Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DC/00098/2019**

THE IMMIGRATION ACTS

Heard at Field House (via *Skype*)
On 15 September 2020

Decision & Reasons Promulgated
On 07 October 2020

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

KLODIAN NASKI
(AKA KLAJDI NAKDI)
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Foot, instructed by Oliver & Hasani Solicitors
For the Respondent: Mr Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is an Albanian national who was born on 15 March 1985. He appeals, with permission granted by First-tier Tribunal Judge Grant-Hutchison, against a decision which was issued by First-tier Tribunal Judge Louveaux on 13 November 2019. By that decision, Judge Louveaux ("the judge") dismissed the appellant's appeal against the respondent's decision to deprive him of British citizenship under s40 of the British Nationality Act 1981.

© CROWN COPYRIGHT 2020

Background

2. There is a lengthy history to this case and it is necessary to set it out in some detail.

3. The appellant arrived in the UK as an Unaccompanied Asylum-Seeking Child ("UASC") on 14 May 1999. He claimed asylum, stating that he was a Kosovan who had been born in Decan in the west of that country. He gave his correct date of birth but a false name: Klajdi Nakdi. He said that he was in fear of the Serbs and that he and his father had been beaten by the Serbian police on many occasions.

4. On 23 February 2001, the appellant was refused asylum because the respondent concluded that there was no longer a risk to ethnic Albanians in Kosovo. The appellant was nevertheless granted Exceptional Leave to Enter ("ELE"), due to his status as a UASC, until 15 March 2003, that being the date on which he was due to attain his majority.

5. The appellant seemingly applied for further leave before the expiry of his ELE. On 16 February 2008, whilst that application was still pending, he applied for a Home Office Travel Document because he wished to visit his mother, who was said to be very ill, and because he was said to be concerned that the Serbian authorities might take a year to issue him with a passport. He gave his name as Klajdi Nakdi once more, and stated that he was a Kosovan who had been born in Decan. The Travel Document was granted on 17 July 2008, and was valid until 16 July 2009

6. On 26 March 2008, the respondent granted the appellant Indefinite Leave to Remain in the Nakdi identity. It is common ground that the appellant made no application prior to this decision. ILR was granted under the Legacy programme, as considered in cases such as R (Hakemi) v SSHD [2012] EWHC 1967 (Admin) and R (Geraldo) v SSHD [2014] Imm AR 400, and the letter stated that leave was being granted 'exceptionally, outside the Immigration Rules.'

7. On 22 May 2009, the applicant applied for naturalisation as a British citizen under s6(1) of the British Nationality Act 1981 ("the 1981 Act"). The application was approved and, on 20 August 2009, the appellant attended a naturalisation ceremony. In the application form and at the ceremony, he gave his name as Klajdi Nakdi. He became a British citizen in that identity.

8. In 2017, the respondent undertook checks with the Albanian authorities which revealed that the applicant's real identity was Klodian Naski, an Albanian national who was born in Tirana on 15 March 1985. Copies of the appellant's birth certificate and family certificate were provided to the respondent by the Albanian authorities in September 2017.

9. On 28 March 2019, the respondent wrote to the appellant, notifying him of the results of the enquiries I have detailed above and stating that she believed he had obtained his British citizenship as a result of fraud. She was considering whether to deprive him of his British citizenship under s40(3) of the 1981 Act. She sought a response within 21 days.

10. On 16 April 2019, the appellant's then solicitors (Malik & Malik of London NW10) responded. It was submitted, with reference to Upper Tribunal authorities (Ahmed [2017] UKUT 118 (IAC), Pirzada [2017] UKUT 196 (IAC) and Sleiman [2017] UKUT 367 (IAC)) and Chapter 55 of the Nationality Instructions, that the deception had been immaterial to the grant of citizenship and that it would be unreasonable and disproportionate to take deprivation action. It was further submitted that the appellant had been suffering from severe depression and anxiety between 2008 and 2014; that he had been a minor who was acting on the advice of others when he first claimed to be Kosovan; that he was remorseful for his actions; and that he had settled in the UK with his wife and children. Evidence in support of these assertions was provided by way of 36 enclosures.

The Respondent's Decision

11. On 13 September 2019, the respondent made a decision to deprive the appellant of his British citizenship, under s40(3) of the 1981 Act, because it had been obtained fraudulently. The respondent referred to parts of chapter 55 of the Nationality Instructions ("NIs") and recalled that the standard of proof was the civil standard. She rehearsed the history I have described above. She noted, amongst other matters, that the appellant had confirmed that he was Kladji Nakdi, born in Decan, Kosovo, in his asylum application, his Travel Document application, his application for naturalisation and at his naturalisation ceremony. Having set out the basis upon which the respondent had concluded that the appellant's name and nationality were not as stated, and having noted what had been said by his representatives in mitigation, the respondent concluded as follows:

> "[17] It is noted that you became an adult on 15 March 2003 and yet continued the deception claiming to be a Kosovo national. You submitted further representations and obtained travel document, ILR and British citizenship as an adult. You maintained this deception throughout your time in the United Kingdom up until the point you were challenged about your identity by the Home Office. At the time you obtained ILR it was not known to the Home Office you were using a false identity or that your years of residence partly accrued through the fact that the Home Office was not aware you were an Albanian national. It is reasonable to assume that you would have continued with the fraud if it had not been put to you. Good character requirement, Section 9 of the nationality staff instructions in use on the date of your naturalisation that deals with deception and dishonesty (Annex N, Page 25-26, Section 9, 9.1.-9.2).
>
> [18] It is apparent that you set out to deceive the Secretary of State so you could remain in the United Kingdom. You persisted with the material fraud and deception for over 20 years. Chapter 55 states "If the facts, had they been known at the time of the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the case worker should consider deprivation." (Annex O, 55.7.1-55.7.2).
>
> [19] For the reasons given above it is not accepted there is a plausible, innocent explanation for the misleading information which led to the decision to grant citizenship. Rather, on the balance of probabilities, it is consider 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 consider that the fraud was deliberate and material to the acquisition of British citizenship.
>
> [20] 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 your legal representative in their letter dated 16 April 2019 and concluded that deprivation would be both reasonable and proportionate."

12. The letter then turned to Article 8 ECHR, s55 of the Borders, Citizenship and Immigration Act 2009 and to statelessness. She considered that deprivation was proportionate under Article 8 ECHR; that it was in line with her statutory duty under s55; and that even if the appellant was rendered stateless by the decision, that consequence was reasonable, given the seriousness of the fraud and the public interest in preserving the legitimacy of nationality. The letter concluded with reference to the appellant's right of appeal under s40A(1) of the 1981 Act.

