Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-003105
DC/50037/2021; LD/00028/2022

THE IMMIGRATION ACTS

Decision & Reason Promulgated
On 10 March 2023

Before

THE HON. MRS JUSTICE THORNTON DBE
UPPER TRIBUNAL JUDGE BLUNDELL

Between

ARIAN AJAZI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Heard at Field House on 22nd February 2023

Representation:
For the Appellant: Mr Metzer KC, instructed by Gulbenkian Andonian Solicitors
For the Respondent: Ms Cunha, Senior Presenting Officer, Home Office

DECISION AND REASONS

Introduction

1. The Appellant, Mr Ajazi, appeals against the decision of the First Tier Tribunal ("FTT"), promulgated on 21 June 2022, dismissing his appeal against the decision of the Respondent Secretary of State, dated 15 February 2021. The Respondent's decision notified him that the Respondent was depriving him of British citizenship, pursuant to section 40(3) of the British Nationality Act 1981.

Immigration history

2. The Appellant claimed asylum in the UK as an unaccompanied minor on 10 November 1999. He claimed to be born in Kosovo, to parents also born in Kosovo. He provided an account of his village being attacked by the Serb authorities. His application was refused but he was granted four years exceptional leave to remain.

3. On completion of the four years leave to remain he applied for indefinite leave to remain, in the same identity. His application was granted on 26 January 2004.

4. On 25 January 2005 he applied, successfully, to naturalise as a British citizen, in the same identity.

5. As a British citizen, he subsequently sponsored visits by his parents on three occasions in 2005/2006. They were granted entry clearance and subsequently indefinite leave to remain. In making their applications, his parents submitted their Albanian passports and said that the Appellant was Albanian. Whilst the British Embassy in Tirana was aware of the inconsistency, it appears not to have informed the Home Office at the time.

6. A year later however, on 16 November 2007, the Home Office received a referral from the British Embassy in Tirana following receipt of an application from the Appellant's spouse. The application contained contradictory information about the nationalities of the family, including evidence that the Appellant was married in Albania.

7. On 28 July 2008, the Respondent notified the Appellant of an intention to deprive him of citizenship. The basis for the consideration was that he had given false details in representations to the Home Office when submitting his asylum claim and his applications for leave to remain, and registration as a British citizen. He was invited to comment and provide evidence in mitigation.

8. The chronology between 2008 – 2018 is considered below in the analysis of Ground 1. It suffices to say at this juncture that Home Office records indicate that the Appellant's case was placed on hold pending litigation considering whether the Respondent was correct to treat citizenship obtained by fraud as nullified. The litigation concluded in December 2017 in the Supreme Court.

9. On 10 March 2018, the Respondent served notice on the Appellant of a further intention to deprive him of his citizenship. The decision to do so was subsequently issued on 15 February 2021.

The Secretary of State's deprivation decision

10. The Respondent's decision letter states that the Appellant's identify fraud was material to the grant of citizenship. The Appellant would not have

been granted limited/indefinite leave to remain had the truth been known. This would have prevented him from meeting the mandatory residence requirement for naturalisation. If the fraud had been revealed to the caseworker his application to naturalise would have been unsuccessful in accordance with the relevant policy guidance and the Appellant would not have been considered of good character.

11. The letter went on to explain that deprivation of citizenship is distinct from removal or deportation and it was not necessary to take into account the impact of removal on the Appellant or his family members. Nor would it, in itself, have a significant effect on the best interests of the Appellant's children. Whilst there may be an emotional impact on them, it was nonetheless a reasonable and balanced step, taking into account the seriousness of the Appellant's conduct.

