JR/4936/2019 (V)

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of S D

Applicant

v

The Secretary of State for the Home Department

Respondent

Before Upper Tribunal Judge Frances

Application for judicial review: substantive decision

Having considered all documents lodged and having heard the parties' respective representatives, Mr C Jacobs, of Counsel, instructed by Ahmed Rahman Carr Solicitors, on behalf of the Applicant and, Ms J Anderson of Counsel, instructed by the Government Legal Department, on behalf of the Respondent, at a remote hearing at Field House, London on 16 November 2020 which has been consented to by the parties.

The form of the remote hearing was video by Skype. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in bundle of 502 pages, the contents of which I have recorded. The order made is described at the end of these reasons.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the applicant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the applicant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

JUDGMENT

1. The applicant challenges the respondent's decision of 23 July 2019 granting leave to remain under the restricted leave to remain policy following a decision to deprive him of British citizenship.

2. The applicant is a Turkish national born on 15 November 1973. He arrived in the UK in February 2002 and was granted indefinite leave to remain [ILR] in recognition of his refugee status on 2 June 2003. He was naturalised as a British citizen on 12 November 2007.

3. In extradition proceedings concluded in the Westminster Magistrates' Court in December 2012, the District Judge [DJ] found that when the applicant applied for asylum, he deliberately failed to disclose his previous convictions in Turkey. The DJ concluded that the applicant was at real risk of Article 3 treatment on return to Turkey and dismissed the extradition proceedings.

4. On 28 July 2017, the Respondent made a decision to deprive the applicant of his British citizenship under section 40(3) of the British Nationality Act 1981 [the deprivation decision]. The applicant's appeal was allowed by the First-tier Tribunal but dismissed on appeal to the Upper Tribunal on 23 May 2018 [the deprivation appeal]. Edis J and Deputy Upper Tribunal Judge McGeachy found that the applicant deliberately concealed his previous convictions in his asylum application and in his application for British citizenship. Permission to appeal was refused by Underhill LJ on 17 October 2018. The applicant was served with a deprivation order on 23 July 2019 and granted restricted leave to remain [RLR].

5. The applicant has the following previous convictions in Turkey prior to coming to the UK:

    a. July 1994: Convicted of three counts of robbery and membership of a proscribed organisation. Sentenced to life imprisonment.

    b. December 1995: Convicted of murder and possession of a firearm. Sentenced to 20 years and 5 months imprisonment.

    In October 2001 the applicant was temporarily released from prison in Turkey on health grounds. He left Turkey and came to the UK in February 2002.

Relevant legal provisions

6. The RLR policy states:

    Application of the restricted leave policy

Restricted leave is a form of leave outside the Immigration Rules granted to certain individuals who cannot be removed from the UK because to do so would be a breach of their human rights.
Restricted leave will normally be granted where a foreign national

- is excluded from protection under Article 1F of the Refugee Convention or from a grant of humanitarian protection under paragraph 339D of the Immigration Rules
- would be excluded had they made a protection claim
- would be excluded from protection and a previous protection claim was refused without reference to Article 1F of the Refugee Convention or paragraph 339D of the Immigration Rules
- is subject to Article 33(2) of the Refugee Convention because they are a danger to the security of the UK
- is subject to Article 33(2) of the Refugee Convention having been convicted by final judgment of a particularly serious crime they pose a danger to the community of the UK and where their removal would breach their human rights.

…….
Restricted leave cases must be reviewed regularly with a view to removal as soon as possible. If there is no longer an ECHR barrier to removal, the individual will not qualify for a further grant of restricted leave and enforcement action must be prioritised. An ECHR barrier to removal includes, but is not limited to:

- Article 2 – right to life
- Article 3 – prohibition of torture
- Article 6 – right to a fair trial
- Article 8 – right to respect for private and family life

It is in the public interest to seek the removal of an individual subject to the restricted leave policy. It is for this reason that cases are reviewed regularly and individuals excluded from qualifying for ILR under the Immigration Rules. It is only in exceptional circumstances that an individual granted restricted leave will be granted ILR. Where a decision has been taken to grant ILR on the basis of exceptional circumstances, which is likely to be rare, this would be granted outside of the Rules.

7. The relevant sections of the Refugee Convention are set out below:

> **Article 1A(2):** "As a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."
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> **Article 1C(3) :** "This Convention shall cease to apply to any person falling under the terms of section A if he has acquired a

new nationality and enjoys the protection of the country of his new nationality.

