



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000276
First-tier Tribunal Nos:
DC/50137/2022, LD/000236/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18 April 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

DHURATA LEKA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Badar, Counsel, instructed by Oliver and Hasani Solicitors
For the Respondent: Ms J Isherwood, Senior Presenting Officer

Heard at Field House on 24 March 2023

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Prudham dismissing her appeal against the decision to deprive her of her British citizenship. The decision of the First-tier Tribunal was promulgated on 12th January 2023. The Appellant applied for permission to appeal against that decision which was granted by First-tier Tribunal Judge Povey in the following terms:

- “1. The application is made in time.
2. The grounds allege that the Judge erred in law by applying the wrong legal tests, making irrational findings and failing to consider material aspects of the evidence.
3. The Appellant appealed against the Respondent’s decision to deprive her of her British citizenship (on the grounds of fraud). The Appellant accepted that she had provided false information as

to her nationality (at [29]). Contrary to the grounds, the Judge did not apply an incorrect or outdated legal test. Rather, he found that the condition precedent for deprivation was met (at [31] - [32]), a finding which was open to him on the evidence. However, whilst the Judge's finding that the Appellant would retain entitlement to some state benefits and her council accommodation could arguably be derived from the fact that she has four school-aged children who are all British citizens (at [34] - [35]), it was incumbent on the Judge to provide a clearer explanation for those findings. The Judge also arguably placed unsustainable weight on the proposition that the children's father would contribute to their financial welfare (at [36]). The Judge failed to explain how he had assessed the evidence of the Appellant and the children about the father's role and, if had rejected that evidence, the reasons for so doing. As those factors were material to the Judge's decision, they constituted arguable errors of law.

4. For those reasons, the grounds disclosed arguable error of law and permission to appeal is granted. Despite my reservations about Ground 1, all grounds may be argued".
2. The Respondent provided the Appellant and the Upper Tribunal with a Rule 24 response which I have taken into account in reaching this decision.

Findings

3. At the close of the hearing I reserved my decision which I shall now give. I find that the Grounds of Appeal demonstrate a material error of law in respect of Grounds 2 and 3, however not in respect of Ground 1.
4. In respect of Ground 1 and the argument that the judge did not consider the correct legal test and the Appellant's argument, Mr Badar focused his submissions upon paragraphs 25 to 32 of the judge's decision in essence arguing that the judge had not followed *Ciceri (deprivation of citizenship appeals: principles) Albania* [2021] UKUT 238 whilst having a mind to *Sleiman (deprivation of citizenship; conduct)* [2017] UKUT 367 (IAC). It is said that the judge did not consider the condition precedent of deception; however when looking at paragraphs 31 and 32 of the judge's decision it is clear that the judge has in terms assessed whether the statutory condition precedent under Section 40(3) of the British Nationality Act 1981 was or was not met. Mr Badar's point in essence is that if the deception did not have an impact upon the grant of citizenship then it would not be appropriate to pursue deprivation as stated in the Chapter 55 guidance. He asked the rhetorical question, did the false information have a direct bearing upon the grant of citizenship? In my view the judge was entitled to reach the decision that she did given the context and nature of the deception, as accepted and admitted to by the Appellant. As Ms Isherwood pointed out, the refusal letter bore detailed reasons for the Secretary of State's decision that she was entitled to deprive the Appellant of her British citizenship primarily from paragraphs 24 to 28 of the decision. Ms Isherwood highlights that the Appellant's mental health concerns and the history that gave rise to them were of a whole and part of the false claim that she had previously made which resulted in the judge's findings at paragraph 27 that her narrative, which was now accepted to be false, that she had been assaulted and raped in Kosovo which then resulted in her pregnancy and therefore resulted in her suffering from post-traumatic stress

disorder (PTSD), was accepted to be wholly false information used when applying for British citizenship in 2010. This, and subsequent reasons in paragraphs 27 to 29, led to the judge finding that the Appellant had given a false name as well as a false nationality in applying for indefinite leave to remain and also for her British citizenship. In any event, it is also clear that the judge refused to accept the Appellant's mental health issues were not fabricated and found that they were based upon an entirely false account of events provided by her. In short, the judge did not see any reason why the Appellant did not discontinue her reliance upon the false identity and narrative which was originally given in September 2004, and noted that she did not desist in this narrative for many years thereafter. It is in that important context that one must read the findings at paragraph 31 to 32 where the judge notes that the Appellant professed to be of good character as had she declared that she had dishonestly provided a false account of past events, her nationality and her identity, her application for naturalisation would have been refused due to an absence of good character owing to her prior deception. For those reasons, and as the findings on falsity were uncontested in material part, in my view, the judge was entitled to conclude that the false information did have a bearing upon the position that the Appellant found herself in in applying for indefinite leave to remain and in her continuation of the false information when applying for citizenship. Therefore, I find that Ground 1 is not made out and there is no material error of law in this respect.

