IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003390
UI-2022-003391
First-tier Tribunal No:
DC/50120/2021
LD/00051/2021 &
LD/00052/2021

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 15 November 2022

Decision & Reasons Promulgated
On the 15 February 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

-and-

VULLNET KRASNIQI
(AKA VULLNET SHLLAKU)
(ANONYMITY DIRECTION SET ASIDE)

First Respondent

-and-

FATBARDHA KRASNIQI
(AKA FATBARDHA GAXHA)
(ANONYMITY DIRECTION SET ASIDE)

Second Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Presenting Officer

For the Respondents: Mr H Broachwella, Counsel, instructed by Saifee Solicitors

DECISION AND REASONS

Introduction

1. For the purpose of this decision the appellant is referred to as the 'Secretary of State' and the respondents as the 'claimants'.

2. The Secretary of State appeals a decision of Judge of the First-tier Tribunal Phull ('the Judge') allowing the claimants' appeals against decisions to deprive them of British nationality under section 40(3) of the British Nationality Act 1981. The Judge's decision was sent to the parties on 4 July 2022.

3. The Secretary of State was granted permission to appeal to the Upper Tribunal on all grounds by Judge of the First-tier Tribunal Komorowski.

4. The claimants accept that they are (1) Vullnet Shllaku, born on 15 July 1975, and (2) Fatbardha Gaxha, born on 25 June 1980, both Albanian nationals, and not as previously asserted to the Secretary of State (1) Vullnet Krasniqi, born on 15 July 1975, and (2) Fatbardha Krasniqi, born on 25 June 1979, both former citizens of Serbia and Montenegro, hailing from Kosovo.

Anonymity

5. The Judge made an anonymity direction but provided no detail as to why such direction was necessary.

6. The requirement that justice should be administered openly and in public is a fundamental tenet of the domestic justice system. It is inextricably linked to freedom of the press and so any order as to anonymity must be necessary and reasoned: *R (Yalland) v. Secretary of State for Exiting the European Union* [2017] EWHC 630 (Admin). The public enjoys a common law right to know about tribunal proceedings and such right is protected by article 10 ECHR.

7. In *re Guardian News v. Media Limited and Others* [2010] UKSC 1, [2010] 2 AC 697 the Supreme Court confirmed that where both articles 8 and 10 ECHR are in play, it is for a tribunal to weigh the competing claims. Since both articles 8 and 10 are qualified rights, the weight to be attached to the respective interests of the parties and family members will depend on the facts. In making an anonymity direction a judge is obliged to provide reasons as to why article 10 rights are given less weight than those given to an appellant's article 8 rights. Such reasons may permissibly be short, with reference to UTIAC's Guidance Note [2002] No. 2: Anonymity Orders

and Hearings in Private which is concerned with anonymity orders, but they are required.

8. Whilst observing that the appellant's younger child is a minor aged 16, I am satisfied that there is no requirement to anonymise the claimants in this decision. There is a clear public interest in the public knowing the identities of those persons who are deprived of British citizenship. In the circumstances I am satisfied that protected article 10 rights should properly be placed above the article 8 rights of the claimants and their children. I therefore set aside the anonymity direction issued by the First-tier Tribunal.

Relevant Facts

9. The claimants entered the United Kingdom in 1999. They informed officials that they were 'Vullnet Krasniqi' and 'Fatbardha Krasniqi', nationals of Serbia and Montenegro who hailed from the province of Kosovo.

