IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000170
First-tier Tribunal No: DC/50119/2022

THE IMMIGRATION ACTS

Decision and Reasons Issued:
On 24 December 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

KUJTIM SENJA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms Lucy Mair, Counsel, instructed by Paragon Law
For the Respondent Mr David Clarke, Senior Presenting Officer

Heard at Field House on 23 November 2023

DECISION AND REASONS

Introduction

1. This is the re-making of the decision in the Appellant's appeal from the Secretary of State's notice of decision to make an order to deprive him of British citizenship. The Appellant's appeal was originally dismissed by First-tier Tribunal Judge Chohan ("the Judge") in a decision promulgated on 5 December 2022. We set aside the Judge's decision in part as being wrong in law on 6 October 2023 and retained

the appeal for re-making of the decision on Article 8 grounds. A copy of our error of law decision is annexed to this decision.

Factual background

2. The Appellant is a citizen of Albania and was born on 7 May 1981.

3. The Appellant arrived in the United Kingdom on 2 August 2002. He stated that his name was Kujtim Hoxha and he was born on 15 May 1989. He pretended to be a citizen of Kosovo and made an asylum claim. The Secretary of State refused that claim on 20 January 2003 but granted exceptional leave to remain to him as an unaccompanied child until 20 January 2007. The Secretary of State granted him indefinite leave to remain on 14 February 2007. He was naturalised as a British citizen on 4 December 2008. He is married to Mrs Keti Metallari ("wife") and they have two children ("C1" and "C2", or "children").

4. The Appellant's deception came to light when his wife made an application for entry clearance to the United Kingdom in 2014. The Kosovan authorities confirmed in writing that the Appellant was not registered as being born as claimed. The Secretary of State wrote to the Appellant so as to investigate his true identity on 19 June 2018 and 24 March 2022. The Appellant, in response to both letters, accepted that he had previously used deception. The Secretary of State issued a notice of decision to make an order to deprive him of British citizenship on 26 May 2022.

5. The Judge heard the Appellant's appeal from the Secretary of State's decision on 4 November 2022. The Appellant gave oral evidence and was cross-examined. He accepted using deception and giving false details to the Secretary of State. He advanced a claim based on Article 8. He relied on the nature and circumstances of his historical deception, the delay on part of the Secretary of State, his length of residence and ties to the United Kingdom and his relationship with his wife and children. The Judge found that the Secretary of State's decision was not incompatible with Article 8. The Judge promulgated his decision on 5 December 2022 and dismissed the appeal. The Appellant was granted permission to appeal from the Judge's decision 28 February 2023.

6. We heard the Appellant's appeal from the Judge's decision on 12 September 2023. We rejected the Appellant's submission that the admitted use of deception was not directly material to the decision to grant British citizenship and, therefore, on *Sleiman (deprivation of citizenship; conduct)* [2017] UKUT 367 (IAC), it was not open to the Secretary of State to make a deprivation decision. We were persuaded that the Judge's assessment as to the best interest of the Appellant's children was flawed and his decision as to Article 8 was unsustainable. We, therefore, set aside the Judge's decision in part on

6 October 2023. We retained the appeal for re-making of the decision on Article 8 grounds only and gave further case management directions.

Resumed hearing

7. We are grateful to Ms Mair, who appeared for the Appellant, and Mr Clarke, who appeared for the Secretary of State, for their assistance and able submissions at the resumed hearing.

8. The Appellant filed a composite bundle for the resumed hearing. The bundle included all the evidence that was adduced by their parties below and further evidence adduced by the Appellant (and with our permission) pursuant to Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. We were also assisted by a detailed skeleton argument drafted by Ms Mair and received a further letter from her instructing solicitors following the resumed hearing. We were also provided with a bundle of authorities containing key authorities on the subject.

9. Ms Mair called the Appellant to give oral evidence. The Appellant adopted his four witness statements in examination-in-chief. Mr Clarke cross-examined him. There was brief re-examination. Ms Mair next called the Appellant's wife to give oral evidence with assistance of an Albanian interpreter. She adopted her witness statement in examination-in-chief. Mr Clarke cross-examined her too. There was no re-examination.

