Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00015/2019

THE IMMIGRATION ACTS

Heard at Bradford by Skype	**Decision & Reasons Promulgated**
On 5 August 2020	**On 12 August 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

DITAN DEMA
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person.
For the Respondent: Mr I Jarvis - Senior Home Office Presenting Officer.

DECISION AND REASONS

1. On 3 June 2020 it was found a Judge of the First-tier Tribunal had erred in law in a manner material to the decision to dismiss the appeal and that decision set aside.
2. The matter comes before the Upper Tribunal today by way of a remote Skype hearing to enable it to substitute a decision to either allow or dismiss the appeal.

Preliminary matters

3. These proceedings, along with a number of appeals involving similar issues, were stayed awaiting the decision of the Upper Tribunal in Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 128. An application was made to the Upper Tribunal by the appellant in writing for the proceedings on 5 August 2020 to be further stayed pending the outcome of an appeal against that decision to the Court of Appeal. That application was refused by a lawyer of the Upper Tribunal exercising delegated powers in an order dated 28 July 2020 for the following reasons:

Reasons:

1. By email and covering letter sent to the Upper Tribunal on 26 July 2020, the Appellant has applied to stay these appeal proceedings until the application for permission to appeal to the Court of Appeal in Hysaj v SSHD (Deprivation of Citizenship: Delay) [2020] UKUT 128 has been decided. The Appellant has noted that the Respondent has placed reliance on Hysaj in her written submissions to the Tribunal. The Appellant has explained that he did not file any submissions to the Tribunal and was not aware of its error of law decision dated 3 June 2020. In the circumstances, the Appellant seeks a stay until the legal position as set out in Hysaj is settled which he submits would be in the interests of justice especially given he has been in the UK for the past 24 years.

2. This application is opposed by the Respondent in an email sent on 28 July 2020. The Respondent notes that an ongoing permission to appeal application is not a sufficient basis for staying this appeal. It is noted that if this was a sufficient basis for staying the case then many appeals would not be resolved in a reasonable time, which would also not be compatible with the overriding objective. The Respondent has asked that the appeal remain listed and that any further representations on the stay can be made by the Appellant at that hearing.

3. I agree with the Respondent. The fact that there is a pending permission to appeal application is not a good reason to stay this appeal. The Tribunal has a duty to list cases expeditiously and without delay and staying this appeal for the reason advanced by the Appellant would be to this duty. It would lead to this appeal and many others being adjourned for an indefinite period and result in delays to the administration of justice. Given the Appellant is aware of the legal issues in Hysaj, there is no reason why he could not make oral representations on the relevance of this case to his appeal at the resumed hearing. In my view, the resumed hearing should proceed as listed on 5 August 2020, whereupon the Appellant may make further oral representations with respect to a stay which can then be considered by the Upper Tribunal Judge seized of this appeal at the beginning of the hearing.
4. I note both parties were directed to file and serve any additional documents, including witness statements, upon which they intend to rely by 22 July 2020. I note that neither party has filed any additional documents thus far. Given the fact the Appellant has not filed any written submissions, I am of the view that the Upper Tribunal Judge seized of this appeal would be assisted by written submissions from him relating to, but not limited to the case of Hysaj. Accordingly, I will extend time for both parties to comply with this direction.

4. Mr Dema made a further application for a stay on the same basis as that previously considered but failed to establish it is appropriate in all the circumstances to grant a stay resulting in delay and loss of allocated resources to this case, solely on the basis of an application which had not been shown to be

granted, which is not accompanied by any order staying the effect of the Upper Tribunal decision, and which has not been shown to warrant the proposed course of action when considering the overriding objectives.

