IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI- 2022-004676
First-tier Tribunal No:
DC/50226/2021
LD/00063/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 March 2023

Before

THE HON. MRS JUSTICE THORNTON DBE
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALEKS MARKU
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr J Gajjar, instructed by SMA Solicitors

Heard at Field House on 21 February 2023

DECISION AND REASONS

1. These are the written reasons which reflect the oral decision which we gave at the end of the hearing.

2. The appeal is against the decision of Judge Atreya (the 'FtT') dated 28th June 2022, by which she allowed an appeal by Mr Marku, to whom we refer in the remainder of these reasons as the Claimant. We refer to the appellant as the Secretary of State.

3. This is one of the rare cases where we regard it as appropriate to note our concerns about the standard of the FtT's written reasons. We confess that we have found parts of the reasons difficult to follow. Many of the paragraphs are unpunctuated and, in most places, have not been proof-read. This has resulted in the representatives before us having to try to resolve apparent contradictions in the reasons, which we come on to discuss below.

4. We start with the Secretary of State's decision dated 28th January 2021 to deprive the Claimant of his British citizenship, under Section 40(3) of the British Nationality Act 1981. She believed that the Claimant had obtained his citizenship by deception. He had used a false name and place of birth and claimed to be Kosovan, when instead he was Albanian. At §8 of the decision, at page [249] of the main bundle, the Secretary of State recorded that the Claimant had entered the UK clandestinely on 7th October 1998 and had made an asylum application. He did not disclose any prior criminal offences during the asylum process. While his asylum application was refused, the Secretary of State granted the Claimant exceptional leave to remain, on 27th September 2000 (§13). The Claimant then applied for, and was granted, indefinite leave to remain on 4th February 2005 (§19). He applied to naturalise as a British citizen on 23rd February 2006 (§21). He was granted British citizenship in his false identity on 10th April 2006. However, on 2nd February 2008, he was arrested in the UK during a domestic disturbance and was charged with fourteen offences, including actual bodily harm and domestic violence against his wife and children. He was sentenced to 12 months' imprisonment. It was during his criminal trial in 2008 that he admitted to being an Albanian national and having lied throughout the asylum process. It also transpired that he had been convicted in Albania for armed robbery and had been sentenced to fourteen years' imprisonment in that country (§26).

5. On 6th April 2009, the Secretary of State wrote to the Claimant, informing him that she was considering depriving him of his British citizenship. In the meantime, extradition proceedings were considered, but were not pursued. The Claimant resisted deportation and claimed to fear persecution in Albania. On 7th April 2010, the Secretary of State informed the Claimant that there were a number of appeals to the Asylum and Immigration Tribunal on the issue of deprivation and that his decision would have to await the outcome of those appeals. Eventually, on 20th February 2020, the Secretary of State notified the Claimant that deprivation was still being considered, to which the Claimant responded and continued to resist deprivation.

6. In her 2021 deprivation decision, the Secretary of State concluded that she was satisfied that the Claimant had obtained his citizenship through fraud. She went on to consider the proportionality of deprivation, for the purposes of Article 8 ECHR. She considered the period of time between any deprivation decision and any deportation action. She concluded that deprivation was proportionate.

The FtT's decision

7. We do no more than summarise the gist of the FtT's reasons, to the extent that we are able to do so. At §70 of her reasons, the FtT indicated that she must be satisfied that the Claimant was dishonest, and that his false representations were material to the grant of citizenship. She was satisfied that these conditions were met (§§71 to 72). She considered the length of delay between the Secretary of State becoming aware of the Claimant's deception, during his trial in 2008, and the eventual deprivation decision in 2021. The FtT considered the

delay in the case of Laci v SSHD [2021] EWCA Civ 769, which was for a shorter period, between 2009 and 2018. The FtT noted that the Secretary of State had considered depriving the Claimant of his citizenship in or around April 2009, but instead had issued the Claimant with his first passport in 2013 in his false name, and later, a further passport in his real name, when he changed his name by deed poll, in 2015.

8. The FtT observed at §78 that the Claimant had travelled on a British passport and had used it to enter the UK on several occasions. For many years, he had acted on the assumption that the Secretary of State did not propose to take any deprivation action. At §81, the FtT found that there was a delay in the 'Laci' sense. Whilst the Secretary of State's decision was, in the FtT's view, exercised correctly and the FtT could not find that no reasonable decision maker would have made the decision, the "withdrawal decision" was unlawful because of the delay (§82). The FtT added, at §83, that "further or alternatively I find the in limbo period will not breach Article 8 ECHR." She allowed the Claimant's appeal (§84).

