IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003316
First-tier Tribunal Nos:
DC/50102/2021
LD/00043/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 September 2023

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

Jahelezi Ardian
(no anonymity order made)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr P Ward, solicitors from James & Co Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 2 August 2023

DECISION AND REASONS

1. The appellant, a male born in 1972, appeals the decision of the First-tier Tribunal made after a hearing on 20 May 2022 dismissing his appeal against the decision of the respondent to deprive him of his acquired British citizenship.

2. The short point is that he entered the United Kingdom and claimed asylum pretending to be from Kosovo. That was untrue. He was a national of Albania but he was given permission to stay in the United Kingdom on the false basis that he was a refugee from Kosovo. In due course he was given British citizenship in the same, false, identity. It is his case that in dismissing his appeal against the decision to deprive him of his British citizenship the First-tier Tribunal did not direct itself properly and/or gave unlawful weight to strands of evidence.

3. We begin by considering very carefully the First-tier Tribunal's Decision and Reasons.

4. This shows that the appellant entered the United Kingdom in September 1999. He claimed asylum and pretended to be an Ethnic Albanian from Kosovo. His application was refused but he appealed. The appeal was allowed. In December

2005 he was naturalisation as a British citizen after claiming to have been born in Kosovo.

5. In December 2007 his fiancé applied for entry clearance and in her application identified the appellant as having been born in Albania. The case was referred to the Status Review United and the appellant accepted that he was from Albanian. The application for entry clearance was refused.

6. In January 2009 the appellant's wife (the appellant and his fiancé had married in the intervening time) again applied for entry clearance. That application was refused but allowed on appeal and she joined the appellant in the United Kingdom in May 2010.

7. However, on 12 March 2009, that is before the appellant's wife arrived in the United Kingdom, the respondent informed the appellant that she was considering depriving him of citizenship on the grounds of false representations. The appellant made representations against deprivation but accepted that he had been born in Albania.

8. The appellant's wife applied for settlement in the United Kingdom in April 2012. Their son was born in May 2012 and was granted British citizenship on birth. The appellant's wife was given indefinite leave to remain in July 2012. Their daughter was born in November 2013 and became a British citizen on birth. The appellant's wife was naturalised as a British citizen in April 2014.

9. In June 2018, that is almost nine years after informing the appellant that she was considering depriving him of citizenship, the respondent asked the appellant to make further representations against deprivation. They were made about three weeks after the receipt of the letter and the decision to deprive was made on 14 April 2021. It was that decision that provoked the appeal, brought on human rights grounds, alleging a disproportionate interference with his private and family life.

10. Paragraph 10 of the Decision and Reasons may be particularly important. There the judge said:

> "A key component of the appellant's argument is that the delay in the respondent reaching a decision to deprive him of nationality reduces the public interest in the deprivation. It is accepted that the appellant was put on notice that he was being considered for deprivation action in 2009 and that the decision to consider taking such action was only forthcoming on 28 June 2018 and a final decision was only made on 14 April 2021. Mr Ward says the respondent has provided no evidence to give or support the reason for such a delay."

11. It was noted that on 5 February 2011 the appellant's representatives asked the respondent for an "update" and within about a month there was a considered reply. The letter acknowledged the application and stresses the importance of making a good decision and then said that:

> "We have recently released a limited number of decisions to deprive of British citizenship and these decisions will lead to appeals being heard before the Asylum and Immigration Tribunal (AIT) in the immediate term. The outcome of these cases will be an important determining factor in finalising our decision in those cases, like [the appellant's], that will follow."

12. The judge then noted that in 2011 the appellant should have been aware that his status was still under consideration. The judge said:

> "there is nothing in this letter, in my view, which would lead him to believe that the respondent had decided to take no action against him."

13. The judge then reminded himself of the decision of this Tribunal in **Hysaj (deprivation of citizenship: delay) [2020] UKUT 00128 (IAC)** noting that the Tribunal particularly gave guidance on the relevance of delay. As the Decision and Reasons recognised, the cases to which reference was made by the Secretary of State concerned whether it was appropriate in circumstances similar to the appellants to deprive a person of British citizenship that had been obtained dishonestly, or to determine that the British citizenship apparently granted was in fact a nullity. This might be described as an important point for lawyers but it was of little interest to the appellant. The Tribunal then, citing the decision in **Hysaj**, reminded itself of the public interest in not condoning benefits obtained dishonestly. The judge also recognised that there was some explanation given for the delay. There was a letter in 2011 explaining that no decision had been made until the outcome of appeals was determined. The judge was satisfied this letter had been received by the appellant. He expressly confirmed that in the event of the decision to deprive being upheld the appellant would enter a state of limbo while further actions would be considered. There are obvious significant consequences in that state of limbo including that he would not be able to work and loss of income would impact sharply on the family who would need to resort to public funds.

