



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001578

First-tier Tribunal No: DC/00025/2019

THE IMMIGRATION ACTS

**Decision & Reasons
Issued:
On 25 July 2023**

Before

**UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

Between

NERIM RAMADANI

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
(no anonymity order made)**

Respondent

Representation:

For the Appellant: Mr G Hodgetts, instructed by OTB Legal
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 21 June 2023

DECISION AND REASONS

1. This is an appeal by the appellant against the decision of the First-tier Tribunal dismissing Mr Ramadani's appeal against the respondent's decision dated 22 March 2019, to deprive him of his British nationality under section 40(3) of the British Nationality Act 1981.

2. The appellant is currently a British citizen, having previously claimed to be a Kosovan national born in Obiliq, Kosovo, on 8 January 1973. As is now known, he was in fact an Albanian national, Nerim Canameti born in Rremull, Albania. The appellant gave an account of being detained and beaten by the Serbian police in Kosovo and

was granted asylum following a successful appeal against refusal. He was granted indefinite leave to remain as a refugee on 14 August 2001. On 7 September 2001 the appellant applied for a travel document, confirming his identity as Nerim Ramadani and subsequently applied, on 4 November 2003 for naturalisation as a British citizen in the same identity, confirming that he had never been known by any other name and signing a declaration of truth. The application was successful, and the appellant was granted British citizenship on 23 December 2003.

3. The appellant's wife applied for entry clearance as his partner in 2007, which although the application maintained the appellant's false identity, it gave his place of birth as Albania, with the appellant's partner providing the appellant's personal certificate in the name of Nerim Canameti. The respondent wrote to the appellant on 17 September 2008, advising that deprivation action was being considered and providing the appellant with the opportunity to supply mitigating circumstances. The appellant's then representative, Karls Law, replied on 14 October 2008, requesting an extension of time in order to provide full assistance in this matter.

4. No further correspondence was received from the appellant or his representatives. The respondent indicates that the appellant's case was then identified as a potential nullity case and was therefore put on hold, the respondent advising in the 2019 Notice of Decision to Deprive British Citizenship (the 'Decision to Deprive') that the application of Section 40(3) of the British Nationality Act 1981 to deprive individuals of British Citizenship was the subject of several appeals that were lodged in October 2009 and were not finally determined until December 2017 in the Supreme Court. The respondent advised that the process of monitoring these appeals had an impact on the finalisation of decisions in several other cases including the appellant's. The respondent sent a further investigation letter to the appellant on 24 May 2018, again requesting the appellant's mitigating circumstances with the appellant failing to respond.

5. The respondent, in the 22 March 2019 Decision to Deprive, noted that the appellant had employed and maintained deception to obtain status in the UK in his dealings with the respondent and an Immigration Judge. It was not accepted that there was a plausible innocent explanation for the misleading information which led to the decision to grant citizenship. It was acknowledged that the decision to deprive was at the respondent's discretion and the respondent concluded that deprivation would be both reasonable and proportionate.

6. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981. It was accepted before the First-tier Tribunal that the appellant's conduct fell within the ambit of s40(3) of the British Nationality Act 1981. Whilst statelessness was not in issue, delay was, it being argued that the respondent had been aware of the appellant's nationality possibly since his sister's appeal hearing on 21 November 2006 and definitely since the decision in his wife's visa application on 21 February 2008. It was argued on appeal that the guidance in **Hysaj (deprivation of Citizenship: Delay) [2020] UKUT 00128 (IAC) (Hysaj)** was not applicable, with the absence of a nullity decision in this case, distinguishing it from **Hysaj**. It was argued that the decision to deprive over ten years after awareness of the fraud, was not reasonable or proportionate, and that the delay was egregious with the appellant's life and ties in the UK having become entrenched. **EB (Kosovo) v SSHD [2008] UKHL 41** was relied on and it was argued on public law grounds in terms of the guidance in **Begum v SSHD [2021] UKSC 7** that the decision was unlawful.

