UT Neutral Citation Number: [2024] UKUT 00144 (IAC)

Onuzi (good character requirement: *Sleiman* considered)

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Heard at Field House

THE IMMIGRATION ACTS

Heard on 08 August 2023
and 07 February 2024
Promulgated on 29 November 2023
and 16 April 2024

Before

UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BETIM ONUZI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms S. Cunha, Senior Home Office Presenting Officer
For the Respondent: Mr T. Bahja, instructed by OTS Solicitors

1. *Each case is fact sensitive. In the absence of a statutory definition of 'good character', the starting point is for the Secretary of State to decide, subject to general principles of administrative law, whether a person is of good character for the purpose of granting citizenship under section 6(1) and Schedule 1 of the British Nationality Act 1981 ('BNA 1981').*

2. *Any negative behaviour that might cast doubt on whether a person is of good character is likely to be directly material to the assessment of the statutory*

requirement, whether it played a role in the application for naturalisation itself or took place before the application.

3. *In the majority of cases where negative behaviour that might cast doubt on whether a person is of good character has been dishonestly concealed from the Secretary of State, the fact that the negative behaviour might not have been directly relevant to an earlier grant of leave is unlikely to make any material difference to the assessment under section 40(3) BNA 1981. It is for the Secretary of State to decide, subject to general principles of administrative law, whether the negative behaviour might have made a material difference to the assessment of good character under section 6(1) BNA 1981 had the information been known at the time.*

4. *The omission of a fact that might have cast doubt on whether a person is of good character when they applied for naturalisation is likely to be material to the question of whether a person 'obtained' citizenship by the dishonest concealment of a material fact for the purpose of section 40(3) BNA 1981.*

5. *The concept of a chain of causation being broken is only likely to be relevant in cases where there was full disclosure and the Secretary of State exercised discretion to grant leave to remain or naturalisation while in full possession of the facts.*

6. *The decision in Sleiman was based on limited argument and should be read in the full context of the statutory scheme and other relevant case law.*

DECISION AND REASONS

1. This decision considers the relevance of the 'good character' requirement contained in section 6 and Schedule 1 of the British Nationality Act 1981 ('BNA 1981'), which must be considered before a person can be naturalised as a British citizen, in the context of an appeal brought under section 40(A) against a decision to deprive a person of citizenship status with reference to section 40(3) (fraud, false representation, or concealment of a material fact).

Background

2. For the sake of continuity, we will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.

3. The original appellant entered the UK illegally on 28 November 1999 and claimed asylum. He claimed to be Betim Jonuzi, born on 22 February 1976, from Kosovo. In fact, he is Betim Onuzi, born on 23 February 1976, and he is from Albania. The appellant put forward a false asylum application claiming to be at risk of persecution from the Yugoslav authorities in Kosovo as an ethnic Albanian.

4. The respondent refused the asylum claim in a decision dated 16 August 2000. The exact course of the subsequent events is somewhat unclear from the partial evidence contained in the Home Office bundle and a separate copy of the respondent's notes from the GCID system. A letter from the Home Office dated 13 February 2001, to an unknown recipient (addressed to 'Dear Sir or Madam), indicated that the appellant was informed by social services in September 2000 that he had been granted Exceptional Leave to Remain (ELR) until 18 August

2004. The Home Office clarified that this incorrect record was transmitted to social services in error. Notes from the respondent's GCID system indicate that there was no evidence of a grant of ELR on the file. Although a field in the GCID system was checked to show that he had been refused asylum and granted ELR, there appears to be no other evidence to show that the appellant was ever notified of a decision to grant ELR by the Home Office (the relevant authority with power to make the decision) or was issued with papers actually granting him ELR.

5. The assertion that this was likely to be an administrative error is consistent with the respondent's policy at the time, which was on the cusp of change when the appellant arrived in the UK. During the conflict in Kosovo, the respondent recognised Kosovar Albanians as refugees or granted them temporary protection. The policy changed following the ceasefire in Kosovo on 10 June 1999. The respondent continued to grant ELR to Kosovans who claimed asylum before 24 March 1999. By 13 September 1999 the respondent returned to the usual policy of considering claims on their merits: see summary in *R (Matusha) v SSHD (revocation of ILR policy)* [2021] UKUT 175 at [7]. In light of this, it seems likely that the respondent was correct to state in the letter dated 13 February 2001 that the appellant was informed that he had been granted ELR in error. He claimed asylum after the change in policy.

6. What happened next is even less clear. A GCID note dated 10 March 2006, prepared while considering an application made by the appellant for leave to remain, summarised events in 2001 as follows:

> 'CID shows that Mr J was granted ELR but it appears to be an error as his Asylum claim was refused and there is no evidence on file of any grant. Unfortunately Slough Social Services were told in writing (copy on file) that Mr J had been granted ELR for 4 years up to 16/08/04. Mr J's representative sought clarification from an Adjudicator as a preliminary issue. The Determination was Promulgated (sic) on 24/05/01. The Adjudicator stated "and the Adjudicator finds that the respondent is now estopped from denying its authenticity, indeed manifestly less so where the cause is action rather than inaction." (sic) The Presenting Officer… asked for, and was granted, an adjournment for legal advice.'

7. The respondent's bundle contains a 'Decision on a Preliminary Issue' dated 24 May 2001 made by an adjudicator. The decision states:

> '1. The question has been raised as a preliminary issue in this case whether I have jurisdiction to hear the matter of an alleged legitimate expectation.
>
> 2. I find that I do have jurisdiction.
>
> 3. The phrase "legitimate expectation" has been somewhat bandied about, and has also gained a portmanteau meaning, partly because of the variety of contexts in which it has been said to arise.
>
> 4. The higher courts alone, certainly, can address such issues of a general kind (but in the context of immigration) as, "Is there a legitimate expectation that such and such is the case?" or "Is there a legitimate expectation that this or that will be done?" But it happens from time to time that what is described as a matter of legitimate expectation contains no more by way of expectation than that the respondent will stand by something he has said to the appellant and will not renege on it. The expression "legitimate expectation" is scarcely appropriate, and the matter is really one of estoppel. That is so here.

