Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DC/00070/2018

THE IMMIGRATION ACTS

Heard at Field House by Microsoft Teams
On the 23rd September 2022

Decision & Reasons Promulgated
On the 4th January 2023

Before

UPPER TRIBUNAL JUDGE GLEESON
UPPER TRIBUNAL JUDGE RINTOUL

Between

D X (ALBANIA)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr David Sellwood of Counsel, instructed by Oliver and Hasani Solicitors
For the respondent: Ms Susana Cunha, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, an Albanian citizen, appeals with permission from the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision on 24 October 2018 to deprive her of her British citizen status.

2. **Anonymity order.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. **Failure to comply with this order could amount to a contempt of court.**

3. The Upper Tribunal apologises for the delay in promulgating this decision. When drafting and finalising the decision, we had a clear note and recollection of the appellant's oral evidence and the submissions made at the hearing. This is the decision of us both.

Background

4. The appellant is a citizen of Albania, born there on 24 June 1978. Her account is that she left school in 1992 at 14 years old, with no qualifications, at her family's insistence, and became a housewife. She would have liked to continue her education, but her family saw no point in educating women.

5. At 18, the minimum legal age for marriage, the appellant was forced into an arranged marriage to Yilber Spalgu, for economic and socio-political reasons not known to her. He was an influential individual and older than the appellant. After she married Mr Spalgu, the appellant went to live with him in Berat, which lies about two hours' drive south of the Albanian capital, Tirana, and an hour and a half from the coastal town of Durres.

6. Following her marriage, the appellant learned that her husband was a member of a criminal organisation with connections to the local government in Berat. She was kept socially isolated and knew no more than that. Her husband subjected her to physical and sexual violence, which she reported to the authorities, but they refused to assist her. Her husband forced the appellant to become a sex worker and profited from that: she was unwilling but feared reprisals from her husband if she refused.

7. The appellant's family were not helpful: they took her husband's side, considering it shameful that she should complain of being a victim of domestic violence. They would not let her move home, nor would the male members of her family explain why the marriage was socially or politically important to her family.

8. In late January 1998, the appellant learned that her husband was planning to transfer her to traffickers who would use her as a sex worker in Europe. She persuaded her paternal aunt to help her escape her marriage and flee to the UK. She left Albania in February 1998, with instructions from the agent as to what to say on arrival. She was vulnerable and had no

alternative but to do as she was told. She changed her name and appearance, and claimed to be a Kosovan woman called Aferdita Kuqi.

9. On arrival in the UK in June 1998 the appellant claimed asylum in the Kosovan identity. She was uneducated and spoke no English. Her clear understanding was that if she told the truth, she would be sent back to Albania to face persecution from her husband. The appellant considers that she was trafficked to the UK to escape persecution.

10. On 9 June 1999, the appellant was granted leave to enter in the false Kosovan identity. On 22 January 2002, the appellant was granted indefinite leave to remain and refugee status in her Kosovan identity. On 9 May 2002, the appellant was issued with a travel document in the Kosovan identity, and on 22 May 2006, she was naturalised as a British citizen, having applied in the Kosovan identity.

11. The appellant's nationality and identity deception came to light in 2007 when the appellant sponsored her second husband to join her in the UK. She attended the British Embassy in Tirana with him, and submitted her original Albanian birth certificate in her true Albanian identity.

12. The appellant's case was referred to the respondent's Deprivation and Revocation Team in Liverpool.

Deprivation process

13. On 24 July 2008, the respondent wrote to the appellant in her Kosovan identity, setting out the facts and stating that the appellant had obtained settlement in the UK and British citizen status as a result of false representation. The respondent was considering deprivation of citizenship pursuant to section 40(3) of the British Nationality Act 1981(as amended by the Nationality, Immigration and Asylum Act 2002). Deprivation would also remove any leave to remain previously granted. The appellant was invited to provide details of mitigation, private and family life, compassionate circumstances, and/or human rights issues which should be taken into account in considering deprivation.

14. On 16 September 2007, Markandan & Co, the appellant's then solicitors, replied, seeking a change of naturalisation to the Albanian identity, saying that she 'was a victim on the hands of traficants/criminals' and saying that the appellant apologised deeply, understood the need for effective border controls, and had otherwise 'been a person of very good character'. The respondent did not reply.

