IAC-AH-BW-V2

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DC/00011/2020**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 June 2022 & 29 September 2022	**On the 25 October 2022**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

SOKOL PALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant on 14 June and 29 September 2022: Ms H Foot, Counsel, instructed by OTB Legal Solicitors
For the Respondent on 14 June 2022: Mr D Clarke, Senior Presenting Officer
For the Respondent on 29 September 2022: Mr S Kotas, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of the United Kingdom. His date of birth is 1 September 1977. He was born in Albania.

2. I set aside the decision of First-tier Tribunal Judge J K Swaney to allow the Appellant's appeal against the decision of the SSHD on 21 January 2020 to

deprive him of his British citizenship pursuant to s.40(3) of the British Nationality Act (the 1981 Act). The decision of the judge and my error of law decision predate Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238.

3. There was no application for an order to anonymise the Appellant. I have considered Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private and find no reason to make such an order. However, I have identified the Appellant's partner and children by initials to protect their identity.

4. The Appellant came to the UK on 29 July 1988. He claimed asylum falsely claiming to be from Kosovo and giving a false date of birth. His asylum claim was refused. He appealed against the decision. The appeal was dismissed in his absence. The Appellant made an application on 22 September 2006 for LTR under the family Indefinite Leave (ILR) exercise. The application was refused on 12 December 2006 on the basis that he did not have any dependants of qualifying age.

5. The SSHD granted the Appellant ILR outside of the Immigration Rules (IR) on 29 May 2009. The SSHD'S decision stated "*your leave has been granted exceptionally, outside the Immigration Rules. This is due to your strength of connections in the United Kingdom, and length of residence in the United Kingdom*".

6. The Appellant applied for a travel document on 9 June 2009 still maintaining his false date and place of birth. On 6 September 2010 the Appellant submitted an application to naturalise as a British citizen using false details. He was issued with a British passport on 7 December 2018.

7. The Appellant had on 15 November 2019, prior to the SSHD sending him an investigation letter, sent a pre-emptive letter to the Respondent (wherein he accepted that he had given false details to the Home Office throughout his immigration history. He maintained that his life was at risk in Albania following a blood feud. He had followed advice given to him at the time. The Appellant's partner, RP, is a citizen of Albania. They have two children, a daughter, L (date of birth 8 February 2012) and a son, R (date of birth 20 October 2013). The children were British citizens and in full-time education. The Appellant stated that he was anxious and depressed and had frequent suicidal thoughts. In support of this his solicitors enclosed evidence from the Appellant's GP (Dr W T Neville), a letter from Hertfordshire Partnership (confirming that he had been referred to a mental health professional) and a letter from Dr Daniel Brook of the Law Medical Group Practice (confirming that he had been suffering with anxiety and depression). The Appellant said that he was self-employed, had been in the UK for 21 years and had a strong private and family life. He told the SSHD that his daughter L had a disability. It was submitted that deprivation would have a "major negative impact" on her health. The Appellant relied on paras 55.7.3 and 55.7.4 of the deprivation and nullity of British citizenship guidance. It was asserted that it would be unfair and

unreasonable for the SSHD to exercise her discretion to deprive the Appellant of his citizenship. The Appellant's case was referred to the Status Review Unit (SRU) after checks concluded that he was a citizen of Albania. The SSHD made a decision to deprive the Appellant of British citizenship on 21 January 2020.

8. My error of law decision can be summarised. I concluded that the judge erred because she carried out a full merits review of whether the condition precedent had been established. I also found that the First-tier Tribunal erred in respect of the issue of delay. I found, however, that the judge had properly applied Sleiman (deprivation of citizenship) [2017] UKUT 367. I considered at the error of law stage, having set aside the decision that the judge was entitled to conclude that the Appellant had not been granted leave on the basis of his nationality before the grant of ILR under the Legacy Programme. However, that was not the end of the matter because bad character had been relied on by the SSHD which was a matter that the First-tier Tribunal had not engaged with. Moreover, the task of the Tribunal was not a full merits review as it was in Sleiman.