The Appeal to the FtT

13. The appellant gave notice of his appeal on 25 September 2019. The detailed grounds rehearsed much of the same territory as the representations made in the original response to the respondent's 'minded to deprive' letter. The heads of challenge were set out at the end of the grounds, however, in 10 separate sections. It was submitted, in summary, that the deception had not been material to the grant of citizenship and that the decision was not a reasonable or proportionate use of the respondent's discretion.

14. In preparation for the hearing, the appellant's former solicitors filed and served a bundle of 215 pages, which began with a helpful chronology. Counsel was instructed to represent the appellant at the hearing before the FtT on 11 November 2019. He settled a skeleton argument on the preceding day, which was handed to the judge on the day of the hearing. Having set out the salient parts of the history, the skeleton stated that the 'potential legal issues in this appeal are very limited.' The issues were described by counsel in the following terms:

> "The first is whether the section 40(3) condition is satisfied on the facts. The second is whether any removal or exclusion from the United Kingdom would represent a disproportionate breach of the Appellant's article 8 ECHR rights."

15. The submissions made in the skeleton argument on the first of those issues were set out at [6], which I must reproduce in full:

> "As to whether the Appellant did obtain naturalisation by dishonest means (the section 40(3) question), the Appellant regretfully but unequivocally accepts that he did. He regrets the use of dishonesty as he had done so prior to detection, but this does not remove the satisfaction of the section 4)(3) condition. There are numerous potential mitigating factors, and his life in the United Kingdom

since coming to the country in 1999 has been a positive and pro-social one, but he accepts that these do not vitiate the background on which section 40(3) is satisfied."

16. The skeleton then turned to Article 8 ECHR. The author recalled the Upper Tribunal's approach to Article 8 in deprivation appeals, as set out in cases including AB (Nigeria) [2016] UKUT 451 (IAC) and BA (Ghana) [2018] UKUT 85 (IAC). Having referred to those cases, counsel reminded the FtT that they 'required the next decision to be prejudged'. He set out salient parts of the headnote to BA (Ghana) before stating that the Upper Tribunal's approach had 'been disapproved by the decision of the Court of Appeal in Aziz & Ors v SSHD [2018] EWCA Civ 1884; [2019] 1 WLR 266. He then set out the relevant part of the headnote from the Weekly Law Reports before the skeleton concluded with the following two paragraphs:

> "[8] The appellant accepts that accordingly the instant appeal is not the point at which the appellant's Article 8 ECHR rights fall to be examined judicially. If necessary that will follow the further anticipated decision of the respondent, though the appellant hopes that the respondent at that stage will give full consideration to all relevant factors including those mitigating his original false claim and applications dependent upon it thereafter, and the appellant's positive, responsible and pro-social existence in the United Kingdom over the more than 22 years since his arrival in 1997.
>
> Conclusion
>
> [9] It is accepted that the appeal falls to be dismissed, without consideration of article 8 ECHR, in light of the reasons set out above."

17. A copy of the report of the decision in Aziz was provided to the judge by counsel.

18. It is clear from the judge's Record of Proceedings that counsel's written concessions formed the basis of a discussion between the Bench and the representatives at the start of the hearing. Counsel is recorded to have stated that the appeal fell to be dismissed on the basis of the respondent's findings. Understandably, the judge asked counsel whether the appellant preferred the matter to be dealt with in that way, rather than withdrawing the appeal. Counsel invited the judge to determine the appeal, and the appellant was duly called to give evidence.

19. In chief, the appellant adopted his statement and gave evidence about his age on arrival in the UK, the difficulty of leaving his family as a teenager, his life in the UK, including work and family. He stated that he was driving for Uber and that he had three children and a step-child. He said that he was the main breadwinner. Asked about the false representations he had made about his name and nationality, he said that he had been told to say this by the people who brought him to the UK, that he had been scared to correct the position and that he had grown up with the idea that he was from Kosovo.

20. Cross-examined by the Presenting Officer, the appellant confirmed that he had signed relevant application forms which confirmed that he was from Kosovo. He was 23 when he made the travel document application and 24 when he applied for

naturalisation. He was suffering from 'major depression' when he applied for naturalisation. He had received treatment and had started working again in 2012.

21. In closing submissions, counsel for the appellant accepted, as he had in his skeleton, that the s40(3) conditions were 'met'. He submitted that there were some points in mitigation: the appellant had been a minor when he left home and had been under the direction of others; he had been in the UK for more than 20 years and had accrued a substantial private and family life; he had acquired leave to remain and then citizenship and had no criminal record; he was of good character, save for the deception. It was submitted that the appellant had been faced with a dilemma of whether to admit the long-standing deception and had felt this conflict 'quite keenly'. The judge was invited to consider and making findings on these points, which would be significant in the event that the respondent took a decision to remove the appellant from the United Kingdom. At the end of the hearing, the judge indicated that the appeal would be dismissed for reasons he would subsequently provide in writing.

22. The judge's decision was issued two days after the hearing. Given the events I have described above, it is a concise decision. The judge set out the relevant background and a short synopsis of the arguments, such as they were. At [16], he recorded the acceptance that the appellant had obtained naturalisation by dishonest means and he found that s40(3) was 'satisfied'. At [17], he noted the further concession that the appellant's Article 8 ECHR rights did not "fall to be examined (save in so far as the making of the deprivation order itself will be lawful and compatible with Convention rights…". He recorded that the appellant's removal was not a subject which had been ventilated before him and that 'the decision to revoke the appellant's citizenship will not, in and of itself, interfere with the appellant's rights under Article 8 ECHR nor impact the best interests of the children'.

The Appeal to the Upper Tribunal

23. The appellant instructed new solicitors following the dismissal of his appeal and an application for permission to appeal was duly lodged, supported by grounds of appeal settled by Ms Foot. There were are three grounds of appeal. Although they are developed over the course of several pages, they may be summarised quite shortly:

    (i) The judge erred in failing to consider the materiality of the appellant's deception.

    (ii) The judge failed to consider the reasonably foreseeable consequences of deprivation and 'limbo'.

    (iii) The judge misdirected himself in law in his approach to the appellant's minority and other matters relevant to mitigation.

24. Permission to appeal was granted by a judge of the First-tier Tribunal, who considered each of the grounds to be arguable.

25. The papers were placed before Upper Tribunal Judge Smith on27 April 2020. Her provisional view was that the appeal might fairly and justly be determined on the

papers, and she issued directions to the parties seeking submissions on that issue and on the merits of the appeal.

26. Written submissions were made by Ms Foot, for the appellant, on 20 May 2020. Written submissions were made by Mr Clarke, for the respondent, on 9 June 2020. Ms Foot responded in writing on 15 June 2020.

27. The papers were placed before Upper Tribunal Judge Macleman on 7 July 2020. He ordered that the appeal should be listed remotely, via Skype for Business. It was as a result of that direction that the appeal came before me on 8 September 2020, with Ms Foot representing the appellant and Mr Clarke representing the respondent.

