IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006624;
UI-2022-006625

First-tier Tribunal No: DC/50027/2020;
DC50032/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of May 2024

Before

UPPER TRIBUNAL JUDGE SMITH

Between

(1) ARTUR TAHIRI
(2) BLERINA SYJAJA
[NO ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms H Foot, Counsel instructed by Oliver and Hasani Solicitors
For the Respondent: Ms E Blackburn, Senior Home Office Presenting Officer

Heard at Field House on Friday 12 April 2024

DECISION AND REASONS

BACKGROUND

1. By a decision promulgated on 4 December 2023, the Tribunal (myself sitting with Deputy Upper Tribunal Judge Grimes) found an error in the decision of First-tier Tribunal Judge S Taylor dated 11 September 2022 allowing the Appellants' appeals against the Respondent's decisions dated 20 October 2022

and 28 October 2022 respectively giving the Appellants notice to deprive them of their British citizenship pursuant to section 40(3) British Nationality Act 1981. The Tribunal's error of law decision is appended hereto for ease of reference.

2. The error of law found was limited to the Judge's assessment of Article 8 ECHR. We therefore set aside only paragraphs [16] to [18] of Judge Taylor's decision.

3. The effect of the error of law decision is that the following findings made by Judge Taylor are preserved:

> "15. I am satisfied that the appellants gave false information in their applications for citizenship, and that the applications would have been refused if the deception was known, even though the fraud of the second appellant was less material. Applying the above mentioned paragraphs of the Guidance, I am satisfied that the first tests in the case of Ciceri are met and that the appellants are liable to be deprived of his [sic] British citizenship. However, I accept the submission made that the respondent should have been aware of the true position since May 2006, when the second appellant made her application for entry clearance as a spouse and submitted her marriage certificate which indicates that the first appellant was a national of Albania. In addition, the first appellant sponsored a visit visa application for his parents in early 2007, which included his Albanian birth certificate. Even though there may be a lack of internal communication between a local entry clearance officer and the Home Office in the UK, I consider that it is entirely reasonable for the appellants to conclude that the respondent was aware of the first appellant's true nationality since 2006. I am satisfied that the respondent has been on notice of the first appellant's true nationality since 2006 and that this compounded the delay in starting measures to deprive the appellants of citizenship, which I will discuss in the proportionality assessment."

4. The reference to the guidance given is to the case of Ciceri (deprivation of citizenship appeals: principles) Albania [2021] UKUT 238 ("Ciceri") the headnote to which reads as follows:

> "Following KV (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 2483, Aziz v Secretary of State for the Home Department [2018] EWCA Civ 1884, Hysaj (deprivation of citizenship: delay) [2020] UKUT 128 (IAC), R (Begum) v Special Immigration Appeals Commission [2021] UKSC 7 and Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 the legal principles regarding appeals under section 40A of the British Nationality Act 1981 against decisions to deprive a person of British citizenship are as follows:
> (1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the

approach set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.

(2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.

(3) In so doing:

(a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and

(b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).

(4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 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.

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in EB (Kosovo) v Secretary of State for the Home Department [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs 13 to 16 of EB (Kosovo).

(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).

(7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good."

5. The effect of the preserved findings is therefore that the fact of the Appellants having exercised deception/fraud is made out. It is also accepted that the deception/fraud was material to the grant of citizenship to both Appellants.

The Respondent's decisions were therefore lawful adopting public law principles.

6. The only issue which remains to be determined is whether the decisions breach the Appellants' human rights. That issue involves consideration of the extent of the interference with their family and private lives caused by the deprivation of citizenship (and not at this stage with that which would be caused by removal). Delay in taking action to deprive the Appellants of their citizenship is also a live issue having regard to Judge Taylor's finding that the Respondent was on notice and should have known of the First Appellant's deception as to his nationality from 2006.

7. In addition to the guidance in Ciceri, I was also referred to the following cases: Hysaj (Deprivation of Citizenship; Delay) [2020] UKUT 128 (IAC) ("Hysaj"), Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 ("Laci") and Chimi v The Secretary of State for the Home Department (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115. The principles to be derived from those cases were not in dispute. I deal with the application of those principles to these cases in the discussion which follows so far as necessary.

EVIDENCE AND FINDINGS

8. I had before me a consolidated bundle lodged by the Respondent running to 955 pages to which I refer below as [B/xx]). That bundle contains the core documents relating to the appeal before me and the Appellants' bundle before the First-tier Tribunal as well as the Respondent's bundle before the First-tier Tribunal in relation to Mr Tahiri. Ms Foot pointed out that the Respondent's bundle before the First-tier Tribunal in relation to Ms Syjaja was not in the consolidated bundle but I was able to access that. I refer to that as [RB/xx]. I also had a supplementary bundle of evidence filed by the Appellants running to 141 pages to which I refer as [SB/xx]. I heard oral evidence from both Appellants, and they were cross-examined. I refer only to the oral and documentary evidence which is relevant to the issues I have to decide, but I have taken into account all the evidence in what follows.

9. Mr Tahiri has provided two witness statements. The first is dated 5 October 2021 ([B/48-52]) and the second 4 January 2024 ([SB/10-15]).

10. In the first statement, Mr Tahiri sets out the background to his deception. He readily admits to it. He also there explains that he met Ms Syjaja in Albania in April 2005. They married on 11 May 2006. The marriage certificate (at [RB/7]) shows that Mr Tahiri's nationality was stated to be Albanian. Ms Syjaja applied for entry clearance as Mr Tahiri's spouse using that marriage certificate. An extract from her entry clearance application and notes of her entry clearance interview appear at [RB/2-4]. Against the words "[h]is birth cert" is recorded "Albanian in VAF" (visa application form). As such, it is evident that the entry clearance officer was told by Ms Syjaja that her husband

was born in Albania and that he had the marriage certificate also recording that Mr Tahiri was Albanian. The birth certificate is at [B/924]. A family certificate was also produced ([B/925]).

11. Mr Tahiri also says that he sponsored his parents' visit visa applications in 2007 and again declared that he was Albanian. I do not have a copy of that application, but I have no reason to doubt what is there said. It was not challenged.

12. In his oral evidence, when asked at what point he had realised that the Respondent had become aware of his true nationality, however, Mr Tahiri admitted that this was not until he had received the first letter from the Respondent threatening deprivation action in 2020. Whilst I have preserved the finding that the Respondent was on notice of the deception when Ms Syjaja applied for entry clearance in 2006, Mr Tahiri's position (contrary to his wife's) was that he had not thought that the Respondent was aware that he was Albanian until he was notified of the intention to deprive him of citizenship. In other words, he thought that he had got away with the deception.

13. It is not disputed nor could it be that Mr Tahiri used his Kosovan nationality when claiming asylum in 1999 ([B/828]), when he applied for and was granted indefinite leave to remain in 2001 ([B/868]), when applying for a refugee travel document in 2001 ([B/871]) and when applying for citizenship in 2004 ([B/880]).

