**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2024-000424**
**First-tier Tribunal No: LR/00008/2022**
**DC/50195/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On the 27 June 2024**

**Before**

**THE HON. MRS JUSTICE HEATHER WILLIAMS, DBE**
**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**JESSE DOE**
**(AKA CLAUDE BRUNO POTHIN AND JESSE OKYERE)**
**[ANONYMITY DIRECTION NOT MADE]**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr P Blackwood, Counsel instructed by WH Solicitors
For the Respondent: Mr K Ojo, Senior Home Office Presenting Officer

**Heard at Field House on Tuesday 18 June 2024**

## DECISION AND REASONS

## BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Khurram promulgated on 17 April 2023 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 30 April 2021 giving notice of a decision to deprive the Appellant of his British citizenship ("NDD").

2. The Appellant's appeal against the NDD was originally dismissed by First-tier Tribunal Judge Parkes on 23 February 2022. However, following the grant of permission to appeal that decision, Upper Tribunal Judge Stephen Smith found an error of law in that decision, set it aside and remitted the appeal for hearing afresh by a different Judge with no findings preserved.

3. The Appellant claims not to know his original nationality and date of birth (although as we will come to his evidence about the latter has changed over time). He believes he was born in Liberia but moved to Libya with his mother aged approximately ten years. It is his case that when he arrived in the UK (in 2011) he was still a minor. There is a dispute of fact as to when the Appellant began to use the false identity of Claude Bruno Pothin, a French citizen purportedly born on 10 November 1980. It is common ground that this identity has been used by the Appellant. However, he denies having used it in an application made on 4 December 2009 for a registration certificate in that name. That application was refused on the basis that Claude Pothin was in fact a woman. The Appellant denies making the 2009 application.

4. However, on 9 August 2015, when the Appellant claims still to have been a minor, and using the Pothin identity, the Appellant applied to naturalise as a British citizen. The Appellant has since naturalisation in 2016 changed his name by deed poll to Jesse Okyere.

5. The Appellant accepts that, in the 2015 application, he lied about his name, nationality, and date of birth. He accepts that the condition precedent under section 40(3) British Nationality Act ("Section 40") is met. However, he appealed the NDD on the basis that the Respondent had made a number of public law errors when deciding whether to exercise discretion to deprive him of citizenship. He also claimed that the NDD would breach his Article 8 rights.

6. The Appellant's challenge to the Decision is against the Judge's findings in relation to the exercise of the Respondent's discretion and the Judge's findings as to the Appellant's age (which is also relevant to the exercise of that discretion). The challenge falls under four headings as follows:

   Ground one: the Respondent acted in a manner contrary to his policy as the NDD was made by the wrong level of decision-maker. The Judge was wrong to conclude that this was not the case.
   Ground two: the Judge failed to consider whether the Respondent had taken into account an irrelevant consideration/ made an irrational decision when exercising his discretion in relation to the length of the "limbo period" (that is to say the period between the dismissal of an appeal and the grant of leave to remain or removal).
   Ground three: the Judge erred when considering the Appellant's age and date of birth by relying on an inconsistency which did not exist.
   Ground four: following on from ground three, the Judge erred in his conclusion that the Appellant had used the false identity from the outset in 2009.

7. Permission to appeal the Decision was granted by Designated First-tier Tribunal Judge Shaerf on 12 November 2023 (wrongly dated 2024) in the following terms so far as relevant:

