IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000231

First-tier Tribunal No: DC/50069/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5th of October 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE KEITH

Between

MITAT MUJA
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Collins, instructed by Sentinel Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 28 September 2023

DECISION AND REASONS

1. This is the re-making of the decision in the appellant's appeal, following the setting aside, in a decision of 17 June 2023, of the decision of First-tier Tribunal Symes in which he allowed the appellant's appeal against the decision to deprive him of his British nationality under section 40(3) of the British Nationality Act 1981. The decision of 17 June 2023 is annexed to this decision and provides a detailed account of the appellant's history which is summarised below.

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2. The appellant is currently a British citizen. He previously claimed to be a Serbian national born in Shillove, Kosovo, on 20 October 1984, but is in fact an Albanian national born on 1 February 1980 in Kukes, Albania. He entered the UK illegally on 17 February 2002 and claimed asylum in the identity of Mitat Muja, born on 20 October 1984 in Kosovo. He was granted indefinite leave to remain as a refugee on 20 October 2002 following a successful appeal against the refusal of his claim and was naturalised as a British citizen on 13 March 2009 in the same identity. He was issued with a British passport on 5 August 2013. His wife, whom he had married on 11 July 2010 in Albania, was granted leave to enter the UK to join him as his spouse, in 2013. In 2013 the appellant applied for a passport for his daughter and, in support of that application, provided his Albanian birth certificate and family certificate which showed his identity to be Mitat Muja born on 1 February 1980 in Kukes, Albania. It was that application which led to the appellant being referred for deprivation in 2014. An investigation letter was issued to him on 27 January 2021 advising him that the Secretary of State was considering depriving him of his British citizenship on the basis of fraud. He was invited to respond to the allegation which he did, on 8 February 2021, providing an explanation and stating that he had a wife and three children in the UK and that he had been living in the UK for 19 years as a law-abiding citizen.

3. The respondent, in a decision dated 11 March 2021, did not accept the appellant's explanation as a justification for the deception and concluded that his British citizenship had been obtained fraudulently and that he should be deprived of that citizenship under section 40(3) of the British Nationality Act 1981. The respondent considered that, as an adult, the appellant was complicit in the deception and that he would not have been successful in his application for naturalisation if it was known that he had concealed material facts in his application. The respondent considered that the appellant would not have been granted ILR as a Kosovan refugee if the true facts were known. The respondent concluded that the appellant's grant of British citizenship had been obtained as a result of fraud and that it was reasonable and proportionate to deprive him of his British citizenship.

4. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981. For the appeal he submitted a witness statement in which he claimed that when his daughter was issued with her first British passport in 2013 he went to the passport office to inform them that he wanted to correct the details on his own British passport but was advised that he could continue to use his passport and could keep it. He stated that he had never intended to mislead the authorities and that he feared being forced to leave the UK and to leave his family if he was deprived of his citizenship. He was worried about the emotional impact on his children if he had to leave.

5. The appellant's appeal was heard on 6 December 2022 by First-tier Tribunal Judge Symes. It was accepted before the judge that the relevant condition precedent for deprivation had been established. It was argued on behalf of the appellant, in terms of the guidance in Begum, R. (on the application of) v Special Immigration Appeals Commission & Anor [2021] UKSC 7, that the respondent's decision was unlawful on public law grounds for the reason that, when exercising her discretion, the respondent had failed to take account of relevant considerations, namely the fact that the appellant had come clean by providing his correct bio-data in his wife's entry clearance application, and the unjustified delay from the time of the referral in 2014. The judge accepted that the appellant had sought to draw attention to the true facts to the respondent's officials in 2013, although he did not accept that there was a public law error in that regard. He concluded that the refusal letter represented a

reasonable response to the appellant's reply to the notice of intention to deprive him of his citizenship. The judge went on to consider Article 8 and concluded that there was an unexplained delay, as in Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 which was relevant to the assessment of proportionality. The judge considered that the emotional impact on the children and the unexplained delay carried significant weight on the appellant's side of the scales and he concluded that the respondent's deprivation decision was disproportionate. He accordingly allowed the appeal.

