Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00051/2020

THE IMMIGRATION ACTS

Heard at Manchester CJC (via Microsoft Teams)	**Decision & Reasons Promulgated**
On 4 October 2021	**On 15 November 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ALFRED SALLAHU
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Youssefian, instructed by Osprey Solicitors.
For the Respondent: Mrs Aboni, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By a decision dated 6 August 2021the Upper Tribunal found a material error of law in the decision of the First-tier Tribunal that allowed Mr Sallahu's appeal against the decision of the Secretary of State to deprive him of his British citizenship pursuant to section 40(3) British Nationality Act 1981, set that decision aside, and gave directions for the further hearing of this appeal.

2. The matter comes back before the Upper Tribunal to enable it to substitute a decision to either allow or dismiss the appeal.

Background

3. The background to this matter is set out at [2 – 20] of the error of law finding in the following terms:

> 2. The appellant entered the United Kingdom as an unaccompanied minor on 27 October 2020 using the above name, claiming to have been born on 25 September 1986 in Pej, Kosovo, stating his nationality is Kosovan.
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> 3. The asylum claim was rejected although he was granted Exceptional Leave to Remain (ELR) until his 18th birthday, 25 September 2004, on the basis he could not be safely returned Kosovo as an unaccompanied minor.
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> 4. In June 2001, Mr Sallahu applied for a travel document, again claiming to have been born in Kosovo, to enable him to travel to Albania.
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> 5. Mr Sallahu applied for Indefinite Leave to Remain (ILR) on 17 September 2004, again repeating the same details as to his date and place of birth and nationality. He was invited for an interview in which he confirmed the answers given in his application for ILR were true, and in which he stated he had come to the United Kingdom from Kosovo with his last known address being in Pej.
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> 6. ILR was eventually granted on 18 February 2013 after Mr Sallahu's solicitors at the time commence judicial review proceedings (which application was refused). The grant was said to be a discretionary grant recognising the length of time Mr Sallahu had been in the United Kingdom and in light of the delay in processing and deciding the claim.
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> 7. In April 2013 Mr Sallahu applied for naturalisation as a British citizenship. On his application form he again repeated his claimed identity, date of birth, place of birth and nationality as Kosovan, resulting a certificate of naturalisation being issued on 19 March 2013.
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> 8. On 20 June 2016, Mr Sallahu's first child, Miss Liana Sallahu, a British citizen, was born in the UK and on 28 November 2018 a second British child, Master Alfie Sallahu, was born in the UK.
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> 9. Checks undertaken by the Status Review Unit of the Home Office found no trace of Mr Sallahu's birth in the civil registration files in Kosovo but it was found that the date of birth had been registered in Albania and that he was born in Kukes. The Status Review Unit wrote to Mr Sallahu on 19 December 2019 to advise him that the Secretary of State was considering depriving him of his British citizenship as a consequence of fraud.
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> 10. Mr Sallahu's current representatives, Osprey Solicitors, sought to obtain a correction of his registration on the naturalisation certificate, making submissions as to why their client should not be deprived of his British citizenship.
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> 11. The Secretary of State deprived Mr Sallahu of his citizenship placing reliance upon the dishonesty shown by him in signing the declaration on the application form, being the original SEF form, the application for a travel document in June 2001, the application for ILR in 2004 at which time he was 17 years of age, and the application for naturalisation at which time he was 26 years of age.
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> 12. The Judge sets out her findings having considered the evidence from [36] of the decision under challenge. At [38] the Judge finds the first occasion that Mr Sallahu was untruthful about his nationality was in the SEF form, which was admitted before the Judge was

dishonest and that his dishonesty is not an issue as Mr Sallahu "knew full well he was not born in Kosovo and that he was in fact Albanian".

13. At [39] the Judge accepted as credible that Mr Sallahu could not recall whether he signed the application form or whether it was his maternal cousin who signed it, and at [40] that at the time the appellant was a 14 year old child who would have followed the advice of the maternal cousin and that he lacked capacity to make his own decisions at that age.

14. In relation to the application for the travel document to travel to Albania in 2001, the Judge finds the Secretary of State ought to have been put on notice at the time that there was a real possibility that Mr Sallahu was not Kosovan as claimed but Albanian [44] and finds that had they checked it is possible that Mr Sallahu's true identity might have been discovered [45].

15. The Judge places particular weight on the letter granting ILR, stating between [47 – 50]:

    47. The letter granting the appellant's ILR is important. The final paragraph of the letter, which was contained at page 79 of the Home Office bundle set out the reasons for granting the further leave. It is stated:

        "Consideration is being given the length of time spent in the United Kingdom. It is noted that the applicant has resided in the United Kingdom for approximately 12 years. The applicant has accrued this leave following the grant of leave for three years and then waiting for his further leave application to be considered. The excessive delays attributed to the United Kingdom BA's lack of consideration of the further leave application. Taking all the information into the round. It is believed that the applicant should be granted ILR DL. As a result of the exceptional circumstances gives the excessive delay in deciding the outstanding further application."

    48. This grant was made on 8.2.2013, more than 8 years after the appellant originally applied. It was very clear that the grant of ILR was not made because the appellant was a Kosovan national, but rather because he had lived in the United Kingdom for 12 years and there had been a considerable, excessive delay in determining his application for further leave. This is apparent from the wording of the final paragraph quoted above. There is no reliance on the appellant's nationality.

    49. Furthermore, in the penultimate paragraph before the decision, the writer makes specific reference to the appellant's travel to Albania in 2001/2002. The letter from London Borough of Redbridge is referred to. The writer states:

        "The applicant was never questioned about this episode in his further leave interview. This may indicate that the applicant might be Albanian and should be noted if he applies to change his personal details in the future".

    50. In other words, it is clear that the respondent considered, at the time of granting ILR, and yet no action was taken and the grant was made. In fact, the wording of the paragraph does not suggest that there is any real concern about the appellant's nationality. It simply states that the fact the appellant may be Albanian "should be noted if he applies to change his personal details in the future". If the respondent was so concerned about the appellant's nationality, that that was the time that action might have been taken to explore this further, and yet no such action was taken. I accept the argument advanced by Mr Youssefian in his skeleton argument at paragraph 4 with regard to this issue when he states:

        "The only reason such a potentially serious suspicion did not result in some form of investigation, strongly supports the fact that his nationality was not material to the grant of ILR".

