Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00042/2019

THE IMMIGRATION ACTS

Heard at: Field House
On: 14 January 2020

Decision & Reasons Promulgated
On: 22 January 2020

Before

THE HON. MRS JUSTICE MOULDER
SITTING AS AN UPPER TRIBUNAL JUDGE
UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUSA GJONIKU

Respondent

Representation:

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Ms M Sardar, instructed by Oliver & Hasani Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Gjoniku's appeal against the decision of 25 April 2019 to deprive him of his British nationality under section 40(3) of the British Nationality Act 1981.

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2. For the purposes of this decision, we shall hereinafter refer to the Secretary of State as the respondent and Mr Gjoniku as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a national of Albania, born on 2 February 1980. He arrived in the UK in 1998 and claimed asylum on the grounds of being at risk on return to Kosovo as an ethnic Albanian, stating that he came from Prishtine, Kosovo, and giving a date of birth as 2 April 1981. He was granted asylum and indefinite leave to remain on 14 May 1999 and was subsequently naturalised as a British citizen on 18 May 2005, all on the basis of what he now accepts were false representations in regard to his date of birth and nationality.

4. The appellant married his wife, an Albanian national, in Albania on 28 August 2003 and had three children born in Albania, on 24 May 2005, 4 November 2011 and 4 June 2016, all of whom remained and still remain living in Albania. As a result of his British citizenship, the appellant's children are British citizens.

5. The appellant's false identity came to light when he applied to Her Majesty's Passport Office (HMPO) for a British passport for his son in 2018. Following an investigation by the Status Review Unit (SRU), the Home Office wrote to the appellant on 18 January 2019 advising him that consideration was being given to depriving him of his British citizenship on the basis of fraud and inviting a response to the allegation. The appellant responded on 4 February 2019, admitting to the deception, accepting his genuine identity and providing mitigating circumstances such as the rise of violence and civil unrest in Albania. The appellant also claimed to have been advised by his solicitor and interpreter to give false details about his place and date of birth, despite having provided them with his genuine birth certificate. The respondent did not accept the appellant's explanation as a justification for the deception and concluded that his British citizenship had been obtained fraudulently. The respondent decided, in a decision dated 25 April 2019, that he should be deprived of his British citizenship under section 40(3) of the British Nationality Act 1981.

6. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981. His appeal was heard on 16 July 2019 by First-tier Tribunal Judge Atreya. There was no oral evidence before the judge and the appeal proceeded on the basis of submissions only. The judge accepted that the appellant was advised by solicitors/ interpreters to lie about his nationality and date of birth, that he was a very young adult when he came to the UK and had been dependent upon his parents prior to coming here, that he may have been influenced by others and that he had apologised for his actions, but she noted that it remained the position that he had deliberately misled the respondent as to his country of origin and had continued to lie in his applications up to 2005 when he was an adult. The judge observed that the appellant had been employed by the same company in the UK for almost 20 years since 1999 and had paid taxes, that he had significant savings from his work, that he was a bread-winner and had supported his family from his work in the UK, that he had not committed criminal offences in the UK, that he was married with three British children and that the family were suffering because of the uncertainty caused by deprivation of his British nationality. The judge noted that

the consequences for the appellant of losing his British citizenship would include a period of uncertainty whilst the respondent decided whether to remove him and that he would be unable to work or rent if a removal decision were made and pending any appeal against such a decision, as well as the advantages and privileges he would lose even if he were not removed.

7. Having had regard to the guidance and principles set out in recent cases concerning deprivation of citizenship, the judge found that the appellant's deception motivated the grant of citizenship, that his nationality was material to the decision to grant him citizenship and that the exercise by the respondent of the power to deprive him of citizenship was lawful and fair. The judge found that, in such circumstances, the relevant consideration was the reasonably foreseeable consequences of deprivation in line with the decisions in BA (deprivation of citizenship: appeals) [2018] UKUT 85 and Aziz & Ors v Secretary of State for the Home Department [2018] EWCA Civ 1884. She considered that the "period of limbo" in which the appellant would have no immigration status, would be prohibited from working and renting and would be at real risk of destitution in the UK, would have a detrimental and significant impact upon his family who were dependent upon his remittances and would be contrary to the best interests of his children. She considered that even aside from the impact on the children, the impact on the appellant alone would be sufficient to make out the "high threshold for private life" and that the legal consequences of deprivation would "engage Article 8" such that the appeal should be allowed.