14. Mr Tahiri and Ms Syjaja have two children, born in 2007 and 2014. Both are British citizens. It is of note that the children's birth certificates both record Mr Tahiri as being Kosovan even though, on the Appellants' case, he was aware by then that the Respondent had been told that he was Albanian ([B/93] and [B/95]). There is no suggestion that either child will be directly impacted by the deprivation action. They will not lose their citizenship.

15. In relation to the impact of deprivation, Mr Tahiri says that he will not be able to work or support his family. He and his wife have "bills, school fees and mortgage payments that depend on [him] being able to work". He also says in his first statement that he considers himself to be British. His children are both British and are being raised in the UK. He has lived in the UK now for about 25 years. He has worked in the UK in the construction industry. He has paid taxes here.

16. Mr Tahiri gave evidence that he and his wife have family and friends in the UK. His brother is here. He has a couple of cousins and a few friends. He is very close to his family members. When asked whether they could assist with accommodation if they lost the house, he said he doubted they could due to the cost of living crisis. I do not have any evidence from those family members and whilst I appreciate that many families are undergoing difficult economic circumstances at present, I am not prepared to assume that the

Appellants do not have family or friends who could assist them financially in the short term if they require such assistance (as to which see below). Mr Tahiri also gave evidence that he has family living outside the UK. When asked if they could assist, he said only that he had never thought to ask them but it "would not be easy" and then that he was not sure if they could help or not.

17. In his supplementary statement, Mr Tahiri explains that he had an accident at work in 2020. He says that he has had treatment from the NHS and is also concerned that he would lose his entitlement to that treatment were he to be deprived of his citizenship. He remains working on the HS2 project. There is some documentation regarding treatment for this injury at [SB/21-31]. The latest information is contained in a report dated 18 October 2022 following an appointment in August 2022 ([SB/21-22]). That confirms that Mr Tahiri was able to continue with manual labouring work but experienced intermittent ankle pains. Mr Tahiri indicated that he would like to proceed with an injection which it appears was to be arranged and it is indicated that there would be a follow up appointment after one year but there is no documentary evidence that this has occurred. There is nothing to confirm ongoing treatment.

18. Mr Tahiri also says that, although the Respondent says that the period between deprivation and grant of any form of leave to remain would be short (no longer than 8 weeks) he believes that it would be much longer and on average 303 days. That is based on the Respondent's response to a Freedom of Information request which I deal with below. In that period, he would have no right to work, would not be able to claim benefits, and therefore would not be able to pay his bills including his mortgage. As above, he would also lose his entitlement to free NHS treatment.

19. Ms Syjaja has provided two witness statements dated 23 June 2021 ([B/53-57]) and 4 January 2024 ([SB/16-20]).

20. Ms Syjaja admits in her first statement that she was aware of her husband's deception. He told her after they married. She also points out that she told the Entry Clearance Officer at the British Embassy in Albania that her husband was Albanian. As already noted, this is confirmed by the interview record.

21. Ms Syjaja entered the UK in 2006. In 2009, she applied for and was granted indefinite leave to remain ([RB/12]). I do not have the application forms in evidence, so I do not know what was asked about Mr Tahiri's original nationality on those forms. Of course, by then he was a British citizen, and it may be that the form did not ask about his original nationality.

22. Ms Syjaja admits to having exercised deception only when applying for nationality in 2009. The form at [RB/20] confirms that she told a blatant lie when she gave Mr Tahiri's place of birth as "Surarek – Kosovo". She has never explained why she did that other than that those were the details on his

British passport. That is not an adequate explanation, particularly since, according to her evidence, she thought the Respondent knew already that he was born in Albania. If that is true, there was no incentive to lie.

23. I find that although Ms Syjaja thought that the Respondent might be aware of Mr Tahiri's deception, she was not willing to admit to the deception in case he did not. That is in effect what she says at [16] of her statement where she admits that they were "confused and afraid" of what would happen to them and their daughter. They therefore maintained the details as shown on Mr Tahiri's British passport. That is consistent with Mr Tahiri's evidence that he was aware of the Respondent's knowledge of his deception only when he was notified of the intention to deprive and the couple's use of the Kosovan nationality even after 2006, for example when registering their children's births.

24. Ms Syjaja has studied in the UK. She now has a bachelor's degree in biomedical science. She works as a pharmacy assistant. She too says that she considers herself to be British. She has lived here now for 18 years. She too points out that if both she and Mr Tahiri were deprived of their citizenship, they would be unable to work and unable to support themselves and their children.

25. In her supplementary statement, Ms Syjaja says that she moved jobs in April 2023. It took several months for her to be cleared to start her new job and therefore she used up all their savings to cover expenses. She says that this was at the same time as Mr Tahiri changed job (in October 2022) and was consequently earning less. As a result, they took out a loan in May 2023. Ms Syjaja has changed jobs again (in February 2024) and is now training to be a pharmacy technician in a hospital.

26. Ms Syjaja repeats what is said by Mr Tahiri about the length of the period between deprivation and any grant of leave. She sets out the expenses which the family has to bear. Their mortgage is increasing as they have a limited fixed rate. Their bills and food costs amount to £1000 per month.

27. In oral evidence, Mr Tahiri said that the couple bought their house for £355,000 with a £55,000 deposit in about 2020. They have not had it revalued and do not know what it is now worth. He had not investigated the possibility of a mortgage holiday, nor did he know how long it would be before repossession action would be taken if they could not pay the mortgage.

28. I was provided with bank statements for the couple from January 2023 to 2024 ([B/34-136]). The couple have several accounts which show regular transfers between accounts in sole names and a joint account. The mortgage of roughly £1350 per month is paid from Ms Syjaja's account but she receives regular transfers from the joint account into which account Mr Tahiri's earnings are paid. She also receives child benefit monthly and payment (at that time) from her job of roughly £400 per week (although that varied substantially).

29. Mr Tahiri's earnings are paid into the joint account. That shows money being credited to that account of between £4500 and £8800 per month during the period of the statements. As he is self-employed, the fluctuation in earnings is unsurprising. What is perhaps surprising is that this account shows a negative balance at the end of the period but that appears to be accounted for by two substantial payments to HMRC in January and December which is consistent with Ms Syjaja's evidence that he owed a lot in tax (as also confirmed by the tax statement at [B/137-138]). Those payments total over £29,000.

