



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006520

First-tier Tribunal No: DC/50037/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

12th October 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

FATUSH LALA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Reuben Solomon, instructed by Jein Solicitors

For the Respondent: Susana Cunha, Senior Presenting Officer

Heard at Field House on 18 September 2023

DECISION AND REASONS

1. I issued my first decision in this appeal on 4 July 2023. In that decision, I found that the First-tier Tribunal (“FtT”) had erred in law in allowing the appellant’s appeal on Article 8 ECHR grounds. I set aside the FtT’s decision to that extent and I ordered that the decision on the appeal would be remade in the Upper Tribunal after a further hearing.

Background

2. The full background was set out by the FtT at [1]-[12] of its decision. There is another summary at [3]-[6] of my first decision. No purpose would be served by repeating the full history here. What matters for present purposes is that the appellant was found by the FtT to have obtained naturalisation by means of false representation because his application was made in the same false identity he

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had used when seeking and being granted leave to remain. That finding is preserved was not said to be tainted by legal error and is preserved.

3. The decision on the appeal is therefore to be remade on Article 8 ECHR grounds, which involves an examination of the reasonably foreseeable consequences of removal: *Muslija (deprivation: reasonably foreseeable consequences)* [2022] UKUT 337 (IAC). In considering that question, the Upper Tribunal may consider evidence which was not before the Secretary of State: *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 115 (IAC).

Preliminary Matter

4. Mr Solomon invited me to remit the appeal to the First-tier Tribunal. That application had been made in writing by those instructing him in advance of the hearing. The basis of the application was that no submissions had been made on the question of relief at the first hearing in the Upper Tribunal and the resumed hearing was 'to be treated as a de novo hearing.'
5. Ms Cunha opposed remittal and submitted that the matter should proceed in the Upper Tribunal.
6. I agreed with Ms Cunha. It is incorrect to suggest that the resumed hearing is de novo; the only remaining issue is Article 8 ECHR. The presumption in the Senior President's Practice Statement is in favour of retention in the Upper Tribunal and there was no suggestion of unfairness to the appellant in the proceedings before the FtT. Having considered what was said in *Begum (remaking or remittal)* [2023] UKUT 46 (IAC), I refused the application to remit.

Evidence

7. Mr Solomon confirmed that the appellant now relies on three bundles of evidence: Bundle A and Bundle B were before the FtT and contain 175 and 32 pages respectively. Bundle C, of 18 pages, was produced for the Upper Tribunal hearing.
8. I heard oral evidence from the appellant and his wife, Xhumrije Memishaj. I do not propose to rehearse their evidence in this decision. I will refer to it insofar as it is necessary to do so to explain my findings of fact.

Submissions

9. Ms Cunha relied on the respondent's decision and she took me particularly to [69]-[71] of that decision, in which the heavy public interest in deprivation had been explained.
10. It was necessary to consider the best interests of the child. Three children were potentially affected by the decision. The appellant had two children from a previous relationship and one toddler with his wife. The children from the previous relationship were British citizens born in 2015 and 2017.
11. Ms Cunha asked me to consider the relevant sections of *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 128 (IAC), *E3 & Ors v SSHD* [2023] EWCA Civ 26; [2023] KB 149, *Usmanov v Russia* (App No 43936/18); [2020] ECHR 923, and *Chimi*. There was no suggestion that the decision was 'arbitrary' such that it fell

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foul of what was said in *Usmanov v Russia*. Ms Cunha submitted that the 'limbo period' was likely to be in the region of eight weeks but that even a longer period would be proportionate on the facts of this case. The appellant would still have access to emergency treatment on the NHS during that time. His wife would be able to access benefits and had settled status. As noted in *Hysaj*, society provides a 'safety net' for the most vulnerable. Whether by reference to support from family and friends or by reference to that safety net provided by the state, the family would be able to manage during the limbo period.