16. The Judge went on to consider the decision of the Upper Tribunal in Sleiman [2017] UKUT 00367 , which was found to support a finding that the fact Mr Sallahu had lied about his nationality must be directly material to the grant of citizenship, and the subsequent finding

that the fact Mr Sallahu had been untruthful about his nationality was not directly material to the decision to grant citizenship. At [53] the Judge writes:

> 53. With regard to the appellant's application for naturalisation he did state on the form that he was Kosovan (page 86 in the Home Office bundle) of 8.4.2013 and the certificate of naturalisation was issued to the appellant on 19.6.2013. However, it is my finding that the reason the appellant was granted citizenship was because he had ILR and the reason he had ILR was because that leave was granted under the so-called "legacy policy". This was a benevolent policy designed to resolve long outstanding cases where there had been significant delays. The grant of ILR to Mr Sallahu's makes it clear that the reason he was given ILR was because of his length of residence in the United Kingdom and the long delay in considering the further leave application which had been first made in 2004. The only reference to his nationality was to raise the issue that he might in fact be Albanian. This combination of factors persuades me that the appellant's false representations made prior to the grant of ILR was not material in either the grant of ILR being made or more importantly, the certificate of naturalisation obtain.

17. The Judge's finding that the Secretary of State had not shown that section 40(3) had been satisfied, as she had not shown that the naturalisation was obtained by means of fraud, false representation or concealment of material fact, was challenged by the Secretary of State in her application for permission to appeal which relied upon two grounds.

18. The first ground asserts a failure by the Judge to make findings or failure to engage with the case advanced by the Secretary of State. It is said the Judge nowhere in the entire determination engaged with or made any findings in relation to the arguments advanced on character and conduct within the application form for nationality by reference to the Chapter 18 "Character and Conduct policies set out in the decision letter.

19. Ground 2 asserts the Judge erroneously misdirected herself in relation to causation and the applicability of Sleiman resulting in inadequate reasons for allowing the appeal and in reaching the conclusion that is said to be perverse.

20. Permission to appeal was granted to the Secretary of State by another judge of the First-tier Tribunal the operative part of the grant being in the following terms:

> "It is arguable as set out in the grounds that the judge failed to consider the respondent's alternative argument that if the appellant had disclosed (as required by the application for British citizenship) his prior dishonestly he would have been refused citizenship for lack of good character. The grounds explain why the case of Sleiman does not necessarily fatally undermine this argument.

4. The Upper Tribunal found material error of law for the reasons set out at [22 – 49] of its decision, which for the sake of completeness are annexed to this determination.

5. In support of his argument that as the appellant had previously been granted indefinite leave to remain (ILR), which he had lost when he had been granted citizenship, and that if he was to lose that citizenship he will be in a worse position than if he had not been granted citizenship in the first place as he would no longer have the benefit of the grant of ILR, Mr Youssefian relied upon the decision of the Court of Appeal in KV (Sri Lanka) v SSHD [2018] EWCA Civ 2483 in which it was held:

> 19. Where, as in the present case, it is established not only that deception was used but that, without it, an application for naturalisation as a citizen would not have been granted, it seems to me that it will be an unusual case in which the applicant can legitimately complain of the withdrawal of the rights that he acquired as a result of naturalisation. That is because the withdrawal of those rights does no more than place the person concerned in the same position as if he had not been fraudulent and had acted honestly in making the application.

> The position may be different, however, in a case where, as a result of naturalisation, the individual has lost other rights previously enjoyed which will not or may not be restored if he is now deprived of his citizenship. In such a case depriving the person of citizenship will not simply return him to the status quo ante but will place him in a worse position than if he had not been granted citizenship in the first place.

6. It must be remembered the reason the appellant 'lost' his ILR is that he chose to apply for citizenship the legal effect of the grant of which is that his ILR ceased. I was not referred to any provision of law that would support the suggestion that if citizenship was taken away from the appellant as a result of his fraud or misrepresentation he is entitled to a further grant of ILR or to be put in the exactly the same position that he was prior to acquiring British citizenship. Current case law clearly shows that is not the required test.

The law

7. The relevant parts of Section 40 and 40A of the British Nationality Act 1981 are stated to be the following:

> 40. Deprivation of citizenship
>
> (1) In this section a reference to a person's "citizenship status" is a reference to his status as-
>
> (a) a British citizen….
>
> (2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.
>
> (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—
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> (a) fraud,
>
> (b) false representation, or
>
> (c) concealment of a material fact.

8. The Upper Tribunal have since the error of law finding handed down a further judgement relating to appeals of this nature reported as Ciceri (deprivation of citizenship appeals: principles) Albania [2021] UKUT 238.

9. The head note of that decision which accurately reflects findings made within the body of the determination reads:

> (1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held

(2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.

(3) In so doing: (a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and (b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).

(4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in EB (Kosovo) v Secretary of State for the Home Department [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs of EB (Kosovo)

(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).

(7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good.

10. Mr Youssefian's written submissions are in the following terms:

SUBMISSIONS

s.40(3) of the 1981 Act – dishonesty

16. It is submitted that A's behaviour did not have a direct bearing on the decision to grant him ILR and to subsequently naturalise him as a British citizen. Therefore, s.40(3) of the 1981 Act is not made out and A cannot be deprived of his citizenship.

17. In the first place, the Tribunal's starting point is that the SSHD in the appeal before the FtTJ expressly conceded that the A's misinformation did not directly motivate A's grant of ILR. This concession is extant in the absence of any application to withdraw it (see Secretary of State for the Home Department v Davoodipanah [2004] EWCA Civ 106).

18. It is submitted that this concession is practically identical to the one made in Sleiman (deprivation of citizenship; conduct) [2017] UKUT 00367. The fact that the concession was made in her file note or at the hearing is immaterial. The 'chain of causation' was the SSHD's delay (see §28) of Sleiman. The point is, rather, that A's nationality was not material to the grant of ILR, much like in Sleiman. The relevance of a concession is simply that it acts as a shortcut for the Tribunal to find that A's nationality was not directly material to the grant of his ILR.

