



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DC/00016/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 15 January 2019**

**On 30 January 2019**

**Before**

**THE HON MRS JUSTICE FARBEY  
SITTING AS A JUDGE OF THE UPPER TRIBUNAL  
UPPER TRIBUNAL JUDGE KEBEDE.**

**Between**

**PREL [P]**

**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Chakmakjian instructed by Kilby Jones Solicitors

For the Respondent: Ms N Willocks-Briscoe, Senior Presenting Officer

**DECISION AND REASONS**

## **Introduction**

1. This is an appeal against the decision of the First-tier Tribunal (“FTT”) dismissing the appellant’s appeal against the Secretary of State’s decision to deprive him of British citizenship under section 40(3) of the British Nationality Act 1981 (“the deprivation decision”). The Secretary of State made the deprivation decision on the ground that the appellant obtained citizenship by fraud. At the appeal before the FTT, the appellant accepted the fraud but submitted (at least primarily) that the deprivation decision breached his children’s right to respect for private life under article 8 of the European Convention on Human Rights.
2. The essence of the appellant’s submission to the FTT was that the deprivation decision would cause the appellant to lose his entitlement to social welfare benefits which would in turn cause his children to fall into destitution. That would amount to a disproportionate interference with their article 8 rights. The FTT judge who heard the appeal rejected that submission but permission to appeal was granted by a different FTT judge.

## **Factual background**

3. The relevant facts are not in dispute. The appellant is an Albanian national. He entered the United Kingdom on 6 August 1999 and applied for asylum in a false Kosovo identity. He was interviewed by the Secretary of State and provided a written statement in support of his asylum claim. The information that he provided both at interview and in writing was false.
4. Following a decision to refuse him asylum, the appellant appealed to the Immigration Appellate Authority as it then was. His appeal was heard by an immigration adjudicator on 11 October 2000. At the appeal hearing, he gave false evidence, maintaining that he was Kosovan. The adjudicator allowed his appeal. Consequently, on 18 June 2002, he was granted indefinite leave to remain as a refugee under the 1951 Refugee Convention. On 17 July 2002, he maintained the false Kosovan identity in an application for a travel document.
5. By application form dated 16 October 2004, the appellant applied for naturalisation as a British citizen. A certificate of naturalisation was issued on 23 February 2005. In 2008 the appellant’s wife submitted an application for entry clearance at the British Embassy in Tirana which caused the Secretary of State to make enquiries about the appellant’s identity which was by that stage in doubt. In response to a request for information from the Secretary of State, the appellant stated in a letter dated 22 May 2009 that he had been born and raised in Kosovo.

6. The Secretary of State sent a further letter to him on 27 January 2018 when it was again put to him that he had obtained British citizenship as a result of false representations. On 5 February 2018 his solicitors responded, giving his correct date of birth and his place of birth as Albania. The letter confirmed that he was married with children, having been resident in the UK for 19 years. The solicitors submitted on the appellant's behalf that the deprivation of citizenship would breach article 8 ECHR.
7. By letter dated 27 March 2018, the Secretary of State gave notice of the deprivation decision. Acknowledging that the appellant had two British citizen children, the decision letter demonstrates that the Secretary of State gave consideration to his duties under section 55 of the Borders, Citizenship and Immigration Act 2009. The Secretary of State concluded that, while deprivation might have an emotional impact on the children, the deprivation was reasonable in light of the seriousness of the appellant's fraud. There had been no plausible or innocent explanation for the misleading information which he had provided. The effects of deprivation on the appellant and his family members had to be weighed against the public interest in protecting the special relationship of solidarity and good faith between the UK and its nationals. The decision to deprive the appellant of citizenship was reasonable and proportionate.

### **The FTT's decision**

8. The appellant appealed to the FTT. His appeal was heard on 6 September 2018 by FTT Judge Cassel who heard oral evidence from the appellant and his wife. In his oral evidence, the appellant said that he had been in employment until 2009 but now receives a variety of welfare benefits including employment and support allowance ("ESA"). He suffers from terrible headaches and dizziness. He has problems with kidney stones. He has a problem in his right eye and suffers from depression. In cross-examination he said that his wife has a degree in economics. She has not worked in the UK as the children are very young. She came to the UK illegally but regularised her status in 2013. From that date, she had permission to work. The appellant's wife gave oral evidence consistent with his evidence.
9. The FTT considered a bundle of documents submitted by the appellant which included correspondence in relation to an accident at work which the appellant very sadly suffered on 12 December 2009. His employer agreed to pay compensation. The FTT referred to neurological evidence confirming that the appellant has a history of headaches but that clinical examination reported "no abnormal findings". Medical evidence from April 2018 referred to renal problems and a referral to the urology stone clinic.