12. The letter then addressed the period following deprivation, during which time the Appellant's immigration status will be under consideration:

> *'40 In order to provide clarity regarding the period between loss of citizenship via service of a deprivation order and the further decision to remove, deport or grant leave, the Secretary of State notes this period will be relatively short:*
>
> *a deprivation order will be made within four weeks of your appeal rights being exhausted, or receipt of written confirmation from you that you will not appeal this decision, whichever is the sooner.*
>
> *within eight weeks from the deprivation order being made, subject to any representations you may make, a further decision will be made either to remove you from the United Kingdom, commence deportation action (only if you have less than 18 months of a custodial sentence to serve or has already been released from prison), or issue leave.'*

13. The letter concluded:

> '*41 The effects of deprivation action on you and your family members must be weighed against the public interest in protecting the special relationship of solidarity and good faith between the UK and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality. Having weighed those effects, it has been concluded that it is reasonable and proportionate to deprive you of British citizenship.'*

The decision of the First Tier Tribunal Judge

14. The FTT's decision records that there was 'no challenge by the appellant to the facts as found by the respondent' (§64) before recording as follows at §78:

> *'I find that the appellant has been aware throughout this time – from the discovery of the fraud in 2007 to the notice in 2018 that the respondent was pursuing the issue of deprivation. I find that the appellant has deliberately used fraud and there was no innocent explanation or genuine omission. During this time the appellant has*

had the benefit of his status and no disadvantage was discernible. The only issue was that of uncertainty but the appellant would have been aware from others in his position, particularly his brother, that there would inevitably be a delay. The significant issue in the delay was the time needed for the litigation to proceed through the courts and for the matter to be finally determined by the Supreme Court.'

15. Turning to apply the law, the Judge identified that there was no challenge as to the use of fraud/deception. The Respondent was therefore entitled to deprive the Appellant of his British citizenship subject only to the issue as to whether deprivation would breach the Appellant's Article 8 rights.

16. The Judge directed himself to the relevant principles and authorities including the analysis in Hysaj (deprivation of citizenship; delay [2020] UKUT 00128 IAC) as to the so called 'limbo' period following deprivation, pending a decision by the Respondent on immigration status. Having done so, the Judge made the following assessment:

'87. In respect of the right to respect for private life, I accept that the appellant is unlikely to be able to work legally, at least for a period, or claim benefits, but will have to rely on financial support from family and friends. The appellant developed his private life, and family life, in the knowledge that it was based on deception and a right to remain in the UK which was entirely premised on a false identity. His parents and wife knew that status had been obtained by him and in turn theirs, by the use of fraud.

88 I accept that the appellant works and is financially responsible for his family. The effect of deprivation will mean that the appellant will not be able to legally work in the UK but it is not possible to speculate for how long "limbo" period will last until the respondent makes a further decision. I accept that this uncertainty will place the appellant in some difficulties but these have been of his making. I find that the appellant lives with his brother and parents and that he will have financial support from them here.

……

90. The appellant holds a mortgage and the mortgagee expects monthly payments but I take judicial notice of the fact that mortgagees can offer periods where payment is not required for compassionate reasons and there was no evidence before me that the appellant's mortgagees would not be able to assist in this way. The suggested time scales of the respondent are such that it is likely that the appellant, if granted leave, would be able to recommence payment of the instalments having secured employment before any action to take possession is initiated by the mortgagee.

91. The appellant lives with his brother and his partner and family. His parents are in the UK and the family will be able to offer support both emotional and financial. The children are young but the appellant's wife can work. She can reverse her role with her husband and during this period she can seek work, although I accept that her income is likely to be insufficient to cover their outgoings.

> *92. I attach weight to the information obtained following a Freedom of Information request by the appellant. It discloses that on average it took 303 days to grant temporary leave following a decision to deprive citizenship on grounds of fraud. The time period is significantly longer than that of six to eight weeks envisaged in Hysaj but it is, however, an average figure. There is no way of knowing the circumstances and complexities that may have arisen in some cases throughout the relevant period. This appellant's case is relatively straight forward and he can make representations to the respondent forthwith.*
>
> *93. The reasonably foreseeable consequences of deprivation are that the family will experience a period of limbo. I take into account that the decision will have an adverse impact on not only the appellant but on his wife -Beoku- Betts v SSHD [2008] UKHL 39. However I do not accept that the limbo period will adversely impact on his children as they are extremely young and will not be aware of any possible consequences.*
>
> *.....*
>
> *97. In respect of the limbo period I accept that this will cause some difficulties to the appellant and to his immediate family. However I do not find that such difficulties are of such a strength to displace the public interest in this appeal. The appellant is not an innocent victim and has used deception to gain an immigration advantage. His wife and parents were aware of that deception.'*