15. On 19 April 2011, Soods Solicitors, who had taken over the appellant's case from Markandan & Co, chased the respondent for a response. Soods blamed the appellant's previous 'so-called immigration experts' for giving her bad advice: the appellant had 'perfectly valid conventional reasons to claim sanctuary as an Albanian' and had arrived, 'clearly traumatised and bewildered' in the UK in 1998. As a lay person, she did what her advisers

told her to do. The appellant realised that she 'should have come clean a long time ago' and apologised profusely for that. The appellant continued to resist deprivation of her British citizen status.

16. On 5 May 2011, Mr McVeety on behalf of the respondent maintained the notice of intention to deprive, commenting that the appellant appeared to have spent 31 days in total in 2002 and 2005 in Albania, despite claiming to have a well-founded fear of persecution there at the hands of her first husband or his family. If she had been genuinely in fear of her life in Albania, she should and would have claimed asylum in her true Albanian identity. The respondent was awaiting the outcome of a leading case before the Upper Tribunal before proceeding to make a decision on the appellant's nationality.

17. On 25 March 2013, the respondent made a decision to deprive the appellant of her British citizenship, noting that she had been naturalised in the false Kosovan identity. Naturalisation had been obtained by means of impersonation. Her naturalisation was null and void and her British passport should be returned.

18. On 8 January 2018, following the decision of the Supreme Court in *Hysaj & Ors, R (on the application of) v Secretary of State for the Home Department* [2017] UKSC 82, the Secretary of State indicated that she would be reviewing the nullity decision.

19. On 8 February 2018, the appellant's latest representatives, Lloyds PR Solicitors, made further representations. They said that the appellant had been trafficked into the UK, brought in by smugglers while escaping a hostile and abusive family life. The controlling and abusive marital relationship to which she was subject was known and reported to the authorities in Albania. The appellant had been coached as to how to respond to Home Office queries in order to seek refuge here. She still had indefinite leave to remain, following the withdrawal of the nullity decision. The appellant had worked and paid taxes and should not be deprived of her British citizen status.

20. On 10 February 2018, the respondent again gave notice of intention to deprive the appellant of her British citizen status, seeking mitigation, private and family life details, compassionate circumstances, and any human rights issues which should be taken not account when making a decision.

21. On 1 March 2018, Lloyds PR solicitors responded. The appellant admitted committing an act of fraud in her initial asylum claim, by declaring herself a Kosovan citizen with different identity details. After setting out her history the appellant was described as 'of good character' and Lloyds PR said she had learned to speak confident English. She had made a network of friends, and had a life and a part-time job in the UK, working in a coffee shop.

Deprivation decision

22. On 24 October 2018, the respondent decided to deprive the appellant of her British citizen status by reference to section 40(3) of the 1981 Act. Her British citizenship had been obtained fraudulently and the Secretary of State was satisfied that it would be conducive to the public good to deprive h

23. er of it. The appellant had both made false representations in her citizenship application and concealed the material facts of her real name, nationality and her identity details.

24. The respondent acknowledged that deprivation of citizenship was discretionary. She had taken into account private and family life factors under Article 8 ECHR. There was no risk of statelessness, given the appellant's admission that she was still a citizen of Albania when she became a British citizen.

25. The respondent would give consideration to whether to grant limited leave, once the deprivation order had been made: she would make the deprivation order within 4 weeks of the appellant being appeal rights exhausted on this appeal, and the decision whether to deport or grant limited leave would be made within 8 weeks after the deprivation order was made. The respondent gave formal notice of her decision to make a deprivation order with reference to section 40(5) of the British Nationality Act 1981.

26. The respondent informed the appellant of her appeal rights.

27. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

28. By a decision promulgated on 28 June 2019, First-tier Judge Stedman dismissed the appeal. He noted that the appellant had admitted fraud, triggering section 40(3) of the 1981 Act. The condition precedent for deprivation was met. Her maintenance of the Kosovan identity was material to the grant of British citizen status.

