Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DC/00113/2019**

THE IMMIGRATION ACTS

Heard at Manchester (via Skype)	**Decision & Reasons Promulgated**
On 13 May 2021	**On 28 May 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ARTAN FRROKU
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Foot instructed by Oliver & Hasani Solicitors.
For the Respondent: Mr McVeety Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By a decision promulgated on 16 November 2020 the Upper Tribunal found a Judge of the First-tier Tribunal had erred in law in a manner material to its decision to allow the appeal. The matter comes back before the Upper Tribunal to enable it to substitute a decision to either allow or dismiss the appeal.

Background

2. There is no factual dispute between the parties. The background set out at [6 – 15] of the appellants skeleton argument, supplemented by the appellant's more recent witness statement, is in the following terms:

> 6. The Appellant was born in Shkoder, Albania on 5 May 1973. On 27 March 1998, aged 24, he entered the UK, claiming asylum the following day. On the advice of the agents who arranged his journey here, he falsely stated that he was Artan Berisha, born on 5 May 1973 in Prishtina, Kosovo. The Appellant now deeply regrets this course of action and wishes to apologise for it. Like many young men arriving in the UK at the time, the Appellant was escaping violence and upheaval in Albania as a result of the civil unrest taking place there in the late 1990s.
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> 7. The Appellant's asylum claim was never decided, and on 20 August 1999 he received a letter from the Respondent informing him that his case was on hold due to a review of the security situation in Kosovo. On 6 September 1999, the Appellant was granted exceptional leave to remain ("ELR") for a year until 6 October 1999. His asylum case was never determined.
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> 8. In parallel to these events, in 1998 the Appellant met and formed a relationship with Judith Hynes, a British citizen. They married on 27 August 2000. On 26 September 2000, independently of his asylum claim, the Appellant applied for leave to remain as the spouse of a British citizen, and was granted it on 19 July 2001, until 18 July 2002. On 16 July 2002, he applied in time for ILR, and was granted it, also on the basis of his status as the spouse of a British citizen, on 30 August 2002.
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> 9. On 25 October 2003, the Appellant applied for naturalisation as a British citizen under s6(2) of the 1981 Act, and was issued a certificate under that provision on 27 August 2003. The Appellant put forward his false nationality in all of these applications.
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> 10. The Appellant's relationship with his first spouse eventually broke down, and on 19 November 2010 a decree absolute was issued.
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> 11. The Appellant met a new partner, Iolanda Frashnaj, and she gave birth to a son Daniel on 18 October 2015. The couple were married on 19 April 2016 in the UK. Daniel, who is now four years old, has been diagnosed with autism, and the Appellant receives Disability Living Allowance ("DLA") on his behalf. Daniel is a British citizen.
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> 12. On 22 February 2019, the Respondent wrote to the Appellant to inform him that deprivation action was being considered against him. Appellant assumes this was on the basis that his case was reviewed following the *Hysaj* judgement in the Supreme Court on 21 December 2017 and the Respondent's practice of issuing deprivation decisions following the judgement
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> 13. On 24 March 2019, the Appellants representatives wrote to the Respondent disclosing his true identity and apologising for his past actions, as well as setting out their case as to why deprivation action should not be initiated.
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> 14. On 11 October 2019, the Respondent issued the decision under appeal here. It was not received by the Appellant at the time, owing to a fire in his home which caused the Appellant and his wife and child to have to move into temporary accommodation. The Appellant rescued his child. The circumstances,, which are set out in the grounds of

appeal, necessitated an application to appeal out of time, which was eventually granted by the Tribunal (FTT).

15. The Appellant resides with his wife and child. He has worked in the UK since being granted permission to do so, including being employed as an Assistant Steward by P&O Ferries.

