Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2021-000514
DC/00003/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28th July 2022	**On 28th September 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

SARDAR HUSSEIN QADIR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed against the decision of First-tier Tribunal Judge Hussain, who dismissed the appellant's appeal against the Secretary of State's decision of 20th December 2019 to deprive him of nationality under Section 40(3) of the British Nationality Act 1981.

2. The appellant failed to attend the hearing before me in the Upper Tribunal, but I am satisfied that he was advised of the date, time and venue of the hearing. Indeed this hearing was resumed following a previously adjourned hearing from 30th June 2022 because of the appellant's absence.

In accordance with the overriding objective, the interests of justice and fairness, I concluded that the hearing should proceed. There was no indication that the appellant would attend any subsequent hearing should this be adjourned again.

3. The appellant, whose true name is Sardar Hussein Qadir, date of birth 14th January 1985, is a national of Iraq. He had presented himself as Dilshad Ahmedi born on 23rd September 1988, a national of Iran, and applied for asylum having entered the United Kingdom on 8th June 2004. His asylum claim was refused on 28th February 2005, but he was granted leave to remain until 22nd September 2006 as an unaccompanied minor. On 25th September 2006 he submitted an application for further leave to remain out of time, which was not decided upon for four years, but his case was placed in the "legacy" list of cases and on 1st September 2010 he was granted indefinite leave to remain. On 3rd November 2012 the appellant was issued with a certificate of naturalisation as a British citizen.

4. On return to the United Kingdom on 7th April 2019 his British passport was retained by the Border Force and he was asked to apply for a new passport. When making that application, the appellant disclosed his true identity, that is that he was in fact Sardar Hussein Qadir born on 14th January 1985, some three years earlier than asserted in his asylum claim. Additionally, he was an Iraqi national, not one from Iran. The appellant was invited to make representations as to deprivation of citizenship and following consideration a decision to deprive the appellant of citizenship was made.

5. The grounds for permission to appeal were as follows and I deal with each challenge in turn:

Ground 1

6. It was asserted the judge's approach to the appellant's mental health and well-being in the context of deprivation was unreasonable and irrational. At [69] the judge was prepared to accept an exacerbation of the appellant's condition, however, he went on to conclude that "the impact on the appellant is proportionate given the gravity of the wrong he has committed". In particular, the decision was unreasonable and irrational in the light of what was said **in BA (deprivation of citizenship: Appeals)** [2018] UKUT 85 (IAC), cited at [45] of **Laci v Secretary of State [2021] EWCA Civ 769**, that is that the Tribunal could allow the appellant's appeal only if the reasonably foreseeable consequences of deprivation would violate the obligations of the UK under the Human Rights Act 1998 and/or there were some exceptional features of the case which meant that discretion in the sub-Section concerned should be exercised differently.

7. The judge failed to consider the deterioration of the appellant's mental health, which would amount to a breach of his Article 8 rights and this should have been considered weighty if not determinative of the fact that

there were sufficiently compelling circumstances. The report of Dr Labeeb Ahmed dated 12th April 2021 highlighted at [21.1] that "the initiation of medication and counselling is likely to help his recovery". He also made further recommendations as to treatment. Although the judge recorded at [68] that the appellant's oral evidence was that "he did not need any psychological intervention and had not taken the advice given in the report about treatment", this showed that the appellant's state of mind was to resist medication. The reasonably foreseeable consequence of deprivation was that the appellant's mental health would deteriorate.

8. Further, the judge had failed to consider the appellant's state of mind at the time he applied for naturalisation in 2012, which was a mitigating factor in line with the Secretary of State's guidance on deprivation at 55.7.11.2.

9. I reject this ground. First, the judge clearly took into account the medical evidence at [64] to [67] and effectively disregarded the reports of practitioners other than Dr Ahmed because they failed to explain whether their opinions were based on notes contemporaneously taken and subsequently retained. The judge gave sound reasoning for his conclusions.