29. The respondent's delay in dealing with the deprivation question was significant, but not material: the appellant was single, with neither partner nor children in the UK and any argument against removal would rest on private life alone. The question whether a removal decision would be made was proleptic and must await the respondent's decision in due course.

30. There would be some adverse consequences during the limbo period of approximately 8 weeks between deprivation and the decision whether to remove, or grant some form of leave. The appellant would be unable to work or to open a bank account (although she may have one already), and her UK driving licence might be revoked. Following any removal decision,

the appellant would have 28 days to apply for leave to remain and a right of appeal if the answer was negative.

31. The consequences for the appellant in the limbo period were not disproportionate nor were there any relevant exceptional circumstances.

32. The appellant appealed to the Upper Tribunal.

Error of law decision

33. By a decision sent to the parties in 4 October 2019, a panel comprising Upper Tribunal Judges Rintoul and Owens set aside the decision of the First-tier Tribunal for rehearing in the Upper Tribunal at a later date.

34. The remaking hearing was delayed, in part because of the Covid-19 pandemic. It was considered important for the appellant to be able to give evidence at a face to face hearing: see the directions order of UTJ Rintoul on 12 October 2020.

35. On 29 July 2020, the applicant's solicitors applied under rule 152A of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) for leave to admit a brief updating statement, psychiatric and country expert evidence. Those documents have been admitted.

July 2021 hearing

36. The appeal was part-heard before Upper Tribunal Judges Rintoul and Owens on 23 July 2021. Unfortunately, it has not been possible to complete the hearing with the same panel: by a Transfer Order on 24 August 2022, DPRJ Pitt ordered that the remaking hearing be completed before the present panel.

37. The parties have agreed a note of the July 2021 hearing. The same representatives for the parties who now appear also appeared on that occasion.

38. That is the basis on which this appeal came before the present Tribunal.

Upper Tribunal hearing

39. The appellant gave oral evidence at the resumed hearing. In addition, we had skeleton arguments and oral submissions from both representatives to assist us, as well as a bundle of relevant documents.

Appellant's evidence

23 July 2021

40. The appellant gave oral evidence at the July 2021 hearing, which was held by video link during the Covid-19 pandemic. There were a few technical problems which were resolved as they occurred. It has not been suggested

that the hearing was unfair, nor that the evidence the appellant gave was affected by the difficulties Ms Cunha had in staying on the video link.

41. The appellant adopted three witness statements, the first dated 20 May 2019, the second undated, and the third dated 11 December 2019. She confirmed that they were true to the best of her knowledge, information and belief, and that she wished to adopt their contents as her primary evidence. There were no supplementary questions from Mr Sellwood.

42. The appellant was then tendered for cross-examination. She confirmed that she was divorced from both her first and second husbands. She had left Albania and applied for entry clearance in 1998 at the British Embassy in Paris, fleeing her first husband, who was older than she was. The appellant changed her appearance, her looks, and other personal details to prevent her first husband finding her in the UK. She adopted a Kosovan identity to which she was not entitled.

43. In January 1998, after the appellant she left her first husband, her paternal aunt had sheltered her in Albania: the appellant then travelled via Italy and France before coming to the UK. On 22 January 2002, the appellant was granted refugee protection in the UK in the Kosovan identity.

44. The appellant admitted that she had lied in her 2007 affidavit, where she said that she was separated from her first husband because he had found out that she was in a relationship with another man. The appellant said her then solicitors told her to say that, because it was more credible. The real reason she left her first husband was domestic violence, but she was scared, so she lied: she feared that he would find her.

45. The appellant had decided to take the blame for the failure of her first marriage, by claiming to have been unfaithful to her first husband, rather than admit that he had ill-treated her: she had been scared for so many years that her first husband would find her. Her fear was not reduced by the fact that she had leave to remain: the appellant described herself as ‘scared for my life’.

46. The appellant said that she did not want to think about her first husband or to recall her past: he had been abusive to her. She realised that she had had many years in which to reflect and tell the truth, but had not done so out of fear.

47. Markanda & Co failed to mention the appellant’s first ex-husband in the letter they sent to the respondent: she was already in a relationship with the man who became her second husband. The appellant said that this was their error, not hers. She had told Markanda & Co that she was a victim of trafficking and about the ill-treatment by her first ex-husband.

