IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006500

First-tier Tribunal No: DC/50106/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of September 2024

Before

UPPER TRIBUNAL JUDGE KEITH
UPPER TRIBUNAL JUDGE BULPITT

Between

Fatmir Ngjeci
(also known as 'Ezir Shuti')
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr J Collins, Counsel, Marsh & Partners Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 5th September 2024

DECISION AND REASONS

1. These written reasons reflect the full oral reasons which we gave to the parties at the end of the hearing.

2. This is the remaking of the appellant's appeal against the respondent's decision to deprive him of his British Citizenship, on the basis that he had obtained it by deception. A Judge of the First-tier Tribunal, Judge Ford, had allowed the appellant's appeal. This Tribunal set aside that decision because it contained errors of law, but retained remaking in the Upper Tribunal. We retained remaking because the effect of the Judge's error was not to deprive the appellant of a fair hearing or the opportunity to put his case to the First-tier Tribunal. Rather, it appeared that he chose to adduce limited or no evidence on the effect of deprivation on his right to respect for his family and private life, to the First-tier Tribunal. Moreover, the nature and extent of additional judicial fact-finding

was limited, in light of the Judge's findings which we preserved. The error of law decision is annexed to this decision. The preserved findings are repeated below, for ease of reference.

The legal issue before us

3. No decision has been taken to remove the appellant from the UK. The appellant may in future apply for leave to remain in the UK. The respondent may then reach a decision on that application. At this stage, there is no such application or decision. The sole question is whether, during the period between any deprivation, when the appellant ceases to be a British citizen, and any decision by the respondent on any application for leave to remain, which is now commonly referred to as the "limbo" period, the effect of deportation would breach the appellant's right to respect for his family and private life in the UK.

The law

4. The law is now well-established. This Tribunal in Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 00115 (IAC) confirmed the three questions:

   a. Did the respondent materially err in law when she decided that the condition precedent in s40(2) or s40(3) of the British Nationality Act 1981 was satisfied? If so, the appeal falls to be allowed. If not,

   b. Did the respondent materially err in law when she decided to exercise her discretion to deprive the appellant of British citizenship? If so, the appeal falls to be allowed. If not,

   c. Weighing the lawfully determined deprivation decision against the reasonably foreseeable consequences for the appellant, is the decision unlawful under s6 of the Human Rights Act 1998? If so, the appeal falls to be allowed on human rights grounds. If not, the appeal falls to be dismissed.

5. The appellant accepts that the condition precedent was met and also that the respondent did not err in deciding to exercise her discretion to deprive the appellant of his British citizenship. Rather, this appeal relates to the third limb of Chimi.

6. On the third question, we have considered Muslija (deprivation: reasonably foreseeable consequences) Albania [2022] UKUT 00337 (IAC), the headnotes of which state:

   "(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."

7. Finally, we remind ourselves that the respondent's delay in making a deprivation decision might be relevant to proportionality (see EB (Kosovo) v SSHD [2009] AC 1159). In particular, at §16:

"16. Delay may be relevant, thirdly, in reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control, if the delay is shown to be the result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes."

Preserved findings

8. The appellant secured his British citizenship in 2008 by means of misrepresentation.

9. He was an adult when he entered the UK.

10. The appellant was not considered credible in his asylum claim and he was not given refugee status.

11. The appellant will not be rendered stateless by the deprivation decision.

12. The appellant was under the influence of an agent in making his misrepresentations but is not under any disability and was aware at all relevant times that he was giving the respondent false information to gain an immigration advantage. The appellant deliberately and knowingly and as an adult, repeatedly misrepresented his place of origin, his nationality and date of birth to the respondent. It is clear that he engaged in misrepresentation on these matters in

his original asylum application and in subsequent applications for ELR, ILR, for a certificate of naturalisation, in sponsoring his fiancée's applications to join him in the UK, in his own passport application and his children's applications for British passports. But the Judge exercised some caution in treating these as fresh misrepresentations as it is an integral part of every grant of citizenship that representations made as to identity, nationality and date of birth are repeated at various stages in the process. Nevertheless, the appellant has repeatedly misrepresented his nationality and his date of birth in his dealings with the UK authorities. He was not pressurised in any way into being dishonest. He chose to be dishonest to secure personal advantage.