7. The appellant's appeal was heard on 11 May 2021 by First-tier Tribunal Judge Black ('the judge). In a decision signed by the judge on 18 May 2021, but not promulgated until 7 February 2022, it was accepted before the judge that the relevant condition precedent for deprivation had been established, with the appellant accepting that his impugned behaviour was directly relevant to the grant of citizenship. It was not in dispute that there was a significant delay in the process of seeking to deprive the appellant of his citizenship. The judge at paragraph [50] noted that Counsel had conceded that the appellant 'did not pursue a discrete Article 8 claim in the appeal' and the judge treated it as abandoned. This Tribunal noted at the error of law hearing before us, that the judge's record of proceedings, whilst confirming that concession of Counsel, also set out at the beginning of proceedings that Counsel conceded that he was 'not running Article 8'.

8. The judge found that the respondent became aware of the appellant's false identity as a result of his wife's application for entry clearance in 2007, refused in 2008. The judge noted that it did not appear that the respondent had replied to the appellant's representative's letter dated 14 October 2008 requesting an extension of time, with the next letter from the respondent, dated 24 May 2018, noting the 2008 request and that no further information had been submitted from the appellant. The appellant was asked to advise what information he wished to submit about the alleged fraud, his personal and family life, any compassionate circumstances, and his human rights. The judge noted that a Royal Mail receipt for this letter was produced and that in the absence of any response the Decision to Deprive was made on 22 March 2019.

9. The judge considered the respondent's explanation at paragraph 12 of the Decision to Deprive, which noted the timeline in the case up to the 14 October 2008 extension of time request, with no further correspondence from the appellant or his representatives. The judge noted that the respondent's decision went on to state:

"Your case was then identified as a potential [sic] nullity case and was therefore put on hold; The application for Section 40(3) of the British Nationality Act 1981 to deprive individuals of British Citizenship was the subject of several appeals that were lodged in October 2009 and were not finally determined until December: 2017 in the Supreme Court. The process of monitoring these appeals had an impact on the finalisation of decisions in several cases including this one."

10. Whilst the judge accepted the submission made on behalf of the appellant that there was no specific mention of potential nullity proceedings, the judge found it highly relevant that there was no submission for the appellant that the respondent's assertion as to the reason for the delay could or should be construed as misleading, whether deliberately or otherwise. The judge found that the delay did not take effect until 2009 because of the request by the appellant's solicitors for an unspecified extension of time to make submissions.

11. The judge considered that the facts were similar to some extent to those before the Supreme Court in **R (Hysaj)** save that in this case the respondent had not taken steps to declare the appellant's citizenship a nullity. The judge found that it would have been reasonably foreseeable to the respondent that the outcome of the appeal proceedings, ultimately in **R (Hysaj)** in the Supreme Court, would provide definitive guidance on how to proceed in cases where Albanians had used false identities to obtain British citizenship. The judge found that the outcome of those proceedings was directly relevant to the appellant's case. The judge found that the facts in **Hysaj**

resonated with the appeal before her. Whilst unlike **Hysaj** the respondent had not declared the appellant's citizenship a nullity, the respondent's delay and inaction was reasonably explained, in the judge's findings, by this appellant's case being on hold pending the outcome of the **Hysaj** litigation. The judge found that had the respondent not taken some action to put the appellant on notice of her concern about the use of a false identity she would have been open to some criticism. However, the judge found that it was reasonable for the respondent to put the appellant's case on hold pending firm judicial guidance, accepting that there was uncertainty as to the appropriate proceedings in the appellant's case (either nullity or deprivation). The judge found that the appellant's Counsel had not identified any particular detriment to the appellant or his family, with the judge finding that the birth of a British child and lengthy residence in the UK was not a detriment nor was the entrenchment of the appellant's ties. The judge found that the 2008 notification 'has caused the appellant and his family considerable distress' but found that this would have been foreseeable.

