Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-003482**
DC/50083/2020; LD/00005/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 26 March 2023

Before

UPPER TRIBUNAL JUDGE PITT

Between

GEZIM RAMCAJ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Collins, Counsel instructed by Marsh & Partners Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 21 November 2022

DECISION AND REASONS

1. This is an appeal against the decision issued on 14 June 2022 of First-tier Tribunal Judge Dempster which refused an appeal against a decision dated 10 December 2020 to deprive the appellant of British nationality.

Background

2. The appellant is a national of Albania and was born on 16 August 1978.

3. The appellant entered the UK on 13 July 1998 and claimed asylum in a false identity, maintaining that he was a Kosovan national born on 16 July 1981. On 9 June 1999 he was granted indefinite leave to remain (ILR) on the basis of his asylum claim as a Kosovan national. On 23 July 1999 he applied for a travel document in the false identity. On 24 November 2003 he applied to naturalise as a British citizen using the false Kosovan identity. That application was refused as the appellant had two unspent road traffic convictions and failed to meet the good character requirement. The appellant made a further application for naturalisation on 15 February 2008, again in the false Kosovan identity, and this application was successful.

4. It is common ground that on 31 December 2010 the appellant was stopped by Immigration Officers in Calais in a car with three other people. On that occasion the appellant was using a genuine Albanian passport in his true identity. One of the people in the car was the appellant's wife, Erblinda Ramcaj who was attempting to enter the UK using a false identity.

5. The First-tier Tribunal Judge recorded the appellant's evidence on the events of 31 December 2010 as follows in paragraph 21 of the decision:

> "21. He [the appellant] was further asked in supplementary questions about the time he had been detained at Calais in 2010. At the time, his wife, who was pregnant with their first child, was being brought to the UK using false identification documents. They were with two men who I understand to be the people to be arranging the appellant's wife's journey to the UK, the appellant confirming in cross examination that he had paid for these smugglers to bring his wife to the UK. The appellant said he was using his valid Albanian passport because he had been asked not to use his British passport. They had been detained by UK immigration officials at Calais when they had been separated. They were detained for about an hour and then handed over to the French authorities when and they were detained overnight and questioned. His Albanian passport was taken by the British authorities and was never returned to him. He said that since that time, he had never seen his passport. He explained that they returned to the UK the following day on Eurostar when he used his British passport. He was stopped on entering the UK and he was told that the authorities were doing some checks on him. He had been detained for about half an hour. The UK authorities being in possession of his Albanian passport since 2010, he had never thought, having regard to the delay, that they would start deprivation proceedings against him".

6. This incident is at the core of the current appeal. The appellant maintains that the respondent was on notice from December 2010 onwards that the appellant had made false representations when obtaining citizenship. She took no action for at least 7 years, however, and the appellant considers that the delay was such as to outweigh the public interest in the deprivation of nationality.

7. Having entered the UK on 1 January 2011, the appellant and his wife established themselves in the UK and had four children. Their details are as follows:

> Emily, born on 30 May 2011, birth registered on 3 June 2011, the appellant's nationality recorded as Kosovan on the birth certificate
>
> Amelia, born on 17 July 2013, birth registered on 1 August 2013, the appellant's nationality recorded as Albanian on the birth certificate
>
> Ayra, born on 7 April 2017, birth registered on 11 April 2017, the appellant's nationality recorded as Kosovan on the birth certificate;
>
> Aron, born on 25 October 2020, the appellant's nationality recorded as Albanian on his birth certificate.

8. On 21 June 2018 the respondent wrote to the appellant informing him that she had reason to believe that he had obtained his British citizenship as a result of fraud, false representation or concealment of a material fact and requested the appellant provide details of his identity. The appellant responded on 27 June 2018. He maintained that he was not Albanian but was Kosovan and continued to rely on the false identity. As regards his nationality being recorded as Albanian on his child's birth certificate, the appellant's response was as follows:

> "In response to Home Office comments that he has recorded his place of birth as Albania on his child's birth certificate we wish to state that our client told the officers at the register office that he was an ethnic Albanian from Kosovo and the error is because of this reason".

