



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-001877

First-tier Tribunal No: DC/50157/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 11<sup>th</sup> of October 2023**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**LEONARD VELIA**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**(NO ANONYMITY ORDER MADE)**

**Representation:**

For the Appellant:

Mr T. Wilding, instructed by A J Jones Solicitors

For the Respondent:

Ms A. Ahmed, Senior Home Office Presenting Officer

**Heard at Field House on 05 July 2023**

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 12 July 2022 to deprive him of British citizenship with reference to section 40(3) British Nationality Act 1981 ('BNA 1981') on the ground that the appellant had obtained British citizenship by means of fraud, false representation, or concealment of a material fact. The appellant appealed under section 40A(1) BNA 1981.
2. First-tier Tribunal Judge L.K. Gibbs ('the judge') dismissed the appeal in a decision sent on 10 May 2023. The judge noted that the appellant accepted that he made a protection claim on 18 April 2000 in the name of Leonard Veliaj, born on 07 August 1986, and claimed to be from Kosovo. In fact, he is Leonard Velia, born on 15 August 1985, and he is from Albania.

3. The judge recorded that a possible deception first came to the respondent's notice on 21 December 2015. No action was pursued until 16 March 2022 when a letter was sent to the appellant. In correspondence dated 08 June 2022 the appellant's legal representatives admitted that the original details were not correct and confirmed the appellant's real identity [3].
4. The judge went on to record the legal arguments put forward by the appellant's legal representative. It was argued that the Supreme Court decision in *R (on the application of Begum) v Special Immigration Appeals Commission and Others* [2021] UKSC 7, [2021] 2 WLR 556 did not apply to appeals against decisions made under section 40(3) BNA 1981 and that the Upper Tribunal decision in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 238 (IAC) was wrongly decided [7]. The judge was not persuaded by the argument. She concluded that the wording in section 40(2) and section 40(3) was sufficiently similar for the same principles to apply [9].
5. The judge made her findings with reference to the structured approach suggested in *Ciceri*. She began by considering whether there was any error in the respondent's approach to the condition precedent with reference to administrative law principles. The judge rejected the appellant's argument that the false identity put forward by the appellant did not have a direct bearing on the grant of citizenship. It was argued that the appellant was granted Exceptional Leave to Remain ('ELR') because he was a minor (even with reference to his genuine date of birth) [12]. The judge found that the appellant had failed to show that the grant of ELR was based solely on his age [14]. She went on to note that the appellant continued the deception when he applied for Indefinite Leave to Remain ('ILR') and for naturalisation [15]. For these reasons the judge found that the respondent's decision relating to the condition precedent was 'not susceptible to challenge' [16].
6. The judge turned to consider whether the reasonably foreseeable consequences of deprivation would amount to a breach of Article 8 of the European Convention. She rejected the argument that delay had any bearing on the proportionality of the decision. Although the respondent had concerns for some time, the appellant was not aware of those concerns until he was contacted by the respondent in March 2022. The decision was made shortly thereafter. Any delay did not have an impact on the appellant [18].
7. The judge considered the argument put forward by the appellant's representative about the length of time that a person might find themselves in 'limbo' waiting for a review of their position after they had been deprived of citizenship. She quoted the freedom of information request dated 31 August 2021, which the appellant relied on [19]. She also considered the assertion that the appellant and his family would not be entitled to benefits during any limbo period and that his wife could not work because she had recently given birth to their third child [20]. Having considered the recent guidance in *Muslija (deprivation: reasonably foreseeable consequences) Albania* [2022] UKUT 337 (IAC), the judge accepted that deprivation would engage the right to private life under Article 8(1) [21]. In conducting the balancing exercise under Article 8(2) she considered the inherent weight that must be given to the public interest in maintaining the integrity of British nationality law with reference to the decisions in *Begum* and *Laci v SSHD* [2021] EWCA Civ 769 [22]. She accepted that the family might face difficulty if they had to rearrange their

finances and working arrangements, but she did not consider that this factor was sufficiently compelling to outweigh the public interest in deprivation [23].

