IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos.: UI-2022-006682

First-tier Tribunal Nos:
DC/50209/2021
IA/13975/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29th May 2024

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

ELTON BUZI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Blackwood, Counsel instructed by WH Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on Friday 10 May 2024

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Munonyedi dated 29 August 2022 ("the Decision") dismissing his appeal against the Respondent's decision dated 3 August 2021 giving notice of his intention to deprive the Appellant of his British nationality on account of his deception/fraud as to his nationality.

2. The Appellant is a national of Albania. However, he entered the UK in August 2001 claiming to be Elton Ismaili from Macedonia. He also claimed to have been born on 27 May 1988 (and therefore aged thirteen at date of entry) whereas he was in fact born on 27 May 1985 (and would therefore have been aged sixteen at that time). He claimed asylum on 5 June 2002 as an unaccompanied minor. He claimed that his family had been persecuted by the Macedonian police.

3. The Appellant's asylum application was refused but he was granted exceptional leave to remain (we assume on the basis of his age) on 10 July 2002. At that time, even on his true age he would have remained a minor. However, he would not have benefitted from the same period of leave had he told the truth. As it was, he was given leave until 26 May 2006. On 24 April 2006, he applied for and was granted indefinite leave to remain.

4. The Appellant applied for citizenship on 7 January 2008 relying on his false details. He was given citizenship on 3 July 2008. He subsequently applied for and was given British passports in 2014 and 2017.

5. On 24 March 2021, the Respondent wrote to the Appellant giving him notice that he was considering revocation of his citizenship. In response, the Appellant admitted that he was Albanian. The Appellant asked that his certificate of naturalisation be amended to reflect his true name, date of birth and nationality. That was done on 24 February 2022, after the notice of decision to deprive him of citizenship.

6. The Judge found that the Appellant had exercised deception, initially when a minor but that deception was continued after his majority. She concluded that, but for the deception, the Appellant would not have obtained citizenship. She also rejected arguments regarding the legality of the Respondent's decision based on submissions about the level of decision-maker.

7. The Judge went on to consider Article 8 ECHR. The Appellant has a wife and four children in the UK. His wife has limited leave to remain. His children are all British citizens. The Judge did not accept that there had been any material delay by the Respondent in taking deprivation action. She concluded that the interference with the Appellant's rights and those of his family were insufficient to outweigh the public interest.

8. For those reasons, the Judge dismissed the appeal.

9. The Appellant appealed the Decision on six grounds as follows:
Ground 1: the Judge made perverse or irrational findings with regard to the level of decision maker.
Ground 2: the Judge failed to resolve a conflict of fact and law in relation to the amendment of the certificate of naturalisation post the notice of intention to deprive.
Ground 3: the Judge materially misdirected herself in relation to the application of Article 8 ECHR and section 55 UK Borders Act 2007.

Ground 4: the Judge failed to give adequate reasons for her finding in relation to the likely length of the "limbo" period (that is to say the period between the deprivation order and the grant of any leave to remain).
Ground 5: also in relation to the "limbo" period, the Judge failed to recognise the distinction between this Appellant's case and that of Mr Hysaj in Hysaj (deprivation of citizenship; Delay) [2020] UKUT 00128 (IAC ("Hysaj").
Ground 6: the Decision was procedurally unlawful due to the delay between the hearing and the date of the Decision.

10. Permission to appeal was granted by First-tier Tribunal Judge O'Brien on 7 November 2022 in the following terms:

> "1. The application is in time.
> 2. The grounds assert that the judge erred as follows. The judge made perverse or irrational findings with regard to the NDD decision-maker. The judge failed to take into account or resolve conflicting submission with regard to the New Certificate. The judge made a material mis-direction of law on a material matter (Art 8 engagement). The judge failed to give any or any adequate reasons for his findings with regard to the likely period of limbo. The judge failed to give weight to evidence regarding the likely period of limbo. The judge committed a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings through delay.
> 3. The judge's consideration of Article 8 and the reasonably foreseeable consequences of deprivation is brief to the point of constituting arguably inadequate reasons for her findings. She arguably overlooks relevant uncontested evidence regarding the length of the 'limbo' period. The other grounds are considerably less persuasive. However, I give permission for them to be argued.
> 4. All grounds may be argued."

