Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2021-001541
DC/50013/2020; IA/00888/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 May 2022	**On 19 August 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

ARTAN SULA
(also known as ELTON CIRA)
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. R Toal, Counsel, instructed by Gulbenkian Andonian Solicitors
For the Respondent: Mr. D Clarke, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This appeal is brought under section 40A(1) of the British Nationality Act 1981 ('the 1981 Act'). The appellant was granted permission to appeal to this Tribunal against the adverse decision of Judge of the First-Tier Tribunal O'Keefe ('the Judge') sent to the parties on 3 June 2021.

2. The underlying appeal is a challenge to the respondent's decision to deprive the appellant of his British nationality, conveyed by a decision dated 9 September 2020.

Background

3. The appellant is a national of Albania who was born on 16 March 1986 and is aged 36. Though the appeal was lodged by the appellant in the name of 'Artan Sula', he accepts that his true identity is 'Elton Cira', an Albanian national born on 16 March 1986.

4. He entered the United Kingdom on 17 October 2000 and claimed asylum in the identity of 'Artan Sula', a national of the Federal Republic of Yugoslavia who was born on 16 March 1996 and so a minor at the date of application. He stated that he hailed from Preshevo (Presheva to the Albanian minority), a municipality then situated in southern Yugoslavia. He claimed that he had been persecuted by Serbian soldiers and civilians because of his Albanian ethnicity. He further claimed that Serbian soldiers broke into the family home and his sister was raped by several men. The respondent refused the appellant's asylum application by a decision dated 28 August 2001 but granted him exceptional leave to remain on the same day.

5. A successful application for a travel document was subsequently made by the appellant on 5 December 2001 in the identity of 'Artan Sula'. When asked by the application form as to whether he had ever been known by another name he wrote 'n/a'. He signed the form confirming that the information provided was true and correct. In both identities he was aged 15 when he completed the form, and so was a minor.

6. The appellant applied for indefinite leave to remain in the identity of 'Artan Sula' on 4 October 2005, when he was an adult aged 19. He gave his country of nationality as 'Serbia and Montenegro'. When asked whether he had engaged in any activities that may mean he was not of good character, he ticked 'No' on the form. He signed the declaration that all information provided was correct and that he understood the penalties for providing false information. At the date of application, the appellant was aged 19 in both of his identities. The respondent granted the appellant indefinite leave to remain by a decision dated 21 November 2005.

7. He successfully undertook the Life in the UK Test on 20 November 2006. In his application he identified his place of birth as Presheve, and his country of birth as Kosovo. He declared himself to be a Kosovan national. I observe that Preshevo/Presheve was at the time, and continues to be, a part of Serbia.

8. The appellant applied for naturalisation as a British citizen on 20 December 2006. He again relied upon his identity as 'Artan Sula' but identified himself as a Kosovan national and not a Serbian national. Though identifying his place of birth as Presheve, he again declared his country of birth to be Kosovo, and not Serbia.

9. He was issued with a certificate of naturalisation as a British citizen on 3 May 2007.

10. On 1 October 2008 the appellant changed his name from 'Artan Sula' to 'Elton Cira' by Deed Poll.

11. The respondent wrote to the appellant on 22 January 2020 stating that she had reason to believe that the appellant obtained his status as a British citizen as a result of fraud, with the Albanian authorities confirming that he was an Albanian citizen from birth. The respondent requested that the appellant provide requested information including his original birth certificate.

12. The appellant responded with a letter from his present legal representatives, dated 11 March 2020. He confirmed his true identity as 'Elton Cira' and provided his Albanian birth certificate. He explained that he left Albania at the age of 14 in search of a better life given Albania's then failing economy. He was advised by fellow Albanians, both prior to his departure and during his journey to the United Kingdom, that he should present himself as a Yugoslavian national as this was a wide-spread practice and was the only means of securing leave to remain. The appellant 'reluctantly' took the advice offered 'by almost every Albanian he came into contact with prior to claiming asylum' in the United Kingdom and presented himself as Yugoslavian when seeking international protection.