17. The Judge addressed the Respondent's delay in decision making as follows:

> *'102. In terms of any expectation that he would be retaining British citizenship, unlike the case of Laci there is nothing to support that this appellant has at any time understood that the SSHD would not be pursuing any further action. It is unarguable that there is any delay that could be described as prolonged or inexcusable or so egregious to fall into the third category identified by Lord Bingham in EB (Kosovo). It has not been shown that the delay "is as a result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes.'*

18. The Judge's conclusion was as follows:

> *'104. Accordingly, for all of these reasons, I find that, following Ciceri, that the reasonably foreseeable consequences of deprivation are not such as to amount to a violation of the appellant's rights under Article 8 of the ECHR. The respondent's exercise of discretion in seeking to deprive the appellant of his British citizenship was a reasonable and proportionate response to his deception and the impact upon the appellant of such deprivation is not such as to outweigh the strong public interest in depriving him of the status and citizenship to which he was not entitled. The Secretary of State, in reaching her decision, had regard to all relevant matters and was entitled to conclude as she did.'*

The Law

19. The legal framework was common ground and may be summarised as follows.

20. The Secretary of State may 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 fraud; false representation, or concealment of a material fact (Section 40(3) of the British Nationality Act ('the Act')). Whilst section 40A of the Act provides for an appeal to the Tribunal rather than a review, the Tribunal should approach its task on (to paraphrase) essentially *Wednesbury* principles, save that it is obliged to determine for itself whether the decision was compatible with the obligations of the decision-maker under the Human Rights Act 1998 ((Begum v SIAC [2021] UKSC 7; (Ciceri (deprivation of citizenship appeals: principles [2021] UKUT 00238)).

21. In this context, the Tribunal must first establish whether the conduct (fraud; false representation or concealment of a material fact) has taken place. Having done so, the Tribunal must assess whether depriving the appellant of British citizenship would constitute a violation of any rights under the European Convention on Human Rights are engaged (usually Article 8), determining the reasonably foreseeable consequences of deprivation and paying due regard to the obvious strong public interest in depriving the Appellant of a benefit that he should never have received: Laci v Secretary of State for the Home Department [2021] EWCA Civ 769; [2021] 4 WLR 86.

22. Any delay by the Secretary of State in making a decision 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) ((Ciceri (deprivation of citizenship appeals: principles [2021] UKUT 00238)).

The Grounds of Appeal

23. The following grounds of appeal were advanced.

24. Ground (1) Delay: There was prolonged and unexplained delay and inaction by the Respondent in her decision making. The Judge was wrong to conclude that the Respondent had not given any impression that deprivation action would not be pursued and that there was nothing to suggest the Appellant had understood this to be the case (§78 and §102 of the decision).

25. Ground (2) The limbo period: the Judge gave no reason for concluding that the consideration of an Article 8 application by the Appellant would

take less than the average of 303 days. Her conclusion that the Appellant's case was relatively straightforward was irrational and wrong or alternatively inadequately reasoned.

26. Ground (3) The financial impact on the Appellant during the limbo period: the Judge failed to adequately assess and take into account the impact of the limbo period on the Appellant and his family, in particular his children. The Appellant will be unable to financially support them during the period and they would not have been aware of his deception (§90 and §91 of the FTT decision).

27. Ground (4) Failure to admit his nationality: the FTT judge wrongly placed reliance on the finding that the Appellant had not advised the British authorities that he was Albanian when a letter dated 12 August 2008 from the Appellant's solicitors makes clear he was from Albania.

Discussion

Ground (1) – delay and the Appellant's understanding of the decision making.

28. In order to assess the merits of ground 1, we asked Counsel (assisted by his instructing solicitor) to address us on the chronology of the decision making and take us to the relevant correspondence.