48. The appellant submitted letters from her employers, and payslips. Since coming to the UK, the appellant had worked, always lawfully, first as a cleaner, then as a florist, and in a coffee shop. She had never been

contacted by the people who trafficked her to the UK, although she had been here since 1998.

49. The appellant met her second husband in a restaurant in Covent Garden in February 2006 and married him in the UK, following which he returned to Albania. The appellant's second husband was from Durres, a seaside city in Albania. The appellant had visited her second husband's family in Durres a couple of times, twice with her second husband, and once alone, but always with his family around her. She was not afraid of her first husband with them there to protect her, and Durres was a long way from her own family members in Albania.

50. In January 2007, the appellant sponsored her second husband to come to the UK as her spouse: they visited the British Embassy in Tirana together. As part of that application, she disclosed her real identity and the deception as to her real nationality was exposed. She was only in Albania for a few days that time.

51. The only person in Albania with whom the appellant had been in contact was her late paternal aunt. She had no contact with her parents or any other member of her family in Albania. She had applied for a British passport in her false Kosovan identity, but had not used that travel document to visit her immediate family members in Albania.

52. The appellant said that she could not remember getting a letter from respondent on 27 July 2008 about the deception. She said that she had not travelled for about a year, as she had no British passport. She had only had her British passport for about a year before she was asked to return it to the respondent.

53. On 19 April 2011, Sood Solicitors, who were then representing the appellant, sent a letter to the respondent accepting that (under influence from Bass Solicitors) she had lied to the respondent. The appellant remembered giving instructions for that concession letter to be written. She told Soods that her previous representatives had given her the wrong advice, but she had never sought to sue her previous solicitors about their poor advice: she did not know how, and she said she was a very nervous, shy person.

54. In March 2012, the appellant travelled to Albania to see her paternal aunt, using a British passport issued in her false Kosovan identity. By this time, she had divorced her second husband. She visited her aunt in Tirana, not in the same city or town as her other family members. Her paternal aunt had since died and the appellant has not been back to Albania since then.

55. The appellant re-entered the UK, using her British passport in the false Kosovan identity. She had not yet learned to speak English at that time. The appellant was unable to clarify the time line of her visits very much beyond that.

56. There followed oral submissions, which are not relevant today, as submissions have also been made before us.

23 September 2022

57. As the panel was not the same, it was agreed that the appellant should give oral evidence again, but that account would be taken of her previous evidence, as set out in the agreed record of proceedings summarised above, which also accords with UTJ Rintoul's record of her evidence.

58. The appellant was provided with an Albanian interpreter for our hearing. She had made a supplementary statement, which she adopted as true to the best of her knowledge, information and belief. It had been read back to her in Albanian and she was confident that she understood the contents of her latest statement. She wished it to stand as her evidence-in-chief.

59. In her supplementary statement, the appellant set out her current circumstances and the foreseeable consequences of deprivation of her British citizen status. The appellant had lived in the UK for 24 years, and was 44 years old. She had spoken to a psychiatrist for the first time in 2021, after 23 years in the UK. She had done so only for evidence for the Tribunal. The thought of giving evidence to the Upper Tribunal made her 'extremely nervous'.

60. The appellant still found it very difficult to speak of her past. Her memory of her history was extremely difficult to access: she had tried to forget, and when she remembered her past, she felt very anxious and stressed. The delay between the two Upper Tribunal hearings caused her to feel 'like everything gets on my shoulder and I have a flashback of distressful circumstances I do not want to have memory of'.

61. The appellant was very grateful for the opportunity to rebuild her life and re-establish her persona in the UK: the worst years of her life were in Albania during her enforced marriage to her first husband, who abused her sexually and psychologically, and forced her to work as a prostitute.

62. She two good friends in the UK (a man and a woman) upon whom she relied. She considered the woman like a sister, and they had been best friends for 15 years now. Even with them she had never been fully open, nor given specific details of her past.

63. From April 2020 to September 2021, the appellant had not been able to work due to the pandemic. Her two good friends had helped her top up her finances, over and above housing benefit, so that she could live and pay her rent in full. The money they gave her, either in the bank or directly in cash, enabled her to pay bills, buy food, and so on, which was shaming and embarrassing, but very helpful of them.