5. It seems to me that it is no more outside the jurisdiction of an Adjudicator to deal with such matters of estoppel than with the situation where the respondent has over a long period failed to authenticate or otherwise for example an arrest warrant, and the Adjudicator finds that the respondent is now estopped from denying its authenticity, indeed manifestly less so where the cause is action rather than inaction.'

8. It is unclear on what basis this case came before the special adjudicator. At the time, the only right of appeal that the appellant was likely to have was against the decision to refuse asylum dated 16 August 2000. At that date, the appeal is likely to have been brought under section 8 of the Asylum and Immigration Appeals Act 1993. The available grounds were that removal in consequence of the refusal of leave to enter, variation of leave, or refusal to vary leave, would be contrary to the United Kingdom's obligations under the Refugee Convention. The adjudicator did not explain why he considered that he had jurisdiction to make a preliminary decision regarding an erroneous statement made to the appellant by social services, but not by the respondent, about a grant of ELR (a matter than did not engage the Refugee Convention). Nor did he explain what his decision was.

9. The GCID note dated 10 March 2006 went on to say:

> 'LAB were subsequently contacted and in an e-mail reply they thought that the case should not be automatically conceded but suggested arguments that we could put forward. Nothing else appears to have been done on the case until 03-04 when the file was returned to the PO. He thought that there would have been another appeal hearing but this was not the case. The appeal was finally heard on 27 January 2004. He then suggested that we withdraw the decision, grant Mr J leave until 16/08/04 and reconsider the case. There is a Notice Of Withdrawal Of Decision (sic) dated 30 January '04 on file. We did not grant Mr J any leave and the case has been passed from department to department. There are a number of complaint letters on file.'

10. There is no evidence to show that any appeal was determined by the tribunal and there is only vague evidence to suggest that the underlying decision to refuse asylum giving rise to a right of appeal might have been withdrawn. In the absence of any evidence from the appellant to show that he was issued with a document granting ELR, the evidence contained in the GCID notes indicates that, save for checking a field on the GCID system, no formal decision seems to have been made to grant ELR. The respondent did not notify the appellant of a decision to grant ELR (only social services). Nor were any papers ever prepared or served on the appellant. Despite this, the appellant made an application for further leave to remain in July 2004, repeating the false name and nationality given in the original asylum claim. It is in this context that the respondent was considering the case in respect of the notes made in March 2006 quoted above. By the time the respondent came to consider the application the situation seems to have become so unclear that the following decision was noted on 10 March 2006:

> 'This has not been handled well. We have never recovered from the original error. I doubt that this case is even for E & R as the decision was withdrawn on 30 Jan 04 with an expectation that consideration would be given to granting the balance of exceptional leave. Nevertheless enough time has been wasted, so we should reach a decision.
>
> The original application was made on 28 November 1999. I do not think it appropriate to return to the Asylum Group in view of the failure to grant exceptional leave. Had it been implemented then MM would have ben in a position to consider

> the grant of ILR. Looking at this mistake ridden case I agree that we should grant ILR. I cannot see any fairer conclusion.'

11. The appellant was granted ILR in a letter dated 17 May 2006. He applied to naturalise as a British citizen on 25 April 2007, again, in the false identity put forward in his original asylum claim. Section 3 of the application form was entitled 'Good Character Requirement'. At the top of the section it stated that 'you need to give information which will help the Home Secretary to decide whether he can be satisfied that you are of good character.' A series of specific questions were asked about criminal convictions and activities relating to international crimes. At paragraph 3.11 of the application form the appellant was asked: 'Have you engaged in any other activities which might be relevant to the question of whether you are a person of good character?' to which he ticked the box stating 'no'.

12. Section 6 of the form required the appellant to make a series of formal declarations. The section began by giving a warning that knowingly giving false information in the form is a criminal offence. At paragraph 6.1 the appellant was asked to confirm that the information given in the application was correct. At paragraph 6.5 he confirmed that he understood that a certificate of citizenship may be withdrawn if it is found to have been obtained by fraud, false representation or the concealment of any material fact. At 6.6 the appellant was given an opportunity to make representations as to why discretion should be exercised if he did not meet all the statutory requirements. He did not complete that section.

13. The application form made clear that the appellant should read the accompanying guidance before completing the form. A copy of guidance that slightly postdated the application is contained in the Home Office bundle. It was entitled 'Naturalisation as a British citizen: A guide for applicants' (September 2007). It is reasonable to infer that similar guidance was likely to be in place when the appellant made the application in April 2007, only a few months before. If an applicant was in any doubt about how to complete sections 3.8-3.11 of the form relating to good character the guidance said the following [pg.21]:

> 'You must say whether you have been involved in anything which might indicate that you are not of good character. You must give information about any of these activities no matter how long ago this was. Checks will be made in all cases and your application may fail and your fee will not be fully refunded if you make an untruthful declaration. If you are in any doubt about whether you have done something or it has been alleged that you have done something which might lead us to think that you are not of good character you should say so.'

14. From the initial picture, which was somewhat confused, the following central facts appear to emerge. The appellant made a false asylum claim, which was refused. It is likely that he did not qualify for ELR, nor was ever formally notified or granted ELR by the respondent. Nevertheless, the respondent chose to exercise discretion to grant him ILR in 2006. At all times the appellant continued to conceal the fact that he had used a false identity and had made a false asylum claim. He perpetuated the false representation that he was a Kosovar Albanian. At all times up to and including the application for naturalisation the respondent was unaware of these material facts.

15. Following investigations conducted in 2020, the respondent discovered that the appellant was a national of Albania and was not from Kosovo as claimed. When

invited to make representations, the appellant admitted that he had lied about his real identity because he did not want to be returned to Albania. In a statement, the appellant expressed remorse for what he had done and asked for discretion to be exercised not to deprive him of citizenship status because he had lived in the UK for over 20 years and had a wife and three British children here.