13. During the period of delay between 2009 and 2020, the appellant has got married, got employment and advanced to a team leader position in his work, his wife has learned English, trained as a teaching assistant, the couple have had two children and formed family life as well as private lives in the UK.

14. The appellant's wife is a qualified teaching assistant. She has not been seeking employment as a teaching assistant using her qualifications because she is holding out for a teaching assistant position at her children's primary school where she currently works as a volunteer. While that might be her preference, it does not mean that she could not secure a paid teaching assistant post elsewhere sufficient to support the family if her husband is out of work. He can look after the children while she is at work to save childminder costs.

The hearing before us

15. We turn to the conduct of the hearing and the evidence before us as well as the submissions. We do not recite the submissions except to explain why we have reached our decision.

16. We had the benefit of a bundle from the appellant, which did not include everything that had been identified in the the Upper Tribunal's directions. We also have the benefit of a skeleton argument from each of the representatives, albeit disclosed regrettably in breach of directions, at the last moment.

17. We add that the directions expressly permitted the appellant to provide updated written evidence should he wish to do so, particularly where this Tribunal had been concerned that the evidence before the Judge in relation to the effect of deprivation on the appellant's private and family life had been sparse.

The evidence at the hearing and our findings

18. In fact, despite the error-of-law decision having been issued in January 2024, no additional written witness evidence or any documentary evidence has been adduced. The appellant's oral witness evidence was also limited, as our directions had stated that the appellant's witness statements should stand as his evidence-in-chief, subject to any cross-examination and re-examination. Mr Collins did not seek to argue against this. Instead, he asked permission (and we granted this) to ask two questions. First, the appellant clarified that his wife had indefinite leave to remain rather than being a British citizen. Second, he added that she was not present at the hearing today because she was attending a job interview at a local school, for a role as a teaching assistant.

19. We do not recite the live oral evidence from the appellant. He relied on two witness statements, which are substantially out of date, dating back as long ago

as 2022. They provide very limited evidence in relation to private and family life. What is however clear (and is not disputed) is that the appellant had entered the UK in 2001. His wife had entered in 2012 as per §3 of her witness statement. She has learnt English and qualified as a teaching assistant. It appeared that she has never worked, and has a role as a homemaker looking after the couple's children.

20. In particular, in relation to any emotional impact of deprivation of the appellant's citizenship on his children, the appellant's wife's witness statement had indicated that life without the appellant around would have a detrimental effect on both her and her children's mental health. We recite that specific wording because the effect of a deprivation of citizenship does not mean that there would be life without the appellant. No decision has been taken to remove him at this stage. There is no further evidence on the emotional impact of deprivation on those children.

21. In oral evidence the appellant described the genuineness of the relationship with his wife, his earnings and the family's plans for the future. Mr Collins invited us to consider that the appellant was a witness of candour who had given truthful evidence in answer to questions of why there was no evidence about the subsisting relationship between the appellant and his wife and his children. We are prepared to accept that at this late stage the appellant has been willing to be candid and has given evidence that is not necessarily helpful to his case. Insofar as we are able to make findings of fact (because the evidence before us is very limited), we accept that the appellant has been candid as best he can.

22. In summary, the appellant confirmed, and we find, that he has worked for his current employer for around eight years. He is in a position of responsibility as a team leader and drives, albeit under his false name. He was particularly concerned about losing his driving licence to collect work colleagues. His net annual earnings are approximately £35,000. The couple rent a property where they and their two children, aged ten and eight live. The couple have planned to purchase the property in which they live. To that end, the couple have saved up £75,000 to do so. The appellant works hard. He explained that he has broken no other law other than his use of deception to gain citizenship and used of an assumed identity, and his wife intends to try and secure a job locally to their home.

23. We find that the deprivation of citizenship will not cause the family to become destitute. They have significant savings on which to live during any limbo period. There is nothing to prevent the appellant's wife, even if she is not able to obtain a current job in the local school, to travel slightly further afield within London, for a teaching assistant role, whilst the appellant looks after the children, even if she needs to use public transport to do so. The appellant, to his credit, candidly accepted that the children do not have any particular medical issues. Whilst we have no doubt that the deprivation decision may be upsetting for the children, if they are informed, there is no evidence as to any worsening in health or any disruption to education or the like, that is relevant to the impact of the respondent's decision during the limbo period.