The Decision of the SSHD

9. The relevant parts of the decision letter reads as follows:-

> "15. On 6 September 2010 you submitted an application to naturalise as a British citizen. You again claimed your identity as Sokol Pali, date of birth 1st September 1980, place of birth Deçan, Kosovo (Annex J, page 1, Section 1). You claimed your father's identity as Pal Pali, date of birth 13 March 1943, place of birth Deçan, Kosovo and your mother's identity as Katrina Mark Pali, date of birth 1 October 1946, place of birth Shkodër, Kosovo (Annex J, page 3, Section 1.23 – 1.30). You left the partner section blank (Annex J, page 4, Section 1.31 – 1.45). You signed the declaration section of the form AN which clearly states:
>
> > 'To give false information on this form knowingly or recklessly is a criminal offence punishable with up to three months' imprisonment or by a fine not exceeding £5,000 or both), Section 46(1) of the British Nationality Act 1981, as amended.' (Annex J, page 12, Section 6.1).
>
> Also, on the form AN Section 3 is the good character requirement and Section 3.12 of this states 'Have you engaged in any other activities which might indicate that you may not be considered a person of good character?' This was a tick box answer to which you ticked 'no' (Annex J, page 8, Section 3.12). You ticked the box to confirm that you have read and understood the guidance AN and booklet AN (Annex J, page 12, Section 6.2). This application was successful, and you were granted British citizenship. You attended your ceremony to naturalise on 11 October 2010 (Annex L).
>
> 19. Your legal representatives state that as your asylum claim was unsuccessful and you were not granted any form of refugee leave, you were granted indefinite leave to remain outside the Rules due to your length of residency in the UK. However, had the truth be known of your genuine identity you would not have been able to remain in the UK and qualify for any type of leave. Given you are from Albania, your

removal could have been facilitated. However, given your claim to be from Kosovo, your removal was not enforced. You were therefore able to remain in the UK and accrue residence, which ultimately resulted in you being granted ILR outside the Rules. Had it been known that you were Albanian, you would not have accrued this residence and it is therefore submitted that your deception was material to the grant of status. Chapter 55, Section 55.7.1 states:

> 'If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation.' (Annex V, page 6, para 55.7.1).
>
> Also, it is noted that you sent in an application for family ILR (Annex G) which was incorrect as all your applications have only ever been individual. Family ILR is only granted for Applicants who have dependants, or any Applicant who has exceptional or compassionate circumstances which you did not at this time. This added to you gathering more residency time in the UK as the application was being considered, this then benefitted you and enabled you to be granted ILR (LOTR) due to your length of residency in the UK (Annex H).

20. It is also noted that your representatives state that you suffer from mental health problems and you are very anxious and depressed and have also had frequent suicidal thoughts (Annex P), this is also shown in a letter sent in with your representatives mitigation from your GP dated 28 March 2018 (Annex P). This has been noted by the Home Office that you have mental health issues and has been taken into consideration when making this decision. Chapter 55, Section 55.7.11.3 states:

> 'That where there is evidence of some form of mental or physical impairment that can clearly be shown to have impacted on the subject's judgment at the time the material fraud took place, may be considered to be a mitigating factor' (Annex V, page 9, Section 55.7.11.3).

The letter from your GP, dated 28 March 2018, confirms that you have become increasingly depressed in the last three years and now have frequent suicidal thoughts. You have failed to supply any evidence to support the claim that you were suffering from such issues at the time that you employed deception. Chapter 55.7.11.3 further states that:

> 'Evidence of mental or physical impairment that is alleged to have impaired on the subject's free will or judgment would need to be considered by the subject's doctor or other relevant health professional' (Annex V, page 9, Section 55.7.11.3).

Without evidence of the same, this cannot be considered as mitigation.