12. Ms Cunha submitted that there was no good reason that the appellant's wife could not work. She could seek work through friends. It was fallacious to suggest that she needed to speak English even to work as a cleaner. The child might still be breastfeeding at the age of two but plenty of women returned to work whilst breastfeeding; milk could be expressed and the child would shortly be weaned in any event. This was a personal choice and it was unlikely that she would choose to make her family destitute.
13. There is family in the United Kingdom. The appellant said that he had been taking out loans but there was no evidence of that and it was a matter which could readily have been corroborated. It was not clear that the appellant had lost his job in construction because of a lack of documentation. The email from Lang O'Rourke seemed to suggest that there had also been a grievance procedure. Whilst Ms Cunha accepted that the appellant's passport had been taken from him, she did not accept that it was this which prevented him from working. He could have secured other work and it appeared that he had worked after parting company with Lang O'Rourke. There was no evidence to show that the appellant's driving licence had been taken from him.
14. The difficulties which would be caused by deprivation were wholly justified by the appellant's deception and the appeal should be dismissed on Article 8 ECHR grounds.
15. For the appellant, Mr Solomon relied on the skeleton argument which previous counsel had settled for the hearing in the FtT. Article 8 ECHR was considered at [23] onwards in that skeleton. There would be a limbo period of around twelve weeks, comprising four weeks to deprive the appellant of his British citizenship after a negative decision on the appeal and eight weeks to decide whether to grant some form of leave.
16. Mr Solomon accepted that there was a heavy public interest in deprivation but submitted that it was not determinative. Each case was to be considered on its own facts. Ms Cunha had relied on *E3* and *Usmanov* but the public interest in those cases was of a different type and order, since both were national security cases.
17. The impact on the appellant and his family would be serious and particularly harsh. It was set out at [24] of the skeleton argument. Relevant matters included the appellant's length of residence and integration to the UK, the fact that he had been told to lie by an agent, the absence of convictions, his voluntary work in the community, his consistent work record, and his desire to resume contact with his children from a previous relationship. His current wife is Bulgarian and has pre settled status. Their daughter is nearly two. The appellant evidently viewed the UK as his home.

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18. The reasonably foreseeable consequences of removal would be losing the ability to work and to access non-emergency NHS treatment. The reason that the appellant had lost his previous job was immaterial; what mattered was that he would be unable to work during the limbo period. The Passport Office had refused to accept that the appellant's daughter was a British citizen in May 2023. The appellant's passport had been seized and the DVLA had sought to recover his driving licence before the Home Office had even issued the 'minded to deprive' letter in March 2020. These were unlawful actions and were relevant to the proportionality of deprivation.
19. It was unrealistic to expect the appellant's wife to get a job. Things had moved quickly after she arrived in the UK. The appellant's passport had been taken and she had fallen pregnant. The practical reality of the situation was that she would not be able to find work; she had only previously worked in a sewing shop. The consistent evidence was that the child refused to take a bottle and there was no reasoning with a child of that age. The appellant's wife would not be entitled to any benefits, given her status: *Fratila v Secretary of State for Work and Pensions* [2021] UKSC 53; [2022] PTSR 448. Mr Solomon accepted that she appeared to be eligible for Local Housing Allowance at £300 per week, however.
20. Mr Solomon submitted that the income support rate was the bare minimum that the appellant's family would need to survive. That was currently at £133.30 for a couple of their ages and £78.78 for a child. That equated to £914.68 per calendar month. The appellant also gave £152 per week to his older children. He was in around £25,000 debt. On any sensible view, working as a cleaner would not suffice. Reasons had been given for the family's inability to help, whether by reference to geographical distance or straitened circumstances of their own.
21. The appellant's wife and children had done nothing wrong, yet it was they who would suffer the most. It was a concern that these proceedings might have an ability on the appellant's application for direct contact with his older children. It was not in the public interest to force the family onto public funds. He had a good record of work and it was disproportionate to prevent him from supporting his family. In all the circumstances, the decision to deprive was in breach of Article 8 ECHR.
22. Given that it had been positively asserted by Mr Solomon that the Secretary of State had acted unlawfully in taking the appellant's passport (and in removing his driving licence), I asked Ms Cunha whether she wished to reply, or to make any submissions on *R (Gjini) v SSHD* [2021] EWHC 1677 (Admin) [2021] 1 WLR 5336. Beyond noting that the passport expired in October 2022 and submitting that the appellant could have applied for recognition of his status as a British citizen, Ms Cunha did not wish to do so.
23. I reserved my decision at the conclusion of the submissions.