30. The statements also confirm a loan being taken in May 2023 of £14,950 ([SB/105]). Almost immediately, £14,000 was transferred out to an account ending "2673" for which no statement has been provided. Ms Syjaja said that this was a sort of budgeting account which the couple use to supplement income to pay bills as necessary. I do not find that the omission of the statement of that account was deliberate. However, the absence of it means that it is not clear how much of the £14,950 remains. Ms Syjaja said that the loan had been taken out due to Mr Tahiri's tax bills but those appear to have been paid from the joint account with no corresponding credit from the budgeting account. There are some transfers from the budgeting account to the joint account but those do not total £14,950 (they total at most around £11,000). Since I have no statement from that account nor any statement in relation to the loan, therefore, I find that there is still money remaining from the loan which the couple could call upon if necessary.

31. The statements of the accounts at January 2024 show a very limited amount of money in Ms Syjaja's and Mr Tahiri's accounts and a negative balance in the joint account ([SB/133-136]). However, those balances followed immediately after the payment of a substantial sum (£15,000) to HMRC and are unlikely to reflect the current position following the couple's earnings in the period from January 2024 to date of hearing. In particular, Mr Tahiri appears to earn substantial sums of money each month (which is unsurprising if he is working on HS2 – by way of example his income in December was over £8,000). Whilst I appreciate that those are gross earnings, I do not accept that the couple do not have any savings to fall back on in the period between deprivation and a grant of leave to remain (assuming that to be the outcome which is likely given they have two British citizen children).

32. That brings me to the arguments about the length of the "limbo" period, that is to say the likely period between deprivation action and the grant of any leave to remain.

33. The Respondent's decisions letter under appeal are dated 20 and 28 October 2020 ([B/58-73]). The letter dated 20 October 2020 (in relation to Mr Tahiri) states as follows:

> "34. In order to provide clarity regarding the period between loss of citizenship via service of a deprivation order and the further decision to remove, deport or grant leave, the Secretary of State notes this period will be relatively short:
>
> - a deprivation order will be made within four weeks of your appeal rights being exhausted, or receipt of written confirmation from you that you will not appeal this decision, whichever is the sooner.
> - within eight weeks from the deprivation order being made, subject to any representations you may make, a further decision will be made either to remove you from the United Kingdom, commence deportation action (only if you have less than 18 months of a custodial sentence to serve or has already been released from prison), or issue leave."

The same commitment is given at [31] of the letter in relation to Ms Syjaja.

34. To counter these very clear commitments, the Appellants rely on a response to a Freedom of Information request dated 31 August 2021 ([SB/139-141]). The request which was made reads as follows:

> "What we are looking for is the timescale for the Status Review unit specifically to consider granting leave on private life, family life or Human rights grounds following the cancellation of citizenship. We are not interested in cases subsequently determined by other departments or following further applications.
>
> Our focus is on cases of deprivation under section 40 (3) where citizenship was obtained by deception.
>
> If it helps the status review unit writes in its decision letters that consideration will take place within 8 weeks of the tribunal decision. In our experience the time period is considerably longer and we wish to have the data necessary to assess that assertion."

35. The response was as follows:

> "Our records indicate that on average (mean) it took Status Review Unit 303 days to grant temporary leave following an earlier decision to deprive citizenship on grounds of fraud. This average is calculated from [when] Appeal rights were exhausted on the deprivation appeal.
>
> For those cases that became appeal rights exhausted and where Status Review Unit subsequently served the order that formally deprives citizenship, our records indicate that on average (mean) it took Status Review Unit 257 days to grant temporary leave, following the service of the order.
>
> The following notes should be taken into account when viewing this data:
>
> 1. These statistics have been taken from a live operational database. As such, numbers may change as information on that system is updated.
>
> 2. Data extracted on 30/03/2021
>
> 3. Data relates to Main applicants who have been deprived of citizenship on grounds of fraud and have had a subsequent grant of temporary leave decision made by Status Review Unit This includes all limited leave grants, some of which may not necessarily be on human rights grounds.
>
> 4. If no appeal was lodged against the deprivation decision then the Appeal Rights Exhausted date has been calculated by adding 14 days to the deprivation decision date.

> 5. The time from deprivation to grant of temporary leave has been calculated by counting days from the actual or implied Appeal Rights Exhausted date to the first grant of temporary leave post.
>
> 6. Data goes up to 31/12/2020 which is the last reportable period in line with published immigration statistics."

36. Whilst I appreciate as Ms Foot pointed out that this appears to cover the period when the decisions under appeal here were sent and that the request draws attention to the difference between the period specified as here and the actual period, I have the following difficulties with this evidence.

37. First, it is not clear what period the data covers save that it was extracted in March 2021 and covers a period to 31 December 2020. There is no indication of when the statistics extracted began. That is important because, of course, the UK was in the grip of a pandemic from early 2020 continuing up to 31 December 2020 during which time it is undoubtedly the case that less decisions were being taken.

38. Second and flowing from that, the periods given are of a mean average. It is however not clear how many decisions that average covers. It is not said how many decisions were taken and how long was taken in each case. Ms Blackburn indicated that the figure of most interest is the 257 days figure because it is not until the deprivation order is served that deprivation takes effect. It could however be that a few cases have taken a very lengthy period of time because they are complex (for example if deportation action is under consideration) which has skewed the average period. The period might well also be extended if there are substantial representations filed by an appellant which have to be considered. Whilst I do not wish to pre-judge the situation in this case, Mr Tahiri and Ms Syjaja have no criminal convictions and have two minor British citizen children. If both are to be deprived (or probably if only one is to be deprived), then it seems to me unlikely that they would not be granted leave to remain. The case appears straightforward.

39. Third, and in any event, the statistics only cover the period to 31 December 2020. We are now dealing with the situation in April 2024, over three years later. There has been no later FOI request. I also mentioned to Ms Foot that I had previously dealt with an appeal where a spouse was being deprived and where her husband had already been deprived. The Home Office representative was therefore able to tell me that in her husband's case, the grant of leave to remain was made within a few weeks from the service of the deprivation order. Ms Foot did not object to my reliance on the information from another case. Whilst I recognise that this relates only to one case and the situation in others may be very different, this does illustrate the difficulties in placing reliance on general and outdated information.

40. For those reasons, I can give little weight to the FOI response. As such, I find that the "limbo" period is likely to be of the length that the Respondent states or thereabouts. I find that it will be a short period.

DISCUSSION

41. Based on those findings, I now turn to assess the Appellants' Article 8 case.

42. I begin with the issue of the period of "limbo" since that is relevant to the time when the Appellants would be without income. I have made findings above in relation to the FOI response and provided reasons why I am unable to place much weight on that evidence. On the basis of the evidence before me, I am satisfied that the period is unlikely to be as lengthy as stated in the FOI response. It may not be exactly eight weeks, but I find it would be considerably shorter than the average period of about nine to eleven months suggested by the FOI response.

43. I turn then to the evidence about what is likely to happen in that period in the event that the Appellants fail in their appeals.

