



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003080
UI-2024-003332

First-tier Tribunal No: DC/50111/2023
DC/50112/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of October 2024

Before

UPPER TRIBUNAL JUDGE LOUGHRAN

Between

**EMIRA ALIAJ
LAZAM ALIAJ
(NO ANONYMITY ORDER MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms K McCarthy, counsel instructed by A J Jones Solicitors

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 2 October 2024

DECISION AND REASONS

Introduction

1. In a decision dated 4 June 2024, First-tier Tribunal Judge T Lawrence ('the judge') dismissed Emira Aliaj's appeal and allowed Lazam Aliaj's appeal, I will refer to them as Mrs Aliaj and Mr Aliaj respectively as the judge did. Mrs Aliaj and Mr Aliaj had appealed against the Respondent's decisions dated 26 July 2023 to deprive them of their British citizenships under section 40(3) of the British Nationality Act 1981.
2. Mrs Aliaj appeals with the permission of First tier Tribunal Judge J Le Grys and the Respondent appeals with the permission of First tier Tribunal Judge Cox. I shall refer to Mrs and Mr Aliaj by name when referring to them individually and

the Appellants when referring to them jointly. I shall refer to the Secretary of State for the Home Department as the Respondent.

Background

3. The Appellants are Albanian nationals. Mrs Aliaj was born on 5 October 1981 and Mr Aliaj was born on 23 February 1975. The Appellants are married and live together with their three children.

Immigration History - Lazam Aliaj

4. Mr Aliaj arrived in the UK in 1998 and claimed asylum. He now accepts that he gave a false name, place of birth and nationality in that application, claiming to be a Kosovan national. He also accepts that he maintained the false Kosovan identity and nationality in his screening and substantive asylum interviews.
5. It is the Respondent's position that his asylum application was refused on 21 February 2001 but was withdrawn in 2005, because the original decision had never been served on Mr Aliaj. Mr Aliaj's wrote to the Respondent in 2007, 2008 and 2009 requesting the resolution of his asylum claim. It was also requested that he be considered for a grant of indefinite leave to remain based on his long residence in the UK. On 25 June 2009, Mr Aliaj was granted indefinite leave to remain.
6. On 3 July 2009, Mr Aliaj applied for a Home Office travel document in the false Kosovan identity, which was granted. In the application Mr Aliaj made a declaration that the information he had provided was complete and true to the best of his knowledge.
7. On 26 June 2010, Mr Aliaj applied to naturalise as a British Citizen in the false Kosovan identity, which was granted and Mr Aliaj was naturalised on 19 August 2010. In the application Mr Aliaj again made a declaration that the information he had provided was correct.

Immigration History - Emira Aliaj

8. Mrs Aliaj arrived in the UK in July 2003 and claimed asylum on 1 August 2003. She now accepts that she gave a false name, date and place of birth and nationality in that application, also claiming to be a Kosovan national. Mrs Aliaj had turned 18 years old on 5 October 1999, but on her false date of birth (5 January 1987) would not reach 18 years old until 5 January 2005. Mrs Aliaj maintained the false identity in her asylum interview. On 10 March 2004, the Respondent refused the application (no issue was taken in respect of Mrs Aliaj's identity), but she was granted limited leave to remain until 5 January 2005 on the basis that she was a child.
9. On 29 November 2004, Mrs Aliaj applied for an extension of leave in the false identity. In the application she made a declaration the information she had provided was complete and true to the best of her knowledge. The application remained outstanding and on 5 February 2010 Mrs Aliaj submitted a letter before claim under the pre-action protocol.
10. On 31 August 2010, Mrs Aliaj was granted indefinite leave to remain in the UK in the false Kosovan identity.

11. In 2011, Mrs Aliaj applied to naturalise as a British Citizen in the false Kosovan identity. In the application Mrs Aliaj again made a declaration that the information she had provided was correct. The Respondent wrote to Mrs Aliaj asking her to provide documentation to confirm her identity. On 16 January 2013, Mrs Aliaj's representatives responded saying that Mrs Aliaj was unable to provide such documentation. Mrs Aliaj's representatives also asked the Respondent to note that Mrs Aliaj was from Kosovo and had come to the UK when she was a child. On 28 April 2016, Mrs Aliaj was naturalised as a British Citizen.

