



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003484
On appeal from: IA/12826/2021
DC/50145/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 April 2023

Before

UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHERIF CELAJ
aka
SHERIF LAMI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Amrika Nolan, a Senior Home Office Presenting Officer
For the Respondent: Mr Jonathan Trussler of Counsel, instructed by Turpin Miller LLP

Heard at Field House on 9 February 2023

DECISION AND REASONS

1. The claimant is a citizen of Albania who challenges the decision of the First-tier Tribunal dismissing his appeal against the Secretary of State's decision on 6 May 2021 to deprive him of his British citizen status pursuant to section 40 of the British Nationality Act 1981.
2. **Mode of hearing.** The hearing today took place face to face.

Background

3. The claimant obtained his British citizen status in a Kosovan identity to which he was not entitled. He is married: his wife, whom he married in Albania in 2008, has joined him in the UK and is working as a nurse here. The claimant's wife has limited leave to remain until 4 August 2023.
4. Their two children are British citizens and there is no suggestion on the Secretary of State's behalf that they will be deprived of their British citizen status as a result of his fraud. The couple have a son born in 2014, who is now 8 years old and at school, and a daughter born in 2019, who is 3 years old and still at home.
5. The claimant has his own construction business, but is not able to work because of the deprivation of citizenship, which renders him subject to immigration control. He will need some other kind of leave in order to do so.
6. The Secretary of State's correspondence states that he will be without status for a period of up to 12 weeks, 4 weeks for the deprivation order to be signed, and a further 8 weeks in which the Secretary of State will decide either to remove him, or to grant some form of leave to remain.

Preliminary matters

7. The claimant sought to adduce a late-filed bundle of evidence without a rule 15(2A) application. There being no objection from Ms Nolan on behalf of the Secretary of State, the documents were admitted.
8. The bundle contained a freedom of information response dated 31 August 2021; an unreported decision by UTJ McWilliam in April 2022 in *SB v Secretary of State for the Home Department* [2022] DC/00054/2019; the Upper Tribunal's directions of 9 November 2022 in this appeal; the Secretary of State's grounds of appeal of 28 June 2022; and the claimant's skeleton argument dated 1 February 2023.
9. No formal application was made to admit the decision by Judge McWilliam. Mr Trussler was unable to identify any point of law in that decision which was not to be found in publicly available decisions of this Tribunal or other courts and we declined to admit the McWilliam decision, observing that the arguments, which were similar to those in this application, did not succeed and that the appeal was dismissed.

First-tier Tribunal decision

10. The First-tier Tribunal allowed the appeal. The First-tier Judge noted at [15] that the condition precedent in *Ciceri* (deprivation of citizenship appeals: principles) [2021] UKUT 238 had been met as the claimant admitted obtaining British citizen status by deception and maintaining that deception for 21 years. He found that the Secretary of State's discretion had been exercised, but that deprivation of citizenship was disproportionate.

11. The Judge took account of the fact that during the limbo period, after the claimant had been deprived of his citizenship but before the Secretary of State had granted temporary leave, the family would be without the claimant's income and would not be in a position to maintain their current standard of living if the claimant were not allowed to work.
12. The Judge considered that the claimant would be severely prejudiced by the practice of making a deprivation order and delaying any future decision as to leave. He noted that the Secretary of State's decision letter was silent about how long the period of limbo would be: he then directed himself that 'an average delay in such cases is 303 days (10 months) to grant temporary leave following a decision to deprive citizenship'. He did not specify the source of that information.
13. The Judge noted that the claimant's previous indefinite leave to remain would not revive, and that the consequences of deprivation on the claimant's own life were as a result of his deception and, without more, could not tip the proportionality balance in his favour, as there is substantial public interest in maintaining the integrity of the immigration system. At [26], the Judge said this:

"26. It is reasonably foreseeable that the limbo period would have an adverse impact on the wife and the four children. The children's best interests are to be taken into account. the older child is at school and this period of instability and uncertainty could be detrimental to him. If the period of limbo is the length of the average, that would be detrimental. This is relevant to proportionality. The [claimant] has lived in the UK for over 20 years and built up a significant private and family life in the UK. Also, the public interest in a deportation appeal was not a question of national security where section 40(3) governed the case."

14. The Secretary of State appealed to the Upper Tribunal.

Error of law decision

15. By a decision dated 7 November 2022, the Upper Tribunal set aside the decision of the First-tier Tribunal for remaking. The panel consisted of UTJ Gleeson and DUTJ Juss. By a Transfer Order made on 21 December 2022, Principal Resident Judge Blum transferred the remaking hearing to a differently constituted Tribunal.
16. The claimant's representatives conceded that the first stage of the *Ciceri* test had been met, and the Tribunal found that the second was properly considered and unarguably met. The reason we allowed the appeal is set out at [23]-[25]:

"23. However, it was common ground at the hearing that the Judge had erred in fact and law in his approach to the length of the limbo period. It was not right to say that the Secretary of State had not said how long it would be: she had, about 12 weeks in all. Nor was there any evidence on the basis of which the Judge could properly take 'Judicial Notice' of a 10-month delay being the real limbo period.