10. The judge properly directed himself at [68] and considered that the foreseeable consequence of depriving the appellant's nationality including the proposition that it would make the appellant's mental health deteriorate. As the judge noted at [68], section 5.2 of the expert report which the judge found relevant, is that the appellant merely suffered from mixed anxiety and a depressive disorder, and it was the appellant's own opinion that he did not need psychological intervention.

11. Further, as stated at [69], the judge noted that it could not be overlooked that the opinion of Dr Ahmed was entirely based on an interview with the appellant "without reference to any notes of a previous medical history". That observation was open to the judge and the weight to be given to evidence is a matter for the judge and should not be characterised as an error of law. Nevertheless, the judge at [69] accepted that the appellant suffered from depression and anxiety which may exacerbate when the deprivation decision was taken and it was open again to the judge to consider that the impact on the appellant was proportionate having carefully analysed the evidence.

12. As Mr Clarke, on behalf of the Secretary of State, pointed out, **Hysaj v Secretary of State for the Home Department [2014] EWCA Civ 1633** at [110] places heavy weight on the public interest in deprivation. **Hysaj** chimes with [19] of **KV (Sri Lanka) v Secretary of State for the Home Department** [2018] EWCA Civ 2483, and it can be seen that **Laci** and **Ciceri (deprivation of citizenship appeals: principles)** [2021] UKUT 238 (IAC) invoked a similar principle. Although there was a weight to be attached to the loss of rights, as the judge states, it is not an inevitability that if the appellant is deprived of British nationality, he would

also cease to have a right to live here. As the judge also pointed out at [70], should the appellant be subjected to proceedings of removal there was no reason why he could not at that stage make an asylum claim. **Ciceri** has confirmed that it is not a requirement to make a proleptic assessment under Article 8.

13. The judge dealt with the claim that the appellant suffered from mental health problems when making the application itself. The judge in his analysis of the medical evidence identified that Dr Ahmed made no mention of the appellant suffering from such issues since childhood and on consideration of the evidence from Dr Labeeb Ahmed there was no reference to schizophrenia and a bipolar disorder. Less weight was attached accordingly.

14. The judge at [63] specifically rejected the concept that the appellant did not know what he was doing and merely followed the advice of the smugglers because he asserted that he, the appellant, was "thereafter guilt-ridden by it, leading him to make attempts to bring to the Secretary of State's attention to his identity".

15. As set out by Underhill LJ at [37]

> *'As to point (4) in BA, the broad thrust of what the UT says is that only exceptionally will it be right for a person who has obtained British citizenship by (in short) deception to be allowed to retain it. In my view that is entirely correct: the reason is self-evident. It is in line with what Leggatt LJ says in the first half of para. 19 of his judgment in KV. I note that he uses the term "unusual" rather than "exceptional"'.*

16. It was thus open to the judge to make the findings that he did in relation to the deprivation, 'the impact of that on the appellant is proportionate given the gravity of the wrong that he has committed'. Irrationality holds a high bar and there was nothing either irrational nor unreasonable in the judge's reason which constituted a material error of law.

Ground 2

17. Here it was asserted that the judge made an error of fact in relation to the reliable evidence of the appellant contacting the Home Office. The appellant wrote to the Home Office as early as 2017 and it is an accepted fact as the letter is annexed in the respondent's bundle and documented in the refusal letter at [26]. It was submitted that the judge had materially erred in relation to factual matters which are relevant to the deprivation action and/or whether it amounted to a mitigating factor. The judge's decision was unreasonable.

18. Indeed, I note, there is an admission within the determination itself at [26] that the appellant did contact the UKVI on 6th July 2017 wanting to convey his genuine identity. At [71] the judge states as follows:

> *"71. The case of **Laci** seems to suggest that it is appropriate to take into account in deciding whether the Secretary of State has tried to struck the right balance in the decision to deprive the appellant of nationality any delay between the deception coming to notice and the decision to deprive. In **Laci**, there was a delay of some 9 years which the court observed led the appellant to a belief that no action would be taken against him. However, in this case, it seems that the appellant's admission of wrongdoing was only made known to the Secretary of State in 2019 and she lost no time in following that up. In my view, there has not been any delay of any degree that should allow the appellant to take advantage of delay."*

