



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

Case No: UI-2023-005527

First-tier Tribunal Nos: DC/50302/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

3<sup>rd</sup> December 2024

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**Selami Deda**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation::**

For the Appellant: Mr T Wilding, Counsel instructed by A J Jones Solicitors  
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

**Heard at Field House on 18 October 2024**

**DECISION AND REASONS**

**Introduction**

1. The appellant is a citizen of Albania who entered the UK in 2002 and claimed asylum using a false identity. He lied about both his age and nationality.
2. Although the appellant's asylum claim was refused, he was granted exceptional leave, and subsequently ILR (in 2006) and British citizenship (in 2008). The appellant applied for, and was granted, ILR and citizenship under his false identity.
3. Following the appellant's true identity coming to light, the respondent made a decision to deprive him of his citizenship under Section 40(3) of the British Nationality Act 1981.
4. Section 40(3) of the 1981 Act provides:

(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.

5. The appellant appealed against this decision to the First-tier Tribunal where his appeal came before Judge of the First-tier Tribunal Roots (“the judge”). The judge dismissed the appeal. The appellant now appeals against this decision.

### **Decision of the First-tier Tribunal**

6. Under the subheading “The Legal Framework” the judge identified recent case law concerning the approach to take in cases of this type, including the Supreme Court judgment in *Begum v Secretary of State for the Home Department* [2021] UKSC 7 and two Upper Tribunal decisions considering the implication of that judgment: *Ciceri (deprivation of citizenship principles)* [2021] UKUT 00238 and *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 00115.

7. Under the subheading “Scope of the Appeal” the judge noted that Mr Wilding, who represented the appellant in the First-tier Tribunal as well as in the Upper Tribunal, submitted that *Ciceri* and *Chimi* were wrongly decided and that, contrary to the findings in these cases, the First-tier Tribunal was required to undertake a merits based assessment rather than a public law review of the “condition precedent” question (i.e. whether the appellant had obtained citizenship by means of fraud, false representations or concealment of a material fact). The judge rejected this argument, stating that he was not persuaded he should depart from the approach in *Ciceri* and *Chimi*.

8. The judge found that the appellant made, and repeated, false representations over many years, including in his application for naturalisation, where he gave a false answer to the question regarding his good character. The judge concluded in paragraph 28:

“28. For all these reasons I reject the submission that no reasonable Secretary of State could conclude that his nationality was obtained by fraud or false information because the false information was not material. It is highly unlikely I find that a reasonable and rational Secretary of State could come to a different conclusion.”

9. The judge then found that it was open to the respondent to not exercise discretion in the appellant’s favour in circumstances where the appellant made no response to the enquiry letter giving him an opportunity to make representations relevant to the exercise of discretion.

10. The judge considered an argument by Mr Wilding that discretion was not lawfully exercised because a Freedom of Information (“FOI”) request revealed that the “limbo period” between deprivation of citizenship and the subsequent decision on whether to grant leave was likely to be far longer than the eight weeks mentioned in the refusal decision. The judge rejected this argument on the basis that the FOI letter relied on by Mr Wilding was nearly two years old,

gave only an average and did not relate to the appellant's case. The judge stated in paragraph 33:

"Even if it could be argued that more weight should have been given to the evidence disclosed by the FOI request - which I do not accept - I do not accept that the Appellant can show that no reasonable respondent could not have reached the same decision, given that the evaluation of the public interest is a matter for her."

11. The judge then turned to Article 8 ECHR, finding that deprivation would not be disproportionate even if there was an extended limbo period given that the appellant's family live in Albania, he has savings, and he had not provided up-to-date bank statements regarding his financial circumstances.

### **Grounds and Submissions**

12. There are four grounds of appeal.
13. Ground 1 argues that *Chimi* and *Ciceri* were wrongly decided. Mr Wilding's arguments can, broadly, be divided into two strands. The first is that the Upper Tribunal in *Chimi* and *Ciceri* were wrong to find that *Begum* was relevant in a deportation case under Section 40(3) and that a correct interpretation of the statutory language (that is not inconsistent with *Begum*) leads inextricably to the conclusion that a merits based approach is required where the deprivation order is made under Section 40(3) even if not under Section 40(2). The second strand of Mr Wilding's argument is that in the light of the Court of Appeal judgment in *Ullah v Secretary of State for the Home Department* [2024] EWCA Civ 201, the Upper Tribunal is now bound by precedent to find that a merits based approach is required.
14. Ground 2 argues that the judge's application of the public law approach was legally erroneous because the respondent failed to identify how the false information provided by the appellant in respect of his age and nationality led to, or even had a material bearing, on the decision by the respondent to grant him leave and citizenship.
15. Ground 3 argues that the judge erred by not finding that the respondent's exercise of discretion was undermined by the public law error of assuming that the "limbo" period between the appellant being deprived of citizenship and a subsequent decision in respect of leave, would only be eight weeks when the FOI letter indicated that it is likely that the limbo period would be significantly longer.
16. Ground 4 argues that the Article 8 assessment is undermined by a failure to have regard to the likely extensive limbo period revealed by the FOI letter.

