Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00028/2019 (P)

THE IMMIGRATION ACTS

Decided without a hearing

Decision & Reasons Promulgated
On 12 January 2021

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MIMOZA SHABANI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

REMAKE DECISION AND REASONS

Introduction

1. At this stage of proceedings Ms Shabani is to be treated and referred to once again as the appellant and the Secretary of State as the respondent.

2. This is the remaking of the decision in the appellant's case following my error of law decision, promulgated on 3 September 2020, in which I concluded that the First-tier Tribunal erred in law when allowing her appeal against the respondent's decision to deprive her of her British citizenship pursuant to section 40(3) British Nationality Act 1981, as amended ("the 1981 Act"). The error of law decision is annexed to this remake decision.

3. At the error of law hearing, both representatives expressed the view that the remaking of the decision could be undertaken without a further hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In my error of law decision, I set out why I had concluded that a further hearing was, subject to any further representations from the parties, unnecessary. The reasons were:

i. both parties had expressed a view that proceeding by way of written submissions only may well be appropriate;

ii. the core facts relating to the appellant's history and current circumstances in the United Kingdom were not in dispute;

iii. the legal framework was clear;

iv. the question of the foreseeable consequences of the deprivation of citizenship (as it relates both to Article 8 and the general discretion) could be dealt with by way of written submissions, despite the fact that the judge did not address this issue in his decision;

v. there had been no notice from the appellant under rule 15(2A) of the Procedure Rules to adduce further evidence.

4. I issued directions to the parties in order to give them the opportunity to make representations as to why a further hearing might be required and/or to provide any further submissions as to the merits of the case.

5. In the event nothing has been received from either party, notwithstanding a chasing email sent to the appellant's solicitors on 20 October 2020 and a check with the Upper Tribunal's records on 17 December 2020.

6. In reaching a final conclusion as to how to proceed, I have taken all of the above circumstances into account. In addition, I have considered the overriding objective, the guidance set out by the Supreme Court in Osborn v The Parole Board [2013] UKSC 61, and the recent judgment of Fordham J in JCWI v The President of the Upper Tribunal (Immigration and Asylum Chamber) [2020] EWHC 3103.

7. I have concluded that it is fair and appropriate to remake the decision in this appeal without a further hearing.

Background

8. The appellant entered the United Kingdom in June 1998. Stating her correct name and date of birth, but claiming to be Kosovan, she made an asylum claim. On this basis, she was recognised as a refugee and granted indefinite leave to remain on 7 July 1999. She was naturalised as a British

citizen on 8 December 2004. Following what may be described as investigatory letters from the respondent in July and September 2008 (acting upon information received), on 17 November 2008 the appellant accepted that she was in fact a citizen of Albania and had previously lied about her true nationality. In February 2018, the respondent informed her that action might be taken to deprive her of her British citizenship. The decision to do so was taken on 22 March 2019. The basis for this decision was section 40(3) of the 1981 Act, section 40(3) of which provides:

> "The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of –
>
> (a) fraud,
>
> (b) false representation, or
>
> (c) concealment of a material fact."

9. It is common ground that the appellant's admitted use of deception was material to the acquisition of British citizenship. Thus, the condition precedent under section 40(3) of the 1981 Act has been proved by the respondent.

10. As at the date of the error of law hearing there was no dispute as to the following factual matters:

i. she is married to a British citizen;

ii. the couple have three British citizen children, born in 2003, 2006, and 2017;

iii. in September 2016 she purchased a property in London;

iv. she is a Senior Lecturer in Financial Economics at the University of East London (having completed a PhD at SOAS).

11. At the time of writing this decision I have not been provided with any evidence to suggest that these circumstances have materially changed and I find that they have not.

The appellant's case

12. The appellant's case is straightforward. First, it is said that the discretion to deprive should be exercised in her favour. This is based largely on what is said to be a very serious delay on the respondent's part between the discovery of the appellant's deception in 2008 and the making of the deprivation decision in 2019. This delay had the claimed effect of

depriving the appellant of the opportunity to benefit from what was, until August 2014, a policy which provided those in her situation would "normally" not be deprived of their citizenship if they had resided in the United Kingdom for at least 14 years.

13. The second basis of the appellant's case is that the impact of depriving her of her British citizenship would be such as to breach her protected Article 8 rights.

14. These arguments were put forward on the appellant's behalf by Mr Kerr to the First-tier Tribunal and maintained (albeit in the context of the Secretary of State's appeal to the Upper Tribunal) at the error of law hearing. I have taken them as representing her case at this stage as well.