10. The first claimant claimed asylum, with his wife as his dependent. He confirmed that he was of mixed Albanian and Gorani heritage. His application for asylum was refused by the Secretary of State and he appealed to the Immigration Appeal Tribunal (HX/39863/01). In allowing the first claimant's appeal by a decision dated 25 February 2002, Special Adjudicator McGeachy observed, *inter alia*:

> '13. At the hearing of the appeal the appellant was asked by Mr Coleman what he feared if he returned to Kosovo. He said that because his family was of mixed ethnicity - his mother was a Goran and his father Kosovan - and that after his father was released he had been killed by Kosovans he feared that he would also killed. Asked why his father had been killed he said it was because it was thought that he had been collaborating with the Serbs because he had a Gorani wife. He said that he had learned this from his cousin who was from the same district as himself – the district of Dragash. His cousin had arrived in Britain on 10 January 2000 – that cousin's father had also been killed. The appellant went on to say that his father had been involved a diary about human rights matters. It was put to him that in his statement there had been nothing about his father being accused of being a collaborator and he said that his father was not. He said that his father had been arrested because the Serbs had thought that he had supported the KLA and that he himself had left Kosovo before his father was released. He referred to the letter which he said was written by the Mayor of the village in his mother's name and said that after his father was released he could not go to live in the house in Malishevo and had been forced to go and live in his parents-in-law's house in Dragash and there he had been killed. He had been accused of collaborating because he had a Gorani wife. He said that another cousin of his had been killed and he claimed that his own 11-year-old brother was in hiding. He himself would be in danger because of the 'canon'

> which was that if one member of the family was killed then surviving members would have avenged the death of the first and therefore those that had killed the first member would have ensured that they would kill the other member so that they themselves would not be able to kill the original aggressors. It was put to him that as the men were gunned down his father had to have their faces covered, it would not be possible to find out who they were. He said that he had learned what was going on from the friends from his region including some who had gone to Switzerland. He said that Gorani were in difficulties in Kosovo – if one was ill KFOR would take them specially to Belgrade or to Novi-Bazar. This was because Goranis could not go outside their village and their villages had to be specially protected because during the war they had worked with the Serbs. He said that the certificate, which he described as being from the council in Dragash was written in Serbo-Croat and that he had received it after the letter from his mother. He had asked for the certificate as he had wanted to know what had happened to his father. He thought he could not live anywhere else in Kosovo and that he could not go to Pristina. It was put to him that as his wife was from another part of Kosovo he could always go to her family but he said that since his father had been killed he would not want to consider that. '

11. It is abundantly clear that at the hearing in 2002 the first claimant set out a detailed history of persecution of his family in Kosovo, and specifically relied upon false documentary evidence, placed before the Tribunal, purportedly to have been authored by a mayor in Kosovo.

12. In allowing the first claimant's appeal, the Special Adjudicator found:

> '22. It is certainly the case that this appellant's claim developed very considerably as it progressed. Initially, although he said that he spoke Gorani there was no reference to his mother's ethnicity let alone the family having had problems because of that. Indeed, it appears to be the case that his father, who was Kosovan Albanian had worked to publicise human rights atrocities by the Serbs and that it was because of this his father was in prison. It is of note that, when the appeal was submitted, no reference was made to what had happened to the appellant's father and that the murder was not raised until October 2001 – the appeal is dated 25 June 2001. Although I accept that the appellant's father was a Kosovo Albanian and that his mother was Gorani that that they lived in an area in which there was a large Gorani community it is difficult to find credible his claim that his father would be targeted by 'ex-KLA' members. The reality is that his father had helped the Albanian cause and had been imprisoned because of this. The fact that his father was released from prison a year after the war possibly before others who had been imprisoned in Serbia were released is not a likely reason for ex-KLA men killing him. Though the death certificate has been produced and although there is the letter from the appellant's mother (or at least part of it) and the

> certificate from the council I question whether the murder of the appellant's father because he was married to a Gorani or indeed whether or not his father was murdered. There is a further question as to whether or not the appellant himself would be targeted either as his father's son or because his mother was Gorani.
>
> 23. However, from the background documentation it is evident that the Gorani community, in particular those from mixed marriages, might suffer harassment and ill-treatment in Kosovo. That, of course, is the context within which I should consider the death of the appellant's father. Although I am sceptical therefore that, the appellant's father was killed as he has claimed, even applying the low standard of proof, applying that low standard I consider that the appellant himself might be liable to harassment and ill-treatment from the Albanian community, who could act with impunity – there is evidence, for the Gorani there is not a sufficiency of protection – and that the ill-treatment of which the appellant, on the low standard of proof might suffer is sufficient to amount to persecution or inhuman or degrading treatment and for these reasons I allow this appeal.'