10. We heard detailed closing submissions from Mr Clarke and Ms Mair respectively. There was no dispute between them as to the law and they both agreed that the sole issue for us was whether depriving the Appellant of British citizenship would constitute a breach of Article 8. Mr Clarke invited us to find that there was no such breach and to dismiss the appeal. Mr Mair's submissions were focused on six matters, namely, the nature and circumstances of the deception, delay in making the deprivation decision, the likely length of any period of uncertainty, the Appellant's length of residence and ties to the United Kingdom, the qualify and nature of his private and family life and the impact on the family and welfare of the children. She invited us to find that the deprivation decision, in the light of these matters, would be incompatible with Article 8 and to allow the appeal on that basis. She advanced no other grounds to impugn the Secretary of State's decision.

Findings

11. There is no dispute between the parties that the relevant condition precedent specified in section 40(3) of the British Nationality Act 1981 exists for the exercise of the discretion to deprive the Appellant of British citizenship. Under that provision, "the Secretary of State may

by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of, (a) fraud, (b) false representations, or (c) concealment of a material fact". The Appellant accepts that he provided false details to the Secretary of State on arrival in the United Kingdom on 2 August 2002. There is no dispute that the Appellant falsely claimed to be Kujtim Hoxha from Kosovo born on 15 May 1989 in his original asylum claim and his subsequent applications for indefinite leave to remain and British citizenship. He ticked "No" to the question "Have you engaged in any other activities which might indicate that you may not be considered a person of good character" in his application for British citizenship. The answer was dishonest. The Appellant, in answering "No" to that question, deliberately concealed the earlier use of deception. The earlier use of deception was directly relevant to the question as to his character.

12. There is, likewise, no dispute between the parties that the rights of the Appellant and his family members under Article 8 are engaged. The key question is whether the interference with those rights would be proportionate. It is common ground that the proper approach to that question is summarised, by reference to earlier cases, in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 238 (IAC) and *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 115 (IAC). We must determine the reasonably foreseeable consequences of deprivation. There is no automatic revival of previously held indefinite leave to remain upon deprivation. It is for us to assess the question of proportionality on the evidence before us. We must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct. Delay by the Secretary of State in the decision-making process is a relevant factor but the weight to be given to it on the facts of this case is a matter for us.

13. The Appellant, upon deprivation of British citizenship, will become subject to immigration control under the Immigration Act 1971. The Secretary of State confirms that a deprivation order will be made within four weeks of the appeal rights being exhausted and within eight weeks from that order, subject to any representations, a further decision will be made either to grant him leave to remain or to remove him from the United Kingdom. A reasonably foreseeable consequence of deprivation is that the Appellant will be left with no leave to remain during this period of time resulting in an inability to lawfully work, drive, access certain benefits or have property in his own name. Ms Mair referred to this period as the limbo period and submitted that the Secretary of State's time estimate was not reliable. She referred us to some materials suggesting that, as of 31 August 2021, the average time it took the Status Review Unit to grant

temporary leave to remain following an earlier decision to deprive citizenship on grounds of fraud was 303 days from the time when appeal rights were exhausted. It is not necessary for us to resolve the dispute about the potential length of the limbo period in this case. We proceed on the basis of the average length of time put forward by Ms Mair but note that the Appellant will become subject to immigration control on the service of the order that formally deprives him of British citizenship, as opposed to the date on which his appeal rights are exhausted.

14. We commence our assessment of proportionality by considering the best interests of Appellant's children. We do so in accordance with the principles set out in *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74; [2013] 1 WLR 369, at [10]. We treat the best interests of the children as a primary consideration. Although it can be outweighed by the cumulative effect of other considerations, we proceed on the basis that no other consideration can be treated as inherently more significant.

15. The Appellant's children are British citizens and were born in Nottingham. C1 was born in 2015 and C2 was born in 2019. They both are in school and, on the evidence, are making good progress. Their attendance is good and they are very well-settled. It is in their best interest to stay at the same school and have stability in their lives. It is, likewise, in their best interest to continue receiving care and support of their parents. The Appellant told us in evidence that C1 has some understanding as to these proceedings and she is consequently worried. We accept that depriving the Appellant of British citizenship will be a major event in the lives of the children and is likely to have an adverse impact on them. They are innocent and cannot be blamed for the conduct of the Appellant. We find that it is in the best interest of the children not to deprive the Appellant of British citizenship, although we find for the reasons which follow that the extent to which that is so is rather less than was asserted by Ms Mair.