10. The FTT recorded in its determination that no decision had been made as to any further grant of leave to the appellant; nor had removal directions been made. The FTT reminded itself that deprivation of citizenship would not automatically lead to the expulsion of the appellant from the UK. His removal would be governed by other statutory provisions with specific procedural requirements and rights.
11. The FTT concluded that there had been no evidence and no submission that the appellant was disabled and unable to work by reason of his workplace injury. The evidence pointed to a reasonable foreseeability that he would be able to obtain employment. It was not reasonably foreseeable that he would have no access to income. His reliance on welfare benefits at the date of the hearing did not lead to the conclusion that he would remain reliant on benefits in the future.
12. The FTT took into consideration that it was no fault of the children that their own British citizenship had been obtained as a result of their father's fraud. The children were young (aged 4 and 5 years) but the decision to deprive the appellant of citizenship would not in itself have a significant effect on their best interests nor on the appellant's wife. The FTT took into account that the appellant's wife was pregnant and awaiting the birth of their third child. There was nothing to suggest that, in due course, she would be unable to work albeit that she would need some support in doing so.
13. There was some discussion before us as to whether the appellant's wife had the right to work. However Ms Willocks-Briscoe provided us with a letter from the Secretary of State in relation to the appellant's wife, dated 20 September 2018, which clearly shows that she does have the right to work in the UK. We have seen nothing to suggest that she did not have the right to work at any time that was material to the FTT's consideration of the issues in the appeal.
14. Having considered the relevant evidence, the FTT went on to consider the appropriate legal principles. The FTT judge correctly directed himself (at para 25) that there is a balance to be made between public policy considerations and individual rights. He cited *BA v Secretary of State for the Home Department* [2018] UKUT 00085 (IAC). In that case, Mr Justice Lane held (at para 44) that in relation to cases of fraud:

"Where statelessness is not in issue, it is likely to be only in a rare case that the ECHR or some other compelling feature will require the Tribunal to allow the appeal".
15. The FTT concluded that there were no compelling features in the appellant's case and that the decision to deprive the appellant of British citizenship was reasonable and proportionate.

### **Appellant's submissions**

16. Mr Chakmakjian's submission seemed to us, at its highest, to be that, if the appellant were to be deprived of his British citizenship, his entitlement to ESA would cease. Either the appellant would not be granted immigration status in the UK, in which case his children would face a period of destitution pending his removal. Or he would be granted at most discretionary leave to remain and it would be a condition of his stay that he should not have recourse to public funds, in which case the children would likewise face destitution. The deprivation decision would therefore amount to a disproportionate interference with article 8 rights when the children were blameless for their predicament.

### **Analysis and conclusions**

17. We have no hesitation in rejecting Mr Chakmakjian's submission. As we have mentioned, the appellant's wife has at all material times had permission to work in the UK. The FTT was entitled to conclude on the evidence before it that his wife would be able to work even if the appellant was unable to do so. The FTT relied on evidence that the appellant had been able to settle his personal injury claim and that there was no evidence that the compensation would not be available to him. While it was not in dispute that the appellant was in receipt of ESA, which is a disability benefit, the FTT judge was not bound by any assessment of the Secretary of State for Work and Pensions that the appellant cannot undertake any paid work. The FTT was entitled to consider the issue for itself. The judge was entitled to consider all relevant evidence and to reach the conclusions that he did.
18. As Ms Willocks-Briscoe pointed out, should the appellant's wife be unable to find employment, it will be open to her to apply to the Secretary of State to lift the condition that she should have no recourse to public funds ("NRPF"). We were taken to the relevant policy which indicates that destitution is a ground for lifting NRPF. The Secretary of State would be bound to consider the family's article 8 rights when deciding any application and would be bound to consider the position of the appellant's children in accordance with article 8.
19. There was no evidence before the FTT that the appellant would be separated from his children if ESA were to cease, or that there would be an interference with family life. We agree with the FTT's conclusion that the deprivation decision will have no significant effect on his children's ECHR rights.
20. In any event, it was open to the FTT conclude, as it did, that any interference would be proportionate. The appellant committed a sustained fraud in order to obtain citizenship. We agree with the

Secretary of State's position that the relationship between the UK and its nationals stands to be damaged by those who obtain citizenship by fraud. It is not in the public interest that the rights inherent in being a British citizen should be available to those who gain those rights by fraud. We take this opportunity to reiterate the Tribunal's conclusion in *BA* that, where statelessness is not in issue, it is likely to be only in a rare case that the ECHR, including article 8, will require an appeal to be allowed in cases of fraud.

**DECISION**

The making of the decision of the First-tier Tribunal did not involve an error on a point of law. We do not set aside the decision. The decision to dismiss the appeal stands. The appeal is dismissed.

Signed

Date 22/01/2018

A handwritten signature in black ink, appearing to read 'Justice Farbey', written in a cursive style.

The Hon Mrs Justice Farbey