13. The respondent decided to deprive the appellant of his British citizenship, observing in her decision letter of 9 September 2020, *inter alia*:

> '16. Chapter 55 deals with deprivation of citizenship. Whilst it is accepted that chapter 55.7.5 confirms that we would not deprive of citizenship if a person was a minor on the date at which they acquired ILR and the false representation, concealment of material facts of fraud arose at that stage, you were an adult when you applied for, and were granted, ILR and as such, this paragraph is not applicable in your care. Chapter

55.7.8.3 also confirms that where a minor on reaching the age of 18 does not acquire ILR or other leave automatically and submits an application for asylum or other form of leave which maintains a fraud, false representation or concealment of material fact which they adopted whilst a min or, they should be treated as complicit. As previously stated you were an adult when you applied for ILR and citizenship, you spoke English well (as confirmed on your naturalisation application form by ticking that you had meet the language requirements) and you had plenty of opportunity to inform the Home Office that your nationality and place of birth were incorrect. You had also been in the UK for a number of years and had been well educated up to degree level, therefore it is considered that you were fully aware that your true nationality should have been declared.

…

25. Under s.40 of the 1981 British Nationality Act the Secretary of State may deprive a person of citizenship status which results from this registration of naturalisation if the secretary of state is satisfied that the naturalisation was obtained by means of fraud, false representation or concealment of a material fact. Based on the information available you have knowingly and willingly secured status in the UK using a false Kosovan nationality and false name and this deception has been maintained over many years. Had it been known that you were Albanian you would not have been [granted] ELR and ILR and therefore would not have acquired settled status, and thus been ineligible to be naturalised as a British citizen. Therefore, you would not have been in a position to build such ties that you are now seeking to rely on [had] your true details been known.

26. For the reasons given above it is not accepted there is a plausible, innocent explanation for the misleading information which led to the decision to grant citizenship. Rather, on the balance of probabilities, it is considered that you provided information with the intention of obtaining a grant of status and/or citizenship in circumstances where your application(s) would have been unsuccessful if you had told the truth. It is therefore considered that the fraud was deliberate and material to the acquisition of British citizenship.

27. It is acknowledged that the decision to deprive on the grounds of fraud is at the Secretary of State’s discretion. In making the decision to deprive you of citizenship, the Secretary of State has taken into account the following factors, which include the representations made by your legal representatives in their letter dated 11 March 2020 and concluded that deprivation would be both reasonable and proportionate.’

Law

14. Section 40(3) of the 1981 Act (as amended):

> (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,
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> (b) false representation, or
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> (c) concealment of a material fact.

15. After the Supreme Court judgment in *R (Begum) v. Special Immigration Appeals Commission* [2021] UKSC 7, [2021] A.C. 765, the Upper Tribunal confirmed in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC), at [30], that in deprivation appeals:

> (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.
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> (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.
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> (3) In so doing:
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> (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
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> (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 13 to 16 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.

Decision of the First-tier Tribunal

16. The appeal came before the Judge sitting at Hatton Cross on 17 May 2021. Both the appellant and the respondent were represented. The Judge observed the Supreme Court judgment in *Begum*.

17. In dismissing the appeal, the Judge noted that the burden of proof rested upon the respondent to establish the precedent fact. She accepted that the appellant was granted exceptional leave to remain in this country as an unaccompanied asylum-seeking child ('UASC').

18. In respect of the ILR application in 2009, the Judge found:

> '41. The appellant knew he was not Artan Sula and he knew he was not a national of Serbia and Montenegro. He knew therefore that his completed application contained false representations as to his identity and nationality.'

19. The Judge further found:

> '44. … I have no hesitation in concluding that the appellant acted dishonestly in his application for indefinite leave and naturalisation. When the appellant applied for naturalisation, he maintained the position that he was Kosovan when he is not. The appellant knew that he had previously given false information about his nationality; his evidence before me was that he should have come forward with the correct information at the time. In his application for naturalisation, the appellant signed a declaration stating that the information he had provided was correct. On the evidence before me I find that the appellant used fraud or false representation in his application for naturalisation and that he was acting dishonestly.'

Grounds of Appeal

20. The appellant initially relied upon four grounds of appeal drafted by counsel who represented him before the First-tier Tribunal:

    1) The Judge misapplied the law in respect of the burden of proof

    2) The Judge misapplied the law in respect of the reported decision of *Sleiman (deprivation of citizenship; conduct; Lebanon)* [2017] UKUT 367

    3) The Judge erred in her assessment of procedural fairness, the respondent having failed to evidence her case

    4) The Judge erred by conducting an incomplete proportionality assessment

21. Judge of the First-tier Tribunal Brewer granted the appellant permission to appeal by a decision dated 7 October 2021, reasoning that it is an arguable error of law for the Judge to find that section 40(3) of the 1981 Act was established in circumstances where the respondent reached these nexus findings absent any evidence of her decision-making on the ILR application and subsequent naturalisation application.