Article 1F: "This Convention shall not apply to any person with whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

8. In Deliallisi (British citizen: deprivation appeal: Scope) [2013] UKUT 00439 (IAC), the Tribunal made the following relevant findings:

> "46. As can be seen, the general provisions in the 1971 Act regarding leave to enter and remain are expressly stated not to apply where a person is a British citizen. We do not consider that it is compatible with the scheme of that Act to regard indefinite leave to remain (or any other sort of leave) as having some sort of vestigial existence, whilst the person concerned remains a British citizen. A person cannot be both a British citizen and concurrently subject to indefinite leave to remain. Upon becoming such a citizen, the appellant became a person to whom section 1(1) applied. As Mr Deller put it, the appellant's indefinite leave to remain simply ceased to exist.
>
> 52. … We reiterate that it is incoherent with the legislation to assume indefinite leave to remain can remain extant, in the case of a person who is a British citizen, or that, without express statutory provision, such leave automatically reappears on deprivation of that citizenship.
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> 53. Accordingly, for the purposes of these proceedings, we find that, were the appellant to be deprived of British citizenship, he would not fall to be treated as a person having indefinite leave to remain in the United Kingdom."

9. In Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 00128 (IAC), in relation to status on deprivation, the Tribunal concluded:

> 93. Further, in deprivation matters, where refugee status was granted on a true understanding of relevant facts, the subsequent securing of British citizenship brings into operation the second paragraph of article 1A(2) that

provides if a person has more than one nationality, the term 'country of his nationality' shall mean each of the countries of which he is a national. This is consistent with the surrogacy principle. If a recognised refugee acquires British citizenship, then by operation of article 1C(3), his Convention status ceases because he enjoys the protection of the country of his new nationality. Paragraph 132 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees details that where refugee status has terminated through the acquisition of a new nationality, and such new nationality has been lost, depending on the circumstances of such loss, refugee status may be revived. However, revival is not automatic and therefore must be applied for. In the appellant's matter it is clear that the original claim for international protection was made on a false basis and he could never meet the requirements of article 1A(2). Even if he wished to seek to 'revive' his former status based on his original claim it would be an application devoid of merit.

94. The cessation provision of article 1C(3) of the 1951 Convention is mirrored by Council Directive 2004/83/EC of 29 April 2004, the Qualification Directive, at article 11(1)(c) and has been transposed into domestic law by paragraph 339A(iii) of the Immigration Rules.

95. The Tribunal confirmed in *Deliallisi*, at [43]-[53], that upon deprivation a foreign national does not continue to enjoy ILR which had been granted prior to acquiring citizenship. The power to grant leave to enter or remain under section 3 of the Immigration Act 1971 ('the 1971 Act') is limited to those persons subject to immigration control. ILR is a status enjoyed by persons who do not possess a right of abode in this country and so it simply ceases upon a recipient becoming a person to whom section 1(1) of the 1971 Act applies. Whilst the respondent enjoys discretion to grant ILR consequent to deprivation, we are satisfied that there is no process in place by which automatic revival of such status can occur upon deprivation of British citizenship. The leave system is a permissive system of immigration control and revival is a significant and far reaching legal concept, particularly as to settled status, that requires express statutory provision that it be intended. There is no revival of previously held ILR status upon deprivation."

The applicant's grounds and submissions

10. The applicant's primary position is that the respondent could not lawfully have made a grant of RLR under the RLR policy unless and

until she had either revoked the applicant's refugee status or excluded him from the protection of the Refugee Convention with reference to Article 1F.

11. The applicant submits the respondent failed to consider Article 1F and part 11 of the Immigration Rules. The respondent could rely on her policy if the applicant had been formally excluded from protection under the Refugee Convention (paragraph 339 of the Immigration Rules) and he had failed to exercise a right of appeal or had been unsuccessful on appeal against the decision to exclude him.

12. Mr Jacobs referred to the decision of 23 July 2019 [RLR decision] and submitted the respondent had erroneously applied the RLR policy to the applicant without determining whether he met the criteria of that policy. Given the draconian nature of the RLR policy, the respondent was required to take a procedural step before invoking the policy i.e. granting leave to remain as a refugee, revoking refugee status or applying Article 1F which would give rise to a right of appeal.

13. The respondent's position that the applicant had to make a fresh asylum claim, following [93] to [95] of Hysaj, was incorrect. Mr Jacobs submitted the respondent could not lawfully have made a grant of RLR unless and until she had revoked the applicant's refugee status or excluded him from the Refugee Convention with reference to Article 1F. The RLR decision did not deal with exclusion (actual or hypothetical) which was required by the terms of the RLR policy.