13. The appeal was therefore allowed on the basis that the appellant's Gorani heritage established a well-founded fear of persecution in Kosovo.

14. It is appropriate that I observe that the appellant had used the services of a Gorani dialect interpreter at the hearing before the Special Adjudicator, and I am satisfied that the finding of fact as to his being ethnically half Albanian and half Gorani is unimpeachable. However, as he has subsequently accepted, his stated history of persecution and the accompanying persecution of his family in Kosovo is entirely false. He is an Albanian national who has never resided in Kosovo. In 2002, he possessed no well-founded fear of persecution in Albania.

15. Consequent to the judicial findings of fact the first claimant was granted asylum and indefinite leave to remain on 8 July 2003. The second claimant was granted leave in line with her husband.

16. The first claimant applied for a Home Office travel document on 4 June 2004 in the identify of 'Vullnet Krasniqi', a national of Kosovo. A travel document was issued to him on 21 June 2004.

17. On 28 September 2005, the claimants applied to naturalise as British citizens in the identifies of 'Vullnet Krasniqi' and 'Fatbardha Krasniqi'. They were naturalised on 30 March 2006.

18. A referral was made to the Secretary of State in respect of the first claimant by her Status Review Unit on 19 January 2021. This followed a referral to the Unit on 2 May 2017 from Her Majesty's Passport Office in respect of the first claimant's brother who had naturalised in the United Kingdom under the identity of 'Hajdarin Shllakobski', a Serbian national. It

was alleged that his genuine identity was 'Altin Shllaku' an Albanian national born in Kukes, Albania. The first claimant's brother subsequently admitted that this was his genuine Albanian identity. Checks were undertaken by the British Embassy in Albania that revealed the genuine details of the parents of both Altin Shllaku and the first claimant, establishing that they were both Albanian nationals. Subsequently, an Albanian birth certificate was secured in relation to the first claimant as well as his parents' birth certificates confirming that they were born in Albania.

19. On 12 February 2021, the British Embassy, Tirana, wrote to the Secretary of State in respect of the second claimant confirming that with the assistance of the Albanian Ministry of the Interior checks were undertaken with the Department for International Relations at the General Directorate of State Police and with the General Directorate of Civil Registry at the Albanian Ministry of the Interior. It was confirmed that there was no Kosovan national registered with the Central Civil Status Register of Kosovo in the identity of the second claimant. However, there was an Albanian national called Fatbardha Gaxha who possessed the same personal details as the second claimant.

20. On 1 February 2021 an investigation letter was provided to the first claimant detailing that the Secretary of State believed him to have obtained his British citizenship as a result of fraud and provided details as to his suspected genuine identity of Vullnet Shllaku.

21. On 12 February 2021 an investigation letter was sent to the second claimant again asserting that she had obtained British citizenship on a fraudulent basis and confirming her suspected genuine identity as Fatbardha Gaxha.

22. By a letter dated 6 April 2021, a little over two months after the first claimant was notified of the allegation as to his true identity, the claimants' present legal representatives wrote to the Secretary of State on their behalf and confirmed that they were born in Albania. The explanation provided was that the claimants could not at the time of their asylum claim speak English and were at the mercy of an interpreter in order to process their claim and to explain their circumstances to the Secretary of State. During the course of the application the claimant had explained to the interpreter what had happened to them in their home region of Kukes consequent to the first claimant being of mixed Albanian/Gorani ethnicity. It was the interpreter who informed the Secretary of State that they were Serbian nationals rather than nationals of Albanian. The representatives clearly identified on behalf of the claimants that it was the interpreter who had misleadingly informed the Secretary of State as to the incorrect nationality.