8. Permission to appeal was sought by the respondent on the grounds that the judge's limbo/destitution finding/reasoning was wholly inadequate in that it failed to take into account the appellant's true circumstances and failed to apportion appropriate weight to the public interest. The grounds asserted that there was nothing on the facts of the case that would elevate the appellant's appeal into the category of rare, as required by BA, that the judge had failed to grapple with the factual matrix and had failed to identify what meritorious claim the appellant could pursue in order to obtain status following deprivation.

9. Permission was granted on 25 October 2019 in the First-tier Tribunal. The matter then came before us and we heard submissions on the question of whether there was an error of law in Judge Atreya's decision.

Relevant Law relating to Deprivation

10. Section 40 of the British Nationality Act provides as follows:

> "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."

Error of Law

11. Mr Lindsay submitted that the central error was a material misdirection by the judge in her Article 8 assessment as she went no further than finding that Article 8 was engaged and did not conduct a proper balancing exercise. A further error arose from the judge's failure, when referring to a "period of limbo", to take account of the indication in the Secretary of State's decision letter of 25 April 2019 at paragraph 36 of the relatively short period between the loss of British citizenship and a decision whether to remove the appellant from the UK. Mr Lindsay submitted that the judge erred by accepting the appellant's evidence of having been advised by solicitors/interpreters to lie when there was only the appellant's evidence to support such a conclusion and when there was no evidence that the allegation had been put to those solicitors in accordance with the principles set out in <u>BT (Former solicitors' alleged misconduct) Nepal [2004] UKIAT 00311</u>. The judge had referred to the duration of the fraud as 1998 to 2005, which was wrong as it was 1998 to 2018 and the Secretary of State had been unaware of the fraud in 2005, which was material to a proportionality assessment. The judge's finding that the appellant would be destitute ignored the fact of the appellant's savings, a matter raised by the Home Office Presenting Office at the hearing.

12. Ms Sardar, in her submissions, relied upon the appellant's Rule 24 response and her skeleton argument. She submitted that in the context of deprivation appeals there was no statutory weighted balance or explicit parliamentary exposition of the public interest as in deportation cases or section 117C of the Nationality, Immigration and Asylum Act 2002 and that the public interest in deportation cases had a moveable rather than a fixed quality in any event. She submitted that the judge did consider the public interest in any event and was clearly aware of the fraud. Having addressed the fraud, it was open to the judge to consider countervailing factors, which was in effect a proportionality balancing exercise consistent with [17] and [18] of <u>KV, R (On the Application Of) v Secretary of State for the Home Department [2018] EWCA Civ 2483</u>. There was no requirement for there to be

anything exceptional. The judge considered all relevant matters including the effect of deprivation of citizenship on the appellant's family, the best interests of his children and his length of residence in the UK and had therefore undertaken a proper proportionality assessment and had addressed all the relevant Razgar steps. Length of residence was particularly important as the Home Office policy previously in place had been that deprivation would not occur after 14 years' residence in the UK, and the immigration rules now recognised the significance of 20 years' residence. With regard to the appellant's savings, the judge was fully aware of these but noted that there was no evidence of the limbo period being for a limited time. Although the respondent gave a time-line in the deprivation decision, that did not take account of the fact that the appellant had said he would make a human rights application which would then have to be considered by the respondent and, if refused, would be followed by an appeal. That was the time-line referred to by the judge at [61] and she was entitled to find that the period of time was uncertain. As to the assertion in the grounds that the appellant could return to Albania voluntarily, he had a right to remain in the UK until a decision was made to remove him.

13. Having considered the submissions we advised the parties that, in our view, the judge's decision contained material errors of law in that there was a misdirection of law by failing to assessing proportionality and a failure to take material matters into account including the respondent's indication of the time-line for any period of limbo. We indicated that we would give full reasons in our decision, which we now do.