6. The respondent sought, and was granted, permission to appeal to the Upper Tribunal.

7. Following a hearing before the Upper Tribunal on 25 April 2023, Judge Symes' decision was set aside to a limited extent. As can be seen from the Upper Tribunal's decision of 17 June 2023, annexed to this decision, the Upper Tribunal found that Judge Symes was entitled to conclude that the respondent had not acted unlawfully or unreasonably in the exercise of her discretion, and upheld his decision in that respect. However the Tribunal concluded that the judge had erred in law in his Article 8 proportionality assessment, in particular in his findings on the respondent's delay in initiating deportation proceedings, in the context of the decision in Laci, and in his findings on the impact of the deprivation of the appellant's British citizenship upon his children. The Tribunal directed that the decision be re-made in relation to those matters at a resumed hearing, whereby consideration would be given to the appellant's most current circumstances when assessing proportionality under Article 8.

8. The matter then came before us for a resumed hearing on 28 September 2023. The appellant appeared at the hearing with Mr Collins but did not give oral evidence before us. Mr Collins confirmed that there was no further evidence and that he would simply be making submissions. Both he and Ms Everett made submissions before us.

Discussion

9. Mr Collins' submissions were essentially the same as those made at the error of law hearing, although with additional reference to the recent case of Chimi v The Secretary of State for the Home Department (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115. He relied upon the respondent's period of inaction in initiating deprivation proceedings after becoming aware of the appellant's deception and referred to [16] of the respondent's deprivation decision whereby it was accepted that the appellant's deception had become known to her in 2014. He submitted that that was relevant to the second question at head-note [1(b)] of Chimi at [1b)], as to whether the Secretary of State had materially erred in law when deciding to exercise her discretion to deprive the appellant of his British citizenship. He submitted that the Secretary of State had erred by failing to take into account what she had said at [16] of her refusal decision. However, as Mr Collins readily acknowledged, that argument had been rejected by the Upper Tribunal in the decision of 17 June 2023 and we simply reiterate the findings made at [16] of that decision.

10. Mr Collins focussed on the Article 8 proportionality assessment and the weight to be accorded to the respondent's inaction, as considered in Laci. He submitted that the circumstances in the appellant's case were similar to those in Laci in that the Secretary of State was aware of the appellant's deception in 2014 yet decided to do nothing for seven years. He submitted that that was sufficient to amount to the "something more" referred to in Ciceri (deprivation of citizenship appeals: principles) Albania [2021] UKUT 238, when considering Underhill LJ's observations about delay in

Laci. We have had regard to the discussion in Ciceri in that respect, which we set out below:

> "25. So far as concerns disruption to day-to-day life caused by loss of citizenship, Underhill LJ at paragraph 80 approved the finding of the Upper Tribunal in paragraph 110 of Hysaj, which reads:-
>
> > "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 and without more, such as the loss of rights previously enjoyed, cannot possibly tip the proportionality balance in favour of his retaining the benefits of citizenship that he fraudulently secured."
>
> 26. In approving that passage, Underhill LJ pointed out that it was "important to note the 'without more'" in paragraph 110 of Hysaj. He held that "where there is something more (as, here, the Secretary of State's prolonged and unexplained delay/inaction), the problems that may arise in the limbo period may properly carry weight in the overall assessment".

11. It is clear to us, however, that the "prolonged and unexplained delay/inaction" referred to at [80] in Laci involved different and specific circumstances, and that was indeed made clear by Underhill LJ when he said at [51] that:

> "It is important to appreciate that this is not simply a case where the Secretary of State could have taken action but did not do so. Rather, it is a case where she started to take action and invited representations, but then, having received those representations, did nothing for over nine years. Indeed it goes beyond mere inaction…"

12. That was the point made by the Upper Tribunal in the decision of 17 June 2023 at [19] when rejecting Mr Collins' argument. The submissions Mr Collins made before us today are essentially the same and we remain of the same view as previously. This was not a case of delay or inaction by the respondent in the sense discussed in Laci and, as Ms Everett submitted, neither was this a case of the appellant 'coming clean' to the Home Office in the sense considered in Laci, as the Upper Tribunal found at [18]. There is nothing in Laci to support the case being made by the appellant and by Mr Collins in regard to the question of delay.