19. The issue is therefore one that was not addressed in Sleiman: whether the fact that A relied on his false nationality in his naturalisation application is a legitimate ground to deprive him of his nationality.

20. On A's behalf, it is submitted that in circumstances where the false information had no bearing on the grant of ILR, the subsequent use of that false information in the naturalisation application does not mean that A obtained his nationality 'by means of' deception or that that grant of citizenship was directly motivated by the use of the false information. As the FtTJ found in her decision, the reason A was naturalised as a British citizen is because he had ILR and satisfied the good character requirement. Not because of A's purported nationality.

21. The suggestion that had the SSHD been aware of A's true nationality at the point of the naturalisation application she would have refused his naturalisation application is speculative. It is difficult to see how a false information immaterial at the time of the grant of ILR would suddenly become material at the time of the grant of naturalisation.

22. Perhaps an important distinction to bear in mind is A's circumstances with those who, for example, were granted refugee status as a Kosovan national when they were in fact Albanian, and off the back of the refugee status obtained ILR and subsequently naturalised as a British citizen. In this latter scenario, the deception was very clearly directly material to the grant of ILR and citizenship.

23. In support of her suggestion, the SSHD would point to the good character requirement at para 10.4 of "Chapter 18, Annex D, The Good Character Requirement" dated 13 December 2012 stated the following:

    "10.4 Evidence of deception in the immigration and nationality process

    10.4.1 Caseworks should refuse the application where there is evidence to suggest an applicant has employed deception either: a. during the citizenship process or b. in previous immigration application processes Page 8 of 13

    10.4.2 It is irrelevant whether the deception was material to the grant of leave or not. The fact that deception was engaged during the current or any previous application is sufficient to warrant refusal on the basis of good character. In such cases, the applicant should be advised that an application for citizenship made within 10 years from the date of refusal on these grounds would be unlikely to be successful." (emphasis added)

24. However, the above guidance must be considered in light of "Chapter 55: Deprivation and Nullity of British Citizenship". In this guidance, the SSHD 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: • 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 (see NAMES in the General Information section of Volume 2 of the Staff Instructions): 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." (emphasis added)

25. Had Chapter 55 not existed, the SSHD's argument may have had some force. However, where Chapter 55 expressly contemplates deceptions which would not have a direct bearing on the grant of citizenship, such that deprivation would be inappropriate, the SSHD argument is not as simple as she attempts to make it be. She cannot simply point to her Chapter 18 guidance and ignore her own guidance under Chapter 55. Such an approach would be irrational.

26. For example, para 55.7.4 specifically contemplates a person having lied about their asylum claim but that does not necessarily provide a justification to depriving that person of their nationality because it would have been immaterial to the grant of ILR, even though they too would have fallen foul of the good character requirement.

27. By relying on para 10.4.2 of Chapter 18, the SSHD essentially seeks to argue that, in a deprivation case, materiality of the dishonesty is. The SSHD's position is however untenable:

    a) If the SSHD's argument was correct, it would remove the requirement for materiality altogether. On her logic, any false representation (however insignificant or trivial) in a previous application or a naturalisation application would engage s.40(3), whether citizenship was obtained "by means of" it or not, simply because it is a lie, and all lies are relevant to good character. The SSHD would ask the Tribunal to ignore the clear words in the statute which requires materiality. If the SSHD was right, it would effectively expand her deprivation powers far beyond the limits set by Parliament under s.40 of the BNA.

    b) Further, if the SSHD was correct, it would render her own guidance "Chapter 55: Deprivation and Nullity of British Citizenship" completely meaningless. That guidance expressly states: "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." The SSHD has failed to offer any explanation whatsoever as to how para 55.7.3 should be applied if her position is correct. It is difficult to understand the point of para 55.7.3. if the SSHD's position is that all false representations would result in a person falling foul of the good character requirement.

28. There is also good reason as to why the test of materiality applies in a deprivation case under s.40(3) of the BNA.

29. If a naturalisation application is refused on good character grounds due to a lie in the application, the only real consequence is the refusal and a likely refusal of naturalisation for the next 10 years. An applicant would not ordinarily lose their ILR and their ability to continue to live in the UK would not be in jeopardy. However, if that applicant is deprived of British citizenship because of the same lie, that applicant would be in a far worse position because, upon being naturalised, any previously held status would be lost and deprivation would not revive the previous status (see §95 of Hysaj (Deprivation of Citizenship: Delay) Albania [2020] UKUT 128).

30. The difference of consequence of the same lie, depending on when it was detected, was explored by the Court of Appeal in KV (Sri Lanka) v SSHD [2018] EWCA Civ 2483, though concerning a question of statelessness in a decision to deprive. At §19, the Court observed the following: "19. Where, as in the present case, it is established not only that deception was used but that, without it, an application for naturalisation as a citizen would not have been granted, it seems to me that it will be an unusual case in which the applicant can legitimately complain of the withdrawal of the rights that he acquired as a result of naturalisation. That is because the withdrawal of those rights does no more than place the person concerned in the same position as if he had not been fraudulent and had acted honestly in making the application. The position may be different, however, in a case where, as a result of naturalisation, the individual has lost other rights previously enjoyed which will not or may not be restored if he is now deprived of his citizenship. In such a case depriving the person of citizenship will not simply return him to the status quo ante but will place him in a worse position than if he had not been granted citizenship in the first place."

31. If the completely immaterial deception was identified before A's naturalisation application was approved, he would have continued to reside in the UK with ILR (absent any separate decision to revoke his ILR). A is however now in a far worse position because the deprivation of his citizenship does not return him to the status quo.

32. The test of materiality, as required under s.40(3) of the BNA, remedies the mischief set out above. The SSHD's position that all and any immaterial lie would allow her to deprive a person of their citizenship is thus mistaken in law and in principle.

33. It follows that A did not obtain his British nationality "by means of fraud" under s.40(3) and the appeal should be allowed on this basis.

Art 8 ECHR and Proportionality

34. In this case, the decision to deprive A of his nationality is disproportionate and discretion should be exercised in his favour.

