



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: UI-2022-001484  
[DC/50107/2021]

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 April 2023**

**Decision & Reasons  
Promulgated  
On 14 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**ZAMIR KUPA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms M Vidal, Counsel instructed by Haris Ali Solicitors  
For the Respondent: Mr D. Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. After a hearing on 25 October 2022 before Lang J and me, we decided that the First-tier Tribunal (“FtT”) had erred in law in its decision allowing the appellant’s appeal against the respondent’s decision to deprive him of his British citizenship.
2. Aspects of our decision as to error of law on the part of the FtT are referred to in this decision, either in summary or by direct quotation, for an understanding of the background. In summary, we concluded that the FtT

erred in law in its consideration of the issue of discretion in the deprivation of citizenship decision. We were also satisfied that the FtT materially erred in its assessment of the issue of delay in the respondent's decision-making and in its consideration of the issue of proportionality.

3. It is useful to repeat the further factual background to the appeal in order for the context of this decision on re-making to be understood.
4. The appellant was born in Albania. He arrived in the UK illegally on 19 December 2000, aged 14 years. His claim for asylum made on 21 December 2000 was refused but he was granted exceptional leave to remain ("ELR") on 29 September 2001. His nationality was recorded as the Federal Republic of Yugoslavia. In fact, he was born in Albania.
5. On 26 October 2005 he was granted indefinite leave to remain ("ILR") and was issued with a certificate of naturalisation as a British citizen on 25 June 2007.
6. On 19 April 2021 the respondent made a decision to deprive the appellant of his British citizenship pursuant to Section 40(3) of the British Nationality Act 1981 ("the 1981 Act") on the basis that he had used a false place of birth and nationality in order to gain ELR and that that deception led to his obtaining ILR and, subsequently, British citizenship.
7. The appellant appealed against the decision to deprive him of British citizenship and his appeal came before First-tier Tribunal Judge Ford at a hearing on 1 March 2022, following which, in a decision dated 3 March 2022, Judge Ford allowed the appeal.

### ***The oral evidence***

8. The following is a summary of the oral evidence at the resumed hearing. The appellant gave evidence and adopted his witness statements. He said that he now has a British passport again after his previous one was revoked (prematurely).
9. He works full-time and has done for many years. He has contact with his wife, his children and his parents (all of whom are in Albania) almost every day and he visits when he can; two or three times a year, depending on the circumstances.
10. His intention and those of his two children is that they should be with him, and the only option is to bring them to the UK so that they can be together. His wife also wants to come to the UK. As to whether he had made any preparations for them to come to the UK, he wants to get himself sorted out first. There is not much that he can do at the moment. He is in limbo a bit. He does not know where he stands after all these years.
11. The appellant was asked about the situation arising whereby the Secretary of State deprives him of his citizenship and the period in which he would

have no status and be subject to immigration control. The appellant said that this would have a big impact on his life after so many years of being settled here, and after working for so many years.

12. In cross-examination he said that there was evidence of his self-employment in the years 2007-2020. Before tax his earnings were £19-23,000. It was work in the construction industry as a sole trader in many different places. He knows this country better than Albania as he has spent all his working life here.
13. His wife does not work in Albania. He does not know why there is no witness statement from her. He was never asked for one and did not know that one was needed. The appellant was pressed on why there was no witness statement from his wife in circumstances where this was likely to be an issue in the appeal. The appellant said that when he applied for passports for his children, his wife was going to be the next stage of family reunification and she would have applied for a visa.
14. His children are aged 9 and 5 years, this month. He applied for passports for them in 2019. He did not apply before because it was only then that he found out that that was something he could do.
15. It was put to the appellant that his wife had no intention of coming to the UK given that there was no evidence from her, there was no application for her to come to the UK and his circumstances had been the same for some considerable time, and he had been working since 2007. She had not come to the UK already. The appellant denied that this was the case, repeating that he had taken steps in relation to his children and the next step was for his wife to apply for a visa. He accepted that she had not so far applied for a visa and his wife and children had never been to the UK.
16. There was no evidence from any bank as to his financial circumstances, for example any savings, because he did not think that it was necessary. He denied that such evidence would show that he had funds on which he could rely whilst awaiting a decision by the respondent on his status.
17. He does not own a property. There is no evidence as to the terms on which he is renting a property because where he stays is not his own. He shares with a cousin and his family, who own the house. If he is deprived of his citizenship it *would* affect his accommodation because he would still need to pay for it. There is no evidence from the family that he is staying with because he did not think that it was necessary.
18. He lives away from that property most of the time, in temporary accommodation. Whilst waiting for a decision on his status it is true that he would not need to live away from that property. He would not be able to rely on that family to feed him. He had not asked them, and it would probably put them in difficult financial circumstances.