44. I begin with the best interests of the children. Both are British citizens. Neither will lose their citizenship whatever action is taken in relation to their parents. Their education and access to other services in the UK will be unaffected. They remain entitled to those services in their own right as British citizens. There may be a short period where the family would be unable to travel outside the UK together whilst leave to remain is considered by the Respondent. I have however found that the "limbo" period is likely to be quite short. The children may also be affected in the short term by the impact on the family's financial circumstances which I therefore turn to consider.

45. On the evidence, the main breadwinner is Mr Tahiri. He earns substantial sums working in the construction industry. He is self-employed and so his income varies. However, the loss of his income would be the most significant for the couple.

46. However, Ms Syjaja is working. It is difficult to establish her earnings as she has recently changed jobs and the bank statements go up to January 2024 only. At that time, she was earning several hundred pounds per month. The couple are also entitled to child benefit which would continue.

47. I have found that the bank statements at January 2024 are unlikely to reflect the current position as the couple will have earned income since then. The evidence I had was that the Appellants' income was adversely affected by them both changing jobs in 2022/2023 coupled with a large tax bill which Mr Tahiri had to pay and has now dealt with. Mr Tahiri's earnings, albeit gross, are generally in the order of several thousand pounds per month and the couple are therefore likely to be rather more solvent than their January statements suggest.

48. In any event, I have also found that the loan which they took out in May 2023 is not fully expended and will give the Appellants a small cushion in the short term. They could also ask family and friends for short term financial

assistance. They could seek a mortgage holiday for a few months. These are not options which the Appellants have explored. I do not accept therefore that the Appellants would be financially destitute or would risk losing their home in the short period between deprivation and any grant of leave to remain.

49. There is however one further issue which I consider relevant in relation to their employment. Mr Tahiri is self-employed in the construction industry. He would not therefore have to be concerned about the impact on that employment of a short break whilst he is not permitted to work. He could simply inform those to whom he is offering his labour that he is unavailable to work for a short time. He would not need to give any reason.

50. Ms Syjaja is in a very different position. She is employed in a hospital. She would have to inform her employer if she were not permitted to work for a period and would likely lose that job and have to find another. Moreover, she is in a job where she is training. She would therefore lose the benefit of that training position. The impact on her employment is therefore the greater albeit the couple's income from her employment is less.

51. I do not place any weight on Mr Tahiri's suggestion that he would lose the benefit of NHS treatment which he would require during the "limbo period". Whilst he would lose that benefit in that period, the evidence does not show that he is currently receiving that treatment or would require it in the short term.

52. I turn then to the public interest beginning with the issue of delay.

53. I accept that Ms Syjaja was open with the entry clearance officer about Mr Tahiri's true nationality when applying for entry clearance in 2006. As Ms Foot put it, as a lay person, she may have assumed that this information would be passed to the Respondent. I do not make that assumption and the Respondent's position is that he was not made aware at that time.

54. In any event, Ms Syjaja's evidence was that she and Mr Tahiri were "confused and afraid" when she applied for citizenship such that she did not give his Albanian nationality at that time, thereby herself committing a deception. It is also notable that Mr Tahiri's Kosovan nationality was stated in the children's birth certificates even after Ms Syjaja had told the entry clearance officer that he was not Kosovan. The youngest child was not born until 2014. At that time, therefore, the Appellants were still relying on the lie as to Mr Tahiri's nationality. That is inconsistent with their case – or at least Ms Syjaja's evidence – that they had assumed that the Respondent did not intend to take any action once they had declared Mr Tahiri's true nationality in the entry clearance application in 2006.

55. Ms Blackburn referred me to the cases of Hysaj and Laci. She sought to distinguish those cases on the basis that the periods of delay there considered

were at a time when it was accepted that the Respondent was aware of the appellants' true nationality and existence of deception. In Hysaj, the Respondent had intimated deprivation action in 2008 but did not issue a decision to deprive until 2018 (albeit had taken nullity action in the interim but not until 2013). In Laci, the Respondent intimated deprivation action in 2009 but then took no further action until 2018. That coincides with the period when the Respondent was litigating the issue regarding nullity and deprivation highlighted by the case of Hysaj but there was nonetheless a lengthy delay in both cases between the discovery of the deception and deprivation action.

56. Here, although it might be said that the Respondent ought to have been made aware in 2006 of Mr Tahiri's deception, it appears that the Respondent did not in fact become aware of it until sometime thereafter and prior to May 2020 when deprivation action was first intimated in relation to Mr Tahiri. Decisions to deprive were taken in November 2020.

57. Based on that chronology, Ms Blackburn argued that there was not in fact any delay. Ms Foot argued that I should consider delay to begin in 2006 when Ms Syjaja had provided Mr Tahiri's true nationality to the entry clearance officer. I accept that Ms Syjaja might have thought that in so doing, that information would come to the attention of the Respondent.

58. I do not accept however that this should be my starting point. There is no evidence that Mr Tahiri's true nationality did in fact come to the Respondent's attention at that time. I do not find that surprising since the true nationality was brought to the attention of an entry clearance officer working in the embassy in Tirana and not a Home Office caseworker in the UK. As I have already pointed out, even if Ms Syjaja thought that the information might have come to the Respondent's attention, that does not explain her conduct in not declaring that nationality when applying for her own citizenship nor the declaration of Mr Tahiri's nationality as Kosovan when registering the children's births.

59. For those reasons, I consider the starting point for any allegation of delay to be when the Respondent has admitted to first becoming aware of Mr Tahiri's deception which, according to the decisions under appeal, was when a first passport application was made for one of the children ([16] of the letter at [B/62]). It is not entirely clear for which of the two children the application was made nor when but there appear at [B/92] and [B/94] copies of the children's British passports. One was issued in 2015 and one in 2018. The one issued in 2018 relates to the eldest child (who was born in 2007) and it is at least possible that there was an earlier passport issued five years' earlier, but I do not have any such passport in evidence, and it is not for me to speculate. On the Respondent's case, therefore, the deception was discovered by the Passport Office in either 2015 or 2018 when the children's passports were being considered. I do not have evidence of when the Passport Office referred

the matter to the Respondent but even taking the earliest of those two dates, I do not consider the delay in taking deprivation action to be significant when it comes to an assessment under Article 8.

60. In case I am wrong about that, however, I go on to consider the impact of any delay.

61. In this regard, Ms Foot referred me to the House of Lords judgment in EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41 ("EB (Kosovo). As set out at [13] to 16] of that judgment, delay may be relevant in one of three ways.

62. First, the delay may enable an individual to develop a stronger private and family life in the UK. Second, it may lead an individual to develop an expectation that no action will be taken. That in turn may lead that individual to lose the sense of impermanence when entering into or strengthening a relationship entered into whilst that individual's status is precarious, thereby strengthening the family and private life side of the balance. Third, the public interest may be reduced where the delay is shown to be as a result of "a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes". In that latter regard, the House of Lords made reference to a case where two siblings in factually similar positions had received different outcomes due to the delay in resolving one of their cases.