22. Noting the public law element to the deprivation appeal, Mr. Toal was granted permission to amend the appellant's grounds of appeal:

    5) The respondent failed to exercise her discretion properly, by not reaching a reasonable and proportionate decision: She did not have regard to matters relating to the appellant's good character and contribution to the community.

    6) The decision to deprive the appellant of his citizenship was unfair because of the inadequacy of the respondent's 'Naturalisation as a British Citizen: a guide for applicants'.

7) The factual conclusions reached by the Judge did not entitle her to hold that the appellant's non-disclosure in the naturalisation process was material to the grant of citizenship.

Decision

23. At the hearing Mr. Toal advanced the appellant's case through the additional grounds of appeal alone – grounds 5 to 7, save for accepting that ground 1 was erroneous as to the burden of proof. However, as the original grounds were not withdrawn, I address them below.

24. Mr. Toal confirmed that the appellant did not contest that he had exercised dishonesty. The core of his case before the First-tier Tribunal and this Tribunal is that the exercise of dishonesty was not material to his securing British citizenship.

Ground 1 - Burden of proof

25. Mr. Toal conceded at the outset that the approach adopted by the Judge to the burden of proof throughout her decision was consistent with the guidance provided in *Ciceri*. This ground is dismissed

Ground 2 - The Judge misapplied the law in respect of the reported decision of Sleiman (deprivation of citizenship; conduct; Lebanon) [2017] UKUT 367

26. Mr. Toal made no submissions on this ground. He was right to do so. It enjoys no merit.

27. The written grounds contend that consequent to the decision in *Sleiman (deprivation of citizenship; conduct) Lebanon* [2017] UKUT 367, the burden is upon the respondent to show that but for the fraud, false representation or concealment of a material fact then nationality would not have been granted.

28. The principle enunciated in *Sleiman* is properly to be modified to underline the departure from the full merits approach following the Supreme Court judgment in *Begum*. In an appeal against a decision to deprive a person of citizenship, in assessing whether there were grounds which rationally entitled the respondent to be satisfied that the appellant obtained naturalisation by means of fraud, false representation, or concealment of a material fact, a Tribunal must consider whether the respondent was entitled to conclude that the impugned behaviour was directly material to the decision to grant citizenship. Relevant considerations to this assessment are restricted to whether the respondent has acted in a way that no reasonable Secretary of State could have acted or has taken into account some irrelevant matter or has disregarded something to which the respondent

should have given weight, or has erred on a point of law, including making an error of law when arriving at a finding of fact.

29. The respondent relied upon the failure by the appellant to declare his true identity over several years, whilst an adult, and that on several occasions he had signed declarations that the answers he had given were correct and that he was aware of the consequences of providing false answers. The respondent expressly stated at §23 of her decision:

> '23. … Had your true nationality and details of your deception been known, these applications would have fallen for refusal Had you declared your true details at the time of your ILR application, the discrepancies in your identity would have been noted and once it was established that you were actually from Albania rather than Kosovo as initially claimed, it is likely that removal to Albania would have been applicable. As such, you would not have acquired the residence requirements needed to naturalise and any application for citizenship made in the absence of the same would have fallen for refusal. **In any instance, your application for naturalisation would have fallen for refusal due to failure to satisfy the good character requirement had the details of your deception been known**.' [Emphasis added]

30. The ground is predicated on the complaint that the respondent did not place before the Judge 'any evidence that the grant of ILR on completion of four years of Exceptional Leave to Remain was not the correct practice and procedure'. The ground fails to engage with the appellant's failure to provide accurate information as to his true identity, including his true nationality, both in his ILR application and his subsequent application to naturalise, the latter requiring him to attest to his good character. The latter required admission of the earlier deception, even if it played no role in securing ELR, as the use of deception is relevant to the issue of good character. Mr. Justice Kenneth Parker held in *R (Kurmekaj) v. Secretary of State for the Home Department* [2014] EWHC 1701 (Admin), at [39], in respect of a challenge to a refusal to naturalise, "I see no good reason why the earlier deception should not be taken into account. The fact that the deception played no role in a later decision does not … affect its relevance in determining the good character for naturalisation purposes." As confirmed in *Kurmekaj* the respondent could properly rely upon the fact that ILR would not have been granted if the true facts had been known at the time, namely that the applicant applying for leave was an Albanian and not a national of Serbia.