> "The first ground discloses an arguable error of law by the Judge in finding that even if the decision was taken by a person without due authority according to the Respondent's own published policy, it was not a material matter when arguably it went to the validity of the process by which the decision was made.
>
> The second ground is perhaps too concisely expressed or not fully articulated. However, it is sufficient to show the Judge arguably erred in law in not making clear his reasons for finding the Appellant was not a minor at the time he made his naturalisation application. There is a confusing typographical error in paragraph 18a of the decision, reasons for accepting the Appellant's claimed year of birth are given in paragraph 18b but at paragraphs 18d, 18f and 18e the Judge refers to evidence not supporting the Appellant's claimed year of birth. Further, in the light of the decision in *Chimi (deprivation appeal; scope and evidence) Cameroon [2023] UKUT 00115 (IAC)* to which the Judge made no reference in his decision. He was not required to make an assessment of these facts on the evidence as it appeared to him but whether the Respondent had reason to find the facts which he did find at the time the deprivation decision was made at the time of [sic] on 30 April 2021 which would be material to assessing whether the Respondent made a public law error in making his decision to deprive the Appellant of his nationality.
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> This is material for considering the application of the Respondent's relevant guidance to caseworkers in Chapter 55.
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> For these reasons Permission to appeal is granted and may be argued all grounds [sic]. I would add that this is the second time permission to appeal has been granted to the Appellant in respect of a First-tier Tribunal decision in this appeal and if it is found that there is a material error of law in the Judge's decision the Upper Tribunal may wish to consider whether it should also decide the substantive appeal."

8. The appeal therefore comes before us to determine whether there is an error of law in the Decision. If we conclude that the Decision does contain an error of law, we have to consider whether to set it aside in whole or in part. If we set it aside, we have to go on either to re-make the decision ourselves or to remit the appeal to the First-tier Tribunal for re-making.

9. We had before us a hearing bundle running to 449 pages to which we refer below as [B/xx]. That contained the core documents relating to the appeal before us as well as most of the Appellant's documents as before the First-tier Tribunal and the Respondent's bundle before that Tribunal. Mr Blackwood also informed us that a supplementary bundle had been filed under cover of an application under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to which we refer below also as [B/450] onwards. We did not have the supplementary bundle at the outset of the hearing and Mr Ojo had not seen it either. However, Mr Blackwood assured us that it had been filed on the system (it has since appeared on the system having been filed on 17 June). Mr Blackwood supplied us and

Mr Ojo with a copy electronically and we admitted that without objection from Mr Ojo. Most of the documents in the supplementary bundle were in fact before the First-tier Tribunal but omitted from the main bundle. There was one additional document to which we come below. We also had a skeleton argument from Mr Blackwood.

10. Having heard submissions from Mr Blackwood and Mr Ojo, we indicated that we would reserve our decision and provide that in writing which we now turn to do.

## DISCUSSION

11. The first and second grounds relate to the Judge's findings at [19] to [21] of the Decision which we therefore set out below for ease of reference:

> "19. I do not consider the respondent's conclusion is susceptible to public law challenge. The challenge with reference to the appellant being a minor at the time of application falls away based on the above findings. The policy level of decision-maker and procedure was not materially addressed by the respondent. The appellant has not sufficiently particularized how this infected the reasoning in the decision such that makes it susceptible to a public law challenge, nor referred to any case precedent, which would support the position on this narrow point.
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> 20. I do not consider the limbo period/adverse information at the time of the application/ lack of receipts submissions take matters further. The failure to respond by the appellant to the two letters from the respondent is potentially relevant and on balance the respondent came to a reasonable conclusion. I note the appellant does not say that the correspondence was not addressed correctly. The historic adverse information relating to the 2011 [should be 2009] application is relevant in the context of the ongoing credibility and the relevant information materially came to light some time later. The limbo period is relevant to the s6 HRA position and not sufficiently relevant to that of the public law consideration. None of these points even taken cumulatively demonstrate that the respondent acted in a way that no reasonable SSHD could have acted.
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> 21. The respondent takes account of relevant current policy, and all relevant evidence. The respondent's view was supported by evidence and based on a view of the evidence that could reasonably be held. The evidence relied upon is detailed within the decision letter and the documents referred to are contained within the respondent's bundle."