16. The Appellant and his wife gave detailed evidence as to the circumstances of their family. The Appellant works in the construction industry and earns around £1940 a month after deductions. The family's total monthly outgoings are around £1790 a month, including a mortgage payment of £480. The Appellant's wife is a citizen of Albania and has twice been granted limited leave to remain on the basis of her relationship with him. We were told that her latest leave to remain was valid until 12 November 2023 and she has made an application for further leave to remain on 26 October 2023. The application is presently pending and she enjoys the automatic extension in her leave to remain under section 3C of the Immigration Act 1971. She stays at home but provides essential support to the family. She takes the children to school, picks them up and handles their activities. She cooks and shops for the family. She prefers to be a homemaker and has never worked in another capacity. We have no

difficulty in accepting the evidence given by the Appellant and his wife to that extent.

17. The Appellant and his wife, however, go a step further in their evidence. They say that it is effectively impossible for them to switch roles. The Appellant, as noted above, will have no leave to remain or right to work during the limbo period. His wife, however, has leave to remain and will be entitled to seek employment or run a business. He asserts that he just “cannot cook or do most of the day-to-day household”. According to him, he and wife decided at the beginning of the relationship that he would work while she stayed at home. The Appellant’s wife also says in the evidence that he simply “cannot do most of the work” at home and “cannot cook”. She further says that switching the roles would confuse children and would also be against the Albanian culture and may make the Appellant “unhappy”. We consider that these are all exaggerations and we reject them with no hesitation. It is simply implausible to suggest that the Appellant cannot do household chores. He is a healthy and resourceful individual. When it was put to him in cross-examination as to how he managed his life prior to the marriage, he had no real answer. He suggested that his life at the time was in a mess but he surely was able to deal with basic domestic tasks. It may well be the case that he would prefer not to be a homemaker but there is no practical obstacle to it. He is perfectly capable of switching roles with his wife and to undertake all domestic chores that she is presently undertaking in the household. This will not undermine the best interests of the children.

18. We accept that the Appellant’s wife may find it difficult to secure employment or work on a self-employed basis. It may also be difficult for her to match or exceed the current income. She, as noted above, has not worked in any other capacity and gave evidence with assistance of an Albanian interpreter. She can drive, however, and she went to college in Albania. She prefers not to be a breadwinner for the family and is content with her role as a homemaker. She has never made an attempt to find employment or work on a self-employed basis. But she is a capable and intelligent individual. In her evidence, she presented herself as someone who is able to think and articulate herself in a proper manner. She has mental and physical capacity to be the breadwinner and secure an income for the family. We find that she, despite some challenges, will be able to find employment or work on a self-employed basis upon deprivation of the Appellant’s British citizenship.

19. The Appellant told us in evidence that he had some savings but most of these have been spent on legal costs as to these proceedings and the wife’s application for further leave to remain. He, however, has not produced his bank statements in support of his claim. His solicitors wrote a letter following the resumed hearing stating that the omission was an oversight on their part and that they had neglected to request the bank statements when compiling the evidence. We are

prepared to accept, though with some reluctance, that the Appellant does not have sufficient savings so as to enable the family to live on them during the limbo period. This, however, is not a matter that carries much weight in the Appellant's favour in the light of our earlier findings.

20. We do not accept that the Appellant is likely to lose the family home upon deprivation. Even if the Appellant is not able to work, as we find above, his wife has the capacity and ability to find employment or work on a self-employed basis and to pay mortgage instalments. Even if she will be unable to earn at the same level as the appellant, she will be able to overcome challenges and find a way to meet the family's essential needs. The Appellant was asked in cross-examination if he knew as to how long the mortgage provider might take to re-possess the property and if he had made enquiries about mortgage payment holiday. The Appellant answered in the negative. We, accordingly, reject the suggestion in the evidence that the Appellant and his family would become homeless upon deprivation and face incredible difficulty. This is another exaggeration. The deprivation of citizenship will have an impact on the family's arrangements, circumstances and finances, but there is no real risk of them losing their home, relocating to a rented property in a different area or becoming homeless.