29. In this context, we remind ourselves of the relevant principles relating to delay. Only exceptionally will it be right for a person who has obtained citizenship by deception to be allowed to retain it. To be relevant, delay in the decision whether to deprive must be in the realm of 'wholly unexplained' and/or inexcusable and or unreasonable. The relevance of the impact is that an appellant is likely to develop ties and put down roots in the UK and the sense of impermanence in his position arising from the knowledge that deprivation is under consideration will fade. It follows that the appellant's understanding of the situation is material to the impact of delay. Once it is accepted that unreasonable delay is capable of being a relevant factor then the weight to be given to it in the particular case is a matter for the FTT judge (EB Kosovo v SSHD [2008] UKHL 41) and Laci v Secretary of State for the Home Department [2021] EWCA Civ 769).

30. It was common ground at the start of the hearing that the Judge must have erred in his reference to the Appellant being aware that his fraud was being investigated from 2007. He could only be taken have been aware from the notice to him in 2008. In our assessment nothing turns on the point given the subsequent chronology.

31. Having considered the relevant documents and chronology we are not persuaded that the Judge fell into material error in finding there to be no inexcusable delay and that the Appellant would have been aware that deprivation action was being pursued against him during the period 2008 to 2018. That was a finding of fact which the specialist judge of the First-

tier Tribunal was entitled to reach after considering the sea of evidence presented to him.

32. Relevant correspondence and chronology in this regard is as follows:

2008– 2010

a. 28 July 2008, letter from the Home Office to the Appellant putting the Appellant on notice that deprivation action is being considered.

b. 12 August 2008, the Appellant's solicitors write objecting to the proposed deprivation action.

c. 16 March 2009, a letter from the Home Office to the Appellant's Member of Parliament (MP), apologising for the delay but making it clear the decision making was ongoing:

> *'I understand from your letter that you and Mr Ajazi are concerned with the length of time that it is taking for a decision to be made on his wife's application. I have noted and appreciate that there has been a considerable delay on the process of this application.*
>
> *I wish to assure you that our Visa Section in Tirana are doing all they can to bring this matter to a conclusion and am sorry that I cannot at present provide you with more helpful information.'*

d. 16 April 2009, a letter from the Home Office to the Appellant's solicitors explaining the Appellant's case is still being considered:

> *'.....we will write to you in due course to advise of any progress or a final decision on Mr. Ajazi's case.'*

e. 18 May 2009, a letter from the Home Office to the Appellant's solicitors responding to a chaser letter dated 12 May 2009 from the solicitors. The letter apologises for the continuing delay and explaining that:

> *'Mr Ajazi's case is due to be forwarded to the Chief Executive's shortly and there should not be any lengthy delay after this.'*

f. 1 Sep 2009, a letter from the Home Office to the Appellant's solicitors stating that:

> '*A final decision has still not been taken as to whether there are grounds to deprive Mr Ajazi of his British citizenship. Decisions are taking longer than expected in these cases as they have to be referred to Home Office ministers but we have asked for Mr Ajazi's case to be prioritised …'*

g. 17 November 2009, a letter from the Home Office to the Appellant's solicitors explaining that:

> *'A final decision on whether to deprive Mr Ajazi of his citizenship is currently with the Home Secretary and you will be notified as soon as it has been made.'*

h. 23 June 2010, a letter from the Home Office to the Appellant's MP responding to a letter from the MP dated 18 May 2010 sent on behalf of the Appellant:

> *'Mr Ajazi is being considered for deprivation as it is thought that he committed fraud …*
>
> *The UK Border Agency gives very careful consideration to whether it is appropriate to deprive someone of their citizenship and this is inevitably a protracted process.*
>
> *The UK Border Agency has recently released a limited number of decisions to deprive British citizenship and one of these decisions was appealed as a test case before The Tribunal Immigration and Asylum Chamber on 26 April. The appeal determination is expected soon. The outcome of this case, and others awaiting appeal, will be an important determining factor in finalising the UK Border Agency's decision in those cases, like Mr Ajazi's, that will follow.'*

33. Pausing here, in our assessment nothing in the correspondence above can be said to have given the Appellant any sense that deprivation proceedings were not being pursued.

