



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2022-006468**  
**First-tier Tribunal No: DC/50273/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 28 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**LULZIM HALAJ**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Smith of Counsel, instructed by Oliver and Hasani Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**Heard at Field House by remote video means on 16 May 2023**

**DECISION AND REASONS**

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.
2. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Atreya promulgated on 28 July 2022, in which Mr Halaj's appeal against the decision to deprive him of his British Citizenship dated 15 October 2021 was allowed on Article 8 grounds, albeit the decision to deprive was found to be lawful under section 40(3) of the British Nationality Act 1981. For ease I refer to the parties as they were before the First-tier Tribunal, with Mr Halaj as the Appellant and the Secretary of State for the Home Department as the Respondent.
3. The Appellant is a national of Albania, born on 14 May 1973, who entered the United Kingdom and claimed asylum on 12 March 1998 as a Kosovan national named Ardian Dushaj born on 10 January 1981. The claim was on the basis that

the Appellant was an unaccompanied asylum seeking child who was at risk of abuse from the Serbian police. The Appellant was granted asylum and later indefinite leave to remain on that basis and in that identity and was also issued with a travel document in that identity on 8 October 2009. The Appellant applied for naturalisation on 16 May 2003, which was granted on 24 June 2003. The Appellant applied for two British passports, both of which have subsequently been revoked by HMPO on the basis that they were obtained using fraud. HMPO made a fraud referral on 3 March 2021 and on 26 February 2022 the Appellant admitted that he had used a false identity.

4. The Respondent made the decision to deprive the Appellant of his British citizenship on the application the basis of the history set out above, that the Appellant had intended to use fraud as an adult as to his identity and nationality, which was both deliberate and material to the grant of asylum, leave and citizenship; in addition the Appellant had failed to meet the good character requirement for citizenship in light of this deception. Further, there was no delay in this case and the Appellant's length of residence of itself was not sufficient to make deprivation disproportionate.
5. Judge Atreya allowed the appeal in a decision promulgated on 28 July 2022 on Article 8 grounds. The Appellant had accepted both the fraud and that it was material and overall the decision was lawful under section 40(3) of the British Nationality Act 1981. In relation to the Article 8 challenge, the Judge identified that there would be a period of some weeks or months between the decision to deprive and a further decision on whether the Appellant would be granted any form of leave to remain in the United Kingdom, what is known as the limbo period and that this alone is not sufficient, but that overall the effect on the Appellant's private and family life would be disproportionate. I return below to the discussion on this point in the decision.

### **The appeal**

6. The Respondent appeals on two grounds. First, that the First-tier Tribunal erred in law in failing to make a finding on whether the Appellant was of good character when applying for citizenship, a matter which could be inferred he was not, but no express finding was made. Secondly, that the First-tier Tribunal erred in law in allowing the appeal on Article 8 grounds in circumstances where there was no assessment at all of the likely circumstances facing the Appellant during the limbo period between deprivation and a decision on leave; nor any assessment of the severity of any impact and no reasons are given for the ultimate finding that it would be disproportionate.
7. At the oral hearing, Mr Clarke relied on the grounds of appeal on behalf of the Respondent. In relation to the first ground of appeal, Mr Clarke accepted that nothing much turned on this point, but it was included in the grounds of appeal on a belt and braces approach in case there was any re-making of the decision.
8. In relation to the second ground of appeal, it was noted that the Judge identified that the issue was only with the limbo period and that of itself was insufficient to find a disproportionate interference, but failed to go on to make any findings about what may happen during this period nor why it would be disproportionate, i.e. why the effects would be sufficiently severe to outweigh the significant public interest in this case. Mr Clarke summarised the relevant case law, including the following.

9. The case of Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238 (IAC) confirmed the correct approach to Article 8, which required assessment of the reasonably foreseeable consequences of deportation until a new decision is made. In Laci v Secretary of State for the Home Department [2021] EWCA Civ 769, it was confirmed that absent a long delay (9 years in that case) the period taken for a deprivation decision does not carry any significant weight, a factor recognised by the Judge in the present appeal. The decision under appeal expressly included paragraph 110 of Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 128 (IAC), the factual context of which is also important, which including that the appellant there could not work or provide for his family, but his wife could work and there were safety nets in place; overall it was found that the disruption to daily life could not possibly tip the balance in the proportionality assessment in the Appellant's favour. In KV (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 2483 the court found that the withdrawal of rights as a British citizen was no more than to place a person in the position that they would have been without the use of deception. In BA (deprivation of citizenship: appeals) [2018] UKUT 00085 (IAC) it was noted that it would be rare for an appeal to be allowed absent the element of statelessness.
  