31. The Judge considered the respondent's decision, and the decision of *Sleiman* over a number of paragraphs of her decision and concluded that the appellant intended to rely upon a false identity, including a false nationality, and that he had not been honest when expressly asked

about whether he was of good character. The Judge concluded that the impugned behaviour was material to the respondent's decision to grant British citizenship:

> '47. I am satisfied, on the balance of probabilities, that the original grant of leave to the appellant was more likely than not to have been as an UASC. I do not accept, however, that everything else that flowed thereafter was unaffected by the continued false representation as to identity and nationality. Mr. Wilding [counsel for the appellant] submitted that there were no file notes to show that the appellant was granted naturalisation because he was Kosovan and none were provided to me. It is also correct that the respondent had to go further than simply saying the appellant accepted he had given a false nationality in order to make out her case. The appellant maintained in his application for indefinite leave and in his application for naturalisation that he had not engaged in any activities which might be relevant to the question of whether he was a person of good character.
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> 48. That question manifestly is not just about convictions; there are separate questions for that. I am satisfied that maintaining he was from Kosovo when he was in fact from Albania indicates that the appellant had engaged in other activities which might indicate that he may not be considered a person of good character. The appellant maintained this falsehood in a number of applications to the Home Office. I am satisfied that in answering 'no' to the question about good character, the appellant was making a false representation or using fraud … I am satisfied that the appellant was acting dishonestly when he completed both the application for indefinite leave and naturalisation.'

32. In the circumstances, the simple reliance upon the decision in *Sleiman*, in its unmodified form, does not establish a material error of law in respect of the Judge's decision. This ground of appeal is dismissed.

Ground 3 – Procedural unfairness arising from the respondent's failure to provide 'any evidence'

33. The written ground of appeal addresses in general terms several decisions of the Upper Tribunal concerned with disclosure, though there is no specific reference to the Judge's decision until §20 where it is contended that 'in the present case the respondent produced no evidence going to that. In an appellate structure, which relies on public law principles, the respondent should act in a way consistent with those principles and was required to have disclosed all file minutes surrounding the grants of show that the nationality was an important and relevant feature. She did not do this in this case, and as a result the Tribunal is left in an evidential vacuum". The appellant contends at §21

that the Judge's decision is perverse in that there was no evidence upon which she could base her finding.

34. There are real difficulties for the appellant arising from the facts of this case. The Judge accepted, at [38], that the respondent granted the appellant exceptional leave to remain in 2001 consequent to him being an unaccompanied asylum seeker, and not specifically because he was from Kosovo. However, the Judge concluded that the appellant used fraud or false representation in his application for naturalisation, at [45], that he was acting dishonestly, at [45], that he had read and understood the respondent's naturalisation guidance, at [46], and that whilst he secured exceptional leave to remain as an unaccompanied child asylum seeker, his naturalisation flowed from his false assertion that he had not engaged in any activities which might be relevant to the question of whether he was a person of good character, at [48].

35. The Judge proceeded to consider the importance of the good character requirement and the duty of an applicant seeking to naturalise to be candid when addressing the requirement, concluding at [53]:

> '53. On the evidence before me I am satisfied that the appellant's maintenance of his claim to be Kosovan rather than Albanian throughout his dealings with the Home Office meant that he had engaged in activities that might indicate that he may not be considered a person of good character. That meant it should have been disclosed. I find the failure to disclose that amounts to false representation or fraud. I find that the false representations that the appellant was of good character is directly material to the grant of citizenship. On the evidence before me I find the respondent has demonstrated that this appellant did obtain naturalisation as a British citizen by means of fraud or false representation.'