The Deprivation decisions

12. On 27 March 2023, the Respondent wrote to Mrs Aliaj informing her that her British Citizenship was under review on account of concerns about her identity.
13. On 19 April 2023, the Appellants provided a joint response informing the Respondent that they had both provided false details in their initial asylum applications but submitting that they had not obtained naturalisation by means of fraud, false representation or concealment of a material fact. The Appellants also submitted that deprivation would adversely impact their youngest child who is severely disabled.
14. On 15 May 2023, the Respondent wrote to Mr Aliaj informing him that his British Citizenship was under review on account of concerns about his identity. He responded on 23 May 2023 reiterating the information he had provided in his joint response with Mrs Aliaj.
15. On 26 July 2023, the Respondent made the decisions to deprive the Appellants of their British citizenship. She concluded that they had obtained British citizenship by means of fraud, false representation or concealment of a material fact and that deprivation action was warranted under section 40(3) of the British Nationality Act 1981 and that it was lawful under section 6 of the Human Rights Act 1998. The Appellants appealed against the decisions.

The Decision of the First-tier Tribunal

16. The judge recorded at [23] that the parties disagreed on the approach to be taken in determining an appeal against a decision taken by the Respondent under sections 40(2) or 40(3) of the British Nationality Act 1981.
17. The judge noted at [25] it was Respondent's position that he must adopt the formulation provided by this tribunal in *Chimi v Secretary of State for the Home Department (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 115 (IAC). In short, the tribunal should first consider whether it was open to the Respondent to conclude that the Appellant satisfied the condition precedent for deprivation, if so whether it was open to the Respondent to exercise her discretion to deprive the Appellant of his British citizenship, and if so whether the reasonably foreseeable consequences of deprivation would be unlawful under section 6 of the Human Rights Act 1998. When considering the first two questions, the tribunal has to apply public law principles, and must only consider evidence which was before the Respondent or which is otherwise relevant to establishing a pleaded error of law in the decision under challenge.
18. The judge outlined the Appellants' submissions at [27]-[37] that he should take a different approach and the Appellants' submission at [31] that *Ullah v*

Secretary of State for the Home Department [2024] EWCA Civ 2021 had 'displaced the effect of *Chimi* and other Upper Tribunal authorities in relation to the approach to be taken to the condition precedent question.'

19. The judge concluded at [38] that he was bound by *Ullah* and must therefore decide for himself as a matter of fact whether Mr Aliaj satisfied the condition precedent i.e. whether he had obtained British Citizenship by dishonest means. The judge noted that the correct approach to the other two questions were as outlined in *Chimi* and remained unaffected by the Appellants submissions.
20. Mrs Aliaj accepted that she had obtained British Citizenship by dishonest means so the different approach only arose in Mr Aliaj's appeal.

The Decision of the First-tier Tribunal - Lazam Aliaj

21. The judge concluded at [40] that the key issue of fact before him was whether Mr Aliaj was dishonest when he ticked 'no' in the question asked in his naturalisation application form as to whether he had engaged in any activities which might indicate that he might be considered of good character. The judge went on at [41] to apply the two-stage test for dishonesty in *Ullah*. He concluded at [41] that although Mr Aliaj's conduct in ticking 'no' in the application form was dishonest, his naturalisation as a British Citizen was not obtained by that dishonesty '*because the evidence indicates that it is more likely than not Mr Aliaj was granted indefinite leave to remain due to his long residence in the UK and the evidence does not establish that it is probable that the Respondent would have pursued Mr Aliaj's deportation to Albania if his genuine nationality had been known when he first arrived in the United Kingdom.*' [50]
22. The judge found that Mr Aliaj had not obtained British Citizenship by dishonesty and therefore allowed his appeal.

The Decision of the First-tier Tribunal - Emira Aliaj

23. As outlined above, Mrs Aliaj accepted that she obtained British Citizenship by dishonest means. The judge identified at [52] that the first question he was required to ask was whether the Respondent materially erred in law when she decided to exercise her discretion to deprive Mrs Aliaj of her British Citizenship.
24. The judge recorded the Appellants' submissions at [53]-[59] that the Respondent had materially erred in this respect by (1) failing to consider the factual situation in relation to the consequences of deprivation, in particular the impact on the Mrs Aliaj's family and evidence regard her youngest child's disability; (2) failing to take account of her decision to also deprive Mr Aliaj; (3) inadequately considering the best interests of the Appellants' children; (4) breaching her *Tameside* (*Secretary of State for Education and Science v Metropolitan Borough Council of Tameside* [1977] AC 1014) duty of sufficient investigation by failing to consult Mrs Aliaj further; (5) telling Mrs Aliaj the limbo period would be 8-12 weeks when a response to a Freedom of Information request of 31 August 2021 indicated that it took much longer.
25. The judge did not consider that the Respondent had materially erred in any of the ways identified in the Appellants' submissions. The judge addressed the Appellants' submissions noting at [60] that the Respondent recorded that she had taken into account all the relevant evidence and finding at [61] the

