IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: UI-2022-002588

First-tier Tribunal No: DC/00132/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 19 September 2023

Before

UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

GJIN GJERGJI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Heard at Field House on 2 August 2023

Representation:

For the Appellant: Mr A Mackenzie, counsel instructed by Duncan Lewis Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the remaking of the decision in the appellant's appeal against the decision of the Secretary of State to deprive the appellant of his citizenship for reasons set out in a letter dated 26 November 2019.

Anonymity

2. No direction has been made previously, and there is no reason for one now.

Background

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3. The appellant first arrived in the United Kingdom during 1999, using another identity. He was removed to Germany as he had previously claimed asylum there in a different identity. The appellant returned to the United Kingdom during 2000 and applied for asylum using his own name, stating that his nationality was Yugoslavian. Following a successful appeal, the appellant was recognised as a refugee and granted indefinite leave to remain. He was naturalised as a British citizen during 2011. In a letter dated 14 May 2019, the British Embassy in Tirana stated that it had discovered that the appellant was born in Albania. In 2017, the appellant was convicted of the rape of a child and was sentenced to six years' imprisonment.

4. On 26 July 2019 the respondent informed the appellant that consideration was being given to depriving him of his British citizenship for claiming asylum in a false identity and inviting his representations.

5. The Secretary of State decided to deprive the appellant of his citizenship for reasons set out in a decision dated 26 November 2019. In short it was considered that the appellant acquired British citizenship by means of fraud, and as such he should be deprived of his citizenship under section 40(3) of the British Nationality Act 1981. The decision letter set out the numerous occasions on which the appellant had provided false details, including those as to his nationality. Reference was made to checks undertaken by the Ministry of Interior which confirmed that the appellant was an Albanian national by the name of Gjin Gjergji. The Secretary of State considered that the appellant perpetrated material fraud in order to acquire both status and citizenship and that had the nationality caseworker been aware that he had presented a false identity he would have been refused British citizenship. The respondent also acknowledged her discretion in deciding to deprive the appellant of citizenship and considered a series of factors prior to concluding that deprivation of citizenship was a reasonable and balanced step to take.

The decision of the First-tier Tribunal

6. The decision of First-tier Tribunal Judge Swaney, dismissing the appellant's appeal was set aside by a panel of the Upper Tribunal following a hearing which took place on 16 November 2022. None of the First-tier Tribunal's findings were preserved and the matter was retained in the Upper Tribunal for remaking.

7. In addition, the Secretary of State was directed to disclose all relevant material concerning the appellant (as previously requested by his solicitors on 11 February 2022) to those representing the appellant no later than 4pm on 18 January 2023. These directions were amended owing to a delay in the error of law decision being promulgated.

8. On 14 February 2023, a case management hearing was held, the outcome of which is best summed up in the following extract from the resulting order.

When this matter came before me, I was satisfied that the respondent had complied with the Tribunal's directions to the best of her ability. Indeed, Mr Ansari agreed that there was no need for Ms Cunha to provide a witness statement to that effect.

Mr Ansari brought up the duty of candour. In response to which, Ms Cunha undertook to obtain a statement from a Home Office caseworker to the effect that there were no further documents available on the appellant's file(s), irrespective of whether or not they were helpful to either party's case.

The continuance hearing

9. When this matter came before us, there was some discussion regarding the extent to which the directions had been complied with but ultimately nothing much turned on this. The appeal proceeded by way of submissions. Mr Mackenzie provided a detailed skeleton argument in advance of the hearing which identified the appellant's primary argument, which was that evidence of the appellant's Albanian citizenship and his previous applications was available to the Secretary of State at the time he was naturalised as a British citizen and that the respondent's policy guidance (Nationality Instructions, Ch. 55 (55.7.10.2)) precluded deprivation of citizenship on the basis of evidence already available to the respondent at the time of the grant of naturalisation.