Analysis

24. In the paradigm case in which the respondent seeks to deprive an individual of their British citizenship, the sole focus for Article 8 ECHR purposes is on the reasonably foreseeable consequences of deportation. It is impermissible to conduct what has been called a 'proleptic' assessment, by considering the likelihood of removal from the United Kingdom. And it is usually unnecessary, at

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least for the purposes of Article 8 ECHR, to consider in any great detail what has happened in the past.

25. As will be apparent from my summary of the submissions above, however, this case is rather unusual. The appellant maintains that the reasonably foreseeable consequences of deprivation will be particularly harsh partly because action has already been taken against him as a result of the respondent's suspicions, and those actions have already caused him difficulty, including significant debt. It is positively submitted on the appellant's behalf that the respondent acted unlawfully in seizing his passport and in causing the DVLA to revoke his driving licence.
26. It is common ground that the appellant previously held a British passport which was valid until 5 October 2022. In his first statement, he describes the circumstances in which the passport came to be taken from him by Immigration Officers in Brussels. He was returning to the United Kingdom from Bulgaria with his wife on 29 January 2020. He was told by the officers that he had no entitlement to the passport. He was unable to travel and the passport was seized. He sought assistance from the British Embassy but he was told to 'go away' because he was not a British citizen. He explained in oral evidence that he was able to get a laissez passer which was confiscated from him on arrival in the UK. It took him two weeks to obtain this document, during which time he was 'stranded' in Belgium. The appellant states in his statement that the seizure of his passport was 'not in fact correct and that I am a British citizen unless and until a final decision is made to deprive me of that citizenship.'
27. I note that the appellant was first notified that the Secretary of State had reason to believe that he had obtained his British citizenship by fraud in March 2020. The decision to deprive him of his citizenship was taken on 27 October 2020. That decision obviously remains subject to this appeal.
28. I referred the advocates to the judgment of Morris J in *R (Gjini) v SSHD*. The circumstances in that case were similar, with the Passport Office having refused to issue Mr Gjini a British passport because checks had established that he had acquired his British citizenship by falsely representing himself to be a Kosovan national. He was subsequently issued with a decision to deprive him of his British citizenship, against which he appealed to the First-tier Tribunal. He sought judicial review of two decisions, the first of which was the refusal to issue him with a British passport. In respect of that complaint, Morris J held:

[103] For these reasons, whilst a final order depriving a person of British citizenship would be a ground for refusing to issue a passport, neither the intimation, nor the commencement, of deprivation proceedings by the defendant is, nor can be, a lawful or rational basis for refusing to issue a passport. I conclude that it was unlawful and irrational for the defendant to refuse to issue a passport to the claimant on the basis of the contemplation or institution of deprivation of citizenship proceedings.
29. Ms Cunha did not seek to distinguish *R (Gjini) v SSHD*, nor did she seek any additional time in which to make written submissions on the decision. I can see no basis for distinguishing it, and the holding at [103] seems to me to apply equally to the seizure of the appellant's passport as it did to the refusal to issue Mr Gjini with a new passport. There is no suggestion that passport facilities had been withheld or revoked because the granting of those facilities was contrary to

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the public interest, for example, and it seems (from the appellant's account) that the decision was motivated entirely by the forthcoming initiation of deprivation proceedings. I accept Mr Solomon's submission that the seizure of the passport was unlawful.