2010 – 2012 the Appellant's judicial review proceedings

34. As is apparent from the correspondence, and confirmed by Mr Metzer, the Appellant initiated judicial review proceedings about the delay in decision making, sending a letter before action dated 23 June 2010. The proceedings concluded in 2012 when the Appellant withdrew the claim, following a decision by the Tribunal in the case of Arusha & Demushi v Secretary of State for the Home Department [2012] UKUT 80 (IAC), which raised similar issues.

35. As Mr Metzer conceded before us, the judicial review proceedings were pursued by the Appellant in light of his concerns at the ongoing delay. It cannot therefore be said that the Appellant had any sense that deprivation proceedings were no longer being pursued during this period.

36. We also note the contents of a letter sent by the Treasury Solicitor to the appellant's solicitors in connection with an application to stay the judicial review proceedings. The letter is dated 19 October 2010 and explains why, in the view of the Secretary of State, the outcome of the appeals in Arusha & Demushi would be relevant to the claim. Amongst other things, the respondent's solicitor stated that:

> 'The First Appellant [Arusha] in that case is challenging the SSHD's decision to deprive him of his nationality under Section 40(3) of the British

> Nationality Act 1981. As you are aware the SSHD is currently considering whether it is appropriate in your client's case to deprive him of his nationality on the basis that when he obtained British nationality he claimed to be from Kosovo but there is now evidence to suggest that he may in fact be from Albania.'

It is difficult, frankly, to see how the Secretary of State could have made her position any clearer at this time.

2012 - 2018

37. In oral submissions Mr Metzer focussed on the delay between 2012 – 2018. However, his difficulty in doing so is twofold.

38. Firstly, 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 not, normally, be relevant in assessing the effects of delay (Ciceri). As the Judge said, "The significant issue in the delay was the time needed for the litigation to proceed through the courts and for the matter to be finally determined by the Supreme Court" (§78).

39. Secondly, we are not persuaded that the 'sense of impermanence' occasioned in the Appellant by the commencement of deprivation proceedings could be said to have faded during this period. We accept that there is nothing in the correspondence indicating that the nullity litigation was explained to the Appellant in terms by the Respondent. In this regard Mr Metzer criticised the Judge's description of an internal minute dated 10 March 2017 as 'a clear minute…that the appellant had been informed that his status was under review and that the case was on hold pending the Supreme Court decision' (§ 76 of the decision). Mr Metzer took us to the minute and we accept his submission that the minute is not as clear as the Judge suggests as to whether the Appellant was told about the nullity litigation.

40. However, the Appellant continued to be professionally represented by experienced immigration solicitors during the relevant period. The nullity litigation and the consequent pause on decision making was well known by those practicing in immigration law at the time. In this context we observed that the Appellant's solicitors sent chaser letters to the Home Office during the period between 2008 – 2010 but there did not appear to be any such letters on the Home Office file (a copy of which was disclosed to the appellant by way of a Subject Access Request) during the period 2012 - 2018. On raising our query with Mr Metzer, he confirmed that there were no letters sent during this period. This supports our view that the position was known and understood by the Appellant and his advisors. We also observe that the Appellant's brother, who lives with the Appellant, instructed the same solicitors during this period on an immigration matter. Whilst his brother's case concerned indefinite leave to remain, it would have provided the Appellant with a further understanding of the pace of decision making in the immigration system (his brother's case was put on

hold pending policy guidance), a point made by the FTT judge at § 78 of the decision.

41. On 10 March 2018, following the conclusion of the nullity litigation in the Supreme Court, the Respondent wrote again to the Appellant stating that deprivation action was under consideration.

42. Mr Metzer emphasised that the Appellant was granted a passport during the period in question. In response Ms Cunha directed us to R (Gjini) v SSHD [2021] EWHC 1677 at §103 in which the Court concluded that:

> "*Whilst a final order depriving a person of British citizenship would be a ground for refusing to issue a passport, neither the intimation, nor the commencement, of deprivation proceedings by the Defendant is, nor can be, a lawful or rational basis for refusing to issue a passport*."