5. Mr Dema also applied for an adjournment as he was without legal representation. The Upper Tribunal file shows Mr Dema is represented by Fountain Solicitors. Mr Dema confirmed he had spoken to a Mr Khan, a consultant at that firm, asking Mr Khan to represent him before the tribunal today but was advised by Mr Khan that he had an alternative commitment that he could not change and was unable to assist on this occasion. It is not made out that other than this Mr Dema did anything else. It is not made out he made telephone contact with the offices of Fountain Solicitors to enquire whether any other representative was available or whether alternative counsel could be instructed. There is no correspondence from Fountain Solicitors seeking an adjournment on the basis of any difficulties they faced in providing representation.
6. Mr Dema claimed he only received notification of the remote hearing two weeks ago but such a claim is questioned as there is within the tribunal file a copy of the Notice of Resumed Hearing sent on 10 July 2020 by email to both Mr Dema and the Home Office Presenting Officer's Unit in Solihull. This was four weeks before the remote hearing. Notwithstanding, Mr Dema claimed he only telephoned Mr Khan 3 to 4 days ago. There is no satisfactory explanation for the failure to act promptly and with due diligence to ensure that representation would be available.
7. Mr Dema also claimed that on the facts of his case he required professional representation. When asked to expand on this argument no satisfactory explanation was given to establish that the issues now at hand in this case are such that the interests of justice cannot be served without Mr Dema being professionally represented. The main issues in cases such as this have now been resolved by the decision in Hysaj [2020] UKUT 128 which is a reported decision of the Upper Tribunal. The main matter of concern in case is to establish Mr Dema's personal circumstances and how the application of the principles established in Hysaj impact upon him.
8. It is also the case that a substantial number of people appearing before the immigration tribunals' are without legal representation as a result of the lack of access to public funding or personal resources. Both the First-tier and Upper Tribunals have considerable experience in dealing with those appearing as litigants in person to ensure they receive a fair hearing.
9. The application to adjourn to enable a representative to be instructed was refused as it was not established it was in accordance with the overriding objectives or, more importantly, the principle of fairness, to grant it as it was not established that Mr Dema would not receive a fair hearing if he proceeded as a self-representing person without the benefit of professional representation. Having indicated the refusal of the application on this ground Mr Dema was advised that if anything arose during the course of the hearing that indicated the need for professional representation further consideration will be given to his application. In the event, no such need arose.

Background

10. It is not disputed that Mr Dema arrived in the United Kingdom on 6 June 1996 and claimed asylum shortly thereafter. It is not in dispute that when he made such claim Mr Dema stated he was from Kosovo in the Federal Republic of Yugoslavia, claiming he will face a real risk of persecution on return on that basis.
11. It is not disputed that the application was initially refused against which Mr Dema appealed but that before the appeal was listed the respondent granted 4 years leave to remain, valid until 30th September 2001.
12. It is not disputed that Mr Dema applied for naturalisation on 21 November 2001 using the same identity details resulting in his receiving his naturalisation certificate on 6 August 2002.
13. It is not disputed that on 1 March 2011 Mr Dema wrote to the Secretary of State asking for his certificate to be amended as he wanted to apply for a new passport at which point he confirmed his true nationality as a national of Albania, not Kosovo.
14. The Secretary of State served Mr Dema with a decision to nullify the grant of citizenship on 4 November 2013. As a result of a decision in the Supreme Court in Hysaj [2017] UKSC 82 Mr Dema received a letter from the Home Office dated 3 February 2018 in the following terms:

> Dear Mr Dema
>
> Re: Mr Driton Dema Kosovo 25 April 1974
>
> Real identity: Mr Dritan Dema Albania 5 April 1974
>
> You were issued with a certificate of naturalisation on 6 August 2002, but after the Secretary of State received information that you had falsified elements of your identity, you were served with a decision nullifying the grant of citizenship on 4 November 2013. We have reviewed the nullity decision in light of a Supreme Court judgement that was handed down on 21 December 2017 ([2017] UKSC 82 *on appeal from: [2015] EWCA Civ 1195)*.
>
> The review of that decision has been completed and the Secretary of State accepts that you are a British citizen under section 6(1) of the British Nationality Act 1981 and the nullity decision has been withdrawn.
>
> However, in light of the false information provided by you in your dealings with the Home Office, consideration will be given to whether it is appropriate to deprive you of citizenship in accordance with section 40 of the British Nationality Act 1981. We will contact you as quickly as possible and no later than 3 months from today's date.