3. In his recent witness statement dated 30 November 2020 the appellant confirmed he was placed on furlough by the ferry company from March 2020 as a result of the Covid pandemic. The appellant states he had to leave such employment and seek work during September 2020 but was unable to find further employment until October 2020 when he started working on a part-time basis at a car wash in Dover. His wife has also started working on a part-time basis, assisting with the operation of machinery in a cosmetic company.

The law

4. There has also been a fundamental development in relation to the legal approach to be taken to appeals of this nature since the error of law hearing, following the handing down of the judgement in the case of Begum v Secretary of State for the Home Department [2021] UKSC 7. At [66 – 71] in the lead judgment given by Lord Reed it is written:

66. In relation to the nature of the decision under appeal, section 40(2) provides:

"(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."

The opening words ("The Secretary of State may …") indicate that decisions under section 40(2) are made by the Secretary of State in the exercise of his discretion. The discretion is one which Parliament has confided to the Secretary of State. In the absence of any provision to the contrary, it must therefore be exercised by the Secretary of State and by no one else. There is no indication in either the 1981 Act or the 1997 Act, in its present form, that Parliament intended the discretion to be exercised by or at the direction of SIAC. SIAC can, however, review the Secretary Page 24 of State's exercise of his discretion and set it aside in cases where an appeal is allowed, as explained below.

67. The statutory condition which must be satisfied before the discretion can be exercised is that "the Secretary of State is satisfied that deprivation is conducive to the public good". The condition is not that "SIAC is satisfied that deprivation is conducive to the public good". The existence of a right of appeal against the Secretary of State's decision enables his conclusion that he was satisfied to be challenged. It does not, however, convert the statutory requirement that the Secretary of State must be satisfied into a requirement that SIAC must be satisfied. That is a further reason why SIAC cannot exercise the discretion conferred upon the Secretary of State.

68. As explained at paras 46-50, 54 and 66-67 above, appellate courts and tribunals cannot generally decide how a statutory discretion conferred upon the primary decision-maker ought to have been exercised, or exercise the discretion themselves, in the absence of any statutory provision authorising them to do so (such as existed, in relation to appeals under section 2 of the 1997 Act, under section 4(1) of the 1997 Act as originally enacted, and under sections 84-86 of the 2002 Act prior to their amendment in 2014: see paras 34 and 36 above). They are in general restricted to considering whether the decision-maker has acted in a way in which no reasonable decision-maker could have acted, or whether he has taken into account some irrelevant matter or has disregarded something to which he should have given weight, or has erred on a point of law: an issue which encompasses

the consideration of factual questions, as appears, in the context of statutory appeals, from Edwards (Inspector of Taxes) v Bairstow [1956] AC 14. They must also determine for themselves the compatibility of the decision with the obligations of the decisionmaker under the Human Rights Act, where such a question arises.

69. For the reasons I have explained, that appears to me to be an apt description of the role of SIAC in an appeal against a decision taken under section 40(2). That is not to say that SIAC's jurisdiction is supervisory rather than appellate. Its jurisdiction is appellate, and references to a supervisory jurisdiction in this context are capable of being a source of confusion. Nevertheless, the characterisation of a jurisdiction as appellate does not determine the principles of law which the appellate body is to apply. As has been explained, they depend upon the nature of the decision under appeal and the relevant statutory provisions. Different principles may even apply to the same decision, where it has a number of aspects giving rise to different considerations, or where different statutory provisions are applicable. So, for example, in appeals under section 2B of the 1997 Act against decisions made under section 40(2) of the 1981 Act, the principles to be applied by SIAC in reviewing the Secretary of State's exercise of his discretion are largely the same as those applicable in administrative law, as I have explained. But if a question arises as to whether the Secretary of State has acted incompatibly with the appellant's Convention rights, Page 25 contrary to section 6 of the Human Rights Act, SIAC has to determine that matter objectively on the basis of its own assessment.