21. Your legal representatives further submit that you have lived in the UK for 21 years and you have established a strong private and family life for the purpose of Article 8. You have a wife who is Albanian and two children who are British citizens who all live with you in the UK. Your private and family life has been taken into consideration when making this decision, and further points are addressed later in this letter. As

chapter 55, Section 55.7.6 states 'length of residence in the UK alone will not normally be a reason not to deprive a person of their citizenship' (Annex V, page 7, paragraph 55.7.6).

23. Section 9 of the nationality staff instructions in use on the date of the naturalisation application deals with deception and dishonesty. It is clear that you would have been refused British citizenship under s.9.1 and 9.5 had the nationality caseworker been aware that you had presented a false identity to the Home Office and continued to use that identity throughout your immigration history (Annex V, page 25 – 26). This is shown on your form AN (Annex J). You ticked the box to confirm that you have read and understood the guide naturalisation as a British citizen (Annex K). In this Section it gives information on how to fill in all the Sections, and in Section 3: Good Character Requirement Section 3.12 it states: 'You must say whether you have been involved in anything which might indicate that you are not of good character, and you must give information on this no matter how long ago.' It further states 'You must tell us if you have practised deception in your dealings with the Home Office or government departments (e.g. by providing false information or fraudulent documents)' (Annex K, page 10, Section 3.12). It is here that you would have been aware of your deception, yet it is apparent that you chose to continue to deceive the Home Office in order to secure a successful application. This application was successful, and you were granted British citizenship. You attended your ceremony to naturalise on 11 October 2010.

24. Chapter 55, Section 55.4.2 states 'Concealment of any material fact' means operative concealment i.e. the concealment practised by the Applicant must have had a direct bearing on the decision to register or, as the case may be, to issue a certificate of naturalisation (Annex V, page 4, Section 55.4.2). Also, chapter 55, Section 55.7.1 states if the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration, the caseworker should consider deprivation (Annex V, page 6, Section 55.7.1).

25. It is important to note that you have perpetuated a deliberate fraud against the UK immigration system, where you employed deception to obtain status that would not have been granted to you if the truth had been known. Parliament has provided the power to deprive British citizenship status if the Secretary of State is satisfied that naturalisation was obtained by means of fraud, false representation, or concealment of a material fact, which is clearly the case here, and it is balanced and proportionate step to take. (my emphasis)

26. 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 considered 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 considered that the fraud was deliberate and material to the acquisition of British citizenship.

27. 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 15 November 2019 and concluded that deprivation would be both reasonable and proportionate."

The Law

10. Section 40 of the 1981 Act reads as follows:-

"40 Deprivation of citizenship

(1) In this section a reference to a person's 'citizenship status' is a reference to his status as –

(a) a British citizen,

(b) a British overseas territories citizen,

(c) a British Overseas citizen,

(d) a British National (Overseas),

(e) a British protected person, or

(f) a British subject.

(2) …

(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) …

(4A) …

(5) …

"**40A Deprivation of citizenship: appeal**

(1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to the First-tier Tribunal.

(2) …

(3) The following provisions of the Nationality, Immigration and Asylum Act 2002 (c. 41) shall apply in relation to an appeal under this section as they apply in relation to an appeal under section 82 of that Act –

(a) . . . . . .

(b) . . . . . .

(c) section 106 (rules),

(d) section 107 (practice directions), and

(e) section 108 (forged document: proceedings in private)".

11. The case of the R (on the application of Begum) v SIAC [2021] UKSC 7 concerned, inter alia, an appeal to SIAC against a decision to deprive Ms Begum of her British citizenship on grounds that it was conducive to the public good under s.40(2) of the 1981 Act. The reasons for depriving Ms Begum of her citizenship concerned national security and her appeal lay to SIAC under s.2(b) of the Special Immigration Appeals Commission Act 1997. The Supreme Court held that in an appeal under s.2(b) of the 1997 Act, SIAC is not entitled to re-exercise the Secretary of State's discretion for itself. Rather, unless there is an issue as to whether the Secretary of State has acted in breach of her obligations under the Human Rights Act, SIAC is confined to reviewing the Secretary of State's discretion by applying essentially the same principles that apply in administrative law (per Lord Reed at [67]–[71], [118]–[119]).