Respondent had referred to the submissions made by Mrs Aliaj in respect of compassionate circumstances or Human Rights issues and had referred to the evidence provided in respect of the youngest child's health; at [62] the Respondent had addressed her duty to safeguard and promote the welfare of children in the UK and acknowledged that deprivation may have an emotional impact on the Appellants' children; at [63] the Respondent's consideration of proposed deprivation of Mrs Aliaj's citizenship was not inadequate and the Appellants had not identified any features that required further investigation by the Respondent; at [64] there was no unreasonableness or irrationality indicated by the Respondent's stated intention to make a decision on whether to grant Mrs Aliaj leave to remain after the making of a deprivation order and the evidence provided by the Appellants was limited to a historic position and to the average delay at that time. In addition, the judge considered Mrs Aliaj's repeated declarations she had provided accurate and correct information and had chosen not to take multiple opportunities to update her details before she was naturalised were relevant considerations the Respondent was entitled to consider.

26. The judge concluded at [65] that the Appellants' *'stronger point, perhaps, was that the deprivation of Mr and Mrs Aliaj's citizenship arguably might lead inevitably to some adverse impact of the family's financial position'* but concluded that issue was no longer material as he had found the condition precedent for depriving Mr Aliaj had not been met.
27. In respect of Article 8 ECHR, the judge found at [68] that it was in the Appellants' children's best interests to remain living as part of the household with their parents and for Mr Aliaj to carry on working and providing for the family financially and that deprivation of Mrs Aliaj's citizenship would not prevent her from caring for her youngest child and other children and there was no reason to consider their interests would be significantly impacted by the deprivation of Mrs Aliaj's citizenship.
28. The judge noted at [69] the timeframe provided by the Respondent i.e. that a deprivation order would be made within four weeks of Mrs Aliaj's appeal rights being exhausted or receipt of written confirmation she will not appeal the decision whichever is sooner and within eight weeks from the deprivation order being made, subject to any representations made by Mrs Aliaj a further decision would be made to remove her from the United Kingdom. The judge did not consider that the Freedom of Information response cast any doubt on the specific reassurances in this case. The judge concluded at [70] that the foreseeable hardship during the limbo period for Mrs Aliaj and her family would be minimal and insufficient to counterbalance the weight to be placed on 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 in favour of an individual given the perception Mrs Aliaj has perpetrated.

The Appeal to the Upper Tribunal

Application and grant of permission to appeal - Lazam Aliaj

29. On 11 June 2024, the Respondent sought permission to appeal the judge's decision to allow Mr Aliaj's appeal. The Respondent submitted that the judge (1) made a material misdirection of law by placing reliance on *Ullah* as authority to depart from the guidance in *Chimi* and by deciding himself as a matter of fact

whether Mr Aliaj obtained British Citizenship by dishonest means; (2) having found that Mr Aliaj admitted to deception and that he had been dishonest in his application for naturalisation the judge was obliged to consider that that behaviour was material to the assessment of whether an appellant had obtained naturalisation by deception in line with *Onuzi (good character requirement: Sleiman considered)* [2024] UKUT 00144 (IAC). The judge's finding that there was no evidence the Respondent's mistaken belief that Mr Aliaj had no adverse character or conduct issues played any part in the decision to grant him leave is erroneous and perverse because it is impossible for the Respondent to have taken into account concealment of fraud that she was not aware of and it is outlined in paragraph 395C of the immigration rules that the Respondent is obliged to 'take into account character and conduct, especially where there is a evidence of absconding or a history of deception'. By requiring the Respondent to produce a copy of a policy that Albania was not unsafe in 1998 when no such policy existed requires the Respondent to prove a negative. If Albania had been an unsafe location there would have been no need for Albanians to pretend to be Kosovans.

30. Permission was granted on all grounds by First-tier Tribunal Judge Cox on 17 July 2024:

The appeal raises at its core an issue of law in relation to the approach to be adopted by the First Tier Tribunal when considering whether an appellant has obtained British citizenship by dishonest means. The judge arguably erred in finding that they are bound by the Court of Appeal decision in *Ullah v Secretary of State for the Home Department* [2024] EWCA Civ 201, instead of applying *Chimi v The Secretary of State for the Home Department* (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115.