14. We agree with Mr Lindsay that the judge's decision showed a failure to accord weight to the public interest and to undertake a full proportionality balancing exercise. We accept, as Ms Sardar submitted, that the judge plainly gave consideration to the appellant's fraud. However, that appeared in the earlier part of her decision where she considered whether the precedent facts were made out and whether the exercise of the power to deprive the appellant of citizenship was fair and lawful. There was nothing to indicate, in her findings at [50] and from [54] where she considered Article 8 and properly directed herself on the relevant issue being the "reasonably foreseeable consequences of deprivation", that she gave any weight to the public interest in so doing. Her decision is expressed in terms of Article 8 being engaged but contains no further balancing exercise taking account of the public interest. Ms Sardar, in her submissions, sought to downplay the significance of the public interest in the context of deprivation appeals, asserting that there was no statutory weighted balance or explicit parliamentary exposition of the public interest as in deportation cases or section 117C of the 2002 Act. However the significance of the public interest in deprivation cases was emphasised in Deliallisi (British citizen: deprivation appeal: Scope) [2013] UKUT 439 at [36] and [37]:

> "36. … In cases of the present kind, the application by the respondent of her policy on deprivation must be taken as indicating where, as a general matter, the respondent considers the balance falls to be struck, as between, on the one hand, the public interest in maintaining the integrity of immigration control and the rights flowing from British citizenship, and, on the other, the interests of the individual concerned and of others likely to be affected by that person's ceasing to be a British citizen. As in similar appeals governed by the 2002 Act, the appellate tribunal must give the respondent's policy due weight, bearing in mind

> that it is the respondent - rather than the judiciary - who is primarily responsible for determining and safeguarding public policy in these areas.
>
> 37. So far as the ECHR is concerned, in most cases (including the present) the provision most likely to be in play is Article 8 (respect for private and family life). If, on the facts, the appellate tribunal is satisfied that depriving an appellant of British citizenship would constitute a disproportionate interference with the Article 8 rights of that person or any other person whose position falls to be examined on the principles identified in Beoku-Betts [2008] UKHL 39, then plainly the tribunal is compelled by section 6 of the Human Rights Act 1998 to re-exercise discretion by finding in favour of the appellant."

15. That was in turn adopted in the case of BA at [37], where the Upper Tribunal added at [38] that:

> "In a section 40A appeal, the respondent's view should normally be accorded significant weight: see Lord Carlile of Berriew v Secretary of State for the Home Department [2014] UKSC 60; Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60. In the majority of cases, the weight will be such that the Tribunal will have no proper basis for exercising its discretion differently. This does not, however, mean the Tribunal is absolved from the duty of deciding that issue."

and at [44]:

> "The Tribunal will be required to place significant weight on the fact that the Secretary of State has decided, in the public interest, that a person who has employed deception etc to obtain British citizenship should be deprived of that status."

16. Such a position was endorsed by the Court of Appeal in Aziz and subsequently in KV, albeit the Court, in the former, found that the Upper Tribunal in those cases had gone too far by endorsing a 'proleptic analysis' of whether an appellant would be likely to be deported or removed at a later stage.

17. Accordingly we disagree with Ms Sardar's submission that the judge conducted a proper Article 8 assessment and accorded weight to the public interest and we find that the judge plainly materially erred in law in this respect. We also find merit in the other assertions made in the grounds and by Mr Lindsay as to the judge's failure to take account of relevant matters such as the respondent's indication of a time-line for making a decision on the appellant's immigration status subsequent to the loss of British citizenship, the lack of consideration of the appellant's savings in concluding that he would become destitute, the appellant's ability to return to Albania and support his family there and the period of the deception.

Disposal of the Appeal and Adjournment Request

18. Having advised the parties of our conclusion that Judge Atreya erred in law in her decision to the extent stated, we invited submissions as to the disposal of the appeal.

