IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004345

First-tier Tribunal No: DC/50117/2023
(LD/00047/2024)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 December 2024

Before

UPPER TRIBUNAL JUDGE HOFFMAN
DEPUTY UPPER TRIBUNAL JUDGE MERRIGAN

Between

ARDJAN MERSI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Grigg of Counsel, instructed by Visa and Immigration UK
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 3 December 2024

DECISION AND REASONS

Introduction

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Le Grys ("the judge") promulgated on 5 July 2024 dismissing his appeal against the decision of the respondent dated 3 August 2023 depriving him of his British citizenship.

Background

2. The appellant was born in Albania in 1980. He entered the UK on 8 April 1998 and claimed asylum the following day pretending to be a national of the former Republic of Yugoslavia born in Kosovo. He was granted refugee status on 27 June 1998. On 27 July 1998, the appellant successfully applied for a Home Office travel document, again using his false identity. A further travel document was issued in

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the appellant's false identity in 2002. On 17 May 2002, the appellant applied for indefinite leave to remain ("ILR") in his false identity. He was subsequently granted ILR on 10 October 2002. On 10 October 2003, the appellant applied for naturalisation as a British citizen in his false identity, which was granted on 12 February 2004.

3. On 2 May 2022, the appellant's representatives wrote to the Home Office's Status Review Unit requesting a correction of the Home Office's records to reflect the appellant's real place of birth and nationality. In mitigation, it was asserted that the appellant was under the age of 18 when he arrived in the UK and it was claimed that he had been trafficked to the country.

4. On 22 March 2023, the respondent wrote to the appellant informing him that she had reason to believe that he obtained his status as a British citizen as a result of fraud. The appellant was given the opportunity to respond to the allegation before a decision was taken on whether to deprive him of his citizenship. The appellant's representatives responded in a letter dated 6 April 2023 raising several reasons why they believed their client should not lose his citizenship.

5. In her decision dated 3 August 2023, the respondent deprived the appellant of his citizenship on the basis that he had obtained it through fraud in accordance with s.40(3) of the British Nationality Act 1981. The appellant was granted a right of appeal against that decision under s.40A of the 1981 Act.

The appeal before the First-tier Tribunal

6. The appellant's appeal was heard by the judge on 1 July 2024. In dismissing the appeal, the judge accepted that the respondent had acted rationally in finding the appellant had been dishonest in his dealings with the Home Office and that this was material to the grant of naturalisation; and that the respondent was rationally entitled to exercise her discretion in favour of making the deprivation order. The judge also found that any interference caused to the appellant's Article 8 ECHR rights were proportionate in the circumstances.

The appellant's appeal to the Upper Tribunal

7. The appellant sought permission to appeal the decision of the First-tier Tribunal on two grounds:

> (1) In deciding to not accept the appellant's claim that he had provided his genuine birth certificate in support of his mother's 2004 application for a visit visa because no supporting documentary evidence had been provided, the judge had acted unfairly because the appellant had not been asked about this in oral evidence.
>
> (2) The judge erred in failing to take into account that the respondent had failed to comply with her duty not to mislead the tribunal as a result of her failure to disclose the appellant's mother's 2004 application for a visit visa.

8. In a decision dated 3 October 2024, Upper Tribunal Judge Ruddick granted permission to appeal. In her reasons, she stated that permission was granted on

Ground 1 and that Ground 2 was not arguable. However, as we explain below, Judge Ruddick's decision did not in fact restrict the grant of permission.

The hearing

9. We had before us the 29-page composite bundle; the 360-page Upper Tribunal bundle prepared by the First-tier Tribunal; the 257-page bundle of authorities; the appellant's skeleton argument; and the appellant's application to amend his grounds of appeal.

10. We had three preliminary issues to determine.

11. The first was to do with the scope of the grant of appeal. Mr Grigg, representing the appellant, argued that contrary to her stated intentions, Judge Ruddick's decision did not in fact prevent the appellant from relying on Ground 2. While Ms Cunha argued to the contrary, we were satisfied that while Judge Ruddick had purported to refuse permission in relation to Ground 2 in her reasons, she had not restricted the grant of permission in the operative part of her decision: see EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 0117 (IAC). We therefore agreed with Mr Grigg that the appellant could make submissions on both grounds of appeal.