## Ground one: Level of Decision Maker

12. Mr Blackwood refers in his skeleton argument to two unreported decisions of this Tribunal – Secretary of State for the Home Department v MKM (UI-2022-002795) ("MKM") and Buzi v Secretary of State for the Home Department (UI-2022-006682) ("Buzi"). Although no application was made formally by either party to rely on these unreported decisions, we heard submissions which involved reference to them, and Mr Ojo relied on what was there said. We should also say that in both cases Mr Blackwood represented the appellants. Judge Smith was also part of the

Tribunal panel in Buzi, but no objection was taken to her hearing this appeal on that basis.

13. The arguments made by Mr Blackwood which are essentially those repeated before Judge Khurram and us in this appeal are summarised at [27-29] of MKM and more fully at [15-21] of Buzi.

14. In essence, Mr Blackwood submits that the Respondent's policy requires the NDD to be taken at senior civil servant (SCS) (head of department) level. That is (or rather was) to be found at 55.6.4 of the policy entitled "Chapter 55: Deprivation and Nullity of British Citizenship" ("Chapter 55" of "The Guidance") [B/329] which reads as follows:

> "The final decision to deprive in a fraud deprivation case should be made at SCS level (Grade 5 or above)."

15. The Respondent's position in relation to this part of the Guidance is that the "final decision to deprive" follows on from the appeal as, until the appeal is concluded, no final decision to deprive can be taken.

16. Mr Blackwood, as he did in MKM and Buzi, submitted that the Respondent's position is inconsistent with the statutory scheme. He pointed out that, Section 40(5) requires the Respondent to give notice of the decision to deprive (NDD) which then gives rise to an appeal under Section 40A. He submitted that whilst it would be open to the Respondent to give another notice of decision after an appeal, that too would give rise to a (second) appeal. That clearly is not what is intended. To that extent we agree. However, we also agree with the Respondent that no final decision to deprive can be taken until after an appeal is concluded. On Mr Blackwood's submission the word "final" in Chapter 55.6.4 would be otiose. There would be only one decision taken which is that notified to an appellant.

17. As in MKM and Buzi, in this case we can find no evidence put forward by the Appellant to underpin a submission that the wrong grade of decision-maker took the decision under appeal in this case. As the Tribunal observed in Buzi (at [24]), it is highly unlikely that a decision maker at SCS level would take every decision; it is more likely that decisions would only be approved at that level. However, as Mr Blackwood confirmed, there has been no subject access request in this case which might give rise to disclosure of notes showing who was responsible for taking the decision and whether that was approved by a higher grade (assuming for the moment that the Appellant's interpretation of the Guidance is correct). Mr Blackwood also accepted that he was unable to draw any specific support from the Respondent's documentation in this case.

18. At the hearing before us, Mr Blackwood relied on an extract from the Independent Chief Inspector's Report for April-June 2023 entitled "Inspection of the use of deprivation of citizenship by the Status Review Unit" ("the ICI Report") ([B/479-484]). Figure [3] at [B/483] appears to

indicate that the Deprivation Team is now headed by a grade 7 civil servant rather than a SCS (although we are not clear from the extract whether the Deprivation Team is a sub-section of the Status Review Unit). Paragraph 3.31 explains that "[f]raud cases are routinely decided by EOs and authorised by the Grade 7 head of unit, whereas conducive to the public good cases are decided by the Home Secretary". Whilst the point is there made that "non-conducive" decisions have to be determined personally by the Secretary of State, there is no reference there to any policy or guidance requiring decisions in fraud cases to be taken or even approved at any particular grade.

19. We accept that the flow chart at [B/484] appears to show that the deprivation decision prior to an appeal is approved at grade 7 level, which might be suggested to be inconsistent with the Respondent's position, the difficulty for the Appellant in this regard is that the ICI Report does not deal with the position in 2021 when the NDD in this case was taken. Chapter 55 at that time did not refer to a "deprivation decision" as set out in the flow chart but to a "final decision".

20. Although Mr Blackwood pointed out that the practice of the Deprivation Team appeared in April to June 2023 (or at least the first part of that period) to be inconsistent with the published guidance at that time (the guidance was not published as amended until 10 May 2023), we are quite unable to accept his submission that this is illustrative of the Home Office failing to follow its published policy. Instances where practice changes may precede publication of a policy amendment are not in our experience that uncommon. That could not in any event provide evidence of the position in 2021.