19. Ms Sardar's initial request was that the case be remitted to the First-tier Tribunal as the appellant had further evidence of his financial circumstances which needed to be

considered. She also submitted that the case should be stayed behind a similar case in which her instructing solicitors were also involved, Hysaj, which had been heard by the Upper Tribunal and the decision was awaited. However we did not consider that it was appropriate for the case to be remitted to the First-tier Tribunal. The judge's findings on the appellant's behaviour in deliberately misleading the respondent and her findings as to the lawfulness and fairness of the deprivation decision had not been challenged and the decision was to be re-made only in relation to Article 8 and proportionality. In the circumstances we saw no reason why the case should not be retained in the Upper Tribunal. We also indicated that we saw no reason why we could not proceed to hear the case ourselves at that time, since the only indication of further evidence was an application made on 20 December 2019 under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to admit a statement from the appellant's wife. Ms Sardar, however, requested an adjournment for a resumed hearing on another day. We then invited submissions on the adjournment request.

20. Mr Sardar submitted that an adjournment was required in order for the appellant's wife's statement to be admitted and considered; for evidence of remittances to be submitted, in the form of Swift receipts for 2014, 2016 and 2017 showing money transferred from the appellant to his father-in-law with whom his wife and children were living; for the appellant to give oral evidence explaining how he supported not only his wife and children but also his parents in Albania and how his inability to work would impact on him and his family; and to await the decision in Hysaj which involved the same issues as in this case including the argument in relation to the state of limbo. Mr Lindsay opposed the application made under Rule 15(2A) as it did not comply with the Procedure Rules and the Tribunal's directions since there was no explanation why the evidence was not submitted to the First-tier Tribunal; he opposed the adjournment request on the basis that there was no good cause for further oral evidence from the appellant; he submitted that the First-tier Tribunal had already accepted that the appellant was the breadwinner and therefore the non-admittance of the remittances would not prejudice him; and he submitted that there had been no previous request by the appellant's solicitors to stay his case behind Hysaj and therefore no reason why it should be stayed.

21. We considered the adjournment request which we then refused for the following reasons. With regard to the application under Rule 15(2A) to admit the appellant's wife's statement, we noted that the application did not comply with the Procedure Rules since no reason had been provided as to why a statement had not been produced before the First-tier Tribunal. However, since the statement had been produced prior to the hearing before us together with an appropriate application we agreed to admit it, albeit finding no reason why an adjournment was required on that basis. With regard to the remittance receipts, there had been no application under Rule 15(2A), there was no explanation why they had not been produced before the First-tier Tribunal and they were, in any event, irrelevant in assessing the impact of deprivation on the appellant at the current time as they were dated 2014, 2016 and 2017 and were thus historical and did not provide a complete picture. We did not agree to admit that evidence. As for the appellant's oral evidence, we did not see how it would add anything to the case as it had already been accepted by the First-tier Tribunal that he was the breadwinner. There had been no application under Rule 15(2A),

despite the appellant's solicitors being aware of the need for such an application, having made one in relation to the appellant's wife's statement, and we refused to admit such evidence. Finally, with regard to the case of Hysaj, Ms Sardar was unable to explain how the decision in that case would have any direct relevance to the case before us, and despite the same solicitors being involved in both cases, there had been no prior application for a stay.

22. In addition, the directions from the Upper Tribunal, issued together with the grant of permission and followed by further directions, specifically required an application to be made under Rule 15(2A) if further evidence was to be relied upon, and specifically stated that there was a presumption that in the event of the First-tier Tribunal's decision being set aside, the re-making of the decision would take place at the same hearing. Accordingly, the appellant's solicitors would have been fully aware that the Upper Tribunal may proceed to re-make the decision in the appeal and indeed made a Rule 15(2A) application to admit the appellant's wife's statement on that understanding. We therefore found no reason for the hearing to be adjourned and considered that no procedural unfairness arose from refusing to adjourn. We proceeded to hear from the parties in regard to the re-making of the decision in the appeal.

23. Both parties made further submissions. Ms Sardar relied on her skeleton argument and submitted that consideration had to be given to the impact of deprivation of citizenship on the appellant's family, as his wife's statement confirmed that he supported both his immediate family and his parents. The bank statements previously submitted before the First-tier Tribunal showed the appellant's economic history in the UK and the cash withdrawals for money sent to his family, and gave the most recent balance for 14 January 2019 of £5,964. That was not enough to support his family and sustain himself during the period of limbo, considering the uncertain length of time involved whilst his Article 8 application was being considered by the respondent and, if refused, whilst an appeal was pending.