28. Ms Foot confirmed that the appellant's consolidated bundle contained the written submissions which had been made on each side. She continued to rely on those she had filed in compliance with Judge Smith's order. At my request, Ms Foot turned first to the concessions which had been made before the FtT. It was accepted that concessions had been made; the skeleton before the FtT appeared in the consolidated bundle. It was accepted, in particular, that it had been conceded before the FtT that the appellant had obtained his citizenship by means of false representations. It was clear from [15] of the decision letter that the materiality of the lie had been in issue between the parties and the stance in the skeleton appeared to have been prompted by a lack of awareness of, or focus upon, the importance of causation and materiality in such a case. The centrality of that question was underlined in cases such as Sleiman [2017] UKUT 367 (IAC) and this was a point which fell into the 'Robinson obvious' category: R v SSHD, ex parte Robinson [1998] QB 929. Sleiman was materially indistinguishable, in that the appellant in this case would in all likelihood have been granted leave as a UASC whether he was from Albania or Kosovo.

29. Ms Foot submitted that the authorities on concessions favoured the appellant. She cited Grobelaar v News Group Newspapers Ltd [2002] UKHL 40; [2002] 1 WLR 3024, at [56]. She sought to distinguish AK (Sierra Leone) [2016] EWCA Civ 999; [2017] Imm AR 319, upon which Mr Clarke sought to rely, on the basis that the concession in that case was one of fact and because it would be unjust, in the appellant's case, to hold him to the concession made before the FtT. The Upper Tribunal's statutory task was to consider whether the decision of the FtT involved the making of an error on a point of law and that included errors which had come about as a result of improper concessions.

30. Turning to the merits of her first ground, Ms Foot submitted that the decision to grant the appellant ILR under the Legacy programme had broken the chain of causation. In Sleiman, there had been a deception as regards the appellant's age. That decision applied equally to the appellant's circumstances, in that his name and his nationality were immaterial to the decisions to grant him ILR and naturalisation. The Legacy scheme was described in authorities such as Hakemi and Geraldo and it was plain that the appellant would have been granted ILR under that programme regardless of his real name and nationality.

31. It was not a foregone conclusion, submitted Ms Foot, that the appellant would have been refused nationality on grounds of good character if he had 'come clean' about

the lies he had maintained prior to the application for British citizenship. The policy appeared in the respondent's bundle and there was evidently scope for an argument that the respondent might have naturalised the appellant even if he had told the truth about his previous deception. The respondent was required to consider her discretion in the face of any such deception and the appellant could have succeeded in all the circumstances, notwithstanding his previous lies. The judge consequently erred in failing to consider the materiality of the lies to the citizenship decision.

32. Turning to ground two, Ms Foot submitted that the FtT had fallen into plain error in stating that the decision to deprive the appellant of his citizenship did not raise Article 8 ECHR issues. It was clear from Hysaj [2020] UKUT 128 (IAC) and Aziz that the judge should have considered the immediate consequences of the deprivation decision and he had erred in failing to do so. Ms Foot acknowledged that it was potentially difficult for her to succeed on this point in light of what had been said in Hysaj but there were still points to consider. The appellant would not be able to rent property or receive an income and there would be knock-on consequences on the best interests of his children. It was relevant to recall that he had been unwell at the time of the deception.

33. As for ground three, Ms Foot submitted that the appellant's minority had not been taken adequately into account by the judge. Although the appellant was an adult when he applied for a travel document, and when he applied for citizenship, he had been a child when he first arrived and told lies about his name and nationality. The appellant had found it difficult to tell the truth about these matters when he came to make his subsequent applications because he was suffering from mental health problems.

34. Ms Foot submitted that the FtT 's decision on the appeal should be set aside as a whole and that the appeal should be remitted to be heard de novo.

35. Mr Clarke submitted that the appellant was inviting the Tribunal to permit the entire case to be relitigated. It was clear from the skeleton argument before the FtT that clear and unequivocal concessions had been made, in relation to s40(3), Article 8 ECHR and the ultimate outcome of the appeal. There was no proper basis upon which these concessions could be withdrawn. As in AK (Sierra Leone), the concessions were determinative of the appeal. Significant prejudice arose to the respondent in the event that they were withdrawn, since the whole appeal would be re-opened. The judge had been entitled to rely on those concessions and to determine the appeal accordingly.

36. Ms Foot had attempted to submit that no criticism was made of counsel who appeared below but that did not withstand any scrutiny when set against her submission that the Robinson obvious points had been overlooked. What was clearly submitted was that counsel had been negligent but there had been no opportunity for counsel to answer that charge, contrary to authorities such as BT (Nepal) [2004] UKIAT 311. The circumstances in which the concessions had been made were entirely unclear: they could have been made following written advice and careful consideration by counsel's professional and lay client or they could have

been made on a whim, without proper instructions or consideration of the law. It should not be presumed that counsel had acted in the latter fashion.

37. Ms Foot had submitted that Sleiman was materially indistinguishable but that was not so. On proper analysis, Sleiman was a narrowly focused case, in which the respondent had accepted that the appellant's age had been immaterial to the decision to grant ILR and in which no submissions had been made as to the good character requirement. The circumstances of the present case were quite different, in that good character had been at the forefront of the respondent's case, as was clear from the decision letter. Had the appellant told the truth in the course of his naturalisation application, it was clear from the respondent's policy that he would have been refused on character grounds. The operative question was the effect of fraud in the naturalisation application.

38. As to ground two, Mr Clarke submitted that the cogent public interest in the appellant being deprived of his British citizenship could not be outweighed by the limited effect on the Article 8 ECHR rights in question. Counsel had taken the limbo point before the FtT and it had been considered but nothing else had been ventilated before the judge. In truth, there was nothing on the facts of this case which came close to the rare case contemplated in Hysaj, in which the decision to deprive was disproportionate in Article 8 ECHR terms.

39. As for ground three, Mr Clarke accepted that the appellant had been a child when he first applied for asylum but he had been an adult when he made his applications for a travel document and naturalisation. The respondent's guidance was quite clear that adults should generally be held responsible for misrepresentations such as this. The reality was that the appellant chose to make an application for British citizenship, during which he chose to tell lies. He had not been required to make that application as he had ILR at the time.