63. Ms Foot relied on the second and third limb. If delay is to be taken as from 2006 based on Ms Syjaja's evidence that she thought that her declaration of Mr Tahiri's true nationality would be communicated to the Respondent and was thereby fortified in the development of her private and family life by the inaction thereafter, that might be relevant to the second limb. However, I return to the point made above. If she truly believed that to be the position, why lie about Mr Tahiri's true nationality in her own citizenship application and why register their children with "Kosovo" as Mr Tahiri's place of birth? I do not for that reason consider that the second limb can apply.

64. Even if it could, there is limited evidence about how the Appellants have developed their family and private life in the UK in reliance on an assumption that the Respondent would not pursue deprivation action. This is not a case such as those considered in EB (Kosovo) where the inaction was in removing someone unlawfully in the UK who had formed a relationship whilst here unlawfully. Ms Syjaja came to the UK with entry clearance and in fact entry clearance obtained with a declaration of the true facts. Whilst Mr Tahiri might never have had status to sponsor her entry had it not been for his deception, it cannot be said that Ms Syjaja acted unlawfully at that time. Nor, however, can it be said that the Respondent's inaction fortified her position.

65. The Appellants have had two children in the UK. However, the eldest was born in 2007 very soon after Ms Syjaja entered the UK. She could not at that stage have thought that any inaction by the Respondent meant that none

would be taken. I repeat that she thereafter applied for citizenship using Mr Tahiri's false nationality which she would have had no reason to do if she truly thought that this was already known to the Respondent. The second child was born in 2014 but, again, if the Appellants truly thought that the Respondent was aware of the deception and did not intend to act, there is no explanation for the use of Mr Tahiri's false nationality when registering that child's birth.

66. The Appellants have integrated into life in the UK by working but they would have done that whether or not they thought that the Respondent intended to take action. They bought a house but that was, according to Mr Tahiri, in 2020. The Appellants were made aware of the Respondent's intention to deprive in May of that year.

67. On the evidence, I am unable to accept that any delay by the Respondent even if relevant to the Article 8 assessment has been such as to have any effect based on the second limb in EB (Kosovo).

68. Nor do I accept that the third limb is engaged in this case. Whilst good administration might suggest that there ought to be a better coordination of information between the entry clearance function and the Home office in the UK, any failure in this regard is insufficient to be categorised as a "dysfunctional system". In fact, eventually, Mr Tahiri's deception did come to light as a result of communication within Government. This is not a case where the Appellants declared Mr Tahiri's true nationality to the Respondent prior to the Respondent's discovery of the deception.

69. Again, therefore, even if there were delay, I do not consider that it impacts on proportionality as asserted.

70. I turn then to the public interest. Having regard to the headnote in Ciceri, I remind myself that weight must be given to the public interest in the maintenance of "the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct". I attach significant weight to that public interest.

71. In this case, however, the two Appellants are in a different situation. The fraud was committed by Mr Tahiri at a time before he met Ms Syjaja. Although she was aware of his true and false nationalities, it is to her credit that she declared his true nationality when applying for entry clearance. As I have already observed, she therefore entered lawfully albeit I accept that, had it not been for Mr Tahiri's deception, she would not have been able to be sponsored to come to the UK. I have no evidence that Ms Syjaja lied on applications for further leave. Her deception is limited to the declaration of Mr Tahiri's false nationality when applying for her own citizenship.

72. Whilst there is no excuse for her conduct, I consider Ms Syjaja's deception to be of a lesser order and therefore the public interest is deserving of less weight.

73. I turn finally to balance the impact of deprivation action against the public interest.

74. I accept that the status quo is in the children's best interests. The financial impact of deprivation in relation to either or both of the Appellants is likely to have some effect on them in the short term. However, they can continue with their education and lives in the UK largely unaffected by that action. I weigh the children's best interests in favour of the Appellants, but I do not give those interests significant weight.

75. Deprivation will have an impact on the Appellants' employment in the short term. I have found that the impact will be the greater on Ms Syjaja given her employed status and that she is training to be a pharmacy assistant. She is likely to lose that job and have to find another. I have also found that her deception is less and therefore that the public interest in her case is lower. Having regard to those factors, I have concluded that it would be disproportionate to deprive Ms Syjaja of her nationality.

76. That will have the beneficial impact on the family of allowing Ms Syjaja to work. She is responsible for payment of the mortgage. Whilst the family may have to look to savings or help from friends and family in the short period of "limbo", they will still have some income albeit I accept that Ms Syjaja's income is lower than that of Mr Tahiri.

77. Mr Tahiri is responsible for the deception at the heart of these cases. He perpetrated that fraud and continued with it for many years. He did not admit to it until confronted with the allegation by the Respondent over twenty years later. During that time, he used the status falsely obtained to sponsor entry clearance for Ms Syjaja. He used the false nationality when registering his children's births. He worked in the UK when he would not have been entitled to do so had he declared the true position. I accept that he has integrated and has paid taxes here, but his fraud is significant and extensive. The public interest in deprivation in his case is weighty.

78. Against that, I accept that his inability to work during the "limbo" period will affect not just him but also his family. However, I have found that this is likely to be a short period. The children are both British. It is not for me to second guess the decision which the Respondent may take in relation to leave but the facts of Mr Tahiri's case appear straightforward. There is no suggestion of any adverse criminal history or other factors which might render the case complex.

79. As I have found in Ms Syjaja's favour, it is also the case that she will be able to continue to work in the interim to provide some financial support to the family.

80. Balancing the impact of deprivation of Mr Tahiri's citizenship on him and his family against the weighty public interest, I am satisfied that deprivation is the proportionate course in his case.

81. For those reasons, I allow Ms Syjaja's appeal on Article 8 grounds. I dismiss Mr Tahiri's appeal on all grounds.

CONCLUSION

82. The appeal of Mr Tahiri (the First Appellant) is dismissed on all grounds.

83. The appeal of Ms Syjaja (the Second Appellant) is allowed on Article 8 grounds only.

NOTICE OF DECISION

The First Appellant's (Mr Tahiri's) appeal is dismissed on all grounds.
The Second Appellant's (Ms Syjaja's) appeal is allowed on Article 8 grounds only.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber
14 May 2024

APPENDIX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006624;
UI-2022-006625

First-tier Tribunal No: DC/50027/2020;
DC50032/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

……4/12/23……

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

(1) ARTUR TAHIRI
(2) BLERINA SYJAJA
[NO ANONYMITY DIRECTION MADE]

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Ms H Foot, Counsel instructed by Oliver and Hasani Solicitors

Heard at Field House on Wednesday 25 October 2023

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State for the Home Department. For ease of reference, we refer to the parties as they were before the First-tier

Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge S Taylor dated 11 September 2022 ("the Decision") allowing the Appellants' appeals against the Respondent's decisions dated 20 October 2022 and 28 October 2022 respectively giving the Appellants notice to deprive them of their British citizenship pursuant to section 40(3) British Nationality Act 1981. The decisions were made on the basis that the Appellants had both misrepresented themselves as nationals of Kosovo when applying for citizenship whereas both are in fact nationals of Albania. The citizenship applications were made on 22 September 1999 and 1 September 2009 respectively.