30. In respect of the appellant's driving licence, I have not been referred to any law or policy in relation to such matters and it is not for me to undertake that research for myself. The circumstances in which a person's driving licence might be revoked may be narrower or wider than those in which the Passport Office might refuse to issue a passport. I simply do not know, and there is no proper basis upon which to conclude that the revocation of the appellant's driving licence was unlawful. That is largely immaterial for the purposes of this appeal, however, since no relevant consequences are said to have flowed from the revocation of the driving licence, whereas the appellant states that the loss of his passport caused difficulties in finding and retaining employment. Those difficulties are said, in turn, to render the reasonably foreseeable consequences of deprivation all the worse, not least because of the amount of debt that the appellant is now in.
31. In order to evaluate that submission, it is necessary to consider in a little detail the consequences of the seizure of the appellant's passport. It is clear that he was able to continue working in the construction industry when he returned from Brussels. He was employed as a steelfixer by the construction firm Laing O'Rourke in September 2021. It was the appellant's oral evidence that he was able to continue in this role until around January 2023. He said that he had been required to work at various different sites and that some sites required him to produce his passport as evidence of his nationality and/or permission to work in the United Kingdom. Matters came to a head, he said, at the end of 2022 when he was unable to produce his passport. He entered a grievance with the company which ultimately came to nought, and he was unable to continue to work with them because he could not produce his passport. Despite Ms Cunha's submission to the contrary, I consider the appellant's account to be supported by the email dated 1 December 2022 which appears in Bundle C. This refers to him returning to work for an induction process and being required to produce three documents at his induction. I note that the first document is a passport.
32. It is clear from the text messages which also appear in that bundle that the appellant sought work shortly thereafter with another firm, Mitchellson, but that they too were keen to ensure that they had seen the appellant's passport before he undertook work for them. Those messages come to an end with the appellant saying that he would ask his Member of Parliament to 'chase up the Home Office'. As I understand it, that message is dated 7 February 2023.
33. There is no documentary evidence which goes to establish that the appellant made any further enquiries, whether with other companies or with the Home Office. He claims in his latest statement that he has been 'tirelessly trying to find a job' but there is no further evidence of this, beyond the documents I have described above. Nor do I understand why the appellant has taken no action to obtain a new passport despite being advised when he prepared his first statement that the seizure of his passport was unlawful.
34. The appellant maintains that he has been unable to work for months and that he is in significant debt but there is not a single bank statement in the three bundles before me. That is a striking omission, given the significance which I was asked

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to attach to financial considerations and to the level of debt which the appellant is said to have accrued. Although I accept for the reasons I have set out above that the appellant experienced difficulties with his previous employer due to the lack of a passport, I do not accept that he has been unable to work during 2023 and I do not accept that he is in significant debt. He has failed to establish these matters on the balance of probabilities due to the absence of evidence which would have been readily available.

35. Having made those findings, I return to the main focus of my Article 8 ECHR enquiry: the reasonably foreseeable consequences of deprivation. There is some common ground between Ms Cunha and Mr Solomon as to the length of the limbo period. It will take the Secretary of State four weeks to act on a final appeal decision by depriving the appellant of his citizenship and it will take her eight weeks thereafter to consider whether to grant leave to remain. Mr Solomon submitted that all twelve weeks should be counted but that cannot be right; it is the deprivation decision itself which exposes the appellant to the 'hostile' or 'compliant' environment in which he is unable to work, access benefits and non-emergency NHS treatment. I proceed on the same basis as the Upper Tribunal in the reported decisions and consider that the limbo period in this case will be in the region of eight weeks.
36. I do not accept that the appellant has already 'maxxed out' his overdraft and credit cards, as he sought to suggest before me. As I have already observed, there is no documentary evidence in support of that important assertion. Nor, I note, is there any evidence to support the appellant's claim that he does not have any savings on which he can draw to tide him over the limbo period.
37. The appellant stated in evidence that he had also borrowed eight thousand pounds from a friend but there was also no evidence of that substantial loan. The appellant was dismissive during his oral evidence of the possibility of obtaining short-term financial assistance from family and friends. He suggested that no one was close enough, geographically, to assist and that his family did not have enough money to provide assistance. As with the appellant's claim to be in significant debt, however, these assertions are unsupported by evidence. The appellant has cousins and a brother in the UK. His wife also has cousins in this country. It would have been a simple matter to take statements from these individuals and to exhibit their bank statements to show that they cannot provide any assistance to the appellant and his young family in the short term.
38. I accept Ms Cunha's submission that there is no proper reason that the appellant's wife cannot obtain work. She is said to speak very little English. I bear the chronology in mind in evaluating that submission. She is a Bulgarian national who came to the UK in 2020. She fell pregnant shortly thereafter and has been raising the couple's daughter since her birth in Greenwich on 14 October 2021. I accept that she has had no real opportunity to take formal English lessons but I do not accept that her English is so poor that she would be unable to obtain work as a cleaner, to use the example given by Ms Cunha. She has looked after the couple's daughter whilst the appellant was working in the construction industry and she must have needed to attend appointments with him, or go to the shops in order to buy provisions. I am unable to accept that she has insufficient familiarity with the English language to obtain and carry out some form of manual work such as cleaning.