70. In considering whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight, SIAC must have regard to the nature of the discretionary power in question, and the Secretary of State's statutory responsibility for deciding whether the deprivation of citizenship is conducive to the public good. The exercise of the power conferred by section 40(2) must depend heavily upon a consideration of relevant aspects of the public interest, which may include considerations of national security and public safety, as in the present case. Some aspects of the Secretary of State's assessment may not be justiciable, as Lord Hoffmann explained in Rehman. Others will depend, in many if not most cases, on an evaluative judgment of matters, such as the level and nature of the risk posed by the appellant, the effectiveness of the means available to address it, and the acceptability or otherwise of the consequent danger, which are incapable of objectively verifiable assessment, as Lord Hoffmann pointed out in Rehman and Lord Bingham of Cornhill reiterated in A, para 29. SIAC has to bear in mind, in relation to matters of this kind, that the Secretary of State's assessment should be accorded appropriate respect, for reasons both of institutional capacity (notwithstanding the experience of members of SIAC) and democratic accountability, as Lord Hoffmann explained in Rehman and Lord Bingham reiterated in A, para 29.

71. Nevertheless, SIAC has a number of important functions to perform on an appeal against a decision under section 40(2). First, it can assess whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight, or has been guilty of some procedural impropriety. In doing so, SIAC has to bear in mind the serious nature of a deprivation of citizenship, and the severity of the consequences which can flow from such a decision. Secondly, it can consider whether the Secretary of State has erred in law, including whether he has made findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held. Thirdly, it can determine whether the Secretary of State has complied with section 40(4), which provides that the Secretary of State may not make an order under section 40(2) "if he is satisfied that the order would make a person stateless". Fourthly, it can consider whether the Secretary of State has acted in breach of any other legal principles applicable to his decision, such as the obligation arising in appropriate cases under section 6 of the Human Rights Act. In carrying out those functions, SIAC may well have to consider relevant evidence. It has to bear in mind that some decisions may involve considerations which are not justiciable, and that due weight has to be given to the findings, evaluations and policies of the Secretary of State, as Lord Hoffmann

explained in Rehman and Lord Page 26 Bingham reiterated in A. In reviewing compliance with the Human Rights Act, it has to make its own independent assessment.

5. Reliance was also placed by Ms Foot upon the decision of the Upper Tribunal in Sleiman (deprivation of citizenship; conduct) [2017] UKUT 00367 (IAC) the headnote of which reads:

In an appeal against a decision to deprive a person of a citizenship status, in assessing whether the appellant obtained registration or naturalisation "by means of" fraud, false representation, or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship.

6. A further relevant decision of the Upper Tribunal is that of Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 00128 (IAC) decided by a Presidential Panel, the headnote of which reads:

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

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

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

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

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

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

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

7. Whilst it is accepted that a headnote is not the actual judgement the headnotes set out above accurately reflect the actual findings made by the respective tribunals.

Discussion

8. As in any case, the starting point is the decision under challenge and the basis on which it is submitted by any challenger that such decision is wrong in law. In her original skeleton argument dated 14 July 2020 Ms Foot set out the three basis on which the impugned decision is challenged in the following terms:

   i. Since his ILR was granted on the basis of his marriage to a British citizen, and it was that ILR, which enabled the Appellant to meet the statutory requirements for citizenship, it cannot be said that the citizenship was obtained *by means of fraud* under section 40(3) of the 1981 Act. In other words, the deception was not directly material to the grant of citizenship: *Sleiman (deprivation of citizenship; conduct)* [2017] UKUT 367 (IAC). The Appellant obtained his citizenship under s6(2) and not 6(1) of the British Nationality Act 1981 ("the 1981 Act") and his nationality was irrelevant to his ability to meet the statutory criteria for naturalisation. Had his true nationality been known to the respondent at the material time, it would have made no difference to the Appellant's route to citizenship.
   ii. Even if his citizenship was obtained by means of fraud, it is unlawful and unfair for the Respondent to exercise his discretion and deprive the Appellant of his citizenship now, in light of the Appellant's long residence and the time that has passed since he most recently committed deception. Moreover, there are compassionate circumstances in this case. The Appellant's son has autism and the impact of deprivation on the family would be highly unsettling.
   iii. Deprivation is contrary to the Appellant's rights under Article 8 ECHR and those of his British citizen child, given the impact on him of the Appellant being left without status pending any grant of leave to remain to him, taking proper account of his child's best interests with reference to section 55 of Borders, Citizenship and Immigration Act 2009.