8. The appellant applied for permission to appeal to the Upper Tribunal on the following grounds:

- (i) The first ground submits that the decision in *Ciceri* was 'not correctly decided'. Although it acknowledged that the subsequent decision in *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 115 resolved some further issues, the Upper Tribunal did not address the fact that there is similar wording in section 40(2), 40(3) and 40(4). The appellant relied on a brief comment made by the Court of Appeal in *SSHD v P3* [2021] EWCA Civ 1642 [114], which did not form part of the main reasoning of the decision. In a previous decision in *SSHD v E3* [2019] EWCA Civ 2020 ('E3 (2019)'), the Court of Appeal suggested that it was for a court or tribunal to consider whether a person was stateless for the purpose of section 40(4) BNA 1981. No consideration was given to these decisions in *Ciceri*.
- (ii) The First-tier Tribunal failed to give adequate reasons for the finding that the false information provided by the appellant was material to the grant of citizenship.
- (iii) The First-tier Tribunal failed to give adequate reasons for the findings and/or failed to resolve a material matter in relation to the Article 8 findings.
- (iv) The First-tier Tribunal failed to make adequate findings as to whether the decision involved an error of law with reference to public law principles.

9. I have considered the First-tier Tribunal decision, the evidence that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my findings.

## **Decision and reasons**

### *Ground 1 - Ciceri 'wrongly decided'*

10. Appeals against decisions to deprive a person of British citizenship made under section 40 BNA 1981 can be brought in the Immigration and Asylum Chamber (IAC) under section 40A(1) or can be diverted by way of a certificate made under section 40A(2) to be heard under section 2B of the Special Immigration Appeals Commission Act 1997 ('SIAC 1997') in SIAC. Whether the appeal is brought in the IAC or in SIAC the underlying powers to deprive a person of citizenship are still contained in section 40 BNA 1981. Unlike appeals against other types of immigration decisions, neither the BNA 1981 nor section 2B SIAC 1997 specify the grounds upon which an appeal against a deprivation of citizenship decision can be brought: see also *Begum* at [40].

11. The scope of appeals against deprivation decisions made under section 40(2) (conducive to the public good) and section 40(3) (fraud) has been the subject of much recent judicial consideration. Following the decisions in *Begum*, *Ciceri*, and *Chimi*, a court or tribunal should consider whether the Secretary of State's decision relating to the condition precedent required under

section 40(3)(a)-(c) to deprive a person of citizenship is lawful with reference to the full range of administrative law principles before going on to consider any human rights issues.

12. A decision to deprive a person of citizenship is not a human rights decision. Nor is an appeal under section 40A(1) BNA 1981 or section 2B SIAC 1997 based directly on human rights grounds.<sup>1</sup> However, the Secretary of State's exercise of discretion under section 40(2) or section 40(3), denoted by the word 'may' rather than 'must', is subject to the duty under section 6 of the Human Rights Act 1998 ('the HRA 1998') not to act in a way which is incompatible with a right under the European Convention of Human Rights ('ECHR'). For this reason, a court or tribunal, which is also subject to the same duty, can consider for itself whether the reasonably foreseeable consequences of deprivation are likely to amount to a breach of a right under the ECHR. It is only in this limited way that human rights issues can be considered in an appeal against a decision to deprive a person of citizenship: see *Begum* [68]-[71].
13. In *Begum*, the Supreme Court took a general common law approach in circumstances where, unlike other types of immigration appeals, the scope and grounds of appeal against a deprivation decision is not defined in section 40A(1) BNA 1981 or section 2B SIAC 1997 [68].
14. In *Begum*, the decision to deprive was taken under section 40(2) BNA 1981 and the appeal was heard in SIAC. Of course, national security and other public interest issues are matters of importance within the particular focus of an appeal under section 2B SIAC 1997. However, it is possible for the respondent to decide to deprive a person of citizenship because it is conducive to the public good without certifying the decision under section 40A(2) if the decision was taken on information that the Secretary of State considers can be made public. In other words, appeals against decisions made under section 40(2) on conducive grounds can in principle be brought in the IAC or in SIAC.
15. It is this context that what is said in *Begum* about the general approach to appeals against deprivation decisions taken under section 40 BNA 1981 must be considered. It does not follow that the mere fact that *Begum* was heard in SIAC means that the same principles do not apply in appeals heard in the IAC. The wording of section 40(2) and section 40(3) both state that an order depriving a person of citizenship may be made 'if the Secretary of State is satisfied' of the relevant condition precedent.
16. Further support for the proposition that the principles outlined in *Begum* are equally applicable to decisions made under section 40(3) is the fact that the Supreme Court considered a range of decisions relating to deprivation of citizenship which included decisions made under section 40(3) e.g. *Deliallisi (British citizen: deprivation appeal: Scope)* [2013] UKUT 439 (IAC), *Pirzada (Deprivation of citizenship: general principles)* [2017] UKUT 196 (IAC), and *BA (deprivation of citizenship: appeals)* [2018] UKUT 85 (IAC). There is no