24. Mr Lindsay submitted that the appellant's private life in the UK carried very little weight and he could not meet the requirements of paragraph 276ADE(1)(iii) on the basis of 20 years' long residence as that was subject to the suitability provisions. His wife's assertions about the difficulties he would face integrating and finding work were not supported by any evidence. As confirmed in the case of Secretary of State for the Home Department v Abbas [2017] EWCA Civ 1393 at [18], Article 8 could not be engaged on private life grounds in respect of a person living outside the UK and the appellant could not, therefore, rely on the private life of his wife and children. There was no prejudice to the appellant's family life as he could return to Albania and reside there with his family. Section 55 of the Borders, Citizenship and Immigration Act 2009 did not have extra-territorial effect. As for the reasonably foreseeable consequences of deprivation, the appellant had not shown that his savings would not last for the period of limbo. With regard to the assertion that that period would be extensive due to the appellant making an Article 8 application, such an application was not capable of succeeding and it was therefore open to the appellant to return to Albania.

Re-making the Decision

25. The Court of Appeal, in the case of Aziz, made clear the relevant considerations in a deprivation case, where it endorsed the principles in Delialissi and AB, as set out at [14] and [15] above, and held at [26]:

> "Although in a sense it is of course difficult to quibble with the formula in Delialissi that regard should be had to the reasonably foreseeable consequences of deprivation of citizenship, an examination of such consequences is only required insofar as it is necessary to make an assessment in relation to them in order to rule upon whether the making of the deprivation order itself will be lawful and compatible with Convention rights, in particular Article 8, and section 55. That will depend in turn upon the reasons put forward by the Secretary of State to justify the making of the deprivation order."

26. We start by acknowledging and taking account of the public interest in maintaining the integrity of immigration control and the rights flowing from British citizenship and we therefore give considerable weight to the fraud perpetrated by the appellant and the adverse effect on the interests of the public. As the First-tier Tribunal Judge found, whilst the appellant claims that he was advised by solicitors/interpreters to lie about his nationality when he first made his protection claim, and whilst he may have been a young and impressionable man at the time who had previously been dependent upon his family and had arrived in a new country, it was his choice as an adult to maintain that deceit throughout further applications and to lie in his application for naturalisation in May 2005. He maintained his fraud for a period of 20 years and would no doubt have continued to do so had he not been discovered when he applied for a British passport for his son. It was on the basis of his lies that he was able to obtain refugee status, indefinite leave and British citizenship, and was able to work and continue to reside in the UK. The public interest in deprivation is therefore strong.

27. It is the appellant's case, however, that the public interest is outweighed by his own interests and those of his family in Albania on the basis that the reasonable foreseeable consequences of deprivation are that he would become destitute and would be unable to support his family during the period of limbo after losing his British citizenship and waiting to find out whether the Secretary of State will seek to remove him from the UK, which in turn breaches his Article 8 rights. However, we do not consider that the appellant has shown that that would be the case or that that has to be the case.

28. The respondent has confirmed, in the deprivation decision at [36], that the period between the deprivation order and the decision to remove/ grant leave, will be up to eight weeks. The most recent evidence from the appellant of his financial circumstances showed savings of £5,964 in January 2019. He did not produce any more current evidence before the First-tier Tribunal or before the Upper Tribunal and provided no evidence to show that that amount would not cover his expenses for that period of time. It is submitted on behalf of the appellant that the period of "limbo" would be considerably longer than eight weeks, as he would be submitting an Article 8 human rights claim which, if refused, would then be appealed. However, as Mr Lindsay submitted, there can be no prospect of success in such a claim. Whilst we are mindful of the Court of Appeal's comments about

the inappropriateness of undertaking a proleptic assessment of the likelihood of removal, the merits of an Article 8 claim has to be a material consideration in addressing Ms Sardar's submission about an extended period of limbo.