11. The matter comes before us to determine whether the Decision contains an error of law. If we conclude that it does, we must then consider whether to set aside the Decision. If we set aside the Decision, we must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

12. We had before us a consolidated bundle running to 520 pages containing the core documents relating to the appeal before this Tribunal and including also the Appellant's and Respondent's bundles before the First-tier Tribunal. We refer to documents in that bundle so far as necessary as [B/xx]. We also had a skeleton argument from Mr Melvin which served as the Respondent's Rule 24 reply. We were also taken to other documents in the course of Mr Blackwood's submissions to which we refer as necessary below.

13. Having heard from Mr Blackwood and Mr Melvin, we indicated that we would reserve our decision and provide that with reasons in writing which we now turn to do.

DISCUSSION

Ground 6: Procedural unlawfulness

14. Mr Blackwood recognised at the outset of the hearing that he could not argue this ground which runs contrary to other case law (in particular R (oao SS (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 1391). He therefore very properly abandoned this ground.

Ground 1: Level of Decision Maker

15. Again, very properly, Mr Blackwood drew our attention to an unreported decision of this Tribunal (Upper Tribunal Judge Mandalia) in Secretary of State for the Home Department v MKM (UI-2022-002795) ("MKM"). That supported the position taken by the Respondent before Judge Munonyedi in this case. As we come to below, the Judge did not in fact adopt the Respondent's position. We also accept that the decision in MKM can be no more than at best persuasive (particularly since it is unreported). Nevertheless, we have taken into account what is there said.

16. The argument put forward by the Appellant focusses on the Respondent's own guidance as set out in Chapter 55 of the Nationality Instructions guidance specifically 55.6.4 ([B/463]) which reads as follows:

> "The final decision to deprive in a fraud deprivation case should be made at SCS level (Grade 5 or above)."

17. The Appellant asserts that this did not happen in this case. According to the pleaded ground, the evidence which is said to show that this did not happen is contained in the Appellant's supplementary bundle at [B/27-35] which it is said that the Respondent did not dispute. However, that is not evidence of anything save as to the grading structure in the Civil Service. As we understood the Appellant's position (and according to the Appellant's skeleton argument), the evidence that the decision which the Appellant says is the "final decision" was not taken at the correct level is that, at the foot of the notice of decision to deprive (NDD) ([B/327-352]), the initials "D.E.L" appear. Those same initials appear on other documents of a more administrative nature, including we observe the cover sheet when the appeal was submitted (see [B/324]).

18. We do not read that as evidence that the NDD was taken by an individual with the initials "D.E.L" still less that this individual is of an insufficient grade to take that decision. Although Mr Melvin was unable to assist us with what "D.E.L" might stand for, we surmise that it is probably an acronym for a section within the Home Office's Status Review Unit. In our experience, where an individual's name appears as the maker of a decision, that is generally quite clearly the name of an individual (although not usually accompanied by a statement of the grade of that individual).

19. Mr Blackwood also submitted that the Respondent had accepted that the NDD was not taken by a Senior Civil Servant (SCS). Quite apart from the fact that this appeared to us to amount to Mr Blackwood giving evidence, what is said in the pleaded grounds does not support that impression. It is said at [10] of the grounds that the "evidence" in the supplementary bundle (to which we refer above) was not disputed by the Respondent but that the Respondent "submitted that the Policy was not relevant to the NDD as the NDD was '…*not [the] final decision'* and '…*the final deprivation decision will be made later'."*

20. The position taken by the Respondent is as it was before the Tribunal in MKM. The Tribunal accepted that view for the reasons set out at [27] and [28] of the decision. We agree with the Tribunal in that case. The NDD is notice that deprivation action will follow in the future. A final deprivation decision cannot be taken until after an appeal is concluded against the NDD.

21. We should add that we do not read the Respondent's submission as recorded at [10] of the grounds as confirmation that the NDD was not made by a SCS but in any event, in our view, it did not need to be.

22. We turn then to the Decision since we are of course considering error of law at this stage. At [10] of the Decision, the Judge records the Respondent's position that "the appropriate and properly qualified civil servant of the Status Review Unit made the decision to deprive the Appellant of his citizenship." The Appellant's position that "the decision made on behalf of the Secretary of State had not been conducted by the correct official" is recorded at [11] of the Decision.