10. As to the decision under appeal, the discussion and findings on Article 8 begin at paragraph 56 and in paragraph 58 there is a backward looking assessment of the Appellant's private and family life, including reference to residence of 24 years, a British citizen since 2003 and the Appellant living here since he was a young adult. The Appellant is married to a British citizen with four British citizen children and has worked and contributed to the economy. There follows the quote from Hysaj but it was submitted that this was not applied to the facts in the paragraphs that follow, in paragraphs which erroneously begin again at 45. The Judge acknowledges that limbo itself is not sufficient and refers to the backwards looking findings (including a factual mistake that the Appellant entered as a teenager, he did not, he was 24 on entry on his real date of birth). The decision fails to identify any breach of the Appellant's private or family life and fails to consider the evidence of savings and property and no consideration is given to education or healthcare. At most there was evidence that the Appellant worked and had injuries which caused occasional difficulties at work. Mr Clarke submitted that even if a breach of Article 8 could be inferred, it was impossible on the limited findings made to understand why the effect on the Appellant was any more than the natural consequences of deprivation, with nothing particularly difficult for him. The conclusion allowing the appeal is therefore irrational and unsubstantiated. Mr Clarke submitted that on the evidence and following a proper assessment, it is impossible to see how the Appellant's appeal could be allowed on Article 8 grounds.
  
11. On behalf of the Appellant, Ms Smith relied on her rule 24 response. In relation to the first ground of appeal, there could be no material error of law as the Tribunal had already found in the Respondent's favour that the decision to deprive was lawful. As to the second ground of appeal, the Judge properly set out the background and circumstances to the appeal, including the Respondent's case and relevant law. It is clear that the Judge was well aware of the applicable legal principles, quoting them and referring to Ciceri, Hysaj and KV throughout the decision. Ms Smith submitted that a proper assessment was carried out applying this caselaw and on the particular facts it was open to the Judge to reach the conclusion that they did.

12. In terms of the consequences of deprivation for the Appellant pending a new decision, Ms Smith identified that the Appellant would not be able to work and there was a possible impact on his health, albeit it was not asserted that he would be unable to access any required medical treatment and it was not suggested that there would be any impact on family members, all of whom were British citizens with no deprivation action taken against them. The Appellant owned his own home with a mortgage. On these facts it was submitted that it was rationally possible for a Judge to find that the adverse consequences could outweigh the public interest in this case.
13. I indicated at the hearing that I found a material error of law in the assessment of Article 8 by the First-tier Tribunal on the basis that there was no identification of the reasonably foreseeable consequences of deprivation, no assessment of the seriousness of the same and no reasons given as to why any breach (even if established) would outweigh the public interest in this case. The parties agreed that submissions could be made at the hearing as to how the appeal should be remade on the Article 8 issue such that a composite decision could be made in writing to dispose of the appeal.
14. On behalf of the Respondent, Mr Clarke submitted that on the evidence, there is no breach of the Appellant's Article 8 rights during the limbo period; and even if one is found, at most it is a temporary interruption to his ability to work. There is no evidence of any ongoing health needs that would not be met during this period and nothing rare, exceptional or compelling that could possibly outweigh the public interest.
15. On behalf of the Appellant, Ms Smith relied on the skeleton argument that was before the First-tier Tribunal, particularly at paragraphs 16 to 19. In his written statement, the Appellant stated that he would be unable to work and would be devastated if he was deprived of his British citizenship. It was suggested that this would have an impact on his family and his health due to the stress it would cause, although it was accepted that this was not expressly identified in the written evidence. There was some medical evidence before the First-tier Tribunal, but it was not submitted that any healthcare needed would not be available to the Appellant. The evidence included financial documents, tax returns, CIS payments, payslips and the deed for the Appellant's property; all of which show he has been working for many years in the construction industry.

### **Findings and reasons**

16. At the hearing, the parties were largely in agreement that the first ground of appeal did not identify any material error of law in the First-tier Tribunal's decision on the basis that the findings on the decision under section 40(3) of the British Nationality Act 1981 were in the Respondent's favour and any failure to expressly make a finding on whether the good character requirement was met could not be material to that outcome. In any event, given the findings of deliberate fraud which was material to the grant of leave and of citizenship; not admitted to by the Appellant until after the HMPO investigation, it can readily be inferred that the Appellant did not in addition meet the good character requirement.
17. The second ground of appeal clearly contains a material error of law as the decision is entirely devoid of any findings as to what the reasonably foreseeable consequences of the limbo period are for the Appellant (and potentially his family); how serious any such consequences are and devoid of any reasons why

such consequences would outweigh the significant public interest in this case. If such a balancing exercise was undertaken at all, which is doubtful on the face of the decision, it is entirely missing from it. These errors can be seen from the entirety of the Tribunal's reasoning on Article 8 which was as follows:

*"58. It is clear on the evidence before me that he has developed very strong and close family ties and private life since 1998. He has been resident in the UK for 24 years, been naturalised as a British Citizen since 2003 and has been living in the UK since he was a young adult. He is married and has four British Citizen children. I accept that the appellant has worked and contributed to the economy through his income and tax contributions. None of this was disrupted by the respondent.*

*59. Taking into account Hysaj (deprivation of citizenship: delay) [2020] UKUT 00128 (IAC) at 110 I find the following.*

*60. In Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 128 (IAC) the Upper Tribunal provided the following guidance at paragraph 110*

*110. There is heavy weight to be placed on the public interest in maintaining the integrity of the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship. That deprivation will cause disruption in day-to-day life is a consequence of the appellant's own actions and without more, such as the loss of rights previously enjoyed, cannot possibly tip the proportionality balance in favour of his retaining the benefits of citizenship that he fraudulently secured. That is the essence of what the appellant seeks through securing limited leave pending consideration by the respondent as to whether he should be deported. Although the appellant's family members are not culpable, their interests are not such, either individually or cumulatively, as to outweigh the strong public interest in this case. [Emphasis added].*

*45. It was not disrupted on the day of the hearing by the respondent that there will be a period of several weeks or months when the appellant will be without leave to remain if he is unsuccessful in his deprivation appeal and then issued with a deprivation order.*

*46. Whilst the "in limbo" period alone is insufficient I find on the facts of this particular case that the appellant's long residence of over 20 years since he was a teenage boy, strong family ties including children, work and health (stroke) tip the scales in his favour and I find that the reasonably foreseeable consequences of deprivation for the appellant, his wife and family amount to a disproportionate interference with Article 8 ECHR.*

*47. I allow the appeal on Article 8 grounds and find the appellant should be granted limited leave to remain pending consideration by the respondent about any further decision made about his future in the UK."*

18. Although I accept that earlier in the decision the Judge correctly sets out the relevant case law, there is simply nothing in the decision that suggests its application to the facts of this case; with a lack of any of the necessary findings and no reasons given for the ultimate conclusion which are relevant to a forward looking assessment of reasonably foreseeable consequences during the limbo period. For these reasons and as outlined in the second ground of appeal, there is a material error of law in the decision of the First-tier Tribunal such that it is

necessary to set it aside in relation to the Article 8 issue. There is no cross-appeal by the Appellant to the First-tier Tribunal findings on the lawfulness of the Respondent's decision under section 40(3) of the British Nationality Act 1981 such that those findings stand.

19. As to remaking the appeal, the first task is to identify the reasonably foreseeable consequences of the decision to deprive pending a further decision by the respondent. Aside from the Appellant's distress at being deprived of his British citizenship, the only reasonably foreseeable consequence on him or his family is that he would be unable to work for a period of time. The evidence before the First-tier Tribunal is that the Appellant had worked for a number of years in the construction industry and his earnings in the year to April 2021 (the latest available) were £36,573. It is not however suggested anywhere in the evidence that the Appellant being unable to work would cause any financial hardship to him or his family and I do not find that it would. The Appellant's wife works and remains entitled to do so as no action is being taken against her and the Appellant's latest available bank statement shows a significant balance of more than double his previous years' earnings. The Appellant owns his own home and the leasehold does not show a mortgage charge, but in any event, he has far in excess of the total amount that could have been borrowed in his latest bank statement.
20. There will be no impact on any of the Appellant's family, his wife and four children given that they are all British citizens with no action taken against them. It is also accepted that the Appellant will be able to access healthcare as required. Although it was suggested that the stress of the situation may create a risk to the Appellant's health, this was not claimed in the Appellant's own evidence nor is there any supporting medical evidence of risk; such that the submission is entirely unsubstantiated.
21. I find therefore that there is no breach of the Appellant's right to respect for family life and only a very limited breach of his private life given that he will be unable to work for a period, albeit that that does not have any adverse knock on consequences. At most, that returns the the Appellant to the position he would be in without the fraud, that he would not have permission to work. It is the slightest possible breach of Article 8. Applying the case law referred to above and as set out in the First-tier Tribunal's decision (as to which there is no dispute between the parties), on these facts, the disruption to the Appellant's ability to continue working for a limited period of time can not on any rational view outweigh the very significant public interest in this case where a person has obtained leave to remain and citizenship by fraud, maintaining a false identity and false nationality for a period of over 20 years. The appeal is dismissed on human rights grounds, there is no disproportionate interference with the Appellant's Article 8 rights.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remake the appeal as follows.

The appeal is dismissed on all grounds.

**Case No: UI-2022-006468**  
**First-tier Tribunal No: DC/50273/2021**

G Jackson

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**22<sup>nd</sup> May 2023**