2. The Judge accepted at [15] of the Decision that both Appellants had given false information in their applications for citizenship although found that the fraud exercised by the Second Appellant was less material. He there referred to the guidance given in Ciceri (deprivation of citizenship: principles) Albania [2021] UKUT 238 (IAC) ("Ciceri"). He also found however that the Respondent should have been aware of the true position after May 2006 when the Second Appellant applied for entry clearance as a spouse and submitted her marriage certificate indicating that the First Appellant was Albanian. He also pointed out at [15] of the Decision that the First Appellant had sponsored a visit by his parents in 2007 which included a copy of his birth certificate showing that he was Albanian. The Judge found that there had been delay in taking action to deprive the Appellants of their citizenship which fell to be taken into account in the proportionality exercise. There has been no challenge by the Appellants to the findings in relation to deception.

3. The Judge went on to conduct an Article 8 proportionality assessment at [16] to [18] of the Decision. We deal with his reasoning below as this is now the sole focus of the Respondent's appeal. He concluded that deprivation would be disproportionate. He therefore allowed the Appellants' appeals.

4. The Respondent challenged the Decision on two grounds as follows:

> Ground one: the Judge failed to have regard to the Respondent's case in relation to delay and/or failed to give adequate reasons for rejecting it.
> Ground two: the Judge failed to identify or give weight to the public interest in the balancing exercise at [16] to [18] of the Decision.

5. Permission to appeal was granted only on the second ground by First-tier Tribunal Judge Curtis on 28 October 2022. Although the Judge did not state in terms in the notice part of the decision that he was refusing permission on the first ground, the Respondent did not renew her application for permission to appeal on this ground to the Upper Tribunal. In any event, Mr Clarke indicated at the outset of the hearing that the Respondent did not pursue this ground. The reasons for finding that this ground was not arguable appear at [2] to [8] of Judge Curtis' decision.

6. Judge Curtis however granted permission on the second ground for the following reasons:

> "9. Ground 2 argues that the Judge fell into error in his consideration of the public interest in the deprivation of the appellants' British nationality. In [17] the Judge refers to Ciceri as providing authority that 'in carrying out the second test, the Tribunal should consider the foreseeable consequences and carry out the balancing exercise which is usually associated with an article 8 ECHR decision'. In Ciceri, after holding that a tribunal 'must' determine the reasonably foreseeable consequences of deprivation, the Upper Tribunal proceeded to say 'but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the UK'. However, in [16] the Judge appears to have assumed, without explanation, that 'removal is a foreseeable outcome of the decision to deprive citizenship, so the distinction [between the decision to deprive the appellants of their British citizenship and a future decision that they are to be removed from the UK] may be considered to be somewhat artificial' (my emphasis). Such an assessment was, according to Ciceri, not necessary and arguably affected the Judge's approach to the balancing exercise.
> 10. The Judge proceeded to consider the length of time that the appellants had been in the UK (noting that the First Appellant had been here for 23 years, and the Second Appellant for 16 years) and that the First Appellant has a senior job in construction and that the Second Appellant has a Biomedical Science degree and a job in a pharmacy. The Judge found that deprivation of citizenship would leave the appellants unable to work and so unable to maintain the mortgage on their home. In [18] the Judge brought into the balancing exercise his findings about the Respondent's delay. However, it is true to say that the Judge did not explicitly direct himself to the passage of the UT in Hysaj v SSHD [2020] UKUT 128 (IAC) (which was approved by Underhill LJ at [80] in Laci) that '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' (my emphasis). It is arguably an error of law that the Judge did not approach the assessment on this basis. It was the Respondent's explicit case, as per para. 26 of the Review, that the public interest in these appeals attracted heavy weight.
> 11. Moreover, whilst not expressly argued, it seems to me a Robinson-obvious point that the Judge arguably fell into error in [18] by double-counting the effect of the delay. He said this: 'I consider that the delay in taking action not only diminishes the argument that it is in the public interest that the appellants lose their citizenship, **but also adds** to the weight of the appellants' article 8 submission' (my emphasis). Such double-counting arguably vitiates the balancing exercise.
> 12. Ground 2, under the heading 'public interest', is arguable."

7. The matter comes before us to decide whether the Decision contains an error of law. If we conclude that it does, we must then decide whether to set aside the Decision in consequence. If we do so, we must then go to on re-make the decision or remit the appeals to the First-tier Tribunal for re-making.

8. We had before us a core bundle of documents relevant to the appeals and the Appellants' and Respondent's bundles before the First-tier Tribunal. The focus of the Respondent's case does not depend on documents, and we do not therefore need to refer to those bundles. The Appellants filed a Rule 24 response dated 28

November 2022. In addition, both parties filed legal authorities on which they sought to rely. Ms Foot filed the decisions in Budhathoki (reasons for decisions) [2014] 00341 (IAC) ("Budhathoki") and VV (grounds of appeal) Lithuania [2016] UKUT 00053 (IAC) ("VV"). For his part, Mr Clarke filed the decisions in Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 ("Laci") and Muslija (deprivation: reasonably foreseeable consequences) Albania [2022] UKUT 00337 (IAC) ("Muslija").

9. Having heard submissions from Mr Clarke and Ms Foot we indicated that we would reserve our decision and provide that in writing which we now turn to do.

DISCUSSION

10. Since there is now only one ground of appeal which is confined to one limited section of the Decision, we set that out in full to illustrate the submissions and our conclusions:

> "16. The case of Ciceri provides for a further test, which is the focus of this appeal, which is whether the deprivation of citizenship would amount to a breach of article 8 ECHR. The respondent noted that the decision to deprive a person of citizenship is separate from a decision to remove. The appellant is not expected to leave the UK, so it was submitted by the respondent that there would be no interference with family life as a result of the decision. There may be a subsequent decision to remove the appellants but the current decision does not require removal. I accept that the current decision does not require removal, however the appellants' representative submitted that the appellants would be placed in immigration limbo as a result of the decision, while they wait to see if the respondent makes a removal decision. In addition, removal is a foreseeable outcome of the decision to deprive citizenship, so the distinction may be considered to be somewhat artificial.
>
> 17. The case of Ciceri provides that in carrying out the second test, the Tribunal should consider the foreseeable consequences of deprivation and carry out the balancing exercise which is usually associated with an article 8 ECHR decision. The decision letter referred to paragraph 55.7.6 which provides that length of residence in the UK alone is not sufficient reason not to deprive citizenship. However, the first appellant has been in the UK for almost 23 years by the time of the hearing, having entered the UK in September 1999. He has been in the UK for three years over the 20 years required to establish a private life in the UK under paragraph 276ADE, even with no leave whatsoever. The second appellant has been in the UK since 2006, so by the time of the hearing she had been living in the UK for some sixteen years, during which time she had leave to enter as a spouse and leave to remain as a spouse, before being granted citizenship. The first appellant has been working in the UK since he was granted leave, over 20 years ago, he currently has a senior job in construction and earns a substantial salary. He has obtained qualifications in the UK and is a front-line crane supervisor on the HS2 project. The second appellant has obtained a degree in Biomedical Science in the UK and has a responsible job as a pharmacy assistant. The appellant own their own home and have an outstanding mortgage in excess of £300,000. The appellants have two children, aged 15 and 8, they are both British citizens and are at school in the UK. The appellants are of good character.