12. Lord Reed's reasoning as to SIAC's jurisdiction under s.2(b) was as follows:-

> "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 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 decision-maker 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, 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 Bingham reiterated in *A*. In reviewing compliance with the Human Rights Act, it has to make its own independent assessment.

13. Lord Reed said as follows as to the relevance of policy:

124. It follows that policy is not law, and can be consciously departed from. However, a failure by a public authority to follow its policy without good reason can be open to challenge. There are many examples of discretionary decisions being successfully challenged on the ground that the relevant authority failed to have regard to its policy, misdirected itself as to the meaning of its policy, or departed from its policy without good reason. They include authorities on which counsel for Ms Begum relied, such as *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59; [2015] 1 WLR 4546, para 29. On the other hand, the question how the policy applies to the facts of a particular case is generally treated as a matter for the authority, subject to the *Wednesbury* requirement of reasonableness. That is most obviously the correct approach where, as in the present case, the application of the policy

expressly depends upon the primary decision-maker's exercise of judgment ("if she is satisfied that doing so would expose those individuals to a real risk …").

125. That point is illustrated by the case of *R (LE (Jamaica)) v Secretary of State for the Home Department* [2012] EWCA Civ 597, which concerned the Home Secretary's policy concerning the use of immigration detention pending removal. The relevant policy document stated that there was a presumption in favour of temporary release, and that there must be strong grounds for believing that a person would not comply with conditions of temporary release for detention to be justified. It set out a list of factors to be taken into account when considering the need for detention, including the risk of absconding. The Home Secretary decided that the appellant should be detained, for reasons which included that he was otherwise likely to abscond. A challenge to that decision was rejected. The judge found that the decision was a rational one. On appeal, it was argued that the judge was wrong to analyse the matter in terms of the rationality of the decision: the court, it was argued, was not limited to applying a *Wednesbury* test, but was required to act as the primary decision-maker in deciding on the evidence whether detention was in accordance with the policy.

126. That argument was rejected by the Court of Appeal. Richards LJ, in a judgment with which Maurice Kay and Kitchin LJJ agreed, reviewed a number of previous authorities on the point, and concluded at para 29(viii) that a distinction had to be drawn between "the question whether the decision-maker directed himself correctly as to the meaning of the policy (a matter on which the court is the ultimate decision-maker) and the question whether, if so, the decision-maker acted within the limits of his discretion when applying the policy to the facts of the case (a matter in relation to which a *Wednesbury* test applies)". The core reasoning supporting that conclusion was set out in para 29(iii):

> "… the power to detain is discretionary and the decision whether to detain a person in the particular circumstances of the case involves a true exercise of discretion. That discretion is vested by the 1971 Act in the Secretary of State, not in the court."

It followed that "[t]he role of the court is supervisory, not that of a primary decision- maker: the court is required to review the decision in accordance with the ordinary principles of public law, including *Wednesbury* principles, in order to determine whether the decision-maker has acted within the limits of the discretionary power conferred on him by the statute."

14. Following Begum, the UT reformulated the legal principles regarding appeals against decisions to deprive a person of British citizenship in Ciceri (deprivation of citizenship appeals: [2021] UKUT 238 as follows:-

> "Following KV (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 2483, Aziz v Secretary of State for the

Home Department [2018] EWCA Civ 1884, Hysaj (deprivation of citizenship: delay) [2020] UKUT 128 (IAC), R (Begum) v Special Immigration Appeals Commission [2021] UKSC 7 and Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 the legal principles regarding appeals under section 40A of the British Nationality Act 1981 against decisions to deprive a person of British citizenship are as follows:

(1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 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. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.

(2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.

(3) In so doing:

(a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and

(b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).

(4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in EB (Kosovo) v Secretary of State for the Home Department [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing

the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs 13 to 16 of EB (Kosovo).

