



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-001866  
DC/50143/2021; LR/00019/2022

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 November 2022**

**Decision & Reasons Promulgated  
On 19 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN  
DEPUTY UPPER TRIBUNAL JUDGE B KEITH**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**NAIM HASSA  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Smith, Counsel

For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed, against the decision of First Tier Tribunal Judge Rodger promulgated on 18 March 2022 dismissing the appellant's appeal. That appeal was against the Respondent's decision dated 21 May 2021 to deprive him of his British citizenship. That decision was made on the grounds that British Nationality was obtained by means of fraud, pursuant to section 40(3) of the British Nationality Act 1981. In that the appellant was in fact an Albanian national and not as he claimed from Kosovo.

## The Law

2. The case of *Ciceri v Secretary of State for the Home Department* [2021] UKUT 238 (IAC); [2021] Imm AR 1909 states that a judge hearing an appeal against a decision of the Secretary of State to deprive a person of their British citizenship under section 40(2) or (3) of the British Nationality Act 1981 (“the 1981 Act”) must consider (i) the “reasonably foreseeable consequences” of the decision but (ii) should not conduct a “proleptic analysis” of the individual’s removal. In *Ciceri*, the President held that the legal principles regarding appeals under section 40A are as follows (with bold emphasis added):

“Following *KV (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 2483, *Aziz v Secretary of State for the Home Department* [2018] EWCA Civ 1884, *Hysaj (deprivation of citizenship: delay)* [2020] UKUT 128 (IAC), *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7 and *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769 the legal principles regarding appeals under section 40A of the British Nationality Act 1981 against decisions to deprive a person of British citizenship are as follows:

(1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in *Begum*, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.

(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).

**(4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.**

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) 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)*.

(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).

(7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good."

3. The law was recently set out in *Muslija (deprivation: reasonably foreseeable consequences) Albania* [2022] UKUT 00337 (IAC) which was promulgated on the day of this hearing. The Tribunal stated:

(1) *The reasonably foreseeable consequences of the deprivation of citizenship are relevant to an assessment of the proportionality of the decision, for Article 8(2) ECHR purposes. Since the tribunal must conduct that assessment for itself, it is necessary for the tribunal to determine such reasonably foreseeable consequences for itself.*

(2) *Judges should usually avoid proleptic analyses of the reasonably foreseeable consequences of the deprivation of citizenship. In a minority of cases, it may be appropriate for the individual concerned to demonstrate that there is no prospect of their removal. Such cases are likely to be rare. An example may be where (i) the sole basis for the individual's deprivation under section 40(2) is to pave the way for their subsequent removal on account of their harmful conduct, and (ii) the Secretary of State places no broader reliance on ensuring that the individual*

*concerned ought not to be allowed to enjoy the benefits of British citizenship generally.*

- (3) *An overly anticipatory analysis of the reasonably foreseeable consequences of deprivation will be founded on speculation. The evidence available and circumstances obtaining at the time of making of the deprivation order (and the appeal against that decision) are very likely to be different from that which will be available and those which will obtain when the decision regarding a future application or human rights claim is later taken.*
- (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.*
- (5) *It is highly unlikely that the assessment of the reasonably foreseeable consequences of a deprivation order could legitimately extend to prospective decisions of the Secretary of State taken in consequence to the deprived person once again becoming a person subject to immigration control, or any subsequent appeal proceedings.*

4. There is therefore a fine but clear line between reasonably foreseeable consequences of deprivation and a proleptic assessment.

## **The Judgment**

5. The judgment of the First Ter Tribunal has a section entitled “Likely Grant of Indefinite Leave” That is problematic as on its face it is future looking to the consequences of the removal of nationality and therefore a potentially proleptic analysis. It states at paragraph 25 in relation to the consequences of losing his job:

“25. [...] These losses may well occur due to the loss of rights that he had as a British citizen, ie, to obtain a British HGV driving licence and to obtain the right to work in the UK but I am not satisfied that the loss of these rights, even if for a temporary period until ILR might be granted in due course, are such that are capable of tipping the proportionality balance in favour of him retaining the British citizenship that he fraudulently obtained.”

6. The reference to “even for a temporary period” is potentially a proleptic assessment.
7. Then, at paragraph 30 the judge states:

“30. ... Whilst the deprivation decision will adversely interfere with the appellants’ Article 8 right to a private life as he will be unable to work until ILR is granted, the interference is not disproportionate or in breach of his Article 8 rights.”