64. In September 2021 the coffee shop reopened, but working there did not really assist the appellant's finances: she was just surviving, with no

money at the end of the month, and her mental health was affected by the adversity in her life and the emotional rollercoaster she was experiencing.

65. Her work was interrupted again between May 2022 and August 2022, because the owners of the coffee shop closed for general refurbishments. She was working again now.

66. The appellant apologised sincerely for having changed her personal and nationality details and lied about her nationality when she came to the UK in 1998. She was proud to be British: to lose her British citizen status would be mentally emotionally and psychologically damaging. Also, she would not be able to work legally if she lost her status, which would cause hardship: she would lose her housing benefit and be mentally affected by the resultant financial issues.

67. The appellant was tendered for cross-examination. The appellant confirmed that she had signed her British nationality application with a birth date and other relevant details in the Kosovan identity which she knew to be false. She did it that way because she was scared.

68. The appellant clarified her employment position: before the pandemic, she had been working as a cleaner in a coffee shop, but was unable to continue during the lockdown. She had not applied for any financial support as she lacked any identity document, so she could not register. The appellant was receiving some state assistance: she received housing benefit. That had not been interrupted by the pandemic.

69. After the pandemic, she was able to resume her cleaning work in the coffee shop, before being locked down again. She had an employment contract, which stated where she was to work. The appellant had not been asked by her employers at the coffee shop to produce any evidence of a right to work in the UK, because she had worked there before. In other places to which she had applied, they did ask and she was not accepted as an employee.

70. The appellant had benefited from some input by a private psychiatrist but had not been able to afford it for long. She had stopped about 2 years earlier (so at some time in 2020). It was too hard to speak to people about her experiences. She found it very difficult to open up, she was ‘quite closed by myself’. The appellant was able to open up, with difficulty, and only a little, with friends of hers: she felt very guilty and could not speak. The appellant was tearful at this point in her evidence and remained emotional while discussing therapy.

71. The appellant said she knew that she could get some free therapy through her GP, but it was just too difficult to open up. It made her feel quite unwell: things she thought she had forgotten kept coming back. She did go to her GP and speak about some issues which she was experiencing. The appellant was having trouble sleeping, and she went about that. It was difficult to communicate with her GP as she did not speak the

language and could not express herself. She did know that an interpreter could be provided if she asked for one. The appellant had never had any difficulty accessing her GP, a hospital or doctor, while in the UK.

72. There was no re-examination.

Other evidence

73. The appellant produced a hospital note, transferring her care to her general medical practitioner, on 26 April 2019. She had been placed on an anticoagulant, which was well tolerated.

Appellant's submissions

74. In submissions for the appellant, Mr Sellwood relied on his skeleton argument. He sought to distinguish the Upper Tribunal's guidance in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 238 (IAC), arguing that in *P3 v Secretary of State for the Home Department* [2021] EWCA Civ 1642, and *U3 v Secretary of State for the Home Department* [2022] UKSIAC SC_153_2018 (04 March 2022), it had been made clear that the judgment of the Supreme Court in *Begum, R. (on the application of) v Special Immigration Appeals Commission & Anor* [2021] UKSC 7 (26 February 2021) was confined to cases where national security is in issue. That was not the case here.

75. The Upper Tribunal should instead apply the established line of authorities as summarised in *KV (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 2483 and *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769 as to the relevant factors when considering deprivation of citizenship.

76. As regards Article 8 ECHR, in his speaking note for the July 2021 hearing, Mr Sellwood noted that the appellant would be in legal limbo following a deprivation decision, until the respondent decided whether to grant her some form of leave, or deport her. There had already been significant delay by the respondent in proceeding with deprivation. Deprivation was not the least necessary interference (see *Laci*): the impact on this appellant would be serious, as she did not have a partner to share her financial or rental burden, and would be unable to work or claim income support during the limbo period.

77. In his skeleton argument for the September 2022 hearing and in his oral submissions, Mr Sellwood relied on his July 2021 submissions and on the appellant's evidence as to her current circumstances and the impact which deprivation would have on her. The appellant would rely on the respondent's Nationality Instructions on deprivation policy (Chapter 55).

