



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-001609
First-tier Tribunal No: DC-50057-2020
IA/02144/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 16 March 2023**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**MR HAJDAR LALA
(NO ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr G Hodgetts, counsel instructed by OTB Legal
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 17 January 2023

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Bibi heard on 1 February 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge FE Robinson on 31 March 2022.

Anonymity

3. No direction has been made previously, and there is no reason for one now.

Background

4. The appellant arrived in the United Kingdom clandestinely during 1998. Upon being apprehended, he falsely stated that he was a national of the Federal Republic of Yugoslavia and applied for asylum. That claim was refused on 10 June 2003 and his appeal against that decision was dismissed. On 9 February 2006, the appellant sought indefinite leave to remain (ILR) under the respondent's concession for asylum-seeking families. That application was refused on 9 June 2006. On 1 January 2009, the appellant applied for ILR under the legacy scheme. He was granted ILR on 12 June 2009 and on 28 January 2011, the appellant was naturalised as a British citizen.
5. It was only on 1 February 2011, that the appellant informed the Secretary of State that he had provided a false date of birth, place of birth and nationality. He provided his Albanian birth certificate and requested that his certificate of naturalisation be amended. The respondent's status Review Unit (SRU) wrote to the appellant on 24 February 2012 to inform him that the Secretary of State was undertaking a review of her policy of considering a grant of citizenship to be a nullity in cases such as the appellant's where false particulars had been provided. The SRU wrote to the appellant on 8 September 2020 to update him on the outcome of the litigation, to inform him that consideration was being given to depriving him of citizenship and to invite any representations.
6. On 20 November 2020, the respondent deprived the appellant of his British citizenship, which is the decision under appeal. The decision set out the multiple occasions when the appellant had maintained his false identity, including the false representations made on form AN when applying for naturalisation. The respondent considered that it was clear that the appellant was unable to satisfy the 'good character' provision and that the deprivation of citizenship was both reasonable and proportionate. As for Article 8 ECHR, the deprivation decision did not preclude the appellant from remaining in the United Kingdom and as such it was not necessary to take account of the impact of removal on the appellant and his family members.

The decision of the First-tier Tribunal

7. At the hearing before the First-tier Tribunal, the appellant and his partner gave evidence. The judge decided the decision depriving the appellant of British nationality was lawful, in that the Secretary of State's discretion was properly exercised. It was argued before the judge that the decision was contrary to the appellant's rights under Article 8 owing to the impact upon him of being left without status. The judge found there to be no requirement to consider Article 8 as the appellant's removal was not reasonably foreseeable.

The grounds of appeal

8. The grounds of appeal are threefold. Firstly, that the judge misdirected herself in law in holding that there was no requirement for her to consider Article 8. Secondly, there was a failure to make any findings on the reasonably foreseeable consequences of deprivation and thirdly, the judge erred in exercising her own discretion and failing to address whether the respondent failed to have regard to her own published policy on Good Character.

9. The judge granting permission admitted the application out of time, made an unrestricted grant of permission and made the following comment.

With (regards) to Ciceri (deprivation of citizenship appeals: principles) Albania [2021] UKUT 238 (IAC) it is arguable that the Judge has misdirected herself in law by not clearly determining whether the rights of the Appellant under the ECHR are engaged and if they are, whether depriving the Appellant of British citizenship would constitute a violation of those rights.

10. In the respondent's Rule 24 response, dated 11 April 2022, the appeal was opposed. The author of the said response, submitting that the judge did not materially err in failing to consider Article 8 as 'removal was not reasonably foreseeable.'

The hearing

11. Mr Tufan accepted, at the outset of the hearing, that the judge had erred at [112] of the decision and reasons, in stating that there was no requirement for her to consider Article 8 ECHR. I indicated to the parties that my preliminary view that all three grounds were made out. Mr Hodgetts briefly addressed those grounds as well as the future disposal of the appeal. Mr Tufan wished to add nothing further. At the end of the hearing, I set aside the decision on the basis that the decision of the First-tier Tribunal contained material errors of law. Since there was no consideration of Article 8 nor of the public law arguments made, I acceded to Mr Hodgetts request that this matter be remitted to the First-tier Tribunal for a de novo hearing.

Decision on error of law

12. As Mr Tufan right conceded, the First-tier Tribunal misdirected itself by finding that there was no requirement to consider the appellant's Article 8 claim. Indeed, the correct approach to Article 8 claims was confirmed in Ciceri (deprivation of citizenship appeals: principles) Albania (Rev1) [2021] UKUT 238 (IAC) as follows.

- (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).*

13. It was because of the misdirection as to the ambit of the Article 8 appeal that the Tribunal failed to assess the reasonable foreseeable consequences of deprivation along with the material arguments put on the appellant's behalf which addressed delay, inaction and most importantly the appellant's enduring mental health conditions. It follows that the complaints made in Grounds one and two are made out.
14. It was argued before the First-tier Tribunal that, in the decision under appeal, the respondent failed to have regard to her policy on Good Character at Chapter 55, paragraph 9.5.2. Reliance was placed on Example B. The decision of the First-tier Tribunal does not address this argument or reach a conclusion as to whether the decision to deprive the appellant of citizenship was vitiated on public law grounds. There is also some indication from [117] of the decision, that the Tribunal exercised its discretion in this matter, applying *Begum* [2021] USKC 7.
15. In deciding whether to retain the matter for remaking in the Upper Tribunal, I was mindful of statement 7 of the Senior President's Practice Statements of 25 September 2012. Taking into consideration the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of his appeal at the First-tier Tribunal, I reached the conclusion that it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Bibi.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 January 2023