Mr Metzer's submission that the judge should have explained herself further in relation to delay is to seek reasons for reasons. The judge clearly considered the 'sea of evidence' before her and reached a finding of fact with which we should not interfere. To do so would be contrary to the principles stated in Fage v Chobani [2014] EWCA 5; [2014] ETMR 26 and restated (by Lewison LJ) at [2] of Volpi v Volpi [2022] EWCA Civ 464; [2022] 4 WLR 48. Despite the claimed similarity of this case and Laci v SSHD, the judge was entitled to conclude that the appellant was not a person who had come to believe that the Secretary of State had decided not to proceed with depriving him of his citizenship.

43. Ground (1) fails.

Grounds (2) - (4)

44. In oral submissions Mr Metzer conceded that his main ground was ground 1 so we take the other grounds shortly.

Ground (2) – the limbo period

45. We find no error in the Judge's assessment of the limbo period. The weight to be given to the average length of time for the grant of temporary leave following a deprivation decision (303 days) was a matter for the Judge. As a specialist tribunal it was entirely within her remit to assess the appellant's case in this context as 'relatively straightforward' (HA (Iraq) v SSHD [2022] UKSC 22 at [72]). There is no suggestion of criminality or other such complicating factors. On inquiry by the Tribunal, Mr Metzer conceded that a submission that the Appellant's case was not straightforward had not been advanced before the Judge. Mr Metzer seeks reasons for reasons when suggesting that her assessment in this regard was inadequately reasoned.

Ground (3) – financial impact during the limbo period

46. We are not persuaded that the Judge fell into error in her assessment at paragraphs 91 and 92 about the impact on the Appellant and his family during the limbo period.

47. The burden is on the Appellant to demonstrate an interference with his Article 8 rights (private and family life) during the period in question. In undertaking her assessment, the judge was required to balance the 'heavy weight' of the public interest in maintaining the integrity of immigration control (Hysaj and Laci), on the one hand and the impacts on family life on the other. On inquiry by the Tribunal, Mr Metzer conceded that the Judge had not been presented with a submission or evidence that the Appellant would not be able to manage during the limbo period. In the absence of a positive case to this effect the judge was entitled to assess the balance as she did. Mr Metzer criticised the judge for finding that the Appellant's elderly parents could provide financial support, but this is not what the Judge said. She found as follows at §91:

> "*The appellant lives with his brother and his partner and family. His parents are in the UK and the family will be able to offer support both emotional and financial…*' (emphasis added).

Ground (4) – alleged failure to admit his nationality

48. Mr Metzer conceded that this ground was unlikely to be material in the event he failed to persuade us on the other grounds. The focus of this ground is paragraph 100 of the FTT decision where the Judge contrasts the actions of Mr Laci in admitting his deception with that of the appellant ('The appellant, unlike Mr Laci, had not admitted his deception at any time'). We are not persuaded of any material error in this regard by the Judge. Even if the solicitor's letter of 12 August 2008 is taken into account, there is no challenge to the other findings that 'deception has been utilised on several occasions and I note that as late as 2011 his wife entered the UK clandestinely' [100]. This was only one of the factors considered by the Judge in his assessment of the limbo period which included delay and the financial position of the family. Of itself, exposure to the limbo period is not sufficient to carry weight in the assessment of the proportionality of the decision (Laci).

Postscript

49. Whilst this decision was being finalised, the appellant's solicitors filed a copy of an unreported decision (*Semaj v SSHD* UI-2021-001737). It is a decision made by Lang J and UTJ Kopieczek and issued on 27 February 2023. We understand that there is no intention on the part of the Tribunal to refer it to the Upper Tribunal's Reporting Committee. The appellant's solicitors made no application to rely on an unreported decision (as to which, we refer to [8] of the Senior President's Practice Directions of 13 May 2022). We note, in any event, that the decision does not purport to establish any new proposition of law. It was, instead, a decision which turned entirely on its own facts and on the Upper Tribunal's conclusion that

the judge in the FtT had failed to come to grips with the appellant's submissions on delay. For the reasons we have given above, we have come to the contrary conclusion in this case. We decided in these circumstances not to delay the promulgation of this decision by seeking further submissions from the parties on the decision in Semaj v SSHD.

Decision

50. The appeal is dismissed.

Signed: MRS JUSTICE THORNTON Date: 08.03.2022

The Hon. Mrs Justice Thornton DBE