21. Ms Mair submitted that it is unclear as to what impact the deprivation of the Appellant's citizenship will have on the wife's pending application for leave to remain in the United Kingdom. It is, however, tolerably clear that the deprivation will not be fatal to the wife's application. The Secretary of State is obliged to acted compatibly with Article 8 in deciding her application. She has a genuine and subsisting parental relationship with two British citizen children and there is no suggestion that it would be reasonable to expect the children to leave the United Kingdom. Under section 117B of the Nationality, Immigration and Asylum Act 2002, the public interest does not require a person's removal where that person has a genuine and subsisting parental relationship with a qualifying child (which includes a British citizen child) and it would not be reasonable to expect that child to leave the United Kingdom. The fact is that the Appellant's wife has been granted leave to remain and presently enjoys an extension in that leave, and there is no obvious reason to assume that she would not be granted further leave to remain.

22. In the circumstances, we find that depriving the Appellant of British citizenship will not require the children to leave their current school or home. Considering the findings we have made above, we accept that the disruption which the family will encounter will be contrary to the best interests of the children but not significantly so.

23. We accept that the Appellant arrived in the United Kingdom as a child and, as he says in the evidence, provided false details to the

Secretary of State on the advice of an agent. We do not attach any weight against the Appellant to his original deception in the asylum claim. He was a child at the time. He, however, was an adult when he made his application for British citizenship. He is fully responsible for the deception in that application and his deliberate decision to conceal his past. It is also true that he made open and frank admissions immediately after the Secretary of State first wrote to him about his deception and he has also expressed deep remorse. These are matters to his credit and we attach some weight to them in his favour in our assessment.

24. We also accept that there has been a delay on part of the Secretary of State in the decision-making process. The Secretary of State, it appears, was aware as early as 2014 that the Appellant had used deception. The Secretary of State wrote to the Appellant on 19 June 2018 seeking further information in that respect. The Appellant responded on 9 July 2018 and provided detailed written submissions and evidence. The Secretary of State wrote to the Appellant again on 24 March 2022 in almost identical terms. The Appellant responded to that letter on 4 May 2022. The Secretary of State, ultimately, made the deprivation decision on 26 May 2022. As the Court of Appeal observed in *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769 [2021] 4 WLR 86, at [81], delay and unexplained inaction on the part of the Secretary of State is relevant and capable to amounting to a sufficiently compelling reason so as to justify a decision that an individual should not be deprived of his citizenship. We take into account the delay on the part of the Secretary of State and count it as a factor in favour of the Appellant in our assessment of proportionality. The Appellant, as noted above, arrived in the United Kingdom as a child and has lived here for over 21 years. He has developed a private and family life in the United Kingdom, including during the period of delay on the part of the Secretary of State when he may well have believed that the Secretary of State knew about his deception and decided not to take any action against him. He is well-settled and, according to his employer, a trustworthy and valued employee. His employers plainly wish to retain his services.

25. However, as the Court of Appeal noted in *Laci*, at [80], by reference to *Hysaj (Deprivation of Citizenship: Delay) Albania* [2020] UKUT 128 (IAC), there is a heavy weight to be placed upon the public interest in maintaining the integrity of the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship. That deprivation will cause disruption in day-to-day life is a consequence of the Appellant’s own actions. Delay on part of the Secretary of State and the Appellant’s early admission of deception, when considered in conjunction with all other matters, do not outweigh the public interest. Although the Appellant’s wife and children are entirely innocent, the public interest outweighs their interests. Looking at all the evidence in the round, we find that there is nothing sufficiently compelling so as to tip the balance in favour of

the Appellant retaining the benefits of citizenship that he fraudulently secured. The interference with the private and family life rights of the Appellant and his family members is justified and proportionate.

Conclusion

26. For all these reasons, that the Secretary of State's decision is lawful and compatible with Article 8.

Decision

27. The First-tier Tribunal's decision having being set aside in part, we re-make the decision on appeal by dismissing it on all grounds.

Anonymity

28. In our judgment, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the overriding objective, an anonymity order is not justified in the circumstances of this case. We make no order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Fee award

29. We make no fee award in the light of our decision to dismiss the underlying appeal on all grounds.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 19 December 2023

ANNEX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000170
First-tier Tribunal No: DC/50119/2022

THE IMMIGRATION ACTS

Decision and Reasons Issued:

……

Before

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

KUJTIM SENJA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms Lucy Mair, Counsel, instructed by Paragon Law
For the Respondent Mr David Clarke, Senior Presenting Officer

Heard at Field House on 12 September 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Chohan ("Judge") promulgated on 5 December 2022. By that decision, the Judge dismissed the Appellant's appeal from the

Secretary of State's notice of her decision to make an order to deprive him of British citizenship.