14. In addition, the respondent granted leave in line with findings which were not made by the Upper Tribunal in dismissing the applicant's appeal against deprivation of citizenship. The Upper Tribunal did not consider whether the applicant would be excluded under Article 1F.

15. Mr Jacobs submitted the facts of this case were unusual and compelling. He referred to the extradition decision of DJ Zani dated 11 December 2012. In summary, the applicant disputes the murder of his sister and his first conviction was arguably a political crime. There was no factual determination on these issues.

16. The DJ found that there was a real risk that, in the event of the applicant's return to prison in Turkey, his Article 3 rights would be breached by reason of his ethnicity linked with his political views. Mr Jacobs submitted this factual finding demonstrated that the applicant was still at risk of persecution if returned to Turkey. This finding was not challenged and was not considered by the Upper Tribunal in the deprivation appeal. Mr Jacobs submitted that at the time of the respondent's referral for approval of deprivation of citizenship (10 April 2017), the respondent could not have known that the applicant

would not have been granted asylum because relevant factual findings had not been made.

17. Mr Jacobs submitted the deprivation decision was made under section 40(3) British Nationality Act 1981. The decision was not made on the basis that the applicant would not have been granted asylum. There had been no consideration of whether the applicant had been convicted of 'trumped up' charges. The issue on deprivation was whether the applicant had concealed a material fact. There had been no factual finding and no decision that the applicant would be excluded from protection under Article 1F.

18. Mr Jacobs submitted the RLR policy did not apply to those with an ongoing fear of persecution. The policy was draconian in nature and prevented the applicant from building a private life in the UK because the intention was to remove undesirable persons as soon as possible. The applicant was not removable and therefore he was left 'in limbo'. His presence was tolerated while the respondent explored whether he could be removed.

19. Mr Jacobs stated the RLR policy was predicated on exclusion. The applicant's position was that there was no finding under any of the relevant bullet points or they did not apply, save that the applicant's removal would breach his human rights. Mr Jacobs submitted that where there was an extant fear of persecution there had to be a finding that the applicant would be excluded. The respondent did not dispute the findings of DJ Zani that the applicant had a well-founded fear of persecution or the evidence that the applicant had been convicted of 'trumped up' charges. The grant of leave had to be in line with the RLR policy, but the factual findings were absent.

20. Mr Jacobs submitted the provisions of Article 1A(2) could not be treated as a nullity when the applicant acquired British citizenship because he maintained a well-founded fear of persecution. Paragraph 132 of the UNHCR Handbook anticipated this scenario and recognised there may be circumstances in which refugee status *may* be revived. This paragraph was relevant to the application of Article 1C(3) where a well-founded fear remained. There had to be a process whereby Refugee Convention protection could be revived. The respondent had to look at the circumstances of the loss of citizenship and determine if the applicant was excludable for the purposes of the RLR policy.

21. It was accepted by the DJ in December 2012 that the applicant had a well-founded fear of persecution. There had been no material change in Turkey and the applicant had lost his British nationality because he failed to disclose a material fact. This did not detract from his underlying asylum claim and there had been no finding on exclusion.

There was no reason from the respondent why Article 1A(2) was not engaged. The respondent had to give effect to this.

22. Mr Jacobs submitted there was no reason why protection under the Refugee Convention should not continue now that Article 1C(3) had fallen away. There was no procedure or primary legislation supporting the respondent's position that the applicant's protection under the Refugee Convention was extinguished when he acquired British citizenship. The respondent was required to give effect to the Refugee Convention by granting a form of leave commensurate with Refugee Convention protection.

23. Alternatively, the respondent should issue a decision, acknowledging the grant of refugee status, but excluding the applicant under Article 1F. This decision would generate a right of appeal and if the applicant was not successful, the respondent had the necessary criteria to apply the RLR policy.

24. The decision of the Upper Tribunal in Hysaj had not been promulgated when permission for judicial review was granted in this case. Mr Jacobs submitted that Hysaj could be distinguished on its facts. In that case the appellant was not a refugee and had never enjoyed Refugee Convention status because he was Albanian not Kosovan. The Tribunal's conclusions at [93] (see above) were *obiter* because there were no arguments or submission on the points raised therein. The decision was not binding but illustrative of current thinking. Alternatively, the conclusion that revival was not automatic and must be applied for was wrong. The fact that revival was not automatic did not mean the respondent did not have to give effect to Article 1A(2) and issue a decision which brought about the continuation of protection. The respondent could not apply the RLR policy without determining those matters. The respondent could not rely on the absence of procedural provision.