40. In response, Ms Foot submitted that there had been no consideration whatsoever of the reasonably foreseeable consequences of deprivation or the mitigating factors which were relevant to the respondent's discretion. She initially sought to submit that she was not criticising counsel who had appeared before the FtT. I observed that I found that submission rather difficult to reconcile with the submission that Robinson obvious points had been missed by counsel and the judge. On reflection, Ms Foot submitted that relevant points had plainly been missed by counsel before the FtT. In the event that it was to become significant, she sought an opportunity to put these allegations to counsel who had appeared before the FtT. She could take instructions as to whether the appellant was content to waive privilege in respect of his dealings with his former representatives. I indicated, without objection from Mr Clarke, that I would provide such an opportunity in the event that I considered it necessary to investigate the circumstances in which the concessions came to be made.

41. After the hearing, I received confirmation by email that the appellant was content to waive privilege in respect of his dealings with his former solicitors and his former counsel.

Discussion

Concessions in the FtT

42. There can be no doubt that the dismissal of the appellant's appeal by the First-tier Tribunal was brought about by the concessions made by counsel. I have set out those concessions above and Mr Clarke was undoubtedly correct to describe them as unequivocal; that was not his choice of words but the choice of counsel who wrote the skeleton argument. The first question, logically, is whether the appellant should be held to those concessions or whether, as Ms Foot contends, that should not be the case because the concessions were erroneously made. Before I turn to the authorities on concessions, I must make some preliminary observations.

43. Firstly, it is unfortunately all too commonplace for judges sitting in the Immigration and Asylum Chamber, particularly at first instance, to receive limited assistance from the advocates. Skeleton arguments are not prepared, or when they are prepared they comprise little more than boilerplate submissions. Relevant authorities are not drawn to the attention of the Tribunal, regardless of the assistance they might provide to one party or the other. Many different heads of argument are deployed, with little regard for the merits of the various submissions. And representatives on both sides decline to narrow the issues by making appropriate concessions, preferring merely to invite the Tribunal to determine all the issues which arise, on the basis of the evidence before it. This style of advocacy is to be deprecated.

44. The advocacy which the FtT encountered in the instant case, on the other hand, is to be encouraged. Counsel produced a skeleton argument which drew relevant authority to the attention of the FtT, none of which served to advance his client's case. He had plainly considered the issues in the case and was able to explain to the judge the outcome he sought, which was for favourable findings of fact to be made which would stand the appellant in the best possible stead for any future consideration of his expulsion from the United Kingdom. The hearing was accordingly focused, with the judge's typed Record of Proceedings spanning no more than three pages. This is the co-operation which any tribunal is entitled to expect from the advocates who appear before it.

45. Secondly, counsel who appeared before the FtT in this case is well known in this jurisdiction. He has appeared in many reported decisions in this field and has written two practitioner texts, the first of which "*The Law and Practice of Expulsion and Exclusion from the United Kingdom*" is, to my knowledge, the only text on that specific subject matter. It is relevant to note that the fourth of that text's five parts is entitled *Denial and Deprivation of Citizenship* and contains, at 12.38-12.48, a detailed examination of the power conferred by s40(3) of the 1981 Act. Within that section, at 12.43, there is a section dealing with the materiality of false representations to the grant of citizenship. That section includes reference to relevant authority and to the Nationality Instructions ("NIs") and states, amongst other things:

    'If fraud, false representation or concealment or concealment did not have a direct impact upon the grant of citizenship, then the NIs at 55.7.3-4 envision that 'it will not be appropriate to pursue deprivation action'.'

46. Thirdly, although Ms Foot was initially at pains to submit that she intended no criticism of counsel who appeared below, the reality (as she was eventually constrained to accept) is that her entire case before me rests on various criticisms of the way in which the appeal was conducted before the FtT. The absence of detailed consideration of materiality (ground one) or Article 8 ECHR (ground two), or the failure to consider mitigation (ground three); all of these points are made on the basis that counsel should have erected an argument but failed to do so. Counsel, who I shall not name but whose identity is likely to be discernible from what I have said above, has been given no opportunity to comment on these allegations. It was only on reflection, and in response to Mr Clarke's submissions, that Ms Foot requested an opportunity to put the allegations to him. I also note that it has not been suggested *by the appellant* that the concessions which were made orally and in writing by counsel were made without his express instructions. It has been confirmed in writing that he is content to waive privilege, but he has not suggested that he was not advised about the approach counsel intended to adopt before the FtT.

47. I turn to the authorities on concessions and their withdrawal.

48. Ms Foot cited Grobelaar, in which it had been conceded before the Court of Appeal that the jury in a defamation action must have been satisfied that none of the charges made against a professional footballer had been proved by the newspaper in question: [20] of Lord Bingham's opinion refers. The full range of that concession, upon which the Court of Appeal had proceeded, was said by Lord Bingham, also at [20], to defy reason, since the tape recordings which were available contained clear admissions of a corrupt agreement and the acceptance of bribes on the part of the appellant. Lord Bingham stated that it would only be rarely and with extreme caution that the Appellate Committee would permit counsel to withdraw from a concession which had formed the basis of argument and judgment in the Court of Appeal. On the unusual facts of that case, however, Lord Bingham was prepared to allow the concession to be withdrawn and to consider for himself the verdict returned by the jury: [21]-[27].

49. Lord Steyn disagreed, and was not prepared to depart from the agreed basis put before the Court of Appeal: [32] Lord Hobhouse (upon whose speech Ms Foot particularly relied) noted, at [56], that the 'so-called concession' which had been made in the Court of Appeal was deployed before the House of Lords as a reason for dismissing the appeal. Lord Hobhouse considered that acceding to that submission would merely have served to compound the Court of Appeal's error. He noted that counsel in the Court of Appeal had been subjected to 'close questioning by an unsympathetic court' and that it was improper to try to decide a case 'by obtaining 'concessions' from counsel.' In the closing part of [56], Lord Hobhouse said this:

> "The purpose of oral argument is to inform, clarify and enlighten the minds of the court (hopefully in favour of the advocate's client). It is not right to seek to decide cases upon the tenacity of the advocate or 'concessions' forced out of the advocate in the course of oral argument. (This is not a case where a point has been conceded, in the proper sense of that word, either by a pleading or a statement in court and has thereafter governed what issues do and do not arise.) Still less is it right to decide appeals upon the basis of upholding wrong decisions

> arrived at using legally mistaken 'concessions' by counsel. To have conceded that the excessive amount of the jury's second verdict invalidated, or demonstrated perversity in, their first verdict would have been both legally and logically wrong (as well as being based upon wrong factual assumptions)."

50. Lord Millett agreed with Lord Bingham, noting at [66] that the premise on which the case had been argued in the Court of Appeal, which was neither an agreement between the parties nor a concession, was false. Lord Scott did not touch on the withdrawal of the concession (or assumption) on which the Court of Appeal had proceeded, and his opinion is more frequently cited for what he said at [90] (regarding the maxim that he who comes into equity must come with clean hands).