9. Ms Foot accepted in her opening address to the Upper Tribunal that following the decision in Begum she was no longer able to rely upon the second of the above arguments but maintained her challenge to the decision on the first and third grounds, stating that they were not materially affected by the decision of the Supreme Court.
10. The relevant statutory provisions referred to by Ms Foot are:

    Section 40(3) British Nationality Act 1981 which reads:

(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.

And sections 6(1) and (2) which read:

6 Acquisition by naturalisation.

(1) If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.

(2) If, on an application for naturalisation as a British citizen made by a person of full age and capacity who on the date of the application is married to a British citizen, or is the civil partner of a British citizen the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.

11. The issue of an individual's conduct is relevant as a result of section 40(2) of the 1981 Act which reads:

"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."

12. The requirement for naturalisation under section 6 (2) is not only that a person is of full age and capacity, who at the date of application is married to a British citizen or the civil partner of a British citizen, but also that such person is able to meet the requirements of schedule 1 which sets out the requirements for naturalisation, the relevant sections of which read:

Naturalisation as a British citizen under section 6(1)

1 (1) Subject to paragraph 2, the requirements for naturalisation as a British citizen under section 6(1) are, in the case of any person who applies for it—

(a) the requirements specified in sub-paragraph (2) of this paragraph, or the alternative requirement specified in sub-paragraph (3) of this paragraph; and

(b) that he is of good character; and

(c) that he has a sufficient knowledge of the English, Welsh or Scottish Gaelic language; and

(ca) that he has sufficient knowledge about life in the United Kingdom; and

(d) that either—

(i) his intentions are such that, in the event of a certificate of naturalisation as a British citizen being granted to him, his home or (if he has more than one) his principal home will be in the United Kingdom; or

(ii) he intends, in the event of such a certificate being granted to him, to enter into, or continue in, Crown service under the government of the United Kingdom, or service under an international organisation of which the United Kingdom or Her Majesty's government therein is a member, or service in the employment of a company or association established in the United Kingdom.

(2) The requirements referred to in sub-paragraph (1)(a) of this paragraph are—

(a) that the applicant was in the United Kingdom at the beginning of the period of five years ending with the date of the application, and that the number of days on which he was absent from the United Kingdom in that period does not exceed 450; and

(b) that the number of days on which he was absent from the United Kingdom in the period of twelve months so ending does not exceed 90; and

(c) that he was not at any time in the period of twelve months so ending subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom; and

(d) that he was not at any time in the period of five years so ending in the United Kingdom in breach of the immigration laws.

(3) The alternative requirement referred to in sub-paragraph (1)(a) of this paragraph is that on the date of the application he is serving outside the

United Kingdom in Crown service under the government of the United Kingdom.

…

Subject to paragraph 4, the requirements for naturalisation as a British citizen under section 6(2) are, in the case of any person who applies for it—

(a) that he was in the United Kingdom at the beginning of the period of three years ending with the date of the application, and that the number of days on which he was absent from the United Kingdom in that period does not exceed 270; and

(b) that the number of days on which he was absent from the United Kingdom in the period of twelve months so ending does not exceed 90; and

(c) that on the date of the application he was not subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom; and

(d) that he was not at any time in the period of three years ending with the date of the application in the United Kingdom in breach of the immigration laws; and

(e) the requirements specified in paragraph 1(1)(b), (c) and (ca).