15. On 10 February 2018 Mr Dema received a letter advising him his case had been reviewed that that the respondent was considering depriving him of his British citizen status under section 40(3) of the British Nationality Act 1981 (as amended) and providing an opportunity for Mr Dema to provide further information which he did a letter dated 18th February 2018.

16. Mr Dema was served with notice of decision to deprive him of his British citizenship pursuant to section 40(3) in a document dated 5 February 2019. Having set out the relevant provisions of Chapter 55 of the Nationality Instructions it states at [31 – 32]:

> 31. For the reasons stated above it is not accepted that there is a plausible, innocent explanation for the misleading information which led to the decision to grant you British citizenship rather, on balance of probabilities, it is considered that you provided information with the intention of obtaining a grant of status and/or citizenship in circumstances where your application(s) would have been unsuccessful if you had told the truth. It is therefore considered that the fraud was deliberate and material to the acquisition of British citizenship.
>
> 32. It is acknowledged that the decision to deprive on the grounds of fraud is at the Secretary of States discretion. In making the decision to deprive you of citizenship, the Secretary of State has taken into account the following factors, which include the representations made by you in your letter dated 18 February 2018 and concluded that deprivation will be both reasonable and proportionate.

17. The author then sets out the conclusions in relation to article 8 ECHR and statelessness. Mr Jarvis confirmed that the respondent's position is as set out at [39] of the reasons for refusal letter. It is relevant to set out the conclusions between [27 – 41] which are in the following terms:

> 27. You responded to our letter on 18 February 2018, apologising for providing false details and claiming that you were exhausted after an extremely long journey, fell prey to the wrong advice and was caught in a 'vicious circle until 1 March 2011' (Annex T1, Sec. 1).
>
> 28. The mitigating circumstances you have stated hold little weight as you have not provided any objective evidence to support your account, such as an admission of culpability or letter of support, or at least named the individual who advised you to fabricate your identity to the SSHD. Even if your account was accepted as true, you chose to follow that advice and as an adult, you are responsible and culpable for your actions (Annex V8, 55.7.8.4 & 55.7.8.5). You are also responsible for the information you provided in your name and under your signature, such as the various applications you submitted in your long immigration history, and in each you signed declarations to confirm the accuracy of the information contained therein. It is now apparent you made false declarations in each applications from 1996 to 2011, thus undermining your credibility as a witness and providing the SSHD with grounds to treat your uncorroborated statements with caution.
>
> 29. You are now being deprived of your fraudulently obtained British citizenship in the identity of 'Dritan Dema, born on 25 April 1974 in Bec, Kosovo' under section 40(3) of the British Nationality Act of 1981, for the reasons cited in this letter.
>
> 30. You have stated that you have a partner who you currently living with and have resided in the United Kingdom for a considerably long time. Full consideration will be given to family/private life in the United Kingdom should you choose not to appeal our decision or if your appeal is dismissed.
>
> 31. For the reasons stated above it is not accepted that there is a plausible, innocent explanation for the misleading information which led to the decision to grant you British citizenship. Rather, on the balance of probabilities, it is considered that you provided information with the intention of obtaining a grant of status and/or citizenship in circumstances where your application(s) would have been unsuccessful if you had told

the truth. It is therefore considered that the fraud was deliberate and material to the acquisition of British citizenship.

32. It is acknowledged that the decision to deprive on the grounds of fraud is at the Secretary of State's discretion. In making the decision to deprive you of citizenship, the Secretary of State has taken into account the following factors, which include the representations made by you in your letter dated 18 February 2018 and concluded that deprivation will be both reasonable and proportionate.