78. In oral submissions, Mr Sellwood said that he had not considered the materiality of the appellant's fraud to be in issue now. He had made lengthy oral and written submissions thereon before the First-tier Tribunal. He relied on his speaking note for the hearing on 23 July 2021: the

respondent had not demonstrated that the false details given regarding immigration or asylum had led to the appellant being given British citizen status when she would not otherwise have qualified. In this case, the appellant would have qualified even on the true facts, given her history of past persecution and the risk on return from her family members. The residence requirements would have been met.

79. The appellant was a trafficked woman and the Upper Tribunal guidance in *TD and AD (trafficked women)* CG [2016] UKUT 92 (IAC) (9 February 2016) was applicable. Her immediate family had disowned her and she had no contact with them since coming to the UK. The appellant's medico-legal report and the country evidence supported her account.

80. In relation to Article 8 proportionality, the guidance in *Ciceri* was that the Tribunal should make a proportionality assessment of the reasonably foreseeable consequences of deprivation as at the date of hearing. However, in *Usmanov v Russia* 43936/18 (Judgment : Remainder inadmissible : Third Section) [2020] ECHR 923 (22 December 2020), the European Court of Human Rights advised a two-stage process: first, was the decision of the respondent government arbitrary, and if so, what were the consequences of its decision. In *Usmanov,* it was clear that arbitrariness included delay in the decision making process: see also *Ciceri* at [20] and at (3) in the judicial headnote.

81. In the present appeal, concerns had been raised in 2007 by the British Embassy in Tirana about the appellant's identity: she conceded the deception on 16 September 2008 but it was nearly 5 years thereafter that her citizenship was (erroneously) declared to be null and void. That decision, made in 2013, was not withdrawn until 3 February 2018 and there was no further action during the hiatus.

82. The appellant's solicitors and Counsel were appearing pro bono as she could not afford legal fees. She received partial housing benefit as her income was very modest. She had no savings It was not the appellant's evidence that she had lost any right to state benefits during that 5-year period. The appellant would rely on the decision of the Court of Appeal in *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769 (20 May 2021), the facts of which were analogous. The issue of delay was relevant to arbitrariness.

83. Mr Sellwood accepted that there could be no proleptic analysis of whether the appellant would be granted leave to remain after deprivation. The respondent had not said how long a decision on whether to grant leave to remain would take, and the appellant would be in financial difficulties during the limbo period. Her housing benefit might disappear if she had no lawful immigration status; he accepted that no evidence had been produced to support that submission, but argued that it must be reasonably likely that such would be the outcome.

84. The appellant's mental state was fragile, as set out in the psychiatric evidence, which was relevant to the proportionality of any interference with her Article 8 private and family life rights.

85. As regards *Begum* and *P3,* both dealt with the national security considerations in section 40(2), not section 40(3), as here. Mr Sellwood accepted that there were no time limits in the nationality instructions but noted that the respondent had not waited for the outcome of the nullity proceedings before giving her decision that the appellant's citizenship was a nullity. *Hysaj* did not assist the respondent, on the facts.

86. Mr Sellwood asked the Tribunal to remake the decision by allowing the appellant's appeal.

Respondent's submissions

87. For the respondent, Mr Clarke had prepared a skeleton argument. He relied on *Begum* as the leading authority on deprivation of citizenship appeals. The Tribunal's role was now to review, rather than remake the exercise of the respondent's discretion to deprive a person of British citizen status, but it remained open to the Tribunal to determine the compatibility of that decision with the appellant's human rights.

88. *Begum* was a section 40(2) conducive grounds appeal, but in Mr Clarke's submissions, the same approach applied to section 40(3) appeals. The wording 'The Secretary of State may by order deprive a person of a citizenship status …if the Secretary of State is satisfied that [etc]' appeared in both provisions. The guidance of the Supreme Court in *Begum* at [66]-[69] was applicable in the present proceedings, and at [124] in relation to the treatment of the respondent's policy and its application by her caseworkers.