> If citizenship is removed and with no status in the UK, the appellants would be unable to work in the UK, which would result in them being unable to maintain their family and being unable to maintain the mortgage payments on their home, both in the limbo period while the respondent decides whether or not to remove the appellants, and during the period thereafter while they await removal. They would be deprived of the means of livelihood and would end up being the forced sellers of their home in the UK which may result in significant financial loss. With regard to S55 of the 2009 Act, I do not consider that it would be in the best interest of the children to be placed in a position where their future was uncertain and parents would be unable to earn a living to maintain them and to keep the mortgage payments on their accommodation. Considering both the period before a decision on removal, as well as the period after such a decision, I consider that given the established family and private life of the appellants in the UK, that it would be disproportionate to the need for immigration control to deprive the appellants of citizenship, applying the second test in the case of Ciceri.
>
> 18. In addition to the article 8 test in the paragraph above, the appellants have been in the UK for several years and it was only after an application for a passport was made for one of their daughters, that the respondent decided to take action on the false statements made during the period 1999 to 2005. As I have stated in paragraph 15 above, I consider that the respondent has been on notice of the true nationality of the first appellant since 2005 and took no action on the matter. I consider that the delay in taking action not only diminishes the argument that it is in the public interest that the appellants lose their citizenship, but also adds to the weight of the appellants' article 8 submission, that they were allowed to be given the impression that the respondent was aware of the true position regarding the first appellant's nationality but was taking no action, and in the meantime they built their family and private life."

11. We begin by accepting Ms Foot's submission that the Tribunal should be slow to interfere with the findings of the Tribunal below simply because it might itself have reached a different decision (relying on the judgment in AA (Nigeria) v Secretary of State for the Home Department [2020] EWCA Civ 1296 at [32] citing from UT (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1095 at [19]).

12. We also accept (per Budhathoki) that a Judge is not expected to "rehearse every detail or issue in a case". We also accept Ms Foot's submission that, when considering whether the Judge below has fallen into error, the Decision must be read as a whole (see the headnote in VV).

13. However, in this case, we do not consider that any of those principles assist the Appellants. As the Judge said at [16] of the Decision, the Article 8 ECHR issue was "the focus of this appeal" and that had to be determined lawfully. When the Decision is read as a whole, the highest that the Appellants can put their case that the Judge did in fact properly identify the public interest is the Judge's references to Ciceri. Ms Foot was unable to point us to any express reference to the public interest in deprivation cases save for the last sentence of [17]. Ms Foot submitted

that the Judge's reference to Ciceri shows that he had applied his mind to the correct test. We reject that submission for the reasons which follow.

14. We accept that the Judge refers to Ciceri at [16] and [17] of the Decision when purporting to carry out the Article 8 assessment required by (3) of the headnote in that case. However, having set out the Respondent's argument that "the decision to deprive a person of citizenship is separate from a decision to remove", he appears to reject that argument because, on the face of what is said at [16] of the Decision, he considered that removal was a "foreseeable outcome" so that "the distinction may be considered to be somewhat artificial". As Judge Curtis pointed out, that is a finding that "removal is a foreseeable outcome of the decision to deprive" (Judge Curtis' emphasis) and must therefore have formed part of the assessment which follows.

15. This approach is precisely the kind of "proleptic assessment" which the guidance in Ciceri says is "not necessary or appropriate". Whilst we accept that the guidance in Ciceri indicates that this is not the correct approach "in the usual case", if it was the Judge's position that this was not a usual case, then he needed to explain what it is which is unusual in this case. He does not do so.

16. The reason why removal prospects are not part of the Article 8 assessment in a deprivation case is not difficult to discern. First, whether an individual will be removed will be the subject of a separate decision. That will, as Mr Clarke agreed, be the subject of a further appeal (if leave to remain is refused). Second, and more importantly, what is at play in a deprivation case is a balance between the impact of deprivation on an individual's rights which, except in a clear case, does not involve the impact of removal. In many cases, deprivation will not lead to removal because of the rights built up over time and the impact on other family members (particularly children) of the removal of one or both parents. Deprivation may in the short term leave an individual without any right to remain. It inevitably leaves that individual subject to immigration control. It is for that reason that factors such as the inability to work, and associated impacts on ability to pay bills and maintain family are relevant as foreseeable consequences of the decision to deprive. However, there is no interference with an individual's ability to stay in the UK until such time as a removal decision is taken.

17. As the guidance in Muslija makes clear, if a deprivation decision is followed by a removal decision, that is the point at which the balance between the interference caused by removal against the usual public interest in removal occurs. To balance the impact of removal at the deprivation stage will generally be speculative as it will not be known at that stage whether removal will follow. That depends on a further decision.

18. The guidance in Muslija also makes clear that "[e]xposure to the 'limbo period' without more, cannot tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship". This point and the distinction

between the Article 8 impacts of deprivation and those of removal are also considered by the Court of Appeal in Laci (see in particular [37] and [38] of that judgment).

19. The correct approach to the balance between interference with Article 8 rights and the public interest during the "limbo" period is also to be found in the Tribunal's decision in Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 128 (IAC) ("Hysaj") at [110] as follows:

> "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. That is the essence of what the appellant seeks through securing limited leave pending consideration by the respondent as to whether he should be deported. Although the appellant's family members are not culpable, their interests are not such, either individually or cumulatively, as to outweigh the strong public interest in this case."

20. The Appellants emphasise the words "without more" in that guidance. They argue that the factors relied upon by the Judge provided the context for finding that more existed in this case and that the Judge did not in fact take into account removal as part of the assessment.

21. That argument is however difficult to sustain when one looks at the Judge's reasoning at [17] of the Decision. The factors which the Appellants say tipped the balance in their case are (1) their long residence and private lives (2) the best interests of their children and the impact which deprivation would have on them and (3) delay.