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<sup>1</sup> In *Begum*, the original appellant also had a right of appeal under section 2 SIAC 1997 against a separate decision to refuse a human rights claim in the context of an application for entry clearance, which could be brought directly on human rights grounds with reference to section 2(1) [35].

suggestion that the Supreme Court distinguished between the two sections when considering what general principles should apply in appeals relating to deprivation of citizenship, nor between appeals brought in SIAC or the IAC.

17. Mr Wilding relied on the Court of Appeal decision in *E3* (2019). What was said by the Court of Appeal about the burden of proof in that case pre-dated the Supreme Court decision in *Begum*, which set out a different approach to the scope of appeals against deprivation than had previously been understood. The case was reheard by the Court of Appeal in December 2022: see *E3 & Ors v SSHD* [2023] KB 149; [2023] EWCA Civ 26 (*'E3* (2023)').
18. It is important to note that the issue in *E3* was quite different to the one that must be determined in this appeal. In that case the Secretary of State made a decision to deprive the appellant of citizenship status, but later withdrew the order because it was realised that it would make the person stateless. The appeal related to a decision to deprive made under section 40(2) (conducive grounds), which is subject to the 'limitation' (as described by the Court of Appeal) contained in section 40(4) BNA 1981 relating to statelessness. The question before the court was whether withdrawal rendered the original order a nullity or not [2].
19. None of the issues raised in the grounds of appeal in *E3* (2023) required the Court of Appeal to determine the point now argued on behalf of this appellant in the context of a decision made under section 40(3) BNA 1981 [24]-[25]. The analysis undertaken at [30]-[42] provides an answer to a different question.
20. The limitation on the power to make a deprivation order contained in section 40(4) relates to the need to comply with international obligations under the UN Convention on the Reduction of Statelessness 1961. Since 28 July 2014 the provision contained in section 40(4) has also been subject to the qualification contained in section 40(4A), which is said to be consistent with the declaration made by the UK when ratifying the Convention (see [406] Explanatory Notes to Immigration Act 2014). The Court of Appeal in *E3* (2023) did not consider the combined effect of the two provisions relating to statelessness, which relate to a limitation or a decision where 'the Secretary of State is satisfied' of the relevant precedent fact.
21. The Court of Appeal in *E3* (2023) did not conduct a detailed analysis of the principles in *Begum* as it applied to section 40(2) or section 40(3) because it did not need to. Although I accept that some of the reasoning suggests that the court or tribunal should make a finding of fact on the evidence as to whether a person is likely to be rendered stateless [32], it is also clear that the Court of Appeal re-emphasised the significance of the wording that the Secretary of State 'is satisfied' of a certain state of affairs in assessing the lawfulness of the decision [31][39]. The only mention of *Begum* is at the end of [32] where the court appeared to limit the principles outlined by the Supreme Court in *Begum* to decisions made under section 40(2). This comment was placed in parenthesis and was no more than a general unreasoned statement. However, where a court or tribunal is considering section 40(4) it is inextricably linked by the statutory framework to section 40(2). The Court of Appeal did not conduct any further analysis of this link because it was not relevant to the question that needed to be determined in that case.