51. What was said by Lord Hobhouse in Grobelaar was considered by the Court of Appeal in Hendricks v The Commissioner of Police of the Metropolis [2002] EWCA Civ 1686; [2003] 1 All ER 654, at [32]-[37]. Mummery LJ, with whom May and Judge LJJ agreed, rejected a submission made by John Cavanagh QC (as he then was) that the appellant should be held to a concession made in the Employment Tribunal and the Employment Appeal Tribunal. At [37], he said this:

> "In my judgment, the court should only allow a concession to be withdrawn in very special circumstances. In this case, such circumstances exist, as the concession was not made in sufficiently clear and unambiguous terms to be treated as binding on Miss Hendricks. It is impossible to reconcile what is stated in paragraph 11 of the extended reasons with other parts of the decision, from which it is clear that the tribunal appreciated that reliance was being placed by Miss Hendricks on acts of less favourable treatment on the grounds of sex and race alleged to have continued while she was on extended sick leave and into the period of 3 months immediately preceding the commencement of the discrimination proceedings. In those circumstances I do not regard Miss Hendricks as being bound by any concession inhibiting Mr Allen from submitting that this is a case of "an act extending over a period", so that it is not out of time. Lord Hobhouse indicated in **Grobelaar v. News Group Newspapers Ltd** **[2002] UKHL 40** at paragraph 56 it is not right to decide appeals on the basis of legally mistaken concessions. Nor would it be right to do so where the Court or Tribunal recorded the concessions in unclear and confusing terms."

52. In terms of immigration authorities on the subject, the most frequently cited must be NR (Jamaica) [2009] EWCA Civ 856; [2010] INLR 169, in which the Court of Appeal considered that the respondent had been permitted to withdraw concessions regarding the appellant's sexual orientation and risk on return to Jamaica. The court rejected a submission that the Tribunal was bound to consider whether a decision to withdraw a concession was rationally made in public law terms. Goldring LJ, with whom Mummery and Lloyd LJ agreed, echoed what had been said in Davoodipanah [2004] EWCA Civ 106, noting that 'the Tribunal may in its discretion permit a concession to be withdrawn if in its view there is good reason in all the circumstances for that course to be taken': [12]. He continued as follows:

> "Its discretion is wide. Its exercise will depend on the particular circumstances of the case before it. Prejudice to the applicant is a significant feature. So is its absence. Its absence does not however mean that an application to withdraw a concession will invariably be granted. Bad faith will almost certainly be fatal to

> an application to withdraw a concession. In the final analysis, what is important is that as a result of the exercise of its discretion the Tribunal is enabled to decide the real areas of dispute on their merits so as to reach a result which is just both to the appellant and the Secretary of State."

53. Notably, the concession in NR (Jamaica) was made and withdrawn at first instance. The circumstances in the instant appeal are different, in that concessions were made at first instance and it is only on appeal that a party seeks to withdraw them. The circumstances in AK (Sierra Leone) were similar to those before me, albeit that the concession which was sought to be withdrawn was made at first instance by the respondent. Before the FtT, the respondent's Presenting Officer had accepted that the appellant – who was threatened with deportation – met the first of the statutory exceptions to deportation in Part 5A of the Nationality, Immigration and Asylum Act 2002. Since the appellant was a 'medium offender', that concession was determinative of the appeal, which was accordingly allowed by the FtT.

54. On appeal to the Upper Tribunal, the respondent sought to withdraw the concession made by the Presenting Officer. The Upper Tribunal Judge mentioned NR (Jamaica) and stated that 'the respondent is entitled to withdraw that concession'. He then found fault with the decision of the FtT, which had made no findings on the first statutory exception. He set aside the FtT's decision and remade the decision on the appeal, substituting a decision dismissing the appeal.

55. Each of the three grounds of appeal to the Court of Appeal centred on the Upper Tribunal's treatment of the concession. Jackson LJ reviewed the authorities on concessions, including Davoodipanah and NR (Jamaica). He considered that the Upper Tribunal Judge had erred in his approach to the concession, for the following reasons:

> "[39] Bearing in mind that guidance from the authorities, I turn to the Upper Tribunal decision in the present case. The Upper Tribunal Judge deals with withdrawal of the concession in paragraph 39. I have read that paragraph out in part 3 of this judgment. He simply says that he follows NR and considers that the Secretary of State is entitled to withdraw her concession. There is no analysis of the circumstances of the case. There is no consideration of prejudice. There is no consideration of the interests of justice. The Upper Tribunal Judge did not have to make any finding about the extent of the concessions because the argument was presented on the simple basis that they had been withdrawn."

56. These criticisms were positively accepted by counsel for the Secretary of State but he submitted that the appeal should be remitted to the Upper Tribunal so that it could consider the respondent's appeal, and in particular the question of whether the appellant would encounter 'very significant obstacles' on return to Sierra Leone, afresh. Counsel for the appellant submitted, however, that this was not a 'satisfactory remedy'; the case had been conceded in its entirety before the FtT and the respondent should not be permitted to go behind that concession.

57. Jackson LJ noted that limb (c) of the statutory exception (very significant obstacles) had been the subject of a carefully considered concession after hearing the evidence of a witness and that there was no obligation on the judge in the FtT to query that

concession. That concession, taken together with the concessions made regarding the other parts of Exception One, was determinative of the appeal; it was, as Jackson LJ put it at [47], the end of the matter. In allowing the appellant's appeal and reinstating the decision of the FtT, Jackson LJ concluded:

> "[48] It follows that the concessions made by the Home Office Presenting Officer were such as to determine the entire appeal. The First-tier Tribunal Judge, as he was entitled to do, accepted those concessions. That was the end of the case.
>
> [49] I do not need to go so far as to say that in such circumstances the Secretary of State could never appeal to the Upper Tribunal, but on the facts of this particular appeal, it seems to me quite unjust that the Secretary of State, having conceded on all points, should be entitled to resurrect her case and withdraw the concessions which she had made. As Mr Fortt rightly concedes, the Upper Tribunal gave no good reason for allowing the Secretary of State to take that course."

58. Having considered these authorities in detail, I fear that both advocates before me might have pitched their submissions rather too high.

59. If Ms Foot's submission was that the appellant must be permitted to withdraw the concessions made below merely because he maintains that they were wrong, I do not consider Grobelaar to support that submission. That was a case in which there had, in reality, been no concession before the Court of Appeal and there were concerns, in any event, that counsel had been placed under improper pressure in the Court of Appeal to adopt the stance in question. There can be no doubt in this case that the concessions, which were made in writing in a carefully researched skeleton argument, were anything other than clearly and freely made. I do not understand Lord Hobhouse to have been enunciating a rule when he said what he said in the final paragraph of [56]. The decision of the majority in that case reflected the justice of the case and the flimsiness of the 'so-called concession' as it was described on more than one occasion.