24. We emphasise at this stage that we have not undertaken a proleptic assessment of the extent of any limbo period. That would, of course depend on the nature of the application made by the appellant. If it is as simple as his being the father of two British citizen children, it may be that the decision on it is a relatively simple one, with a speedy result, but that is a matter for the

respondent. Even if the limbo period is longer, the family has savings exceeding two years of the family's net income.

25. We turn then to the question of delay and our findings of fact in relation to the reasons for that delay. It is necessary for us to repeat, perhaps at greater length than we would have otherwise done, the reasons for the delay in question. The appellant points to the letter of 4th August 2009 which was touched upon briefly in the error of law decision.

> "On 14th February 2008 you were issued with a certificate of naturalisation.
>
> The Secretary of State has reason to believe that you obtained your status as a British citizen as a result of fraud. The Secretary of State has received information that indicates that checks made by the British Embassy, Tirana revealed that with regard to your birth identity there is no such person born in Presheve, Kosovo.
>
> This letter informs you that the Secretary of State is, as a result of this information, considering depriving you of your citizenship".

We do not recite the remainder of the letter.

26. There was a swift and robust response by the appellant via his lawyers, Markandan & Co Solicitors on 3rd September 2009, at pages [S1] onwards of the bundle before the First-tier Tribunal, maintaining his place of birth as Preshevo, Serbia and his nationality as Serbian. It continues:

> "We are writing to your office further to
>
> - above details of immigration history for our client
> - your letter dated 04/08/2009…
> - our previous correspondence…
>
> and in doing so, we wish to inform the Secretary of State that our client is a national of Serbia and not a national of Kosovo as it is stated on your letter dated 04/08/2009 (see enclosed pages numbered 4 to 6 of the enclosed documents with a copy of our client's birth certificate… and original birth certificates for our client's mother and father). We wish to state that our client was born in the southern Serbia, however, ethnic Albanians from southern Serbia consider themselves to be known as from the eastern Kosovo and not from Serbia, this is due to the continuous persecution they have suffered on the hands of Serbian authorities due to their Albanian ethnicity.
>
> We wish to state that on dealing with the Home Office our client and his legal representatives have stated our client's nationality either as Serbian or Yugoslavian because Preshevo is located in the southern Serbia very close to the Kosovan borders".

The letter then recites a number of pieces of correspondence. The letter continues:

> "In your letter dated 04/08/2009 you have stated that our client was born in Preshevo, Kosovo which is not the case indeed as there is no such evidence to suggest so.

> Please note that our client, his legal representatives or anyone else have not submitted any documents to suggest he was born in any country other than Serbia.
>
> It is also submitted that the information you have received from British Embassy in Tirana, Albania is completely incorrect as our client has submitted in support of his wife's application for entry clearance … Please also note that this document clearly states that our client was born in Preshevo, Serbia and not in Kosovo.
>
> Please note that we are due to make a complain [sic] to the Foreign Office for the behaviour of the ECO at Tirana, Albania passing incorrect information for our client to the Home Office, as this has caused great stress to our client.
>
> As it is very clear from the enclosed documentary evidence and from the dealings with the Home Office, in the past, our client has stated he is from Preshevo, Serbia despite the fact that ethnic Albanians from southern Serbia consider to be from eastern Kosovo…".

27. The next relevant documentation is a note in the UK Border Force agency in respect of the appellant's wife's visa application:

> "9 July 2010 Sponsor claimed to be Serbian. Birth certificate check indicates that he is not. However no evidence that he is ALB and Nationality Deprivation Team are not taking action against him. Doubt he is Serbian but not enough evidence to maintain this to the higher degree of probabilities under 320(7A) refusal. Asked to provide more docs on 23/06/10. Have provided good evidence of M&A. Some cards and some phone cards. At time of application also had money transfers and phone bills. OK in interview. On balance, issue".

There was one further citation 10/03/2011, 'to be weeded'.