9. The respondent then conducted identity checks with the authorities in Albania and Kosovo and established that the appellant's true identity was Gezim Ramcaj born on 16 August 1978 and that he was an Albanian national. The respondent informed the appellant of this in a letter dated 7 October 2020.

10. The appellant responded on 27 October 2020. He accepted the details of his true identity and that he had used a false identity. He maintained, however, that he had been a victim of traffickers when he entered the UK in 1998 and had been advised to claim to be Kosovan.

11. On 10 December 2020, the respondent made a decision to deprive the appellant of his nationality, relying on Section 40(3) of the British Nationality Act 1981. Section 40 (3) provides:

> "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."

The respondent relied on the appellant's use of a false identity from 1998 onwards, finding that he had made false representations and fell to be deprived of his nationality, that outcome not amounting to a breach of Article 8 ECHR.

First-tier Tribunal Decision

12. The appellant appealed against that decision. He maintained that the respondent knew of the use of a false identity from December 2010 onwards but did not take any action until 2017 at the earliest. This delay was material and should lead the Tribunal to find that the respondent had acted unlawfully when exercising her discretion to deprive the appellant of British nationality and showed that a breach of the appellant's Article 8 ECHR rights.

13. The First-tier Tribunal considered the issue of delay in some detail, including an assessment of whether the evidence showed that any period of delay began in 2010 or later. The assessment took into account two Respondent's Reviews setting out the respondent's case before the First-tier Tribunal, one dated 28 October 2021 and one dated 29 March 2022. The First-tier Tribunal was clearly aware of these two documents; see, for example, paragraphs 5 and 8 of the decision.

14. The two Reviews made very different statements about when the respondent knew of the appellant's use of a false identity. Paragraph 7 of the Review dated 28 October 2021 (the first Review) stated that the respondent commenced an investigation "after the Home Office encountered him at Calais with a valid Albanian passport". above. The Review dated 29 March 2022 (the second Review) stated:

> "**[C] Counter Schedule and Submissions**
>
> The Respondent would like to draw the Tribunal's attention to a Revocation Referral form uploaded onto CCD, alongside this Respondent's Review. This Revocation Referral Form demonstrates that it was the Appellant's child's birth certificate that triggered the investigation into the Appellant's true identity. The referral form highlights the date of referral which is 13 April 2017. It is noted that the decision letter at para 17 states that the date of referral was 09 August 2017, this is most obviously a typo. Nonetheless, the Home Office investigation was triggered by the Appellant's child's birth certificate, not the 2010 encounter. It is evident that the author of the first review has made a mistake in stating that the Home Office investigation was triggered by the 2010 encounter at Calais. When barristers prepare cases and construct reviews, the only documents they are given are the AB, SA and the RB. There is nothing in the RB to suggest that the 2010 encounter triggered the Home Office investigation, the statement made in the first review is most obviously a mistake".

15. The appellant maintained that the respondent's starkly different position in these two documents was unexplained. Further, the second Review was

not correct in stating that there was nothing in the respondent's other materials "to suggest that the 2010 encounter triggered the Home Office investigation." The appellant maintained that paragraph 16 of the respondent's decision letter dated 10 December 2020 suggested that the respondent was on notice as of December 2010:

> "16. On 31 December 2010 you were encountered by Immigration Officers in Calais in a car with 3 other people, one of which was your wife Erblinda Ramcaj. Your wife was travelling using a false identity and you were in possession of a genuinely issued Albanian passport in the name of Gezim Ramcaj".