23. The Judge's findings in this regard are at [36] to [37] of the Decision as follows:

> "36. Neither am I persuaded by Mr Blackwood's claim that the Decision maker was not properly qualified to deal with the Appellant's case and make a decision. Mr Wightman submitted that the hierarchical and organisational nature of the civil service permitted only suitably qualified personnel make relevant decisions in line with their positions.
> 37. It is my finding that the Secretary of State has tasked her Status Review Unit (SRU) within the framework of the civil service to deal with Deprivation of Citizenship matters. The SRU is comprised of differing levels of civil servants headed by a senior civil servant who has the role of ensuring that Decisions are taken by a civil servant of the required level. I have not been provided with any compelling evidence that would suggest anyone other than a properly qualified civil servant had made the Decision in this case. There is nothing to suggest that anyone other than an appropriate civil servant made the decision in this case."

24. We accept that this does not reflect the Respondent's position as set out in the pleaded grounds of appeal that the decision under appeal did not need to be made by a SCS because it was not a final decision. However,

the Judge was entitled to say as she did at [37] of the Decision that there was no evidence in support of the Appellant's allegation. As it was the Appellant's assertion that the NDD was taken at the wrong level, it was for him to prove. He might have done so by seeking the Home Office's notes relating to his case which may or may not show the level of decision maker. We would of course observe that it is highly unlikely that even the final decision is actually signed by a SCS given the high grade; it is more likely to be approved by that grade (see in that regard what is said in Oladehinde v Immigration Appeal Tribunal and others [1991] 1 AC 254 regarding public law decision making). If there was a systemic failure to make decisions at a correct level, that would normally be identified as a failure by the oversight mechanisms which exist (for example by the Independent Chief Inspector in his report or the relevant Parliamentary select committee).

25. In this case, there was no evidence beyond an assertion apparently based on a misunderstanding of initials at the bottom of the NDD. The Judge was therefore entitled to conclude as she did that there was no evidence that the NDD was not taken at the appropriate level. In any event, as indicated above, we agree with the view taken in MKM, that the NDD was not the "final decision" as set out in the Respondent's Nationality Instructions guidance. Accordingly, it did not need to be taken (or approved as the case may be) at SCS level.

26. The first ground discloses no error of law.

Ground 2: Amendment of Naturalisation Certificate

27. As recorded in the Appellant's grounds, in October 2021, and therefore after the NDD, the Appellant applied for and was issued with a revised naturalisation certificate in his Albanian identity ("the New Certificate"). That was issued on 8 February 2022 and sent to the Appellant on 24 February 2022.

28. The New Certificate appears at [B/25]. It continues to show the original details but, at the top of the New Certificate are written the following (signed in each instance by the Head of the Nationality Directorate):

> "According to documentary evidence produced to the Home Office the place of birth and date of birth of the certificate holder should read Roskovee, Albania 27th May 1985"
> "According to documentary evidence produced to the Home Office the Name of the certificate holder should read *Buzi* Elton."

29. According to the Appellant's grounds, his position before the Judge was that the New Certificate was material to the appeal as "it completely undermined the NDD". The Respondent's position was that this was simply an administrative matter. The error of law is said to be that the Judge failed to determine "this conflict of fact and law" which "was material to the outcome of the appeal".

30. We observe that there is no indication of the arguments made in this regard in the Decision. The Judge noted at [5] of the Decision that the Appellant had applied for the amendment to be made and that this had been done but nothing is said about any arguments made in this regard under the summary of the positions of the parties at [10] and [11] of the Decision.

31. Mr Blackwood indicated to us that this was not referenced in the Appellant's skeleton argument as the New Certificate post-dated that skeleton argument (which appears at [B/51-59]). However, he failed to inform us that there was in fact an amended skeleton argument dated 21 June 2022 (which we have been able to find on the system notwithstanding that it was not before us) which makes no mention of any argument based on the New Certificate. It is therefore not clear whether the argument made to us was made to Judge Munonyedi.

32. This ground has no merit in any event for the following reasons.

33. First, it is difficult to see what issue of law is said to flow from the New Certificate. The Appellant asked for the certificate to be amended. It was amended by annotation. It is difficult to see how the Respondent acceding to a request made by the Appellant to amend the certificate of naturalisation to reflect the correct position when the original certificate was issued based on fraud can in some way be said to undermine the NDD founded on that fraud. That would be tantamount to a submission that the Appellant should be allowed to benefit from his fraud. If anything, the Appellant's request to amend the certificate of naturalisation strengthens the Respondent's position as confirming the Appellant's admission of his fraud.

