



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

**Ce-File Number: UI-2022-
005156**

**First-tier Tribunal No:
DC/50224/2021;
LP/00014/2022**

THE IMMIGRATION ACTS

**Decision and Reasons Issued:
On the 19 April 2023**

Before

**THE HON. MR JUSTICE DOVE, PRESIDENT
UPPER TRIBUNAL JUDGE O'CALLAGHAN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AFERDITA ELEZI
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms. S Cunha, Senior Presenting Officer

For the Respondent: Ms. E Rutherford, Counsel, instructed by Axiom
DWFM Solicitors

Heard at Coventry Combined Court on 15 February 2023

DECISION AND REASONS

Introduction

1. For the purpose of this decision the parties are referred to as they were before the First-tier Tribunal: Mrs. Elezi is the 'appellant' and the Secretary of State for the Home Department is the 'respondent'.
2. The respondent appeals a decision of Judge of the First-tier Tribunal Jarvis ('the Judge') allowing the appellant's appeal against a decision to deprive her of British nationality under section 40(3) of the British

Nationality Act 1981. The Judge's decision was sent to the parties on 7 April 2022.

Relevant Facts

3. The appellant accepts that she is an Albanian national, aged 73. She entered the United Kingdom with her children in February 2000. An adult son, Arben, was dependent upon her asylum application consequent to mental health concerns. The basis of the application was that the family were ethnic Albanians, originating from Mitrovica, Kosovo, who had been persecuted due to their ethnicity. The appellant now accepts that a false personal history was provided to the United Kingdom authorities. The family were recognised as refugees by the respondent and granted indefinite leave to remain on 6 June 2001.
4. The appellant applied to naturalise as a British citizen on 19 March 2005, falsely asserting that she hailed from Kosovo and detailing that she was of good character. She was naturalised as a British citizen on 22 July 2005.

Arben: British citizenship

5. On 18 September 2008, the respondent wrote to Arben advising him that she believed that he had provided false information as to his nationality and that she was considering depriving him of his British citizenship. In February 2013 the respondent informed Arben that she considered his British nationality to be a nullity.
6. On 3 February 2018, following the Supreme Court judgment in *R (Hysaj) v. Secretary of State for the Home Department* [2017] UKSC 82, [2018] 1 W.L.R. 221, the respondent informed Arben that she accepted he was a British citizen. However, she then informed him that consequent to his use of deception, consideration would be given to whether he should be deprived of his citizenship. In response, Arben provided the respondent with a Kosovan birth certificate and Kosovan citizenship certificate, both purportedly issued in March 2016. These documents were subsequently found to be false by the respondent following an investigation undertaken with the support of the Albanian authorities.
7. By a letter dated 9 July 2021, the respondent informed Arben that she had decided not to deprive him of his British citizenship. On 30 October 2021 the respondent added an endorsement to Arben's naturalisation certificate detailing his correct date and place of birth.

Appellant: Deprivation proceedings

8. On 29 April 2021 the appellant was informed by the respondent that it was believed false information had been provided as to her nationality and so deprivation action was being considered. The

appellant responded by admitting that she had falsely claimed to be a Kosovan when seeking asylum.

9. The respondent decided to deprive the appellant of British citizenship by a decision dated 19 August 2021. The appellant appealed and the respondent issued a 'review' dated 9 January 2022.

First-tier Tribunal Decision

10. A hybrid hearing was held before the Judge at Taylor House on 31 March 2022.
11. The Judge recorded that there was no dispute between the parties that the relevant condition precedent was established. The appellant accepted that she used deception when obtaining refugee status and indefinite leave to remain by falsely claiming to be an ethnic Albanian from Kosovo when seeking international protection and continuing to assert the same when making her application for British citizenship.
12. The appellant confirmed before the Judge that it was not her case that any delay arising in deprivation being initiated was so egregious as to satisfy the third question identified in *R (Razgar) v. Secretary of State for the Home Department* [2004] UKHL 27, [2004] 2 A.C. 368, at [27].
13. The Judge found, *inter alia*:
 - The respondent most likely knew of the potential issues relating to the appellant's nationality around the same time that investigations were instigated against her son, Arben, in 2008/2009.
 - The appellant was aware that deprivation action was being taken against Arben.
 - The appellant presumed that in the absence of any communication to her between 2009 and July 2021 the respondent had decided not to take deprivation action against her.
 - The appellant's sense of precariousness based upon her own past use of deception faded after the respondent took action against Arben but not her.
14. In respect of 'delay', the Judge found:

'53. In this case, however, there is the fairly unusual scenario where, on the evidence before me, I accept that the Secretary of State did, most likely, know about the issues with the Appellant's nationality around about the same time as her son (2008/2009) and did not seek to do anything about it until

2021. That is plainly delay, although this does not mean that it is automatically determinative of the outcome of the Article 8(2) proportionality assessment. It is nonetheless, in my view, plainly a highly material aspect of the Appellant's overall appeal under Article 8 ECHR.'