16. In a decision dated 04 November 2020 the respondent decided to deprive the appellant of citizenship status with reference to section 40(3) BNA 1981. But for the dishonest concealment of material facts, the respondent's decision to exercise discretion in 2006 would have been different. But for the dishonest concealment of material facts, the respondent's decision relating to the good character requirement for naturalisation would have been different.

17. The appellant exercised his right of appeal. First-tier Tribunal Judge S. Taylor ('the judge') allowed the appeal in a decision sent on 15 July 2022. The judge referred to the guidance given in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 238 (IAC). He accepted that the appellant had made false representations about his asylum claim and found that this was one of the grounds upon which the respondent could deprive the appellant of citizenship status [9].

18. The judge went on to say that 'a further test in an appeal of this nature is materiality'. He considered the decision in *Sleiman (deprivation of citizenship; conduct)* [2017] UKUT 00367 (IAC). He also noted what was said in what he described as the 'Nationality Guidance', but in fact appears to be a reference to the guidance 'Chapter 55: Deprivation and Nullity of British Citizenship'. He noted that paragraph 55.7.1 stated that if the relevant facts had been known at the time the application for citizenship was considered, and would have affected the decision, the caseworker should consider deprivation. The judge also noted that paragraph 55.7.3 stated that if the fraud, false representation or concealment of a material fact did not have a direct bearing on the grant of citizenship, it will not be appropriate to take deprivation action. The judge stated that: 'paragraph 55.7.4 provides that where a person acquires ILR under a concession, the fact that the respondent can demonstrate that he had previously lied in an asylum claim may be irrelevant.' [10].

19. The judge outlined what he considered to be 'the key evidence of causation', which was the GSID note dated 10 March 2006 (see [9] above). The judge went on to make the following findings:

> '12. Applying the guidance in the case of Sleiman (sic) and in particular the Nationality Guidance at paragraph 55.7.4, I am satisfied that the appellant was granted ILR, and subsequently British citizenship, mainly on the basis of the delays and maladministration in his case, rather than the specifics of his nationality. The 2006 minutes, which explain the appellant's grant of ILR, make no mention of the appellant's nationality and identity, and refer only to the appellant have (sic) completed four years of his ELR, as well as the delays and mistakes in the processing of his application. On the basis of the material evidence of the internal minutes, there is no suggestion that the respondent was induced to grant the appellant ILR, which was the forerunner of his citizenship, due to his false nationality and identity. I find no evidence that the deception motivated the appellant's grant of citizenship. Applying paragraph 55.74, the appellant was granted ILR, and subsequently British citizenship, on the basis of a concession due to the delays and mistakes, so the previous deception may be considered to be irrelevant.'

20. In the alternative, the judge went on to consider whether the decision to deprive the appellant of citizenship status would breach his right to private and family life under Article 8 of the European Convention. He noted that the appellant had not prepared a witness statement and did not give evidence. We note that the records indicate that the only documents filed and served by the appellant for the First-tier Tribunal appear to be a skeleton argument and a copy of the disclosure of the GCID records. The only evidence considered by the judge appears to have been the original statement sent to the Home Office in which the appellant made a bare statement that he had lived in the UK for over 20 years and had a wife and three British children. He went on to find:

> '13. … While I allow the appeal primarily on the basis of materiality of the deception, the case of Ciciero (sic) provides for a second test, which is whether the deprivation of citizenship would amount to a breach of article 8 ECHR. The respondent noted that the decision to deprive a person of citizenship is separate from a decision to remove, however case of Ciciero (sic) provides that in carrying out the second test, the Tribunal should consider the foreseeable consequences of deprivation and carry out the balancing exercise which is usually associated with an article 8 ECHR decision. The decision letter referred to paragraph 55.7.5 which provides that length of residence in the UK alone is not sufficient reason not to deprive citizenship. However, the appellant has been in the UK for a very long time, some twenty-two years, being ten (sic) years longer than the 12 (sic) years to establish private life under paragraph 276ADE. I am satisfied that the appellant has a family life in the UK and that the deprivation of his citizenship would have an adverse effect on his family life. I am satisfied that, while materiality is the main reason for allowing this appeal, the appellant's established family life stands as a secondary reason for allowing the appeal.'

21. The Secretary of State applied for permission to appeal to the Upper Tribunal on the following grounds:

(i) *Good Character*

The First-tier Tribunal erred in assessing the materiality of the fraud solely by way of a chain of causation and misapplied *Sleiman*, which was limited in scope. The First-tier Tribunal should have considered whether it was likely to have been material to the assessment of the good character requirement. The First-tier Tribunal failed to consider the fact that the respondent had decided to deprive the appellant of citizenship status on this basis. The relevant provisions were section 6(1) and Schedule 1 BNA 1981 and the Chapter 18: Good Character policy guidance.

Article 8

(i) The First-tier Tribunal failed to have regard to public interest considerations when assessing whether the decision amounted to a breach of Article 8.

22. We have considered the First-tier Tribunal decision, the evidence that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but we will refer to any relevant arguments in our findings.

Decision and reasons

General principles relating to the good character requirement: section 6(1) BNA 1981

23. At the date when the appellant applied to naturalise as a British citizen, section 6(1) BNA 1981 stated:

> (1) If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.

24. Schedule 1 sets out a series of substantive requirements for applications for naturalisation made under section 6(1). The relevant requirements for the purpose of this appeal are as follows:

> (1) Subject to paragraph 2, the requirements for naturalisation as a British citizen under section 6(1) are, in the case of any person who applies for it—
>
> (a) ….
>
> (b) that he is of good character; and
>
> (c) ….

25. The relevant policy guidance will depend on the date when an applicant applied for naturalisation. The respondent has not identified what policy guidance was in place when the appellant applied in 2007. The Home Office bundle refers to Chapter 18 guidance, but did not include a copy. The current guidance appears to be 'Nationality: good character requirement' (Version 4.0) (23 July 2023). It includes guidance to Home Office caseworkers on how to assess a range of different factors in assessing whether a person is of good character, including criminality, behaviour relating to international crimes, dishonesty and deception in dealings with another government department and in relation to immigration matters.