31. Mr Aliaj's representatives provided a response under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In respect of ground 1 it is submitted that the judge was correct to find that the effect of *Ullah* in an appeal against a deprivation decision under section 40(3) of the British Nationality Act 1981 the judge is required to undertake a merits based assessment and is not restricted solely to a public law review. In respect of ground 2, it is submitted that *Onuzi* is of no assistance to the Respondent because it was reported in ignorance of *Ullah* and once the judge found that the effect of *Ullah* is that it is a merits based assessment much of the reasoning of *Onuzi* falls away because the focus of *Onuzi* is on the lawfulness of the Respondent's decision making process. The submissions state that the judge makes specific findings on the evidence and records his findings that that there was no evidence the Respondent's mistaken belief that Mr Aliaj had no adverse character or conduct issues played any part in the decision to grant him leave and there was no evidence had Mr Aliaj provided his correct nationality when he arrived in the UK, the Respondent would have pursued removal.

Application and grant of permission to appeal - Emira Aliaj

32. On 12 June 2024, Emira Aliaj sought permission to appeal the judge's decision to dismiss her appeal. Mrs Aliaj submitted that the judge (1) made a material misdirection in law in by failing to consider whether the Respondent erred in law in deciding to exercise her discretion to deprive Mrs Aliaj of her British Citizenship by rejecting Mrs Aliaj's submission that the Respondent had failed to consider she was depriving Mr and Mrs Aliaj at the same time because he had allowed Mr

Aliaj's appeal when he was required to consider the circumstances at the time the Respondent exercised her discretion; (2) made a material error of law in his consideration of the Respondent's exercise of discretion by (i) failing to address the Mrs Aliaj's submission that the Respondent had failed to consider the evidence pertaining to her youngest son's disability; (ii) acting irrationally in finding that the Appellants representations and evidence did not address the impact of deprivation on the children's education, housing, financial support care or other needs and it was not inevitable Mrs Aliaj's deprivation would impact her youngest child in those areas (iii) misapplying the Respondent's Tameside duty of sufficient investigation because if the Respondent took the view that the representation and evidence was insufficient to show the impact on Mrs Aliaj's family she should have requested further evidence (iv) inadequately considering the Respondent's assessment of Article 8 ECHR by failing to consider the impact of Mrs Aliaj's deprivation on the family unit and failing to determine the length of the limbo period.

33. Permission was granted on all grounds by First-tier Tribunal Judge J Le Grys on 3 July 2024:

2. The grounds assert that the Judge erred in:
 - i. Making a material misdirection in law as to the relevant date of the public law review.
 - ii. Making a material error of law in the consideration of the exercise of discretion.
 - iii. Misapplying the Thameside duty.
 - iv. Inadequate consideration of the Article 8 assessment.

3. I shall take grounds 1 and 2 together. At [38] of the decision the judge records that he considered himself bound by Ullah, and that he must decide for himself as a matter of fact whether the citizenship was obtained by dishonest means. It is arguable that this constitutes a material misdirection on the law, and that Ullah is a case that is confined to its own unique facts, with the focus of both the Upper Tribunal and the Court of Appeal never upon Begum. If this were found to be a material misdirection on the law, it is arguable that the Judge's analysis in respect of both grounds 1 and 2 would necessarily be infected by this error as a result.

4. Grounds 3 and 4 relate to separate matters but are closely linked to the arguable grounds. Permission is therefore granted on all grounds.

34. The Respondent provided a response under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The Respondent notes her challenge to the decision in respect of Mr Aliaj and submits that the approach taken by the judge in respect of the two Appellants is contradictory. In respect of the challenge to the decision in respect of Mrs Aliaj, the Respondent submits (1)(i) it is unclear how the argument that the Respondent failed to consider that she was also depriving Mr Aliaj of his British Citizenship assists Mrs Aliaj in the circumstances where his appeal was allowed (ii) the judge properly found that the Respondent had considered the evidence in respect of Mrs Aliaj's youngest son; (iii) the submission that the Respondent misapplied her Tameside duty of sufficient investigation is erroneous, a disagreement with the judge's findings at paragraph 63 of the decision and an attempt to re-argue the case (vi) the judge's findings in respect of Article 8 ECHR are sound and adequate and considers the Freedom of Information request evidence relied on by Mrs Aliaj.

Submissions

35. I heard detailed submissions from Ms Carthy and Ms Ahmed which along with the written pleadings I have fully taken into account.