15. During the currency of the proceedings in the Upper Tribunal the decision of the Presidential panel in Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 00128 (IAC) was promulgated. At the error of law hearing, Mr Kerr submitted that this case was wrongly decided and was not fatal to the appellant's case.

The respondent's case

16. The respondent asserts that in all the circumstances discretion should not be exercised in the appellant's favour and that Article 8 would not be breached by the deprivation of citizenship. In particular, it is said that the appellant's children, as British citizens, would not be significantly affected by loss of their mother's British citizenship.

17. The decision in Hysaj is, asserts the respondent, correct and it very much counts against the appellant's case.

18. Whether, following the deprivation of citizenship, the appellant might nonetheless be entitled to a grant of limited leave to remain on the basis of Article 8 rights, is said to be a matter to be considered in due course.

Discussion and conclusions

19. The essential factual matrix which I now apply to the relevant legal framework is that set out in paragraphs 9 and 10, above. It is also, as a matter of simple fact, the case that there was a delay between the detection of the appellant's deception in 2008 and the issuance of the deprivation decision in 2019.

20. In terms of the legal landscape, I reiterate what is stated at paragraphs 22 and 23 of my error of law decision, namely that Hysaj is not wrong in law and that its conclusions should be applied to the appellant's case.

21. The main factor said to warrant the exercise of discretion in the appellant's favour is the delay in the respondent acting upon the detection of deception in 2008. In light of Hysaj, and for the reasons set out in paragraph 28 of my error of law decision, I conclude that the delay does not assist the appellant in showing that this factor constituted an exceptional feature of her case. There was no illegality on the respondent's part in pursuing the so-called nullity route, which was finally ruled out by the Supreme Court in its judgment of 21 December 2017 in Hysaj [2017] UKSC 82; [2018] 1 WLR 221. Nor was there any legitimate expectation that the appellant would have had her case decided within a particular timeframe, or that it would have been considered in light of a policy which, as of August 2014, had been withdrawn. There was no legitimate expectation, or that from some unspecified point in time the respondent would not seek to take deprivation action against her.

22. It follows from this that there was no "historic injustice" applicable to the appellant's case and no substance to the argument that the delay caused unpredictable and inconsistent outcomes.

23. I turn to consider other factors which do clearly weigh in the appellant's favour when considering whether depriving the appellant of British citizenship would constitute a disproportionate interference with her protected Article 8 rights or whether discretion should be exercised in her favour.

24. In respect of the primary consideration of the best interests of her three children, I note that they are all themselves British and will continue to enjoy the benefits of their nationality. The children will continue to be able to reside with both of their parents. I find that there would be no significant detriment to the children's best interests.

25. The appellant has resided in the United Kingdom for a considerable period of time. She has married and had three children. Her family life ties are clear. By way of career, she has established herself in a strong academic role at the University of East London, having clearly flourished as a committed student prior to this. In these respects, the appellant can be said to have contributed to the economic and educational wellbeing of this country.

26. I accept that if deprivation were to occur, the appellant would be left without an alternative form of status in the United Kingdom. This may have an adverse impact upon her employment and other related matters.

27. On the other side of the balance sheet, the family life and educational career referred to above have both been established at a time when the appellant was enjoying the benefits of citizenship which had been procured by deception (as had the obtaining of leave to remain previously). It is this inescapable fact which underpins the respondent's decision to seek deprivation as a means of safeguarding the public interest in maintaining the integrity of the United Kingdom's immigration system

and the rights which flow from British citizenship. I place considerable weight on this factor.

28. There is no evidence before me to indicate that the family unit would, as a result of deprivation and the relatively short period before a decision is taken on whether to remove the appellant or grant her leave to remain, be placed in a position of destitution or other circumstances such as to result in a disproportionate interference with Article 8 rights. I am satisfied that on the facts of this case, a relatively short period of what may be described as "limbo" would not require the grant of leave to remain in order to avoid breaching Article 8 rights.

29. Having regard to Chapter 55 of the respondent's guidance on deprivation (published on 27 July 2017), I see no applicable mitigating circumstances in this case. The appellant entered the United Kingdom as an adult. There is no evidence that she was coerced into providing false information and then maintaining the deception thereafter. There are no material health issues in this case.

30. Taking all the circumstances into account, I conclude that the reasonably foreseeable consequences of making a deprivation order would not result in a breach of Article 8.