35. A would be severely prejudiced by the practice of making a deprivation order and delaying any future decision. At §48 of the RFRL, the SSHD indicates that A will be left without status for some 8 weeks. During that time, A will be without status and will not be entitled to work, or rent property, or have any of the other benefits of having status of some kind. This would have a disproportionate effect as he will not be able to support his family. The decision to deprive would place his wife and British children in a vulnerable position, and would breach obligations under s.55 of the Borders, Citizenship and Immigration Act 2009.

36. Further, A has expressed deep remorse for his actions. Having entered at age 14, he explains that he lived close to the border between Albania and Kosovo and that where the war was particularly violent. The fact that he was following his guardian's instructions must mitigate against the seriousness of the dishonesty.

37. The fact that the SSHD in her consideration of granting ILR contemplated the possibility of A being Albanian but took no further notice of this is significantly compelling.

38. A has lived in the UK for a continuous period of 20 years, with strong ties in the UK through both his private and family life. Whilst admittedly his lengthy residence in the UK alone is insufficient to be decisive, the Tribunal is invited to consider it a particularly weighty factor against deprivation when considered cumulatively with all other factors. Deprivation is disproportionate and discretion should be exercised differently.

39. Furthermore, there is a delay element in this case as was considered relevant in the case of Laci v Secretary of State for the Home Department [2021] EWCA Civ 769. The SSHD appears to have had doubts about A's nationality as early as in 2013 but no attempt was made to establish A's true nationality. The SSHD's inaction and delay led to A establishing deeper roots in the UK and going on to having two British children in the

> UK. In the circumstances, depriving A of his nationality at this stage would be a disproportionate interference with A's and his family's Art 8 rights.

11. Mrs Aboni accepted that the appellant's deception was not material to the grant of ILR but did not accept the deception was not material to the grant of citizenship, as the appellant had maintained the deception throughout the applications referred to in the chronology above, including after he had acquired his majority, and in particular in the application for British citizenship in which he signed a declaration confirming the details provided were correct, including those in relation to his claimed nationality as a Kosovan, knowing they were not.

Discussion

12. As noted in the error of law finding at [37], the case of Sleiman relied upon by the appellant does not arguably assist him to the extent submitted. In Sleiman it was not disputed that that appellant's age (in relation to which he had lied) was not relevant to the grant of ILR, but of more importance is the fact the Secretary of State's representative in that case did not submit that the deception as to age was material to the grant of citizenship. At [65] of that decision it is written:

> 65. Furthermore, it is not suggested by the respondent that had the false date of birth been known by her at the time of the citizenship application, the application would have been rejected on the ground that the appellant had not shown that he was of good character.

13. In this case it has always been the Secretary of States position that had the appellant's claims to be the nationality that he later admitted he was not had been known at the date of the citizenship application; the application would have been refused on the good character ground. Mrs Aboni also made this specific submission during the course of the hearing.
14. The first submission made by Mr Youssefian, that as the appellants dishonesty did not have a direct bearing on the decision to grant him ILR and to subsequently naturalise him as a British citizen s.40(3) of the 1981 Act is not made out and the appellant cannot be deprived of his citizenship, is not made out.
15. As recorded in the error of law finding at all times in which the earlier decisions were made by the Secretary of State prior to the decision under challenge in this appeal the appellant's true nationality was not known to the decision maker.
16. The submission made that as the Secretary of State expressed a view that the appellant might be Albanian following his regular trips to Albania in 2001/2002 which may indicate he might be Albanian, and which should noted that if at a later date he disclosure he was an Albanian rather than a Kosovan, was a matter known to the Secretary of State or which the Secretary of State should have done more to discover, does not provide the appellant with a viable defence.
17. At [15] of the error of law hearing are details of the specific findings made by the First-tier Tribunal, when referring to the grant of ILR, which contains the following:

> 49. Furthermore, in the penultimate paragraph before the decision, the writer makes specific reference to the appellant's travel to Albania in 2001/2002. The letter from London Borough of Redbridge is referred to. The writer states:
>
> "The applicant was never questioned about this episode, and his further leave interview. This may indicate that the appellant might be Albanian and should be noted if he applies to change his personal details in the future".

18. The wording of the material referred to by the First-tier Tribunal clearly shows that the Secretary of State was not aware of the fact the appellant was an Albanian national. As Mrs Aboni submitted it would not be unusual for an individual who was a national of State A who had come to the United Kingdom seeking a grant of international protection as a result of a fear of harm in that state, but who wanted to maintain contact with family or relatives, to travel to a neighbouring state to see such family members without having to cross into the territory of the state in which they were claiming a real risk of harm. Whilst the Secretary of State noted the possibility of the appellant applying to change his personal details at some point in the future, which he eventually did, that does not mean the Secretary of State was fixed with notice of the appellant's true nationality or of the continued deception by him in claiming to be a national of Kosovo until the truth of the matter later arose. It cannot be imputed such knowledge existed. The argument that the Secretary of State in not undertaking further enquiries, when there was no hard and fast evidence to justify the same, somehow gave rise to unreasonable excessive delay has no merit. The Secretary of State was entitled to take the view that the appellant's nationality was as he claimed until sufficient evidence arose to warrant a contrary decision, as happened later on in the proceedings.
19. The further submission that *"The suggestion that had the SSHD been aware of A's true nationality at the point of the naturalisation application she would have refused his naturalisation application is speculative. It is difficult to see how a false information immaterial at the time of the grant of ILR would suddenly become material at the time of the grant of naturalisation"* is without merit. The Secretary of State has maintained throughout the proceedings including in her oral submissions that had she been aware of the appellant's true nationality she would have refused the naturalisation application. That is not speculative. That is the stated position of the Secretary of State. It is not irrational for it to be found that false information found immaterial to the grant of ILR will become material to the grant of naturalisation, as they are two completely different applications. An individual has to apply for naturalisation as a British citizen in which they complete an application form containing the requested information that they declare to be the truth. If it later transpires, as in this and many other cases, that the information in the application for naturalisation is false that gives rise to the ability of the Secretary of State to take the action she has, even if that information, had it been known at the time, would have made no difference to the grant of ILR.
20. The basis on which it was said the application for naturalisation would have failed is as a result of the inability of the appellant to satisfy the good character requirements.