13. In any event, it is relevant to note that the issue of delay was found by Judge Symes to have tipped the balance in the Article 8 proportionality assessment particularly because of the impact it had on the appellant's children. The Upper Tribunal found that Judge Symes had erred in that respect because he had failed to give reasons, by reference to any evidence, as to how or why the respondent's delay in initiating deprivation proceedings, or in depriving the appellant of his British citizenship would adversely impact upon his children. He simply relied upon the appellant's unsupported claim that there would be an emotional impact upon them. It was precisely on that basis that the Tribunal agreed not to re-make the decision at that time, but to provide the appellant with an opportunity to produce relevant evidence at a further hearing. Yet no further evidence has been produced and the appellant, although present at the hearing, did not give oral evidence before us. Ms Everett confirmed that there was no intention to deprive the appellant's children of their British citizenship and the only issue, therefore, was the impact of the appellant's own loss of British citizenship on him and his family. In the absence of any evidence to show that there would be such an adverse impact, either through the delay in the

deprivation proceedings or in the deprivation of citizenship itself, the appellant has failed to show how that carried any weight in the proportionality assessment.

14. The appellant has produced no relevant evidence of any other factors weighing against deprivation and indeed the submissions made by Mr Collins relied only upon the issue of delay. As Mr Collins acknowledged, the respondent has specified, in the deprivation decision, the anticipated period of 'limbo' between the appellant being deprived of his British citizenship and a decision being made on his immigration status, and that period is not of lengthy duration. The appellant has provided no evidence to show that the consequences of the loss of his British citizenship would have any material impact on him, and certainly nothing that would outweigh the public interest in depriving him of a citizenship obtained through deception and to which he was not entitled. In the circumstances the appellant has failed to show that depriving him of his British citizenship would be disproportionate and in breach of his Article 8 rights.

Notice of Decision

15. The decision of the First-tier Tribunal having been set aside, the decision is re-made by dismissing the appellant's appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 September 2023

Error of Law decision issued on 17 June 2023

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000231

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Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MITAT MUJA
(no anonymity order made)

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr J Collins, instructed by Sentinel Solicitors

Heard at Field House on 25 April 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department (SSHD) against the decision of the First-tier Tribunal allowing the appeal of Mr Muja against the decision to deprive him of his British nationality under section 40(3) of the British Nationality Act 1981.

2. For the purposes of this decision, we shall hereinafter refer to the SSHD as the respondent and Mr Muja as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is currently a British citizen, having previously claimed to be a Serbian national born in Shillove, Kosovo, on 20 October 1984. As is now known, he was in fact an Albanian national, born on 1 February 1980 in Kukes, Albania. He entered the UK illegally on 17 February 2002 and claimed asylum three days later in the identity of Mitat Muja, born on 20 October 1984 in Kosovo. He claimed that his father was Albanian and his mother Serbian, that his father was murdered by Albanians in February 2002 because he had spied for the Serbians during the war and had married a Serbian woman, and that his life was in danger from the Albanian people. His claim was refused as lacking in credibility but his appeal against that decision was allowed and he was granted indefinite leave to remain as a refugee on 20 October 2002.

4. On 11 December 2002 the appellant applied for a travel document, confirming his identity as Mitat Muja, born on 20 October 1984 in Serbia, confirming that the information he had given was true, and he used the travel document to travel to Albania four times over the subsequent five year period. On 8 December 2008 the appellant applied 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 granted, and the appellant was granted British citizenship on 13 March 2009. He was issued with a British passport on 5 August 2013. In the meantime, on 11 July 2010, the appellant married his wife, Shyrete Muja, in Albania and applied for her to join him in the UK. She was granted leave to enter the UK in 2013.

5. In 2013 the appellant applied for a passport for his daughter and, in support of that application, provided his Albanian birth certificate and family certificate which showed his identity to be Mitat Muja born on 1 February 1980 in Kukes, Albania. It was that application which led to the appellant being referred for deprivation in 2014. An investigation letter was issued to him on 27 January 2021 advising him that the Secretary of State was considering depriving him of his British citizenship on the basis of fraud. He was invited to respond to the allegation which he did, on 8 February 2021, admitting to having used a false identity and claiming that he had fled Albania in July 2002 because his life was in danger and that he had been given strict instructions by the agents who brought him to the UK to say that he was under 18 and that he was from Kosovo. He stated that he had a wife and three children in the UK and that he had been living in the UK for 19 years as a law-abiding citizen.