23. No reference was made within this letter as to there having been any delay in the Secretary of State taking steps to investigate the allegation of

deception. Additionally, there was no engagement with the fact that the first claimant had attended a hearing before the Asylum and Immigration Tribunal and had not only reconfirmed the false case of persecution but had also produced and relied upon false documentation to establish his false personal history.

24. The Secretary of State served both claimants with notices of decisions to deprive them of British nationality dated 27 April 2021 and 28 April 2021 respectively, detailing that they had perpetrated a prolonged period of fraud beginning with their asylum claim and continuing throughout their dealings with the Secretary of State until their representations of 22 February 2021. The Secretary of State confirmed that indefinite leave to remain had been granted because of the deception, and that had the truth been known the application for nationality would have been refused because they should not have enjoyed settled status and also because of serious concerns to their character.

Law

25. Section 40(3) of the 1981 Act (as amended):

> (3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—
>
> (a) fraud,
>
> (b) false representation, or
>
> (c) concealment of a material fact.

26. After the Supreme Court judgment in *R (Begum) v. Special Immigration Appeals Commission* [2021] UKSC 7, [2021] A.C. 765, the Upper Tribunal confirmed in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC), [2021] Imm AR 1909, at [30], that in deprivation appeals:

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

(2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.

(3) In so doing:

(a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and

(b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).

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

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in *EB (Kosovo) v Secretary of State for the Home Department* [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs 13 to 16 of *EB (Kosovo)*.

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

(7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section

> 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good.

Grounds of Appeal

27. The Secretary of State's grounds of appeal are of some length but can be appropriately identified as follows.

    (i) The First-tier Tribunal failed to adequately assess the public interest in the article 8 proportionality exercise, having failed to lawfully consider the Secretary of State's exercise of discretion.

    (ii) The First-tier Tribunal failed to adequately consider the Secretary of State's policy as to good character when undertaking the balancing exercise. Further the First-tier Tribunal failed to identify anything rare or exceptionally capable of outweighing the public interest.

    (iii) The First-tier Tribunal's assessment of delay was inadequately reasoned and perverse.

28. At the hearing Mr Clarke withdrew reliance upon ground (i), and whilst relying upon ground (ii) accepted that it was ancillary to the primary challenge directed through (iii).

Discussion

29. It is obvious that the Judge took care to consider the appeal before her on subject matter that can properly be considered complex since the Supreme Court decision in *Begum*. She properly turned her attention to the judgments of *KV (Sri Lanka) v. Secretary of State for the Home Department* [2018] EWCA Civ 2483, *Ciceri* and *Laci v. Secretary of State for the Home Department* [2021] EWCA Civ 769, [2021] Imm AR 1410.

30. The condition precedent was found to exist. The claimants have not challenged this decision by cross-appeal.

31. The Judge allowed the claimants' appeal solely on article 8 grounds, concluding at [57]:

> '57. For the above reasons, whilst the Respondent has shown that the condition precedent in section 40(3) applies, I consider that the decision to deprive the Appellants of their citizenship would put the United Kingdom in violation of its obligations under article 8. For these reasons, the appeals are allowed.'

32. It is appropriate to observe at this juncture that the Judge recorded at [40] of her decision the Secretary of State's position, confirmed through her Presenting Officer Miss Hogben, that she intended to make a decision as to removal within four weeks of the conclusion of the deprivation appeal. This is a notably short period of time and could – I stress could – be predicated

upon the real likelihood that the appellants would be granted leave to remain consequent to their long history in this country and their British citizen children, including a minor British citizen child aged 16. What is abundantly clear is that the appellant's representative at the hearing did not challenge the assertion made in respect of the four-week period, and the Judge did not consider such assertion to be unreasonable. Consequently, any consideration as to article 8 rights flowing from the decision to deprive citizenship had properly to focus on the very short period of 'limbo' arising in this matter.