31. Beyond that, and considering the exercise of discretion for myself, I conclude that there are no exceptional features in this case which me to find in favour of the appellant.

32. It follows that the appellant's appeal falls to be dismissed.

33. I would expect the respondent to abide by the timeframe set out in the decision letter of 22 March 2019 in respect of considering whether to instigate removal action or to grant the appellant some form of leave to remain in the United Kingdom. The nationality and ages of her three children will no doubt be a central feature of that consideration.

Anonymity

34. I make no anonymity direction in this case.

Notice of Decision

35. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

36. I remake the decision by dismissing the appeal.

Signed: H Norton-Taylor Date: 17 December 2020

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed: H Norton-Taylor Date: 17 December 2020

Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00028/2019

THE IMMIGRATION ACTS

Heard remotely by *Skype for Business*

On 12 August 2020

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MIMOZA SHABANI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the appellant: Mr S Whitwell, Senior Presenting Officer
For the respondent: Mr S Kerr, Counsel, instructed by Karis Law

DECISION AND REASONS

Introduction

1. For ease of reference I shall refer to the appellant in these proceedings as the Secretary of State and to the respondent as MS.

2. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Ferguson ("the judge"), promulgated on 21 October 2019, by which he allowed MS' appeal against the respondent's decision of 22 March 2019, depriving her of her British citizenship.

3. MS entered the United Kingdom in June 1998. Stating her correct name and date of birth, but claiming to be Kosovan, she made an asylum claim. On this basis, she was recognised as a refugee and granted indefinite leave to remain on 7 July 1999. She was naturalised as a British citizen on 8 December 2004. Following what may be described as investigatory letters from the Secretary of State in July and September 2008 (acting upon information received), on 17 November 2008 MS accepted that she was in fact a citizen of Albania and had previously lied about her true nationality. In February 2018, the Secretary of State informed MS that action might be taken to deprive her of her British citizenship. The decision to do so was taken on 22 March 2019. The basis for this decision was section 40(3) of the British Nationality Act 1981, as amended. Section 40(3) provides as follows:

> "The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of –
>
> (a) fraud,
>
> (b) false representation, or
>
> (c) concealment of a material fact."

4. Section 40(4) of the 1981 Act relates to statelessness, but is not relevant in these proceedings.

5. MS' appeal to the First-tier Tribunal was brought under section 40A of the 1981 Act.

The decision of the First-tier Tribunal

6. There was no dispute as to the establishment of the condition precedent that MS had obtained her British citizenship by fraud, namely her original assertion that she was Kosovan and her subsequent reassertion of this (or at least her failure to have disclosed the original fraudulent assertion) when applying for naturalisation. There was no dispute as to the materiality of that fraudulent conduct in relation to the obtaining of British citizenship.

7. Whilst not expressly set out by the judge in his decision, there was no dispute between the parties as to MS' personal circumstances in the United Kingdom, which were as follows:

v. she was married to a British citizen;

vi. the couple have three British citizen children, born in 2003, 2006, and 2017;

vii. in September 2016 she purchased a property in London;

viii. she was a Senior Lecturer in Financial Economics at the University of East London (having completed a PhD at SOAS).

8. MS' case was essentially put forward on the following general bases: first, that the appeal should succeed on Article 8 grounds because of the reasonably foreseeable consequences of the effect of the decision to deprive her of her British citizenship; second, that in any event the discretion under section 40(3) of the 1981 Act should have been exercised differently. Within these 'umbrella' submissions, it was argued that the Secretary of State was guilty of a very serious delay between 2008, when the fraud perpetrated by MS was discovered, and 2019, when the deprivation decision was eventually made. This delay had, it was said, caused MS very real prejudice in that she had been denied the chance of benefiting from what was, until August 2014, a policy which provided that those in her situation would "normally" not be deprived of their citizenship if they had resided in the United Kingdom for at least 14 years. This argument was described as the "historic injustice" point. In addition, it was said that the Secretary of State's inaction had effectively given rise to a reasonable belief on MS' part that deprivation proceedings would not occur. In respect of Article 8, the impact of depriving MS of her British citizenship would, in all the circumstances, have a disproportionate effect on her private and/or family life. The Secretary of State's delay reduced the public interest in deprivation.