19. As to whether there was anything else that he could point to that would be a consequence of a deprivation decision for 8-10 weeks whilst waiting for a decision, the appellant said that if something was to happen to his wife or children he would not be able to support them. They live with his parents.
20. His parents do not work. His mother is a pensioner and his father relies on him for financial support. Her pension is not that great and she relies on him.
21. The appellant denied the suggestion that he had provided no evidence of his own, his wife's, his parents' or relatives' finances in order to disguise the effect that depriving him of his citizenship would have on him. The appellant repeated that he did not think that all that evidence was necessary. Deprivation would have a huge impact on him. He genuinely regards this as his home.

### **Submissions**

22. The following is a summary of the parties' submissions. Mr Clarke relied on the respondent's decision dated 19 April 2021 and said that it appears to be accepted on behalf of the appellant that the condition precedent for deprivation of citizenship has been met. It was only proportionality that was in issue. It was for the Tribunal to decide what were the reasonably foreseeable consequences of deprivation up to the point when a decision in relation to leave to remain was made.
23. Mr Clarke referred to paragraph 33 of the decision letter to the effect that a decision on status would be made within 8 weeks of the deprivation order, subject to representations. That was a 'ball park' figure and depended on what submissions are made and when. Mr Clarke referred to *Muslija (deprivation: reasonably foreseeable consequences) Albania* [2022] UKUT 00337 (IAC) and the guidance given in it.
24. I was also referred to *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769 on the question of delay in the making of the respondent's decision to deprive. Mr Clarke also relied on *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 00128 (IAC), in particular at [110] in terms of the weight to be attached to the public interest.
25. It was submitted that there was no evidence as to the appellant's financial circumstances, those of his relatives he lives with, or in relation to his family in Albania. It was submitted that there was no evidence of the effect of deprivation on his family. In those circumstances, the decision of the Court of Appeal in *TK (Burundi) v. Secretary of State for the Home Department* [2009] EWCA Civ 40 was relevant given the absence of supporting evidence. As was clear from the UT's decision in *Hysaj*, there is no obligation on the state to provide financial support for family life.
26. Ms Vidal accepted that one must start from the position that the condition precedent is made out. Article 8 is engaged, it was submitted. Mr Clarke

accepted at this point that the appellant does have a private life in the UK but did not accept that the consequences of the decision would be sufficient to engage Article 8.

27. Ms Vidal also submitted that the question of the appellant's financial circumstances was not something that it was expected would be confronting the appellant at this hearing and that she and the appellant were caught by surprise. In reaction to that submission Mr Clarke argued that this was hardly a new point and there was an evidential burden on the appellant to demonstrate the consequences of deprivation.
28. Ms Vidal was given the opportunity to take instructions. After having done so she reported that the appellant indicated that he had nothing to hide but wanted the case to be concluded. Accordingly, there was no application for an adjournment of the hearing for evidence to be provided of the matters said on behalf of the respondent to be lacking. Ms Vidal said that she was able to proceed with the hearing, therefore.
29. It was submitted that as regards delay, the appellant had no clue that he was being investigated in 2017 until he received the decision letter. Although in the error of law decision the panel had decided that this was a case of simple delay only, it was submitted that delay is not irrelevant. Here there was no explanation provided for the delay, unlike in *Laci*.
30. The respondent's guidance (Deprivation and Nullity of British Citizenship Chapter 55 of July 2017 at 55.7.10.1), was relevant to the requirement for a consideration of whether the decision to deprive was a "balanced and reasonable" step to take, and "what information was available to UKBA at the time of consideration". Ms Vidal pointed to paragraph 17 of the decision letter which refers to an investigation into the appellant's business in the UK, which the appellant was unaware of. That, it was submitted, was relevant to the question of whether the decision to deprive was a "balanced and reasonable" step to take.
31. Paragraph 55.7.11 refers to the need to consider mitigating factors. The appellant had on two occasions volunteered evidence that would have alerted the Secretary of State as to his true identity. It was submitted that the appellant would have known that he was in some difficulty in 2017 when making the application for his sons in terms of it disclosing his true identity, but he did so nevertheless, thus taking this case out of the realms of ordinary circumstances.