24. This error of fact vitiates the judge's final reasoning and makes his decision unsound. There is no alternative but to set aside the decision and remake it.

25. After discussion with the parties, it is agreed that the principal findings of fact are uncontentious (except for those relating to the length of the limbo period). The decision in the appeal can be remade by consideration of such evidence as can be presented relating to the length of the limbo period and on submissions alone."

We gave directions for the evidence to be adduced before us.

17. That was the basis on which the appeal came back before the Upper Tribunal for remaking.

Preserved findings

18. For the purposes of this rehearing, the following findings are preserved:
- (a) The claimant obtained his British citizen status in a Kosovan identity to which he was not entitled. He has lived in the UK for over 20 years. He has built up a significant private and family life during that time.
 - (b) The claimant married his wife in Albania in 2008 and she has joined him here and is working as a nurse, with leave. They have two British citizen children, the elder of whom is at school in the UK. The claimant runs his own construction business.
 - (c) During the period following deprivation, but before any further leave to remain was granted or removal directions set ('the limbo period') the claimant would have no leave to remain in the UK and would not be entitled to work or claim benefits.
 - (d) During the limbo period, the claimant would be unable to contribute to the family income. The family's standard of living would be affected and the period of instability and uncertainty would be detrimental in particular for the claimant's elder child.
19. The First-tier Judge's findings as to the claimant's children are inconsistent: at one point he refers to the claimant having four children. The claimant and his wife have never stated that they had more than the two children mentioned above and we approach the appeal on that basis.

Freedom of information response: 31 August 2021

20. Mr Trussler relied on a Home Office freedom of information response dated 31 August 2021, concerning the length of the limbo period, in response to two freedom of information requests made on 4 February 2021 and 11 March 2021. The Secretary of State responded based on information extracted on 30 March 2021 from a live operational database. The name of the person requesting the information has been redacted. It appears that it was not this claimant.

21. Mr Trussler confirmed that the August 2021 freedom of information response was the material part of the claimant's case for today's remaking decision. He suggested that it was likely that this was the document to which the First-tier Judge had referred in his decision.
22. The information sought is summarised thus in the Secretary of State's response:

"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."
23. The Secretary of State's response, based on her March 2021 data, was 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 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."
24. The first paragraph is confusing. But what emerges is that at the peak of the Covid-19 pandemic, in March 2021, the grant of temporary leave took a mean average of either 257 days or 303 days, from either when the decision to deprive was taken, or when the person was appeal rights exhausted.
25. This response is not evidence of how long the limbo period would be in 2023: it may now be either longer or shorter than in March 2021. The claimant has not made his own freedom of information request and there seems to have been no attempt to clarify what the first paragraph of the August 2021 response means.
26. That was the evidence relied upon by the claimant in support of his assertion that the limbo period would cause deprivation to be disproportionate in Article 8 ECHR terms.

The *Muslija* guidance

27. On 16 November 2022, the Upper Tribunal in *Muslija* (deprivation: reasonably foreseeable consequences) [2022] UKUT 337 (IAC), gave guidance on the consequences of deprivation of citizenship under section 40(3) of the 1981 Act. The Upper Tribunal was expressly applying and clarifying its earlier guidance in *Ciceri v Secretary of State for the Home Department* [2022] UKUT 238 (IAC).

28. The judicial headnote, so far as relevant here, is as follows:

“(1) The reasonably foreseeable consequences of the deprivation of citizenship are relevant to an assessment of the proportionality of the decision, for Article 8(2) ECHR purposes. Since the tribunal must conduct that assessment for itself, it is necessary for the tribunal to determine such reasonably foreseeable consequences for itself. ...

(3) An overly anticipatory analysis of the reasonably foreseeable consequences of deprivation will be founded on speculation. The evidence available and circumstances obtaining at the time of making of the deprivation order (and the appeal against that decision) are very likely to be different from that which will be available and those which will obtain when the decision regarding a future application or human rights claim is later taken.

(4) 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.

(5) It is highly unlikely that the assessment of the reasonably foreseeable consequences of a deprivation order could legitimately extend to prospective decisions of the Secretary of State taken in consequence to the deprived person once again becoming a person subject to immigration control, or any subsequent appeal proceedings.”

