



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-006219**  
**First-tier Tribunal No:**  
**DC/50116/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 17 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**  
**DEPUTY UPPER TRIBUNAL JUDGE JOLLIFFE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR ALTIN SHLLAKU (AKA HAJDARIN SHLLAKOVSKI)**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Clarke, Senior Home Office Presenting Officer  
For the Respondent: Mr Wilding, counsel

**Heard at Field House on 27 March 2023**

**DECISION AND REASONS**

Introduction

1. The parties will be referred to as the Appellant and the Respondent as they were before the First-tier Tribunal, although the Secretary of State is the appellant in the appeal to the Upper Tribunal and so the roles were reversed.
2. The Appellant is an Albanian national whose date of birth is 26 June 1984. For many years he claimed to have a different identity - Hajdarin Shllakovski, a Serbian national whose date of birth is 26 June 1985. It is accepted that that identity was not his real identity.
3. The Respondent Secretary of State for the Home Department appeals against a decision of the First-tier Tribunal dated 16 December 2022. In

that decision, First-tier Tribunal Judge Davey (the Judge) allowed the appeal of the Appellant against a decision of the Respondent dated 29 April 2021.

4. By that decision, the Respondent exercised the power under section 40 of the British Nationality Act 1981 to deprive the Appellant of British citizenship previously granted to him because the grant had been obtained by means of fraud, false representation or the concealment of a material fact. The essential factual basis for that decision to deprive was that it had been obtained in the identity of Hajdarin Shllakovski, which was not the Appellant's real identity.

#### The immigration history

5. The Appellant entered the United Kingdom on 22 July 2000, and claimed asylum on 24 July 2000 in the false identity of Hajdarin Shllakovski. The basis of his asylum claim was that he was a Kosovan at risk in Kosovo because his father was an ethnic Serb.
6. His claim was refused by a decision dated 19 September 2005, and he appealed the refusal to the Asylum and Immigration Tribunal. His appeal was refused on asylum grounds but allowed on Article 8 grounds - see the decision of Immigration Judge Morrison sent out on 24 November 2005. He was granted 3 years discretionary leave in his false identity.
7. On 3 November 2008, he applied for indefinite leave to remain because he would be at continued risk on return to Kosovo. This was granted on 19 February 2010. On 28 April 2010 he was granted a travel document. On 21 March 2013, he was granted a certificate of naturalisation in his false identity.
8. On 2 May 2017, after the British Embassy in Tirana had undertaken identity checks, a referral was made regarding the Appellant's identity.
9. On 21 February 2020, the Appellant's representatives confirmed to the Respondent's Status Review Unit that he was not Hajdarin Shllakovski and that his real identity was in fact Altin Shhaku. Further checks were undertaken which confirmed his real identity.
10. On 11 February 2021, the Appellant was given a further opportunity to provide other information which he wanted to be considered. His representatives confirmed that the 21 February 2020 representations comprised his case.
11. On 29 April 2021, he was served with a decision letter under section 40 of the BNA of the decision to deprive him of his British citizenship.

#### The decision letter

12. The decision letter set out in some detail the Appellant's immigration history and the basis of the various grants of leave and later citizenship which he had received. It also reviewed the granular detail of his false identity. It cited the provisions of Chapter 55 of the Nationality Instructions concerning the definition of fraud, false representation and the concealment of any material fact, and the circumstances in which it would be appropriate not to deprive someone of citizenship which had been fraudulently obtained [see paragraphs 8-23].
13. It considered the circumstances of his grant of indefinite leave to remain, including that there was nothing adverse known about his character and his length of residence and his family ties. It recorded that he had applied

for a Home Office travel document in his false identity, and declared that he had no other identities [see paragraphs 18-19].

14. It analysed the Appellant's account of why he had advanced a false identity, including that he felt Albania was an unsafe country, that thousands of other Albanians who had entered the United Kingdom in false identities, and that he was the victim of trafficking gangs. It also noted that his partner and their son both lived in Albania, as did his parents. These matters were not known to Immigration Judge Morrison when the Appellant's appeal was allowed on Article 8 grounds in 2005. The Appellant's use of false identities had not been known to the Respondent when it had made grants of leave to the Appellant. The deception was therefore material to the grant of ILR [paragraphs 24-44]. It concluded that the Appellant had not provided a plausible, innocent explanation for using a false identity.