34. Second, and in any event, the only argument put forward by Mr Blackwood as an issue of law concerned, once again, the question whether the decision-making process was in accordance with the Respondent's policy. The policy guidance on this occasion is entitled "Nationality Policy: Identity" version 2 dated 29 November 2021 ("the Identity Policy"). That policy was not in the documents put before Judge Munonyedi (which further undermines the Appellant's position that this argument was raised).

35. Third, the only part of the Identity Policy relied upon is a section at pages [9] to [10] under heading "Potential deprivation cases". Under the sub-heading, "Where the person has admitted that they provided false personal details to obtain nationality and a passport", the following is said:

> "Cases often come to light where a person has obtained a certificate of registration or naturalisation using false personal details. This might have been identified by HMPO when the person applied for a passport either for themselves or for their child, or if the person has contacted UKVI to ask for the certificate to be amended.

> If HMPO have reliable evidence of the true identity, and the person has admitted that they provided false details and declared their true identity, HMPO will refer the case to the Status Review Unit to consider whether deprivation or nullity action is appropriate. If the person has contacted UKVI directly, the case should be referred to the Status Review Unit to consider whether deprivation or nullity action is appropriate.
> If the grant of nationality is not assessed to be null and void, deprivation action must be considered in line with the deprivation guidance.
> Whilst deprivation action is being considered, the person concerned remains a British citizen. HMPO will refuse a passport application and revoke any live passports in the fraudulent identity. If HMPO have reliable evidence of the true identity, and the person has admitted that they provided false details and declared their true identity, they may be issued with a restricted validity passport (of 3 years) in their true identity pending the outcome of deprivation action, but they must first apply for a naturalisation or registration certificate in their correct details. This must be a charged application.
> Once the certificate has been re-issued in the correct details, HMPO will consider the passport application. The person's correct and fraudulent details will be added to the HMPO watchlist.
> Status Review Unit must prioritise consideration of the case so that a deprivation decision is made before the person's restricted validity passport expires."

36. We can see nothing inconsistent in this guidance with what happened in this case. If the Appellant wished to apply for a British passport in the interim period until he is finally deprived or deprivation action fails, he has first to apply for an amended naturalisation certificate. This he did.

37. The Identity Policy makes clear that a person "remains a British citizen" "[w]hilst deprivation action is considered". Mr Blackwood suggested that at the time that the New Certificate was issued, deprivation action was no longer under consideration as the NDD had been made. However, again, this argument fundamentally misunderstands the deprivation process. A person remains a British citizen until the deprivation order is made. That cannot be done until after an appeal is concluded. The appeal is therefore part of the consideration of deprivation action.

38. We observe that this misunderstanding also further reinforces the Respondent's position (and our conclusions) in relation to the first ground. Deprivation action is not concluded until a deprivation order is made. That is the final decision.

39. Finally, and in any event, the NDD post-dates the New Certificate so it is difficult to see how any argument can be made that the New Certificate undermines the decision-making process in relation to the NDD.

40. Even assuming that this argument was made before Judge Munonyedi, therefore (as to which there is no evidence) there was no issue for the Judge to determine.

41. The second ground discloses no error of law.

Grounds 3 to 5: Article 8 ECHR

42. The third to fifth grounds all concern Article 8 ECHR and we therefore consider them together.

43. We begin however with the fourth and fifth grounds which both focus on the "limbo period" that is to say the period between the outcome of the appeal and a decision as to whether the Appellant should be granted leave.

44. The Respondent's position as set out in the NDD is as follows (B/351]:

> " 19). 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/or your representative 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".

45. The Appellant's position is that the length of the period will be much longer. This is based on a Freedom of Information request response dated 31 August 2021 ([B/91-92]) ("the FOI Response"). The FOI Response was in response to a FOI request which his recorded 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."

In response, the Respondent said this:

> "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."

46. We accept of course that this evidence is potentially relevant. It is dated at a time shortly after the NDD in this case. However, as it is said to be relevant to the Article 8 issue, the timing of the decision under appeal is of less relevance since a Judge has to consider the position at date of hearing. In this case, that hearing was on 21 June 2022 therefore some ten months after the FOI Response is dated and eighteen months after the last date from which data was taken (December 2020).

