



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005316

First-tier Tribunal Nos: DC/50228/2021
LD/00097/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6th July 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SPARTAK DODA
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr E Fripp, Counsel, instructed by A J Jones Solicitors

Heard at Field House on 19 May 2023

DECISION AND REASONS

1. The Secretary of State is the appellant in this case. However, for convenience, I will refer to the parties as they were designated in the First-tier Tribunal.

Introduction

2. On 24 August 2021 the respondent made a decision to deprive the appellant of British citizenship under Section 40(3) of the British Nationality Act 1981 on the basis that he fraudulently claimed to be Kosovan when in fact he is from Albania. The appellant appealed to the First-tier Tribunal. The First-tier Tribunal found that the appellant knowingly deceived the respondent but that depriving him of citizenship was disproportionate under article 8 ECHR. The respondent appealed to the Upper Tribunal.
3. In a decision promulgated on 18 April 2023, Upper Tribunal Judge Bruce set aside part of the decision of the First-tier Tribunal. She decided that the First-tier Tribunal's finding that the appellant obtained his citizenship by fraud would

stand, but that the decision on proportionality would be re-made following a further hearing. Accordingly, the sole issue at the hearing before me was whether depriving the appellant of British citizenship would be inconsistent with Article 8 ECHR.

Relevant Legal Principles

4. The relevant legal principles for assessing whether a deprivation decision is consistent with Article 8 ECHR are summarised in two recent Upper Tribunal decisions: *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC) and *Muslija (deprivation: reasonably foreseeable consequences)* *Albania* [2022] UKUT 00337 (IAC). In summary:

- (a) The standard of proof is the balance of probabilities.
- (b) Judges must assess for themselves, having regard to all of the evidence before them up to the date of the hearing, whether deprivation would be incompatible with Article 8 ECHR. This entails determining the reasonably foreseeable consequences for the appellant and his family without speculating about whether he will be permitted to remain in the UK.
- (c) Following the deportation order taking effect the appellant will have no legal status for an uncertain duration whilst he awaits a further decision on his status (i.e. whether he will be removed or what leave, if any, he will be granted) from the respondent. This is frequently referred to as a “limbo period”. A lengthy limbo period is “without more” unlikely to tip the balance in the appellant’s favour, but what occurs during the limbo period may be significant because, inter alia, the appellant may lose his ability to work and face other significant implications of the “hostile environment”.
- (d) The public interest in depriving a person of citizenship who has committed fraud is high because of the importance of maintaining the integrity of British nationality law.

Analysis

5. The following is not in dispute:

- (a) The appellant has a wife and daughter (born in 2019) who are British citizens.
- (b) The appellant’s wife has not been working since December 2021 (when her contract was not renewed).
- (c) The appellant’s wife is part-way through a course of study to become an accountant.
- (d) The appellant bought a house (in his name) for approximately £160,000 fifteen years ago, and has an interest only mortgage on the property.

6. I now turn to consider the factual issues that were in dispute.

7. One of the issues was the length of time that is likely to elapse between a deprivation order being made and a decision on the appellant’s status in the UK.

The respondent's deprivation decision indicates that a decision on his status could be made in only eight weeks. Mr Fripp argued that it is extremely unlikely that it will only take eight weeks. He relied on a Freedom of Information Request where an enquiry was made (on 11 March 2021) as to the average timescale for making a decision on leave following the cancellation of citizenship. The response states that:

"It took Status Review Unit 303 days to grant temporary leave following an earlier decision to deprive citizenship on grounds of fraud. This average is calculated from appeal rights or exhausted on the deprivation appeal. For those cases that became appeal rights exhausted and where Status Review Unit subsequently served the order that formally deprives citizenship, our records indicate that on average (mean) it took Status Review Unit 257 days to grant temporary leave, following the service of the order".

8. Mr Clarke argued that the Freedom of Information Response is not a reliable basis for going behind the timeframe given in the respondent's decision. This is because the information provided in response to the Freedom of Information Request is the "mean" for all deprivation decisions, and this would include very complex cases (including where a lengthy delay may be necessary because of criminality). He submitted that the mean figure is of little value in assessing how long a decision is likely to take in the appellant's particular situation. He also noted that the data in the Freedom of Information Response is taken from March 2021, and therefore is not up-to-date.
9. Mr Fripp acknowledged that the Freedom of Information Response was not specific to the appellant but maintained it was the best evidence available. He submitted that the "elephant in the room" was that the respondent has the relevant data available but has not provided it. He contended that this was the best information available to evaluate how long the limbo period is likely to be for the appellant. He also noted that the appellant's solicitors have been endeavouring to obtain updated information from the respondent but this has not been provided.
10. I agree with Mr Clarke that the Freedom of Information Response is of little value in assessing how long it will take for a decision to be made in the appellant's case as the "mean" figure provided in the Freedom of Information Response is likely to contain within it widely divergent time periods and I am unable to infer from it that it is likely that the time that will be taken in the appellant's case will be close to the "mean". However, this does not mean that the limbo period will not be lengthy. In the deprivation decision the respondent states that a decision on the appellant's status will be made within eight weeks subject to any representations from the appellant. The length of time it may take following representations is open-ended. Accordingly, I find as a fact that following the appellant's loss of citizenship he is likely to be exposed to a limbo period that may be lengthy and is likely to be substantially more than eight weeks.
11. Another issue in dispute was whether the appellant's wife suffers from mental health problems that prevent her working. Her evidence (both written and oral) was that she does. The appellant's evidence is consistent with this. However, no medical (or other documentary) evidence was submitted to support this claim. I draw a negative inference from the absence of such evidence because the appellant has had ample opportunity to adduce it and could have been in no doubt as to the necessity for it to support the claim, given that, as explained in

paragraphs 25 and 26 of her decision, Upper Tribunal Judge Bruce adjourned the re-making of the decision in order for this type of evidence to be adduced. I therefore do not accept that the appellant's wife is unable to work. The appellant's wife's evidence was that she used to work in an accounting role earning approximately £22,000 a year. I find that, should she wish to do so, she could find work of a similar nature earning a similar income.