26. The courts have considered the requirement for a person to be of good character on a number of occasions and have found that there is no fundamental right to citizenship: *R v SSHD ex parte Al-Fayed (No.2)* [2000] EWCA Civ 523; [2001] Imm AR 134 [93] ('*Al-Fayed (No.2)*'), *R (AKH and others) v SSHD* [2009] EWCA Civ 287 [10], and *R (Thamby) v SSHD* [2011] EWHC 1763 (Admin) [40].

27. The test is whether the 'Secretary of State is satisfied that' the applicant is of good character and the burden is on the applicant to satisfy the Secretary of State that they are of good character: see *SSHD v SK (Sri Lanka)* [2012] EWCA Civ 16 [31].

28. The BNA 1981 does not define good character. In *Al-Fayed (No.2)* the Court of Appeal made the following findings about the scope of the Secretary of State's discretion in assessing whether a person is of good character:

> '41. In *R v. Secretary of State for the Home Department, ex parte Fayed* [1998] 1 WLR 763, 773F-G, Lord Woolf MR referred in passing to the requirement of good character as being a rather nebulous one. By that he meant that good character is a concept that cannot be defined as a single standard to which all rational beings would subscribe. He did not mean that it was incapable of definition by a reasonable decision-maker in relation to the circumstances of a

> particular case. Nor is it an objection that a decision may be based on a higher standard of good character than other reasonable decision-makers might have adopted. Certainly, it is no part of the function of the courts to discourage ministers of the Crown from adopting a high standard in matters which have been assigned to their judgment by Parliament, provided only that it is one which can reasonably be adopted in the circumstances.

29. These principles have been reiterated in other decisions including *R (Sandy) v SSHD* [2023] EWHC 640 (Admin), *R (Amin) v SSHD* [2022] EWA Civ 439, *R (Hiri) v SSHD* [2014] EWHC 254 (Admin), and *R (Amirifard) v SSHD* [2013] EWHC 279 (Admin).

30. A decision to grant a person citizenship status and a decision to deprive a person of citizenship status are both matters within the discretion of the Secretary of State, subject to the general principles of administrative law: see *Al-Fayed (No.2)* and *SK (Sri Lanka)* in relation to granting status and *R (on the application of Begum) v Special Immigration Appeals Commission and Others* [2021] UKSC 7, [2021] 2 WLR 556, *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 238 (IAC), and *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 115 in relation to depriving status.

Good character in the context of deprivation: section 40(3) BNA 1981

31. The Secretary of State has power to deprive a person of citizenship status under sections 40(2) (conducive to the public good) and 40(3) BNA 1981 (fraud, false representation, or concealment of a material fact). For the purpose of this appeal, the relevant power is contained in section 40(3), which states:

> (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.

32. The test contained in section 40(3) contains three elements:

    (i) Whether the ‘Secretary of State is satisfied that’ the relevant condition precedent is met;

    (ii) that registration or naturalisation was ‘obtained by means of’;

    (iii) one or more of the three means i.e. fraud, false representation, or concealment of a material fact.

33. In many cases there might not be any material difference between the three means of obtaining registration or naturalisation in order to justify deprivation. However, it is not a requirement for an applicant to have obtained registration or naturalisation by means of an active fraud or false representation in the application for naturalisation itself. For example, using another person’s documents to obtain citizenship status. It is sufficient for an applicant to have dishonestly concealed material facts that they know or should have known might be relevant to a proper assessment of the application. For example, concealment

of criminal convictions, acts that might amount to international crimes, or other forms of dishonesty that might cast doubt on whether the applicant is a person of good character.

34. For many years, the policy guidance relating to deprivation has been 'Chapter 55: Deprivation and Nullity of British citizenship'. This guidance was superseded on 10 May 2023 by up to date guidance entitled 'Deprivation of British Citizenship'. However, at the date the decision was made in this case the relevant guidance was still Chapter 55. The relevant sections for the purpose of this appeal are:

> '**55.4 Definitions**
>
> 55.4.1 **"False representation"** means a representation which was dishonestly made on the applicant's part i.e. an innocent mistake would not give rise to a power to order deprivation under this provision.
>
> 55.4.2 **"Concealment of any material fact"** means operative concealment i.e. the concealment practised by the applicant must have had a direct bearing on the decision to register or, as the case may be, to issue a certificate of naturalisation.
>
> 55.4.3 **"Fraud"** encompasses either of the above.
>
> .....
>
> **55.7 Material to the Acquisition of Citizenship**
>
> 55.7.1 If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation.
>
> 55.7.2 This will include but is not limited to:
>
> - Undisclosed convictions or other information which would have affected a person's ability to meet the good character requirement
> - A marriage/civil partnership which is found to be invalid or void, and so would have affected a person's ability to meet the requirements for section 6(2)
> - False details given in relation to an immigration or asylum application, which led to that status being given to a person who would not otherwise have qualified, and so *would have affected a person's ability to meet the residence and/or good character requirements for naturalisation or registration*
>
> 55.7.3 If the fraud, false representation or concealment of material fact did not have a direct bearing on the grant of citizenship, it will not be appropriate to pursue deprivation action.
>
> 55.7.4 For example, where a person acquires ILR under a concession (e.g. the family ILR concession) the fact that we could show the person had previously lied about their asylum claim may be irrelevant. Similarly, a person may use a different name if they wish… : *unless it conceals criminality, or other information relevant to an assessment of their good character*, *or immigration history in another identity it (sic) is not*

> *material to the acquisition of ILR or citizenship. However, before making a decision not to deprive, the caseworker should ensure that relevant character checks are undertaken in relation to the subject's true identity to ensure that the false information provided to the Home Office was not used to conceal criminality or other information relevant to an assessment of their character*.' [our emphasis]

35. We note that the definition section makes clear that there needs to be an operative concealment of a material fact that has a direct bearing on an application to register or to naturalise. Good character is a statutory requirement that must be considered in all cases before the Secretary of State can exercise discretion to register or to naturalise a person as a British citizen. It is clear from the application form that any matter that is potentially relevant to the assessment of good character should be disclosed. It is open to the Secretary of State to consider deprivation of citizenship status if a person commits fraud, makes a false representation, or dishonestly conceals a material fact in the original application knowing that it might be relevant to the assessment of good character. Although paragraph 55.7.4 suggests that a previous application made in another identity might not always be material to the acquisition of ILR or citizenship, it is clear that the Secretary of State retains overall discretion to decide whether a person's conduct affects the assessment of good character for the purpose of naturalisation.