13. I find the argument that the deception committed by the appellant, which he has admitted to in form and in terms of his culpability, is immaterial is without merit following an in-depth consideration of the provisions of the requirements for naturalisation and the earlier applications for leave.

14. It is clearly a condition of an application for naturalisation under section 6(2) that the applicant can satisfy the requirements of paragraph 1(1)(b), the good conduct requirement, and that the person must not at any time in the period of three years ending on the date of the application have been in the United Kingdom in breach of immigration laws, in addition to the primary requirement of being a spouse of a British citizen.

15. A person will have previously breached the United Kingdom's immigration laws if, when aged 18 or over, they have:
- overstayed (unless an exception applies)
- breached a condition of their permission
- been, or are, an illegal entrant ('illegal entrant' includes those who have attempted to enter illegally)
- used deception in an application for entry clearance or permission to enter (whether the application was successful or not).

16. In this regard, it is important to look at the chronology in some detail. When the appellant entered the United Kingdom on 27 March 1998, he lied about his true identity by reference to both his true name and in claiming to have been Kosovan when he is Albanian. The consequence of such deliberate act of

deception is that the appellant was granted exceptional leave to remain for a period of one year as a result of the respondent's policy relating to Kosovan nationals in existence at that time due to the war in Kosovo. But for that deception it is highly unlikely the appellant would have been granted any form of leave to remain in the United Kingdom. As Mr McVeety stated in his submissions there was no similar policy in force in relation to citizens of Albania, making it likely that the appellant would have been returned to Albania had his true nationality been known. The appellant's deception is therefore material not only to his grant of ELR, but also his being permitted to remain in the United Kingdom thereafter.

17. It is accepted the appellant's deception was not relevant to him forming a relationship with the person he initially married, although as he appears from the copy Decree Absolute to have married in the name of Artan Berisha, which is not his true name, that may have given rise to other issues.
18. What is not disputed is that the appellant applied for leave to remain as a spouse of a British citizen, which was granted on 19 July 2001 until 18 July 2002.
19. It is important to consider what information was provided to the Home Office with that application. An applicant completes the required application form in which they are asked to provide their personal details and which contains a declaration at the end of the form which is signed by the applicant confirming that those details that have been provided are true. In this case, with the appellant still claiming to be Artan Berisha both the declaration and information as to the appellant's true name and nationality was false.
20. The deliberate provision of false information for the purposes of deceiving the Home Office I find was material. In addition to considering whether a person met the specific requirements of an immigration rule the Secretary of State was required to consider whether an individual fell foul of the General Grounds of Refusal found in paragraph 322 of the Rules. It was not made out that at the date the appellant applied for leave that such provision was not applicable.
21. If an applicant failed to disclose a material (relevant) facts in relation to a current application the application was refused pursuant to paragraph 322(1A) which was a mandatory ground of refusal.
22. Also, as submitted by Mr McVeety, when a material fact was not disclosed in a previous application an application would have been refused under paragraph 322(2) which is a discretionary ground of refusal.
23. Any application could also have been refused, had the truth of the appellants identity been know, under paragraph 322(5) which reads *It is undesirable to let an applicant stay because of their character, behaviour or associations (including convictions which do not fall within paragraph 322(1C)), or because they are a threat to national security*. There are no national security issues in this appeal, but the deliberate deception by the appellant clearly falls within his character of behaviour.
24. The deception was in relation to both name and nationality. Had the Secretary of State discovered who the appellant actually at the time the applications were made it is likely that the mandatory ground of refusal would have been applied,

the application refused, and the appellant removed from the United Kingdom. The deception was therefore material.

25. When the appellant applied for ILR on 16 July 2002, which was granted on 30 August 2002, he maintained the same deception.