12. The judge considered and rejected Counsel's submission, which had relied on the third way in which Lord Bingham in **EB (Kosovo)** said that delay may be relevant, namely that delay:

'may reduce the weight otherwise to be accorded to the requirements of firm and fair immigration control, if the delay is shown to be as a result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes.' The judge found that submission to fall at the first hurdle with the delay and inaction not unreasonable in all the circumstances, the judge finding at [48] of the decision:

"While she did not pursue nullity proceedings, it was reasonable for the respondent to await the outcome of judicial consideration on deprivation versus nullity, having protected her position by putting the appellant on notice that his citizenship was at risk by way of deprivation. The taking of legal advice ensures the maintenance of a functioning system with predictable, consistent and fair outcomes."

13. The judge concluded that there was no error of law in the respondent's decision that the respondent had taken into account all relevant factors in exercising her discretion.

14. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal and was renewed before the Upper Tribunal on the following grounds: that the First-tier Tribunal had misdirected itself in law/provided inadequate reasoning, it being argued that the First tier Tribunal failed to resolve the inherent inconsistency between the claimed two reasons given in the Decision to Deprive for the delay and that the judge had erred in undertaking a freestanding assessment of reasonableness at [48]-[50] outside of an Article 8 claim, in contradiction of the jurisprudence in **Ciceri**. It was further argued that at [44] of the decision, the judge appeared erroneously to believe that the deprivation was also taken under s40(2); and secondly that although the decision was not promulgated until 7 February 2022, there was no evidence that the judge was asked to, or considered reconvening after September 2021 in light of the authorities of **Laci v Secretary of State for the Home Department [2021] EWCA Civ. 769**, handed down on 20 May 2021 and **Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238 (IAC)**, promulgated on 8 September 2021. Whilst it was accepted that no argument had been advanced on the reasonably foreseeable consequences of deprivation, such matters were clearly in issue taking into account the jurisprudence explained in paragraph 29 and 30 of **Ciceri**. The grounds argued that it had been incumbent on the judge to make findings on the limbo period the appellant was nearly certain to be left in without leave to remain.

15. Permission was granted by Upper Tribunal Judge McWilliam and the matter came before us for a hearing with both parties making submissions.

Discussion

16. We agree with Mr Hodgetts that it is difficult to see why the First-tier Tribunal decision was promulgated on 7 February 2022 when the judge appeared to sign it off on 18 May 2021. Whatever the reason, the practical effect of that delay is that the decisions of both the Court of Appeal in **Laci** and the Upper Tribunal in **Ciceri** were made in that interim period with no suggestion that the First-tier Tribunal was either asked to or considered reconvening. The essential question before this Tribunal, highlighted by the Upper Tribunal Judge granting permission, is whether, within the context of the grounds of appeal, any claimed error by the First-tier Tribunal in not considering that jurisprudence, (and although it is unclear whether the judge was even aware of this delay in promulgation that is of no relevance) is material.

17. Considering the grounds of appeal to the Upper Tribunal, the argument at paragraphs 18 and 19 of the grounds, that the First-tier Tribunal erred in conducting a freestanding assessment of the reasonableness of the respondent's explanation for the delay, outside of Article 8 ECHR, having not made any findings under Article 8, when considered in light of what was said at paragraph 30 of **Ciceri**, does not bear scrutiny.

18. The appellant's skeleton argument (ASA) before the First-tier Tribunal set out at paragraphs 3, the issues:

"The issues appear to be

(a) Did the Appellant obtain his naturalization by means of fraud /false representations / concealment of the facts.

(ii) If so was that directly material to the decision to grant citizenship.

(iii) Statelessness.

(iv) Was there delay on the part of the Respondent and if so the consequences.

(v) The reasonably foreseeable consequences of deprivation.