25. In response to a question from me, Mr Jacobs submitted it was not appropriate for the applicant to make an asylum application because the applicant had already discharged the burden of proof in 2003 and, after depriving the applicant of British citizenship, it was for the respondent to determine the basis of the grant of leave. At that point, the respondent had to decide if the applicant was entitled to Refugee Convention protection or whether the applicant was excluded. The respondent must issue a decision to that effect. The respondent could not make a decision under the RLR policy until she demonstrated that the policy applied. It was not appropriate to require the applicant to remedy the unlawfulness. There was no dispute the applicant still held a well-founded fear of persecution. It was for the respondent to prove exclusion. The respondent had to make a decision on this issue

at the point of deprivation of citizenship. In this case the respondent had applied the wrong policy.

26. Mr Jacobs accepted that the grant of British citizenship extinguished the applicant's ILR, but not the applicant's protection under the Refugee Convention because the applicant met the requirements of Article 1A(2) unless and until the respondent showed otherwise. The applicant had been recognised as a refugee and that decision had not been revoked, notwithstanding he had changed his status. Mr Jacobs submitted that recognition as a refugee continued not withstanding British citizenship. There had been no material change in circumstances save for the application of Article 1C(3) which no longer applied.

27. In response to a question from me, Mr Jacobs submitted the applicant's disclosure of his previous convictions did not amount to a material change in circumstances because there had been no finding of fact made as to whether, in the applicant's case, prosecution amounted to persecution.

28. Mr Jacobs submitted there had been procedural unfairness in this case. Hysaj was wrongly decided and there was no procedural bar to the respondent issuing a decision stating that Article 1F applied. The Refugee Convention and paragraph 11 of the preamble of the Qualification Directive 2004/83/EC required this. It was a simple procedural step, issuing a decision with a right of appeal, prior to considering the form of leave. There did not have to be a prescribed procedure for this to happen.

29. The Refugee Convention was binding. Article 1C(3) should be applied in accordance with paragraph 132 of the UNHCR Handbook. The respondent had to look at the circumstances. It was incumbent on the respondent to consider the deprivation decision and decide if it would breach international instruments not to revive underlying refugee protection. This was not automatic and required a procedural step by the respondent.

30. Mr Jacobs agreed there had to be an assessment of the applicant's asylum claim, but this had to be done by the respondent before considering whether to grant leave to remain. The decision to grant RLR was unlawful because the respondent had not addressed exclusion.

31. Section 3 of the Immigration Act 1971 enabled the respondent, at the point of deprivation, to consider the basis for a grant of leave. The respondent could grant leave under the Refugee Convention or defer

the grant of leave until she had decided whether the applicant should be excluded.

32. Mr Jacobs referred to [43] of Deliallisi and submitted, in that case, the appellant was never entitled to ILR. In this case, it was accepted the applicant was a refugee and that he continued to have a well-founded fear of persecution. Even if the applicant cannot concurrently have British citizenship and ILR, the respondent was not prevented from granting ILR or another form of leave until the 'exclusion question' was resolved. Had the respondent made a decision there would have been a right of appeal under section 82(1)(c) of the Nationality, Immigration and Asylum 2002 Act.

33. Mr Jacobs submitted the respondent had a discretion to grant ILR and therefore there was a process in place to revive ILR status. It was for the respondent to decide in what circumstances the applicant's status could be revived.

34. The RLR decision did not deal with exclusion and did not say why the RLR policy applied. There had to be a finding that the applicant met the criteria in the RLR policy. The respondent proceeded on the basis of Upper Tribunal findings which did not exist. Mr Jacobs accepted that the Upper Tribunal was not obliged to make findings on exclusion in the deprivation appeal, but the respondent treated this decision as if the Upper Tribunal had made findings on exclusion.

35. The respondent stated in response to the pre-action protocol letter that she was granting leave in line with the Upper Tribunal's findings. Mr Jacobs submitted the rationale was that, because the applicant had concealed a material fact when applying for British citizenship, the RLR policy applied. This was the only justification offered by the respondent. There was no consideration of the underlying refugee claim or Article 1F. These issues were still extant and should have been considered by the respondent. The respondent proceeded on an erroneous basis, acted unlawfully and in a manner which was procedurally improper.