The grounds of appeal and grant of permission

9. The Secretary of State lodged grounds of appeal that the FtT's conclusions were contradictory. The FtT found that the Secretary of State had proven that the 'condition precedent' was met, and the Secretary of State was entitled to reach her decision, which was not in breach of Article 8. At the same time, the "withdrawal decision" was "unlawful," because of the delay. The FtT had also failed to take into account the Claimant's poor character, or had not reached clear conclusions on the Claimant's poor character on the basis of his concealment of his prior offending in Albania, when she considered the proportionality of deprivation.

10. Upper Tribunal Judge Gill granted permission for the appeal to proceed on 15th November 2022. The grant of permission was not limited in its scope.

The hearing before us and our conclusions

11. We do not repeat the parties' written and oral submissions, or the Claimant's Rule 24 response, except where necessary to explain our decision. While Mr Gajjar suggested that it was not material to the proportionality of deprivation whether the Claimant had concealed his conviction and imprisonment for armed robbery in Albania, as the FtT had found the condition precedent to have been met, we accept Mr Clarke's submission that the weight to be attached to the public interest in ensuring rigour in the naturalisation process could clearly have been impacted by findings on the Claimant's criminal activities in Albania. We accept that the FtT's failure to include this factor in the proportionality exercise amounts to a material error of law.

12. The core weakness in the FtT's reasons is at §§79 to 84:

> 79. I accept the appellant was able to travel in and out of the UK on several occasions and he applied for two British Citizen passports. The appellant made his identity and nationality disclosure of the trial in 2008.
>
> 80. There appears to have been no contact from the respondent from 7 April 2010 to August 2020

> 81. I find there has been delay in the Laci sense the respondent taking action and I take into account that the appellant has lived in the UK since October 1998 but I find discretion was exercised correctly in this case and I cannot find that no reasonable decision maker would have made this decision
>
> 82. I find the withdrawal decision was unlawful because of the delay
>
> 83. Further or alternatively I find the in limbo period will not breach Article 8 ECHR.
>
> 84. The appeal is allowed"

13. Mr Gajjar submitted that the word, "not" should be added just before, "exercised correctly", in §81, to make sense of it. However, even if we do so, that ignores the rest the sentence which says that the decision is not one that no reasonable decision maker would have made. It also ignores the proportionality conclusion in §83. We are left with no confidence as to what the FtT decided, and why. We also considered Mr Gajjar's submission that these conclusions cannot be taken out of context, and must be read with the FtT's earlier findings, at §§76 to 79, on the history of the Secretary of State's delay. However, the wider context only confirms the absence of a sustainable article 8 analysis. While the FtT referred to the development of private life (§73), she made no analysis of the Claimant's family life with his wife and son, who attended and gave evidence before her (§66).

14. What the FtT should have done was to have made clear findings on the nature of any Article 8 private or family life, consider how they would be impacted by any deprivation decision, and then assess the proportionality of that interference, by weighing on the one hand, the public interest in maintaining rigour in the naturalisation process, and on the other, the effect of deprivation, with the presumption in favour of the public interest. As Mr Gajjar pragmatically accepted, there was no real article 8 analysis, and no sense of why the FtT reached the conclusion she did.

15. In summary, the FtT erred in law in making her decision, which is unsafe and cannot stand. We set aside the FtT's decision. We note that the Claimant has previously conceded that the condition precedent has been met. That concession is unaffected by our decision. We preserve none of the FtT's other findings.

Disposal

16. With reference to §§ 7.2(a) and (b) of the Senior President's Practice Statement, this is not a case where either party has been deprived of a fair hearing. However, our focus has been on §7.2(b) and in particular, the nature and extent of any fact finding. We canvassed with the parties their views and both representatives submitted that we should remit remaking back to the First-tier Tribunal. We accept that we should remit remaking back to the First-tier Tribunal, because of the extent of the necessary fact finding.

17. The remittal shall involve a complete rehearing of the appeal. All aspects of the claims must be addressed, subject to the existing concession on the condition precedent.

Notice of Decision

18. **The decision of the First-tier Tribunal contains material errors of law and we set it aside.**

19. **We remit this appeal to the First-tier Tribunal for a complete rehearing, subject to the concession that the condition precedent has been met.**

Directions to the First-tier Tribunal

20. **This appeal is remitted to the First-tier Tribunal for a complete rehearing, with no preserved findings of fact.**

21. **The remitted appeal shall not be heard by First-tier Tribunal Judge Atreya.**

22. **No anonymity direction is made.**

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14th March 2023