28. We find it reasonable to infer the following. First, the respondent did not in 2009 or 2010 conclude that the appellant was Albanian. Rather, she had a reason to believe that he had obtained British citizenship by fraud, because there was no one of the appellant's claimed birth identity was born in Preshevo, Kosovo. The respondent asked the appellant to address her concerns. He sought to do so, providing the detailed and entirely fictitious narrative contained at [S1]. In essence, he had doubled down and provided an explanation which confused matters by referring to being a Serbian national, part of a persecuted Albanian minority in a border area of Serbia, who considered themselves as eastern Kosovan. This was intended to sow seeds of confusion. It is also clear that it had the desired effect. The UK Border Force note confirmed that while the respondent doubted that the appellant was Serbian, there was not enough proof of false representations or documents. Contrary to Mr Collins's submission that the Border Force's view could not have informed a decision by the respondent not to take action, because there was no evidence that Border Force staff had spoken to the Home Office, the record makes clear that there were discussions between Border Force staff and the Nationality Deprivation Team. The fact that no further action was taken was because of the appellant's confusing explanation about being a member of a persecuted minority in a border area between Albania and Serbia, on the Serbian side of the border.

29. We find that far from there being evidence of a dysfunctional system, the records explain why the respondent had decided to take no further action between the 2010 note, until when, for reasons given by Judge Ford in her subsequent decision at §2(j), the appellant's untruths began to unravel in 2019. At that stage, there had been a passport renewal application for one of the appellant's children and the appellant had failed to provide his false Serbian birth certificate, which triggered a routine investigation. The appellant was interviewed in the course of that investigation, during which he repeated the untruths and threatened legal action on 12 February 2020, as per page [44] of the First-tier Tribunal:

> "I am writing to your office further to your letter of 13/12/2019 and doing so I wish to state as follows.
>
> I attended the HMPO for an interview in relation to my child's passport application and at the end of the interview I was allowed to leave the office and after few months I received the British passport for my child. This means that the HMPO was satisfied that all the information given before them was correct and true and then the passport for my son was issued.
>
> Now, I received a letter from your office after my child's passport was issued revoking my British passport which is completely unlawful. Later on, the DVLA also contacted and I really worried that my driving licence may be revoked ....
>
> Once again I wish to state and reconfirm that I was born and raised up in a place called Preshevo which is situated in southern Serbia, however we are all ethnic Albanians and we consider ourselves as being from Eastern Kosovo and we do not like to say we are Serbians due to what we have suffered under the Serbian regime in years.
>
> I wish also to reconfirm that I am from Preshevo in Southern Serbia and I am still British citizen as the SSHD was satisfied at the time I applied for naturalization and issued to me the certificate of naturalization.
>
> If your office fails to issue to me the passport, I will instruct a solicitor and start Judicial Proceedings in the High Court of Justice without any further notice to yourselves....
>
> Ezir Shuti"

30. Having received the appellant's threat of judicial review, the respondent had the benefit of further information. She wrote on 26th January 2021, and this is included at page [59] of the Upper Tribunal Bundle:

> "The Secretary of State has reason to believe you obtained your British citizenship status as a result of fraud.
>
> The Secretary of State is in possession of information received from the Albanian Ministry of Interior confirming your true identity as Fatmir NGJECI; DOB 31 sf January 1977; POB Nikoliq, Kukes, Albania. The evidence received from the Albanian Ministry of Interior also shows that your Personal Number is H7013103D.
>
> Can you provide an explanation on this?"

Mr Collins pointed to a delay between the information being provided by the British Embassy in Tirana on 22nd April 2020 (page W1 of the FtT Bundle) and the January 2021 letter. We do not regard that delay as evidence of a dysfunctional system. Indeed, it was only following the respondent's provision of incontrovertible evidence that the appellant finally switched from threatening litigation on an entirely false basis to confessing everything, in the letter from Imperium Chambers 39 dated 15th February 2021.

31. In summary, the 'delay' falls into two period. First, between 2010 and 2019, when the respondent's concerns resurfaced. That period is explained by the appellant 'getting away' with his false narrative, in which he addressed the respondent's concerns, to the extent that they did not feel they had sufficient evidence to challenge him. Second, from 2019, matters began to unravel, and he threatened the legal action, again on the false basis, in 2020. The period from 2019 to 2021 is explicable as the respondent considered and then placed before the appellant the incontrovertible evidence. That is the opposite of a dysfunctional system. Both periods show a simple true history, made complicated by the appellant's obfuscation.