### **Ground 1: the argument that *Ciceri* and *Chimi* are wrongly decided.**

17. Mr Wilding advanced a thoughtful and well-structured argument in respect of the scope of *Begum*, and whether the Upper Tribunal in *Chimi* and *Ciceri* had, as he put it, "taken a wrong turn". He also made a forceful argument about the significance of *Ullah*. The difficulty for Mr Wilding is that, even if he is correct about *Ciceri*, *Chimi* and *Ullah*, it makes no difference in this appeal. This is because, whether the judge applied a merits based or a public law approach to the condition precedent question in section 40(3) of the 1981 Act, the same conclusion would inevitably have been reached, which is that the appellant's British nationality was obtained by means of false representation.

18. In the appellant's citizenship application he acted fraudulently and made a false representation in two distinct ways. First, he lied about his nationality and age, as on the form he gave a nationality and age that was, as he now admits, untrue. Second, he gave a false answer to the question in the application form asking if he had ever engaged in activities relevant to whether he was of good character. Failing to disclose he had lied when applying for asylum and ILR (and was maintaining the lie in the citizenship application) meant that answering this in the negative constituted giving false information.
19. Pursuant to Section 6.1 of the 1981 Act, the respondent is not permitted to grant citizenship to a person who is not of good character. An adult who intentionally (and without a good excuse) lies to the respondent about his nationality and age in an ILR application, and repeats the lie in an application for citizenship, is plainly not someone that the respondent could characterise as a person of good character. Accordingly, the appellant's application for citizenship was only successful because he maintained the lie about his citizenship and age. Had he, in the citizenship application, revealed that he had previously lied when making his application for ILR and was presently lying when making the application for citizenship, his citizenship application would have been refused on good character grounds. It follows, therefore, that the appellant's citizenship was obtained *by means* of his false representation.
20. On the facts in this particular case, the only conclusion open to the respondent - and the only conclusion that a judge deciding the appeal on a "merits basis" could reasonably reach - is that the appellant obtained his British citizenship by means of false representation. As it made no difference to the outcome whether a public law or merits based approach was taken, it is not necessary to decide whether Mr Wilding is correct that *Chimi* and *Ciceri* were wrongly decided.

### **Ground 2: Causal Connection Between the Fraud/False Representation and the Grant of Citizenship**

21. Mr Wilding argued that as the appellant's age and nationality (the matters about which he lied) were not material to his original grant of leave, it is not the case that his citizenship was *obtained by means of* the fraud that he committed. The difficulty with this argument is that even if the initial grant of leave was granted to the appellant irrespective of his age and nationality (such that he would have received it even if he had told the truth), this does not change the fact that he subsequently acted in a way that meant he did not satisfy the good character requirement necessary for a grant of citizenship. If the truth had come to light about the appellant's true identity after his citizenship application was made but before a decision was made on the application, the respondent would have had to refuse the application on good character grounds because the appellant lied about a matter of fundamental importance in the citizenship application. As the fraudulent misrepresentation in the citizenship application needed to succeed in deceiving the respondent for the appellant's application to not be refused on good character grounds, there is a clear causal connection between the fraudulent misrepresentation and the grant of citizenship.

### **Grounds 3 and 4: Significance of the FOI Letter**

22. The FOI letter relied on by the appellant indicates that, on average, there was a period of 257 days between service of a deprivation order and a decision on whether to grant leave. This is significantly longer than the period indicated in the respondent's refusal letter. Mr Wilding argued that the potential for a very

long limbo period (ie the gap between deprivation of citizenship and a later decision on what leave, if any, to grant the appellant) needed to be considered by the respondent when exercising discretion (ground 3) and by the First-tier Tribunal when assessing proportionality under article 8 (ground 4).

23. The difficulty with this argument is that the judge gave cogent reasons as to why the respondent was entitled to give little weight to the FOI letter and why he gave it little weight in the proportionality assessment. These are set out in paragraph 32, and in summary are that: the FOI letter is nearly two years old; the figures given in it are averages; and the figures do not relate to the appellant's specific case. For these reasons, I am satisfied that it was open to the judge to attach little weight to the FOI letter.
24. In any event, any error in respect of the FOI letter would have been immaterial given what is said in the headnote to *Muslija (deprivation: reasonably foreseeable consequences) Albania*[2022] UKUT 00337 (IAC) about exposure to a lengthy limbo period:
  - (4) Exposure to the "limbo period", without more, cannot possibly tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship. That means there are limits to the utility of an assessment of the length of the limbo period; in the absence of some other factor (c.f. "without more"), the mere fact of exposure to even a potentially lengthy period of limbo is a factor unlikely to be of dispositive relevance.
25. In finely balanced cases a lengthy limbo period might tip the balance. However, this is not such a case, given in particular that the appellant's wife and children live in Albania. On the facts of this case, even a very lengthy limbo period could not, on any view, have meant that the appellant's private and family life outweighed the strong public interest in the deprivation of his citizenship.

### **Notice of Decision**

26. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

**D. Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**2.12.2024**