33. The Judge observed at [42]-[44] of her decision:

> '42. I find that the making of a deprivation order will trigger an intense period of uncertainty. I find that by removing their citizenship, and right to work, their ability to support their family and employees will be severely impaired. This will have financial, practical and an emotional impact upon the Appellants, their children (who are blameless) and their employees, who depend on their income from the Appellants' businesses.
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> 43. The loss of their citizenship will have an adverse impact on their children, who have spent their whole lives in this country. Although their elder son is over the age of 18 years, he remains dependent on his parents whilst at university and relies on their financial support and accommodation, which will cease if they cannot work and earn an income. The consequence would lead to an adverse impact on his studies.
>
> 44. The younger son is under 18-years of age and is a dependent minor. I find it is in his best interests to remain in the UK, and for his parents to remain British citizens.'

34. Mr. Broachwella confirmed at the hearing that neither claimant had a business employing people.

35. The Judge then proceeded to consider the issue of delay, at [47] and [51]-[55] of her decision:

> '47. The Respondent submits that she was only aware of the falsity of the application following checks made in 2017 about Vullnet's brother, which led to checks being made about him and Fatbardha in early 2021. I did not have any evidence why the Respondent was making enquiries about Vullnet's brother in 2017, did not make their enquiries about the Appellants until 4 years later, in 2021. I find that there has been a delay by the Respondent, which is factor to be considered whether deprivation is disproportionate.
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> ...
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> 51. Applying the 'balance sheet' approach often used in other article 8 appeals, I find on the side of the Appellants is the following:

- From 2006 the Appellants have lived a law-abiding life in the UK.

- The Appellants have now been in the United Kingdom since 1999, which is a considerable period of time.

- They have two children, one under 18-years of age, and the other over 18 years of age at university. Both children are reliant on the Appellants and without any income, they would not be able to support themselves.

- The Appellants operate businesses and have employees who rely on their income for their livelihoods.

- There was a delay of at least 4 years from 2017 to 2021 before enquiries were made about the Appellants.

52. Against that, there is the following:

- The deception was a serious one that was fundamental to their asylum claim.

- They were adults at the time of the initial deception.

- There is a strong public interest in maintaining confidence in the immigration system, in particular the principle of maintaining the integrity of the process of naturalisation of foreign nationals.

- There is nothing to suggest that the family (in particular, the children) have any medical or other needs.

53. It appears to me that the most significant factor in this case is the severe impact of the deprivation on the Appellants' children who are British citizens. The children have continuing dependency on the Appellants for their financial, emotional, and practical support. Had the Respondent started the deprivation process in 2006 or any time thereafter then, notwithstanding that the Appellants had settled in the United Kingdom by then, they could have had little complaint.

54. Since 2006 the Appellants have continued to build their family and private life in the UK and have lived a law-abiding life. Their lives, and that of their family, is embedded in the United Kingdom. Without their income, the children would suffer severely and would not be able to maintain themselves and their accommodation. The Appellants will not be able to operate their businesses and the employees would lose their jobs and source of income. The employees are dependent on an income from the business.

> 55. I consider that the development of their family life, the impact on the dependent children, delay factor, when combined make the deprivation of citizenship disproportionate.'

36. It is clear that the Judge endeavoured to carefully consider the matter before her, but as discussed with Mr Broachwella at the hearing the significant difficulty is that she did not identify with clarity the period of limbo to which the proportionality assessment was directed.

37. As the Judge was not considering a human rights challenge to removal, the focus of the proportionality assessment was directed toward the limbo period, and it was for the claimants to establish that rare and exceptional circumstances arose.

38. The relevant period is the four-weeks between deprivation and the Secretary of State issuing her decision whether to grant status or seek to remove the claimants. As correctly accepted by Mr. Broachwella, it was not the claimants' case before the First-tier Tribunal that the Secretary of State did not intend to, or was not capable, of issuing relevant decisions to them within the identified four-week period.