Conclusions

32. We address proportionality with a balance sheet assessment. Was there something 'more' than exposure to the limbo period, as per Muslija? On the one hand we appreciate that the appellant has been present in the UK for a very lengthy period, as has his wife. He entered the UK in 2001, his wife has since entered the UK in 2012. They have a family, with two British children and she has ILR. He has worked hard and does not appear to have claimed any state benefits beyond child benefits. He is established in a job of responsibility, which he will lose. Other than the obvious point of having maintained the deception, there is no other apparent offending. The family have the hope of buying a home for which they have saved. The consequence of deprivation is that the appellant will not be able to work or drive, at least until any future decision is reached on any application for leave to remain. The family will have to rely either on their savings (amounting to two years of the family's net income) and any work that the appellant's wife can get as a teaching assistant in London. The family's desire to buy their home will, at the very least, be put on hold.

33. On the other hand, we are not considering the appellant's removal. The consequence of deprivation is not that the family will be destitute. They have a home which they rent and the means to pay for it. The appellant will be able to switch roles looking after the children while his wife works. The children have no particular educational or medical needs which will be impacted by deprivation. There is no evidence that it will affect the family's health. For the reasons outlined, the period between 2009 and 2021 does not show a dysfunctional system. The delay is explained and has been exacerbated by the appellant's attempt to confuse matters and threaten legal action, based on what he knew to be a lie. Any 'delay' did not provide the appellant with any legitimate expectation that the respondent would take no action on any deception.

34. In the circumstances, whilst we have no doubt that the decision will be upsetting. Despite the period of time that the appellant has been in the UK and had worked hard and is part of a close family unit, the public interest in

deprivation of citizenship, in the context of the deception on which the appellant doubled down, again and again, even after gaining citizenship, is overwhelming.

Notice of decision

35. **The appellant's appeal against the deprivation of his citizenship fails and dismissed.**

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19th September 2024

Annex – error of law decision

IN THE UPPER TRIBUNAL
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(Anonymity order not made)

Respondent

Representation:
For the Appellant: Mr J Collins, instructed by Marsh & Partners Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 3 January 2024

DECISION AND REASONS

1. The Secretary of State is the appellant in these proceedings. The respondent was the appellant in the proceedings before the First-tier Tribunal. To avoid confusion, I refer to them as the Secretary of State and the Claimant respectively, for the remainder of these reasons.

2. The Secretary of State appeals against the decision dated 19 December 2022 of a Judge of the First-tier Tribunal, Judge Ford, (the 'Judge') who allowed the Claimant's appeal on human rights grounds.

The Judge's decision

3. The Judge considered the Claimant's immigration history, including entering the UK using a false name, date of birth and nationality. The Claimant had given the UK authorities a false account of being an ethnic Albanian from Presheve on the Serbian/Kosovan border, who had been persecuted by the Serbian police. In fact he had not been born in Kosovo and had obtained naturalisation as a British citizen on 14 February 2008 in that false identity. The Secretary of State informed the Claimant on 4 August 2009 as to her concerns that no such person in the Claimant's assumed name had been born in Presheve, and that she was considering depriving him of his citizenship. The Claimant responded by disputing that he had engaged in deception. On his son's later application for a British passport and following further inquiries, the Secretary of State obtained further evidence that the Claimant had been born in Albania. On being notified that the Secretary of State was again considering deprivation action, the Claimant initially threatened legal action and maintained the false identity. When confronted with the additional (and definitive) evidence, the Claimant acknowledged for the first time in correspondence of 15 February 2021 that his claimed identity was false.

4. The Judge reminded herself correctly of the relevant case law at §§4 to 6 of her decision and the Secretary of State does not contend that the Judge's direction on the law was incorrect. The Judge recorded at §4 that the Claimant acknowledged that the so-called 'condition precedent' was met, namely that he had obtained British citizenship by deception. Nevertheless, he relied on the case of Laci v SSHD [2021] EWCA Civ 769 as authority for the proposition that delay could be a relevant factor in the proportionality of the deprivation decision, because the Secretary of State had information suggesting that the Claimant might be using false details in 2009, but had failed to make any subsequent decision until many years later. The Judge was conscious that this was in the context of the Claimant maintaining his deception (and even threatening to sue on that basis) as late as 2020 (see §2(j)).