9. The judge observed at two points in his reasoning that the Secretary of State had not put forward any reason for the lengthy delay in making the deprivation decision (see [19] and [26]). He took note of MS' conduct and her wish (inferred from the submissions made on her behalf) to rely on different periods of delay for different reasons. At [25] the judge concluded that MS had, as a result of the Secretary of State's delay, not been treated the same as other people in her situation who had been able to benefit from the 14-year policy before its withdrawal in August 2014. In the next paragraph, he concluded as follows:

> "Although her challenge to a decision made in 2008 of 2009 may have carried little weight, at the time she reached 14 years residence in July 2012 she was entitled to believe that the lack of action prior to that time and the policy in effect at that time, meant that the Secretary of State would not make a decision to revoke her citizenship. Her unchallenged evidence was that she was "fully aware of the policy at that time". It is reasonable for her belief that no action would be taken to strengthen in each of the next passing seven years before a decision was finally made to revoke the citizenship in 2019."

10. At [27], the judge found that the deprivation decision had not been made within a "reasonable period of time" following MS' admission of fraud, and that, "[r]easonably believing that she would not have that status [her British citizenship] revoked after July 2012, she was permitted to strengthen her ties to the country of nationality." The judge then sets out

a number of aspects of MS' personal circumstances in the United Kingdom relating to the purchase of property, her children, and her educational and employment decisions and achievements over time. [27] ends with the conclusion that:

> "All of these factors combine to form an exceptional feature which has great weight when considering whether the discretion should be exercised differently."

11. In summary, [28]-[30] continue the theme of delay, citing EB (Kosovo) [2008] UKHL 41; [2008] 3 WLR 178 and containing the conclusions that: the Secretary of State's delay had led to an "unpredictable outcome" for MS because she did not know when, if ever, a deprivation decision would be made; the delay led to "inconsistent outcomes" because she had been deprived of the ability to rely on the 14-year policy and had strengthened her ties in the United Kingdom during the period of delay; and that the case disclosed "exceptional features" which constituted "strong reasons" for departing from the Secretary of State's policy on deprivation. The judge concluded that whilst that policy carried "weight" (described previously as a "strong public interest"), the discretion should have been exercised differently and the appeal fell to be allowed. Nothing was said about Article 8 and the so-called "limbo" argument.

The grounds of appeal and grant of permission

12. In summary, the Secretary of State's grounds of appeal assert that the judge erred in respect of the overall delay issue and failed to place "significant weight" on the public interest in depriving MS of her British citizenship.

13. Permission to appeal was granted on all grounds by Designated Judge of the First-tier Tribunal MacDonald on 29 January 2020.

The parties' written submissions

14. On behalf of the Secretary of State, written submissions, dated 5 May 2020, were filed and served. Neither representative had a copy of these at the remote hearing, but I read out the material passages and Mr Kerr and Mr Whitwell confirmed that they were content to proceed in those circumstances (during the course of the hearing Mr Whitwell was able to find the submissions helpfully email them to Mr Kerr).

15. The submissions rely heavily on the decision of a Presidential panel in Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 00128 (IAC). It is said that the conclusions of the Tribunal in that case showed that the matters relied on by the judge when allowing MS' appeal had all been authoritatively addressed and none of them could have constituted legally sound bases for allowing her appeal. In particular, Hysaj showed that the judge could not have relied on the delay/"historic injustice"/reasonable belief points when concluding that there were "exceptional features" in MS' case.

16. In a detailed written response dated 29 May 2020, Mr Kerr sought to meet the issues dealt with in Hysaj head-on. It is said that that the Tribunal was essentially wrong to have decided that the "historic injustice" point could not benefit a person in the decision of MS (her circumstances being in some respects similar to that of Mr Hysaj himself). The Secretary of State's decision to pursue the nullity route was unlawful, and this, combined with the prejudice to MS, was sufficient for the judge in the present case to have concluded that there were "exceptional features". The judge had taken full account of the strong public interest in depriving MS of her British citizenship. Finally, it is said that the judge took a number of factors into account when concluding that the discretion should have been exercised differently.

The hearing

17. MS attended the hearing on a remote basis and I explained to her the nature of proceedings. Other than a minor technical glitch at the outset, the hearing proceeded without any difficulties.

18. Mr Whitwell relied on the Secretary of State's written submissions and the grounds of appeal. In summary, and with reference to paragraphs 61, 63, 66, 67, 74-76, and 110 of Hysaj, he submitted that the judge's conclusions were unsustainable. He submitted that the judge's decision should be set aside, the decision remade, and the appeal dismissed.