15. The Judge concluded that the decision to deprive the appellant of her British citizenship breached her protected article 8 rights.

Grounds of Appeal

16. The respondent advances three grounds of appeal:
- i) Mistake of fact: the First-tier Tribunal erred in concluding that the respondent did not dispute that delay had arisen in this matter.
 - ii) Delay: the decision of the First-tier Tribunal as to delay is materially erroneous in law consequent to inadequate reasoning, a failure to take into account material matters and perversity.
 - iii) Misdirection: the First-tier Tribunal misdirected itself in law when considering the public interest.
17. Upper Tribunal Judge Keith granted the respondent permission to appeal by a decision dated 16 November 2022.
18. At the hearing before us Ms. Cunha accepted that the respondent was required to succeed on ground 1 before being able to proceed onto grounds 2 and 3, the latter grounds being parasitic on the first.

Discussion

19. In respect of ground 1, the respondent's focus rests upon the first line of [34] of the Judge's decision:
- '34. Again, the delay in this case has not been disputed by Ms. Davies [the Home Office Presenting Officer before the First-tier Tribunal] or Ms. Arnold (the author of the Secretary of State's detailed review letter dated 9 January 2022) and I therefore proceed on the basis that the Home Office first wrote to the Appellant's son Arben in February 2009 [sic] to inform him of investigations relating to his nationality and potential deprivation action (see paragraph 51 of the Home Office review).'
20. Ms. Cunha submitted that the Judge materially erred in finding that the delay was not 'disputed' by the respondent. She observed that in various paragraphs of the review the respondent took the position that there had been no delay in this matter, for instance at paragraph 54 of the review:
- '54. It is submitted the SSHD has not failed to act on information already held for 13 years. This period covered significantly by

the nullity decision, which was a reasonable position for the SSHD to take at the time, as discussed in headnote [3] of *Hysaj*: no historic injustice is capable of arising in circumstances where the respondent erroneously declared British citizenship to be a nullity, rather than seek to deprive under section 40(3), as no prejudice arises because it is not possible to establish that a decision to deprive should have been taken under a specific policy within a specific period of time.'

21. We have considered the Judge's decision with care and conclude that when referencing 'delay' in the first sentence of [34] the Judge was addressing the chronology of events as not being disputed, and therefore not proceeding on the basis that the respondent accepted delay as having occurred. It is unfortunate that the word 'delay' was used, but the fact that the Judge was solely addressing the chronology is supported by the rest of the paragraph, as well as the following three paragraphs, that do no more than identify relevant events. The assessment as to whether there was delay in the respondent taking deprivation action is undertaken by the Judge from [38] onwards, with the Judge reasoning, *inter alia*:

'44. As a result, I proceed on the basis that the Home Office most likely knew of the potential issues relating to the Appellant's nationality around the same time that investigations were instigated against her son Arben in 2008/2009 as paragraph 19 of the decision appears to imply.

...

47. In my judgment it is therefore entirely understandable that the Appellant would have assumed that, if the Home Office knew about her son's use of deception, then they would naturally have also known about her claim for asylum and her later naturalisation.

48. I therefore also accept that it is entirely credible that the Appellant would have presumed that, in the absence of any communication to her from the Home Office at any time between 2009 and July 2021, that the Respondent had in fact decided not to take action against her.'

22. We consider it clear from the Judge's reasoning, as illustrated above, that he did not proceed on the basis that the respondent accepted there was delay in this case. He found, upon examination of both the chronology and evidence, that there had been delay and gave lawful reasons for his conclusion.
23. Consequent to ground 1 being dismissed, we note Ms. Cunha's acceptance that grounds 2 and 3 are parasitic on the respondent establishing her first ground, and so dismiss grounds 2 and 3.

Decision

24. The decision of the First-tier Tribunal did not involve the making of a material error of law. The decision sent to the parties on 7 April 2022 is upheld. The appeal is dismissed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
17 April 2023