21. Nor were we taken to the amended guidance which is now entitled "Deprivation of Citizenship" ("the 2023 Guidance"). The 2023 Guidance in relation to level of decision maker now states that "[t]he Status Review Unit in UKVI consider cases where deprivation is being considered on the grounds of fraud. Decisions to deprive on the basis of fraud must be approved at Grade 7 level." That wording is different from Chapter 55.6.4 in two respects (other than caseworker level). First, it requires that the decision "must" be approved at that grade (as opposed to "should be" which Mr Ojo pointed out involves some degree of flexibility). Second, it refers to "decisions to deprive" and not "a final decision to deprive".

22. We are quite unable to see how we can draw any analogy between the position under the 2023 Guidance informed by the ICI Report and the position under Chapter 55 of the Guidance. We also observe that the ICI Report did not identify any issues in relation to the decision-making level in the Deprivation Team. The Independent Chief Inspector is, as noted at [24] of the decision in Buzi, part of the oversight mechanism for the Home Office and if there were a routine disregard of relevant policy or guidance one would expect that to be identified in his report(s).

23. Finally, on this point, Judge Khurram did not have the ICI Report (unsurprisingly since it had not been published at that time). As before Judge Khurram, therefore, the position was that there was no evidence put forward by the Appellant albeit as Judge Khurram pointed out at [19] of the Decision, neither was this issue addressed by the Respondent.

24. Judge Khurram also pointed out that the Appellant did not refer to "any case precedent" by which we understand him to mean any case authority which would demonstrate that a failure to take a decision at an appropriate grade would amount to a public law error.

25. We accept that unlawful sub-delegation is a head of public law error which may render a decision unlawful in public law terms. Mr Blackwood referred in passing in his submissions to R v Immigration Appeal Tribunal and others ex parte Oladehinde and others [1989] UKHL 3 ("Oladehinde"). However, that was concerned with the division of powers under both primary legislation and the Immigration Rules as between the Secretary of State, Immigration Inspectors and Immigration Officers in relation to decisions to deport. We do not understand that judgment to deal with the position under a policy still less a part of a policy which relates to the internal workings of the Home Office.

26. We do not need to deal with that issue further however since we did not understand Mr Blackwood to put the Appellant's case on that basis. His argument is that if the Respondent has acted contrary to his policy that is itself a public law error which should led to the quashing of the NDD and the allowing of the appeal in consequence. We do not accept however that every failure to follow a policy would lead to that result.

27. We are of course here dealing with error of law. In this case, Judge Khurram considered the argument on the basis it was put. Whilst accepting that the issue of level of decision-maker was "not materially addressed by the respondent", he concluded that if there were any failure in that regard it did not affect the reasoning and did not therefore render the decision under appeal "susceptible to a public law challenge". Those findings and that conclusion were open to him for the reasons he gave at [19] of the Decision. We are therefore satisfied that the Appellant has not made out his case as to error of law on the first ground. Furthermore, as we have already noted there is simply no evidence that the wrong grade of decision-maker took the decision under appeal in this case.

**Ground two: "Limbo period"**

28. Again, the issue of limbo period was dealt with by this Tribunal in both MKM and Buzi but neither are reported on this issue or indeed at all. To save repetition however we refer to [43] to [45] and [50] to [52] of the decision in Buzi which sets out the evidence on which the Appellant here relies and the Tribunal's reservations there expressed about the value of that evidence. The evidence consists of a Freedom of Information Response dated 31 August 2021 ("the FOI Response"). So far as we can

see, the FOI Response itself is not in the bundles before the First-tier Tribunal in this case. It is summarised at [20] of the Appellant's "Written submissions" before the First-tier Tribunal at [B/459]. The full text of the FOI Response and the request which led to it appear at [45] of the decision in Buzi. It is perhaps because Judge Khurram did not have the actual document that no reference is made to this expressly in the Decision (as Mr Ojo accepted was the case).