Article 8 ECHR

33. If you held another form of settled status prior to *naturalising* as a British citizen and obtained a certificate of entitlement to the right of abode after *naturalising* as a British citizen, the loss of citizenship will result in the loss of the right of abode and with it the loss of the ability to enter and remain in the UK without any restriction on time or purpose. However, a deprivation decision does not itself preclude an individual, remaining in the UK. As noted by the Upper Tribunal in *Ahmed (para 30): "[a] deprivation of citizenship order – emphatically - does not equate to either removal or deportation of the affected subject from the United Kingdom. Both removal and deportation are governed by other statutory regimes entailing specified procedures, requirements and rights".* Accordingly, although deprivation may culminate in a decision to remove you it is not necessary to take into account the impact that removal would have on you and your family members.

34. British citizenship also confers a number of other entitlements and benefits including the right to a British passport and the right to vote in general elections. It is acknowledged that deprivation action will have the necessary consequence that you will lose those entitlements and benefits. However, these are benefits to which you have no proper entitlement.

35. It is also accepted that you held British citizenship since 2002 and that loss of citizenship will have an impact on your identity, for example, you can no longer identify yourself as British. However, the misrepresentation only came to the Secretary of State's attention as a result of your admission and the evidence you provided on 1 March 2011. The Home Office would have considered taking deprivation action earlier if it could have done so.

Statelessness

36. The 1981 Act imposes a statutory requirement upon the Secretary of State to consider statelessness only where deprivation is deemed to be conducive to the public good (s.40(2) and (4)). This is consistent with the U.K.'s obligations under the 1961 Convention on the Reduction of Statelessness, which states that a person may be deprived of citizenship if it was obtained by means of fraud or misrepresentation (Article 8 [2] refers). For that reason no detailed analysis has been carried out as to whether or not to the effect of this decision would be to render you stateless under the laws of Albania of which you were a national when you became a British citizen.

37. However, taking the matter at its highest, even if this decision to deprive on fraud grounds under s40(3) did have the consequence of rendering you stateless, in all the circumstances of the case it is reasonable and proportionate step to take given the seriousness of the fraud, the need to protect and maintain confidence in the UK immigration system and the public interest in preserving the legitimacy of British nationality. Also, it may be open to you to engage with the relevant authorities in Albania to seek reinstatement of your original citizenship if it has been lost.

38. Once deprived of citizenship you become subject to immigration control and so may be removed from the UK or prevented from returning to the UK if deprivation action occurs

whilst you are abroad. Consideration may also be given on whether a limited form of leave be given. A decision on this matter will follow once the deprivation order is made.

39. In order to provide clarity regarding the period between the loss of citizenship by service of a deprivation order and a 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 4 weeks of your appeal rights being exhausted, or receipt of written confirmation from you that you will not appeal this decision, whichever is the sooner.
- Within 8 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, commenced deportation action (only if you has less than 18 months of a custodial sentence to serve or has already been released from prison), or issue leave.

40. The effect of deprivation action on you [and your family members] must be weighed against the public interest in protecting the special relationship of solidarity and good faith between the UK and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bonds of nationality. Having weighed those effects, it has been concluded that it is reasonable and proportionate to deprive you of British citizenship.

41. In accordance with section 40(5) of the British Nationality Act 1981, the Secretary of State gives notice of her decision to make an order to deprive you of British citizenship under section 40 of that act (as amended by the Nationality, Immigration and Asylum Act 2002).

