Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00117/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 January 2021	**On 2 February 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

TN
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Hodgetts, instructed by OTB Legal
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant is a national of Albania, born on 8 May 1974. He arrived in the UK on 19 August 1998 and claimed asylum as a 16-year-old ethnic Albanian minor born on 8 May 1982 in Peja, Kosovo, claiming that his home in Kosovo had been destroyed by the Serb army and that he feared persecution from the Serbian police who had beaten him on numerous occasions. On 9 February 2004 he was informed that he had been granted asylum in the UK. On 3 March 2004 he applied for a travel document, in the same false identity and signed a declaration of truth in his application form.

3. On 11 February 2005 the appellant submitted an application to naturalise as a British citizen, in the same false identity, again declaring that he had told the truth, and on 27 September 2005 he attended a ceremony to naturalise as a British citizen.

4. In October 2016 the appellant submitted a passport application for his daughter and supplied supporting documents which confirmed that he was an Albanian national and not Kosovan as previously claimed. His case was referred by HMPO to the Status Review Unit of the Home Office as a result.

5. On 2 May 2018 the appellant submitted a Form RR (application for correction of a registration or naturalisation certificate) and he provided his correct details, giving his date of birth as 5 May 1974 and his place of birth as Peqin, Albania. He enclosed his Albanian passport and other identity documents confirming his genuine identity, together with a statement admitting that he had previously given a false identity but blaming the interpreter arranged by his legal representatives who had told him to declare that he was a Kosovan national. The appellant claimed to have submitted his genuine Albanian documents previously when sponsoring his parents' entry visa application in 2005. The Home Office did not agree to amend the naturalisation certificate and issued an investigation letter to the appellant's legal representatives informing them that there was reason to believe that he had obtained his British citizenship as a result of fraud. The appellant's solicitors then responded, claiming that the appellant had been advised to provide false information by his former solicitors.

6. The respondent, in a decision dated 30 October 2019, did not accept the appellant's explanation as a justification for the deception. The respondent considered that the appellant had had multiple opportunities to disclose his genuine identity but had chosen not to and had only informed the Home Office of his genuine identity after HMPO had revoked his passport. The respondent noted that the appellant was a 24-year-old adult when he entered the UK and was not a minor as claimed. As such, he was responsible for the information he had provided in his asylum application and subsequent applications. The respondent concluded that the appellant's British citizenship had been obtained fraudulently and that he should be deprived of his British citizenship under section 40(3) of the British Nationality Act 1981. It was considered that deprivation would not have a significant effect on the best interests of the appellant's children as their status would not be affected and that it would be both reasonable and proportionate.

7. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981. His appeal was heard on 7 January 2020 by First-tier Tribunal Judge Graves. The judge noted that the appellant had three children, J born on 9 June 2005, K born on 3 February 2016 and R born on 6 January 2017, all of whom were British citizens. His wife was an Albanian citizen with limited leave to remain under Appendix FM of the immigration rules. He had married her after the death of his first wife and her leave had been granted on the basis of their marriage. It was after the birth of the second child that the appellant had made the application for a British passport which led to the deprivation decision. It was accepted before the judge that there had been fraud and deception and that the fraud was material to the grant of his citizenship. However the appellant challenged the deprivation decision on the basis that the respondent had known about the deception in 2005 when processing his parents' visit visa applications and had therefore delayed in taking action, that he had lived in the UK for more than 20 years and that the respondent had previously relied upon a policy not to deprive those who had lived here for over 14 years and that he had relied on the advice of his previous solicitors when claiming to be Kosovan.

8. The judge found that the burden of proving fraud had been met by the respondent, noting that the appellant had maintained the false identity with numerous government agencies, including when he had contact with social services, when registering the births of his two eldest children and when claiming benefits. The judge found further that the appellant had not established mitigating factors such as duress or a lack of capacity or knowledge, that the deception was material to the grant of leave and citizenship, that the effect of deprivation would not make him stateless and that his conduct was sufficiently serious to warrant proceedings to deprive him of his British citizenship. In terms of Article 8, the judge concluded that the appellant had not established that the decision to deprive him of citizenship was disproportionate. She concluded that the respondent had properly exercised discretion against the appellant. The judge rejected the appellant's claim that the respondent had known about the deception for 14 years since the entry clearance applications for his parents in 2005 and had done nothing, noting that the visas were issued after he had been granted British citizenship and that he would not have had to disclose his Albanian nationality. The judge concluded that the appellant had not established that the respondent had knowledge of the deception any earlier than 2016. As for the 14 year policy, the judge noted that that had been withdrawn and she did not accept that the respondent ought to have applied it. The judge found there to be no unlawful delay on the part of the respondent and she concluded that the respondent was entitled to pursue deprivation.