Factual background

2. The Appellant is a citizen of Albania and was born on 7 May 1981.

3. The Appellant arrived in the United Kingdom on 2 August 2002. He stated that his name was Kujtim Hoxha and he was born on 15 May 1989. He pretended to be a citizen of Kosovo and made an asylum claim. The Secretary of State refused that claim on 20 January 2003 but granted exceptional leave to remain to him as an unaccompanied child until 20 January 2007. The Secretary of State granted him indefinite leave to remain on 14 February 2007. He was naturalised as a British citizen on 4 December 2008.

4. The Appellant's deception came to light when his wife made an application for entry clearance to the United Kingdom in 2014. The Kosovan authorities confirmed in writing that the Appellant was not registered as being born as claimed. The Secretary of State wrote to the Appellant so as to investigate his true identity in 2018. The Appellant, in response, accepted that he had previously used deception. The Secretary of State issued a notice of her decision to make an order to deprive him of British citizenship on 26 May 2022.

5. The Judge heard the Appellant's appeal from the Secretary of State's decision on 4 November 2022. The Appellant gave oral evidence and was cross-examined. He accepted using deception and giving false details to the Secretary of State. He advanced a claim based on Article 8 of the ECHR. He relied on the nature and circumstances of historical deception, the delay on part of the Secretary of State, his length of residence and ties to the United Kingdom and his relationship with his wife, Mrs Keti Metallari, and two children. Mrs Metallari, who is a citizen of Albania and was born on 4 August 1994, has limited leave to remain in the United Kingdom. The children are British citizens. The Judge found that the Secretary of State's decision was not incompatible with Article 8. The Judge promulgated his decision on 5 December 2022 and dismissed the appeal.

6. The Appellant was granted permission to appeal from the Judge's decision 28 February 2023.

Grounds of appeal

7. The Appellant pleaded three grounds of appeal. First, the Judge applied the wrong test. Second, the Judge failed to take into account material matters and took into account immaterial matters. Third, the Judge's assessment as to the children was flawed.

Submissions

8. We are grateful to Ms Mair, who appeared for the Appellant, and Mr Clarke, who appeared for the Secretary of State, for their assistance and able submissions.

9. Ms Mair developed the grounds of appeal in the reverse order. She submitted that there was no proper assessment by the Judge as to the best interest of the Appellant's children, and therefore his decision as to Article 8 was unsustainable. She further submitted that the Judge failed to take into account the fact that the deception on part of the Appellant was not directly material to the grant of British citizenship. She submitted that the Judge did not apply the guidance in *Sleiman (deprivation of citizenship; conduct)* [2017] UKUT 367 (IAC). She invited us to set aside the Judge's decision.

10. Mr Clarke resisted the Appellant's appeal. He acknowledged that the structure of the Judge's decision was less than perfect but submitted that the Appellant has not identified any exceptional circumstances. He submitted that the outcome of this appeal was inevitable. He invited us to uphold the Judge's decision.

Discussion

Grounds (1) and (2)

11. These two grounds essentially make the same point, namely, the admitted use of deception was not directly material to the decision to grant British citizenship and, therefore, on *Sleiman,* it is not open to the Secretary of State to make a deprivation decision. In our judgment, this point is misconceived. It is based on the false premise that the Secretary of State took her decision solely on the basis that the Appellant was dishonest in his asylum claim and that he would have been granted indefinite leave to remain and British citizenship in any event. It is, however, clear from the Secretary of State's decision that she took the view that the Appellant was dishonest in his application for naturalisation as a British citizen as to the question concerning his character. He ticked "No" to the question "Have you engaged in any other activities which might indicate that you may not be considered a person of good character". The answer was dishonest. The Appellant, in answering "No" to that question, deliberately concealed the earlier use of deception. The earlier use of deception was directly relevant to the question as to his character. In *Sleiman*, there was no issue as to the question relating to character and, therefore, it provides no assistance. We are not persuaded the Judge erred in law as contended in Grounds (1) and (2).

Ground (3)

12. It is well-settled, as the Supreme Court endorsed in *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 [2013] WLR 3690, at [10], that the best interests of a child are an integral part of the proportionality assessment under Article 8. In making that assessment, the best interests of a child must be a primary consideration. Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant. It is important to have a clear idea of a child's circumstances and of what is in a child's best interest before one asks oneself whether that interest is outweighed by the force of other considerations.