Sleiman considered

36. In light of the arguments put forward by the respondent in this appeal, we consider that the principles outlined in *Sleiman (deprivation of citizenship; conduct)* [2017] UKUT 00367 (IAC) might need to be reviewed. The decision needs to be placed in the full context of the statutory scheme and relevant case law.

37. The facts in *Sleiman* were specific to the case. Mr Sleiman was a national of Lebanon who claimed asylum. He gave his correct name and nationality, but lied about his age. He claimed to be a child when he was not. Based on this false representation he was granted limited leave to remain as an unaccompanied asylum seeking child, to which he was not entitled. Mr Sleiman applied for further leave to remain using the same false date of birth, but there was a delay of five years before the Secretary of State decided the application. It is said that he was eventually granted ILR under the Legacy Programme and went on to be naturalised as a British citizen in 2010. The respondent did not discover the deception until 2013 and went on to make a decision to deprive him of citizenship status on the ground that he obtained naturalisation by means of fraud, false representation, or concealment of a material fact.

38. Having reviewed the evidence, the Upper Tribunal concluded that it was not open to the First-tier Tribunal to find that the false representation or concealment of a material fact was 'directly material' to the decision to naturalise Mr Sleiman as a British citizen. The Upper Tribunal considered the statutory scheme relating to deprivation of citizenship, the policy guidance relating to deprivation, and case law that was relevant at the time. However, it seems that no arguments were put forward by the respondent relating to the statutory requirement to be of good character when Mr Sleiman made his application for naturalisation. At [62] the Upper Tribunal hinted at a possible counter argument when it said: 'whilst his age was irrelevant to the grant of ILR under the Legacy scheme that does not mean to say that the *deception* as to age was similarly irrelevant. Indeed, the decision

letter states that the deception was directly material to the decision to grant .. "DL, ILR LOTR".' The Upper Tribunal noted that the argument was not developed by the respondent [63]. No reference was made to the statutory scheme relating to granting citizenship status or the requirement to be of good character at any point in the decision.

39. The Upper Tribunal concluded that, although Mr Sleiman obtained leave to remain by means of a false representation, it was unclear whether he would have been removed to Lebanon even if the fraud had become known earlier. The Upper Tribunal also noted that many people were granted leave to remain under the Legacy Programme, which no doubt included 'many whose asylum claims were false' [63]. However, the Upper Tribunal did not have the benefit of argument on this point. No detailed consideration was given to relevant cases, which outlined the nature of the Legacy Programme. The Upper Tribunal in *Matusha* (see [4] above), conducted a detailed review of the programme and relevant cases such as *Hakemi & Others v SSHD* [2012] EWHC 1967 (Admin) and *Geraldo & Others v SSHD* [2013] EWHC 2763 (Admin), which made clear that a person's character and conduct still formed part of an evaluative assessment under the Legacy Programme [11]-[27].

40. Indeed, we observe that the Secretary of State usually has discretion to consider character and conduct in any immigration application. Many of the immigration rules now include 'Suitability' requirements. For a long time there have been provisions in the immigration rules for the Secretary of State to refuse applications under the general 'grounds for refusal' if she considers it appropriate. Applications to naturalise as a British citizen are governed by the statutory scheme, where the Secretary of State needs to be satisfied that the person is of good character before exercising discretion to issue a certificate of naturalisation.

41. The decision in *Sleiman* pointed out that there needs to be a 'causative link' between the fraud, false representations, or dishonest concealment of a material fact and the grant of citizenship [53]. It also emphasised the phrase used in the Chapter 55 guidance i.e. for the conduct to have a 'direct bearing' on the grant of citizenship [60].

42. It was open to the Upper Tribunal in *Sleiman* to make those findings on the partial arguments presented at the time. However, they have often been misunderstood. Arguments are sometimes put forward, as in this case, to suggest that there is a chain of causation leading to naturalisation that might have been broken by an earlier grant of leave or that earlier leave was granted on a basis that was unaffected by the deception. It is sometimes also argued, as in this case, that paragraph 55.7.4 of Chapter 55 suggests that a previous exercise of discretion to grant leave means that any previous deception might not be material to an application for ILR or for naturalisation. However, such arguments often fail to consider the statutory scheme in its full context.

43. The Court of Appeal in *Shyti v SSHD* [2023] EWCA Civ 770 recently considered similar arguments in another deprivation case. In that case, the appellant had made a false asylum claim, but argued that a grant of leave to remain under the Legacy Programme had broken a chain of causation despite his failure to disclose the fraud at any point up to and including the application for naturalisation. The court noted the process for applying for citizenship, which required an applicant to disclose information that might be relevant to the assessment of good character [11]-[16]. The court went on to summarise the legal framework relating

to decisions to grant citizenship status [65]-[70]. Before the Upper Tribunal the Secretary of State argued that the submissions made in *Sleiman* were limited in scope and sought to distinguish the case [46]. The Court of Appeal concluded that it was open to the Upper Tribunal to find that *Sleiman* was not decisive and could be distinguished [78][87].

44. The decision in *Shyti* provides further support for our conclusion that the effect of *Sleiman* is limited in nature. The finding that the negative behaviour must have a 'direct bearing' on the grant of citizenship must be read in the context of the full statutory scheme, including the statutory requirement to be of 'good character' before citizenship status will be granted.

Conclusion

45. Having conducted this review, we can identify the following broad principles arising from the statutory scheme and the relevant case law.