89. The respondent's reasons for deprivation were twofold: first, that the chain of causation was broken by the appellant's fraud, in that her application for naturalisation would not have been reached if the fraud had come to light when she entered the UK; and second, that her fraud went to the character and conduct element of consideration of naturalisation, and she would not have been granted it for that reason, had the respondent known of her deceit.

90. The decision of the Upper Tribunal in *Sleiman (deprivation of citizenship; conduct)* [2017] UKUT 000367 (IAC) was distinguishable, since it was based on a grant of indefinite leave to remain under the legacy programme, and the deceit in question related to the appellant's age, not his nationality.

91. If the appellant had come to the UK seeking protection based on a fear of her first husband, there was no reason for her to have maintained her deceit for 9 years. Dr Singh's psychiatric report did not address the failure to disclose the appellant's real identity and the expert had no medical

evidence before him, with the exception of an NHS discharge letter on 24 April 2019 which recorded her having been put on anticoagulants. The expert's evidence was entirely reliant on the appellant's history, as he stated. Only limited weight could be given to this document, for that reason. The Upper Tribunal was invited to find the domestic violence allegations regarding the appellant's first marriage in Albania to be fabricated.

92. The appellant could not rely on the withdrawn 14-year residence policy: see *Hysaj (Deprivation of citizenship: delay)* [2020] UKUT 00128 (IAC). Permission to appeal to the Court of Appeal in *Hysaj* had been refused. The delay caused by the respondent's earlier, withdrawn decision, that the appellant's citizenship was a nullity, did not render the respondent's 2018 deprivation decision unlawful. The respondent had followed the legal advice given to her and her delay did not arise from illegality on her behalf, nor from a dysfunctional system yielding unpredictable and inconsistent outcomes: see *Hysaj* at[63].

93. There was no legitimate expectation as to the period within which a deprivation decision should be made. The respondent was required to apply her current rules and policy, not any earlier version: see *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41 at [13] and Chapter 55.

94. In oral submissions, Ms Cunha addressed three points:

    (a) Whether *Begum* and *P3* trumped the *Ciceri* analysis as regards section 40(3) and the undisputed fraud;

    (b) Whether the delay of 5 years between 2013 and 2018, not all of which could be attributed to the nullity litigation, was such as to make the decision to deprive arbitrary or irrational: see *Ciceri, Laci* and *EB(Kosovo);* and

    (c) Whether it was appropriate to make a proleptic assessment of Article 8 proportionality if the appellant were to be removed.

95. Ms Cunha submitted that *begum* was applicable. If the Supreme Court had wanted to narrow the approach to SIAC judgments, they would not have cited *Dellialisi* and *Pasada.* It was not open to the Tribunal to perform a new review. *Begum* said that the guidance in *Dellialisi* was wrong and liable to mislead a Tribunal, and *Aziz* said that the court could not take a proleptic approach.

96. As regards the delay point, that could be considered as part of the arbitrariness analysis, but there was no authority to suggest that such a delay would be disproportionate (see *Laci*). The respondent had not given the appellant a false sense of security that she would not be deprived, and Chapter 55 of the respondent's own policy said that there was no

obligation on the respondent to make her decision to deprive at any particular time or indeed, at all.

97. The respondent would rely on *Hysaj*: the respondent was entitled to await the Supreme Court decision and then amend her policy, by virtue of Chapter 58 at [7.2]. the appellant could have no legitimate expectation that she would be treated otherwise than in accordance with the law and policy in force at the time.

98. *Laci* was distinguishable on the facts, because the respondent had issued a new passport during the period of delay.

99. As to the proleptic assessment point, the appellant had employment with an individual who had not asked for her identity documents or for evidence that she had the right to work. She would be entitled to use the emergency services, even if leave to remain were refused. The decision to deprive would not be disproportionate on the facts; there were sufficient procedural safeguards to protect the appellant's Article 8 rights. The respondent was not in breach of her section 6 duty.

