IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006281
(DC/50066/22
UI-2022-006282
(DC/50077/22)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 May 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Viktor Gruda
Rosa Gruda

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A. Badar, Counsel instructed by Oliver and Hasani Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

Heard at Field House on 2 May 2023

DECISION AND REASONS

1. The Appellants are respectively a husband and wife born on the 7th July 1959 and 6th August 1961. They are both nationals of Albania. They appeal with permission against the decision of the First-tier Tribunal (Judge Seelhoff) to dismiss their linked appeals, on human rights grounds, against decisions to deprive them of their British nationality.

2. The basic facts are that the Appellants arrived in the UK in 1998 and claimed asylum. They said that they were from Kosovo and that they needed protection. They advanced detailed evidence about the persecution they had suffered, with the result that on the 28th November 2001 they were both granted indefinite leave to remain as refugees. They both naturalised as British citizens on the 11th

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February 2005. A deception came to light in 2021 when their grandson made an application for a British passport. As a result of checks made by HMPO it was discovered that neither Appellant was actually from Kosovo. They were both Albanian nationals.

3. All of this was admitted before Judge Seelhoff. The only matter left for him to consider was whether it would be a disproportionate interference with the Appellants' Article 8 rights for the deprivation to proceed. In particular the focus of his enquiry was whether the impact upon the Appellants during the so-called 'limbo period' – that is to say the period between British nationality being removed and any further leave being granted – would be so adverse as to be disproportionate, notwithstanding the very substantial weight to be attached to the public interest in removing nationality obtained by deception. Judge Seelhoff found that it would not, and dismissed the appeals.

4. The Appellants now appeal on 4 grounds. I take them in the order that Mr Badar addressed them in his submissions.

Ground (i): Failure to Take Material Facts Into Account
Ground (iii): Weight Attached to Private Life

5. It was ground (i) that Judge Cruthers considered arguable when he granted permission. The substance of it is that when the Tribunal conducted its proportionality balancing exercise it failed to factor into the balance two important matters. The first was that the Appellants are now not only parents, but grandparents, and that all their descendants are British nationals. The best interests of their minor grandchildren was a factor to be considered. The second was that the Appellants run their own small business. It was the accepted evidence that they have been restauranteurs for some 16 years and that their latest venture supports 4 other employees.

6. I accept that the relationships that the Appellants enjoy with members of their immediate family are not expressly addressed by the Judge when he considers the impact of the limbo period. That said, it is very difficult to see in what way a more direct reference to these relationships would have made a difference to the outcome of the appeal. Whilst the best interests of any minor grandchildren may in the end be a very significant factor in deciding whether the Appellants should be permitted to remain in the UK in the long term, that proleptic assessment was out of bounds for this judge. He was simply tasked with determining whether there were any particular features of the likely limbo period that rendered the decision to deprive the Appellants of their citizenship disproportionate, notwithstanding that it was citizenship to which they were never in fact entitled. There was no evidence at all before the judge to suggest that it would be contrary to the best interests of the children in this family if their grandparents immigration status should be altered in this way; nor was there any clear evidence that the limbo period might have an adverse impact on the Appellants' children.

7. As for the business, Mr Badar objected that the decision contains no analysis of how the loss of the restaurant might affect this family. With respect to Mr Badar, that is because there was no evidence at all that the withdrawal of status, for a finite period, would result in that loss. Whilst it is true that the Appellants had lost their permission to work, no evidence was supplied to the Tribunal to show that

they could not, for instance employ a manager to run the restaurant whilst they were 'in limbo'. As the Tribunal put it:

> "It was submitted that the Appellants would be prevented from working for the duration of that eight week period and barred from accessing medical treatment which could engage article 8. The first thing I would note is that **I have been provided with no financial evidence on the part of the Appellants to show what their position is and whether or not they would be likely to be able to cope with closing their restaurant for that eight week period. In order to me to make a finding that would represent a significant interference in their private lives I would need to see evidence that they had no savings and no way of coping**. I note that the Appellants live with their daughter and her partner who is apparently working. They have another son in the UK with his own business. It is for the Appellants to show that they could not cope for that relatively short period with their own resources and those of their family members. I also note that those who are barred from working are not barred from drawing an income from assets such as a business and I find that they would likely to be able to find ways to keep the restaurant open for that time either with the help of family or their employees. Without further and better evidence I am not satisfied that this would represent an interference with their article 8 private lives.

8. Mr Badar criticised that reasoning on the grounds that "as a matter of law" there would be an interference with the ability of the Appellants to keep their business open; I was asked to infer from this that the jobs of their four employees would be threatened. That is a wholly unsustainable submission. First, the Appellants adduced no evidence at all about what might happen to their restaurant. Second, it is not "as a matter of law" correct to say that they could not continue to own a business in these circumstances. There are many thousands of companies in the UK owned by people who are not British, or by people who do not live here. Mr Badar could point to no legal provision to the effect that the restaurant would have to shut. Furthermore, as the Tribunal pointed out, the Appellants have the benefit of those four employees and their own grown up children who could step in to cover their shifts.

9. Ground (iii) was a more general attack on the decision below in how the Judge approached the private lives enjoyed by this couple since they arrived in the UK more than 20 years ago. As the Court of Appeal explained in Laci [2021] EWCA Civ 769 [at 54] long-established private lives will always be a relevant feature. There is however necessarily going to be a limit to the weight that can be attached to even the most entrenched private life in circumstances where that private life was built during a period where the individual was in the UK unlawfully: s117B(4)(a) Nationality, Immigration and Asylum Act 2002 refers. I can find no fault in the weight to be attached to the Appellants' long residence here.