5. The Judge also considered the second issue of a limbo period between any deprivation decision and any removal of the Claimant (§10). The Judge made detailed findings at §22, including at §22(f) that the delay on the part of the Secretary of State was excessive, as it was unclear what efforts that the Secretary of State had made to check the Claimant's identity and nationality from 2009, when she knew that the Claimant was not a Kosovan Albanian, until the deprivation decision dated 20 April 2021. During the period 2009 to 2021, the Judge observed that the Claimant had married and had children in the UK (§26). At §29, the Judge concluded:

> "The public interest in immigration control is high in this case due to the Appellant's deception in his dealings with the UK immigration authorities. Were it not for the delay in the Secretary of State taking deprivation action against the Appellant and the impact of the uncertainty on the children during the "limbo period", I would have no hesitation in dismissing this appeal. But the delay combined with the adverse impact on the Appellant's children tips the proportionality assessment in his favour, if only just. The decision is contrary to the best interests of the children. I do not assume that the Appellant will be removed from the UK, but this family will, if the deprivation goes ahead, face a period of great uncertainty and of emotional and psychological pressure over a period of 10 months or so while the Appellant waits to learn if removal action is being pursued against him. He will not be able to work, and the household income will be affected."

6. The Judge added, at §32:

> "Deprivation is at the discretion of the Secretary of State. I find that the decision to deprive the Appellant of his citizenship so long after first learning of his misrepresentation and the fact that the decision is contrary to the best interests of the Appellant's two minor children means that the decision is no longer reasonable. It does not serve the public interest of immigration control. It is a disproportionate response to the Appellant's misrepresentation at this point in time."

The Secretary of State's appeal

7. The Secretary of State appealed on 21 December 2022. Judge O'Garro granted permission on 10 January 2023. The grant of permission was not limited in its scope. The Secretary of State appealed on the following grounds, which I have reordered:

a. Ground (1) - on the 'delay' issue - the Judge ignored that as per the Secretary of State's case worker guidance, Chapter 55: Deprivation and Nullity of British citizenship, §55.5.1, there was no specific time limit within which deprivation procedures must be initiated. The Secretary of State needed to be afforded a significant margin of appreciation.

b. Grounds (2) and (3) – also on the 'delay' issue, the Judge had either misdirected herself, failed to give adequate reasons, or reached a perverse decision. In particular, whilst the Judge had cited EB (Kosovo) v SSHD [2009] AC 1159, the Judge had ignored the examples given in that case, at §§13 to 16, that the longer an applicant remained in the UK, the more likely they were to develop close personal and social ties and the longer the time that went by without any steps being taken to remove them, the more the sense of impermanence which would imbue relationships formed earlier in the period would diminish. The Judge failed to apply that law to the findings that the Claimant had continued to obscure his real identity until 2021, in circumstances where he was not pressured into being dishonest. The Judge had failed to give any reasons for why the Claimant's sense of impermanence could possibly diminish in circumstances where the Claimant was going as far to threaten legal proceedings to defend his fraud. The case of Laci could be distinguished as it was not simply inaction by the Secretary of State that was relevant to proportionality but the fact that in Laci, the individual confessed to fraud and the Secretary of State had done nothing. The Judge failed to give adequate reasons for why any delay outweighed the public interest and her reference to 'reasonableness' at §32 was erroneous. The Judge further erred when assessing the weight of immigration control, as distinct from the special weight accorded to the acquisition of nationality (§32).

c. Ground (4) – on the 'limbo' issue, the Judge erred in relying upon a response to a Freedom of Information Act request which gave average time scales for how long it took the Secretary of State to reach a decision on a human rights claim after a deprivation decision. That was an error, first because the data was in respect of a period up to 31st December 2020 and so it was out of date and second, it was also of a general

nature. Moreover, the Judge had failed to consider the Secretary of State's decision letter which confirmed, at §49, that the period would be relatively short, i.e. within eight weeks from the deprivation order being made, subject to any representations.

d. Ground (5) – on the Article 8 ECHR proportionality assessment generally, the Judge's findings of fact were limited at §§30 to 31 to references to psychological and emotional strain on the children and how it would affect their best interests during the limbo period, which were wholly unparticularised. There had been no findings on the children's schooling or accommodation or indeed any actual assessment of the effect of deprivation up on them.

The hearing before me

8. Mr Collins confirmed that the Claimant had not produced any Rule 24 reply and that instead he relied upon oral submissions. Mr Melvin relied upon the grounds which I have summarised, together with a skeleton argument. I do not repeat the representative's submissions, except to explain why I have reached my decision. I set out my decision in respect of each of the grounds below, followed by directions on how the appeal should be remade.