60. If Mr Clarke's submission was that a party can never be permitted to withdraw a concession which is determinative of an appeal, I do not consider that to be the ratio of AK (Sierra Leone). Jackson LJ was careful to ensure that he would not be understood to decide the case on that basis, as is clear from [49]. Instead, the basis for the court's decision is to be found in [39] of Jackson LJ's judgment, in which he applied the considerations in NR (Jamaica) to the circumstances in which a party seeks in the Upper Tribunal to withdraw a concession which was made in the FtT. Given the public law nature of proceedings before the IAC, it was scarcely surprising (with respect) that Jackson LJ did not endorse the absolute approach contended for by counsel for the appellant in that case. (The increased flexibility which is required in this context has been noted in a number of decisions, including E & R v SSHD [2004] EWCA Civ 49; [2004] QB 1044). Indeed, in AM (Iran) [2018] EWCA Civ 2706, Simon LJ (with whom Sharp and Thirlwall agreed) cited AK (Sierra Leone) and other authorities and proceeded on the basis that a concession could be withdrawn (before the Court of Appeal), and underlined the importance of considering principles of fairness when any such application was under consideration: [39]-[45]. At [44],

Simon LJ stated that he would expect "those who seek to withdraw a concession to explain both promptly and frankly why the concession was made, why it was mistaken and why it is now just and fair that they be allowed to withdraw it."

61. Drawing all of these threads together, I do not consider that the appellant should be permitted to withdraw the clear concessions which were made by expert counsel before the FtT. These were precise, calculated concessions which were made in full knowledge of the law. It was also conceded, in writing and in terms, that the appeal fell to be dismissed. The appellant has not personally claimed that the concessions were made without instructions, or on the basis of instructions which were obtained without comprehensive advice on the law. Whilst the appellant has agreed to waive privilege, no complaint has been made against counsel and he has been given no opportunity to answer the allegations that he missed a total of three points, all of which are said to be Robinson obvious. The reality is that Ms Foot might have argued the case differently below but, as we will come to see, it is quite clear that the concessions were made quite properly. To allow the concessions to be withdrawn at this stage would, as Mr Clarke submitted, be highly prejudicial to the respondent, as it would potentially necessitate re-opening the entire appeal upon remittal to the FtT, that being the relief ultimately sought by Ms Foot.

62. I must not confine my consideration of prejudice to the respondent, however, since what really underpins Ms Foot's argument is the submission that the appellant should not be held to concessions which led to an unjust result. For the reasons which follow, I do not consider that the concessions which were made were anything but proper and I do not accept that the appellant has been unfairly prejudiced by the stance taken by counsel before the FtT. In order to explain why, it is necessary to examine Ms Foot's grounds of appeal. Before I do so, I shall set out the relevant parts of s40 of the 1981 Act, as in force since 28 July 2014:

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) - (f) …

(2) …

(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) – (6) …

63. There has been a great deal of case-law on the proper approach to these provisions. I do not propose to undertake a comprehensive review of the authorities, whether at this stage of my decision or at all. For present purposes, it suffices to recall that Leggatt LJ (with whom Haddon Cave LJ and Sir Geoffrey Vos C agreed) set out the proper approach to an appeal under s40A of the 1981 Act in KV (Sri Lanka) v SSHD [2018] EWCA Civ 2483; [2018] 4 WLR 166:

> [6] Pursuant to section 40A(1) , a person who is given such a notice may appeal against the decision to the First-tier Tribunal ("FTT"). The task of the tribunal on such an appeal has been considered by the Upper Tribunal (Immigration and Asylum Chamber) in a number of cases including *Deliallisi v Secretary of State for the Home Department* [2013] UKUT 439 (IAC) and, more recently, *BA (Deprivation of Citizenship: Appeals)* [2018] UKUT 85 (IAC); [2018] Imm AR 807. I would endorse the following principles which are articulated in those decisions and which I did not understand to be in dispute on this appeal:
>
> (1) Like an appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 , an appeal under section 40A of the 1981 Act is not a review of the Secretary of State's decision but a full reconsideration of the decision whether to deprive the appellant of British citizenship.
>
> (2) It is thus for the tribunal to find the relevant facts on the basis of the evidence adduced to the tribunal, whether or not that evidence was before the Secretary of State when deciding to make a deprivation order.
>
> (3) The tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection.
>
> (4) If the condition precedent is established, the tribunal has then to ask whether the Secretary of State's discretion to deprive the appellant of British citizenship should be exercised differently. For this purpose, the tribunal must first determine the reasonably foreseeable consequences of deprivation.
>
> (5) If the rights of the appellant or any other relevant person under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms are engaged, the tribunal will have to decide whether depriving the appellant of British citizenship would constitute a disproportionate interference with those rights. But even if article 8 is not engaged, the tribunal must still consider whether the discretion should be exercised differently.
>
> (6) As it is the Secretary of State who has been charged by Parliament with responsibility for making decisions concerning deprivation of citizenship, in so far as the Secretary of State has considered the relevant facts, the Secretary of State's view and any published policy regarding how the discretion should be exercised should normally be accorded considerable weight (in which regard see *Ali v Secretary of State for the Home Department* [2016] UKSC 60; [2016] 1 WLR 4799).

Ground One

64. Ms Foot's first ground of appeal concerns the third of the KV (Sri Lanka) stages. She submits that the FtT fell into error in concluding that the condition precedent in s40(3) was met, in that any deception practised by the appellant in the past was not directly material to the grant of citizenship. She takes the words 'directly material' from the decision of Upper Tribunal Judge Kopieczek in Sleiman [2017] UKUT 367 (IAC). Pirzada [2017] UKUT 196 (IAC), a decision of the Vice President and Upper Tribunal Judge Martin, also underlined the statutory requirement that the deception must have motivated the grant of citizenship. The relevant statutory language is obviously that citizenship was *obtained by means of* false representations etc.

65. I have no difficulty with Ms Foot's submissions regarding the history preceding the application for citizenship. The appellant was an Unaccompanied Asylum-Seeking Child when he arrived in the UK. Whether he said that he was from Kosovo or Albania, he would have been granted Discretionary Leave until he reached the age of 17.5 or 18, depending on the policy in force at the time. It is not suggested that the respondent might have made enquiries and secured adequate reception arrangements for the appellant if only he had told the truth about his name and nationality; experience suggests that no such enquiries were made at the time, whether with the Albanian authorities or otherwise.

66. The next step in Ms Foot's argument is equally unobjectionable. She submits that the appellant made no application for ILR under the Legacy programme and that he accordingly made no false representations which led to the grant of ILR. The Legacy programme was in the nature of a backlog clearance exercise and the appellant was granted ILR because he satisfied the basic criteria of that programme; he had applied for asylum before a specific date, he had not been removed, and he had no criminal convictions. I accept that his name and his nationality did not motivate the grant of ILR in any material way.