39. Whilst observing that the Judge sought to take care in this matter, she failed to adequately engage with the short length of the limbo period. As conceded by Mr. Broachwella before me, on instruction, it was not the claimants' case that they had insufficient savings to tide them and their family through the four-week period. There was no likelihood of their bank seeking possession of the family home if mortgage repayments were not met during the four-week period. Their elder child could seek financial support in respect of accommodation and tuition fees consequent to his British citizenship, and the family could approach the local authority in respect of statutory care provision in respect of the younger child, if required. As observed above, the Judge erred in fact as to her understanding that either claimant ran businesses with employees.

40. The Judge further erred in relying on the Secretary of State's delay in issuing her decisions. In *Laci*, Lord Judge Underhill observed, at [78] – [81]:

> 78. I should note that the UT in *Hysaj* rejected an argument based on delay: see paras. 46-63 of its Reasons. But the facts were very different. Although there was a delay of much the same length as in this case between the Secretary of State's original notification that she was considering depriving the appellant of his British citizenship and her eventual decision, much of that period was spent pursuing the ultimately unsuccessful nullity alternative. **There was no suggestion that the appellant (who was also for part of the period serving a prison sentence) ever understood that the Secretary of State was not pursuing any further action**, let alone anything equivalent to the period of nine years' silence in this case (and the renewal of the Appellant's passport). Rather, the issue in the UT was whether the

Secretary of State was disentitled to pursue deprivation under section 40 (3) because of her wrong-headed pursuit of the nullity option.

79. Although Mr Gill submitted that the Secretary of State's delay/inaction was the cardinal feature of this case, he made it clear that he relied on it in combination with the entirety of the other matters identified by the Judge, including the serious consequences for him of the period of immigration limbo which would make it unlawful for the Council to continue to employ him.

80. In connection with the argument based on the limbo period, Mr Malik referred us to paras. 102-111 of the decision of the UT in *Hysaj* , in which a similar argument was rejected, and in particular to para. 110, part of which reads:

> "There is a heavy weight to be placed upon 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. That deprivation will cause disruption in day-to-day life is a consequence of the appellant's own actions and without more, such as the loss of rights previously enjoyed, cannot possibly tip the proportionality balance in favour of his retaining the benefits of citizenship that he fraudulently secured."

I respectfully agree with that passage, which is entirely in line with the overall approach to cases where an applicant has obtained British citizenship by fraud. But it is important to note the "without more". Where there is something more (as, here, the Secretary of State's prolonged and unexplained delay/inaction), the problems that may arise in the limbo period may properly carry weight in the overall assessment.

81. On balance, and not without hesitation, I would accept that the FTT was entitled to regard the Secretary of State's inaction, wholly unexplained at the time and for so extraordinarily long a period, as sufficiently compelling, when taken with all the other circumstances of the case, to justify a decision that the Appellant should not be deprived of his citizenship. It may well be that not every tribunal would have reached the same conclusion as the FTT in this case. However, that is not the test. We are concerned here with the exercise of a judicial discretion, and it is inevitable that different judges will sometimes reach different conclusions on similar facts. Mr Gill reminded us of the frequently cited observations of this Court in *UT (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1095*: see para. 19 of the judgment of Floyd LJ and para. 38 of the judgment of Coulson LJ. In the present context, it is also relevant to quote the observation of Carnwath LJ at para. 25 of his judgment in *Akaeke v Secretary of State for the Home Department [2005] EWCA Civ*

947, [2005] INLR 575, (approved by Lord Bingham in *EB (Kosovo)* – see para. 16) that:

> "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."

[Emphasis added]

41. There can be no criticism of the Secretary of State in not having taken action at a time soon after the claimants were naturlised in 2006. She was wholly unaware of the now accepted deception. As for the delay that may or may not have occurred between the Secretary of State becoming aware of the deception used by the first claimant's brother, and the subsequent issuing of the investigation letters to the claimants in February 2021, it is proper to observe that the first claimant was at no time aware of the Secretary of State's concerns. The decision to deprive was issued some two months later, after admissions as to deception were made. The first claimant's situation is akin to that of the appellant in *Hysaj* and not the appellant in *Laci*, there being no suggestion in the former that the appellant ever understood that the Secretary of State was not pursuing any further action after having become aware of the exercise of deception. The same lack of knowledge applies to the second claimant.