#### The FtT decision

15. The Appellant appealed against the 29 April 2021 decision letter. It is unfortunate that the Respondent was not represented at the appeal hearing, and so the FtT Judge had only limited assistance regarding the correct legal framework.
16. The judgment referred to section 40 and to various reported decisions on it, in particular Sleiman v SSHD [2017] UKUT 367; Deliallisi v SSHD [2013] UKUT 439; AB (Nigeria) v SSHD [2016] UKUT 451; Aziz v SSHD [2018] EWCA Civ 1884; and Pirzada v SSHD [2017] UKUT.
17. The Judge found that the Respondent had not relied on the Appellant's false identity and had not set out how the Appellant had used fraud to obtain his nationality [paragraph 6 of the judgment]. He found that the false identity was not material to the grant of citizenship on the basis that the Respondent had not taken the point when she first knew of it [paragraph 7 of the judgment].
18. The Judge went on to consider Article 8 and noted that there had been delay between the Respondent becoming aware of the false identity and taking steps to deprive the Appellant of citizenship. He considered that there should be a careful consideration of the Appellant's Article 8 rights. He allowed the appeal.
19. The Respondent sought permission to appeal, which was granted on 10 January 2023 by FtTJ Oxlade.

#### The legal framework

20. The provisions of section 40(3) of the BNA 1981 are as follows:  
*(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—*
  - (a) fraud,*
  - (b) false representation, or*
  - (c) concealment of a material fact.*
21. The correct application of section 40 has been analysed in a number of reported cases. The Supreme Court has rejected the suggestion that a

section 40(3) decision under appeal is subject to a full merits reconsideration: Begum v SSHD [2021] UKSC 7.

22. The FtT should not substitute its own view of the evidence for whether the precedent facts exist - see Pirzada [2017] UKUT 196, Begum [68-71]. The FtT must focus instead upon whether the SSHD's conclusion is susceptible to public law challenge, i.e. did she take into account relevant current policy and all relevant evidence, and was her view unsupported by any evidence or based on a view of the evidence that could not reasonably be held - Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238.
23. Since the hearing of this appeal on 27 March 2023, the correct legal approach has been authoritatively explained by the President of the Upper Tribunal in Chimi [2023] UKUT 00115.
24. First, the FtT should review the basis of the SSHD's decision that the condition precedent to either section 40(2) or 40(3) was satisfied. This review is to be conducted on a public law basis - that is to say, the consideration is akin to a judicial review rather than to a conventional rehearing in the statutory appeal context.
25. Second, the FtT must review the SSHD's decision to exercise her discretion to deprive the Appellant of British citizenship. This must also be done on a public law basis.
26. Thirdly, if the decision to deprive is identified as a lawful one, the FtT must identify the reasonably foreseeable consequences for the Appellant of that lawful deprivation against the relevant public interest, in order to ascertain whether or not the decision is disproportionate, and thus unlawful under section 6 of the Human Rights Act 1998, in which case the appeal must be allowed on human rights grounds.

#### The Parties' submissions

27. On behalf of the Respondent, Mr Clarke submitted that the Judge had failed to take a public law approach as required by Begum and Ciceri. That failure was a substantive error of law, on the basis of which the appeal should be allowed.
28. He also invited the Upper Tribunal to take account of the chronology, submitting that the Appellant had been granted discretionary leave in 2005, ILR in 2010 and citizenship in 2013 in the false identity. Because the Respondent had not been aware of the false identity, she had made the various grants of leave. Accordingly, the Appellant's deception was material.
29. Mr Wilding submitted for the Appellant that it was a question of substance whether the Judge had in fact taken a public law approach, and said that when the judgment was read fairly it was clear that he had. He also argued that the Respondent must show that the deception motivated the grant, relying on Pirzada and Sleiman. He drew the Upper Tribunal's attention to the 2005 judgment in which the Appellant's appeal had been allowed on Article 8 grounds. He submitted that any deception in the Appellant's original application was not material to or causal of the grant of leave. He further submitted that the Respondent had not taken action against other people in a similar position to the Appellant, and that the

difference in treatment between different people in a broadly similar position was arbitrary.

Analysis

30. The Judge did not follow the public law analysis of the appeal which is required by the authorities set out above. Mr Wilding accepted that that the Judge had not directed himself to the authorities, but argued nonetheless that he had in substance undertaken the necessary analysis and so any failure was not material.
31. However, a careful reading of the judgment does not reveal any such public law analysis.
32. That failure is an error of law. The Upper Tribunal has considered whether it could properly be said that the error was not material and that the decision would have been the same in any event.
33. There is no basis for coming to such a conclusion. The failure to perform a public law analysis was fundamental to the Judge's reasoning, and it is not the case that the appeal would have been allowed in any event despite the error.
34. It is unfortunate that the Judge was not provided with more assistance about the right legal framework from the Respondent through a Presenting Officer. It is unclear why that is the case, and is regrettable given the nature of the appeal in a deprivation of citizenship case and the legal analysis, which is different to that in many other types of appeal.
35. Given the fundamental error, this is not a case where findings can be preserved and the appeal can be kept in the Upper Tribunal. Accordingly, the case will be remitted for a new hearing before a differently constituted FtT.

**Notice of Decision**

36. The decision of the FtT involved the making of an error of law and is set aside.
37. The decision will be remade in the FtT by a judge other than FtT Judge Davey.

**Deputy Upper Tribunal Judge John Jolliffe**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
Date 10 July 2023