26. To have succeeded in his application for ILR the appellant was required to show:
- He was still in a genuine and subsisting relationship with his partner;
- He meets the financial requirement;
- There is no reason to refuse the application under the General Grounds for Refusal;
- There is suitable accommodation available to them;
- They have had leave as a partner (on the 5-year route) for 60 months;
- They meet the English and Life in UK requirements.

27. The materiality of the deception is that had the decision maker been aware of the deception at that stage it was likely to have been found that there was good reason to refuse the application under the General Grounds for Refusal, meaning that it was only as a result of the appellant's continued reliance upon the information that he knew was not true that he was able to succeed with the application for ILR.

28. The appellant then applied for naturalisation as a British citizen under section 6(2) on 25 October 2003. As noted above, the appellant was in addition to being able to satisfy the requirements of being a spouse to satisfy the specific points raised in the schedule to the Act. The appellant would have completed an application form for the purposes of his naturalisation application. A person is not automatically given citizenship but must apply and prove on the application that they are so entitled. The application form, Form AN, requires an applicant to set out their personal details including name and nationality. It is clear when he completed the application that in respect of both matters the appellant continued his deception and lied. This finding is supported by the wording of the Certificate of Naturalisation in which the appellant's full name is stated as being 'Berisha Artan' and his place and country of birth as 'Prishtina, Federal Republic of Yugoslavia' information that would have been taken from the application form.

29. The appellant was fully aware of the consequences of his deception at the time of his application as there is a clear endorsement on the application form that the application will be assessed on the basis of the details provided by an applicant. It is clear the details that were provided in relation to the key aspects referred to above were wrong. It is clear that not only did the appellant deliberately provide false details, as he had done since his arrival in the United Kingdom, but that he also lied when completing the declaration at the end of the form which required him to certify that the information he had provided was correct.

30. It is no defence to the appellant to claim there was nowhere on the form in which he could have revealed his correct identity and provided an explanation as the box requiring him to provide his correct name and nationality would

have enabled him to "come clean" as to who he really is. There is also a section on the form enabling an applicant to provide 'any other details' or other information relevant to the application the Home Office may need to consider. The appellant failed to take the opportunity to declare the truth on every occasion.

31. The clear thread running through the chronology is the act of deception, the maintaining of the false identified by the appellant, his failure to tell the truth, leading to the grants of leave to remain and citizenship as a result of his deliberate actions.
32. Ms Foot argued that the chain of causation between the initial deception and the grant of leave as a spouse, ILR, leading to citizenship, had been broken, but I do not find this is the case. Assessing whether the deception was material requires consideration of the "but for" test and an assessment of whether the appellant was entitled to the leave he sought and would have been granted the same if the Secretary of State was aware of who he really was, and of the deliberate deception. I do not find that it has been made out that the appellant would have been granted any such leave.
33. The grant of ELR was on the basis of the claim to be Kosovan. Had it been know the appellant was Albanian he would not have been granted such leave.
34. In relation to leave as the spouse of a British citizen, even though the appellant did marry a British citizen spouse it is likely any application will have fallen foul of the general grounds of refusal in force had the truth been known, including the mandatory ground.
35. It is also the case that where character and conduct come into account the deliberate deceit maintained by the appellant over a considerable period of time give strength to an argument that any application would have been refused, which is relevant to the citizenship application.
36. On the basis of what was known at the relevant times the decisions to grant leave were made. On the basis of what should have been the true situation declared, had the deception been known, the applications for leave would have been refused.
37. I therefore find there is nothing arguably irrational, unlawful, or contrary to the public law principles in relation to the Secretary of State's refusal pursuant to section 40(3) British Nationality Act 1981 on the basis of the appellant's deception.
38. Ms Foot's alternative argument is that set out (iii) above, namely that the deprivation is contrary to the appellant's and the rights of his child pursuant to Article 8 ECHR.
39. It was submitted on the appellant's behalf that if he is deprived of his British citizenship he will not be able to work, not be able to rent property and not be able to enjoy the rights to which he has been entitled and enjoyed as a British citizen.
40. Although there was no definitive statement made of what is likely to occur if the deprivation appeal fails and the Secretary of State considers what action to take, it was generally accepted that with a spouse and child in the United Kingdom it is likely that the appellant will be granted leave to remain, pursuant to article 8

ECHR, although that was no more than a view expressed by the advocates rather than a statement of intent by the Secretary of State.

