



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DC/50075/2020
[UI-2022-000887]; IA/02668/2021

THE IMMIGRATION ACTS

**Heard at : Field House
On : 11 August 2022**

**Decision & Reason Promulgated
On : 27 September 2022**

Before

**UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE STOUT**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DRITAN DEDGJONAJ

Respondent

Representation:

For the Appellant: No Appearance

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Dedgjonaj's appeal against the decision of 4 December 2020 notifying him of the intention to deprive him of his British nationality under section 40(3) of the British Nationality Act 1981.

2. For the purposes of this decision, we shall hereinafter refer to the Secretary of State as the respondent and Mr Dedgjonaj as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is an Albanian national, born on 2 March 1977. He entered the UK on 27 August 1997 using a counterfeit Portuguese identity card and claimed asylum that day in his own name but with a date of birth of 5 March 1979 and as a Kosovan national. He claimed that he was at risk on return to Kosovo and on 31 May 1999 he was granted indefinite leave to remain as a refugee. He made two applications for a Home Office Travel Document in the Kosovan identity and on 9 February 2003 he applied for naturalisation as a British citizen in the same identity, signing a declaration of truth. The application was granted, and the appellant was naturalised as a British citizen on 8 January 2004.

4. On 19 September 2011 the appellant wrote to the Home Office via his legal representatives confirming his genuine, Albanian, identity and requesting to amend his identity details with the UK authorities. In February 2012 the Home Office informed the appellant that the current policy on deprivation and nullity was being reviewed. On 3 September 2020, following identity checks conducted with the British Embassy in Tirana which confirmed his genuine Albanian identity, the appellant was notified that consideration was being given to deprive him of his British citizenship under section 40(3) of the British Nationality Act 1981. His legal representatives responded on 24 September 2020, confirming his genuine identity and apologising for and explaining his actions.

5. The respondent, in a decision dated 4 December 2020, did not accept the appellant's explanation as a justification for the deception. The respondent concluded that his British citizenship had been obtained fraudulently, that he should be deprived of that citizenship under section 40(3) of the British Nationality Act 1981 and that it was reasonable and proportionate to do so.

6. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981. His appeal was heard on 10 January 2022 by First-tier Tribunal Judge Kudhail who found that the respondent's delay in pursuing deprivation was prolonged, unexplained and inexcusable and that as a result the proportionality balance under Article 8 was tipped in the appellant's favour. The judge allowed the appellant's appeal on human rights grounds.

7. Permission to appeal was sought by the respondent and, albeit initially refused in the First-tier Tribunal, was subsequently granted by the Upper Tribunal on 20 May 2022. The matter was then listed for a hearing on 11 August 2022.

8. In the meantime, in a letter dated 25 July 2022, the appellant's representatives advised the Upper Tribunal that the appellant no longer wished to appeal the Secretary of State's decision to deprive him of his British citizenship and gave notice of an intention to withdraw the appeal under Rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In response an Upper Tribunal Lawyer advised the appellant, on 29 July 2022, that the appeal in the Upper Tribunal had been brought by the Home Office and therefore it was not his appeal to withdraw. The appellant's representatives responded with a Rule 24 Notice dated 1 August 2022 in the following terms:

“Upon perusing the comments of the Upper Tribunal Lawyer, we would like to clarify the position as follows:

1. Mr Dritan Dedgjonaj (the Appellant before the First Tier Tribunal) does not seek to defend the FTT determination promulgated on 26 January 2022 allowing his appeal against deprivation of citizenship;
2. He accepts that the Secretary of State for the Home Department’s appeal should be allowed and his appeal dismissed;
3. Consequently, we will not be defending the appeal before the Upper Tribunal listed on 8 August 2022.

In view of the above, we invite the Upper Tribunal to dismiss Mr Dedgjonaj’s appeal. In the circumstances it may be appropriate to dispose of the matter on the papers and to vacate the hearing to save time and costs.”

9. In an email of 2 August 2022 the Upper Tribunal responded as follows:

“Please be advised that the Tribunal will, in due course, issue a decision setting aside the FTT decision and re-making the decision by dismissing Mr Dedgjonaj’s appeal, as requested in the Rule 24 Notice. As the matter will be dealt with on the papers there is no need for the appellant or his representatives to attend the hearing on 11 August 2022.”

10. The hearing was not vacated, but there was, unsurprisingly, no appearance at the hearing by or on behalf of the appellant.

11. Mr Avery had no objection to the matter being disposed of as requested by the appellant’s representatives and accordingly we have made the decision requested.

DECISION

12. The Secretary of State’s appeal is allowed and the decision of First-tier Tribunal Judge Kudhail is accordingly set aside.

13. We re-make the decision by dismissing Mr Dedgjonaj’s appeal against the Secretary of State’s decision to deprive him of his British citizenship.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 11 August 2022