5. However, I turn now to Grounds 2 and 3, which I take in turn, although they do overlap one another to an extent.
6. In respect of Ground 2, I find that the judge's findings at paragraphs 35-36 are speculative and not based on the evidence before her and are unsupported by adequate reasons. The judge notes at paragraph 35 that it is reasonably foreseeable as a consequence of the deprivation decision that the Appellant would lose her part-time employment. The judge accepted that this would expose the Appellant and her family to financial hardship, however found that the Appellant "would still retain entitlement to some state benefits and would remain in her council accommodation" and that her children "would not lose their places at school and so their education would continue". The finding in relation to the Appellant still retaining entitlement to some state benefits and remaining in council accommodation that was not borne out by the evidence before the First-tier Tribunal. Albeit that a judge cannot undertake a proleptic assessment, she must still have in mind a reasonably foreseeable consequence of the deprivation decision and given that the judge had accepted that the Appellant would lose her part-time employment if her citizenship were taken away, certainly at least during the period in which she awaited the Secretary of State's decision as to whether and what further status may be given and/or granted to her, it is unclear that the judge looked at the evidence of what benefits the Appellant was receiving and on what evidential basis and/or any extrapolation based upon the law surrounding benefits and welfare, that the judge was entitled to find that the Appellant would retain entitlement to some state benefits and remain in her council accommodation. I observe that the judge was not assisted by a complete lack of objective material in relation to the nature of the benefits that the Appellant was receiving and when and how those might reasonably foreseeably continue or cease to be given; however, given that the Appellant, as Ms Isherwood stated, would lose her citizenship and likely be given a form of limited or further leave to remain at some point in the future, this precarious status would not automatically mean that the Appellant would be entitled to benefits. Far from it, a great deal would depend upon whether or not she would be

permitted to work according to the terms and conditions upon any biometric residence permit and whether or not she would have access to state benefits, again as reflected on any biometric residence permit she may be given. It is hard to know what consequences may follow as there is no data before me in relation to the length of delay between deprivation and a grant of any further status (assuming a grant will be forthcoming), or the nature of the status given and whether permission to work and/or receive benefits will or will not be given. In any event, I accept Mr Badar's submission that the benefits that she receives as a consequence of her British nationality will automatically fall away if that status is contingent upon their being given. In making this decision, I bear in mind the reported decision of *Muslija (deprivation: reasonably foreseeable consequences)* [2022] UKUT 337 and [11] in particular detailing that, upon deprivation of British citizenship, such a person will lose the right of abode and be subject to immigration control and the hostile environment and the need to either regularise their status if limited leave to remain is not forthcoming. Looking at the Appellant's evidence before the First-tier Tribunal, there was evidence of her receiving Universal Credit, housing benefit and council support as well as benefits in respect of her children. It is in respect of the Universal Credit, housing benefit and council support that I find the First-tier Tribunal Judge needed to direct her attention in terms of the reasonably foreseeable likelihood of whether or not those benefits may still be forthcoming and the reasons why, notwithstanding that there would also be an immediate period of limbo following deprivation of citizenship until any status was granted thereafter.

7. Turning to Ground 3 and the judge's finding at paragraph 36 that the children's father could make a contribution to the upkeep of the three children, given that the judge found that there will be a loss of income for the household which would impact the family unit, it is unclear and unreasoned why the judge found that the father, who presently does not provide financial support to the Appellant or children, would now do so, particularly as the First-tier Tribunal had before it three manuscript letters from the Appellant's daughters which gave detail as to their father merely buying them McDonald's occasionally and preferring to spend time with his male offspring, the son, rather than them. Consequently, given that there was no evidence of the father being willing or compelled to support his children (for example, by way of a letter of support from him or a court order ordering him to pay maintenance towards his children), it is unclear why the judge concluded that he would contribute to the upkeep of his children when he was not already doing so and when he had not indicated that he would do so. Indeed, the only mention of the father's financial support appears at paragraph 32 of the Appellant's witness statement where she states "I am no longer in a relationship with G. However, he does have a relationship with the children. I am their sole carer. The children live with me and G does not provide me with financial support. He does, however, buy the children things every so often". Consequently, I find that Ground 3 also discloses a material error of law.
8. In light of the above findings, I find that the decision of the First-tier Tribunal does contain material errors of law.

Notice of Decision

9. The decision of the First-tier Tribunal involved the making of material errors of law.
10. Owing to the above errors I have identified, as Ground 1 is not made out, paragraphs 1 through to 32 of the decision are preserved; however as Grounds 2

and 3 are made out, the decision of the First-tier Tribunal dismissing the Appellant's appeal in respect of the Article 8 assessment is set aside in its entirety resulting in paragraphs 33 to 41 of the decision being set aside.

Directions

11. Given that Mr Badar indicated that the Appellant would wish to put forward further evidence in relation to the benefits she receives and make submissions upon those benefits that might reasonably foreseeably fall away as a consequence of British citizenship being deprived (and as to whether the benefits are means or merit derived etc.), and given the need to hear further evidence from the Appellant on the subject of benefits and whether or not her former partner may or may not provide financial support to his children in future, I find that the appeal should be remitted to the First-tier Tribunal for re-making in respect of the Article 8 element of this appeal which is a conveniently self-contained and separate issue with the findings at paragraphs 1 to 32 preserved.
12. The appeal is to be remitted to IAC Taylor House.
13. The time estimate for the appeal is three hours.
14. I direct that the Appellant set out in a simple tabulated form, the benefits she receives (and in what amounts and how often) no later than one month before the hearing at the First-tier Tribunal.
15. I further direct that a Skeleton Argument is to be prepared by the Appellant no later than two weeks before the hearing and a Review is to be prepared no later than one week before the hearing, wherein the parties shall make written submissions upon the impact of the loss of benefits owing to the deprivation of the Appellant's citizenship and the consequences and implications the altered amount of benefits will have for her and her British children.
16. The Appellant's solicitors are to advise Taylor House listing in respect of the number of witnesses to attend, and whether or not an interpreter will be required etc..
17. The appeal to the Upper Tribunal is allowed to the extent indicated above.
18. The decision of the First-tier Tribunal is set aside in respect of paragraphs 33 to 41 and this appeal is to be remitted to be re-made in respect of the Article 8 assessment by a differently constituted bench.
19. I do not make any anonymity direction and none is required.

Deputy Upper Tribunal Judge Saini
Immigration and Asylum Chamber