(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).

(7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good".

15. Before the Supreme Court in Begum changed the extent of the Tribunals jurisdiction, the UT in the case of Slieman considered an appeal against deprivation. The ratio of that decision is that 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.

The Respondent's Policy and Instructions

16. There is internal guidance given to decision makers to consider when deciding whether to deprive of person of citizenship. The salient parts of Chapter 55 of the Nationality Instructions (NI): Deprivation and Nullity of British Citizenship ("Chapter 55") read as follows:

"55.7 Material to the Acquisition of Citizenship

55.7.1 If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation.

55.7.2 This will include but is not limited to:

- Undisclosed convictions or other information which would have affected a person's ability to meet the good character requirement
- A marriage/civil partnership which is found to be invalid or void, and so would have affected a person's ability to meet the requirements for section 6(2)
- False details given in relation to an immigration or asylum application, which led to that status being given to a person who would not otherwise have qualified,

and so would have affected a person's ability to meet the residence and/or good character requirements for naturalisation or registration (my emphasis)

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 (my emphasis).

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 i n 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. (my emphasis)

17. There is internal guidance given to decision makers deciding whether an applicant is of good character when considering an application for citizenship. The relevant part of Annex D of Chapter 18 "The Good Character Requirement" ("Chapter 18") reads as follows:

"**Aspects of the requirement**

2.1 Caseworkers should not normally consider Applicants to be of good character if, for example, there is information to suggest:

(a) they have not respected, and/or are not prepared to abide by the law (e.g. they have been convicted of a crime or there are reasonable grounds to suspect (i.e. it is more likely than not) they have been involved in crime (see Sections 3 and 4); or

(b) they have been involved in or associated with war crimes, crimes against humanity or genocide, or other actions that are considered not to be conducive to the public good (see Sections 5 and 6); or

(c) their financial affairs were not in appropriate order (e.g. failure to pay taxes for which they were liable) (see Section 7); or

(d) their activities were notorious and cast serious doubt on their standing in the local community (see Section 8); or

(e) they had practised deceit in the UK government (see Section 9); or

9. **Deception**

9.1 Caseworkers should count heavily against an Applicant any attempt to lie or 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.

9.5 **Evidence of fraud in the immigration and nationality process**

9.5.1 Where there is evidence to suggest that an Applicant has employed fraud **either**;

- during the citizenship application process; or
- in previous immigration application processes; and
- in both cases the fraud was directly material to the acquisition of immigration leave or to the application for citizenship;
- caseworkers should refuse the application unless the circumstances in 9.5.2 apply. In such cases, the Applicant should be advised that an application for citizenship made within ten years from the date of refusal on these grounds would be unlikely to be successful (my emphasis).

9.5.2 Where deception has been employed on a previous immigration application and was identified and dismissed by UKBA or was factually immaterial to the grant of leave, caseworkers should not use that deception as a reason by itself to refuse the application under section 9.5.1.

Examples;

A. Mr A applied for and was granted asylum status as a refugee on the basis that he was a Kosovan national and therefore at risk on return to Kosovo. This resulted in a subsequent grant of indefinite leave to remain (ILR) in the UK. The individual was in fact Albanian who was therefore not at risk on return to Kosovo as he would in fact have been removed to Albania if his true nationality had been known by UKBA.

This deception was clearly material to the grant of ILR as **BUT FOR** the deception regarding nationality refugee status would not have been secured and so, therefore, nor would have ILR been secured. The application should therefore be refused on this basis.

B. Mr B applied for asylum on the same grounds as Mr A. However, he was not granted ILR on the basis of a successful refugee claim. He was instead granted ILR under a family concession to which a consideration of nationality was not the primary factor. The deception was not therefore material to the grant of ILR as regardless of that fact that he claimed to be Kosovan on entry to the UK, Mr B would, in any case, have been granted ILR under the concession as a result of his family arrangements. In this scenario UKBA has already disregarded the claimed nationality of the individual as being immaterial to the grant of ILR under the concession. It would therefore be perverse to assert that a previously disregarded fact could be relevant at a later date to a consideration of good character. Nationality on the date of

application is, in any event, irrelevant to the naturalisation consideration.