14. The appellant expressed considerable regret for his dishonest behaviour but said that he was in fear for his life in Albania. He considered the delay there unreasonable. His wife was with him lawfully in the United Kingdom, they had two children and, apart from his entering the United Kingdom and obtaining citizenship on a dishonest premises, he had lived honestly and industriously.

15. The judge directed himself at paragraph 26:

> "Although there has been a considerable passage of time between the appellant being notified of him potentially facing deprivation of nationality and the final decision being made I do not accept that this delay was unreasonable or impacts materially on the merits of needing to maintain an immigration control. The appellant was informed in 2011 that his case remained under consideration and was awaiting the outcome of lead cases on the same issue. It seems that the final determination by Supreme Court in the case of **Hysaj** came in 2017 and the appellant was notified in 2018 of the resumption in consideration of his case. In my view although it has taken some time, he was alive during this time, to the fact [that] he could be deprived of his British nationality due to the deception that he had practiced in obtaining with his original leave to remain and nationality."

16. The judge considered the impact that deprivation would have on the appellant and accepted that the immediate effect would be a period when the appellant was no longer a British citizen but was present in the United Kingdom where he had no immigration status and so was unlikely to work. The judge also found that the appellant had savings of around £14,000 notwithstanding claiming in his witness statement that he had no savings and the judge found this was something that would alleviate the financial consequences of his uncertain status. The judge found deprivation proportionate.

17. Permission to appeal was given by Upper Tribunal Judge Smith. The main reason was given at paragraph 2 where he said:

> "Arguably, those factors, and the others outlined in the skeleton argument and grounds of appeal, combine to merit a conclusion that this is not

> 'simply' a delay case, but one in which the Secretary of State arguably acted inconsistently in her interactions with the appellant during the lengthy period in question. Arguably, the judge's failure expressly to address those issues was an error of law."

18. Judge Smith then emphasised the importance of any error being material.

19. At paragraph 3 of the grounds of appeal (the point was also made particularly succinctly in oral submissions) it is stated:

> "The Appellant relied on a lack of action by the Respondent from 2011 to 2018, and a final decision not being taken until 2021. In paragraph 12 of the Determination the Immigration Judge refers to the Respondent's letter dated 2 March 2011 and states
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> 'So, at this point in time in 2011, the appellant would still be aware that his British nationality remained at risk and that a number of other cases were being heard so as to determine the correct approach for such decisions. There is nothing in this letter in my view, which would lead him to believe that the respondent had decided to take no action against him."

20. It was argued that this was indicative of an erroneous approach. The judge, it was said, should have been concerned not with what had happened until 2011 but how things appeared in 2018. However, the judge's Decision and Reasons does not lend itself to the criticism that the judge was concerned *only* with what had happened until 2011. That was a significant point because that is when an important letter was received but it was a letter saying that there would be ongoing delay. The judge at paragraph 19 made clear that he found the respondent had explained the delay satisfactorily. The judge noted that it was arguable that the Secretary of State could have updated the information but the appellant could have asked for it and did not.

21. Mr Ward had argued that the intervening events of the grant of leave to family members and renewal of a passport tended to suggest that the appellant's misconduct had been excused and no action would be taken. There was little evidence that that was the effect it had on the mind of the appellant and little evidence that it is in fact right. The applications from family members were processed dealing with the facts as they were and when the applications were processed, the appellant's citizenship was established, albeit subject to enquiry. It may have been helpful if the judge had made some more comment on this but we cannot accept that there is an error of law in the judge's approach. The judge was clearly aware of the points being made because that is the way the determination reads.

22. We have re-read Mr Ward's skeleton argument and my notes of the hearing. Certainly Mr Ward pointed out how a judge might have resolved the case in a different way. The judge might have been more concerned about the delay and more impressed with the industrious use the appellant had made of his time but that is wholly different from showing that the judge acted unlawfully in resolving the case in the way that he did.

23. In short, we are not satisfied that there has been any misdirection here or that the judge ignored or gave unlawful weight to any particular strand of evidence or ignored points helpful to the appellant.

24. We recognise that this is a case that might have been decided differently but we are wholly unpersuaded there is any error of law. We dismiss the appeal.

Notice of Decision

25. The appeal is dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 August 2023