    (i) Each case is fact sensitive. In the absence of a statutory definition of 'good character', the starting point is for the Secretary of State to decide, subject to general principles of administrative law, whether a person is of good character for the purpose of granting citizenship under section 6(1) and Schedule 1 BNA 1981.

    (ii) Any negative behaviour that might cast doubt on whether a person is of good character is likely to be directly material to the assessment of the statutory requirement, whether it played a role in the application for naturalisation itself or took place before the application.

    (iii) In the majority of cases where negative behaviour that might cast doubt on whether a person is of good character has been dishonestly concealed from the Secretary of State, the fact that the negative behaviour might not have been directly relevant to an earlier grant of leave is unlikely to make any material difference to the assessment under section 40(3) BNA 1981. It is for the Secretary of State to decide, subject to general principles of administrative law, whether the negative behaviour might have made a material difference to the assessment of good character under section 6(1) BNA 1981 had the information been known at the time.

    (iv) The omission of a fact that might have cast doubt on whether a person is of good character when they applied for naturalisation is likely to be material to the question of whether a person 'obtained' citizenship by the dishonest concealment of a material fact for the purpose of section 40(3) BNA 1981.

    (v) The concept of a chain of causation being broken is only likely to be relevant in cases where there was full disclosure and the Secretary of State exercised discretion to grant leave to remain or naturalisation while in full possession of the facts.

    (vi) The decision in *Sleiman* was based on limited argument and should be read in the full context of the statutory scheme and other relevant case law.

Error of law decision

46. The appellant maintained the deception that he was an asylum seeker from Kosovo in the initial asylum application, the application for further leave to remain, and the application for naturalisation. At no point during that process did he disclose to the respondent that he knowingly made a false application for asylum (as opposed to an application that was simply unsuccessful).

47. In relation to the first ground, we conclude that the judge's reliance on *Sleiman* was misplaced for the reasons explained above. The fact that the respondent exercised discretion to grant the appellant leave to remain following a series of mistakes did not break a chain of causation when the full facts were not known at the time. The judge failed to consider whether it was open to the respondent to find that the exercise of discretion to grant ILR might have been different had the full facts been known. The judge failed to consider whether it was open to the respondent to find that naturalisation was 'obtained by means of' a dishonest concealment of a fact that was likely to be material to the assessment of the good character requirement when the appellant applied for naturalisation in 2007.

48. In relation to the second ground, we conclude that, despite a self-direction to the balancing exercise required under Article 8, the decision is devoid of any assessment of the weight to be given to the public interest considerations relating to deprivation of citizenship.

49. For the reasons given above, we conclude that the First-tier Tribunal decision involved the making of an error of law. The whole decision is set aside. The normal course of action would be for the Upper Tribunal to remake the decision even if it involves making findings of fact. We see no reason to depart from that course. The decision will be remade at a resumed hearing in the Upper Tribunal.

DIRECTIONS

50. **The appellant** must notify the Upper Tribunal within 14 days of the date this decision is sent whether any witnesses will be called at the resumed hearing. If so, the appellant's representatives shall also inform the Upper Tribunal of the following information:

    (i) The name of any witnesses that he intends to call;

    (ii) Whether any witnesses will require the assistance of an interpreter;

    (iii) If so, what language; and

    (iv) Whether any witnesses have any vulnerabilities that might require special measures.

51. **The parties** shall file and serve any up-to-date evidence relied upon at least 14 days before the resumed hearing.

Notice of Decision

The First-tier Tribunal decision involved the making of an error of law

The decision will be remade at a resumed hearing in the Upper Tribunal

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 November 2023

ANNEX (REMAKING)

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BETIM ONUZI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Himself

Heard at Field House on 07 February 2024

DECISION AND REASONS
CONTINUATION HEARING

Introduction

1. A decision on this appeal was previously issued by UTJ Canavan and DUTJ Symes considering the relevance of the 'good character' requirement contained in section 6 and Schedule 1 of the British Nationality Act 1981 ('BNA 1981'), which must be considered before a person can be naturalised as a British citizen, in the context of an appeal brought under section 40(A) against a decision to deprive a person of citizenship status with reference to section 40(3) (fraud, false representation, or concealment of a material fact). Deputy Upper Tribunal Judge Symes now determines the appeal having sat on the continuation hearing alone.

2. For the sake of continuity, I will continue to refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal, as I have recorded above.

Background facts

3. The background facts to this appeal are as set out in the error of law decision of 29 November 2023. In short the appellant arrived in the UK on 28 November 1999 and pursued an asylum claim in a false identity: whereas in truth he is Betim Onuzi, born 23 February 1976, an Albanian national, in that claim he asserted that he was Betim Jonuzi, born on 22 February 1976 and at risk of persecution from the Yugoslav authorities in Kosovo as an ethnic Albanian. Following a sorry tale of administrative mishap he was granted indefinite leave to remain (ILR) on 17 May 2006, on the basis that he should be treated as if he had been granted Exceptional Leave to Remain previously, though it seems likely that in fact no such grant had ever been made.

4. He applied to naturalise as a British citizen on 25 April 2007, in the false identity put forward in his original asylum claim, completing the application form by ticking "no" as to the question whether he had engaged in any activities that might be relevant to whether he was a person of good character. The Guidance believed to be in force at the time, to which the form directed him, stated "If you are in any doubt about whether you have done something or it has been alleged that you have done something which might lead us to think that you are not of good character you should say so."

History of the appeal

5. The Secretary of State initiated citizenship deprivation proceedings, this dishonesty having come to light. The deprivation decision takes the view that the appellant's life in the UK was built on deception. It was likely that he would have been refused settlement had the true facts been known, and he had against again been dishonest when applying for citizenship by ticking the box such as to indicate that he had not done anything that might cast doubt on his good character.

6. The appellant exercised his right of appeal. The First-tier Tribunal allowed his appeal, both in terms of the materiality of his dishonesty to the acquisition of citizenship, and on human rights grounds. As to the former, the Judge concluded that the appellant was granted ILR, and subsequently British citizenship, mainly on the basis of the delays and maladministration in his case, rather than due to the specifics of his nationality. As to the latter, the Judge found that the appellant's long residence and family life in the UK rendered the decision disproportionate. Permission to appeal was granted to the Upper Tribunal where the matter came before Judge Canavan and myself.