16. The appellant also argued that the respondent's case that the false identity came to light in 2017 was undermined by other discrepancies in the respondent's materials. The respondent had also provided a "Revocation – Referral Pro-Forma" (the Pro-Forma) dated 17 April 2017. This stated that the respondent had concerns about the appellant's true identity, those concerns arising from a birth certificate of one of the appellant's children which stated that he was Albanian. The Pro-Forma stated that the date of the referral to the respondent was 13 April 2017. This was at odds with the respondent's deprivation decision which stated that the referral was made on 9 August 2017. The second Review maintained that the decision letter contained a typo on the date of the referral which was, in fact, as in the Pro-Forma, made on 13 April 2017. The First-tier Tribunal set out these matters in paragraphs 7 and 8 of the decision.

17. The appellant also maintained that the respondent's case was further undermined by the statement in the deprivation decision that the investigation into the appellant had commenced "following receipt of your daughter Amelia's birth certificate detailing your place of birth as Albania". As set out above, Amelia was born in 2013 and the appellant submitted that it could not be correct that her birth certificate issued in 2013 had led to the referral and investigation in 2017.

18. In paragraphs 27 to 29, Judge Dempster set out the submissions of the parties on when the respondent had known of the appellant's use of a false identity:

> "27. Mr Tamblinson, in submissions, relied on the deprivation decision. He submitted that there was no delay and it is clear that the investigation was triggered by the referral in 2017. The appellant had been detained in 2010 by the British authorities for a matter of five minutes and it was only in 2017 following the referral that the dots were joined. After the stop at Calais, the appellant had continued to maintain his false identity, for example on Emily's (sic) birth certificate. He had used deception on more than one occasion and there was nothing about the deprivation decision that would be a disproportionate interference with the appellant's Article 8 rights.

28. In response, Mr Collins submitted that the delay between 2010 and 2018 was a matter to which the Tribunal should have regard. In Hysaj [2017] UKSC 82, it was stated at paragraph 110:

> *'There is a heavy weight to be placed on the public interest in maintaining the integrity of the system by which foreign nationals are naturalized and permitted to enjoy the benefits of British citizenship. That deprivation will cause disruption in the day to day life is a consequences of the appellant's actions and without more, such as the loss of rights previously enjoyed, cannot possibly tip the proportionality balance in favour of his retaining the benefits of citizenship that he fraudulently secured'*(emphasis supplied).

29. It was Mr Collins' submission that the delay in this case following the stop at Calais was that *"something more"*. The respondent had failed to explain how the dots had been joined and the respondent's position concerning whether or not the respondent knew of the appellant's false identity in 2010 did not bear scrutiny. There had been no effort by the respondent to explain why counsel who drafted the first Review had arrived at the conclusion that the investigation had commenced in 2010 other than to dismiss it as a clear mistake. There was nothing from counsel to explain the position and Mr Collins submitted that counsel had clearly believed the investigation had commenced in 2010. Further, the respondent, in the deprivation decision at paragraph 17 had asserted that the investigation had commenced *"on 9 August 2017 following receipt of your daughter Amelia's birth certificate detailing your place of birth as Albania"*. Mr Collins submitted that this does not make sense because Amelia was of course born in 2013 and not in 2017 when Ayra's birth was registered. Even then, it was now the position of the respondent that the date of referral in the deprivation decision of 17 August 2017 was another mistake; the correct date of referral was 13 April 2017 (as per the Revocation Referral Form). It was inconceivable that within two days of the registration of Ayra's birth the respondent would have realized there was a problem with the appellant's nationality. The respondent's position throughout had shifted and he submitted that, at the very least, this was a dysfunctional decision making process and he invited me to find that, on balance, the respondent was aware of the appellant's deception in 2010".

19. In paragraphs 35 to 39, Judge Dempster set out why she did not accept that the respondent was on notice of the use of a false identity from 2010 onwards:

> "35. I have considered whether there has been delay on the part of the respondent as there was a clear conflict of evidence between the parties. It was Mr Collins' submission that the respondent was on notice of the appellant's deception in 2010 yet did nothing until 2018 during which time the appellant became more established in the UK. The respondent of course denied that to be the case relying on the Revocation Form. In assessing that evidence, I have applied the guidance in Tanveer Ahmed (Starred) [2002]

UKIAT 00439 which means that I have not considered any of the documentary evidence in isolation.