29. This is not a case, as usually arises, that the appellant has an established family life in the UK with children who have integrated into British life. The appellant's case is unusual as his family are all in Albania. Although his children are British citizens and, as far as we understand, will remain so, their citizenship was enabled by the appellant's fraud, albeit that they retain all the rights of British citizens and are entitled to live in the UK. Their mother, however, has no right to reside in the UK and neither she nor the children have, as far as we are aware, resided in the UK with the appellant. The appellant's claim could therefore only be pursued on private life grounds, but could not succeed within the immigration rules given that paragraph 276ADE(1) is subject to the suitability requirements which would apply to him as a result of his fraud. His private life carries little weight, pursuant to section 117B, given the unlawful nature of his stay in the UK. We do not agree with Ms Sardar that the respondent's previous policy in regard to deprivation and 14 years residence, or the significance of 20 years within the immigration rules, can lend any material weight in the proportionality assessment and it certainly cannot be considered as amounting to compelling circumstances justifying a grant of leave where the rules do not apply. Accordingly, it cannot be the case that the appellant can successfully rely on a claim to be at risk of destitution during a period of time which he chooses himself to prolong by making an unmeritorious claim with no prospect of success.

30. As Mr Lindsay submitted, it is open to the appellant to return to Albania where he has an established family life with his wife and children. We see no merit in a claim that the best interests of his children lie in him remaining in the UK and supporting them from here, not only because section 55 does not have extra-territorial effect, but also because the best interests of his children must, more likely, be for him to return to Albania to live with them. The appellant's wife's statement makes repeated reference to the children missing their father, as well as to his own parents wanting him to be with them in Albania. As for the assertion made by the appellant and in his wife's statement, that he could not find work in Albania and that there would be no means of support if he was not able to continue working in the UK, that is wholly unsupported by any evidence. The evidence about the circumstances of the appellant's wife and children is not entirely consistent, as Ms Sardar repeatedly referred to remittances being sent to the appellant's father-in-law, with whom they lived, whilst his wife's statement was that the money was sent to her father-in-law and that she lived with her husband's parents. However even if the case was as set out in the appellant's wife's statement, there is no proper reason given as to why the appellant could not find employment in Albania with the practical skills acquired during his years of employment in the UK in the construction industry. There is no evidence of the family's finances and living circumstances in Albania to support the claim that they are solely reliant upon the appellant's remittances. We give little weight to the appellant's own evidence as he has shown himself to be a person who has been content to lie to the UK authorities on numerous occasions. Neither do we give weight to his wife's statement, as it has not been tested under cross-examination and is nothing more than bare assertions. In any event, it cannot be the case that an ability to support family members

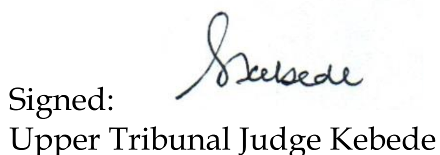
living outside the UK is a matter which carries any significant weight, or indeed any weight at all, in an Article 8 proportionality assessment.

31. Accordingly, we conclude that the reasonably foreseeable consequences of deprivation for the appellant are that, for a relatively short period of time he will be without immigration status in the UK whilst awaiting the respondent's decision whether to remove him or grant him leave. During that period, if he chooses to remain in the UK, he will be able to support himself from his savings from his previous years of employment. It is open to him, alternatively, to return to Albania to join his wife, children and parents and maintain his family and private life there, either prior to a further decision from the respondent or subsequent to such a decision and as an alternative to pursuing a hopeless Article 8 claim in the UK. We do not accept that the reasonably foreseeable consequences of deprivation are that he would become destitute or that he would otherwise be put in a position that would constitute a disproportionate interference with his Article 8 rights and those of his family members. For the reasons we have given, we conclude that the public interest in depriving the appellant of the British citizenship he acquired through fraud and deception far outweighs his individual interests and rights and those of his family. There is no breach of Article 8 arising from the deprivation of citizenship.

DECISION

32. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed and the decision is set aside.

33. We re-make the decision by dismissing Mr Gjonika's appeal.



Signed:
Upper Tribunal Judge Kebede

Dated: 16 January 2020