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39. Nor do I accept that the breastfeeding of the appellant's daughter is an answer to the respondent's suggestion that the appellant's wife can work during the limbo period. As Ms Cunha submitted, many women return to work when they are breastfeeding, by expressing milk for their child to drink in their absence. The appellant's wife protested that her daughter will not accept a bottle. Mr Solomon submitted that there is no reasoning with a child of that age. That is necessarily so but a child's need for nutrition will reason for itself with a preference over the source of that nutrition.
40. I am grateful to Mr Solomon for the calculations he put forward during his submissions. I will not repeat them here. The appellant and his wife need an income of just under £1000 per calendar month in order to meet the income support 'yardstick' of subsistence. He accepted that they would be eligible for some £300 per week in Local Housing Allowance. That figure comes from a calculation which appears in Bundle C. It would be sufficient to cover their rent of £1150. In order to make ends meet, therefore, the appellant and his wife would need around £2000 to cover the limbo period of eight weeks.
41. There is no financial evidence before me to show that the appellant is in debt or that he has no savings. There is also no financial evidence to show that family members in the UK would be unable to assist the appellant and his wife in the short term. I have not accepted that the appellant's wife would be unable to obtain some form of employment in this period. They will have access to Local Housing Allowance and the evidence does not establish that they will be unable to find the remaining money to tide them over the very limited period in question. It is not established on the balance of probabilities, therefore, that the appellant's inability to work during the eight week limbo period will expose the appellant and his family to a risk of destitution or homelessness. It is more likely than not that they will be able to make ends meet during that short period, although it is likely to be stressful.
42. I do not accept, in the circumstances, that the decision to deprive the appellant of his British citizenship has any real impact on the best interests of his daughter. She will be fed and housed as before. She will be able to access the NHS. She will continue to live with his parents. She might, even at her young age, detect the stress to which her parents will be subjected but this will have no significant or lasting impact on her wellbeing.
43. Although the submissions before me focussed on the family's ability to survive financially during the limbo, I have taken careful account of all the other matters which were said by Mr Solomon and the author of the FtT skeleton (Ms Bayati) to make deprivation disproportionate.
44. It is irrelevant that the appellant was told by an agent to lie when he arrived in the UK as a child; he lied in his application for naturalisation as an adult and the law fixes him with responsibility for that lie. I accept that the appellant has been in the UK for many years and that he has applied himself diligently to learning the language, working and assisting the community. He was able to secure admission to university after only a few years in the UK and he has plainly impressed various individuals with whom he has come into contact. I record that he was a highly articulate witness. He has worked at the CAB and in other voluntary capacities during his time in the UK and Ms Bayati submitted with proper justification at [24] of her skeleton that he has made a positive contribution to society.

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45. The appellant expressed some concern that a decision to deprive him of his British citizenship might cause him difficulty in seeking direct contact with his two older children. There is no evidence in support of that assertion and I find it surprising. If it is the best interests of his children to have contact with the appellant, I cannot see how it would even be relevant to the family court's enquiry that he does not have British citizenship. There is scant evidence that the appellant was previously providing financial support to his two older children but, even assuming that he was, the impact on their wellbeing of depriving them of two months' financial support would not be significant.
46. It is obviously accepted by Ms Cunha that the appellant would lose the right to access non-emergency NHS treatment during the limbo period. As she noted, however, there is no evidence to show that the appellant might need such treatment during that short period.
47. Taking all of these matters into account and weighing them against the public interest in depriving the appellant of the citizenship to which he was not entitled, I find that the respondent has shown her decision to be a proportionate one. *Laci v SSHD* establishes, at [80], that a heavy weight is attached to maintaining the integrity of the system by which individuals are naturalised so as to enjoy the rights associated with British citizenship. There is nothing on the facts of this case which suffices to outweigh that consideration. Any difficulty relied upon is either not established on the evidence or overstated, and any short term difficulty which will be experienced by the family during the limbo period is amply justified by reference to the interests of the state. Even taking into account the unlawful seizure of the appellant's passport in 2020, I find the decision to deprive him of British citizenship to be proportionate.

Notice of Decision

The decision of the FtT having been set aside in part, I remake the decision on the appeal by dismissing it.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 October 2023

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