47. Judge Munonyedi dealt with the "limbo period" at [31] of the Decision. Having referred to what was said by Mr Justice Lane about Article 8 ECHR in Hysaj at [30] of the Decision, the Judge continued as follows:

> "At paragraph 109, Mr Justice Lane accepted that the period between deprivation and the issuing of the decision is between 6 to 8 weeks. Though due to the pandemic that may be a little longer at present. The Appellant's wife is able to work. However, I have not been provided with any evidence that suggests that she would not be able to work in order to support the family unit. The Appellant has worked and I did not find credible his evidence that he did not have any money. He has worked and I find it inconceivable that an individual in the Appellant's position facing the prospect of deprivation of his citizenship would not have made financial contingencies and arrangements for the future. The Appellant has relatives in the United Kingdom that he can call upon, if necessary. Furthermore, there is provision of support pursuant to section 17 of the Children Act 1989 available in respect of the Appellant's children if needed."

48. We accept that this paragraph of the decision does not make specific reference to the FOI Response, save perhaps for the reference to the period possibly being longer as a result of the pandemic. That is a point which we ourselves would have drawn from the FOI Response because it

covers a period starting on an unspecified date and ending in December 2020. At least for the latter part of that period the UK was in the grip of a pandemic which undoubtedly affected the level of decision-making in government and the time taken to make decisions. That was therefore a point open to the Judge to make in relation to the FOI Response.

49. Even if the Judge might have said more about the FOI Response, we do not find any material error in that regard for the following reasons.

50. First, we have our own reservations about the value of the evidence in the FOI Response. Leaving aside the lack of any indication of the period covered by the FOI Response (save for the end date) so that it is quite impossible to know what period the data is said to cover and to what extent that is affected by the pandemic, the data refers only to mean averages. It is not said how many decisions were taken and how long was taken in each case.

51. 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.

52. Finally, although Judge Munonyedi was considering a date rather closer to the date of the FOI Response, we are now in May 2024, nearly three years after the date of the FOI Response. The evidence contained in the FOI Response is therefore now dated. If one were to re-make the decision in this case, therefore, that evidence would be of very limited value indeed.

53. Second, in any event, the Judge provided reasons for finding that the rights of the Appellant and his family would not be breached in the interim period even if it were longer.

54. The Appellant in his fourth ground challenges the Judge's findings in relation to the employment of the Appellant's wife on the basis that the evidence was that she could not run his business and not that she could not work. However, the Appellant also said that he employed two persons so that it is difficult to see why his business could not be continued by those two employees. The Appellant's grounds in this regard are somewhat confusing in that they appear to suggest on the one hand that the Judge has erred by finding that the Appellant's wife could work whereas it is said that she could not run his business and on the other that the business was not particularly profitable in any event (so that there is no reason why she should have to run that business). If it is not disputed that the Appellant's wife could work other than in the Appellant's business, then no error arises.

55. In relation to the submission that it was not open to the Judge to find that the Appellant would have made some contingency provision in relation to his finances, which finding it is said was inconsistent with the profitability of that business, the Appellant himself relies on having formed that business in support of his Article 8 case (statement at [B/500]). Whilst he does also there note the impact of the pandemic on his business, he does not provide details of his finances other than for the financial year ending April 2021 (in other words the year when the pandemic was at its height). It is for the Appellant to make out his case as regards interference.

56. Even in the year when the Appellant claimed that his business was most affected, the letter from his accountant dated 25 January 2022 ([B/94]) states that the company (of which the Appellant is the sole shareholder) turned over £25,875 in that year (and at that time had only one employee compared with the Appellant's evidence that he had two at the time of his statement, indicating that the position was improving). The documents which follow show that the Appellant earned £12,000 in the year to April 2021. However, there is no evidence that the Appellant and his family were unable to support themselves on that income during that period. As the Judge noted, the Appellant's wife is not said to be unable to work to earn a comparable level of income during any "limbo period".