8. That analysis tends to suggest that the judge was looking at the Article 8 exercise on the basis that ILR will likely be granted.

9. At para 31 the judge states:

“31. ... Whilst ILR may well be granted and whilst there may be a short delay or delay in between the deprivation and any subsequent grant of ILR, the deprivation is not disproportionate given that the citizenship was obtained based on deception and any consequences on the day to day life of the appellant and his family members arising from the deprivation decision, even if just for a “limbo” period, is a result of his own actions and are not such that or of the extent that is capable of rendering the decision disproportionate in common law or administrative terms.”

10. There are other references to what the judge seems to consider a short deprivation of status is the likely or only outcome, for instance paragraph 21 states (emphasis added):

“21. ... However, there is no persuasive evidence that she would be unable to return to the workplace in order to financially support the family during the period that the appellant does not have leave to work in the UK.”

Or at 22:

“22. ... as a result lose his job or be unable to work for a few months until any subsequent grant of ILR.”

11. Therefore looking at the judgment in the round in our judgment the Judge errs by straying into a proleptic assessment by taking the starting point that ILR will be granted after a short period. In our judgment that is an error of law.

## **REMAKING DECISION**

12. We therefore remake the decision, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

13. At the hearing submissions were invited on the factual matrix that we should take into account upon a rehearing. The appellant submitted that the factual matrix was the same as that before the First Tier Tribunal save for the addition of medical evidence. When asked if the appellant wished to add anything to the evidence before the First Tier it was submitted that the only additional evidence was the medical evidence provided since that hearing. The Respondent submitted that the medical evidence was not admissible but in any event did not change the position of the appellant. Having considered the interests of justice we admit the medical evidence and take it into account in our decision.

14. The appellant submitted that there are sufficient facts within the First Tier Tribunal decision to allow the appeal. There was no further update required

from the appellant himself. The appellant accepted that if the proleptic assessments were removed from the First Tier Tribunal judgment the factual matrix could form the basis of a remaking decision. We therefore proceed on that basis.

15. We therefore take the facts in relation to the appellant's circumstances as those found before the First Tier Tribunal. We have taken into account all the evidence in the bundle and those aspects found by the First Tier Tribunal. The most important aspects of those are as follows, and we refer to the paragraph in the judgment in square brackets:

- i. The appellant came to the UK in 1997.
- ii. The appellant knowingly gave false information and continued to maintain such lies in order to achieve immigration status in the UK. [§12]
- iii. Deprivation of citizenship will likely lead to him losing his job which he has held for 17 years and losing his HGV licence, and therefore losing his livelihood, which may adversely effect his family as he is the sole breadwinner. [§17]
- iv. His wife is presently not working and suffers from ill health.
- v. His younger daughter is working [§19]
- vi. State benefits are available to his family as British Nationals [§22]

16. The judge goes on to consider at para 21:

21. The appellant's wife is a British citizen and she is entitled to apply for disability benefits if she is unable to work due to her medical conditions. Alternatively, she will be able to look for alternative work there being no persuasive evidence that her medical condition is such that would render her unable to find or obtain alternative employment. I have had sight of a GP record setting out her diagnosis and medication. However, there is no persuasive evidence that she would be unable to return to the workplace in order to financially support the family during the period that the appellant does not have leave to work in the UK.

17. In our judgment paragraph 21 of the judgment is correct. The impact of deprivation upon his wife is limited and not such that it impacts significantly on the overall assessment.

18. The updated medical evidence is that the appellant has a series of health issues including: hypertension, sleep apnoea, stress, anxiety and headaches. There is nothing in the medical evidence that tips the balance against the deprivation of citizenship.

19. Therefore, the reasonably foreseeable consequences of deprivation are the loss of the appellant's job and some financial hardship. Combined with

that a likely increase in his stress and anxiety. The impact on his family will be minimal as addressed by the First Tier Tribunal Judge, given their British Nationality. Those factors do not outweigh the public interest in this case.

20. We therefore find that it is a proportionate interference in the appellant's Article 8 rights to deprive him of British Nationality.
21. For the reasons given above the appeal is dismissed.

***Notice of decision***

1. There is a material error of law.
2. Upon remaking the decision the appeal is dismissed

No anonymity direction is made.

Signed B Keith

Date

Deputy Upper Tribunal Judge Ben Keith

18 January 2023