10. Ms Cunha was invited to speak first as the appellant's arguments had been set out in full in the above-mentioned skeleton argument. Her principal argument was that while the Secretary of State had doubts as to the appellant's nationality which had led to the refusal of his asylum application on 27 June 2000, those doubts were resolved following the appellant's hearing at the First-tier Tribunal when his appeal was allowed on the basis that he was Kosovan. The Secretary of State was not entitled to go behind the findings of an independent tribunal and granted the appellant asylum on 11 October 2000.

11. Ms Cunha argued that it was not the case that the respondent was aware that the appellant was Albanian at the time his wife made a marriage application and that the respondent did nothing about it. She submitted that the wife's application for entry clearance was refused as there was no record of anyone in the United Kingdom with the appellant's name, immigration status and Albanian nationality. In the alternative, even had there been evidence the appellant was committing fraud, it did not impeach the Secretary of State's decision or render it unlawful. Ms Cunha also suggested that it would not have been possible for the respondent to obtain information as to the appellant's nationality as the previous understanding was that records were destroyed by the Serbian authorities. She submitted that it was only in 2019 that accurate information had been obtained from the Albanian authorities as to the appellant's citizenship and that there was concrete evidence that the appellant had used deception. Following this the respondent had started the process to deprive the appellant of his citizenship.

12. Mr Mackenzie relied upon his skeleton argument and made the following points. There was no reference to the respondent's policy in the decision letter nor to Ms Cunha's submissions. He drew the panel's attention the witness statement of Mr

Byrne, a senior caseworker at the Status Review Unit which confirmed that the Secretary of State had evidence that the three separate identities were the same person, the appellant. Mr Mackenzie argued that it was unfair of the respondent to deploy evidence from twenty years earlier to deprive the appellant of citizenship now. He added that the respondent accepted that the appellant's wife had submitted evidence showing that the appellant was born in Albania in 2004 and the reasons for the refusal of the marriage application included that the birth certificate showing that the appellant was born in Serbia was a false document. In the second marriage application, the appellant's wife had admitted that he was Albanian and submitted a marriage certificate, for the second time, which confirmed that. Mr Mackenzie argued that the Secretary of State knew that the appellant had a different identity as stated in Mr Byrne's statement; she made a positive decision not to revoke his ILR in 2005 and was not entitled to change her mind nearly twenty years later.

13. In reply, Ms Cunha argued that the respondent knew that the appellant used two identities, both of which were Kosovan. Otherwise, her only reference to the policy was a passing mention of 'public interest.'

14. At the end of the hearing, we reserved our decision.

Decision on remaking

15. We start from the position that in this appeal, the task of the Upper Tribunal is to review the Secretary of State's decision to deprive the appellant of British citizenship on public law grounds, applying *Ciceri* (deprivation of citizenship appeals: principles) [2021] UKUT 00238 (IAC) and *Begum* [2021] UKSC 72.

16. The parties are agreed that the Secretary of State was entitled to find that the condition precedent in section 40(3) of the 1981 Act was satisfied. Nor was it argued that the decision was unlawful under section 6 of the Human Rights Act 1998. The area of dispute concerns whether the respondent materially erred in the exercise of her discretion to deprive the appellant of British citizenship.

17. The appellant's case turns on the Secretary of State's compliance with Chapter 55 of her Nationality Instructions, 55.7.10.2 of which, states:

> Evidence that was before the Secretary of State at the time of application but was disregarded or mishandled should not in general be used at a later stage to deprive of nationality. However, where it is in the public interest to deprive despite the presence of this factor, it will not prevent the deprivation.

18. Ms Cunha accepted that there was no reference to 55.7.10.2 of the Nationality Instructions in the decision letter and other than a passing remark during her submissions, it has never been argued on behalf of the respondent that it was in the public interest to deprive the appellant of citizenship, notwithstanding that evidence of fraud had been before her at the time of the application.