The respondent's grounds and submissions

36. Ms Anderson addressed the challenge to the form and substance of the RLR decision and submitted the applicant's RLR expired on 23 January 2020 and, therefore, any challenge to the RLR decision was academic. She referred to the respondent's explanatory letter of 24 January 2020 which set out the position at the time the RLR decision was made. The two points raised in the grant of permission to apply

for judicial review were academic. The reasons for the decision were clear.

37. Ms Anderson submitted there was no issue with the applicant's immigration history and the applicant's citizenship had come to an end. At this stage something had to be done, the issue was by whom. The RLR policy applied to those who would be excluded under Article 1F. *Prima facie* the applicant's criminal convictions would lead to exclusion. There was a fundamental difference between Article 1F and Article 33(2). If Article 1F applies a person is outside the scope of the Refugee Convention. Under Article 33(2) a person is within the Convention but excluded from protection from refoulement.

38. The application of the RLR policy to the applicant did not leave the applicant 'in limbo' following R (MS (India)) v SSHD [2017] EWCA Civ 1190 at [109]. Notwithstanding the restrictions under the policy, the applicant could pursue his private life.

39. Ms Anderson submitted the issue before the Tribunal was whether the applicant should make an asylum claim or the respondent should make a further decision. The deprivation decision dated 28 July 2017 at 34) stated:"

> "Once you have been deprived of citizenship, you will not revert to refugee status and you will not have leave to remain in the UK. It will be open to you to make a claim under the Refugee Convention. You may be granted a form of leave to remain if there are barriers to your removal. In any event, your position will remain under review.

The position was made clear to the applicant and there was no procedural unfairness. There was no challenge to this part of the deprivation decision.

40. The fact of the applicant's convictions was not disputed. Ms Anderson submitted the applicant is not prevented from putting forward his asylum claim in which he challenges the basis of his convictions. The applicant has not made an application under the immigration rules and any grant of leave would have to be outside the immigration rules. There was no other form of leave appropriate, save for refugee leave, but the respondent was not obliged to grant such leave where there was no application for asylum. There was no extant grant of refugee status.

41. Ms Anderson submitted refugee status was different to being a refugee. There was a distinction between the Refugee Convention in international law and recognition as refugee on the basis of an application. The applicant obtained refugee status on an erroneous

basis. His refugee status had changed by operation of law. The appropriate solution was for the applicant to make an asylum claim so that his claim could be examined in the right context and appropriate findings made.

42. The Tribunal could not make those findings in this application for judicial review and it was not for the respondent to pre-emptively decide the applicant's claim. It was not appropriate for the respondent to make a decision on exclusion on the basis of evidence from other sources until the applicant had positively put forward his claim disclosing all relevant matters. This was not procedurally preferable even if technically possible.

43. There was no reason why the applicant had not made an asylum claim. He had been put on notice in the deprivation decision. It would be procedurally unfair for the respondent to decide the applicant's claim without giving the applicant an opportunity to put forward his case.

44. Ms Anderson submitted the applicant had been granted leave on the basis he was a refugee, but his leave had been extinguished. There was no underlying entitlement because the applicant's asylum claim had never been properly determined. If Article 1F applied the applicant was never within the scope of the Refugee Convention. He was in the same situation as the Albanian appellants claiming to be Kosovan. If nothing had changed, save for cessation due to the grant of nationality, then there had to be a new decision on entitlement to refugee status. Being a refugee in the past was not sufficient because recognition did not exist. The applicant had to apply again and a new recognition decision had to be made. The application had to be made on the current facts.

Applicant's response

45. Mr Jacobs submitted the letter of 24 January 2020 post-dated the grant of permission and had nothing to do with the decision under challenge. The applicant was not challenging the period of leave, he was challenging the application of the RLR policy. The RLR decision of 23 July 2019 was unlawful. The fact that the applicant had chosen not to make another application did not make this application for judicial review academic. The Tribunal could still make a declaration. The respondent accepted that there was a live issue as to what should be done.

46. Mr Jacobs accepted that Article 33(2) did not apply. In MS (India) exclusion decisions had been made. The RLR policy could not apply to

the applicant unless something was done to make it applicable. There were statements before the First-tier Tribunal stating that the applicant had not murdered his sister. The respondent was a party to these proceedings and the material was before her. It was unlawful and unreasonable to require the applicant to make a fresh asylum claim. Nothing had changed. There had been no revocation decision. The factual basis of the applicant's claim was restated and accepted by the DJ in the extradition proceedings. The applicant's account of torture was accepted and it was unreasonable for a victim of torture to be re-traumatised to enable the respondent to make a decision on exclusion when the burden was on the respondent.