67. It is at the final step in Ms Foot's argument that she runs into difficulty. She accepts that the appellant made false representations in his application for naturalisation, in that he once again claimed to be Klajdi Nakdi, a Kosovan national who was born in Decan but she submits that these representations were immaterial to the appellant satisfying the statutory residence requirements in s6(1) of the 1981 Act (or, more accurately) in schedule 1 to the 1981 Act). She submits that the appellant had obtained ILR without making false representations; he had retained that ILR for the requisite period; and he was accordingly entitled to naturalise as a British citizen. She submits that the appellant's position is *a fortiori* that of the appellant in Sleiman, who had obtained DLR as a result of a lie about his age but had thereafter obtained ILR under the Legacy. UTJ Kopeiczek accepted, on those facts, that the grant of ILR had broken the chain of causation and the appellant had not obtained citizenship *by means of* false representations.

68. As Mr Clarke submitted, however, it is necessary to consider what was and was not submitted in Sleiman. Sleiman, as UTJ Kopieczek was careful to point out, was what might properly be described as a 'chain of causation' case, in which the respondent sought to submit only that the appellant would not have met the statutory residence

requirements in s6(1) if he had told the truth about his age. She submitted that the appellant would not have been granted Discretionary Leave if he was not a UASC, that he would have been removed thereafter, and that he would not have been granted ILR under the Legacy because he would not have been in the United Kingdom. UTJ Kopieczek was unable to accept these submissions, and allowed the appeal because he was not satisfied that the deception as to age was directly material to the grant of citizenship *in the manner asserted by the respondent.*

69. At [62] – [65], UTJ Kopieczek set out very clearly what had not been asserted by the respondent. It was not suggested, he said at [65], that had the false date of birth been known to the respondent at the time of the citizenship application, the application would have been rejected on the ground that the appellant had not shown that he was of good character (as required by paragraph 1(1)(b) of schedule 1 to the 1981 Act).

70. As Mr Clarke submitted orally and in writing, however, that precise submission has been made by the respondent throughout this case, as is clear from the part of the decision letter which I have set out above. The respondent's principal submission is that the appellant would have been refused British citizenship on 'character' grounds if, in his citizenship application, he had stated that he had lied about his name and his nationality throughout his time in the United Kingdom, had received grants of status in that false identity and had also been granted a travel document in that identity.

71. In considering that submission, I am obliged by KV (Sri Lanka) to consider the Nationality Instructions. I was taken to the instructions by both advocates. It was agreed that the July 2017 version, as reproduced in the respondent's bundle, was the version I should consider. (Oddly, this part of the NIs has not been revised following the decision of the Supreme Court in Hysaj [2017] UKSC 82; [2018] 1 WLR 221, and appears to contain some positively incorrect advice to caseworkers.) Ms Foot relied particularly on paragraphs 55.7.3-55.7.4, which provide, in full, as follows:

> 55.7.3 If the fraud, false representation or concealment of material fact did not have a direct bearing on the grant of citizenship, it will not be appropriate to pursue deprivation action.
>
> 55.7.4 For example, where a person acquires ILR under a concession (e.g. the family ILR concession) the fact that we could show the person had previously lied about their asylum claim may be irrelevant. Similarly, a person may use a different name if they wish (see NAMES in the General Information section of Volume 2 of the Staff Instructions): unless it conceals criminality, or other information relevant to an assessment of their good character, or immigration history in another identity it is not material to the acquisition of ILR or citizenship. However, before making a decision not to deprive, the caseworker should ensure that relevant character checks are undertaken in relation to the subject's true identity to ensure that the false information provided to the Home Office was not used to conceal criminality or other information relevant to an assessment of their character.

72. Ms Foot's reliance on this part of the NI's is misconceived in the context of this case. The principal submission made by the respondent is not that the appellant would have been unable to satisfy the statutory residence requirements for naturalisation if he had told the truth. It is that he told lies in his application for naturalisation and that the telling of lies is directly relevant to the assessment of his character in that application.

73. The relevant question was that which was posed by Mr Clarke in his cogent oral submissions: if the appellant had 'come clean' at the point of his citizenship application, and confessed that he had lied about his name, nationality and place of birth for the preceding ten years, would that have altered the respondent's conclusion that he was a person of good character? Or, to approach the same question from a different angle, if the respondent had discovered, whilst the application for naturalisation was pending, that the appellant had lied in that application and in all preceding applications about his name, nationality and place of birth, would that have altered the respondent's conclusion that he was a person of good character. The answer to those questions might be thought to be as simple as Lady Hale's answer to the substantive question before the Supreme Court in Miller v The Prime Minister [2019] UKSC 41; [2020] AC 373: of course it would have.

74. It is appropriate to turn, in that connection, to the Guide AN (*Naturalisation as a British Citizen – a Guide for Applicants)* and to the Nationality Instructions on Good Character, both of which are also helpfully reproduced in the respondent's bundle. It was agreed between the representatives that the Good Character guidance produced in the respondent's bundle (which was then at Annex D to Chapter 18 of the NIs) is the relevant version for present purposes.

75. At page 4 of Guide AN, there is a list of the attributes required for naturalisation, the sixth of which is that the applicant must be of good character. Paragraph 1.8 requires an individual to provide details of any other names by which they have been known, and why. Section 3 is entitled 'Good Character' and provides, amongst other things, that a person who is not honest about the information they provide is liable to have their citizenship taken away and to face prosecution. At page 21, the guidance states that an applicant must state whether they have been involved in anything which might indicate that they are not of good character; if in 'any doubt', the information should be disclosed.

76. Turning to the Good Character guidance as in force at the time of the appellant's naturalisation, I note that paragraph 2.1 contains a list of circumstances in which an applicant would not normally be considered to be of good character. The final example is a person who 'had practised deceit, for example, in their dealings with the Home Office, Department for Work and Pension or HM Revenue & Customs…'. Then, at section 9, there are the following paragraphs:

> '9.1 It should count heavily against an applicant who lies or attempts to conceal the truth about an aspect of the application for naturalisation - whether on the application form or in the course of enquiries. Concealment of information or lack of frankness in any matter must raise doubt about an applicant's truthfulness in other matters.

> 9.2 We should take into account the intentions of any concealment. If it is on a minor matter, not relevant to the decision, it may be overlooked. If it relates to a criminal conviction, we should only be prepared to overlook the deception if there are good reasons which we accept as genuine - such as a misunderstanding of the effect of the **Rehabilitation of Offenders Act** or that applicants have good reasons for not wishing to disclose their past to someone, such as a referee or a spouse/civil partner, who would see the application form, and the applicant is open at interview and otherwise suitable for naturalisation. However, if the deception is serious and deliberate, particularly if the applicant did not co-operate in our enquiries, or if it contributes to other doubts about the decision, then the application should normally be refused. For guidance on how to deal with applications where the applicant has failed to declare an impending prosecution please see paragraphs 3.7.7 above.'