22. Mr Wilding also relied on a comment made by Laing LJ in *P3* at [114], where she stated that *Begum* was only authority for the proposition that, broadly, ‘SIAC should take a public law approach to challenges to the Secretary of State’s assessment of national security. It is not authority for any wider proposition.’ The comment was made under the heading ‘post-script’ and clearly did not form part of the main reasoning of the decision. The exact nature of concerns expressed by counsel in submissions is also unclear beyond Laing LJ noting that there were concerns about SIAC taking an unduly narrow approach to section 2B appeals in light of *Begum* [6][114]. In other words, the full context of Laing LJ’s comment is somewhat unclear.
23. The case involved a decision to deprive P3 of citizenship under section 40(2) BNA 1981 (‘Decision 1’), but the appeal before the court was against a decision to refuse an application for entry clearance (‘Decision 2’). The appeal was brought under section 2 SIAC 1997 and not section 2B (it is likely that the appeal against the deprivation decision was stayed pending the outcome of the appeal against the entry clearance decision). It is clear from the summary at [94] that none of the substantive issues in *P3* related to the argument being made by the appellant in this case about the applicability of *Begum* to section 40(3) BNA 1981. Indeed, the case related to the scope of an appeal under section 2 SIAC 1997, in which the grounds contained in section 84 of the Nationality, Immigration and Asylum Act 2002 (‘NIAA 2002’) are available. The key question for the court was the applicability of the principles outlined in *Begum* when SIAC is considering what weight to place on national security issues when conducting a human rights assessment in the context of an appeal against an entry clearance decision [95].
24. Decisions to deprive a person of citizenship status are derived from the powers contained in section 40 BNA 1981 and can be challenged on appeal in the IAC or in SIAC. The decisions in *E3* and *P3* were both considered in the context of appeals brought in SIAC. *E3* (2019) was decided pre-*Begum*, while *E3* (2023) did not analyse the applicability of *Begum* to section 40(4) or section 40(4A). The decision in *P3* focussed on the scope of a different appeal and did not consider the applicability of *Begum* to any other aspect of section 40. Laing LJ’s comments did not form part of the main reasoning and the full context was unclear. When analysed, neither decision considered the argument being put forward about the applicability of the general principles of black letter law outlined in *Begum* to the similar wording used across section 40(2)-(4A) BNA 1981 that the Secretary of State ‘is satisfied’ of a relevant fact.
25. The case law relating to the applicability of the general principles of law identified in *Begum* to other aspects of section 40 might require some clarification by the higher courts. Perhaps because the Court of Appeal was not called on to determine the issue, some of the statements made in recent decisions such as *E3* (2023), *U3 v SSHD* [2023] EWCA Civ 811, *Shyti v SSHD* [2023] EWCA Civ 770, and *Ahmed v SSHD* [2023] EWCA Civ 1087 to some extent muddy the waters and do not help to clarify the point argued in this case.
26. Although some of those cases post-date the hearing in the Upper Tribunal, I did not consider it necessary invite further submissions because they do not engage the argument put forward in this case. In *Shyti* [91]-[94] and *Ahmed* [57], the same constitution of the Court of Appeal in both cases specifically declined to make findings in relation to similar arguments because they were not material to the determination of the appeal before the court.