19. Mr Kerr relied on his written submissions. In essence, he submitted that Hysaj was wrongly decided in material respects and that in any event the judge's decision was sustainable on the basis of the conclusions at [27]. Whilst the judge stated that the Secretary of State had failed to provide a reason for the delay, Mr Kerr acknowledged (in my view, realistically) that in light of paragraph 19 of the decision letter, its cause had in fact been the pursuance of the nullity route and the previous Hysaj litigation which ended with the judgment of the Supreme Court in 2017 (see [2017] UKSC 82; [2018] 1 WLR 221). Whether the delay was caused by an unlawful course of action or simple administrative inaction, the judge had been justified in concluding that the lengthy delay constituted an "exceptional feature". The Tribunal's rejection of the "historic injustice" argument at paragraphs 74-75 of Hysaj was wrong and had the effect of enabling the Secretary of State to adopt what Mr Kerr described as an "open-ended" decision-making process. MS had clearly been prejudiced by the Secretary of State's delay and had acted upon the inaction when strengthening her ties in the United Kingdom. Mr Kerr made reference to Article 8 and the "limbo" issue, accepted that the judge had not dealt with this, but also acknowledged that there was no "cross-appeal" put forward by MS.

Decision on error of law

20. I wish to express my gratitude to both representatives in this case. Their focused submissions have been of real assistance. I also wish to state that although I was a member of the panel which decided Hysaj, I have

considered Mr Kerr's submissions in the present case very carefully and on their own merits.

21. For the reasons set out below, I conclude that the judge did materially err in law when allowing MS' appeal, and that his decision must be set aside.

22. Having read Hysaj critically, I conclude that it was decided correctly in all material respects, and for the reasons set out in the panel's decision. Without intending any disrespect to Mr Kerr's arguments, I do not propose to set those reasons out here as both parties are very well-aware of them.

23. In light of this primary conclusion, the judge's decision falls to be assessed in light of the law as set out in Hysaj.

24. Although the judge was of the view that the Secretary of State had failed to put forward any explanation for the lengthy delay, it is tolerably clear that the cause was indeed the pursuance of the nullity route to deprivation which was ultimately deemed unlawful by the Supreme Court. Paragraph 19 of the decision letter specifically refers to that litigation. Whilst the Presenting Officer may not have referred to this in her submissions to the judge, the inference is relatively strong, particularly in light of the facts. MS' admission of fraud occurred in 2008, at much the same time as that by Mr Hysaj. The nullity route was being employed by the Secretary of State at that time and for some years thereafter. Following the judgment of the Supreme Court in December 2017, a decision to deprive Mr Hysaj of his British citizenship under section 40(3) of the 1981 Act was taken in July 2018, whilst in MS' case this occurred in March 2019. This chronology establishes a link in the present case between the nullity route and its consequent litigation, and the delay in making the deprivation of citizenship decision.

25. For the avoidance of any doubt, the judge's belief that there was no such underlying reason for the delay makes no difference to my conclusions.

26. The judge clearly relied on the delay issue in its wider sense in several respects: first, that it had resulted in, to a greater or lesser extent, "historic injustice" in the sense that it had deprived MS of any benefit from the 14-year policy; second, that it resulted in MS holding the reasonable belief that deprivation action would not be taken against after July 2012 (once she had been residing in the United Kingdom for 14 years); third, that it had allowed MS to establish greater ties in this country; fourth, that it had led to an unpredictable and inconsistent outcome for MS in that she was unsure whether, if at all, deprivation action would be taken against, and that she had not been able to benefit from the favourable policy before it was withdrawn in August 2014.

27. With respect to the judge, and acknowledging that he was deciding this appeal when the law remained unsettled (at least in terms of guidance from the Upper Tribunal), each aspect of his reliance on the delay issue is legally unsustainable.

28. There was no illegality on the Secretary of State's part as result of her pursuing the nullity route (see paragraphs 61 and 63 of Hysaj). There was no legitimate expectation that MS would have had her case decided within a particular timeframe, that her case would have been considered in light of a policy withdrawn some years earlier, or that, from any particular point in time, no deprivation action would have been taken against (see paragraphs 66 and 67). Thus, the "reasonable belief" attributed to MS by the judge could not have properly constituted an "exceptional feature". As there was no illegality by the Secretary of State, MS could not rely on any claimed prejudice: the "historic injustice" argument could not have aided her (paragraph 74-76). It also follows from the foregoing that the judge could not properly have concluded that the delay had led to unpredictable and inconsistent outcomes for MS.