9. Permission to appeal was sought by the appellant on eight grounds: first, that the judge had failed to make any assessment of the best interests of the children; second, that the judge had failed to consider the destabilising impact of deprivation on the appellant's eldest child; third, that the judge failed to consider the impact upon the family of the appellant's inability to work as a result of the deprivation order; fourth, that the judge failed to consider the impact on the appellant's wife's immigration status; fifth, that the judge failed to consider the likely length of delay in making a deprivation order and a decision on a grant of further leave; sixth, that the judge failed to give weight to the

historic 14 year deprivation policy; seventh, that the judge failed to address the argument as to breaches of section 55 of the Borders, Citizenship and Immigration Act 2009 and Article 8(2) on account of the immediate economic consequences of deprivation on the whole family whilst waiting for leave to be granted; and eighth, that the judge failed to consider delay in the context of EB (Kosovo) [2008] UKHL 41.

10. Permission was initially refused in the First-tier Tribunal, but was granted on a renewed application to the Upper Tribunal. The respondent filed a Rule 24 response, submitting that the grounds of appeal were an attempt to re-argue the points already considered in the case of Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 128.

Hearing and Submissions

11. The matter then came before me for a remote hearing by way of skype for business and both parties made submissions.

12. In response to the respondent's case, in the Rule 24 response, that the grounds of challenge made by the appellant had effectively been addressed by the Upper Tribunal in the case of Hysaj, Mr Hodgetts quite properly accepted that ground six, relating to the relevance of the previous 14-year deprivation policy, was dealt with by Hysaj and that he would not be advancing that ground. Indeed, the judge made full and proper findings in that regard at [27] of her decision. Mr Hodgetts' case was that Hysaj did not, however, preclude a positive outcome on Article 8 grounds in a compelling case and he submitted that this was a compelling case, for various reasons. He submitted that the destabilising impact on the appellant's eldest child, J, of the deprivation decision and the loss of her father's British citizenship and his wife's legal status, was a compelling circumstance, given in particular because this would add to the sense of loss J had already experienced through the loss of her mother, the appellant's first wife, who had died of cancer when she was eight years of age.

13. Mr Hodgetts submitted that the judge gave this matter no consideration and that she completely failed to address the best interests of the children, both in her Article 8 consideration and in the consideration of the respondent's exercise of discretion. Mr Hodgetts submitted that the judge did not even acknowledge that J was the daughter of the appellant's previous marriage. He submitted further that the judge gave no consideration to the financial impact of deprivation, as the family were already living on the breadline and barely surviving, but would then lose the appellant's income and have no income at all since his wife was not permitted to have any recourse to public funds and they had no savings. They would have no access to housing benefit and the appellant's wife could not possibly find employment enabling her to cover the costs of rent and all the bills. That would be the position for them as soon as the deprivation order was made and for the period in which they would be waiting for the respondent's decision on whether to grant leave to remain. Mr Hodgetts submitted that, in addition to these foreseeable consequences of deprivation, the judge also failed to consider the fact that the appellant's wife would lose her current leave to remain, as that was based on being the spouse of a British national and she would have to make an application outside the immigration rules.

The judge failed to consider the likely length of time waiting for a decision on a grant of leave following a deprivation order, which was likely to far exceed the four weeks followed by eight weeks referred to in the deprivation decision. Finally, Mr Hodgetts submitted that the judge failed to consider the impact of the respondent's delay, in the context of EB (Kosovo), as there was a three year gap between the respondent finding out about the appellant's fraud and then making the deprivation decision. During that period the appellant had no way of proving his nationality and immigration status, as his passport had been revoked and was only re-issued in late December 2020 following a judicial review challenge, so that he was unable to change employment or move to a bigger house. Mr Hodgett submitted that the judge's decision could not stand and the appeal had to be re-decided with further oral evidence as to the impact on the family of deprivation.