27. Similarly, the Court of Appeal decision in *U3* focussed on the distinction between the appeal and judicial review jurisdictions in SIAC and the scope of an appeal under section 2B SIAC 1997. In relation to that appeal, the grounds argued that SIAC had erred in applying a public law approach to 'the factual aspect' of the national security case [161][165]. The Court concluded that the findings in *Begum* relating to the scope of an appeal brought under section 2B was necessary to the decision i.e. it was authoritative. In the alternative, even if the findings did not form the main reasoning of the decision, they were 'highly persuasive' [166].
28. The Court of Appeal went on to analyse the scope of a section 2B appeal, and whether SIAC could make findings of fact, but within the specific context of a national security case, which involved a deprivation decision made under section 40(2) BNA 1981, and without any issues relating to statelessness arising under section 40(4) (*U3* had dual British/Moroccan nationality). Although the Court of Appeal found that the authorities did not appear to prevent SIAC from making factual findings in relation to decisions made under sections 40(2), 40(3), and 40(4) at [173] of the decision, it went on to conclude that this was in the context of the limitations set out in *Begum* [174]. This was consistent with the approach suggested by Lord Reed at [71] in *Begum*, which was endorsed by the Upper Tribunal in *Ciceri* and *Chimi* [61]-[66]. When the decision in *U3* is read as a whole, again, it is clear that the court was not tackling arguments about the applicability of *Begum* to other aspects of the statutory framework contained in section 40 BNA 1981 of the kind put forward in this appeal.
29. Most of the decisions outlined above post-date the First-tier Tribunal hearing in April 2023. What the First-tier Tribunal judge did have was clear guidance from a Presidential panel of the Upper Tribunal in *Ciceri* on how to approach deprivation appeals brought in the IAC following the decision in *Begum*. The decision in *Chimi* was published on 19 May 2023, not long after the First-tier Tribunal hearing. The Upper Tribunal reaffirmed and expanded upon the principles already outlined in *Ciceri*. I note that similar arguments attempting to distinguish between section 40(2) and 40(3) BNA 1981 were put to the Upper Tribunal in *Chimi* [45] but did not persuade the Upper Tribunal to depart from *Ciceri* [51].
30. Reported decisions of the Upper Tribunal are not authoritative unless they are starred. It is many years since a reported decision was starred. In practice, the system has fallen out of use. Nevertheless, a reported decision of a Presidential panel of the Upper Tribunal is highly persuasive and judicial comity requires that it should be followed unless there are good reasons to depart from the legal guidance. More to the point, the findings made by the Supreme Court in *Begum* did form part of the main reasoning of the decision, did not distinguish between appeals against decisions made under section 40(2) or 40(3), and are binding as a matter of judicial precedent on all lower courts.
31. For the reasons given above, I find that nothing said in *E3* (2023), *P3*, or *U3* is sufficiently clear or binding to depart from the analysis and guidance given in *Ciceri* about the applicability of *Begum* to appeals brought in the IAC against decisions taken under section 40(3) BNA 1981, let alone to find that it was wrongly decided. The fact that another Presidential panel of the Upper

Tribunal reinforced *Ciceri* lends further support to the current approach taken in appeals brought under section 40A(1) BNA 1981 in the IAC.

32. I conclude that the first ground fails to show that the First-tier Tribunal made an error on a point of law by following the guidance given in *Ciceri*. The judge considered whether the respondent's decision to deprive was within a range of reasonable responses the dishonest concealment of the material fact that the appellant had made a false asylum claim. Those findings took into account relevant facts and were open to the judge on the evidence.
33. The main plank of Mr Wildings submissions rested on the first ground of appeal. I can deal with the remaining grounds in shorter order.