36. This challenge simply fails to engage with the Judge's reasoning at [48]-[53], which is concerned with the use of fraud or dishonesty and not solely with the respondent's assessment of the appellant's nationality. The general complaint as to disclosure falls away, as the consideration of good character was undertaken with an understanding of the appellant's true identity in the September 2020 decision which is clearly based upon (1) the appellant knowingly securing status using a false Kosovan identity, and (2) the respondent's conclusion that 'had it been known that you were Albanian you would not have been [granted] … ILR and therefore would not have acquired settled status, and thus been eligible to be naturalised as a British citizen.

37. Mr. Toal acted appropriately in not addressing this ground in oral submissions before me. It enjoys no merit.

Ground 4 - Incomplete proportionality assessment

38. The general challenge advanced is that the Judge failed to undertake a meaningful balancing exercise as to the effect of deprivation on the appellant, in circumstances where there was no evidence before her that the respondent would consider his immigration status within the eight weeks set out in the refusal letter.

39. There is no merit to this ground. The Upper Tribunal noted in *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 00128 (IAC), [2020] Imm. A.R. 1044, at [102], that in her decision letter the respondent confirmed that within eight weeks of the deprivation order being made, subject to any representations received, a decision would be made as to whether to commence deportation, seek to remove or grant limited leave to remain. Such timeframe was considered satisfactory, the Tribunal observing at [110]:

> '110. There is a heavy weight to be placed upon the public interest in maintaining the integrity of the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship. That deprivation will cause disruption in day-to-day life is a consequence of the appellant's own actions and without more, such as the loss of rights previously enjoyed, cannot possibly tip the proportionality balance in favour of his retaining the benefits of citizenship that he fraudulently secured. That is the essence of what the appellant seeks through securing limited leave pending consideration by the respondent as to whether he should be deported.'

40. This passage was approved by the Court of Appeal in *Laci v. Secretary of State for the Home Department* [2021] EWCA Civ 769, [2021] Imm. A.R. 1410, at [80], with the caveat that 'where there is something more (as, here, the Secretary of State's prolonged and unexplained delay/inaction), the problems that may arise in the limbo period may properly carry weight in the overall assessment.'

41. By his grounds of appeal, the appellant simply relies upon the impact awaiting a further decision for eight weeks may have upon his work and domestic life. Such concerns are not on the face of the evidence capable of amounting to 'something more'. This ground is dismissed.

Ground 5 - The respondent did not have regard to matters relating to the appellant's good character and contribution to the community

42. The appellant contends that he advanced a case to the respondent, by means of his letter of 11 March 2020, supported by corroborative references from employers, colleagues and friends to the effect that discretion should be exercised in his favour because, notwithstanding his use of deception in relation to immigration and nationality matters,

and taking a holistic view, he is of good character and is of significant benefit to the United Kingdom.

43. Mr. Toal accepted that the point was not raised before the Judge, and relied upon the judgment of Lord Justice Sedley in *Miskovic v. Secretary of State for Work and Pensions* [2011] EWCA Civ 16, at [124], that there is an assumption that there is no jurisdictional bar to new points being entertained on appeal 'in proper cases':

> '124…. It is an assumption which in my judgment can be made good on a simple constitutional basis. The Court of Appeal exists, like every court, to do justice according to law. If justice both requires a new point of law to be entertained and permits this to be done without unfairness, the court can and should entertain it unless forbidden to do so by statute.'

44. The core of Mr. Toal's submission is that the respondent's conclusion at §§27 and 35 of her decision that 'deprivation would be both reasonable and proportionate' is intended to demonstrate that she has properly exercised her statutory discretion. Mr. Toal stated that it shows the opposite and that as a matter of law the appellant was entitled to decision was that was 'reasonable and proportionate' and so the respondent was obliged to consider whether, notwithstanding that revocation would be reasonable and proportionate, the appellant should nevertheless receive the benefit of her discretion.

45. The permitted challenge is on public law grounds.

46. I am satisfied that the respondent acted lawfully in reaching her decision. The respondent was aware of the discretionary nature of her decision, at [25], and reasonably concluded the appellant's application for naturalisation would have fallen for refusal had the deception been known due to the failure to satisfy the good character requirement and that the appellant should not benefit from his lengthy deception, nor from the ties he built up having relied upon his deception. Consequent to the Judge's finding that the appellant secured ELR because he was an unaccompanied minor, the appellant benefitted from the deception as to his identity from securing settlement in November 2005 until at least the time of his legal representatives' letter in March 2020, a period of some 14 years, if not until the deprivation decision in September 2020. Additionally, the respondent was reasonably entitled to rely upon the appellant's use of deception in various applications when considering whether the appellant would have been assessed to be of good character at the date of the decision to naturalise: *Kurmekaj*.