47. Mr Jacobs submitted that a decision under Article 1A(2) survived Article 1C(3) where there was a deprivation decision and refugee status was extant. Where nothing had changed in relation to the applicant's well-founded fear it was unfair to require the applicant to make a claim. The respondent could have accepted this position and indicated she was considering her position. The applicant did not accept the notice in the deprivation decision of 28 July 2017 and this letter did not prevent any unfairness in the decision making process.

48. The issue was whether Article 1F applied and the applicant was excluded from the protection of the Refugee Convention. The applicant was a *prima facie* refugee in 2003 and it was for the respondent to prove exclusion. It was not right to say asylum was granted on a false basis. There had to be an exclusion decision.

49. Mr Jacobs did not accept that what had previously been granted had fallen away. The issue was whether the applicant's rights under the Refugee Convention were subject to exclusion. The applicant would have a right of appeal and an opportunity to be heard. There was an extant Article 1A(2) claim. UNHCR guidance should be taken into account.

50. It was not possible to revive refugee status in Hysaj because it never existed. This issue had to be resolved before the RLR policy could be applied. The rights under the Refugee Convention were substantive and what was said in Hysaj was not binding because the Upper Tribunal did not hear argument on this point. There should be a procedural step before the respondent could apply the RLR policy.

51. Mr Jacobs submitted the respondent had acted unreasonably and unlawfully in applying the RLR policy which should not have been applied in this case. The respondent had to deal with exclusion when considering the course of action to take after the deprivation of citizenship.

Conclusions and reasons

52. It is accepted that the applicant's ILR was extinguished when he became a British citizen. The Immigration Act 1971 does not apply to British citizens. The applicant cannot be a British citizen and concurrently subject to ILR. The applicant's grant of ILR as a refugee was extinguished on 12 November 2007 when he was naturalised as a British citizen.

53. Article 1C(3) of the Refugee Convention provides that the Convention shall cease to apply to any person falling under the terms of section A if he has acquired a new nationality, and enjoys the protection of the country of his new nationality. The Immigration Rules provide at paragraph 399A(iii) that the Refugee Convention ceases to apply when the applicant has acquired a new nationality and enjoys the protection of the country of his new nationality. Article 11(1)(c) of the Qualification Directive states that a third country national or stateless person shall cease to be a refugee if he or she has acquired a new nationality and enjoys the protection of his or her new nationality.

54. I find that the applicant's recognition as a refugee ceased when he was granted British citizenship on 12 November 2007. Article 1C(3) expressly provides that the Refugee Convention *shall* cease to apply to a person who met the requirements of Article 1A(2) if he has acquired a new nationality and enjoys the protection of that new nationality. Article 11(1)(c) makes it clear that the applicant's refugee status ceased when he became a British citizen.

55. I am not persuaded by Mr Jacobs' submission that the applicant met the requirements of Article 1A(2) unless and until the respondent showed otherwise. The applicant's refugee status ended by operation of law. It did not require the respondent to revoke recognition as a refugee. Further, the applicant could not be a refugee whilst he held British citizenship because he was not 'outside his country of nationality'. I find that the applicant's refugee status was extinguished on 12 November 2007.

56. I am not persuaded that refugee status remains extant on the acquisition of British citizenship for the reasons given above and the UNHCR Handbook does not lead to an alternative interpretation. The term 'revived' means to bring something back to life, health, existence or use. The applicant's leave or refugee status has to have lapsed or become unavailable before it can be revived. The UNHCR handbook states that refugee status *may* be revived. The mechanism

by which it can be brought back into existence is the subject of this judicial review application.

57. There was no dispute that the decision to deprive the applicant of British citizenship did not operate so as to revive or re-instate the applicant's previous grant of ILR or refugee status. The applicant's appeal against the deprivation decision was dismissed. The applicant has no outstanding applications.

58. The Upper Tribunal, in the deprivation appeal, did not decide whether the applicant should be recognised as a refugee on deprivation of citizenship. The applicant submitted that the respondent should have considered whether the applicant was entitled to a grant of indefinite leave to remain as a refugee when she made the order depriving him of citizenship.