29. Thus, to the extent that the judge relied on matters which were subsequently addressed and decided by the Tribunal in Hysaj, his conclusions cannot stand.

30. I turn to Mr Kerr's alternative argument, namely that even if Hysaj was correctly decided and that certain aspects of the judge's decision are flawed, his conclusion that the factors set out at [27] constituted "exceptional features" is nonetheless sustainable.

31. I reject this submission. The various points set out at [27] certainly show that MS has established significant ties in the United Kingdom and has been a productive member of society. Her current employment as a Senior Lecturer says much about her abilities and value to Higher Education in this country. However, the matters relied on by the judge are all predicated on the premise that MS was entitled to hold a "reasonable belief" that deprivation action would not be taken against after she reached the 14-year threshold in 2012. For the reasons set out in paragraph 28, above, and with reference to Hysaj, that premise was flawed.

32. In summary, the delay issue (which encompassed the points concerning "historic injustice", EB (Kosovo), and the strengthening of ties in the United Kingdom) was not, on the judge's reasoning, capable of constituting an "exceptional feature" of the case which legally justified the conclusion that the discretion under section 40(3) of the 1981 Act should have been exercised differently. Given that that conclusion was the sole basis for allowing MS' appeal (Article 8 not having been addressed), the judge's decision must be set aside.

Disposal

33. At the hearing I canvassed the views of the representatives as to what should happen if I were to set the judge's decision aside for error of law. There is no question of a remittal to the First-tier Tribunal. Mr Kerr and Mr Whitwell both acknowledged the possibility of the decision in this appeal

being remade by the Upper Tribunal on the basis of further written submissions only.

34. There is a discretion for the remaking decision to take place without a hearing, pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. This discretion must be exercised with some caution and in light of the overriding objective, the nature of the issues involved, the views of the parties, and the guidance set out in Osborn v Parole Board [2013] UKSC 61.

35. I have concluded that, subject to any further representations, the remaking of the decision in this appeal can fairly be undertaken without a hearing. I say this for the following reasons:

vi. both parties have expressed a view that proceeding by way of written submissions only may well be appropriate;

vii. the core facts relating to MS' history and current circumstances in the United Kingdom are not in dispute;

viii. the legal framework, as it currently stands, is clear (I am aware that there is an application for permission to appeal to the Court of Appeal in Hysaj, but of course the outcome of this is plainly uncertain and any further litigation is highly likely to take a fairly significant amount of time);

ix. the question of the foreseeable consequences of the deprivation of citizenship (as it relates both to Article 8 and the general discretion) can be dealt with by way of written submissions, despite the fact that the judge did not address this issue in his decision;

x. there has been no notice from MS under rule 15(2A) of the Procedure Rules to adduce further evidence.

36. I propose to adopt this course of action, subject to any representations received from the parties (see my directions, below).

Anonymity

37. The First-tier Tribunal did not make an anonymity direction. I have not been asked to make one at this stage. Although MS has minor children, they have not been identified in my decision and in all the circumstances there is no reason for me to make an anonymity direction of my own volition.

Notice of Decision

38. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

39. I set aside the decision of the First-tier Tribunal.

Directions to the parties

1. **No later than 5 days** after this decision is sent out, MS may file and serve in electronic form any further representations as to why the remaking of the decision in this appeal should not take place without a hearing;

2. **No later than 10 days** after this decision is sent out, the Secretary of State may file and serve in electronic form a response to any representations provided by MS in respect of direction 1;

3. **If any objections are raised** by either party as to the remaking of the decision in this appeal being undertaken without a hearing, the TRIBUNAL shall consider these, make a final decision on the issue, and make further directions as appropriate;

4. **If no such objections are raised** by either party, the following directions shall apply:

    i. **No later than 21 days** after this decision is sent out, MS shall file and serve in electronic and physical form written submissions addressing all matters relevant to the remaking of the decision in this appeal and in light of the error of law decision;

    ii. **No later than 35 days** after this decision is sent out, the Secretary of State shall file and serve in electronic and physical form written submissions in response;

    iii. MS may, **no later than 7 days** following receipt of the Secretary of State's response, file and serve in electronic and physical form a reply;

5. With liberty to apply.

Signed: H Norton-Taylor Date: 13 August 2020

Upper Tribunal Judge Norton-Taylor