21. Mr Youssefian makes specific reference to Chapter 18, Annex D, The Good Character Requirements dated 13 December 2012 and Chapter 55: Deprivation and Nullity British Citizenship guidance, and asserts the latter is meaningless if the Secretary of States position as to the materiality of the deception/lie is correct in his skeleton argument at [23] –[29].
22. The purpose of the Chapter 18 Guidance Instruction to case workers is to explain how the good character requirement is to be assessed in relevant nationality applications and is applicable to all decisions taken on or after 13 December 2012.
23. It is specifically stated in the case worker instructions that:

> The Secretary of State must be satisfied that an applicant is of good character on the balance of probabilities. To facilitate this, applicants must answer all questions asked of them during the application process honestly and in full. They must also inform the Home Office of any significant event (such as a criminal conviction or a pending prosecution) that could have a bearing on the good character assessment.

24. It is now accepted by the appellant that he did not answer all the questions asked of him during the application process honestly and in full.
25. In relation to the assessment of acts of dishonesty or deception when dealing with the government of the United Kingdom the instruction to case worker makes it clear that:

> The decision maker will normally refuse an application where the person has attempted to deceive or otherwise been clearly dishonest in their dealings another department of government.
>
> Examples might include but are not limited to:
>
> a. fraudulently claiming or otherwise defrauding the benefits system;
>
> b. unlawfully accessing services (e.g., housing or health care) for which access is controlled by the immigration rules and/or Acts;
>
> c. providing dishonest information in order to acquire goods or services (e.g. providing false details in order to obtain a driving licence); or
>
> d. providing false or deliberately misleading information at earlier stages of the immigration application process (e.g. providing false bio-data, claiming to be a nationality they were not or concealing conviction data).
>
> Where this applies, a refusal under deception grounds may also be merited.
>
> The decision maker will assess the extent to which false information was provided and what, if anything, was intended or actually gained as a result. It's
>
> The decision maker will not normally refuse an application because the person made a genuine mistake on an application form or because they claimed something to which they reasonably believed or were advised they were entitled.

26. In this appeal the appellant falls foul of example (d).
27. The instruction to caseworkers also contains a further provision specifically relating to earlier applications where it is written:

> The decision maker will normally refuse an application where there is evidence that a person has employed deception either:
>
> a. during the citizenship application process; or
>
> b. in a previous immigration application.

> It is irrelevant whether the deception was material to the grant of leave or not.
>
> The decision maker will also normally refuse any subsequent application for citizenship if it is made within 10 years from the date of the refusal on these grounds.

28. The appellant argues that the provision in the instruction to caseworkers that the materiality of the dishonesty is immaterial is untenable as any false representation, however insignificant in a previous application or naturalisation application, would engage section 40(3) whether citizenship was obtained by means of it or not, simply because it is a lie and that all lies are relevant to good character.
29. Mr Youssefian asserts that if the Secretary of State's position is that it is irrelevant whether the decision was material to the grant or not that will be contrary to her own guidance in Chapter 55, which would be rendered meaningless.
30. Chapter 18 of the British Nationality Act 1981 states a person is entitled to naturalisation as a British citizen if at the time of the consideration they meet some of the requirements, such as being of good character. As the Act does not provide a definition of good character the Secretary of State is required to undertake such an assessment on the facts aided by the guidance relating to Chapter 18 which contains information on how to assess if an applicant is of good character. Chapter 18 is therefore relevant at the application stage.
31. Chapter 55 specifically relates to the situation in which the Secretary of State is considering the deprivation and nullity of British citizenship previously granted.
32. The assertion that section 55 will be meaningless where stating at 55.7.3 that if the fraud, false representational concealment of material fact did not have a direct bearing on the grant of citizenship it will not be appropriate to pursue deprivation action if the statement and the Chapter 18 that it is irrelevant whether the deception was material to the grant of leave or not applies, conflates the purpose of these two publications.
33. It is perfectly rational for a decision-maker considering an application for British citizenship to consider in accordance with Chapter 18 whether there has been an act of deception in a previous application without having to explore whether that deception was material to the earlier grant of leave or not. The issue relating to the assessment of good character is whether the individual has lied, not the consequences of that lie. When at a later stage, an issue arises or comes to the notice of the Secretary of State that deprivation action may be appropriate, it is perfectly reasonable for the decision-maker to consider whether the fraud, false representational concealment of a material fact had a direct bearing on the grant of citizenship. This is an exercise being considered at a much later stage when the reasons why an individual was granted citizenship and whether the later discovered fraud was material is a relevant consideration.
34. The decision in Sleiman is a good example of the exercise of these principles. In that case the appellant had lied about his age but was granted ILR through the Legacy exercise of which his age was not a relevant factor. He later applied for naturalisation as a British citizen, which was granted. It was later discovered that he was not the age he claimed to be, but it was not asserted by the Secretary

of State in proceedings before the Tribunal that the appellant's age had a direct bearing on the grant of citizenship. Accordingly, the deception was not material and the appellant succeeded in his appeal.

35. In this case, the appellant's deception was not known at the date of application or consideration of the application for British citizenship and there was therefore no evidence before the caseworker to suggest the appellant had employed deception either during the citizenship process or in previous immigration applications. There was therefore no information before the decision-maker at that time to warrant a refusal in accordance with the good character requirements set out in Chapter 18. At a later stage, however, such evidence became available warranting the decision under challenge pursuant to Chapter 55.

36. I find that it is abundantly clear that the appellant's false representation and concealment of a material fact relating to his true nationality did have a direct bearing on the grant of citizenship and that had the decision-maker been aware of the fraud being perpetrated by the appellant at the date of application, it is highly likely that the application for citizenship would have been refused on the basis of the good character requirement.

37. Returning to the headnote of Ciceri, the first matter a Tribunal needs to consider is set out in the following terms:

> "The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held"

38. I find the Secretary of State has established that the grant of citizenship to the appellant was obtained by one or more of the means specified in section 40(3) of the British Nationality Act 1981, namely by means of (a) fraud, (b) false representation, or (c) concealment of a material fact, in claiming to be a national of a country of which he was not, and in failing to disclose his true identity as a national of Albania.

39. I find the Secretary of States conclusions in the refusal letter relating to the relevant statutory provision is supported by the evidence that the appellant has admitted his deception regarding nationality and is clearly a conclusion and decision based on a view of the evidence that is within the range of those reasonably open to the decision-maker. It has not been made out there is anything irrational in the conclusion that are relevant condition precedent specified in section 40(3) of the British National Act 1981 exist.