Analysis

Lazam Aliaj

36. The first issue I am required to determine is whether the judge erred in finding that *Ullah* required him to depart from the guidance given by this tribunal in *Chimi*. This tribunal's guidance in *Chimi* that the role of the tribunal in a deprivation case is to review the Respondent's decision as to the existence of the condition precedent and exercise of discretion is based on the principles in *R (Begum) v Special Immigration Appeals Commission* and another [2021] UKSC 7.
37. The judge considered that *Ullah* required him to depart from the guidance in *Chimi* and instead of reviewing the Respondent's decision decide for himself as a matter of fact whether Mr Aliaj obtained British Citizenship by dishonest means.
38. I note that a judgment of the Court of Appeal is binding on the First tier Tribunal. However, this tribunal's decision in *Chimi* is also binding on the First tier Tribunal: *BPP Holdings v Revenue & Customs Commissioners* [2016] 1 WLR 1915, at [25] and [35].
39. The judge notes at [36] that in giving judgment in *Ullah* Green LJ did not refer to *Begum*, or to *Ciceri* or *Chimi*. In the rule 24 response, it is submitted that the Court of Appeal in *Ullah* 'had before it all of the relevant authorities vis a vis deprivation' and that annexed to the 24 response is the index to the authorities bundle in *Ullah*. It is also noted that submissions were made on those authorities by the Respondent. The index to the bundle of authorities in *Ullah* is not annexed to the rule 24 response on CE file or in the bundle prepared by Mr Aliaj's representatives for the hearing.
40. It is clear from the Weekly Law Report of *Ullah* - [2024] 1 WLR 4055 - that *Ciceri* and *Chimi* were before the Court of Appeal. However, given that they are not addressed at all it is clear that the Court of Appeal did not express a view about the correctness of that caselaw. A judgment that does not address the lawfulness (or otherwise) of the guidance given in *Chimi* does not stand as an authority for the proposition that the guidance given in *Chimi* is wrong.
41. I am satisfied that by failing to follow the guidance in *Chimi* and deciding for himself as a matter of fact whether Mr Aliaj obtained British Citizenship by dishonest means the judge materially erred in law. This infected the judge's entire consideration of Mr Aliaj's appeal. I therefore set aside the decision in respect of Mr Aliaj.
42. In respect of the Respondent's ground two I am satisfied that the judge was obliged to consider Mr Aliaj's repeated failure to inform the Respondent of his correct identity including in his application for naturalisation. By reference to what was said in *Onuzi*, the judge's analysis was therefore unsustainable for a reason wholly unconnected to his misdirection in respect of *Ullah*.

Emira Aliaj

43. I am also satisfied that that the judge materially erred by finding that he did not have to engage with Mrs Aliaj's submission that the Respondent had materially erred in law in deciding to exercise her discretion to deprive Mrs Aliaj of British Citizenship by failing to consider that Mr Aliaj was being deprived of his British Citizenship at the same time and the consequent impact on their family.
44. As outlined in *Chimi* the judge was obliged to consider whether the Respondent materially erred in law when she decided to exercise her discretion to deprive Mrs Aliaj of British Citizenship. The fact that the judge had subsequently found that the condition precedent for depriving Mr Aliaj of his citizenship had not been met did not mean that it was no longer a material issue as the judge found. As the Upper Tribunal said in *Kolicaj (Deprivation: procedure and discretion)* [2023] UKUT 294 (IAC): "even if the decision of the Secretary of State in relation to the condition precedent is free of public law error, the decision might nevertheless be unlawful where she fails to exercise her discretion, or where the exercise of that discretion is itself tainted by public law error."
45. Alternatively, as I am satisfied that the judge erred in finding that the condition precedent for depriving Mr Aliaj of his citizenship had not been met this error infected his consideration of Mrs Aliaj's appeal. In addition to failing to consider whether the Respondent had erred in law in failing to include it in her consideration of whether to exercise her discretion the judge also conducted his Article 8 ECHR assessment on the basis that Mr Aliaj had not been deprived of his British Citizenship. This is wrong for the reasons I have already given.
46. I am not persuaded by Mrs Aliaj's other grounds and consider them to simply be an attempt to reargue Mrs Aliaj's appeal before First tier Tribunal. However, given the impact of the errors I have identified I do not consider it appropriate to preserve any findings of fact in this case and I therefore set aside the decision in respect of Mrs Aliaj with no findings preserved.

Notice of Decision

47. For the reasons given the judge made a material errors of law in respect of both Appellants. Accordingly, the determination dated 4 June 2024 is set aside. There are no sustainable findings.
48. There will need to be a fresh hearing. Applying the guidance in *AEB v SSHD* [2022] EWCA Civ 1512, taking into account the nature and extent of the fact finding needed in this case, I remit the matter to the First-tier Tribunal to be re-heard by a different judge.

G.Loughran

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 October 2024