59. It is the applicant's position that he is still a refugee. However, I am of the view that this, in itself, does not entitle him to remain lawfully in the UK. He has to obtain recognition of refugee status. There is a mechanism in place to achieve this. He can apply for asylum. Mr Jacobs submits that it is unreasonable to require the applicant to do so because the burden is on the respondent to show that he would be excluded under Article 1F. I disagree for the reasons set out below.

60. The applicant's grant of refugee status in 2003 was not based on a true understanding of the relevant facts. There is no dispute that he failed to disclose previous convictions of serious criminal offences. The respondent has not considered these convictions or the applicant's account disputing these convictions because this account has never been put before the respondent. It is not appropriate for the respondent to rely on the applicant's evidence in the extradition proceedings. The respondent was not a party to those criminal proceedings and they were not determinative of whether the applicant was entitled to be recognised as a refugee notwithstanding his previous convictions. The applicant can rely on his previous asylum application and his current well-founded fear. He will not be re-traumatised given that his account of torture is accepted.

61. It is not appropriate for the respondent to decide the applicant's entitlement to refugee status in the absence of an application for asylum. A decision that the applicant should be excluded under Article 1F without giving the applicant an opportunity to put forward his own account in full would be procedurally unfair. It is not appropriate to rely on the evidence and findings in the extradition proceedings, absent witness statements and evidence from the applicant, in a decision to exclude the applicant from the Refugee Convention.

62. There has been a material change in circumstances since the applicant was granted refugee status in 2003. He has disclosed previous convictions for serious criminal offences. The applicant has to show that he is a refugee on the basis of his current circumstances. I agree with Mr Jacobs that there has been no factual determination of the issues relevant to exclusion. The most appropriate way to resolve this is for the applicant to make an application for asylum. He is not prevented from doing so by virtue of a grant of RLR (now expired).

63. The purpose of the RLR policy is to grant a form of leave to those persons who are not entitled to protection under the Refugee Convention and they cannot currently be removed because to do so would breach their rights under the ECHR. It is clear on the facts of this case that Article 33(2) does not apply. The applicant is under no misapprehension that the policy was applied to him because the respondent considered that he would have been excluded under Article 1F. Any defect in the form or substance of the deprivation decision was not material.

64. The RLR policy does not require a formal decision excluding the applicant from the Refugee Convention under Article 1F. The policy applies to the applicant's situation because if he made a claim for asylum there are serious grounds for considering that he has been convicted of a serious crime. On the material before the respondent, the applicant would be excluded if he made a protection claim.

65. There was no misunderstanding of the decision of the Upper Tribunal in the applicant's deprivation appeal. The Tribunal upheld the respondent's decision to deprive the applicant of British citizenship. As such the applicant had no lawful status to remain in the UK. The grant of RLR prevented the applicant from remaining in the UK unlawfully, given he could not be removed to Turkey. The grant of RLR was in line with the Upper Tribunal's findings. Any failure to refer to exclusion was not material.

66. There was no requirement under the policy to make a decision, that the applicant be excluded from the Refugee Convention, attracting a right of appeal. The DJ in the extradition proceedings concluded that the applicant would be at risk of treatment in breach of Article 3. He had no jurisdiction to conclude that the applicant was a refugee. Whilst the factual position may support a conclusion that the applicant was at risk of serious harm and/or persecution, whether the applicant was entitled to be recognised as a refugee was a matter for the respondent. The decision of the DJ was not capable of re-affirming the applicant's right to recognition as a refugee after disclosure of his previous convictions.

67. There was no obligation on the respondent to give reasons for applying the applicable policy. A lack of reasoning did not render the decision unlawful: R (on the application of MS) v Secretary of State for the Home Department (excluded persons: Restrictive Leave policy) IJR [2015] UKUT 00539 (IAC).

Summary

68. I am not persuaded that that Deliallisi or Hysaj are wrongly decided or distinguishable on their facts. The applicant's refugee status was extinguished when he became a British citizen. There can be no entitlement to a new grant of ILR on the basis that it was granted in the past by reference to a decision made without consideration of the true position that the applicant had committed a serious crime. Past recognition cannot be relied on because it did not take into account the applicant's non-disclosure of previous convictions.

69. The RLR policy does not require the respondent to have made a formal decision that the applicant is excluded from protection under the Refugee Convention. On the facts of this case, the applicant would have been excluded had he made an application. The respondent's conclusion that the RLR policy applied was not unlawful or irrational.