Ground (1)

9. I accept Mr Collins' submission first that a Judge can be expected to have considered relevant evidence and submissions and is not required to set these out in detail. In relation to the submission that the Judge had ignored the Secretary of State's case worker guidance (Chapter 55), I am satisfied that the Judge referred expressly to this at §13 of her decision. It was not necessary for her to cite the principle, included within that policy, that there was no time limit on deprivation decisions. This ground discloses no error of law.

Grounds (2) and (3)

10. In relation to grounds (2) and (3), I accept, on a preliminary point, that the Judge was acutely conscious that the Claimant had throughout maintained his false identity, even threatening legal action until presented with incontrovertible evidence, a consequence of which he then admitted his deception as late as 2021. I accept Mr Collins' submission that the challenge must be a perversity decision, noting EB (Kosovo), already cited, in which the Court had referred to the case of Akaeke v SSHD [2005] EWCA Civ 947 at §25, which stated:

> "Once it is accepted that unreasonable delay on the part of the Secretary of State is capable of being a relevant factor, then the weight to be given to it in the particular case was a matter for the Tribunal."

11. Mr Melvin accepted that the Secretary of State's challenge was that it was not permissible for the Judge to have considered any delay as relevant to proportionality, in circumstances where the Secretary of State had not known of the deception finally until 2021, even though she had had suspicions and concerns at an earlier stage. I confessed to have found this ground difficult to resolve. On the one hand, the Judge had referred at §24 to the Secretary of State's letter of August 2009, at page R1 of the respondent's bundle ("RB"), to

the fact there was no such person of the Claimant's name born in Presheve. However, there is also the response from the Claimant's solicitors dated 3 September 2009 maintaining the deception of birth in Presheve, Serbia, but claiming that ethnic Serbians considered themselves as Kosovans due to persecution and threatening to make a complaint about the Entry Clearance Officer (Albania)'s actions in passing information about the Claimant to the Secretary of State. On the other hand, this is followed by a note of 9 September 2010 in the Secretary of State's records, (page P2/RB), in response to an application by the Claimant's former wife for entry clearance to join the Claimant, which recorded the Secretary of State's view which was to doubt that he was Serbian, but also that there was no evidence that he was Albanian, but the Nationality Deprivation Team were not taking action as there was not enough evidence to progress deprivation proceedings on the balance of probabilities. However, I am conscious that the Secretary of State did not raise the September 2010 note in the grounds of appeal. The perversity challenge had been on the basis that delay was not relevant where the Claimant had maintained the deception, rather than where the delay was explicable because the Claimant had provided an answer which the Secretary of State was willing to accept, because of the limited chances of litigation success, at the time. I am conscious that it is not for me to substitute my view for what I would have decided and that the test for perversity is a high bar. I do not go so far as to say that it is incumbent upon the Secretary of State to explain and to justify any period of inactivity, particularly where, as here, the Secretary of State did not know of the Claimant's use of deception to obtain British citizenship, rather she had doubts. However, I do not accept the Secretary of State's submission that it was impermissible for the Judge to have considered what she regarded as unjustifiable delay between 2009 and 2020, as a relevant factor, merely because the Claimant sought to maintain the deception. The relevance of such a factor is intensely fact specific and may depend on how obvious the fact of deception was and its consequences on naturalisation are. To pick an example, if the Secretary of State was aware that an applicant had maintained a deception and that this was material, even if the applicant continued to maintain the deception, it is difficult to see how a Judge's consideration of a delay in taking action is a fact which it is not open to the Judge to consider. It was not one, on the circumstances of this appeal, which was an error of law.

12. I also do not accept that the Judge erred in referring to the weight of immigration control as distinct from the special weight accorded to nationality. This takes §32 of the Judge's decision out of context, where the Judge had made clear at §9 that she must attach, "heavy weight 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….". I also regard the challenge based on the Judge's reference to "reasonable" at §32 takes that word out of context, when it is clear that the Judge was considering proportionality.

13. In summary, in relation to grounds (2) and (3), the Judge's consideration of the factor of delay was open to her and the weight to be attached to that factor, in the proportionality assessment, was open to the Judge and was sufficiently reasoned. Grounds (2) and (3) disclose no error of law.