6. The respondent, in a decision dated 11 March 2021, did not accept the appellant’s explanation as a justification for the deception and concluded that his British citizenship had been obtained fraudulently and that he should be deprived of that citizenship under section 40(3) of the British Nationality Act 1981. The respondent considered that, as an adult, the appellant was complicit in the deception and that he would not have been successful in his application for naturalisation if it was known that he had concealed material facts in his application. The respondent considered that the appellant would not have been granted ILR as a Kosovan refugee if the true facts were known. The respondent concluded that the appellant’s grant of British

citizenship had been obtained as a result of fraud and that it was reasonable and proportionate to deprive him of his British citizenship.

7. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981. For the appeal he submitted a witness statement in which he repeated his claim to have acted on the instructions of agents who had threatened him and put him under pressure. He claimed that he had feared being detained and deported if he later gave his correct details to the Home Office and he feared that the agents would not be happy with him. He claimed that when his daughter was issued with her first British passport in 2013 he went to the passport office to inform them that he wanted to correct the details on his own British passport but was advised that he could continue to use his passport and could keep it. The appellant stated that he had never intended to mislead the authorities and that he feared being forced to leave the UK and to leave his family if he was deprived of his citizenship. He was worried about the emotional impact on his children if he had to leave.

8. The appellant's appeal was heard on 6 December 2022 by First-tier Tribunal Judge Symes. It was accepted before the judge that the relevant condition precedent for deprivation had been established. It was argued on behalf of the appellant, in terms of the guidance in Begum, R. (on the application of) v Special Immigration Appeals Commission & Anor [2021] UKSC 7, that the respondent's decision was unlawful on public law grounds for the reason that, when exercising her discretion, the respondent had failed to take account of relevant considerations, namely the fact that the appellant had come clean by providing his correct bio-data in his wife's entry clearance application, and considering the unjustified delay from the time of the referral in 2014. The judge did not accept the appellant's claim to have maintained his deception through fear of the agents, but he had concerns about the appellant's claim to have sought to draw attention to the true facts to the respondent's officials in 2013, which the judge accepted. However he did not accept that there was a public law error in that regard, noting that that claim had only been made by the appellant in his witness statement for the appeal and had not formed part of his evidence prior to the respondent's decision. The judge concluded that the refusal letter represented a reasonable response to the appellant's reply to the notice of intention to deprive him of his citizenship.

9. The judge went on to consider Article 8 and considered the appellant's reliance upon the delay in the respondent initiating deprivation action in January 2021 following the matter being referred from the passport office in 2014. He noted that there was no suggestion in the deprivation decision that the delay was due to the respondent initially treating the appellant's application as void, a matter which had been found in Ciceri (deprivation of citizenship appeals: principles) Albania [2021] UKUT 238 not to count against the public interest, although he accepted that the appellant's case had presumably been put on hold alongside all others until the Secretary of State had reflected on the decision in Hysaj. He considered that there was an unexplained delay, as in Laci v Secretary of State for the Home Department [2021] EWCA Civ 769, and that the respondent, in their review prior to the hearing, had wrongly considered the objectionable period of delay to be from 2021 rather than up to 2021. The judge considered that the whole period of delay in progressing the 2014 referral was relevant to the assessment of proportionality, in particular from the termination of the hold on cases due to the Hysaj & Ors, R (on the application of) v Secretary of State for the Home Department [2017] UKSC 82 litigation. He considered that the emotional impact on the children and the unexplained delay carried significant weight on the appellant's side of the scales and he concluded that the

respondent's deprivation decision was disproportionate. He accordingly allowed the appeal.

10. Permission to appeal was sought by the respondent on the following grounds. Firstly, that the judge had made a mistake of fact when considering the appellant's disclosure of his true identity since there had not been a clean and direct disclosure but rather an indirect disclosure to another governmental department. Secondly, that the judge had erred by considering the appellant's case to be comparable to that of Laci. Thirdly, that the judge's public interest consideration was undermined by his incorrect interpretation of the Secretary of State's position with regard to the appellant's children and had reversed the burden of proof in regard to the impact on the children.