70. The respondent was not required to take a procedural step after the deprivation citizenship and prior to invoking the RLR policy. The was no procedural unfairness in the decision making process because the applicant was aware of the consequences of the deprivation decision and he was not prevented from making a further application. The RLR policy enabled the applicant to remain in the UK lawfully whilst he did so.

71. The applicant has an extant fear of persecution. The issue is whether he is entitled to the protection of the Refugee Convention given he has been convicted of serious crimes in Turkey. The applicant has never made an application on this basis and it is open to him to do so.

72. The applicant is not entitled to a grant of indefinite leave to remain as a refugee on deprivation of citizenship. A declaration that the decision to apply the RLR policy was unlawful would serve no purpose as the period of leave has now ended.

73. Accordingly, I refuse this application. The decision of 23 July 2019 was not unlawful, irrational or unfair. The application is dismissed.

Permission to appeal

74. Mr Jacobs applied for permission to appeal on the following grounds:

    (i) The Upper Tribunal erred in finding that the applicant is required to apply for asylum in order to bring about a consideration of exclusion from the Refugee Convention (upon which the respondent bears the burden of proof) so as to determine whether the applicant falls within the RLR policy.

    (ii) The Upper Tribunal erred in finding that the respondent did not act unlawfully/or procedurally unfairly when failing to consider the question of exclusion from the Refugee Convention when applying the restricted leave policy to the applicant.

    (iii) The Upper Tribunal erred when finding that the applicant was not entitled to rely on past recognition of refugee status in circumstances where (i) findings had been made in extradition proceedings (and which were not in dispute) to the effect that the Applicant's Article 3 rights would be violated in the event of return to Turkey due to the applicant's political opinion and ethnicity and (ii) no findings had been made on exclusion either in the deprivation process or by the respondent.

    (iv) The Upper Tribunal erred in finding that paragraph 132 of the UNHCR handbook does not enable a signatory to the Refugee Convention to 'revive' refugee status upon loss of citizenship where circumstances show a continuing fear of persecution and where no findings have been made in relation to exclusion.

    (v) The Upper Tribunal erred in finding that the RLR policy does not require a formal decision excluding the applicant from the Refugee Convention under Article 1F.

    (vi) The Upper Tribunal erred in holding that the respondent did not act unlawfully in failing to provide reasons for applying the RLR policy.

    (vii) The Upper Tribunal erred when finding that a declaration that the decision to apply the RLR policy was unlawful would serve no purpose as the period of leave has now ended.

75. It was accepted the applicant's naturalisation as a British citizen extinguished his indefinite leave to remain as a refugee. The applicant was deprived of British citizenship because he failed to disclose his previous convictions for serious criminal offences. It is accepted his removal would breach Article 3. He was granted RLR, in accordance with the respondent's policy, and this period of leave has now expired. The applicant does not have leave to remain in the UK and has no outstanding applications. It is open to him to make an

asylum claim disclosing all relevant matters. It is not appropriate for the respondent to decide the applicant's asylum claim in the absence of a valid application.

76. For these reasons, I refuse permission to appeal to the Court of Appeal. There is no arguable case that I have erred in law or there is some other reason that requires consideration by the Court of Appeal.

Costs

77. The applicant is to pay the respondent's reasonable costs to be assessed if not agreed. The applicant has the benefit of costs protection under Section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the amount that he is to pay shall be determined on application by respondent under Regulation 16 of the Civil Legal Aid (Costs) Regulations 2013. There shall be a detailed assessment of the applicant's publicly funded costs.

J Frances

Signed: _____

Upper Tribunal Judge Frances

Dated: **4 December 2020**

Applicant's solicitors:
Respondent's solicitors:
Home Office Ref:
Decision(s) sent to above parties on: 04 December 2020

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.
A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3.

JR/4936/2019 (V)

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of S D

Applicant

v

The Secretary of State for the Home Department

Respondent

Before Upper Tribunal Judge Frances

ORDER

UPON hearing counsel for the applicant, Mr C Jacobs, and counsel for the respondent, Ms J Anderson, at a remote hearing on 16 November 2020 which has been consented to by the parties.

It is ORDERED that:

1. The application for judicial review is dismissed for the reasons given in the attached judgment.
2. Permission to appeal to the Court of Appeal is refused.
3. The applicant to pay the respondent's reasonable costs, to be assessed if not agreed.
4. The Applicant's legally aided costs be subject to a detailed assessment.

J Frances

Signed: _____

Upper Tribunal Judge Frances

Dated: **4 December 2020**

Applicant's solicitors:
Respondent's solicitors:
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