18. The headnote of Hysaj (Depravation of Citizenship: Delay) [2020] UKUT 128, reads:

1. *The starting point in any consideration undertaken by the Secretary of State ("the respondent") as to whether to deprive a person of British citizenship must be made by reference to the rules and policy in force at the time the decision is made. Rule of law values indicate that the respondent is entitled to take advice and act in light of the state of law and the circumstances known to her. The benefit of hindsight, post the Supreme Court judgment in R (Hysaj) v. Secretary of State for the Home Department [2017] UKSC 82, does not lessen the significant public interest in the deprivation of British citizenship acquired through fraud or deception.*

2. *No legitimate expectation arises that consideration as to whether or not to deprive citizenship is to be undertaken by the application of a historic policy that was in place prior to the judgment of the Supreme Court in Hysaj.*

3. *No historic injustice is capable of arising in circumstances where the respondent erroneously declared British citizenship to be a nullity, rather than seek to deprive under section 40(3) of the British Nationality Act 1981, as no prejudice arises because it is not possible to establish that a decision to deprive should have been taken under a specific policy within a specific period of time.*

4. *The respondent's 14-year policy under her deprivation of citizenship policy, which was withdrawn on 20 August 2014, applied a continuous residence requirement that was broken by the imposition of a custodial sentence.*

5. *A refugee is to meet the requirement of article 1A(2) of the 1951 UN Refugee Convention and a person cannot have enjoyed Convention status if recognition was consequent to an entirely false presentation as to a well-founded fear of persecution.,*

6. *Upon deprivation of British citizenship, there is no automatic revival of previously held indefinite leave to remain status.*

7. *There is a heavy weight to be placed upon the public interest in maintaining the integrity of the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship. Any effect on day-to-day life that may result from a person being deprived of British citizenship is a consequence of the that person's fraud or deception and, without more, cannot tip the proportionality balance, so as to compel the respondent to grant a period of leave, whether short or otherwise.*

19. Section 40 British Nationality Act 1981 (as amended) reads:

40 Deprivation of citizenship.

(1) In this section a reference to a person's "citizenship status" is a reference to his status as—

(a) a British citizen,

(b) a British overseas territories citizen,

(c) a British Overseas citizen,

(d) a British National (Overseas),

(e) a British protected person, or

(f) a British subject.

(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

(3) 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) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.

(4A) But that does not prevent the Secretary of State from making an order under subsection (2) to deprive a person of a citizenship status if—

(a) the citizenship status results from the person's naturalisation,

(b) the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to

the vital interests of the United Kingdom, any of the Islands, or any British overseas territory, and

(c) the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory.

(5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying—

(a) that the Secretary of State has decided to make an order,

(b) the reasons for the order, and

(c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).

(6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status 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.

Discussion

20. Whilst Mr Dema sought to make a comparison between his and other cases where similar action to that he faces had not been taken, or leave had been granted, such cases are intently fact specific and insufficient evidence was provided to show that such decisions demonstrated a policy held by the decision-maker such that Mr Dema could claim a legitimate expectation his case will be handled in the same way.
21. Mr Dema also sought to rely upon the facts of a case that he stated mirrored his closely but his authority for this proposition was an unreported decision of the Upper Tribunal which he did not have permission to rely upon, no application having been made for the same in accordance with the relevant practice direction.
22. Mr Dema also referred to the fact that the respondent believed his nationality was as he claimed meaning that notwithstanding his admitted deception by providing a false identity by reference to his country of origin, his appeal should be allowed, as such deception was not material to the grant. Such argument has no merit. So far as it is recorded in the documents received by Mr Dema from the Home Office following a Subject Access Request, it is clear that an official of the respondent mistakenly believed that Mr Dema's appeal had been allowed by an Immigration Judge and on that basis granted him the initial period of leave to remain. A proper reading of the chronology clearly shows that although Mr

Dema sought to appeal the refusal of his asylum claim an official of the respondent granted leave to remain before that appeal was listed. It is therefore not a case in which the respondent accepted an independent judicial body had confirmed Mr Dema's identity was as claimed but rather as a result of a material mistake of fact.