7. Having considered the framework of statute, policy and case law, Judge Canavan and I directed ourselves to this effect:

    (i) Each case is fact sensitive. In the absence of a statutory definition of 'good character', the starting point is for the Secretary of State to decide, subject to general principles of administrative law, whether a person is of good character for the purpose of granting citizenship under section 6(1) and Schedule 1 BNA 1981.

(ii) Any negative behaviour that might cast doubt on whether a person is of good character is likely to be directly material to the assessment of the statutory requirement, whether it played a role in the application for naturalisation itself or took place before the application.

(iii) In the majority of cases where negative behaviour that might cast doubt on whether a person is of good character has been dishonestly concealed from the Secretary of State, the fact that the negative behaviour might not have been directly relevant to an earlier grant of leave is unlikely to make any material difference to the assessment under section 40(3) BNA 1981. It is for the Secretary of State to decide, subject to general principles of administrative law, whether the negative behaviour might have made a material difference to the assessment of good character under section 6(1) BNA 1981 had the information been known at the time.

(iv) The omission of a fact that might have cast doubt on whether a person is of good character when they applied for naturalisation is likely to be material to the question of whether a person 'obtained' citizenship by the dishonest concealment of a material fact for the purpose of section 40(3) BNA 1981.

(v) The concept of a chain of causation being broken is only likely to be relevant in cases where there was full disclosure and the Secretary of State exercised discretion to grant leave to remain or naturalisation while in full possession of the facts.

(vi) The decision in *Sleiman* was based on limited argument and should be read in the full context of the statutory scheme and other relevant case law.

8. Applying that approach, we found an error of law in the approach of the First-tier Tribunal below. The fact that the respondent exercised discretion to grant the appellant leave to remain following a series of mistakes did not break a chain of causation when the full facts were not known at the time. The judge failed to consider whether it was open to the respondent to find that the exercise of discretion to grant ILR might have been different had the full facts been known. As to the human rights ground of appeal, we found that the First-tier Tribunal decision was devoid of any assessment of the weight to be given to the public interest considerations relating to deprivation of citizenship.

Proceedings at the continuation hearing

9. The appellant was unrepresented. He provided a document headed "Submission on resumed hearing", which he explained at the continuation hearing before me, where he was unrepresented, was intended to represent the totality of his case. Those submissions essentially contend that

(a) The relevant date for assessing good character was as stated at 55.7.1 of Chapter 55: "If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation."

(b) His case should be assessed against the "real world" backdrop, which here was an administrative error leading to ILR.

(c) The rationale for the grant of ILR had been “the delays and mistakes already made on this case” which led the relevant caseworker to propose “on balance that the appellant should be granted ILR”. In the light of this rationale, it was unnecessary for the Upper Tribunal to consider “whether it was open to the respondent to find that the exercise of discretion to grant ILR might have been different had the full facts been known”.

(d) Shyti [2023] EWCA Civ 770 was distinguishable from the present appeal because it turned on the old Immigration Rule 395 which expressly identified “good character” as part of the discretionary exercise.

10. Additionally, via cross-reference to the skeleton argument before the First-tier Tribunal, it was submitted vis-á-vis ECHR Art 8 that the withdrawal of British citizenship was not proportionate to the private and family life in play given the impact it would have on the Appellant's partner and their three British citizen children. The circumstances of his grant of indefinite leave to remain, plus the Appellant's long UK residence and lengthy possession of British citizenship together rendered the deprivation disproportionate.

Decision and Reasons

11. Applying those findings to the facts here, I can determine the appeal shortly. The Appellant perpetrated a fraud as to his nationality and identity over an extended period, through his applications for asylum, in his dealings with the Respondent as to any entitlement to leave to remain on other grounds, and in his application for naturalisation as a British citizen. There is no doubt that his stay in the UK was significantly extended by this fraud, given that he chose not to pursue any immigration application to which his true citizenship might have entitled him. He was a mature man, aged thirty when he was granted ILR in a false identity, and thirty-one when he chose to continue to perpetrate the fraud by applying for naturalisation in the false identity that he had used since arriving in the UK. There is no evidence of any external influence on him that might lessen his personal responsibility for this fraud.

12. The first question to be determined is whether his deception was material to the grant of naturalisation given the intermediate eventuality by which the Respondent granted him indefinite leave to remain based on his immigration history.

13. The decision of Sleiman (deprivation of citizenship; conduct) [2017] UKUT 00367 indicates a situation in which the chain of causation between the original dishonesty and the grant of naturalisation is broken. It did so on the basis of the Respondent’s Chapter 55 Guidance, which states:

> “**55.7 Material to the Acquisition of Citizenship**
>
> **55.7.1** If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation.
>
> **55.7.2** This will include but is not limited to: …
>
> • False details given in relation to an immigration or asylum application, which led to that status being given to a person who would not otherwise

have qualified, and so would have affected a person's ability to meet the residence and/or good character requirements for naturalisation or registration

55.7.3 If the fraud, false representation or concealment of material fact did not have a direct bearing on the grant of citizenship, it will not be appropriate to pursue deprivation action.

55.7.4 For example, where a person acquires ILR under a concession (e.g. the family ILR concession) the fact that we could show the person had previously lied about their asylum claim may be irrelevant. Similarly, a person may use a different name if they wish… : unless it conceals criminality, or other information relevant to an assessment of their good character, or immigration history in another identity it is not material to the acquisition of ILR or citizenship. However, before making a decision not to deprive, the caseworker should ensure that relevant character checks are undertaken in relation to the subject's true identity to ensure that the false information provided to the Home Office was not used to conceal criminality or other information relevant to an assessment of their character."