36. It was the respondent's position that she first was aware of the deception in 2017 following registration of the appellant's child. It was, of course, Ayra's birth which was registered in 2017 yet the deprivation decision at paragraph 17 referred to Amelia's birth which was in 2013. Mr Collins submitted that it was difficult to square what was said in the deprivation decision with these facts. There is no doubt that the appellant did record his nationality as Albanian on Amelia's birth certificate and to that extent the information in the refusal decision is not incorrect. The referral form did not identify which child's birth certificate they had considered but it is a proper inference that the referrer must have had sight of Amelia's birth certificate because that is the only one, during the relevant period, upon which Albanian nationality had been recorded. The referral was stated to be on 13 April 2017 which I find to be temporally proximate to the registration of Ayra's birth.

37. In contrary submissions, it was the appellant's position that the respondent was aware or should have been aware of the appellant's deception in 2010 at the time when the appellant was seeking to smuggle his wife into the UK and when, on his evidence, his Albanian passport was seized. There is no evidence that any action was taken by the respondent as a consequence of the stop at Calais and the respondent before me did not stand by the representation to that effect made by counsel in the first review.

38. I have considered this aspect of the case with care. I find on balance on the totality of the evidence before me that the trigger to the investigation was not the stop at Calais; rather it was the registration of Ayra's birth which led to the realization that the appellant had used different nationalities on different documents, in the words of the (anonymous) author of the referral form who used the phrase *'different aliases'*. I do not accept the submission that it would be inconceivable that a government department would be able to make a referral within two days of the registration, I find that the temporal proximity is such that it is an almost ineluctable inference that these two events are connected and, having regard to the totality of the evidence, I find the Referral Form to be a document to which I can and do attach weight. I note the criticism made of the respondent who stated the referral date to be 9 August 2017 (in the deprivation decision) and, indeed, this is not a case where the respondent has demonstrated the attention to detail that would be expected of the author of such an important document as a deprivation decision but this failure in my judgment does not detract from the importance in this case of the details recorded on the Referral Form. Once the matter was referred to the Status Review Unit in April 2017, I do note and so find that there was a delay of some 14 months before the respondent wrote to the appellant raising the issue of deprivation of citizenship.

> 39. Is this a case where the respondent should have been aware of the appellant's deception in 2010 and the failure to take action from that date, as submitted by Mr Collins, is evidence of a dysfunctional decision making process, relying upon EB (Kosovo) v SSHD [2008] UKHL 41 where it was said that delay in decision making may be relevant in reducing the weight to be accorded to the requirements of firm and fair immigration control '*if the delay is shown to be the result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes'*(paragraph 16 per Lord Bingham)? In the circumstances of this case, I find that the failure of the respondent in 2010 to identify the appellant as a person of interest, in possession of an Albanian passport, such as to trigger an investigation comes nowhere near to the categorization of a system as dysfunctional and yielding '*unpredictable, inconsistent and unfair outcomes'*. The failure to make the connection between the appellant at Calais and the individual who had used false details to obtain naturalization worked only to the benefit of the appellant and I have little hesitation in finding that the appellant thought that he had been able to pass undetected. He continued thereafter to maintain the deception using his British passport the very next day and then by recording his nationality as Kosovan on Emily's birth certificate in 2011. Whilst I acknowledge that the appellant recorded his correct Albanian nationality in 2013 (and I note his reasons for so doing), he reverted to the deception in 2017 and again, when initially challenged by the respondent in his first response on 27 June 2018, maintained that the entry on the birth certificate had been a mistake. I find further that at no point was the appellant ever on notice before 2018 that the respondent was considering making a deprivation decision against him, unlike, for example, the appellant in Laci [2021] EWCA Civ 769 where the Secretary of State failed to take any action against that appellant for 9 years having put him on notice of their intention to make such an order. This appellant was never under any misapprehension, because of the passage of time, that no action was to be taken against him".