42. Such errors of law arising in the proportionality assessment are material. The only appropriate course of action is to set aside the article 8 decision of the First-tier Tribunal, save for the finding as to the condition precedent which is not challenged by the claimants, who accept that they exercised deception, and for the decision to be remade.

Re-Making the Decision

43. The parties confirmed that it was appropriate for the Upper Tribunal to proceed to remake the decision on the evidence presented.

44. The claimants' human rights (article 8) appeal is to be considered through the accepted prism that the Secretary of State intends 'making the removal order in four weeks after the outcome of the appeal on deprivation'. The proportionality assessment is directed towards those four weeks.

45. I am not required to consider whether removal is, or is not, likely to be directed: *Aziz v. Secretary of State for the Home Department* [2018] EWCA Civ 1884, [2019] 1 WLR 266.

46. I observe the public interest in the claimants' being deprived of their British citizenship. They accept that they used deception in securing their initial leave to remain and continued to rely upon their deception on their path to naturalisation, including the first claimant benefitting from both his

untruths and his use of a false document before the Asylum and Immigration Tribunal.

47. A neutral factor in this matter is the purported delay between the Secretary of State becoming aware of the deception used by the first claimant's brother and the issuing of decisions depriving the claimants of their British citizenship. Consistent with the circumstances arising in *Hysaj* the claimants could not reasonably have understood that the Secretary of State was not pursuing deprivation because they themselves were not made aware until 2021 that the Secretary of State knew their true identity.

48. An additional neutral factor is the claimants' disclosure of their deception. Their acts occurred after evidence was presented to them establishing their true identity, some eighteen years after they secured their initial leave to remain in this country and fifteen years after their naturalisation.

49. I turn to the factors weighing in favour of the claimants. They have engaged in good citizenship since 2006, bringing up a family and being productive. Additionally, they have resided in this country for over two decades.

50. I accept that having been deprived of their British citizenship, they will have unsettled lives and be subject to a limbo period whilst the Secretary of State considers whether to direct their removal or to grant them limited leave to remain. However, as identified above, there has been no challenge to the limbo period being for a period of four weeks. Whilst the claimants will not be permitted to work, there is no likelihood of their bank seeking possession of the family home if mortgage repayments are not met during this time. They have sufficient savings to tide them through this period. As for their children, their adult child can seek financial support in respect of accommodation and tuition fees through his British citizenship. If required, the younger child can access Children Act support from his local authority.

51. I observe the decision in *Hysaj*, at [110], subsequently approved in *Laci*, at [80]:

> '110. There is a heavy weight to be placed upon 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. That deprivation will cause disruption in day-to-day life is a consequence of the appellant's own actions and without more, such as the loss of rights previously enjoyed, cannot possibly tip the proportionality balance in favour of his retaining the benefits of citizenship that he fraudulently secured. That is the essence of what the appellant seeks through securing limited leave pending consideration by the respondent as to whether he should be deported. Although the appellant's family members are not culpable, their interests are not such, either individually or

> cumulatively, as to outweigh the strong public interest in this case.'

52. In all the circumstances, the claimants come nowhere close to displacing the public interest in their being deprived of their citizenship. Such deprivation would not disproportionately interfere with their protected article 8 rights during the proposed short four-week period of limbo. Consequently, their appeals must properly be dismissed.

53. It is appropriate to observe that this Tribunal acts upon the Secretary of State's express statement to the First-tier Tribunal as to her intentions to issue a decision within four weeks of deprivation. A failure to so act may lead to further challenge.

Decision and Reasons

54. The decision of the First-tier Tribunal in respect of the human rights (article 8) appeal is set aside for material error of law and save for the findings as to the condition precedent no findings of fact are preserved.

55. The decision is re-made. The appeals of both claimants (the appellants before the First-tier Tribunal) are dismissed.

56. The anonymity order issued by the First-tier Tribunal is set aside.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 12 December 2022

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 12 December 2022