57. Third, as Mr Melvin reminded us, the arguments regarding the length of the "limbo period" were also considered by this Tribunal in Muslija (deprivation; reasonably foreseeable consequences) [2022] UKUT 337 ("Muslija") at [4] of the headnote as follows:

> " Exposure to the 'limbo period', without more, cannot possibly tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship. That means there are limits to the utility of an assessment of the length of the limbo period; in the absence of some other factor (c.f. 'without more), the mere fact of exposure to even a potentially lengthy period of limbo is a factor unlikely to be of dispositive relevance."

Whilst we recognise that the decision in Muslija post-dates the Decision, it there draws upon Hysaj on which the Judge also relied (see [18] and [19] of the decision in Muslija).

58. Flowing from that, the Judge relied at [31] and at [30] to [33] of the Decision more generally on what was said about Article 8 ECHR in Hysaj. That includes that "a heavy weight …must be placed upon the public interest in maintaining the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship" and "[t]hat 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 frequently secured" (extract from [110] of Hysaj cited at [32] of the Decision).

59. The Appellant challenges the Judge's reliance on Hysaj in his fifth ground. We begin by observing that there is no merit to the criticism that the Judge wrongly attributed what is said in Hysaj to Mr Justice Lane. The decision in Hysaj was signed by Upper Tribunal Judge O'Callaghan but is the decision of the Tribunal which was chaired in that case by Mr Justice Lane (President of UTIAC at that time).

60. Neither is there any merit in the attempt to distinguish Hysaj from the present case on the basis that the appellant in Hysaj was a foreign criminal. What is said at [110] of the decision in Hysaj is reflected in [7] of the headnote which makes clear that it applies to all foreign nationals in deprivation cases. Nor does it make any difference that the wife of the appellant in Hysaj had entered unlawfully. The Appellant in this case can hardly rely upon his lawful entry in circumstances where he has lied throughout, including at the time of entry, about his name, date of birth and nationality.

61. The Judge was for that reason entitled to rely on what was said in Hysaj about the weight to be given to the public interest.

62. Dealing finally with the rights of the Appellant's children (which is the subject of part of the third ground), the Judge properly directed herself to the law which relates to their best interests in the immigration context ([28] and [29] of the Decision). As recorded at [27] of the Decision, the children are all British citizens. Those rights are unaffected. The Appellant's wife has limited leave to remain. The Judge found that she would be able to work if necessary and that the children would be entitled to support from the public purse should that prove necessary ([31] of the Decision). The Judge there considered all matters relevant to the best interests of those children and was entitled to conclude as she did at [33] of the Decision, that "the promotion of the Appellant's children's welfare pursuant to s55 of the Borders, Citizenship, Immigration Act 2009" would not "be adversely interfered with".

63. For the foregoing reasons, the third to fifth grounds do not disclose any error of law.

CONCLUSION

64. The Judge's conclusions, following her findings are as follows:

> "38. It is the cumulative effect of the seriousness of this Appellant's, fraudulent conduct and the important task given to the Respondent by parliament to uphold the integrity of the immigration system and naturalisation process that forces me to find that the article 8 rights of the Appellant, his wife and children are unable to outweigh the very serious and important public interest considerations in this case. The scales tip very firmly in the Respondent's favour.
> 39. It is for the Respondent to determine whether deprivation of citizenship is conducive to the public good and having found that such deprivation is

> conducive to the public good, I am unable to find that the Respondent acted in a way which no reasonable Secretary of State could have acted. The Appellant has acted dishonestly for over 20 years.
> 40. The Respondent has an important task in ensuring that the public have faith and confidence in the naturalisation and immigration process and that any individual who uses fraud to acquire such benefits should not be rewarded for their dishonest actions
> 41. It is my finding that any interference with the Appellant's Article 8 rights is a proportionate response to the Respondent's role in maintaining effective immigration control and naturalisation process. The Respondent's decision is necessary in a democratic society.
> 42. Deprivation of citizenship of this Appellant's British citizenship does not effect [sic] the immediate welfare of his children and wife. Neither does it interfere with his immediate enjoyment of family and private life. Deprivation of British citizenship will mean that this Appellant will be subject to immigration control. He will have the opportunity to challenge in the future any further action taken by the Respondent."

65. Those conclusions were open to the Judge for the reasons she gave. There is no error of law disclosed by any of the Appellant's grounds. We therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

NOTICE OF DECISION

The Decision of Judge Munonyedi dated 29 August 2022 did not involve the making of an error of law. We therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

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