(vi) A free-standing assessment of public law grounds of appeal"

19. Therefore, the reasonably foreseeable consequences of deprivation, in effect the Article 8 test, was a matter initially raised by the appellant and as the grounds of appeal to this Tribunal note, aside from **Laci**, all the other authorities drawn on by the Upper Tribunal in **Ciceri**, pre-dated the hearing in this appeal. We accept that Counsel before the First-tier Tribunal then explicitly withdrew the Article 8 ground as recorded by the judge at paragraph [50] and confirmed in the record of proceedings. There can be no legitimate criticism of the judge therefore, for not reaching findings on Article 8 and for considering the reasonableness of delay as the judge did at paragraphs [47] and [48] of the decision. **Ciceri** at paragraph 30(6) provides that if the deprivation would not amount to a breach of section 6 of the 1998 Act, which it did not in this case as Counsel had withdrawn the Article 8 grounds and therefore Article 8 was not engaged, then the tribunal may only allow an appeal if it concludes that the respondent has acted in a way which no reasonable Secretary of State could have acted.

20. It was open to the appellant before the First-tier Tribunal to argue delay under both Article 8 grounds in terms of reasonably foreseeable consequences and a stand-alone public law consideration, as envisaged in the ASA. Counsel before the First-tier

Tribunal ultimately decided not to pursue a discrete Article 8 argument. The appellant before the First-tier Tribunal relied on **Begum** with the judge setting out, at [46], paragraph 71 of **Begum** which considered the approach to delay, including a discrete assessment of whether there has been any breach of Article 8. Although not specifically in the grounds before us, we do not agree therefore, that the learning in **Laci** and **Ciceri** would have resulted in the appellant pursuing a discrete Article 8 argument. Even if it had, the jurisprudence followed in those cases, including Lord Bingham's test on the three ways in which delay may be of relevance, **EB (Kosovo)**, was clearly in the minds of the parties and the First-tier Tribunal and the judge considered and made findings on the third test at paragraphs [47] and [48]. Any such discrete Article 8 argument would not therefore have made a material difference.

21. The focus in any Article 8 consideration in cases where delay is an issue, is on the effect on the appellant with Lord Bingham in **EB(Kosovo)** setting out the three ways in which delay may be relevant, as summarised in **Laci** at paragraph 75 namely:

“(1) that the longer an applicant remains in the country the more likely they are to develop close personal and social ties and put down roots of a kind which deserve protection under article 8;

(2) that the more time goes by without any steps being taken to remove an applicant the sense of impermanence which will imbue relationships formed early in the period will fade "and the expectation will grow that if the authorities had intended to remove the applicant they would have taken steps to do so", which may affect the proportionality of removal;

(3) that it may "reduce the weight otherwise to be accorded to the requirements of firm and fair immigration control, if the delay is shown to be the result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes".

Lord Hope agreed. At para. 27 he expressed particular agreement with Lord Bingham's point that "the weight which would otherwise be given to the requirements of firm and fair immigration control may be reduced if the delay is shown to be due to a system which is dysfunctional". Likewise, at para. 32 Lady Hale says:

"I agree that prolonged and inexcusable delay on the part of the decision-making authorities must, on occasion, be capable of reducing the weight which would normally be given to the need for firm, fair and consistent immigration control in the proportionality exercise."

22. The Court of Appeal in **Laci** confirmed that the first two points had no general application as that appeal, as with this appeal before the First-tier Tribunal, was not concerned with removal, whereas the third point potentially does apply. The Court of Appeal had set out the background in **Laci**, at paragraph 51, that **Laci** was not simply a case where the respondent could have taken action but did not do so, but rather it was a case where the respondent started to take action, invited representations, received representations and then did nothing for over nine years. The Court of Appeal noted that the respondent went beyond that inaction, in taking the positive step of renewing the appellant's passport in 2016 and during that period the appellant in **Laci** 'had accordingly come to believe [the respondent] had decided not to proceed with depriving him of his citizenship'.

