IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002854
First Tier No: DC/50175/2022
LD/00158/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 January 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

Secretary of State for the Home Department

Appellant

and

FZ

Respondent

(ANONYMITY ORDER MADE)

Representation:

For the Appellant: Mr Lindsay, Senior Presenting Officer
For the Respondent: Mr Jones

Heard at Field House on 14 September 2023

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they appeared respectively before the First-tier Tribunal. The appellant, a citizen of Albania who was born on 16 September 1968, appealed under section 40A(1) of the British Nationality Act 1981 ('the 1981 Act') against a decision of the Secretary of State, made on 18 August 2022, under section 40(5) of the 1981 Act to make an order depriving the appellant of her British citizenship. The respondent relies section 40(3) of the 1981 Act. The appellant appealed to the First-tier Tribunal, which in a decision dated 2 July 2023, allowed the appeal on Article 8 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. In essence, the grounds make one challenge to the judge's decision, namely that the judge failed to provide adequate reasons for her decision. I was assisted at the initial hearing by both advocates. Mr Jones had filed a detailed and helpful Rule 24 response to which I shall refer below.

3. The Upper Tribunal should hesitate before finding that a decision of the First-tier Tribunal is inadequately reasoned. It is the task of the First-tier Tribunal to carry out a robust fact-finding on the evidence; it is generally unnecessary for the Upper Tribunal to interfere with the decision of the fact finder who had the benefit of hearing oral evidence. In this instance, however, the judge has, despite writing a detailed and thoughtful decision, fallen into error.

4. First, I is axiomatic that the appellant needed to support her appeal with detailed evidence of her financial circumstances and those of her son who the judge noted ‘ worked full time as an accountant to help support the family.’ I consider that the judge erred by failing to factor into her decision the absence of detailed evidence of the son’s financial circumstances, the appellant’s likely rental costs during any ‘limbo’ period (and the son’s ability to meet those costs) and the likely costs of medical treatment which the appellant might require in the same period. At [58], the judge had observed that ‘[the appellant’s] loss of welfare benefits, which include an element for housing, mean that she would not be able to meet her rental costs for a property of which she is the sole tenant although there was no evidence that these housing costs could not be borne by the appellant’s elder son during the limbo period.’[my emphasis]. However, the judge simply leaves that observation unresolved by any finding of fact regarding the son’s willingness and ability to meet the appellant’s costs during the ‘limbo’ period. I agree with the respondent that the judge’s failure to make clear findings on the likelihood of the appellant’s son being able to contribute (perhaps substantially) to the appellant’s housing and medical care needs undermines the validity of her conclusion that the lack of free health care ‘would be significantly damaging for this appellant’ [58]. To that extent, the judge’s fact-finding, notwithstanding a detailed decision, is incomplete.

5. Secondly, the judge has proceeded on assumptions when she should have done so on evidence which should have been available to her. Mr Jones submitted that the appellant ‘requires a lawful residence’ that is the council house of which she became sole tenant following her divorce. I do not see why questions over the appellant’s security of accommodation should remove the need for the judge to make findings on how the rent on that property would be met during the ‘limbo’ period or, indeed, how an arrangement for the son to pay the rent for a relatively short period would affect the appellant’s rights as a tenant. It is not clear that the argument advanced by Mr Jones in the Rule 24 response that deprivation of citizenship would ‘render [the appellant] ineligible for occupation of that property as she will no longer meet the habitual/lawful residence test’ was put before the First-tier Tribunal judge. In any event, even if it had been, there has been no assessment by the judge of the likelihood of the appellant and her disabled son actually being evicted from social housing during the ‘limbo’ period and whilst the rent continued to be paid.

6. Thirdly, I agree with the Secretary of State that the judge’s treatment of the public interest in her Article 8 ECHR analysis is flawed. At [59], the judge writes:

> I have considered the case of *KV (Sri Lanka) v SSHD* [2018] EWCA Civ 2483 in which it was stated:
>
> Where, as in the present case, it is established not only that deception was used but that, without it, an application for naturalisation as a citizen would not have been granted, it seems to me that it will be an unusual case in which the applicant can legitimately complain of the withdrawal of the rights that he acquired as a result of naturalisation. That is because the withdrawal of those rights does no more than place

the person concerned in the same position as if he had not been fraudulent and had acted honestly in making the application.

7. It is not at all clear what use the judge considers she should make of the legal principles stated in *KV* on the facts of the case before her. It is, in my opinion, not enough a judge to quote from caselaw so as to signal to the reader that he/she has taken a factor into account (in this instance, the public interest) and then refrain from applying the legal principles cited to the actual facts as found. In the subsequent paragraph, the judge accepts 'the submission of Mr Jones that the deprivation decision places two vulnerable adults at risk'. I agree with the Secretary of State (grounds, [15]) that the judge does not appear to have a clear idea of what constitutes the public interest in this case. I accept the Secretary of State's assertion in the grounds of appeal that 'the public interest in s.40(3) deprivation appeals is the integrity of the naturalisation system in circumstances where A is, at the date of hearing, still in possession of citizenship acquired by fraud.' If that is correct, it is difficult to see why the possibility of placing the appellant and her son at risk (by no means an obvious possibility given the judge's lack of fact-finding as detailed above) should diminish the weight accorded the public interest in the balancing exercise.

8. Fourthly, Mr Jones submitted that the a deterioration in the appellant's health would occur as a result of the deprivation decision being put into effect irrespective of the fact that others may be able and willing to pay for her care and treatment. In his Rule 24 response, that argument is advanced on the basis that Dr Katona's medical report predicted an increase in suicide and self harm risk for the appellant. However, although the judge notes that 'the appellant's loss of citizenship would result in a further deterioration in her PTSD and depressive symptoms such that her suicidal thoughts could become more frequent and intrusive and could spill over into actual self harm', at [58] the judge also makes an explicit connection between increased risk to the appellant and the loss of access to medical care during the 'limbo' period ('she would not be able to access the care that would almost certainly be required to address the risk of suicide.') The judge has not assessed how any deterioration in the appellant's condition as a result of the deprivation might be mitigated or removed by, for example, her son paying for any necessary treatment.

9. For the reasons I have given, I find that the judge's analysis is legally flawed. The judge's findings are inadequately supported by reasons or (as regards the financial help which the appellant might expect her son to provide) incomplete or unclear. I am also not satisfied that the judge understood the nature of the public interest in the Article 8 ECHR assessment. In the circumstances, I set aside the decision of the First-tier Tribunal. The appeal will be returned to the First-tier Tribunal for that Tribunal to remake the decision after a hearing *de novo.*

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision after a hearing *de novo.*

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 2 December 2024