11. Permission was granted by the First-tier Tribunal.

12. In a Rule 24 response, the appellant opposed the appeal, asserting that the respondent's grounds were confused and confusing and were simply a disagreement with the judge's decision. It was asserted that the appellant's position was similar to Laci given the extraordinarily long period of inaction by the respondent, and that the judge had not erred in allowing the appeal for the reasons given. Further, the decision to allow the appeal should be upheld in light of Begum, given the egregious and unreasonable delay and given the respondent's failure to consider the delay when exercising her discretion.

13. The matter then came before us for a hearing and both parties made submissions.

14. Mr Clarke submitted that the judge had misrepresented the nature of the disclosure and that the appellant had never supplied any evidence to UKVI admitting to his true identity. The appellant's case was different to Laci as in that case it was made clear that it was not just the delay which was of particular relevance, but rather the diminishing sense of impermanence experienced by Mr Laci after having been informed by the Secretary of State that deprivation action was being considered. That was a matter which the judge had failed to consider. The judge had misunderstood what was said in the relevant authorities, namely Laci and EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41 about the question of delay. As for the third ground, Mr Clarke submitted that the judge had effectively reversed the burden of proof when considering the impact of deprivation on the appellant's children. The burden of proof was upon the appellant to show such an impact but he had never made any such assertion. The judge had failed to consider that and had failed to consider that the appellant had provided no evidence of the impact upon him of deprivation.

15. Mr Collins submitted that the judge was wrong to find no public error of law in the respondent's decision, in the terms set out in Begum, given that the respondent had failed, at [16] and [17] of her decision, to consider the delay when carrying out the exercise of her discretion, and that the appeal should have been allowed on that basis. However he argued in the alternative that the judge was entitled to allow the appeal on the basis that he did. He submitted that the respondent's grounds of appeal were simply a reasons challenge and a disagreement with the judge's decision. It was clear why the judge made the decision that he did and his reasoning was adequate. The challenge to the judge's findings in relation to Laci was too simplistic. It was the respondent, and not the judge, who had misunderstood the facts. Unlike the circumstances in cases such as Ciceri where the appellant's lie about his identity came

out after making an entry clearance application, it was a fact in this case that the appellant's case was specifically referred to the relevant governmental department for deprivation to be considered and therefore the respondent was fully aware of the deception in 2014 and chose to do nothing about it until 2021, during which time the appellant got on with his life. There was therefore a period of seven years of inaction. There was no suggestion by the respondent in this case that no action had been taken against the appellant because of the Hysaj litigation. There was no explanation for the delay. The weight to be given to the delay was a matter for the judge. There was nothing in the third ground and the judge had clearly not reversed the burden of proof with regard to the impact of deprivation on the children.

16. In response, Mr Clarke submitted that there was no public law error in the respondent's decision in regard to the delay as the respondent's policy specifically stated that there was no time limit to initiating deprivation action. Mr Clarke reiterated the points he made previously about Laci and the question of delay.

Discussion

17. We shall deal firstly with Mr Collins' submission that Judge Symes erred by finding no public law error in the respondent's decision and that he ought to have done so in light of the absence of any explanation by the respondent for the delay in taking deprivation action. We do not find any merit in that submission. We note that the line of authorities addressing the approach to deprivation cases, including the post-Begum case of Ciceri, made it clear that the matter of delay was potentially relevant in the context of an Article 8 proportionality assessment, whereas there was no suggestion that it could potentially form the basis of a public law challenge, either in the context relied upon Mr Collins or otherwise. We 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 specified 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. Further, as Judge Symes observed at [21], the respondent's deprivation decision provided a response to the appellant's own letter which did not raise any issues of unfairness or prejudice as a result of the delay. In the circumstances we consider that Judge Symes 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 adopted in Ciceri.

18. We therefore turn to the respondent's grounds of appeal and Mr Collins' response to the challenges in the grounds. It is the respondent's case that Judge Symes misunderstood the point in Laci about delay, whereas Mr Collins asserts that it is in fact the respondent who misunderstood the position. It seems to us, however, that there was a misunderstanding on both sides. That is relevant to the first two grounds.