12. The second issue was the appellant's application to amend Ground 1. On this point, we expressed our view that the application was unnecessary because, in essence, the appellant was seeking to expand on his reasons as to why the judge had acted procedurally unfairly rather than adding a substantive new point. We therefore declined to make a decision on the application and both parties agreed that the point raised in the amended grounds (at para 5A) could be argued by Mr Grigg.

13. Finally, we were notified at the outset of the hearing by Ms Cunha that the appellant had made an application under rule 15(2A) of the Procedure Rules to rely on evidence that had not been before the First-tier Tribunal. That application had not reached us. We were told by Mr Grigg that the appellant wished to rely on a document confirming that his mother had been issued with a visit visa in 2004. We refused to consider the rule 15(2A) application for two reasons: first, because we had not seen it; and, second, because we were not satisfied that it was relevant to our considerations of whether the judge had made a material error of law. We explained to Mr Grigg that it would be open to the appellant to revive his application if we set aside the decision of the First-tier Tribunal and the appeal was going to be remade.

Findings – Error of Law

Ground 1: Whether the decision is tainted by procedural unfairness

14. At the outset of the hearing before the First-tier Tribunal, the judge asked the appellant's representative to explain a reference in the materials before him to the respondent having been aware of the appellant's deception since 2004. This was not a point raised in either the appellant's skeleton argument before the First-tier Tribunal or in the appellant's witness statement dated 19 February 2024. It appears likely that the judge was referring to a passage on the final page of the appellant's representative's letter to the respondent dated 6 April 2023 which says, "we would like to note to your authority that the real and full identity

of our client has come to the attention of the UK Immigration authority since 2004". With the aid of the presenting officer's notes from the First-tier Tribunal hearing, which Ms Cunha read to the tribunal, the appellant's representative explained that in support of his mother's visit visa application from 2004, the appellant had provided the entry clearance officer with his real Albanian birth certificate. According to those notes, the presenting officer said that they would deal with this issue in closing submissions. There was no evidence before us to suggest that the presenting officer or the judge asked the appellant any questions about why he had not provided evidence of his mother's visa application.

15. The claim that the appellant had provided the entry clearance officer with his real birth certificate in 2004 was relied on by his representative to argue that the respondent had delayed making a decision on whether to deprive him of his citizenship and that this was relevant to the question of whether the decision constituted a disproportionate interference with the appellant's rights under Article 8 ECHR: see Muslija (deprivation: reasonably foreseeable consequences) [2022] UKUT 00337.

16. At [48] of his decision, the judge made the following finding:

> "I do not accept that the Respondent became aware of the deception in 2004 and so should have acted sooner. I begin by noting that, while the Appellant's written representations did make a reference to 2004, it was unclear as to what this related to. I therefore sought clarification at the outset of the hearing, to which [the appellant's representative] indicated that the Appellant had sponsored a visa application for his parents in 2004 in which he had given his proper birth certificate. Beyond this assertion, however, which the Appellant repeated in oral evidence, no documentary evidence was provided to support the claim that this had happened. I do not accept, therefore, that the Home Office became aware of the Appellant's true identity in 2004."

17. Mr Grigg argued that this finding was tainted by unfairness because the appellant had not been given the opportunity in oral evidence to explain why he had not disclosed evidence of his mother's 2004 visa application. Mr Grigg also submitted that it was unlikely that anyone would keep copies of a visa application made for someone else 20 years prior. He said that this error was material because if the judge had accepted that the appellant had provided his real birth certificate to the entry clearance officer in 2004 then this could have led the judge to reach a different decisions on either or both of the discretion and proportionality points.

18. In response, Ms Cunha submitted that there was no material error of law at [48] because, at [49], the judge went on to consider at its highest the appellant's claim that he had provided his real birth certificate to the entry clearance officer in 2004. In doing so, the judge made the following findings:

> "I would not, however, consider this to amount to a material or culpable delay on the part of the Respondent, even were I to take the Appellant's case at its highest. An indirect reference in an application relating to others does not amount to a full confession by the Appellant of his true circumstances upon which the Respondent failed to act. Such a confession

did not come until 2023 [sic], following which there was no significant delay in the Respondent's response."

19. We are satisfied that given the judge's alternative findings at [49], it cannot be said that the judge's findings at [48] amount to a material error of law.