### ***Assessment and Conclusions***

32. As canvassed with the parties at the hearing, the following are the findings of fact that are preserved from the detailed decision of the FtT, with the square brackets indicating the paragraph number of the FtT's decision.
  - The appellant's wife and children do not live in the UK and have never done so. They live in Albania [9].

- The appellant was an adult aged 19 when he made his application for indefinite leave to remain and within that application he maintained the false information that he was an ethnic Albanian national of Serbia and Montenegro and that he had a continuing fear of return. He signed the application form confirming that the statements in it were true, knowing that they were not. Because no concerns were indicated on his file at the time, he was granted indefinite leave to remain. He did not take the opportunity within his indefinite leave to remain application to correct the false information given on his behalf in his original protection claim. The appellant became complicit in the deception at that point [12].
- It is not the case that the appellant would most likely have been granted exceptional leave to remain (“ELR”) as an unaccompanied minor even if the Secretary of State had known that he was an ethnic Albanian from Durres in north-east Albania. The deception went beyond misrepresenting his place of birth and nationality. Within the original protection claim which led to the grant of ELR he had falsely stated that his home in Kosovo had been attacked, that his parents had been shot and that he had been forced to flee in fear of his life but the reality was very different. He was born in Albania and grew up there. He lived there until he came to the UK in 2000. His parents were alive and he was able to contact them. He visited them once he got a travel document in 2002. He visited them several times between 2002 and 2005. His ILR application was made on 2 September 2002 when he was 19 [13].
- The CPIN shows that in 2000 the situation in the appellant’s home area was not one of violent conflict and there was not an internal armed conflict in Albania at the time that the appellant left. His parents were ready and willing to care for him if he returned [14].
- The appellant applied for British citizenship on 5 February 2007 and repeated the false information about his parents being nationals of Serbia and Montenegro and that he was an ethnic Albanian from Kosovo [15].
- The appellant became complicit in the deception initiated when he was a minor in his applications for immigration status after he became an adult. He confirmed the truth of the false allegations in his applications for ILR, naturalisation and a British passport [16].
- He waited until after he was naturalised before he disclosed when sponsoring his parents’ visit in February 2007 that he was born in Durres in Albania and was not Kosovan. He did this by supplying his genuine birth certificate [17].

- The appellant did not provide any explanation for the inconsistent information he had provided and the response of the entry clearance officer (“ECO”) was entirely predictable in terms of concluding that the appellant and his parents were not related as claimed and in refusing the applications for entry clearance [18].
- There was no evidence that the appellant took any steps after the refusal of their applications to inform the respondent that it was the information that he gave to the Home Office that was false and not the information given by his parents with their applications for visit visas [18].
- The appellant obtained his naturalisation by means of deliberately and knowingly as an adult making false representations and concealing material facts on his ILR application and his application for a certificate of naturalisation [20].
- The condition precedent for the decision to deprive the appellant of citizenship is met [21].
- The appellant will not be come stateless as a result of the decision. He is entitled to Albanian nationality and is married to an Albanian national [22].
- The best interests of the appellant’s two minor children are engaged even though they are not currently resident in the UK [25].
- The children live with their mother in Albania and are financially supported by the appellant. There was no evidence of any issues that they have in Albania in accessing adequate education or health care. The appellant has visited them regularly since they were born, save for missing a couple of visits when his passport was initially withdrawn before he was given a temporary passport that enabled him to visit them for Christmas in 2020 [26].
- The appellant has spent more than half of his life in the UK, including four years of his minority. He has put down roots and is settled in the UK. He has received several years of education in the UK, learned English and acquired construction skills. He has made friends, worked throughout and set up a home in the UK [30].
- The appellant was sent with other Albanians at the age of 14 to join his cousin in the UK to make a better life for himself and to send money to his family in Albania. He lied at the instigation of the adults in his life when he arrived. He maintained those lies as an adult and has gained an immigration advantage from his deception [30].