23. The facts in **Laci** are distinguishable from the instant case, in that this appellant was asked for representations, his then representative requested an extension to submit those representations and then failed to do so. The Court of Appeal found that the strength of the appellant's case in **Laci** was that he was entitled to and did believe that no further action would be taken and got on with his life on the basis that his British citizenship was no longer in question. The Court of Appeal, at paragraph 77 noted that, even in the absence of any specific finding that the appellant in **Laci** had made important life decisions on that basis, the Court of Appeal could see why the First-tier Tribunal found the change in the respondent's position obviously unfair. That is manifestly not the case in the appeal before the First-tier Tribunal, where the appellant had requested further time to make additional submissions and then failed to do so.

24. The Court of Appeal in **Laci** had also distinguished **Hysaj**, at paragraph 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."

25. The judge in the instant decision, at paragraph [37] noted that the facts considered in **Hysaj**, resonated in the appeal before her. Whilst unlike in **Hysaj**, the respondent did not declare this appellant's citizenship a nullity, the judge found the respondent's inaction to be reasonably explained by this appellant's case being put on hold pending the outcome of the **Hysaj** litigation. Although not explicitly addressed by the judge, as she did not have the benefit of **Laci**, it is clear that the judge was satisfied that this was a case, similar to **Hysaj** (and distinguishable from **Laci**) where there was no suggestion that this appellant ever understood that the Secretary of State was not pursuing any further action.

26. We also take into account what was said in **Ciceri**, at paragraph 78 which when considering **Laci**, noted that Underhill LJ distinguished between delay which arose from the respondent's decision to pursue the 'nullity' route, until the Supreme Court judgement and, on the other hand, delay that cannot properly be attributed to the issue of nullity. **Ciceri** reformulated the principles on deprivation including that 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 *EB (Kosovo)*. The judge was satisfied (paragraphs [39] to [43]) that this was a case where the delay was properly attributable to the issue of nullity (albeit that no nullity decision was made). Whilst the judge quite properly did not make any specific findings under Article 8, as it was not before her, Underhill LJ at paragraph 46 of **Laci**, is authority for the proposition that the essential questions

may not be very different whether addressed as proportionality or as the exercise of a common law discretion. There was no error therefore, material or otherwise, in the judge's approach to delay.

27. Paragraph 20 of ground 1 is also without merit: it is argued that the judge believed, at paragraph [44] of the decision, that the respondent's deprivation decision had been taken under section 40(2) British Nationality Act 1981, (which would then require a consideration of potential statelessness under s40(4)) whereas the respondent's Decision to Deprive specifically confirmed at paragraph 26 of that decision that it was not taken under s40(2). We note that Mr Hodgetts did not explicitly pursue that argument, which was the correct approach in our view. A proper reading of the judge's decision including at [18] makes it clear that the First-tier Tribunal properly directed itself that the respondent's decision was made pursuant to section 40(3) in respect of fraud. At paragraph [44] where the judge refers to s40(2) and Counsel's submission of the applicability of Begum, was very clearly a reference to s40(3) and has simply been misrecorded by the judge at s40(2) in an accidental slip. Any other reading would not make sense.

28. Paragraph 21 of ground 1 is similarly unfounded. It is argued that the First-tier tribunal failed to make findings on what was claimed to be two discrete reasons for the delay, namely that paragraphs 2 and 3 of the Decision to Deprive referenced an active investigation of the manner in which the appellant obtained British Citizenship whereas paragraph 12 said that in the absence of mitigating evidence submitted by the appellant, his case was put on hold pending ongoing litigation. However, paragraph 12 of the Decision to Deprive was recounting the history of the case and the reasons for delay, whereas paragraphs 2 and 3 set out the conclusions of the case once the active investigation resumed. These reasons are not, contrary to the argument in the grounds (although again not by Mr Hodgetts) mutually exclusive.

29. Paragraphs 22 and 23, of the grounds, which criticise the judge's interpretation of paragraph 12 of the Decision to Deprive which deals with the reasons for the delay, are misconceived. It was argued in the grounds that the judge's interpretation, at paragraphs [39] and [48] that the case had been put on hold to await clarity on the law on nationality and which attributed the delay to the need to take legal advice, did not explicitly emerge from the refusal letter. However, paragraph 12 of the Decision to Deprive references that no further correspondence was received from the appellant/his representatives following the request for more time and that the case was put on hold as it was identified as a potential nullity case and that the legal issues, which it was considered would impact this appeal, were not determined until December 2017.

