord Justice Underhill's findings in Laci and certainly not to the extent that it gave rise to an error of law.

21. It is the respondent's assertion in the grounds that the appellant's case was in fact on all fours with the circumstances in Ciceri (deprivation of citizenship appeals: principles) Albania (Rev1) [2021] UKUT 238, where there was no formal disclosure and acknowledgement of the deception as in Laci, and that the judge had erred by failing to reach conclusions in accordance with the decision in that case. However, Judge Bunting had full regard to the case of Ciceri and his findings made it clear that there were distinguishing features in the appellant's case. Indeed, in Ciceri the Upper Tribunal noted at [34] and [35] that that appellant had, following the entry clearance interview with his wife, continued materially to obscure the true facts about his identity and nationality up until the time when the respondent was alerted to the deception, whereas Judge Bunting found it relevant that in this appellant's case he had made no attempt to hide his true nationality after he had acquired his British citizenship, providing his Albanian birth certificate at his wife's interview and, as mentioned at [78] to [79] and [86], submitting his true details when applying to register his daughter's birth and when applying for her passport. It was on that basis

that he concluded that the appellant would thereby have assumed that the respondent was aware of the deception and had decided to take no action against him, so that the 15-year delay in commencing deprivation proceedings was considered to be of significance.

22. It seems to me, therefore, that whilst the respondent challenges the judge's approach on the basis that it was contrary to the jurisprudence, the reality is that the appellant's case falls somewhere between the factual basis of Laci and Ciceri and that the judge was entitled to draw what he did from both of those cases to reach the conclusions that he did on the basis of the evidence before him.

23. In the circumstances I do not find anything unlawful or irrational in the judge's approach and I agree with Mr Wilding that, whilst another Tribunal may have found otherwise, it was open to the judge to conclude that there was a significant delay, just as the Upper Tribunal in Ciceri found that it had been open to the First-tier Tribunal Judge in that case to accord no weight to the delay.

24. As for the second ground, I agree again with Mr Wilding that the challenge in the grounds is essentially little more than disagreement. The judge's decision may be considered a generous one, and it may be that another Tribunal would have decided that the balance fell in favour of the public interest when assessing proportionality, but this was a matter of weight and was thus a matter for the judge. I note that the judge granting permission in the First-tier Tribunal, considered that ground to have less merit.

25. The respondent asserts, in the second ground, that the judge's decision was contrary to the Upper Tribunal's findings in Hysaj (Deprivation of Citizenship:Delay) Albania [2020] UKUT 128, as approved by the Court of Appeal in Laci. The respondent relies in particular upon the Upper Tribunal's finding that the disruption caused to every-day life by the 'limbo' period between the dismissal of the appellant's appeal and the decision whether to grant leave to remove him from the UK could not, without more, possibly tip the proportionality balance in favour of retaining citizenship. However, I have regard to the observations of the Court of Appeal in Laci, in regard to those findings in Hysaj, which lend support to Judge Bunting's conclusions:

> "80. … I respectfully agree with that passage, which is entirely in line with the overall approach to cases where an applicant has obtained British citizenship by fraud. But it is important to note the "without more". Where there is something more (as, here, the Secretary of State's prolonged and unexplained delay/inaction), the problems that may arise in the limbo period may properly carry weight in the overall assessment.
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> 81. On balance, and not without hesitation, I would accept that the FTT was entitled to regard the Secretary of State's inaction, wholly unexplained at the time and for so extraordinarily long a period, as sufficiently compelling, when taken with all the other circumstances of the case, to justify a decision that the Appellant should not be deprived of his citizenship. It may well be that not every tribunal would have

> reached the same conclusion as the FTT in this case. However, that is not the test. We are concerned here with the exercise of a judicial discretion, and it is inevitable that different judges will sometimes reach different conclusions on similar facts..."

26. So too in this appellant's case, it was the significant, unexplained period of inaction by the respondent – in this case 15 years rather than the 9 years in Laci - which led Judge Bunting to conclude that the proportionality balance was tipped in the appellant's favour. As Mr Wilding submitted, had the respondent given an indication of whether the appellant would be granted leave and when a grant would be made, or given an indication whether the appellant would be given permission to work during the 'limbo' period, the judge's conclusion on proportionality would not have been a sustainable one. At [62] the judge observed that the period of 'limbo' was not clear and indeed the evidence Mr Wilding now presents is of a much longer period than suggested by the respondent at the time. It had been open to the respondent to provide evidence as to the length and nature of this period of time, but there was no such evidence. In the circumstances it seems to me that the judge, having applied the correct legal principles and considered all the evidence, was fully entitled to conclude as he did.

27. For all of these reasons I do not find that Judge Bunting erred in law. It is relevant to make the observation that his decision was clearly evidence-driven and was based to a large extent on the lacunae in the respondent's evidence and the lack of information to support her case, both in relation to the delay issue and the 'limbo' period and was therefore specific to the particular facts of the appellant's case. Had there been a more substantial case presented to him by the respondent he may have reached a different decision or would not have been entitled to reach the decision that he did. However, on the evidence as it was presented to him it was open to him to reach the conclusions that he did. I therefore uphold the decision of the First-tier Tribunal.

DECISION

28. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to allow the appeals stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 10 August 2022