40. It is therefore necessary to consider the second aspect identified in Ciceri:

> If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the

obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.

41. The submission made on the appellant's behalf that there had been unacceptable delay such that the public interest in the decision was not sufficient to be found to be proportionate is not made out. I have dealt above with the assertion that the Secretary of State was aware that the appellant may be an Albanian national in the letter granting ILR but do not find the appellant's case in this respect is made out.

42. In her submissions to the tribunal Mrs Aboni referred to the fact the deprivation decision did not render the appellant stateless as he has provided documents showing that he is Albanian and there was no evidence to support a claim of statelessness. I accept this submission as it was not shown by the appellant to be otherwise.

43. It is also the case that it was accepted the appellant has both the family and private life in the United Kingdom and that article 8 ECHR is engaged. The decision under challenge is however not a removal decision but only the decision to deprive the appellant of his British citizenship. There is no impact made out upon the status of the appellant's wife or children, and it was accepted that if the appellant has a genuine relationship with his family members in the United Kingdom is likely he will qualify for some form of leave to remain on the basis of his family life.

44. Mr Youssefian's submissions in relation to the proportionality of the decision are set out in his skeleton argument, relied upon in his submissions to the tribunal, which are in the following terms:

> 35. A would be severely prejudiced by the practice of making a deprivation order and delaying any future decision. At §48 of the RFRL, the SSHD indicates that A will be left without status for some 8 weeks. During that time, A will be without status and will not be entitled to work, or rent property, or have any of the other benefits of having status of some kind. This would have a disproportionate effect as he will not be able to support his family. The decision to deprive would place his wife and British children in a vulnerable position, and would breach obligations under s.55 of the Borders, Citizenship and Immigration Act 2009.
>
> 36. Further, A has expressed deep remorse for his actions. Having entered at age 14, he explains that he lived close to the border between Albania and Kosovo and that where the war was particularly violent. The fact that he was following his guardian's instructions must mitigate against the seriousness of the dishonesty.
>
> 37. The fact that the SSHD in her consideration of granting ILR contemplated the possibility of A being Albanian but took no further notice of this is significantly compelling.
>
> 38. A has lived in the UK for a continuous period of 20 years, with strong ties in the UK through both his private and family life. Whilst admittedly his lengthy residence in the UK alone is insufficient to be decisive, the Tribunal is invited to consider it a particularly weighty factor against deprivation when considered cumulatively with all other factors. Deprivation is disproportionate and discretion should be exercised differently.
>
> 39. Furthermore, there is a delay element in this case as was considered relevant in the case of Laci v Secretary of State for the Home Department [2021] EWCA Civ 769. The SSHD appears to have had doubts about A's nationality as early as in 2013 but no attempt was made to establish A's true nationality. The SSHD's inaction and delay led to A establishing deeper roots in the UK and going on to having two British children in the

> UK. In the circumstances, depriving A of his nationality at this stage would be a disproportionate interference with A's and his family's Art 8 rights.

45. Whilst the appellant may experience a period whilst his status is sorted out, during which he may not be legally entitled to work and support his family financially, this does not mean that the family are unable to support themselves. I accept there is no evidence of a negative impact upon the status of the appellant's wife and children, and it is not made out that she will not in her own right be able to claim adequate financial support to ensure the needs of the children and the family unit are met, including assistance with rent if required. It is not made out on the evidence there is a disproportionate impact upon the family unit.
46. In relation to the best interests of the children, especially as the appellant is not the subject of removal decision and can therefore continue to play his role as a husband and father, there is insufficient evidence to warrant a finding that the impact upon the children is sufficient to outweigh the public interests. The children will remain in the family home with their parents and continue with their schooling and lifestyle as before.
47. It is not disputed the appellant has lived in the United Kingdom for a long time, most of which he has been able to do as a result of his deception and lies as to his true nationality. The appellant does not claim that length per se entitles him to a grant of leave to remain, which is correct, as it is what is done within that time that is the material consideration. The lack of a removal direction means that the appellant's family and private life that he currently enjoys in the UK is something that he will be able to continue to enjoy. If the appellant is granted leave on the basis of his family ties he is unlikely to be removed in any event.
48. The Secretary of State has made out her case that the change in status from that of a British citizen to a person with leave granted pursuant to article 8 does not make the decision disproportionate on the facts of this appeal.
49. The proportionality of the decision is also made out when considering the inherent weight that will normally lie on the Secretary of State's side of the scales in the article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct and the lack of material delay.
50. I do not find the appellant has made out that deprivation will amount to a breach of section 6 of the 1998 Act.
51. I do not find it has been made out that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).
52. As noted in Ciceri the discretionary power in section 40(2) or (3) provides the Secretary of State with responsibility for deciding whether deprivation of citizenship is conducive to the public good.

Decision

53. I dismiss the appeal.

Anonymity.

The First-tier Tribunal no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 8 October 2021

Annex A

Error of law

22. The Court of Appeal have considered a case with similar facts, an appellant entering the UK as a minor, claiming to be from Kosovo whereas he was from Albania, which has been reported as Laci v Secretary of State for the Home Department [2021] EWCA Civ 769.
23. In giving the lead judgment Lord Justice Underhill reviewed the relent law in an overview in which he wrote:

> Overview
>
> 35. When he gave permission to appeal in this case McCombe LJ observed that the six-point guidance given by the UT in BA had not been considered by this Court. That is literally correct because, as noted, BA was not referred to in either Aziz or KV. However, I do not think that it is appropriate for us to embark on a general examination of each of the six points. That is partly because we now have Leggatt LJ's summary of the relevant principles in KV, which covers much of the same ground and should be taken as the starting-point in future cases: I appreciate that that summary was not the result of argument, but I can see nothing in it that seems likely to be contentious. However, another reason why it is inappropriate is that the present appeal only engages the UT's points (4) and (5). It is true that by ground 4 the Appellant contends that point (2) in BA did not correctly state the law in the case of a decision under section 40 (2); but the decision in this case was taken under section 40 (3), and I do not believe that we should make observations on an issue which is not before us.
>
> 36. There may, however, be some value in my spelling out how points (4) and (5) in BA now stand in the light of Aziz and KV. I take them in turn.
>
> 37. As to point (4) in BA, the broad thrust of what the UT says is that only exceptionally will it be right for a person who has obtained British citizenship by (in short) deception to be allowed to retain it. In my view that is entirely correct: the reason is self-evident. It is in line with what Leggatt LJ says in the first half of para. 19 of his judgment in KV. I note that he uses the term "unusual" rather than "exceptional". That may be because the Courts have been wary of treating "exceptionality" as a test as such, but I do not think that there is a problem here: the reason why such an outcome will be exceptional is that it will be unusual for a migrant to be able to mount a sufficiently compelling case to justify their retaining an advantage that they should never have obtained in the first place. The UT was also right to recognise that the necessary assessment arises both as a matter of common law and (potentially) in relation to Convention rights. The precise formulation, however, may not be quite in line with what is said in KV and Aziz; and now see para. 40 below.
>
> 38. As to point (5) in BA, it is now clear from Aziz that the FTT ought not, at least normally, to undertake any "proleptic assessment" of the likelihood of removal. Loss of British citizenship and loss of leave to remain are different things, appealable by different processes. However, it should be noted that Sales LJ's reasoning does not apply to other adverse consequences of a deprivation decision. One example of such an adverse consequence was statelessness, which was the issue in KV. Another may be a "limbo period": I discuss this further below. Such consequences will in principle be relevant to the exercise of the common law discretion under section 40 (3), and to the extent that they constitute an interference with the appellant's article 8 rights they will need to go into the proportionality balance: see para. 17 of Leggatt LJ's judgment in KV.
>
> 39. I should note for completeness that Mr Gill referred us to the decision of the Court of Justice of the European Union in Rottmann v Freistaat Bayern (case C-135/08). This establishes that it is not contrary to EU law for a member state to withdraw the citizenship of one of its

> nationals where that citizenship was obtained by deception provided that it observes the principle of proportionality. It is not authority for anything else relevant to the present appeal.
>
> 40. Postscript. When this judgment was circulated to counsel in draft, Mr Malik drew our attention to the decision of the Supreme Court in R (Begum) v Special Immigration Appeals Commission [2021] UKSC 7, [2021] 2 WLR 556, which was handed down subsequent to the argument before us. Begum concerns a decision taken by the Secretary of State to deprive the appellant of her nationality under section 40 (2) of the 1981 Act. At paras. 32-81 of his judgment, with which the other Justices agreed, Lord Reed discusses the nature of an appeal to SIAC under section 2B of the Special Immigration Appeals Commission Act 1997, which is the equivalent of section 40A; and in that connection he discusses both Deliallisi and BA (though not KV, to which the Court does not appear to have referred). His conclusion is that while section 2B provides for an appeal rather than a review SIAC should approach its task on (to paraphrase) essentially Wednesbury principles, save that it was obliged to determine for itself whether the decision was compatible with the obligations of the decision-maker under the Human Rights Act 1998 (see para. 68). It may be that that reasoning is not confined to section 2B or to cases falling under section 40 (2), in which case some of statements quoted above about the correct approach to appeals under section 40A in the case of decisions under section 40 (3) will require qualification. But I do not think that that is something on which I should express a view here. Begum does not bear directly on the actual grounds of appeal before us, and Mr Malik made it plain that he did not wish to advance any fresh ground based on it. Rather, he was rightly concerned that we should be aware of it in the context of the more general review of the law in the preceding paragraphs. I confine myself to saying that anything said in the authorities reviewed above about the scope of an appeal under section 40A should be read subject to the decision in Begum.

24. The appellant in Laci succeeded as although the Court of Appeal recognise that not every judge would have made the decision the First-tier Tribunal did in that case, it had not been made out that the decision was outside the range of those reasonably available to that tribunal to a sufficient degree to permit the Upper Tribunal to interfere in the decision-making process.
25. Any suggestion or inference by the Judge that the Legacy programme was an amnesty is legally flawed. It was specifically found in Hakemi at [4] that the Legacy programme was not an amnesty and that grants under the Legacy scheme were made by reference to paragraph 395C of the Immigration Rules, which at that time was in force, even though it was deleted on 12 February 2012.
26. Paragraph 395C set out certain factors the UK Border Agency was required to consider before making a decision to remove someone from the UK. Those factors were:

    - the person's age
    - how long he or she has been living in the UK
    - any ties he or she may have to the UK (e.g. family, work and other associations)
    - his or her personal history (including character, conduct and employment record)
    - his or her domestic circumstances
    - any criminal record
    - any compassionate circumstances

- any representations made to the UK Border Agency on the person's behalf.

27. It is the case in this appeal, however, the Home Office Presenting Officer who appeared before the Judge in her submissions, whilst initially relying on the decision to deprive letter dated 12 March 2020, did state that having read the appellant's skeleton and the point made regarding the grant of ILR not being granted under the Legacy scheme but on a discretionary basis, it had been shown that the deception was material to the grant of ILR which supports Mr Youssefian's argument in his skeleton argument and oral submissions made at the hearing in relation to the lack of materiality in relation to the grant of ILR.
28. What the Home Office Presenting Officer continued to state in her submissions, however, was that the focus of the naturalisation is on the good character requirement and the fact Mr Sallahu did not reveal his true identity and that had he done so his application would not have been granted makes material the claim that had the deception been known naturalisation would have been refused under the good character point.
29. It is clear therefore that although the Presenting Officer accepted the grant of ILR was awarded on a discretionary basis, even though it is arguable that the grant of ELR would not have been made if Mr Sallahu's true nationality had been known, the issue of the later discovered of deception and its relationship to the grant of citizenship was a material issue before the Judge which the Judge failed to deal with.
30. I do not find it is made out that the Judges reliance upon Sleiman defeats the Secretary of State's case.
31. In Sleiman (deprivation of citizenship; conduct) [2017] UKUT 367 (IAC) the tribunal considered the question of how directly causative past deception must be of a subsequent grant of British citizenship in order for a person to be deprived of that citizenship on the basis of deception.