23. Mr Dema also submits that his appeal should be allowed as it was clear from the documents that the respondent accepted that he might not be a Kosovan national as claimed, but Albanian, meaning that a grant of leave to remain and subsequent grant of British citizenship did not occur as a result of any fraud or deception on his behalf. Such submission has no arguable merit. Whilst Immigration Officers may have had a suspicion that Mr Dema was not a Kosovan national as he claimed, in light of the substantial number of Albanians entering the United Kingdom seeking a grant of international protection as refugees on the basis of claimed Kosovan nationality at that time, it is not made out that there was any evidence before the respondent in relation to Mr Dema's nationality other than his statement that he was from Kosovo. It is also clear that any suspicion there may have been in the mind of an official was clearly put aside with reliance being placed upon Mr Dema having been truthful, which it was later discovered he was not.

24. Although he blames advice received from an agent, which may be a credible claim, Mr Dema still knew which country he was a national of but chose not to tell the respondent's representatives the truth; either when he initially claimed asylum or on any other occasion when there was interaction between him and the respondent's representatives, before 2011. Deception is the action of deceiving someone. I find Mr Dema deliberately, with the intention of enabling him to remain in the United Kingdom and to secure status, misled the respondent by providing a false identity both in relation to his initial asylum application on 16 June 1996 and on every further application thereafter before he disclosed his correct details on 21 February 2011, for which no plausible justification for such actions has been provided.

25. Mr Dema stated that the nullity decision put him in considerable difficulty. He was made redundant but was unable to obtain alternative employment as he no longer had any status or right to work. He confirmed he has now obtained full-time employment with Refugee Action who have provided a letter of reference dated 17 April 2019 which has been included in Mr Dema's supplementary bundle. Mr Dema has been able to continue his employment during lockdown from home near Birmingham but otherwise stated he travels regularly to London four days a week, working one day a week from home.

26. Mr Dema lives on the outskirts of Birmingham with his brother, his parents, and a younger family member. Mr Dema is a single man with no children in the United Kingdom but claim to have a 'partner' in the UK who he visits in London and whom he sees often.

27. Mr Dema also states that during the 24 years he has lived in the United Kingdom he has worked tirelessly helping people in all situations both in paid employment and in the voluntary sector. Mr Dema claims that as a result of his length of time in the United Kingdom and activities his case is exceptional.

28. Whilst Mr Dema refers to head note (4) of Hysaj, which confirmed the removal of the respondent's 14 year policy and a deprivation of citizenship policy on 20 August 2014 he is unable to benefit from a policy that has not been shown to be applicable on the facts of his case.
29. Mr Dema confirmed he will be devastated as the consequence of the decision will be that he will lose his job as he will not have any permission to work. He also claims that for the last 3 years he has had to apply for permission to work every 6 months, the last one being in June 2020. All his family are in the UK and his nephew is to start his studies at university this year. All have lawful status. Mr Dema states the UK is his home as he has worked hard to make it his home and invested the best years of his life in the United Kingdom.
30. Although Mr Dema provides an explanation for his actions in providing a false identity there is no evidence that he faced undue pressure from any 3rd party to do so. Mr Dema knew who he is but chose to give a false identity as he wished to seek leave to remain and did so for the purposes of acquiring that aim. I accept the submission of Mr Jarvis that Mr Dema make the most of an opportunistic chance by claiming a new identity for personal reasons.
31. I find it made out on the evidence that Mr Dema practiced significant deception between 1996 to 2011. That is relevant to the weight to be given to the public interest which is significant in a case where deception has arisen. In Hysaj at head note 7 it is written:

> *There is a heavy weight to be placed upon the public interest in maintaining the integrity of the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship. Any effect on day-to-day life that may result from a person being deprived of British citizenship is a consequence of the that person's fraud or deception and, without more, cannot tip the proportionality balance, so as to compel the respondent to grant a period of leave, whether short or otherwise.*