29. At [75] in *Muslija* the Upper Tribunal held that:

“We have found above that the “limbo period” will not leave the family destitute and will only be for a limited (although potentially lengthy) period. “Without more”, that cannot tip the proportionality balance in the appellant’s favour.”

30. At [85], dealing with the effect on Mr Muslija’s child, M, the Tribunal said this:

“85. Drawing this analysis together, we find that the decision to deprive the appellant of his British citizenship would not be disproportionate under Article 8 ECHR, even bearing in mind the best interests of M as a primary consideration. In our judgment, the impact to the family will be proportionate to the considerable public interest that attaches to upholding the integrity of the system by which foreign

nationals are naturalised. The limbo period will be stressful for the family, but they will not be destitute. The impact to the appellant of the loss of all he considers he has worked so hard for counts for little, since it was built on the foundations of dishonesty. The impact on M will be limited, and her best interests are only marginally in favour of retaining the status quo. Length of residence alone is not a reason not to deprive a person of their citizenship. The cumulative weight of the factors militating in favour of the deprivation of the appellant's citizenship outweigh M's best interests for her father to remain British."

31. We did not have the benefit of this guidance when making the error of law decision, and of course, nor did the First-tier Judge. We must, however, have regard to it in remaking the decision.

Submissions

32. For the claimant, Mr Trussler relied on his skeleton argument dated 1 February 2023, which was included in the late-submitted bundle admitted at the beginning of the hearing. It is brief and the relevant passages can be cited in full:
- “6. The Upper Tribunal allowed the SSHD’s appeal to the extent that the learning [sic] judge at first instance had omitted to set out the basis of his information as to the 303 days being the average period of limbo.
7. The Tribunal is directed to the determination of UTJ’s Gleeson and Juss at pages 20-23 for more detail as to background and the decision on appeal.
8. At paragraph 25 of their determination, UTJ’s Gleeson and Juss held that in all other respects, the findings made by FTJ Howard were unaffected by their decision and that the original decision can be remade ‘by consideration of such evidence as can be presented relating to the length of limbo period and on submissions alone’. The issue which falls to be determined in the instant appeal is accordingly a very simple one.
9. It is now apparent that the reference to 303 days by the learned judge at first instance is to be found within the response to a Freedom of Information request. The request and response are set out at pages 1-3 and are referred to in the Upper Tribunal case of SB [2022], included in the bundle at pages 4-19.
10. In the above premises, the learned judge at first instance was entitled to make the findings within his determination. The provenance of the information applied by the learned judge is now apparent and before the Upper Tribunal and the error of law is now corrected. The Upper Tribunal is accordingly invited to remake the decision in terms that [the claimant’s] appeal against the SSHD’s original decision stands allowed.”
33. In response to a question from Judge Jarvis, Mr Trussler confirmed that he was not seeking to go behind the error of law decision. He relied on the 2021 freedom of information response, which was his evidence. Mr Trussler asked us to remake the decision by allowing the claimant’s appeal.
34. For the Secretary of State, Ms Nolan suggested that the 257 or 303-day limbo period in March 2021 was likely to have been skewed by Covid-19. She had no evidence as to the length of the limbo period in 2023, which the Secretary of State had not considered providing. On the day before the hearing, she had made enquiries, but without success.
35. Ms Nolan relied on the guidance given by the Upper Tribunal in *Muslija*. The impact of the claimant’s deprivation of British citizen status on his family was not, without more, dispositive in Article 8 terms.
36. Ms Nolan asked us to dismiss the appeal.

Analysis

37. The only question for this Tribunal is whether the limbo period will have such an effect that it will make the claimant's loss of citizenship disproportionate, either by its effect on him or on his British citizen wife and children. Any consideration of the effect on the claimant's wife or children if he were to be removed is proleptic at this stage and therefore prohibited to us.
38. The *Muslija* guidance makes it clear that exposure to the "limbo period", without more, cannot possibly tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship. *Muslija* is clear that 'even a potentially lengthy period of limbo is a factor unlikely to be of dispositive relevance'.
39. The claimant's witness statement for the First-tier Tribunal does not assist us in identifying any additional factors which should be taken into account. He did not say how much each partner earned, nor what the family's outgoings, savings or assets might be, or what support might be available to the claimant's wife. There was no evidence from the older child's school. There is thus no evidence before us which fits into the *Muslija* 'more than' criterion.
40. Applying *Muslija*, we are not satisfied that the claimant has demonstrated that the consequence of deprivation for him is more than the effect of the limbo period. There is no evidence before us of any additional consequences, above and beyond the distress and financial inconvenience caused by the claimant being returned to a position where he needs leave to remain, and the delay of the limbo period, whatever that may currently be.

Notice of Decision

41. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

We set aside the previous decision. We remake the decision by dismissing the appeal.

Judith Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 27 February 2023