C. Mr C entered the UK in a false name, as he had previously been removed from the UK in his previous identity. On applying for citizenship he has now admitted his true identity. As the fraud was material to the good character requirement, we should refuse the application and impose a ten year ban.

D. Mr D entered the UK in a false name, as he had previously been removed from the UK in his previous identity. Prior to making his application for ILR he admitted to the deception. UKBA took this into account, but decided not to take any action and granted ILR on compassionate grounds. As the fraud had been dismissed during an earlier consideration of the facts by UKBA we should not take it into account when deciding citizenship application.

E. Mr E did not declare on his application form for citizenship that he had a minor conviction, which has since come to light through our internal checks. The conviction was one that would normally fit into our definition of a minor offences and which would not result in refusal of British citizenship. This means the individual should not be refused as the deception in question is not material to the decision."

The Hearing Before the UT

18. Ms Foot relied on her skeleton argument of 8 June 2022. Mr Clarke relied on his skeleton argument of 8 June 2022. The Appellant continued to rely on the bundle that was before the First-tier Tribunal (AB) comprising 501 pages. In addition, he relied on a supplementary bundle (SB) comprising 91 pages and which included the Appellant's most recent witness statement of 30 May 2022. There was a letter from the Appellant's wife of the same date in support of his appeal. The Respondent's bundle (RB) of 24 February 2020 contained the decision letter of 22 January 2020 (Annex W). The parties had helpfully complied with my directions and had prepared an agreed statement of facts. The Appellant gave evidence and was cross-examined by Mr Clarke. The hearing was reconvened on 29 September 2022 at my request so I could hear submissions specifically concerning the impact of Begum on Sleiman. I was assisted by Ms Foot's skeleton argument on this issue and submissions from Ms Foot and Mr Kotas on behalf of the SSHD.

The Appellant's Submissions

19. Following Begum (and Ciceri) if an appellant in a deprivation appeal could establish that the SSHD failed to take into account or to give weight to a material factor, and/or failed to have regard to the correct policy in reaching a deprivation decision, there were public law errors enabling his or her appeal to be allowed. Such errors were apparent in this case.

20. The SSHD failed to take into account the fact that the Appellant's deception did not undermine the grant of ILR to him outside of the IR (under the legacy scheme). The determinative criteria by which he was

granted ILR were his length of residence in the United Kingdom and his connection to the United Kingdom. The SSHD's case is not that had the Appellant's deception been known he would not have been granted ILR under the legacy. Her position is that had the truth been known of your genuine identity you would not have been able to remain in the United Kingdom and qualify for any type of leave. This is speculative and did not amount to a rational basis for concluding that the Appellant's deception was causative of the grant of ILR to him several years later. The Appellant relied on the error of law decision and the application of Sleiman.

21. Albeit Begum did not permit a "merits" appeal in the sense of the Tribunal reaching such a conclusion for itself, Begum did not preclude the Tribunal considering the evidence and making findings of fact which had a bearing on its task, namely to enquire whether the SSHD'S decision making was flawed in public law terms. The approach was expressly approved in SSHD v P3 [2021] EWCA Civ 1642, per Laing LJ at [115], Sir Stephen Irwin at [126] and Bean LJ at [135].

22. The SSHD applied the wrong policy in reaching her decision, referring to the version of Chapter 18 in the SSHD'S bundle and not the guidance agreed by the SSHD to be applicable. Had the SSHD applied the correct guidance she may have concluded that the Appellant did not fall foul of the good character requirement in the terms of that policy, notwithstanding that he falsely declared in his citizenship application that he had not been "involved in anything which might indicate you are not of good character".

23. Chapter 18 at paras 9.5.1 and 9.5.2 required both the citizenship application process and any previous immigration application process. To have been directly material to the acquisition of leave or citizenship. Deception which was factually immaterial to a previous grant of leave should not be relied on to refuse a citizenship application.