77. Ms Foot's written and oral submissions in response to Mr Clarke fail entirely, with respect, to come to grips with this aspect of the case and with these parts of the guidance. The respondent is not required to demonstrate that the appellant would have been removed from the United Kingdom and would not have been granted ILR if he had told the truth about his nationality at an earlier stage. That was how the case was put in Sleiman but it is not how this case is put. Considering the guidance above, it is quite apparent that there is no answer to the case advanced in the refusal letter about the good character requirement. The appellant employed deception in his application for naturalisation. He did so, as he explained in his evidence before the FtT, because he suspected (correctly) that the truth would have an impact on his application. It is quite apparent from the section of the guidance which I have reproduced immediately above that the application for naturalisation would have been refused on character grounds if the respondent had discovered that the appellant had deceived her in that application regarding his name, nationality and place of birth. These were not, on any proper view, 'minor matters' of the type considered at 9.2 of the Good Character guidance.

78. Whether on the evidence and submissions before the FtT or those before me, I conclude that there is simply no arguable case that the appellant's false representations in his application for naturalisation were not directly material to the decision to grant citizenship. Those false representations were obviously directly material to the decision, for the reasons I have set out above. It was entirely proper for counsel to concede, in those circumstances, not only that there had been false representations but also that citizenship had been obtained by means of the same. The acceptance that the condition precedent in s40(3) was satisfied was inevitable, and did not result in any injustice to the appellant.

Ground Two

79. Ms Foot put her oral argument on ground two rather less forcefully than she had in writing. At [18] of her final written submissions, she contended that there was nothing in the Upper Tribunal's decision in Hysaj which precluded an Article 8 ECHR argument from succeeding in any deprivation case. That is undoubtedly

correct but the effect of Hysaj, as is clear from [89]-[111] is that it will be an unusual case in which the strong public interest in deprivation of citizenship will be outweighed by the upheaval and the 'limbo' caused by an individual such as the appellant being deprived of their British citizenship.

80. There was nothing before the FtT, just as there is nothing before me, which even arguably begins to outweigh the public interest in deprivation. Ms Foot notes, amongst other things, that the appellant will not have any status in the event that he loses his British citizenship; that he will no longer be able to work or rent property, and that this will have an impact on his wife and his children. The latter impact is said to be relevant to their best interests. I do not doubt the factual underpinnings of these submissions. I observe that the Upper Tribunal in Hysaj noted the ability of that appellant's wife to work (if necessary, in unskilled employment), and to rent, and the availability of benefits if British children are at risk of destitution. There is no reason to think that the same safety nets are unavailable in this case. Before the FtT, there was no semblance of an arguable case that deprivation would be contrary to Article 8 ECHR. As with ground one, the reasons that counsel did not seek to argue that deprivation would be contrary to Article 8 ECHR is quite apparent; the point is unarguable on the facts. Any error on the part of the judge in failing to consider the point in greater detail was consequently immaterial.

Ground Three

81. Ground three concerns the fourth of Leggatt LJ's stages in KV (Sri Lanka). Satisfaction of the condition precedent in s40(3) does not result, without more, in deprivation. Since the statutory power is discretionary, it remains for the respondent (and then the Tribunal) to consider whether deprivation is the proper course in all the circumstances of the case. As with ground one, the submissions on this point became unduly focused on the historical deception, rather than the deception in the application for naturalisation. For what it is worth, I accept Ms Foot's submission that the appellant should not be held responsible for the deception which he first practised on arrival in the UK. He was a child and was under the instruction of an agent to pretend that he was from a region which, unlike his own, was suffering from war crimes and crimes against humanity. The respondent's guidance (at 55.7.8 of the NIs) states that a child should be assumed not to be complicit in such deception perpetrated by a parent or guardian. I am unable to accept Mr Clarke's submission that this should not extend to a child who has been influenced by a people smuggler.

82. The reality, however, as Mr Clarke went on to submit, was that the appellant was an adult when he made his application for a travel document and, more importantly, when he came to make his application for naturalisation. As is clear from 55.7.8.5 of the NIs, the presumption must be that an adult is held responsible for false information submitted in a citizenship application.

83. Ms Foot also sought to submit that the appellant was mentally unwell at the time of his application for citizenship. There was certainly evidence to that effect before the FtT. Evidence at pp70-74 showed that the appellant suffered from 'mood disturbance, chronic anxiety, panic disorder, nerves and insomnia' as a result of a

history of drug abuse, and that he was taking medication and awaiting counselling. That evidence came nowhere close to establishing, however, the level of mitigation contemplated at 55.7.11 of the NIs. The evidence must, pursuant to those instructions, demonstrate clearly that the subject had a 'lack of free will and/or sound judgement' at the relevant time. Without wishing for a moment to downplay the seriousness of conditions such as those described in the GP's letters, they fall very far short of establishing that the appellant did not have free will or sound judgment at the time that he applied for citizenship. As Mr Clarke submitted, he did not need to make an application for citizenship; he had ILR. He chose to make the application, to pay the fee and to instruct solicitors. There was, and is, no proper evidential foundation for an argument that the statutory discretion should have been exercised differently, given the strong public interest in deprivation, as described in the authorities including Hysaj.

Conclusion

84. Ms Foot noted in her grounds of appeal and in her subsequent submissions that it had been argued by the appellant's former solicitors that the appellant's deception was not material to the decision to grant citizenship; that deprivation would be contrary to Article 8 ECHR; and that there were mitigating factors which argued against deprivation. That was clearly how the case was prepared by the previous solicitors. When counsel came to prepare the case, however, he exercised his professional judgement and concluded that none of these arguments could properly be made on the evidence before the FtT. It is clearly possible to draw that inference, whereas it is simply not possible to conclude (as Ms Foot has submitted) that these wholly unmeritorious lines of argument were overlooked by counsel.

85. In all the circumstances, I conclude that the appellant should not be permitted to withdraw the determinative concessions made by counsel in the FtT. Had I permitted those concessions to be withdrawn, I would in any event have found that any errors on the part of the FtT were immaterial to the outcome. The only proper course was for this appeal to be dismissed and for the appellant to await the respondent's decision on the question of whether he should be expelled from the United Kingdom. In the event of an adverse decision in that respect, the appellant will have an opportunity to ventilate his real Article 8 ECHR and section 55 BCIA 2009 arguments.

Notice of Decision

The appeal is dismissed and the decision of the FtT stands.

No anonymity direction is made.

M.J.Blundell
Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 September 2020