30. It seems to us therefore, that the judge's interpretation was entirely accurate. Whilst the Decision to Deprive may not have explicitly mentioned taking legal advice, that is implicit in paragraph 12, where the respondent was indicating that it was not known definitely until December 2017 whether a deprivation or a nullity decision should be made, that considering the legal position/taking legal advice would be required. There was therefore no conflict to be resolved in the evidence, as suggested in paragraph 23 of ground 1.

31. Ground 1 at paragraph 24 accepts that Counsel for the appellant before the First-tier Tribunal did not claim that the reason given by the respondent for the delay was misleading. There is no suggestion that as a matter of fact that was not what the respondent was doing (waiting for the outcome of the **Hysaj** litigation). The judge found that it was reasonable for the respondent to wait for that outcome.

32. We also find merit in Mr Clarke's submission that the Home Office policy "Chapter 55: Deprivation and Nullity of British Citizenship" at section 55.5.1 provides that there was no specific time limit within which deprivation procedure had to be initiated, and we have been referred to no statutory or other requirement for deprivation action to be taken within a certain period of time. The respondent's Decision to Deprive was made after providing the appellant with a further opportunity to make representations, with the appellant not providing any submissions and not raising any issues of unfairness or prejudice as a result of the delay. In the circumstances we consider that Judge Black was perfectly entitled to conclude that the respondent had not acted unlawfully or unreasonably in the exercise of her discretion, in the public law terms set out in **Begum** and subsequently adopted in **Ciceri**.

33. Ground 1 therefore cannot succeed. Although not in the grounds, Mr Hodgetts sought to argue that the judge fell into error without the benefit of **Laci** because of what **Laci** said, at paragraph 49, about the failure to notify or explain the delay to the appellant. He relied on paragraph 46 of **Laci**, which provides (as discussed at paragraph 27 above) that whether the issue is addressed as one of proportionality or the exercise of a common law discretion, the essential questions may not be very different, with in either case a balance being required between the obviously strong public interest in depriving the appellant of a benefit they should never have received, and the countervailing factors. Although arguably not before us, even if it were, there was no material error in the judge's approach. Whilst it was argued that the judge did not specifically consider the failure to notify the appellant of the reason for the delay, the judge at [48] considered both the 'delay and inaction.'

34. Unlike in **Laci**, there was no suggestion in this case, as in the case of **Hysaj**, that this appellant ever understood that the respondent was not pursuing any further action. Again, this case benefits from what Underhill LJ said in **Laci** which distinguished delay of the kind discussed in **Hysaj** where it arose from the respondent's decision to pursue the nullity route. As we have already found, that is the reason for the delay in this case, albeit that a nullity decision had not been made, the judge accepted it was under consideration.

35. What further weakens Mr Hodgetts' argument, in seeking to rely on Underhill LJ's consideration of the respondent's failure to explain the reason for the delay, was that Underhill LJ made those comments (in the context of restoring the decision of the First-tier Tribunal to allow the appellant's appeal) on the basis that the strength of the appellant in **Laci**'s case was that he was entitled to and did believe that no further action would be taken, whereas that was not the case here.

36. There was no material error in the judge not explicitly considering the respondent's failure to tell the appellant the reason for the delay. We find this point to be underlined by the appellant's failure to provide any submissions despite asking for further time to make those submissions. Whilst we accept that the respondent

did not reply to that request for further time, it is not unreasonable to assume where no such reply was received, that the appellant had been given further time. Nonetheless the appellant still failed to provide any submissions. If the appellant had sent in such submissions the judge's conclusions might well have been different. This was not a case as in **Laci**, where further submissions had been made to the respondent and where it was reasonable therefore for the appellant in **Laci** to consider that no further action was being taken, including as the respondent renewed the appellant in **Laci's** passport. The appellant before this Tribunal was not given any reason to consider that no further action was being taken.

