



21 December 2017

## PRESS SUMMARY

**R (on the application of Hysaj and others) (Appellants) v Secretary of State for the Home Department (Respondent)**

**Bakijasi (Appellant) v Secretary of State for the Home Department (Respondent)**

**[2017] UKSC 82**

***On appeal from [2015] EWCA Civ 1195***

**JUSTICES:** Lady Hale (President), Lord Kerr, Lord Wilson, Lord Hughes, Lord Hodge

### BACKGROUND TO THE APPEAL

The appellants made false representations in their applications for United Kingdom citizenship. The issue in these appeals is whether those misrepresentations made the subsequent grant of citizenship to them a nullity rather than rendering them liable to be deprived of that citizenship under sections 40 and 40A of the British Nationality Act 1981 ('BNA').

Mr Hysaj is an Albanian citizen. He claimed asylum in the UK in July 1998, falsely stating he was born in Kosovo, was therefore a citizen of the Federal Republic of Yugoslavia (FRY), and that he was under 18. He was accepted as a refugee and given indefinite leave to remain (ILR). Mr Hysaj was granted naturalisation as a British citizen in 2004.

Mr Bakijasi was also born in Albania. He sought asylum under a false name and date of birth, gave a false place of birth in Kosovo and falsely claimed FRY nationality. He was eventually granted ILR under the same false details, and then granted naturalisation as British citizen in 2006.

When these frauds came to light the Secretary of State, on the basis of binding Court of Appeal case law, decided that in both cases the grant of citizenship was a nullity, so that the appellants were not and had never been British citizens, albeit that they remained on ILR. The appellants challenged the decisions, submitting that the earlier cases were wrongly decided.

The High Court and Court of Appeal, which were also bound by this case law, upheld the Secretary of State's decisions.

Permission to appeal was granted by the Supreme Court on the ground that the appeals gave rise to an arguable point of law of general public importance. Unusually, the Secretary of State applied pursuant to rule 34(2) of the Supreme Court Rules for the appeals to be allowed by consent, supported with reasons.

### JUDGMENT

The Supreme Court unanimously allows the appeals by consent. It agrees with the reasons provided by the Secretary of State and holds that misrepresentations in an application for UK citizenship renders the applicant liable to be deprived of that citizenship pursuant to s 40 BNA. Lady Hale gives the only substantive judgment.

## REASONS FOR THE JUDGMENT

S 40 BNA makes provision for the Secretary of State to deprive a person of citizenship if satisfied that the grant was obtained by means of ‘fraud, false representation or concealment of a material fact’. There is a right of appeal to the First-tier Tribunal against most such deprivations in s 40A [7].

The original decision adopting the nullity approach, rather than a deprivation of citizenship, involved the purported grant of British citizenship to someone who was impersonating another real person (*R v Secretary of State for the Home Department ex p Mahmood* [1981] QB 58). Subsequent cases, including *R v Secretary of State for the Home Department ex p Akhtar* [1981] QB 46, *Bibi v Entry Clearance Officer, Dhaka* [2007] EWCA Civ 740 and the present ones, expanded this approach to persons adopting a false identity through which the characteristics needed to obtain citizenship were acquired [8-14].

The Secretary of State considers that the law took a wrong turning after *Mahmood*, and the nullity approach should only apply in impersonation cases [15]. The subsequent cases were based on the principle that there is a category of fraud as to identity which is so serious that a purported grant of citizenship is of no effect, but had not articulated a clear definition of such fraud. This uncertainty means the law is difficult to apply in practice and also gives rise to a number of illogical and unsatisfactory consequences. The same principle would also appear to nullify the grant of ILR, but the Secretary of State has never contended for this [16-18].

The Supreme Court agrees with this reasoning. It follows that the decisions of the Court of Appeal in *Akhtar* and *Bibi* must be overruled and the present appeals allowed by consent [19].

*References in square brackets are to paragraphs in the judgment*

### **NOTE**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>