12. A further issue in dispute was whether the appellant could obtain funds through selling his home. The appellant's evidence was that he does not know the value of his home and has never considered selling it. Mr Fripp acknowledged that the appellant's property is likely to be worth more than the mortgage of approximately £160,000 but submitted that the emotional impact and practical difficulties of selling the property meant that this was not a factor relevant to mitigating the negative impacts of the limbo period. I am not persuaded by this argument. I am satisfied that, should it be necessary to do so because he is unable to work, the appellant will be able to access a substantial sum of money by selling his property.
13. A further issue in contention was whether the appellant suffers from mental health problems as a consequence of the deprivation decision and subsequent proceedings. No documentary evidence to corroborate this has been submitted and in these circumstances I am not prepared to accept that he suffers from a significant mental health problem.
14. A further area of dispute is whether the appellant has given a true picture of his financial position. Mr Clarke observed that no personal bank account statements of either the appellant or his wife have been provided. He also submitted that there was an inconsistency between the (relatively low) income showing in the appellant's tax returns and his ability to obtain a mortgage. He submitted that the appellant may have a higher income than he is disclosing. I am not persuaded that the income showing on the appellant's tax returns is insufficient to have obtained the mortgage. However, I am persuaded that the appellant has not been forthcoming about his income and financial position. Upper Tribunal Judge Bruce made extremely clear in paragraphs 25 and 26 of her decision that the appellant needed to substantiate with documentary evidence his financial circumstances. She made a specific reference to producing evidence of the family's savings, assets and income. Despite this, the appellant has not provided any personal bank statements, either for himself or his wife. In the light of this, I find that the appellant has not given a true picture of his financial position.
15. In the light of these findings of fact, I find that the reasonably foreseeable consequences of deprivation are that the appellant will spend a significant and uncertain period of time in a state of "limbo", where he will not have any lawful status in the UK and will be unable to continue working. I find that this will result in some financial difficulties for (and cause considerable distress to) the appellant and his wife. However, I do not accept that it is likely that the appellant and his family will become homeless or experience poverty. This is because the appellant's wife will be able to obtain employment, and earn sufficient money to cover the mortgage; the appellant will be able to sell his property and thereby release sufficient funds to rent a property for a substantial period of time; and the appellant's wife and child, as British citizens, will (if necessary) be able to access benefits and support from their local authority.

16. The best interests of the appellant's daughter, who was born in 2019, is a primary consideration. She will be negatively impacted by the appellant being deprived of citizenship because of the uncertainty the family will face, the reduction in their living standards (including potentially the need to move into rented accommodation if their home needs to be sold), and the distress that both the appellant and his wife are likely to experience. However, because of her young age she is likely to be insulated, to a substantial extent, from the distress faced by her parents. Her material circumstances are unlikely to change significantly, because her family will not become destitute, and she will be able to access free education and healthcare irrespective of any difficulties her family face financially. Accordingly, I find that it is in the best interests of the appellant's daughter for the appellant to not be deprived of his citizenship but that the effect on her will be limited.
17. Adopting a "balance sheet" approach, I weigh the factors for and against the appellant as follows.
18. Weighing against him (on the respondent's side of the proportionality scales) is the public interest in the maintenance of the integrity of the nationality system. As *Ciceri* and other cases make clear, significant weight attaches to this public interest.
19. Weighing for the appellant (on his side of the scales) are the following factors, which are the foreseeable consequences of deprivation:
 - (a) The appellant has a young daughter and it would be in her best interests for the appellant to not be deprived of citizenship. However, although she will be negatively impacted, the deprivation decision will not result in her being separated from her family and the effect on her will be limited (as discussed above in paragraph 16).
 - (b) The appellant and his family will suffer financially, but not to the extent that they will become homeless or fall into poverty (as discussed above in paragraph 15).
 - (c) The appellant and his wife will suffer significant distress but not significant mental health issues (as discussed above in paragraphs 11 and 13).
 - (d) There may be a lengthy "limbo" period where the appellant and his family experience uncertainty and financial difficulties, and where the appellant experiences the consequences of the "hostile environment" for people without lawful status in the UK.
20. I have carefully considered the factors weighing on both sides of the scales and have reached the conclusion that the foreseeable consequences of deprivation do not come close to outweighing the strong public interest in depriving the appellant of his British citizenship. The proportionality balance under article 8 ECHR falls firmly in favour of the respondent. Accordingly, the appeal is dismissed.

Notice of Decision

21. The re-making of this appeal was limited to the question of whether depriving the appellant of British citizenship would violate Article 8 ECHR. For the reasons given above, I am satisfied that it would not. Accordingly, the appeal is dismissed.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16.6.2023