14. Ms Cunha submitted that the judge had properly addressed the reasonably foreseeable consequences of deprivation in accordance with Hysaj. She had considered all relevant matters and, whilst she had not specifically addressed the best interests of the children, that was not material to the outcome as there would be little impact on the children. Mr Hodgetts, in response, and referring to ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4, submitted that such an omission was material.

Discussion and Conclusions

15. I have to say that Ms Cunha's submissions were not entirely clear. However, I understood her response to the grounds relating to the children's best interests to have been that, whilst there were no specific findings on the matter by the judge, consideration had been given to the children in a more general context and no material error arose as a consequence. That seems to me to be the case, as the judge clearly gave careful consideration to the situation of the family and the impact upon them of a deprivation order, in particular at [22], [23], [27], [28] and [30]. In any event I cannot see how a specific reference to the children's best interests could have elicited any different outcome, given that they would not be losing their own British citizenship and that the impact upon them of the respondent's decision would be temporary, awaiting a grant of leave for their father which, as Ms Cunha submitted, is the likely outcome in the circumstances. Indeed, that is what was said by the Upper Tribunal in Hysaj, at [118]:

> "The children's best interests are in staying in a family unit with their parents, which they will continue to do upon deprivation. That the family unit may have to move accommodation or enjoy more limited financial resources is not such as to come close to defeating the significant public interest in the appellant being deprived of his British citizenship. The Tribunal held in *BA* that consequent to such weight, where statelessness is not in issue it is likely to be only in a rare case that the ECHR or some very compelling feature will require an appeal to be allowed. The circumstances in such a case would normally be exceptional in nature."

16. It was Mr Hodgett's submission, however, that this was one of the rare cases referred to in Hysaj and that the situation of the eldest child, J, was particularly compelling as she had already lost her mother and the impact of the respondent's decision was already causing her distress ([28] of the appellant's statement) and had a destabilising effect on her. He submitted that the judge had not even understood her circumstances and had referred to her as the daughter of the appellant's current wife, at [2] of her decision. However, the wording of that paragraph suggests that the judge had missed out a sentence in error and, when taken together with the following two paragraphs, it seems to me that the judge was perfectly aware of the family situation. In any event, given the findings of the Upper Tribunal in Hysaj in relation to the best interests of the children, I cannot see how the judge could lawfully have reached any other decision on the basis of J's situation. As a 15 year old girl she would no doubt be capable of understanding, if explained to her, that the deprivation decision did not mean that the family would be split up, but most likely the result would be that her father would simply have a different basis of stay in the UK.

17. As for the submissions made by Mr Hodgetts in regard to the period following a deprivation order being made, and the impact upon the appellant's wife and children of losing his income and access to benefits, and of financial hardship, that was no different from the arguments made in Hysaj on the "limbo" situation, at [103] and [107], which were rejected by the Tribunal at [108] to [110]. Mr Hodgetts sought to distinguish the appellant's case before me on the basis that this was a family already on the breadline and that the appellant's wife claims she would not be able to find employment to cover all the bills, but it seems to me that the reasons given in those paragraphs are no less applicable in this case. Neither do I find merit in Mr Hodgett's submissions in regard to the appellant's wife's immigration status, a matter he said that the judge had materially erred in failing to consider. The respondent's deprivation decision at [28] made it clear, when considering section 55 and the best interests of the children, that a deprivation order would not impact upon the status of the children or their mother. Further, as stated in the respondent's rule 24 response at [6], the appellant's wife's status in a further application would not only depend upon his status but would also depend upon her British children's status.

18. As in Hysaj, at [111], I cannot see how the judge materially erred in law by not making specific findings on all of these matters. The appellant simply could not succeed in any of those matters. Neither do I see any merit in the grounds referring to delay. Contrary to the assertion in the grounds, the judge gave detailed consideration at [29] to [32] to the impact and reasonableness of delay in the deprivation process and provided cogent reasons for concluding that there was no unlawfulness in that regard.

19. In conclusion, the judge, having given careful consideration to the arguments put to her, followed the correct approach in considering the reasonably foreseeable consequences of deprivation in line with relevant caselaw. She was fully entitled to conclude that the consequences were not such that there was a breach of the appellant's Article 8 rights or those of his wife and children and that the respondent, having properly exercised her

discretion in the matter, was entitled to pursue deprivation in the appellant's case. I find no material errors of law in the judge's decision requiring it to be set aside and I uphold the decision.

DECISION

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

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: *S Kebede* 19 January 2021
Upper Tribunal Judge Kebede