*Ground 2 – materiality of dishonest concealment to the grant of citizenship*

34. In relation to the second ground of appeal, in assessing the lawfulness of the decision, the judge evaluated the uncontested evidence upon which the Secretary of State's decision was based and gave adequate reasons for her findings. It was not disputed that the appellant had used a false identity, nationality, and date of birth when he claimed asylum. It was argued that the original grant of Exceptional Leave to Remain (ELR) leading to eventual naturalisation was likely to be because of the appellant's young age (the appellant was a minor on his real or false age at the time). However, it was open to the judge to find that there was insufficient evidence to show that this was the reason for the initial grant of leave to remain.
35. In my assessment, the argument underpinning the second ground is misconceived. The fact that the appellant made a false asylum claim seeking to exploit the conflict in Kosovo, and continued the deception in further applications, including the application for naturalisation made when he was an adult, was a matter that was relevant to the statutory requirement under section 6(1) and Schedule 1(1)(b) BNA 1981 to be of 'good character'. The wording of section 40(3) itself makes clear that the Secretary of State may deprive a person of citizenship status if it 'was obtained by means of' (i) fraud; (ii) false representation; or (iii) concealment of a material fact. The first two means of obtaining naturalisation might involve positive actions, but the third is likely to involve a deliberate and dishonest omission. Given that it is statutory requirement that a person should be of good character to be naturalised as a British citizen, the fact that the appellant continued a deception that might have led to the application being refused, was relevant to the question of whether the appellant 'obtained' naturalisation by means of the concealment of a material fact.
36. It is not arguable that there was some form of break in a chain of causation leading to the grant of naturalisation merely because the appellant might have been granted an initial period of leave to remain as a minor. Subsequent applications made as an adult for ILR and naturalisation still required an assessment of good character. The appellant obtained citizenship by concealing a fact that was material to the Secretary of State's assessment of the statutory requirement to be of good character. The Secretary of State concluded that, but for the concealment of the material fact that the appellant had made a false asylum claim, he would not have been naturalised as a British citizen. It was open to the judge to find that the Secretary of State's conclusion was within a



range of reasonable responses to the uncontested evidence about the appellant's continued dishonesty once he reached adulthood.

### *Ground 3 – Article 8*

37. The third ground amounts to a disagreement with the judge's findings. The judge considered the relevant factors put forward on behalf of the appellant including the potential length of the limbo period, the financial impact that this might have on the family, and the fact that the appellant's wife had recently given birth to another child [19]-[20]. She weighed those circumstances against the significant weight that must be given to the public interest in deprivation in cases where a person has obtained British citizenship by fraud or dishonesty [21]-[22]. The judge's conclusion that, even though they might face some difficulties, it would be proportionate for the appellant and his wife to re-arrange their finances and working arrangements during any period of limbo was within a range of reasonable responses to the evidence. The evidence indicated that the appellant's wife had limited leave to remain without recourse to public funds but was able to work. Before having their last child, she worked as a cleaner. The Upper Tribunal in *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 128 (IAC) also pointed out that a family in dire need could apply for support under section 17 Children Act 1989 or apply for a change to the 'No Recourse to Public Funds' condition [109].

### *Ground 4 – failure to make finding relating to public law error*

38. The arguments put forward in the fourth ground are rather confused and unclear. Most of the point highlighted relate to the Article 8 issues, which are to be decided by the Tribunal without reference to public law principles.
39. In practice there would appear to be no point in challenging the exercise of discretion with reference to human rights grounds on administrative law principles because the tribunal can consider the substance of any human rights arguments and decide for itself whether the decision to deprive is unlawful under section 6 HRA 1998. Whether a decision is lawful on human rights grounds is likely to be determined by the substantive assessment undertaken by the tribunal rather than an assessment on administrative law principles. Pointing out a technical deficiency in the decision letter is unlikely to make any material difference to the appeal if a judge has concluded that the decision to deprive would not in any event be unlawful under section 6 of the HRA 1998. Conversely, if a judge concluded that deprivation would amount to a breach of human rights any technical deficiency in the decision letter would also be immaterial.
40. Having followed the structured approach outlined in *Ciceri*, the judge concluded that the respondent's decision to deprive the appellant of citizenship status was within a range of reasonable responses to the evidence. No other arguments appear to have been put forward that might have been relevant to the exercise of discretion, save in relation to human rights issues, which were evaluated and decided by the judge.

### **Notice of Decision**

The First-tier Tribunal decision did not involve the making of an error of law

**M.Canavan**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
05 October 2023