Ground (4)

14. I do not accept that the Judge erred in relying upon a response to a Freedom of Information Act Request, which had specified that the likely period of time

between deprivation decision and a removal decision was 303 days (§10). Whilst I accept that there may be issues about the nature of the response to the Freedom of Information Act request, (such as the age of the data and the that it was an average) I accept Mr Collins' submission that, in the absence of evidence from the Secretary of State of contrary arguments to the First-tier Tribunal, the Judge cannot be criticised for entertaining arguments that any decision on removal was likely to be for a period longer than eight weeks, where contrary arguments were not put to the Judge (Mr Melvin was unable to refer me to any such submissions). Put simply, the Secretary of State's position was not apparently advanced before the Judge and instead the Judge was entitled to consider that the limbo was likely to be lengthy. Ground (4) discloses no error of law.

Ground (5)

15. Where I accept that the Judge did err was in relation to her assessment of the impact of the 'limbo' period on the Claimant's children. This, as Mr Collins points out, was one of the two factors, (the other being the earlier delay in taking deprivation action) which just tipped the balance in the Judge's proportionality assessment. The difficulty with the Judge's reasoning, and where ultimately, she has fallen into error in an otherwise clearly structured decision, was in conflating the possibility that the effect of the limbo period would harm the children with any evidence that it might do so. The Judge referred at §3 of her decision to the Secretary of State's acknowledgment that a deprivation decision might have an adverse emotional impact on the Claimant's children. That reflects the Secretary of State's deprivation decision, to which I was taken, which includes the same acknowledgment. When I queried with Mr Collins what actual evidence there was as to the specific impact on the Claimant's children, the highest he was able to refer me to was in the Claimant's wife's witness statement at §5, at page 31 of the Claimant's bundle, which stated that without the Claimant in the UK, this would detrimentally affect the wife's mental health and that of the children. I accept Mr Melvin's submission that this evidence relates to the consequences of the Claimant's removal and not the consequences of a deprivation decision. Mr Collins was unable to take me to any other evidence. In summary, the Judge moved straight from the possibility of emotional impact on the children to this becoming one of the two defining factors that tipped the balance in favour of the deprivation decision being disproportionate. This was where there was no evidence whatsoever on the issue, such as from the Claimant's wife or an independent social worker. I accept that the Judge erred in reaching her decision based on an absence of reasoning relating to any actual evidence. This undermined the proportionality assessment and is material, where the judgment was so finely balanced (as the Judge, to her credit, makes clear). In the circumstances, ground (5) discloses an error of law such that the Judge's decision is not safe and cannot stand.

Findings unaffected by my decision

16. I note, and preserve the Judge's finding, that the 'condition precedent' had been met, i.e. that the Clamant had engaged in deception. I also preserve the Judge's findings at §§ 22a to e, which are unaffected by the Judge's error.

17. I also note, but do not preserve, the Judge's findings at §22f and the conclusion that the delay on the part of the Secretary of State was excessive. The danger in preserving this finding is that 'excessive' may be taken to mean disproportionate,

as opposed to lengthy. That is a matter for a remaking Judge on the basis of the documents before them including documents at pages R1, S1 and P1/AB.

18. I also preserve the Judge's finding at §23 that the Claimant had deliberately and knowingly as an adult, repeatedly misrepresented his place of origin, and at §26 that during the period of 2009 to 2020 the Claimant had married, found employment and advanced to a team leader position in his work and his wife had learned English, and was trained as a teaching assistant. The couple have had two children.

19. I pause also to note Mr Collins' submission that the Claimant's wife was subsequently naturalised as a British citizen in her own right, although this is not a preserved finding, but it may assist a remaking judge to be aware.

20. I also preserve the Judge's finding at §28 in terms of the Claimant's repeated misrepresentations.

21. Finally, I preserve the findings at §30, which are undisturbed by the Judge's error.

Notice of Decision

22. The Judge erred on one ground, namely on ground (5), as set out in the reasons. As a consequence the Judge's decision is not safe and cannot stand, subject to the preserved findings set out above.

Directions on remaking

23. The parties' attentions are drawn to §7.2 of the Senior President's Practice Statement. The parties' representatives are directed to provide submissions within fourteen days of these reasons being sent to them, as to whether remaking should be retained in this Tribunal or remitted back to the First-tier Tribunal for them to remake the decision. A decision will then be taken on how the appeal should be re-made.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23rd January 2024