13. The Appellant, as noted above, has two British citizen children. The Judge, at [19], noted the existence of the two children but failed to give any meaningful consideration to their welfare. The Judge merely acknowledged that "there will be a process of adjustment and difficulty" following deprivation of the Appellant's citizenship and added that "it would be in the best interests of the minor children for the status quo to be maintained". There is simply nothing in the Judge's decision that shows that he treated the best interests of the children as a primary consideration. In any event, it is not clear at all as to what the Judge meant by "status quo". The current position is that the Appellant is a British citizen and the Secretary of State is seeking to deprive him of that citizenship. It is difficult to see how this lack of certainty relating to the Appellant's citizenship can be in the best interest of the children. In principle, proceedings involving children should be dealt with in a timely way as it minimises the uncertainty that they may experience. If the Judge meant that it is in the best interest of the children that the Appellant retains the British citizenship, he failed to explain how other considerations outweigh that interest.

14. The Appellant argued before the Judge that the deprivation of the British citizenship would have a grave impact of the children. He would not be able to work in order to support his family and maintain mortgage for the family home. He is the sole breadwinner and his wife has limited leave to remain with no recourse to public funds. These are all matters that required careful analysis and due weight. The Judge has simply failed to engage with these matters. The Judge's reasoning does not show that he had a clear idea of the circumstances relating to the children and of what is in their best interest.

15. We are mindful that we should not rush to find an error of law in the Judge's decision merely because we might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out and we should exercise judicial restraint in appeals

based on inadequacy of reasons. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. In this instance, for the reason set out above, it is clear that the Judge's approach as to the children is legally flawed and, therefore, his ultimate conclusion cannot stand. We are satisfied that the Judge's decision is materially wrong in law.

Conclusion

16. For all these reasons, we find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. We set aside the Judge's decision to dismiss the appeal on Article 8 ECHR grounds. The Judge's conclusion that the Appellant obtained naturalisation by means of deception will stand, however.

17. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers and the guidance in *AEB v Secretary of State for the Home Department* [2022] EWCA Civ 1512 [2023] 4 WLR 12 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 46 (IAC), we retain the appeal for the purpose of re-making of the decision. This is not a case where the effect of the error made the Judge has been to deprive a party of a fair hearing or other opportunity for that party's case to be put to and considered below. The nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective, it is appropriate to retain the appeal.

Decision

18. The First-tier Tribunal's decision is set aside in part and the appeal is retained at the Upper Tribunal for re-making of the decision on Article 8 ECHR grounds only.

Directions for the resumed hearing

19. We give the following directions as to the future conduct of this appeal:

> (1) The appeal shall be listed for a resumed face-to-face hearing at Field House with a time estimate of three hours.
>
> (2) The Appellant, no less than 14 days before the resumed hearing, shall file and serve a composite appeal bundle in accordance with the Presidential Guidance Note, *Upper Tribunal Immigration and Asylum Chamber: Guidance Note on Ce-file and Electronic Bundles*, so to include:
>
> > (a) All documentary evidence relied upon by the Appellant before the First-tier Tribunal,

(b) All documentary evidence relied upon by the Secretary of State before the First-tier Tribunal, and

(c) Any application under Rule 15(2A) the Tribunal Procedure (Upper Tribunal) Rules 2008 to rely on evidence not before the First-tier Tribunal and any evidence to which such application relates.

(3) The Appellant, no less than 14 days before the resumed hearing, shall file a skeleton argument as to the re-making of the decision in this appeal.

(4) The Secretary of State, no less than 7 days before the resumed hearing, shall file and a serve skeleton argument as to the re-making of the decision in this appeal.

(5) The Appellant, no less than 3 days before the resumed hearing, shall file and serve, a composite authorities bundle in accordance with the Presidential Guidance Note, *Upper Tribunal Immigration and Asylum Chamber: Guidance Note on Ce-file and Electronic Bundles*.

20. These directions must be followed unless varied, substituted or supplemented by further directions. The parties are reminded that any failure to comply with these directions may result in the making of an adverse order pursuant to the power under Rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Anonymity

21. In our judgment, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the overriding objective, an anonymity order is not justified in the circumstances of this case. We make no order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Any application for an anonymity order is to be made in the appellant's skeleton argument for the resumed hearing.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 6 October 2023