- The appellant's supply of his genuine birth certificate with the applications made by his parents for visit visas was not enough to amount to disclosure of his previous deception. The decision that resulted did not turn on the fact that the appellant had lied about his nationality or country of origin, rather that the decision-maker could not be satisfied that the applicants were the appellant's parents. The appellant did not seek to correct this misunderstanding [33].
- In 2017 the Secretary of State undertook enquiries with the authorities in Serbia and Montenegro and in Albania concerning the Kupa family and it was discovered at that point that the appellant was a national of Albania. No deprivation action was taken for another three years until after the appellant applied for British passports for his two children [34].
- The appellant has worked throughout his time in the UK and has paid his tax and national insurance as evidenced in the HMRC documents. Neutral factors are that he has been self-supporting as an adult and speaks English [36d.].
- He has integrated culturally and socially in the UK. It means a lot to the appellant that he has become a British national and overcame the economic challenges that faced him when he left Albania as a child in 2000 [36d.].

33. The FtT found at [21] that the condition precedent for depriving the appellant of his citizenship was satisfied. As indicated above, that is a preserved finding and is not in issue in the appeal before me, as was accepted by Ms Vidal.

34. As was said in the error of law decision in this case at [53]:

“Thus, it is clear from *Begum [R (on the application of Begum) v Special Immigration Appeals Commission & Anor [2021] UKSC 7]* that the FtT, in considering an appeal against a decision to deprive a person of their citizenship, cannot decide the appeal on the basis of its view as to how the statutory discretion ought to have been exercised, nor can it exercise that discretion for itself.”

35. Likewise, in terms of the discretion to deprive the appellant of his citizenship inherent in s.40(3) of the 1981 Act, as is also clear from *Begum* (at [68]) a judge on appeal is restricted to considering whether the Secretary of State acted in a way in which no reasonable decision-maker could have acted, had taken into account some irrelevant matter, or had disregarded something to which she should have given weight.

36. Again, in the error of law decision we said that none of the matters identified by Judge Ford at [36] is capable on the facts of this case of



amounting to the sort of public law error identified in *Begum*. We concluded that the matters she referred to at [36(a)-(e)] are either matters that the Secretary of State considered, or are otherwise matters that are incapable of amounting to factors that could rationally be said to warrant a conclusion that the Secretary of State's exercise of discretion was flawed.

37. I do not understand it to be argued now on behalf of the appellant that there is any basis for a conclusion that the Secretary of State's discretion ought to have been exercised differently.
38. The appeal, therefore, is confined to Article 8, including in particular the reasonably foreseeable consequences of deprivation. At [16] of *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC) a Presidential panel of the Upper Tribunal, after analysis of the various authorities, concluded that "in the usual case" it was neither necessary nor appropriate for a tribunal considering the deprivation question to conduct a 'proleptic assessment' of the likelihood of a lawful removal. Therefore, the determination of the reasonably foreseeable consequences of deprivation must, usually, exclude the issue of removal.
39. This was further examined in *Muslija*, and was the basis for Mr Clarke's submission before me that what the reasonably foreseeable consequences of deprivation are, needs to be considered up to the point when a decision in relation to leave to remain was made. In a temporal sense, therefore, the area of enquiry is relatively narrow in this case, limited to the period of time up to the point when a decision in relation to leave to remain would be made. The 'ball park' figure as to that period of time, as set out at paragraph 33 of the decision letter, is a period of 8 weeks of the deprivation order, subject to representations. No submissions to the contrary were made on behalf of the appellant before me.
40. It is clear that the appellant has a private life in the UK. It was not accepted on behalf of the respondent that Article 8 was, on the facts, engaged in this case, given the limited temporal scope of the Article 8 enquiry. At least that is how I have interpreted Mr Clarke's submissions in terms of whether Article 8 is engaged. However, given that the threshold for engagement in Article 8 terms is a low one, I accept that Article 8 is engaged. The real issue is one of proportionality.
41. Although the appellant does not have any direct or close family in the UK, his wife, children and parents all living in Albania, it is, I think, difficult to say that Article 8 is not also engaged in terms of his family life with those in Albania, in the light of the evidence.
42. As to proportionality, however, I am not satisfied that the decision in this case represents a disproportionate interference with the appellant's family or private life. In coming to that conclusion I have had regard to all the preserved findings of Judge Ford, set out in detail above, and which do not need repeating.