19. We have carefully considered the letter from Mr Byrne in its entirety and reproduce some extracts here.

> I was able to clarify that regarding the fingerprint evidence for Gjin GJERGJI, this information was taken from a referral from the National Crime Agency. I had contacted colleagues at the National Crime Agency and they confirmed that they gleaned the information from CID / case file(s) about the match of fingerprints for Agron BERISHA and the individual who had claimed asylum in Germany in the identity of Ram HALILI - 22 February 1968. I confirmed that he was removed to Frankfurt on 2 February 2000, but later returned to the UK and obtained his status in the Gjin GJERGJI identity.
>
> (I)… noticed a case note dated 12 January 2005 under Home Office reference number B1019627 which stated as follows: This is a multiple applicant. His true identity is considered to be that of his first claim for asylum as he has not provided any documentary evidence of ID to prove otherwise. His true identity is considered to be Agron BERISHA, 22/02/68, KOS (B1019627). His false identity is considered to be Gjin GJERGI, 05/05/70, KOS (G1019470). Therefore it is considered that the applicant has been granted ILR Refugee Status in a false identity. Files to be amalgamated then sent to Helen Sayers, SCW for Kosovo to consider revocation of ILR under Section 10.
>
> I clarified that this case note had been re-entered on CID on 18 January 2011 under Home Office reference G1191169 by colleagues in the Casework Resolution Directorate (CRD), so I stated that this information was available before Mr. Gjergji naturalised.

20. In addition, it is not in dispute that when the appellant's wife unsuccessfully sought entry clearance on 2 December 2004, a marriage certificate was provided which gave the appellant's correct identity and nationality. The same document was relied upon in the successful marriage application made on 4 February 2005. The appellant's wife was interviewed on 19 April 2005 and confirmed that the appellant was born in Albania and that his parents also lived in Albania.

21. It is apparent to us that the respondent was aware or ought to have been aware at the time of the appellant's application for naturalisation that he was an Albanian national. She was aware that the appellant had previously claimed asylum in different identities in the United Kingdom and Germany and that there had been doubts as to his citizenship prior to his appeal being allowed. Indeed, the Home Office fingerprint document shows that when the appellant's prints were taken on 10 June 1999, they matched those of Agron Berisha, whose nationality was recorded as Albanian. The appellant was subsequently removed to Germany on 14 January 2000. Both the removal directions and the laissez-passer record the appellant's nationality as Albanian.

22. Furthermore, the appellant's wife admitted during her entry clearance interview in 2005 that the appellant was an Albanian national and documentary evidence of this was provided as part of both the 2004 and 2005 marriage applications.

23. Mr Byrne's statement reproduces a note on the appellant's Home Office file which shows that the appellant's file was reviewed in January 2005 for revocation of indefinite leave to remain to be considered. Notwithstanding this note, no action was taken by the respondent. The appellant's wife was granted entry

clearance and the couple naturalised on 13 May 2011, with the appellant relying on a false nationality.

24. The Secretary of State wrote to the appellant on 26 July 2019, explaining that she was considering depriving him of his citizenship because she was in possession of information confirming that he had ‘previously claimed asylum in the United Kingdom in the identity of Argon Berisha (and)…information confirming you are in fact an Albanian citizen…’ We find that the Secretary of State was in possession of that evidence nearly twenty years earlier and that she either disregarded or mishandled it, evidenced by her earlier failure to act on it. We accept that it is unfair for the respondent to now seek to rely upon this information as a basis for depriving the appellant of his citizenship. The respondent has failed to consider the relevant policy guidance. We conclude that the decision under challenge was infected by public law error, that is, the Secretary of State failed to take account of her own policy guidance and the deprivation decision was contrary to that guidance.

25. The appeal is allowed.

Notice of Decision

The appeal is allowed.

Signed: T Kamara Date: 16 August 2023

Upper Tribunal Judge Kamara

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