32. I find Mr Dema used deception to claim citizenship in 2002. I accept Mr Dema apologised to the respondent that he had lied in relation to his identity but that was only in 2011 when it suited him to do it to enable him to secure a document that reflected his true identity.
33. I find any Immigration Officer's suspicion that he may have had a different identity to that claimed is not contradictory evidence on the clear facts of this matter. I find there is no basis for making a finding that the respondent's representative knew Mr Dema's true identity details.
34. It is not made out that considering the rules and policies in force at the date the decision under challenge they were not correctly applied by the decision-maker in arriving at the impugned decision.
35. The assertion in relation to the application of historic policies is an issue that has been resolved by Hysaj in the Supreme Court, as confirmed by the Upper Tribunal. Mr Dema fails to establish any legitimate expectation, so far as that term is understood in a legal context, that the decision should have been taken by application of historic policies.
36. This is a case in which the respondent declared Mr Dema's British citizenship to be a nullity which was found to be unlawful resulting in that decision being revoked, but Mr Dema fails to establish any prejudice as he fails to make out

that the decision to deprive should have been taken any under specific policy within a specific period of time. Any claim based upon delay has not been shown to have merit on the facts of this matter.

37. It is also of relevance that had Mr Dema declared his correct identity details it is highly unlikely he would have been allowed to remain in the United Kingdom as he would have been returned to Albania. It is more likely than not to be for this reason that he provided the false identity. The only reason he succeeded with his application for international protection was as a consequence of an entirely false presentation of the facts in relation to his true identity and claim to face a credible well-founded fear of persecution arising therefrom by reference to the country conditions in Kosovo at that time. The deception was clearly material to the grant of citizenship.

38. There is arguable merit in Mr Jarvis's submission that the situation in which Mr Dema finds himself as a direct consequence of his own actions. It is not made out any delay that has occurred in the respondent's decision-making process is sufficient to make the decision unlawful on the facts.

39. Mr Dema has paid employment which he seeks to rely upon in support of his claim that the effect upon him will be devastating if he lost the same; but the only reason he was able to work in the first place is because he obtained permission to work from the respondent based upon his declared status, which was clearly a right to work obtained as a direct consequence of his deception.

40. It is not disputed that the effect of the respondent's decision is that Mr Dema is likely to lose his paid employment as he will have no right to work unless such a right is granted by the respondent. I do not accept any suggestion or implication that Mr Dema will be turned out of the family home as on his own evidence he is living in a very close and loving family environment with his sibling and parents. I accept that loss of employment may mean he is unable to make the financial contribution he currently makes to the family finances, but it is not made out that he will become homeless or destitute or face undue hardship whilst waiting for a decision to be made as to whether he is to be removed or granted a period of leave.

41. I accept that the timescale set out by the Secretary of State in the reasons for refusal letter at [39] may result in Mr Dema being in "limbo" for a period of 8 weeks but I do not find he has made out that the impact upon him during such period is sufficient to make a finding that the discretion conferred in s40A should be exercised any differently.

42. Mr Jarvis accepted there was reference to article 8 in the refusal letter and Mr Dema's submission any interference with his private life will be disproportionate has been considered as part of the review of all relevant matters. Mr Jarvis refers to Section 117B of the 2002 Act and there is arguable merit in his assertion that the private life Mr Dema seeks to rely upon should have little weight attached to it for although it appears on the face of it he had lawful leave to remain in the United Kingdom at that time, such leave was obtained as a result of his act of deception, resulting in leave to which he was never lawfully entitled.. As such his status has always been precarious. I find there is arguable merit in such a submission.

43. Having taken all submissions made into account, I conclude that Mr Dema has failed to discharge the burden upon him to the required standard to show there is anything unlawful, unreasonable, or irrational in the respondent's decision to deprive him of his British citizenship pursuant to section 40(3) of the British Nationality Act 1981 or to show that the discretion contained in section 40A should have been exercised in any other way.

Decision

44. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

45. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 6 August 2020