43. The best interests of the appellant's children are a primary consideration. However, the evidence is that even though they are British citizens, they live with their mother in Albania. The respondent's decision does not affect that position on the facts of this case.
44. Notwithstanding what the appellant said in evidence about the financial difficulty that the decision would have on him and his family, there is little if any evidence to support what he says in that respect.
45. It is a preserved finding, and I note again, that Judge Ford found at [26] that the appellant's wife and children are financially supported by the appellant. To that extent Mr Clarke's submissions go a little too far in relying on the lack of evidence of his wife's financial circumstances. However, Mr Clarke was right to submit that there is no evidence of the *extent* to which his wife and parents rely on him financially or the extent to which his not being able to work any longer in the UK after deprivation of his citizenship would have any impact on them. There is no evidence from his wife or his parents.
46. There is similarly no evidence of the extent to which his cousin and his cousin's family that he is living with would be unable to continue to support the appellant once he is no longer able to work and contribute towards the costs of accommodating him.
47. This is a case in which it is reasonable to expect the appellant to have provided some supporting evidence of the circumstances that he says he, his family, and those he is living with would be in, in consequence of the deportation decision. The absence of such supporting evidence is not determinative but it does indicate that a cautious approach to the appellant's evidence on this issue is needed (see [21] *TK (Burundi)*). It is true that some of the supporting evidence would have to be obtained from Albania, *TK (Burundi)* referring to evidence being readily available within the jurisdiction of the UK. But it was not suggested on behalf of the appellant that such supporting evidence could not be obtained from Albania, and the approach indicated in *TK (Burundi)* therefore remains valid.
48. It was the appellant's choice to proceed with the appeal notwithstanding the suggestion that evidence of his and his family's circumstances was not a matter that it was expected he would have to confront at the appeal. This was a matter on which specific instructions were given by the appellant at the hearing, to the effect that he had nothing to hide but wished the appeal to proceed, and there was, therefore, no application for an adjournment of the hearing for further evidence to be provided. In any event, I am satisfied that this is a matter that could reasonably have been anticipated by and on behalf of the appellant, given that the reasonably foreseeable consequences of deprivation was a matter that necessarily would need to be considered.

49. As regards delay, as we said in the error of law decision at [63], this is a case of 'simple' delay only and that the circumstances, both in fact and principle, are far removed from those of *Laci*. Ms Vidal submitted that delay is nevertheless relevant to proportionality. However, the delay in this case is not very significant in proportionality terms when the public interest in deprivation in this case is considered. It is difficult to see how, and nothing was advanced as to how, the delay in this case reflects significantly on the proportionality of the decision.
50. Similarly, I am not satisfied that the respondent's Deprivation and Nullity guidance relied on on behalf of the appellant has any impact on the proportionality of the decision. There is nothing on the facts that indicates that the decision is otherwise than "balanced and reasonable" within that guidance or that there is anything to suggest that any mitigating circumstances were not taken into account. It is as well to point out that the guidance was relied on in relation to the proportionality of the decision, rather than the discretion to make the decision. In either case, I do not consider that reliance on that guidance assists the appellant and Ms Vidal recognised that the decision in *Laci* presented a difficulty for the appellant in terms of mitigating circumstances (see [58] of *Laci*).
51. In the light of the above conclusions, bearing in mind the detailed findings of fact made by the FtT, and the significant public interest at play, I am not satisfied that the appellant has established that the respondent's decision to deprive him of his British citizenship is unlawful or otherwise involves a breach of the his human rights under Article 8 of the ECHR.

### **Decision**

52. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the decision is re-made, dismissing the appellant's appeal.

A.M. Kopieczek

Upper Tribunal Judge Kopieczek

2/07/2023