20. While Mr Grigg submitted that the contents of [49] served only to highlight the extent of the judge's error because the point was not whether the confession was minor or full, but whether the appellant had provided the respondent with some information about his true identity, we note that the appellant has not sought to appeal the judge's findings at [49]. In any event, we do not accept that there is much merit to his point. We have had regard to Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 at [52], where the Court of Appeal (per Underhill LJ) found that a disclosure made by an appellant is unlikely to be a strong point in the their favour, albeit it is not a wholly irrelevant one.

21. Unlike in Laci, in the present case, it was not the appellant's disclosure of his true nationality in a family member's application for entry clearance that led the respondent to commence deprivation action against him: it was his representative's letter dated 3 May 2022. The appellant nevertheless argues that the respondent was in possession of information from 2004 that he was really Albanian, something the Court of Appeal in Laci noted at [6] as falling "a long way short of making a clean breast of his deception". We are, however, satisfied that what the judge meant at [49] was not just that the appellant had not properly confessed to the respondent in 2004, which undoubtedly was correct, but that the appellant's "indirect" reference to his true identity through the provision of his birth certificate as part of an application for a visa made by a third party was insufficient to have put the respondent on proper notice of his deception thus requiring her to act. In reality, the appellant had dropped only a very small breadcrumb for the respondent to find. In 2004, the entry clearance officer would have been concerned with whether the appellant's mother met the requirements of the Immigration Rules for entry clearance as a visitor. At that time, the appellant was a British citizen and, on balance, it seems to us unlikely that the entry clearance officer would have needed to have make investigations into the circumstances that led the appellant to obtaining that citizenship. We are therefore satisfied that the judge's findings at [49] were reasonably and rationally open to him.

22. For these reasons, Ground 1 does not identify a material error of law.

Ground 2: Failure by the respondent to disclose the 2004 entry clearance application

23. The appellant argues that the respondent was under a duty before the First-tier Tribunal to disclose his mother's 2004 entry clearance application. This, Mr Grigg submitted, stems from her duty not to mislead: see Nimo (appeals: duty of disclosure) [2022] UKUT 88 (IAC).

24. We have no hesitation in finding that there is no merit to this ground.

25. First, as Ms Cunha submitted, and Mr Grigg accepted, it not the appellant's case that the respondent misled the First-tier Tribunal at the hearing, and we would in any event reject any suggestion that the respondent's failure to disclose the 2004 entry clearance application did breach the respondent's duty not to mislead. We

are satisfied that, in actual fact, the appellant is suggesting that the respondent is subject to a duty of candour in all but name, but, as the Upper Tribunal found in Nimo at [23], that principle applies only to judicial review proceedings. Ground 2 therefore fails on this basis alone.

26. Second, this ground arises in circumstances where the appellant himself did not raise the 2004 application as an issue in his First-tier Tribunal grounds of appeal, his skeleton argument or his witness statement. As we have discussed earlier in this decision, the point was only pursued in the appeal after the judge raised a query at the outset of the hearing. Furthermore, as we have also discussed above, the reference to the appellant having brought his real identity to the authorities was mentioned only in passing and somewhat oblique terms on the final page of his representative's letter of 6 April 2023. Reading that passage, we note that it does not indicate that the appellant's representatives were referring to an application for entry clearance made by his mother or explain how exactly he had brought his identity to the respondent's attention. We therefore reject the suggestion that, in preparation for a statutory appeal, the respondent is compelled by her duty not to mislead to identify points that have not been expressly raised as an issue to be determined but *might* be of relevance, and then to search her records and disclose potentially relevant documents, even where those documents are (as here) attached to the file of a third party.

27. The unconvincing nature of this ground of appeal is highlighted by the fact that the appellant argues, on the one hand, that the issue about whether he provided his real birth certificate with his mother's 2004 visa application was not one which would have been obvious to those advising him needed to be addressed without prompting by the tribunal (as per Ground 1) yet, on the other hand, the respondent's duty not to mislead required her to disclose material related to a point that the appellant had not even raised in his own appeal documents.

28. We are satisfied that the burden was on the appellant, and not the respondent, to disclose his mother's 2004 visa application. He was the one who asserted that he had revealed his real identity to the respondent within it. If the appellant needed a copy of that application, it was open to him to make a subject access request in advance of the hearing or else seek an adjournment once the judge had raised the issue at the outset of the hearing, but he did not do so.

Notice of Decision

There is no error of law in the decision of First-tier Tribunal Le Grys.

The appeal is dismissed.

M R Hoffman

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17th December 2024