29. We begin by noting that Mr Blackwood did not put forward his submissions about the "limbo period" by reference to the proportionality assessment under Article 8 ECHR. Had he done so, there could not have been any error because Judge Khurram had to consider the position as at date of hearing, some two years after the NDD. Further, he acknowledged at [28(b)] of the Decision that the length of that period "could be … significant".

30. Mr Blackwood's argument instead was again focussed on the exercise of discretion. In essence, he says that the Respondent has relied upon the period being of eight weeks (see [36] of the NDD at [B/323]). Leaving aside that this refers to the period being "subject to any representations you may make", Mr Blackwood says that the Respondent has taken into account an irrelevant consideration because the FOI Response shows that the period is much longer.

31. We take into account without repeating them the reservations which the Tribunal had in Buzi about the value of the evidence in the FOI Response. We reiterate that Judge Khurram did not apparently have the FOI Response before him. The summary of it at [20] of the Appellant's written submissions at [B/459] does not indicate the date of the FOI Response or the period which it covered. Based on that summary, it is difficult to see how Judge Khurram should or could have assessed the evidence about the length of the limbo period.

32. Even if Judge Khurram had the full FOI Response, although dated August 2021, it included data only up to December 2020 (with no indication of when the data began) and provides only an average figure with no indication of the number of cases within the data pool.

33. Again, we remind ourselves that we are dealing with error of law. The Appellant's position was that the Respondent's decision was irrational on this point, as we understood it either based on a taking into account of an irrelevant consideration or that no Secretary of State properly directed could have said as he did about the length of that period.

34. Judge Khurram dealt with this in relation to the exercise of discretion at [20] of the Decision. As Mr Ojo pointed out, he did not say that the length of the limbo period was not relevant at all to discretion but said that it was "not sufficiently relevant" in this instance and that the Appellant's points "even taken cumulatively" did not indicate that the Respondent had acted irrationally.

35. Those were findings and a conclusion which was open to the Judge. As he said, the length of the limbo period whether that was eight weeks as the Respondent said would be the case (subject to any representations the Appellant might make) or 303/257 days as the Appellant said was the position was relevant to the Article 8 assessment and was considered by the Judge in that context. We also observe in passing that the reference to "eight weeks" in the NDD is also under the heading of Article 8 and not in relation to the exercise of discretion whether to deprive although probably little turns on that.

36. We are therefore satisfied that there is no error of law disclosed by the Appellant's second ground.

**Grounds 3 and 4: Appellant's age and the 2009 application**

37. We take these two grounds together as they were argued as one and arise from the same paragraph of the Decision.

38. We begin by noting that Mr Blackwood did not take the apparent encouragement in the grant of permission to expand this ground by amendment to suggest that the Judge has gone beyond his remit when making the factual findings which he did at [18] of the Decision rather than confining himself to the question whether the Respondent was entitled to be satisfied in relation to those issues. We should also mention since it was pointed out by Mr Ojo that Judge Khurram could not have referred in the Decision to Chimi (deprivation appeal; scope and evidence) Cameroon [2023] UKUT 00115 (IAC) ("Chimi") to which reference is made in the grant of permission. The decision in Chimi was promulgated on 19 April 2023 whereas the Decision was promulgated on 17 April 2023.

39. Turning then to the paragraph which forms the basis of the Appellant's challenge, that is at [18] of the Decision. We do not need to cite it in full. The Appellant's third ground is directed at [18(a)] (although [18(b)] is relevant) and his fourth at [18(g)] (albeit taking into account the reasons prior to that conclusion). We therefore set out those sub-paragraphs as follows:

> "18. I consider the respondent's view on the credibility of the appellant's core narrative account to be reasonably held. I simply note the following main points:
> a. In the witness statement of 10/11/21, the appellant states he cannot confirm if his date of birth is 02/05/1998 as he has no official proof; and he made this date of birth himself because he never knew his actual date of birth [§2]. This changed to him believing his date of birth is 02/05/1998, in the second witness statement [§2]. In evidence before me, the position changed once more, with the appellant saying he is not sure about the day and month, but he is 100% sure about the year having been told this by his mother.
> b. The appellant's account of his journey to the UK, tallies overall with his claimed age. However, having considered it at length and holistically, I find

> it to be vague and evasive. In evidence the appellant was unable to recall anything about his background and circumstances in which he lived in Liberia. He didn't know whether he was born in Liberia, had any extended family, siblings, or indeed his mother's name. I have considered this in light of his claimed age at the time of 10 years, however, find it not credible that he would be told his year of birth alone whilst having so little knowledge of anything else. It is telling and convenient that he is now so certain about the year of birth, considering the appellant's challenge to the decision is largely based on him being a minor.
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> …
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> (g) I consider it therefore, reasonably open to the respondent to conclude that the appellant used the false identity from the outset in 2009. This identity and its use in accruing the requisite period of residence would reasonably have been used by the individual who accrued it. In circumstances where the appellant's claimed history is not accepted and where he used the identity at the very least during the citizenship ceremony and details therefrom for some considerable time thereafter, this is a conclusion easily reached on balance."

40. We begin by noting that, even had Mr Blackwood sought to persuade us that the Judge had dealt with these issues on the merits rather than as a review of the Respondent's decision, we would not have agreed with that submission. As Mr Ojo pointed out, this paragraph begins and ends with a recognition by the Judge that he was reviewing the Respondent's decision rather than reaching his own view on the evidence.

41. Turning then to the third ground, it is said that the Judge failed to explain his adverse credibility findings as to the Appellant's age. It is said that the Appellant was consistent about this in his witness statements and that the only one inconsistency (as to whether he was born on 2 May 1998 or 1988) was corrected in a subsequent statement.

42. The Judge has set out at [18(a)] what were the inconsistencies. Those were as to whether and what the Appellant knew or believed about his birth date. His evidence varied between him not knowing the actual date to believing what was the actual date to not knowing the day or month but being "100% sure about the year". The Appellant may disagree with the weight to be given to those inconsistencies, but the Judge was entitled to find that they were inconsistencies. Weight is a matter for the Judge assessing the evidence.

43. Further, the Judge explained his conclusion about the Appellant's age and whether he was a minor at the relevant time (at the very least when he applied for naturalisation in 2015) by reference to a number of identified factors, including what is said at [18(b)] of the Decision. In short, the Judge was unpersuaded that the Appellant would know his year of birth with the certainty he claimed when he could not say whether he had extended family or siblings and did not know his mother's name.

44. Having reached that assessment, the Judge went on in the following paragraphs to consider whether he was a minor at all relevant times. He

gave reasons which are not challenged arising from the evidence put forward by the Respondent and the Appellant's own evidence which led him to conclude that the Appellant was not a minor at the date of the application ([18(e)]) and had used the false identity since 2009 ([18(g)]).

45. In relation to that latter conclusion which is the subject of the Appellant's fourth ground of challenge, it is said that the Appellant has been consistent that he was not involved in this, and the Respondent had put forward no evidence in support of the Appellant being the person for whom this application was made. However, as we pointed out, even if the Judge had erred in this conclusion (which we do not accept for the reasons the Judge gave prior to that conclusion), that error can make no difference in light of the Judge's finding at [18(e)] that the Appellant was not a minor at the date of application. The only basis upon which that finding was challenged is Ground 3, which we have rejected.

46. For those reasons, we are satisfied that the Appellant's third and fourth ground disclose no legal error.

## CONCLUSION

47. We are satisfied that the Appellant's grounds do not disclose any error of law. We therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

## NOTICE OF DECISION

**The Decision of First tier Tribunal Judge Khurram promulgated on 17 April 2023 did not involve the making of an error of law. We therefore uphold that decision with the consequence that the Appellant's appeal remains dismissed.**

L K Smith
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
20 June 2024