41. As noted in Hysaj, any period between the dismissal of an appeal and a decision by the respondent as to the next step is likely to be relatively short. It was not shown to be otherwise in this appeal.

42. Ms Foot submitted the appellant if he loses his rights as a British citizen will be unable to work, rent property or enjoy the rights as a British citizen to which he would be entitled, as set put above.

43. It is relevant that the appellants spouse and child are British citizens and that deprivation will have no impact upon his wife's right as a British citizen to work, rent property or enjoy the rights she currently does. Although the tenancy of the properties in the appellant's sole name, the copy of the document provided within the bundle shows it is an Assured (non shorthold) tenancy granted between Century Housing Association and the appellant with no evidence being provided to show there had been any attempt to contact the Housing Association to ascertain whether they will be willing to transfer the tenancy into the appellant's wife's sole name if he remained unable to be a tenant.

44. Similarly, it was not made out that the appellant's wife could not continue to work or that if required the benefits received could not be adjusted as a result of the loss of income to ensure the minimum needs of this family unit were met.

45. It was not made out that if the tenancy was transferred into his wife's name that the appellant would not be able to continue to live in the property whilst his status was resolved, or that at any later date the tenancy could not be transferred back into joint names or his sole name if this was what the family wished to do. It has not made out that as a result of the deprivation decision any member of the family will become homeless.

46. In relation to the child, who is a British citizen, it is not disputed that the child has been diagnosed with autism or that the child finds any alteration to his routine distressing. The appellant's updated statement refers to his son becoming more aggressive during the Covid 19 lockdown making it difficult to control him, which is understandable for a child with such needs. It was not made out, however, that the relatively short period of time required between the deprivation decision taking effect and any further consideration of leave to be granted will have any material disruptive effect upon the child's routine.

47. The child is now back at school and should be back into his normal routine which he has adapted to. Whilst the appellant expresses concern about the impact upon his son's health and development he fails to explain why the child should be directly impacted by a legal decision. The child is not a party to these proceedings, is still young, and it is the responsibility of the parents to protect the child as far as possible. There is no need for the child to know about the deprivation decision which is not a decision to remove the appellant from the United Kingdom, but rather a decision relating to status that he obtained as a result of deception. Whilst it is understandable that uncertainty could lead to stress, it was not made out that could not be managed within the family, such as to protect the child. If the speculation regarding what might happen in the

future does occur, in that the appellant is granted leave pursuant to article 8 ECHR within a relatively short period of time, life within the family unit can continue as before, albeit without the appellant having the benefit of British citizenship.

48. I do not find it has been made out that the impact the decision to deprive the appellant of his British citizenship, as opposed to the possible impact of any decision to remove him from the United Kingdom if the same was to be made, amounts to an interference with a protected right, or is contrary to the best interests of the child on the evidence, sufficient to warrant a finding that any such impact is disproportionate to article 8 ECHR.

49. If an adverse human right decision was made the appellant will have a right of appeal against the same.

50. In conclusion, I find the appellant has failed to discharge the burden of proof upon him to the required standard to show that his deception was not material to the grants of leave and citizenship at the various points during which he has maintained his deception, or that the decision to deprive him of his British citizenship is unlawful as being contrary to article 8 ECHR. It is not made out there are sufficiently strong exceptional or compelling circumstances which would justify the appeal being allowed.

51. On that basis I dismiss the appeal.

Decision

52. I dismiss the appeal.

Anonymity.

53. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

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

Signed…….
Upper Tribunal Judge Hanson

Dated 14 May 2021