47. A further difficulty for the appellant is that the respondent expressly identified the supporting evidence as being before her and concluded as to their weight:

> ‘21. You have also supplied a number of references attesting to your good character, however there is no indication that your referees were aware of your deception at the time of writing your references and therefore it is unclear if they would have been happy to supply you with a reference had they known that you had been awarded citizenship based on false representations. Therefore, although these references have been considered, little weight has been given to them.’

48. The appellant seeks to rely upon the personal references to establish that the respondent failed to lawfully exercise her discretion, but in advancing the argument fails to engage with the respondent’s decision to give little weight to the references. The respondent’s conclusion as to the personal knowledge of the referees was reasonably open to her.

49. Whilst noting the skill with which Mr. Toal advanced this ground, ultimately the respondent’s decision cannot be criticised on public law grounds. This ground is dismissed.

Ground 6 - The decision to deprive the appellant of his citizenship was unfair: the respondent’s ‘Naturalisation as a British Citizen: a guide for applicants’ is inadequate

50. Mr. Toal observed that ‘good character’ is not defined in the 1981 Act and so is a concept capable of an extremely wide range of meanings. He contended that it is not self-evident that it necessarily includes deception by an individual in his dealings with the respondent. Consequently, a person should properly be informed about what is relevant to good character.

51. Mr. Toal observed that the respondent’s guidance does not list, but could easily do so, previous use of deceit in dealings with the respondent as a matter that should be volunteered. The matters listed at para. 41 of the guidance as matters that should be disclosed in that context are said to be an entirely different order of gravity to the use of deception in previous immigration applications and thereby give rise to an impression that such conduct is not of the gravity required to be relevant under the heading of ‘good character’. Consequently, it was unfair to hold against the appellant the non-disclosures about his dealings with the respondent, and it was wrong for the Judge to treat such non-disclosure as *ipso facto* dishonest.

52. A fundamental difficulty, as accepted by Mr. Toal at the hearing, is that it was not the appellant’s case before the Judge, or indeed in evidence placed before the Upper Tribunal, that he did not understand the concept of ‘good character’ as covering his assertion to the respondent that he was ‘Artan Sula’. When he signed the declaration on his naturalisation application form, seeking British citizenship in his identity as ‘Artan Sula’, the appellant was aware that he was not being truthful

when declaring the information given was correct. He further confirmed that he understood that a certificate of naturalisation may be withdrawn if he was found to have obtained it by fraud, false representation or concealment of any material fact.

53. On the facts arising in this matter, this ground enjoys no merit.

Ground 7 - The appellant's non-disclosure in the naturalisation process was not material to the grant of citizenship

54. At [53] of her decision the Judge found:

> '53. ... I am satisfied that the appellant's maintenance of his claim to be Kosovan rather than Albania throughout his dealings with the Home Office meant that he had engaged in activities that might indicate that he may not be considered a person of good character. That meant it should have been disclosed. I find the failure to disclose that amounts to false representation or fraud. I find that the false representation that the appellant was of good character is directly material to the grant of citizenship. On the evidence before me I find that the respondent has demonstrated that this appellant did obtain naturalisation as a British citizen by means of fraud or misrepresentation.'

55. Complaint is made that it was not sufficient for the Judge to find that the non-disclosures 'might' show the appellant not to be of good character for the Judge to then hold that those non-disclosures were material.

56. The contention is misconceived. Whilst greater care could have been taken with her wording, the Judge simply identified that the appellant's maintenance of his false identity in dealing with the respondent was such that he would have been aware that it would adversely affect an assessment as to his good character, and so should have been disclosed to the respondent for her assessment. The Judge proceeded to consider the respondent's decision as to good character and consider that it was reasonable in the circumstances. This ground is dismissed.

Notice of Decision

57. The making of the decision of the First-tier Tribunal promulgated on 3 June 2021 did not involve the making of a material error of law.

58. The appellant's appeal is dismissed.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 22 July 2022

TO THE RESPONDENT
FEE AWARD

The appellant's appeal is dismissed. No fee award is made.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 22 July 2022