



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005161

First-Tier Tribunal No: DC/50291/2021
LD/00033/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30th May 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

RAMIZ DIDA
(aka RAMIZ MUSTAFA)
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: David Jones, instructed by Direct Public Access
For the Respondent: Julie Isherwood, Senior Presenting Officer

Heard at Field House on 20 May 2024

DECISION AND REASONS

1. This appeal comes before me following an earlier hearing before a different constitution of the Upper Tribunal. By the decision which followed that hearing, Dove J and UTJ Mandalia ("the panel") ordered that the decision of the First-Tier Tribunal (Judge Hawden-Beal) would be set aside and that the decision on the appeal would be remade in the Upper Tribunal. The panel also ordered that the parties should agree a schedule of the findings from the First-tier Tribunal which were to be preserved for the purpose of the remaking hearing.
2. The Principal Resident Judge made a transfer order and the matter was listed to be heard today before a panel comprising myself and Deputy Upper Tribunal Judge Symes. At the start of the hearing, Mr Jones very properly drew to our attention the fact that he and Judge Symes are directors of a limited company called HJT Training. That caused the respondent (represented, at that stage, by Ms Nolan) to invite Judge Symes to recuse himself from the proceedings. We rose

to consider that recusal application and, having done so, and having reminded ourselves of the authorities including Locabail UK Ltd v Bayfield Properties Ltd & Anor [1999] EWCA Civ 3004; [2000] QB 451, we decided that the proper course was for Judge Symes to recuse himself. I therefore heard the case alone, and Judge Symes played no part in this decision.

3. The recusal application was not the only preliminary difficulty with the hearing. The Secretary of State was due to be represented by Ms Everett this morning but she was taken ill on the way to Field House and it was Ms Nolan who initially appeared before me, in order to explain the absence of Ms Everett and to ask for time whilst a replacement Senior Presenting Officer was located.
4. Mr Jones obviously raised no objection to that course and Ms Isherwood was duly located as a replacement. Ms Isherwood asked for time to consider the papers. I was naturally prepared to give her time in which to do so. I raised with her (as I had with Ms Nolan) my provisional view on the second question posed by Chimi v SSHD [2023] UKUT 115 (IAC); [2023] Imm AR 1071: "Did the Secretary of State materially err in law when she decided to exercise her discretion to deprive the appellant of British citizenship?". It was my provisional view that the preservation of the FtT's finding at [70] was dispositive of that question. In that paragraph, the FtT had rejected the Secretary of State's contention in the decision under challenge that the operative delay in this case had been from 2014 onwards. The judge found in [70] that the respondent had known from 2005 that the appellant was an Albanian national and that the delay had actually been from that point until the deprivation proceedings commencing in October 2021. It seemed to me, provisionally, that the basis upon which the respondent had considered whether to deprive the appellant of his citizenship was based on a misunderstanding of the facts, and that that amounted to a public law error which required the appeal to be allowed.
5. I am extremely grateful to Ms Isherwood for what followed. She was able in the time that I allowed her to read the papers and to take instructions on my provisional view. When the matter was called on, she indicated that she accepted on behalf of the Secretary of State that the decision was indeed vitiated by public law error for that reason, and that the appeal fell to be allowed. She accepted that the decision would have to be retaken by the Secretary of State on the correct footing.
6. Ms Isherwood invited me to note, however, that two important concessions had been made by Mr Jones before the FtT, and that any reconsideration by the Secretary of State would necessarily have to take place on the basis of those concessions. She pointed to the fact that it had been accepted by Mr Jones that (i) the appellant had obtained naturalisation by false representation and (ii) that the reasonably foreseeable consequences of deprivation were not, without more, sufficient to render deprivation a breach of Article 8 ECHR.
7. As Mr Jones accepted, those submissions were properly made. Those two points were accepted on the basis of the law as it stood in July 2022 and there is, at present, no reason for either concession to be revisited. Those concessions should underpin the reconsideration which must take place as a result of this decision.
8. In the circumstances, the appeal will be allowed on the basis agreed by the parties. The Secretary of State fell into public law error in the exercise of his

discretion which, following Chimi and Kolicaj v SSHD [2023] UKUT 294 (IAC), must result in this appeal being allowed so that a lawful decision can be taken on the question of whether or not the appellant should be deprived of the British citizenship which he obtained by deception.

Notice of Decision

The appellant's appeal is allowed for the reasons given above. It is for the Secretary of State to reach a lawful decision on whether or not the appellant should be deprived of his British citizenship.

Mark Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 May 2024