    The official headnote reads:

    In an appeal against a decision to deprive a person of a citizenship status, in assessing whether the appellant obtained registration or naturalisation "by means of" fraud, false representation, or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship.

32. The deception in Sleiman was to mislead the authorities about age on arrival in the UK. The appellant claimed to be younger than he was and this caused him a direct benefit because he was granted a short period of limited leave to remain on this basis even though his asylum claim was refused. He therefore had lawful leave to stay in the UK. As his limited leave came to an end, he applied to extend it. This application was in time so, due to the application of section 3C of the Immigration Act 1971, his lawful stay was extended while the Home Office processed his application.
33. The processing took the Home Office over five years. Mr Sleiman's case became part of what became known as the "Legacy backlog". By the time the Home Office looked at his case such a long time had passed that they decided to grant Indefinite Leave to Remain (ILR). A year or so later he qualified for, applied for, and was granted British citizenship.

34. It came to light later that Mr Sleiman had lied about his age and so the Home Office decided to deprive him of his citizenship on the basis that "but for" his initial deception about his age, he would not have had lawful stay and would therefore not eventually have qualified for citizenship.
35. The statutory power of deprivation on the basis of deception is set out in section 40(3) British Nationality Act 1981, which permits deprivation where 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

36. The most relevant part of the Home Office policy, previously Chapter 55 of the Nationality Instructions but republished as "Nationality Policy Guidance: Deprivation and nullity of British citizenship", reads as follows:

    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 (see NAMES in the General Information section of Volume 2 of the Staff Instructions): 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

37. On the facts of Sleiman, he was able to show that the Home Office file notes showed that his age was irrelevant to the grant of ILR. The tribunal therefore held that the deception must have a direct bearing on the grant of citizenship: the phrase "direct bearing" suggests that in cases where the fraud etc. only has an indirect bearing on the grant of citizenship, deprivation action would not be appropriate.
38. The original deception on date of birth was found to be not directly material to the decision to grant citizenship. The tribunal noted that:

    • other reported deception and nullification cases showed a far more direct link between the deception and the deprivation or nullification

    • the Home Office file note in the case stating age to be irrelevant to ILR

    • there had been no suggestion that had the false date of birth been disclosed at the time of the application for naturalisation that the Appellant would have been refused on good character grounds.

The appeal was therefore allowed.

39. In Sleiman it is an important factor that the Secretary of State's representative did not submit that deception was relevant to the grant of ILR, whereas in this current case she has in the depravation decision letter and did in the appeal before the First-tier Tribunal. It is central to the Secretary of State's case in relation to the grant of citizenship in this case. This is clear from the decision letter and the submissions made by the Presenting Officer to the Judge. The 'bad character' argument is at the forefront, whereas it was not in Sleiman. The chain of causation identified by the Upper Tribunal in Sleiman was recognised as being broken by a concession by the Secretary of State and not the grant of leave. I find the Judge fails to adequately reason within the decision as to how such a proposition is applicable on the facts of this appeal.
40. Chapter 18 of the Good Character Policy refers to caseworkers counting heavily against an applicant any attempt to conceal the truth about any matter in their application for naturalisation. There is merit in the Secretary of States argument that had Judge considered matters properly the appeal against the depravation decision would have been refused on account of the fraud relied upon in support of Ground 1, and it would not have been open to the Judge to find that the deception was immaterial.
41. The Secretary States decision, which was challenged in the appeal took all these matters into account as they were now known and it has not been made out the conclusion contained therein, the decision to deprive, is irrational, unlawful, reached without considering all the material with the required degree of anxious scrutiny, perverse, or outside the range of findings reasonably open to the decision-maker.
42. As in all cases of this nature, there is a chain of events, the chain of causation, and it is clear that at the material stage within the chain of causation, namely when citizenship was applied for and granted, Mr Sallahu's active deceit was a material factor which, had the truth been known at the time, is likely to have led to a refusal of the application.
43. As all time a fundamental aspect of Mr Sallahu's true identity was not known to the decision-maker.
44. It is not disputed the Judge looked at the issues that are recorded in the determination but even before Begum confirmed the correct approach there is arguable merit in the Secretary of State's grounds that warrants a finding the Judge has erred in law in a manner material to the decision to allow the appeal.
45. I set the decision of the Judge aside.
46. The approach to be taken to appeals of this nature is now set out in R (on the application of Begum) [2021] UKSC 7.
47. In [71] of the judgment Lord Reed (with whom the other members of the Court agreed) writes:

> 71. Nevertheless, SIAC has a number of important functions to perform on an appeal against a decision under section 40(2). First, it can assess whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight, or has been guilty of some procedural impropriety. In doing so, SIAC has to bear in

> mind the serious nature of a deprivation of citizenship, and the severity of the consequences which can flow from such a decision. Secondly, it can consider whether the Secretary of State has erred in law, including whether he has made findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held. Thirdly, it can determine whether the Secretary of State has complied with section 40(4), which provides that the Secretary of State may not make an order under section 40(2) "if he is satisfied that the order would make a person stateless". Fourthly, it can consider whether the Secretary of State has acted in breach of any other legal principles applicable to his decision, such as the obligation arising in appropriate cases under section 6 of the Human Rights Act. In carrying out those functions, SIAC may well have to consider relevant evidence. It has to bear in mind that some decisions may involve considerations which are not justiciable, and that due weight has to be given to the findings, evaluations and policies of the Secretary of State, as Lord Hoffmann explained in Rehman and Lord Page 26 Bingham reiterated in A. In reviewing compliance with the Human Rights Act, it has to make its own independent assessment.

48. And at [119]:

> 119. The scope of SIAC's jurisdiction in an appeal against a decision taken under section 40(2) was summarised in para 71 above: first, to determine whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight, or has been guilty of some procedural impropriety; secondly, to determine whether he has erred in law, for example by making findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held; thirdly, to determine whether he has complied with section 40(4); and fourthly, to determine whether he has acted in breach of any other legal principles applicable to his decision, such as the obligation arising in appropriate cases under section 6 of the Human Rights Act.

49. No submissions were called from either party in relation to Begum and the Judge specifically notes that no consideration had been given to the exercise of discretion. The matter shall therefore be listed for a further hearing before the Upper Tribunal to enable it to consider the matter further in light of the correct approach to be taken.