22. We leave delay out of account for the moment. There is no mention of delay in the factors considered in the Appellants' favour at [17] of the Decision and which led to the Judge's finding at the end of that paragraph that deprivation would be disproportionate (before he had weighed delay in the balance).

23. We accept that the Judge did identify some factors which properly weigh in the balance. For example, he took into account that, if deprived, the Appellants would not be able to work and would not be able to pay their mortgage which might result in them having to sell their house (although we observe that the Judge took into account both the "limbo" period during which removal would be considered and "the period thereafter while they await removal" without explaining how he reached the conclusion that the Appellants would be removed). We accept that he was entitled to take into account the impact on the Appellants' children (and we note that in this case and perhaps somewhat unusually both parents are subject to deprivation action).

24. Leaving aside those factors, however, the Judge's assessment also takes into account those which would ordinarily only arise at the stage of removal. He takes into account the long residence of both Appellants. However, there would be no interference with their continued residence unless and until they are to be removed.

25. The Judge also does so as if he were assessing the cases in the removal context. He refers to paragraph 276ADE of the Immigration Rules. The Judge observes that the First Appellant would meet the 20 years' rule under that paragraph and appears to compare the First Appellant (who has had leave to remain) with those who have been here without leave. He appears by that observation to view the First Appellant's case as more meritorious than that of an overstayer or illegal entrant whilst failing to take into account that the First Appellant was only given leave as a result of his fraud. The failure to set these factors in the context of deprivation is compounded by the Judge's reference to the Appellants being "of good character". There is absolutely no reference in this paragraph to the fraud which the Judge had found to exist nor, importantly, any reflection of the fact that the Appellants had obtained the benefit of both residence and citizenship by reason of that fraud.

26. When one looks at the reasoning at [17] of the Decision and in spite of the reference to Ciceri in the first and final sentences of that paragraph, the Judge has erred by carrying out a proleptic assessment, and taking into account in his assessment factors which are relevant at the stage of removal rather than considering only what is the impact of deprivation.

27. That error has then led to the error in relation to public interest. The public interest has been consistently explained as "maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct" (Ciceri), and "maintaining the integrity of the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship" (Hysaj).

28. As we have already pointed out, there is no recognition by the Judge in his assessment at [17] of the Decision that the Appellants have formed their private and family lives in the UK with leave to remain obtained by fraud. The Judge has therefore failed to take into account in that assessment the integrity of nationality laws and systems or recognition that the benefits which the Appellants have obtained arises from their own fraud.

29. The only express reference to public interest lies in the final sentence of [17] where the Judge finds deprivation to be "disproportionate to the need for immigration control"(our emphasis). Ms Foot drew our attention to the Respondent's decisions under appeal which refer to the public interest as being "the need to protect and maintain confidence in the UK immigration system and the public interest in preserving the legitimacy of British nationality." We do not read that as being inconsistent with what is said in Ciceri and Hysaj. In any

event, as Judge Curtis pointed out when granting permission, the Respondent had referred in her Review to "the need to protect the integrity of the system of granting citizenship". She had also cited directly from Ciceri by reference to [110] of Hysaj (set out above) which makes fuller reference to the public interest and the balance which is to be conducted.

30. Whilst Ms Foot may be correct in her submission that the maintenance of the integrity of nationality laws and systems falls under the general umbrella of "maintenance of effective immigration control" (borrowing the phraseology from section 117B Nationality, Immigration and Asylum Act 2002), this is of course an appeal under the British Nationality Act 1981. The brief reference to immigration control by the Judge merely serves to underline the erroneous focus of the assessment which precedes it (by reference to the common balance conducted in the removal context) and does not sufficiently show that the Judge had in mind the public interest which applies in deprivation cases.

31. We consider the issue of delay in the context of the error of law challenge to be something of a red herring. Judge Curtis refused permission in relation to the direct challenge to Judge Taylor's consideration of that issue and Mr Clarke did not pursue that challenge before us. As we also pointed out during the hearing, Judge Taylor determined that deprivation would be disproportionate before saying what he did at [18] of the Decision and therefore before taking delay into account.

32. Nevertheless, in light of Judge Curtis' comments at [11] of the grant of permission to appeal in relation to the double-counting of delay, we consider that we should deal with this point. The point made by Judge Curtis is that the Judge has applied delay as a positive factor in the Appellants' favour (on the basis that they have strengthened their family and private lives during the period of inaction by the Respondent) and a negative factor against the Respondent (on the basis that the inaction diminishes the public interest).

33. The Appellants rely on what was said about the impacts of delay in EB (Kosovo) v Secretary of State for the Home Department [2009] AC 1159 as applied in the deprivation context in Laci.

34. The Rule 24 response relies on [77] of the judgment in Laci. However, the sentence there cited has to be read in the context of the Court of Appeal's full consideration of the argument also at [75] to [76] of the judgment where Underhill LJ expressly rejected any reliance on the first and second limbs of the EB (Kosovo) test (in relation to the strengthening of ties pending removal) and found for Mr Laci only on the third limb (reduction in the weight to be accorded to the public interest). If anything, this undermines the way the Appellants put their case. Further, what is said at [76] merely serves to underline the error made by the Judge in focussing on removal.

CONCLUSION

35. For all those reasons, we find that the Judge made errors of law by failing properly to conduct the Article 8 assessment in these appeals. He did so by carrying out a "proleptic assessment" taking into account the prospects of removal (without explaining why that was "necessary or appropriate"). He also failed to identify the nature of the public interest and, in so doing, failed to give appropriate weight to that side of the balance. He also erred in his consideration of the impact of delay in the proportionality assessment.

36. Given the Judge's findings in relation to the Appellants' fraud, the Article 8 assessment was determinative of the appeals in their favour. The Decision must therefore be set aside as the errors made may well affect the outcome. However, there was no challenge by the parties to the Judge's findings in relation to the fraud or in relation to the fact of the delay (as opposed to its impact on the Article 8 assessment). For those reasons, we set aside the Decision but only paragraphs [16] to [18]. We preserve the remainder. As Ms Foot pointed out, however, Article 8 must be (re)assessed at the date of hearing. She asked, if we set aside the Decision in this regard, for the Appellants to be given time to provide updated evidence. We have given that time in the directions below.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge S Taylor dated 11 September 2022 involves the making of an error of law. We set aside [16] to [18] of the Decision. We preserve the remainder. We make the following directions for the rehearing of this appeal:

DIRECTIONS

37. **Within 28 days from the date when this decision is promulgated, the parties shall file with the Tribunal and serve on each other any further evidence on which they wish to rely at the resumed hearing.**

38. **The re-hearing of this appeal is to be listed before UTJ Smith for a face-to-face hearing on the first available date after six weeks from the date when this decision is promulgated, time estimate ½ day. No interpreter is required for that hearing unless the Appellant notifies the Tribunal of the need for one within 14 days from the date when this decision is promulgated.**

L K Smith

Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 October 2023