Ground (ii): Irrationality

10. This ground is pleaded as follows:

> The IJ finds that there would be no interference as the Applicants would not be able to work or access free medical treatment.
>
> It is firstly submitted that it is a matter of law that the Applicants would not be able to work in any manner or access medical treatment for free…Furthermore, the Applicants' evidence, to which there was no real challenge, clearly cites the difficulties the Applicants will be in if they are not allowed to work or receive medical treatment. For example, at ¶ 6 of Ingrit Gruda's statement, she mentions how she is not able to afford to pay for their medical treatment.
>
> The IJ further states that they are not barred from drawing an income from assets, and they would be able to find ways to keep the restaurant open. These findings were not supported by any evidence, and irrationally made by the IJ. The IJ further makes the assumption that the first Applicant, who has had blood in his urine, would not need urgent hospital care in any limbo period. It is respectfully submitted that these findings are simply assumptions made by the IJ, and hence irrational

11. I am not satisfied that these grounds are an accurate reflection of what the First-tier Tribunal actually found. As I have set out above, what the Tribunal said was that there was *no evidence* about these matters. The passage cited at my paragraph 7 above addresses the restaurant, and as to medical issues the Tribunal says this:

> "30. In terms of the first Appellant's health he says in his statement that he has had blood in his urine and has been in and out of hospital with this. He also says that he takes medication for cholesterol and diabetes and claimed that the stress has caused him to lose 15 kg in two months. **I have not been provided a medical report which confirms that a short interruption in the Appellant's care would have significant consequences.** I was not pointed to evidence of hospital admissions in the GP records although I can see he has had visits to the urology clinic in hospital. I do have copies of his medical records confirming that the conditions exist although whilst the Appellant makes reference to being investigated for Haematuria I note that GP notes from June 2022 confirmed that there were no longer signs of this being seen on a CT scan. **I would need significantly better and more direct evidence on the consequences of any interruption in care to find that a short period of limbo would represent an interference in his private life. It does not seem likely that the Appellant would need urgent hospital care necessarily in any limbo period**.
>
> 31. The situation is similar to the second Appellant although arguably her health conditions are less serious as in her statement she only discloses that she takes medication for blood pressure and cholesterol and is at a prediabetes stage. It is also far from clear that the GPs would even become aware of the fact

> that the Appellants had lost their status before further leave to remain was granted".

12. The Judge cannot properly be criticised for making the "assumption" that no medical care would be required. On the contrary, on the evidence he had, it would have been an error to assume that it would. The point was that in the absence of clear medical evidence this was not a matter upon which he could place weight. I would also observe that the tenor of the grounds is mistaken in that anyone in need of emergency treatment is able to access that on the NHS, without payment at the point of delivery[1].

Ground (iv): Length of Limbo Period

13. It was the Respondent's position that the time frame between the Appellants becoming 'appeal rights exhausted' in these appeals and them receiving a decision in response to any human rights submissions made, would be approximately 12 weeks in total. At the hearing Counsel for the Appellants made reference to, but did not produce, a letter in the public domain which the Home Office had issued in 2021 in response to a 'freedom of information' request. He submitted to the Tribunal that according to that letter, the time frame was likely to be considerably longer. This received an interesting, and somewhat unusual, response from the First-tier Tribunal:

> "Mr Badar made submissions that the timetable would be likely to be longer than eight weeks and made reference to a Freedom of Information request on processing times which had been publicised a few years ago. I notified the parties of a degree of personal interest in that I had made that freedom of information request myself when in practice a few years at the time. The fact of the matter is that that freedom of information request was not put before me and in any event is now several years old and the processing times contained in it was certainly not consistent with my later experiences of such applications. If I was going to make a finding that the eight week period would be extended to an extent such as would engage article 8 I would need clear evidence of the current processing times".

14. This being the case, the Tribunal proceeded on the basis that the limbo period was likely to be the shorter estimate given by the Respondent.

15. The grounds now make two apparently alternative arguments about this.

16. The first is that given the Tribunal's indication that it was aware of the letter, it should have taken it into account. Mr Badar told me that he had the letter with him at court, but upon hearing the indication from the Judge he did not seek leave to adduce it. I am at a loss to understand why not. The Tribunal is not able to take into account evidence that is not before it, even if it is aware of it, for instance having seen such evidence in other appeals.

17. Secondly it is submitted that it is unclear whether the Judge is referring to the same FOI response as Counsel was alluding to. The latter was a letter dated the 31 August 2021 whereas the Judge refers to a FOI request made "a few years

[1] https://www.legislation.gov.uk/uksi/2017/756/contents/made

ago". The grounds imply that on that basis the Judge should not have discounted this evidence out of hand on the basis that he was aware of the processes speeding up since he made his request in practice. This is even more fatuous. Imagining for a moment that there are two of these letters in circulation, it is difficult to see how either would assist the Appellants since neither were produced and are both now of such vintage that little weight could properly be placed upon them.

18. In any event any dispute about whether the Judge should have treated the FOI as determinative of how long the limbo period is likely to be is largely irrelevant in light of the decision in Muslija (deprivation: reasonably foreseeable consequences) Albania [2022] UKUT 00337 (IAC) which says at headnote (4):

> *Exposure to the "limbo period", without more, cannot possibly tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship. That means there are limits to the utility of an assessment of the length of the limbo period; in the absence of some other factor (c.f. "without more"), the mere fact of exposure to even a potentially lengthy period of limbo is a factor unlikely to be of dispositive relevance.*

Notice of Decision

19. The appeals are dismissed.

20. There is no order for anonymity.

Upper Tribunal Judge Bruce
2nd May 2023