20. The judge refused the appeal, finding that the respondent had exercised her discretion under paragraph 40(3) of the BNA 1981 correctly and that the decision did not amount to a disproportionate interference with Article 8 of the ECHR.

21. The appellant appealed against the decision of the First-tier Tribunal and was granted permission to appeal to the Upper Tribunal on 14 July 2022.

Discussion

22. As set out in paragraph 4 of the grounds of appeal, the appellant's challenge to the decision of Judge Dempster was that she had taken an irrational approach to the evidence when finding that there had been no delay.

23. The threshold for concluding that a decision maker made irrational or perverse findings is a high one. In R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982, Lord Justice Brooke said this:

> "11. It may be helpful to comment quite briefly on three matters first of all. It is well known that "perversity" represents a very high hurdle. In *Miftari v SSHD* [2005] EWCA Civ 481, the whole court agreed that the word meant what it said: it was a demanding concept. The majority of the court (Keene and Maurice Kay LJJ) said that it embraced decisions that were irrational or unreasonable in the *Wednesbury* sense (even if there was no wilful or conscious departure from the rational), but it also included a finding of fact that was wholly unsupported by the evidence, provided always that this was a finding as to a material matter.
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> 12. We mention this because far too often practitioners use the word "irrational" or "perverse" when these epithets are completely inappropriate. If there is no chance that an appellate tribunal will categorise the matter of which they make complaint as irrational or perverse, they are simply wasting time – and, all too often, the taxpayer's resources – by suggesting that it was."

24. In my judgment, the grounds do not show that the reasoning of the First-tier Tribunal Dempster was irrational. Paragraphs 28 and 29 and 35 to 39 of the decision show that the Judge Dempster had a proper understanding of the appellant's submission that the respondent was on notice as of 2010 of the appellant's reliance on a false identity. Those paragraphs also show that the judge took into account the alleged shortcomings in the respondent's position when concluding that the respondent was not on proper notice of the use of a false identity in 2010. The differences in the two Reviews, the different dates given for the referral in 2017, whether it was Amelia or Ayra's birth certificate that led to the investigation in 2017, the proximity of the registration of Ayra's birth on 11 April 2017 and a referral being made on 13 April 2017 were all matters taken into account.

25. Having taken the material evidence into account, it was open to the First-tier Tribunal to find "on balance on the totality of the evidence" that it was the birth certificate in 2017 that led to a investigation (paragraph 38), that the respondent did not know of the use of false identity in 2010 (paragraph 39) and that the appellant knew that he had not been identified in 2010 (paragraph 39). It was not irrational to place weight on the statement in the second Review as to the first Review being mistaken as to an investigation commencing in 2010 and the decision letter being incorrect as to when the Referral was made. The judge was entitled to accept the respondent's written and oral submissions on the discrepancies in her various documents and gave reasons for doing so. There was no obligation on the First-tier Tribunal to go further and require the respondent to revert to those who drafted those documents for further explanation as suggested in paragraphs 9 and 11 of the grounds. Paragraph 16 of the decision letter merely set out the facts of the events of 31 December 2010 and are not capable of bolstering the appellant's case that the respondent commenced an investigation at that time.

26. The grounds set out at some length the same arguments that were made before the First-tier Tribunal appellant's on the shortcomings in the respondent's case. At their highest, they really only disagree with the First-

tier Tribunal's findings rather than identifying legal error. The findings of the First-tier Tribunal were reasoned and supported by the evidence. They were not irrational.

27. For these reasons it is my conclusion that the decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Notice of Decision

28. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: S Pitt Date: 9 January 2023
Upper Tribunal Judge Pitt