37. Whilst Mr Hodgetts further argued that there was an insufficiency of reasoning in finding the delay reasonable because the respondent raised the issue of the citizenship during the determination of the appellant's wife's appeal, which was allowed, but the respondent did not make a decision to deprive at that stage, again that argument was not before the Upper Tribunal as a ground of appeal. In any event, as the judge identified at [38] had the respondent not taken some action to put the appellant on notice of her concern in relation to his use of a false identity, she might have been open to some criticism. The judge, at [40] took into account what was said by the Upper Tribunal in **Hysaj** that delay and maladministration are not to be equated without more with unlawfulness. The judge specifically found at [41] that she did not consider the entrenchment of the appellant's ties within the UK to be a detriment and whilst she accepted that the 2008 notification to the appellant by the respondent would have caused considerable the family distress, she found that this would have been foreseeable given their knowledge of the appellant's false identity for many years. In contrast to **Laci**, this was not a case, in essence in the judge's findings, at [41], of any diminishing sense of impermanence.

38. Mr Hodgetts attempted to argue, again outside the grounds of appeal to the Upper Tribunal, that Article 8 had not been wholly abandoned and that the judge had misconstrued the approach to Article 8. Even if that ground were before us, which we find it is not, as noted above we accept on the basis of what the judge said at paragraph [50], reflected in the judge's record of proceedings, that Article 8 was not being pursued by Counsel for the appellant.

39. Similarly, Mr Hodgetts' argument in relation to ground 2 and the reasonably foreseeable consequences of deprivation and the limbo period does not get off the ground, as we accept that Counsel before the First-tier Tribunal withdrew the grounds under Article 8 and reasonably foreseeable consequences. The judge cannot therefore be criticised for not making findings on a ground of appeal not before her. We do not accept that the promulgation of **Ciceri** and **Laci** made a material difference given what we have said about the judge's findings on delay above and given that the appellant having raised reasonably foreseeable consequences in the ASA, ultimately decided not to pursue this at the appeal.

40. Mr Hodgetts' concluding argument was that the judge had gone wrong in her application, in terms, of what was said in **Ciceri** at paragraph 19, that irrespective of whether Article 8(1) is engaged (which we have accepted it was not in this case) the Tribunal must also determine by reference to 'essentially Wednesbury principles' whether the respondent's discretionary decision under section 40(3) (in this case) was exercised correctly. Mr Hodgetts again submitted the judge did not take into account the failure to communicate that the case was being put on hold. For the reasons given at paragraphs 34-37 above, that was not a material error. Underhill LJ in **Laci** was not saying that failure to communicate a delay will always be fatal to the respondent's case, but rather that in **Laci** it was one relevant factor in that case, as the impact of the delay in that case, would have been different if that appellant had been told that the respondent was deferring her decision and why. That was not the case considered before this First-tier Tribunal and as we have already noted, Judge Black, at [48] specifically considered both 'the delay and inaction' finding neither unreasonable for the reasons given.

41. In conclusion, whilst Judge Black did not have the specific benefit of the learning in **Laci** and **Ciceri** we find that any error in, for example, not reconvening the hearing, was not material. **Ciceri** explains that the **EB (Kosovo)** principles must be applied, which was what Judge Black did at [39]-[43] of the decision, with her conclusion at [48] of the decision, that the delay and inaction were not unreasonable in all the circumstances. The judge properly considered that delay could be a relevant factor but gave sustainable reasons that on the facts of the case before her, it was not.

42. In light of what we say above no error of law is disclosed in the grounds of appeal and the decision of the First-tier Tribunal shall stand.

Notice of Decision

This appeal is dismissed

M M Hutchinson

Deputy Upper Tribunal Judge
Immigration and Asylum Chamber
16 July 2023