14. I have not been referred to the Respondent's family ILR policy, which Chapter 55 cites, but I understand it to be the concession cited in JS (Family ILR Exercise, near-miss argument) [2007] UKAIT 80 thus:

"**The Family ILR Exercise**

4. The "ILR concession" referred to was, in fact, the Family ILR Exercise, as described in APU Notice 4/2003.

5. As originally formulated and announced by the Home Office on 4th October, 2003, under the Family ILR Exercise, a family with dependent children would be granted indefinite leave to remain in the United Kingdom (ILR) outside the Immigration Rules, if the application for asylum was made before the 2nd October, 2000, and the applicant for asylum at the time of the application "has" at least one dependant "currently" aged under 18 who "has been living" in the UK since 2nd October, 2000. Provided the family were still present, neither the refusal of asylum nor the grant of limited leave, removed eligibility under the exercise. To qualify, the dependant, since 2nd October, 2000, and on 4th October, 2003, had to be a child of the applicant, or of the applicant's spouse, aged under 18 and financially or emotionally dependent on the appellant and part of the family unit. Once an applicant for asylum met that criteria, leave would be granted in line with that grant to all dependants who met the basic criteria; a dependant for these purposes was a spouse, a child of the applicant or spouse, who was dependent on and formed part of the family unit on 24th October, 2003. APU Notice 4/2003 contains exclusions inter alia in respect of dependants having criminal convictions, or who present a risk to security, or whose presence in the United Kingdom is not conducive to the public good and for other reasons set out in the notice."

15. The appellant was not granted ILR pursuant to any general concession, nor under one relating to family membership. The grant was based on his own individual circumstances, which included his representations as to his nationality and

identity, in the context of a significant dose of Home Office maladministration. One can envisage cases under the family ILR policy just cited where one family member obtains ILR based on the family's general circumstances, not their own, where a decision maker might reasonably conclude that that individual's previous dishonesty, in the language of paragraph 55.7.4, "may be irrelevant". For example they might have been a minor at the time or to have been under some mental impairment meaning that they could not reasonably be held responsible for a dishonesty perpetrated in their favour. Indeed this seems to be just the scenario that was envisaged by Chapter 55, once one reads it in the context of the family ILR policy, whereby leave was granted in line with that grant to all dependants who met the basic criteria. Or one can imagine a country-oriented policy that might have benefitted nationals from their true country of origin such that the fact that the grant of leave was motivated by some other concession made no material difference to their immigration history prior to naturalisation.

16. Taking the approach in Chimi [2023] UKUT 115 (IAC) to the relevant issues, I should consider these questions:

    (a) Did the Secretary of State materially err in law when deciding that the condition precedent in s40(2) or s40(3) of the British Nationality Act 1981 was satisfied? If so, the appeal falls to be allowed. If not,

    (b) Did the Secretary of State materially err in law when deciding to exercise her discretion to deprive the appellant of British citizenship? If so, the appeal falls to be allowed. If not,

    (c) Weighing the lawfully determined deprivation decision against the reasonably foreseeable consequences for the appellant, is the decision unlawful under s6 of the Human Rights Act 1998? If so, the appeal falls to be allowed on human rights grounds. If not, the appeal falls to be dismissed.

17. I do not find the Secretary of State erred in law as to the condition precedent in s40(3) BNA 1981. The Appellant maintained a fraud throughout his residence in the UK. He did not make full disclosure of the relevant circumstances either at the ILR or citizenship stage of his history. There was nothing in the decision-making history to break the causative link between his fraud and the grant of citizenship. There was no exercise of discretion in his favour made with full knowledge of the relevant facts. The omission of a material fact in the naturalisation application is likely to be material to obtaining citizenship by dishonest concealment such that "naturalisation was obtained by means of … fraud", and on the facts here, I so find. Nor was there any material error of law in the context of discretion to deprive. The considerations identified in the refusal letter were perfectly relevant ones and no material factor was overlooked.

18. The submissions provided by OTS Solicitors do not dissuade me from this conclusion. Those essentially invited me to depart from the legal directions made at the error of law stage. It will be rare for such an invitation to be taken up, but of course if the arguments made were sufficiently persuasive it is possible that I would accede to them. However I decline to do so.

    (a) I do not accept that the reference in Chapter 55 to knowledge of the relevant facts at the time the citizenship application was considered in any way limits the relevance of events leading to the grant of indefinite leave to remain. To

do so would blind the Home Office to relevant considerations going to good character, contrary to a central tenet of good public law decision making.

(b) The “real world” backdrop to the case indubitably includes the appellant’s historic and prolonged dishonesty.

(c) The appellant's very presence in the UK was predicated on a false asylum claim and the delays and mistakes in his case arose in that context.

(d) I do not accept that the fact that Shyti involved old Immigration Rule 395C, which expressly identified good character as a relevant consideration, indicates that discretionary decision making would exclude good character as a material criteria. I cannot envisage a rational administrative system excluding good character as relevant, at least absent an express statement to such effect.

19. The remaining issue on the appeal is the compatibility of the deprivation decision with the appellant's private and family life. He has lived in the UK for significantly over 20 years and has a partner; their three young children are British citizens. I have no doubt he and his family are fully integrated into the life in the UK. The skeleton argument before the First-tier Tribunal is very vague as to the precise impact that loss of citizenship might have on the family. It would not of course involve the appellant’s expulsion from the UK: his future is dependent on a further immigration decision, to be taken in the future, after a period of not more than a few months.

20. Muslija [2022] UKUT 337 at headnote 4 holds that:

> “Exposure to the "limbo period", without more, cannot possibly tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship. That means there are limits to the utility of an assessment of the length of the limbo period; in the absence of some other factor (c.f. "without more"), the mere fact of exposure to even a potentially lengthy period of limbo is a factor unlikely to be of dispositive relevance.”

21. I am willing to assume that that period would involve some worry for the adults but there is no reason to think there would be any significant impact on the children, even if the parents choose to make them aware of the reasons why their working arrangements might have to change for a while. But having regard to the guidance from Muslija, and in any event given the scant evidence available to me, I do not find that the foreseeable consequences of citizenship deprivation over a finite period would be disproportionate to the private and family life of the appellant and his family.

Notice of Decision

The appeal is dismissed.

M.Symes
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 April 2024