100. Ms Cunha asked us to dismiss the appeal.

Legal framework

101. Section 40 of the British Nationality Act 1981, so far as relevant to this appeal, is as follows:

> **"40 Deprivation of citizenship.**
>
> (1) In this section a reference to a person's " citizenship status " is a reference to his status as—
>
> (a) a British citizen, …
>
> (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.
>
> (4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless. …"

The *Ciceri* guidance

102. We have had regard to the submissions about the proper approach to deprivation of citizenship after *Begum.* We note that in *Ciceri,* the President and Vice-President of the Upper Tribunal gave guidance which expressly took account of *KV (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 2483, *Aziz v Secretary of State for the Home Department* [2018] EWCA Civ 1884, *Hysaj, Begum,* and *Laci.*

103. Most of the oral and written argument has therefore been overtaken by the reasoning in *Ciceri,* which is binding, or at the very least, highly persuasive, on us in this appeal.

104. The *Ciceri* guidance is as follows:

> *(1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.*
>
> *(2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.*
>
> *(3) In so doing:*
>
> > *(a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and*
> >
> > *(b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).*
>
> *(4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.*
>
> *(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in EB (Kosovo) v Secretary of State for the Home Department [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs 13 to 16 of EB (Kosovo) [1].*
>
> *(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable*

Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).

(7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good.

105. That is the basis on which we approach the remaking decision in this appeal.

Analysis

106. We begin by noting that the condition precedent in s.40 (3) is unarguably met. The appellant did conceal a material fact for 9 years and make false representations as to her date of birth and nationality. Section 40(4) does not apply: the appellant retains her Albanian citizenship and there is no question of statelessness in this appeal.

107. The respondent is satisfied that the appellant's naturalisation as a British citizen was obtained by means of fraud, false representation and/or concealment of a material fact. It was open to her to decide that the appellant should be deprived of her British citizen status.

108. We consider next whether the appellant's Article 8 ECHR rights are engaged, or those of any other person. In this case, although she has two close friends, the appellant has no partner or child in the UK and the only Article 8 rights in play are her own. The evidence is that she enjoys the friendship and support of her two friends, that she has a job in a coffee shop, and that she has some engagement with the medical profession in the UK, albeit that both in relation to her friends and to her medical advisers, her engagement has been limited by her claimed inability to talk about her pre-flight experiences in Albania.

109. Deprivation of citizenship alone will not deprive the appellant of her two close friendships, though it will prevent her from working in the coffee shop until the respondent has decided whether to remove her, or grant her some form of limited leave.

110. The appellant has managed in the past without her coffee shop job during lockdown, with the help of her friends. We consider that she will be able to manage again. The limbo period is expected to be 8 weeks. We do not consider that to be sufficient interference with her Article 8 rights to outweigh the public interest of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.

111. There has been no disproportionate delay by the respondent in these deprivation proceedings, save for the period caused by the respondent's mistaken stance that the grant of citizenship was a nullity, and the legal proceedings associated with that error. There was some additional delay, but the appellant has been able to work (except when the pandemic prevented it) during that period of delay, and her friendships were not disrupted. She has also had access to benefits and no evidence has been produced as to whether she would lose that access, despite Mr Sellwood's submissions.

112. We are not satisfied overall that any interference with the appellant's Article 8 ECHR rights caused by the deprivation, as opposed to a future removal decision, would be disproportionate. It is not for this Tribunal to make a proleptic assessment of the effect of a removal decision which may not be made, if the respondent decides to grant the appellant some form of limited leave to remain.

113. Since we are not satisfied that deprivation would breach the appellant's Article 8 ECHR rights, or be a breach of the Tribunal's or the respondent's human rights obligations under section 6 of the 1998 Act, we can allow the appeal only if we consider that the decision to deprive is one which no reasonable Secretary of State could have reached; that the respondent has disregarded something which should have been given weight; that the respondent was guilty of some procedural impropriety; or that the decision risks making the appellant stateless.

114. For the reasons we have already given, we are not so satisfied. The decision to deprive was open to the respondent on the evidence before her. The respondent has given weight to all relevant facts and matters, and we find no procedural impropriety in her approach. There is, as we have already said, no question of this appellant being stateless as she retains her Albanian nationality.

115. This appeal is accordingly dismissed.

DECISION

116. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

We set aside the previous decision. We remake the decision by dismissing the appeal.

Signed Judith AJC Gleeson Date: 13 December 2022

Upper Tribunal Judge Gleeson