19. In regard to the first ground, Mr Collins asserts that the respondent is wrong to consider that this case involved disclosure simply by way of the documentation provided in support of a passport application. It was wrong, he submits, given that the judge, at [28] with reference to [20], had accepted the appellant's claim made in his witness statement that he had sought to draw attention to the true facts to the respondent's officials in 2013. That appears to be a reflection of the appellant's evidence at [12] of his witness statement where he stated that when his daughter obtained her British passport in 2013 he went to the passport office to inform them that he wished to correct the details in his British passport. We agree with Mr Collins that the respondent does not appear to have appreciated that the judge was making

his findings on that basis. However, having said that, we do not agree with Mr Collins that the judge's finding at [28], that the appellant attempted to "come clean" in 2013 by approaching two officials in the passport office, was equivalent to a finding that he had disclosed the full circumstances and truth about his identity, and had done so to the relevant department of the Home Office and thus "made a clean breast of his deception" in the terms expressed in Laci at [6]. That was what the respondent was asserting in the third bullet point in ground one and to that extent we find merit in the first ground since that was not a matter considered, or adequately considered, by the judge. We do not agree with Mr Collins that that is a matter of a disagreement with the judge's decision rather than an error of law. On the contrary it constitutes a failure properly to consider and apply relevant jurisprudence and a failure to consider material matters.

20. It was Mr Collins' submission that the matter of a clean disclosure by the appellant was irrelevant in any event, and that the crucial issue was that the SSHD became aware of the deception in 2014 when the appellant's case was referred to her by another governmental department, presumably the passport office, but took no action from that time until 2021. It was his submission that it was the lengthy period of inaction by the respondent following her awareness of the deception, which was the relevant issue in Laci, as the judge properly found, and that the fact that the SSHD, in Laci, had put the appellant on notice of the fraud allegation, was not the point. He submitted that the respondent, in her second ground of appeal, had therefore misunderstood the decision in Laci. However we agree with Mr Clarke that that was a relevant matter considered by the Court of Appeal in Laci, as is apparent at [51] of the judgment, where the Court specifically referred to the significance of the SSHD having started to take action and invited representations from the appellant but then did nothing for over nine years, and at [77] where the Court considered that the strength of Mr Laci's case 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. That was precisely the point being made in the respondent's review at [23]. However, it seems from [25] of the judge's decision that he appears to have misunderstood that. Accordingly, we are in agreement with Mr Clarke that the judge failed to appreciate, or at least to engage with, the apparent distinguishing features of the appellant's case in Laci. We do not agree with Mr Collins that this was a matter of an over- simplistic comparison by the respondent of the facts in Laci and the facts in this appellant's case and we reject his submission that the respondent's challenge is simply a disagreement with the weight the judge attributed to the delay, as the Court of Appeal found to be the case in Laci (at [81]). On the contrary we consider that it is again a matter of the proper engagement with, and application of, relevant jurisprudence to the facts of the appellant's case.

21. We also find merit in the challenge in the third ground of appeal. We agree with the respondent that the judge appears to have taken the wording at [32] of the deprivation decision as a concession by the respondent as to the emotional impact of deprivation on the appellant's children, rather than considering whether there was any evidence to support such a conclusion and providing reasons for such a conclusion. Further, we agree with Mr Clarke that the judge's findings on the impact of the deprivation of the appellant's British citizenship does not appear to be founded upon any evidence from the appellant other than by reference in his witness statement to the emotional impact and disruption to their lives as a result of his removal. Yet the prospect of removal was not a relevant consideration, having never been suggested as a likely outcome by the respondent. We therefore agree with Mr Clarke that the judge's proportionality assessment was flawed.

22. For all of these reasons we find that Judge Symes' decision contains material errors of law to the extent stated and cannot stand. We therefore set it aside, albeit preserving his decision on the public law challenge. The SSHD's appeal is accordingly allowed.

Disposal

23. We enquired of the parties whether there was any reason why the decision in the appeal could not simply be re-made on the evidence and information already before us without a further hearing given that the main issue, the respondent's delay in initiating deprivation proceedings, was a matter of legal analysis. We were, however, persuaded by Mr Collins, with no objection from Mr Clarke, that a further hearing would be appropriate in order to consider the human rights issue and proportionality assessment on the basis of the appellant's most current circumstances.

24. The decision will therefore be re-made at a resumed hearing on a date to be notified to the parties. Any further evidence upon which the parties wish to rely is to be filed with this Tribunal and served on the other party no later than 7 days before the hearing.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 April 2023