19. As stated in **Laci**, which comprised wholly different circumstances, there was a delay of some nine years which the court observed led the appellant to a belief that no action would be taken against him. It is correct to say that the judge identified the 2019 rather than 2017 but in fact the dates as set out involved a matter of just two years. The appellant had maintained a deception for 13 years. In **Laci** it was the case that the appellant was served with an investigation letter in 2000 and then there was, as Mr Clarke put it, "radio silence" until he was issued with a new British passport in 2016 and thereafter deprivation proceedings taken against that appellant. It was accepted on balance that the First-tier Tribunal was entitled to take into account that as an extraordinary factor. In **Ciceri** there was a delay of four and a half years, which was insufficient to outweigh the public interest. In this instance it is approximately two years between the appellant confessing his true identity after a period of thirteen years from his entry to the UK in June 2004. Even if this was not a typographical error (the judge having already set out that the appellant had contacted the Home Office in 2017) I am not persuaded that a factual error such as this could undermine the findings of the judge overall. No rational Tribunal could conclude that a delay of two years was sufficient to outweigh the public interest and I find no material error of law here.

Ground 3

20. In relation to the third ground it was asserted that the judge failed to engage whether the appellant's case fell to be considered in line with **Sleiman (deprivation of citizenship; conduct) [2017] UKUT 367**, where the appellant also lied about his age on entry to the UK, thereby securing a short period of leave. It was asserted that there was a subsequent delay in the decision-making for a further claim which in fact as here led to a grant of ILR. In this case the Home Office file notes showed that a delay in deciding his out of time application for FLR led to his residence of over six years. It was submitted that the delay broke the chain of causation and the judge's conclusions at [61] did not demonstrate adequate consideration of the issues and the conclusions were unsustainable.

21. I do not accept that this challenge has merit. As pointed out, the Secretary of State relied on the character and conduct of the appellant which was material to the deprivation and Section 6 of the Nationality Act 1981 makes clear that the Secretary of State must be satisfied as to the appellant's good character and the decision letter specifically refers to that matter. The decision at [20] shows that the appellant had not been truthful when he completed the form and the judge stated at [22] "had the respondent been aware of the concealment of the appellant's true identity on his discretionary leave application and naturalisation", as the decision stated, "he would not have been successful". The case of **Sleiman** did not deal with the position in relation to character because **Sleiman** was a chain of causation case rather than considering whether the application form itself had been filled in correctly.

22. Even so, it is very clear at [61] that the judge was clear that the appellant had lied about his age from the outset. In contrast to **Sleiman** and as pointed out in the underlying Secretary of State's decision he was granted Indefinite Leave to Remain because, in addition to the time taken to consider his discretionary leave extension, the appellant had maintained the deception of his details including his nationality and date of birth and as pointed out, had the decision maker for Indefinite Leave to Remain known of his genuine nationality (not just his age which in Sleiman was according to the underlying Secretary of State's decision as 'irrelevant' to the legacy decision) he would not have been granted ILR. There was a direct bearing on the Secretary of State's decision, no break in the chain of causation and the deception was material to the grant of Indefinite Leave to Remain and subsequently only four years later as a legacy case. As the judge stated:

> *"What is, however known, is that the appellant presented himself as [a] minor from Iran which clearly influenced the Secretary of State's decision whether to either send him to that country or to Greece from where he had come. Because he was a minor, he was not removed there. This paved the way for the appellant to be granted discretionary leave which in turn placed him in the list of 'legacy' cases, which in turn allowed him to be eligible for indefinite leave."*

As the judge noted, this was pointed out in the refusal letter. That said, the appellant's relevant deception was not merely a historical fact and there was no material error of law in the judge's approach.

23. I find no material error of law in the decision.

Notice of Decision

The appeal is dismissed. The First-tier Tribunal decision shall stand and the appellant's appeal remains dismissed.

No anonymity direction is made.

Signed Helen Rimington Date 15th August 2022

Upper Tribunal Judge Rimington