24. On the facts of this case as upheld by the UT, it was the Appellant's length of evidence and connections to the United Kingdom which were the determinative factors in the grant of ILR to him under the legacy scheme, factors that were independent of his past deception as to his nationality. Had the Appellant declared his past deception in his citizenship application, he would not have been barred from naturalisation on character grounds. The Appellant's case was analogous to Mr B's in the policy and not Mr A's since he was not granted ILR as the direct result of his deception. He was granted it under the legacy scheme in relation to which nationality was not a primary factor.

25. The SSHD's errors were material since, had she taken into account the criteria by which the Appellant was granted ILR and applied the correct policy, she may not have exercised her discretion to deprive the Appellant of citizenship. It was not reasonably open to the SSHD to conclude that the Appellant's citizenship was obtained by means of fraud and that the condition precedent was therefore met.

26. The SSHD's decision is incompatible with the Appellant's rights under Article 8. The reasonably foreseeable consequences of deprivation where the Appellant will be left without leave for a period of at least several weeks will have a negative impact on his mental health, including worsening suicidal thoughts. Any negative impact on the Appellant would have a knock on effect on his daughter, L. The Appellant's wife would be prohibited from working. The family would need to move house and or seek accommodation from the local authority which would cause distress and upheaval which would be contrary to L's best interests.

27. Ms Foot submitted that Sleiman remained relevant to the question of whether it was reasonably open to the SSHD to have concluded that the condition precedent was met or whether the SSHD failed to consider a policy which had a bearing in the case. It remained relevant because this amounted to a public law error capable of enabling an appeal to succeed. The length of the Appellant's residence in the United Kingdom was the reason for the grant under the ILR Scheme and the chain of causation was therefore broken.

28. At the reconvened hearing Ms Foot submitted a document from the Home Office dated 31 August 2021. It is an response to a Freedom of Information (FOI) request. The request was for a timescale for the SRU to consider granting leave following the cancellation of citizenship. The response indicated that it took 303 days to grant temporary leave following an earlier decision to deprive citizenship on the grounds of fraud. The average is calculated from when appeal rights were exhausted on the deprivation appeal.

The Respondent's Submissions

29. The wrong version of Chapter 55 was in the RB; however, it is clear from reading the decision that the correct version was applied.

30. In respect of Chapter 18 (para 9.5.1) in force at the time, it is submitted that it is clear beyond pre-adventure that the use of the word 'or' at the end of the first bullet point is disjunctive and shows that the fraud may be committed in either the citizenship application process alone or in any previous immigration application (or arguably both) but in either case the fraud must be directly material to the grant of leave/citizenship.

31. Chapter 18 (para 9.5.2) gave four brief scenarios and were illustrative examples and should not be treated by the Tribunal as an exhaustive list of all eventualities. In any event example A was on all fours with the facts of the present case. The Appellant would not have been granted ILR had the SSHD known that he was Albanian. Example B is not apposite as the Appellant was not granted leave on the basis of any "family concession" such as the relationship with a British national or child such that his fraud/nationality was immaterial to his grant. Example C is arguably more relevant (that the applicant admitted for the first time his previous fraud and this should have lead to a refusal of naturalisation). This example was

more akin to the facts of the present case and distinguishable from example D where SSHD knew of previous deception but disregarded it. The key question was whether the SSHD was aware of previous fraud but decided to ignore it. On the facts of this appeal, this has never been the case. There is nothing about the SSHD's decision to deprive that is inconsistent with the relevant guidance.

32. The respondent submitted that the case against this Appellant was overwhelming. The Appellant declared to the home office that he had always been of good character in all his dealings which was not the case. The SSHD was entitled to find his deception was an important issue and material to the grant of citizenship. The SSHD acknowledged the discretionary nature of the power to deprive and properly took into account at paras 27-37 of the decision factors relevant as to whether she should do so. The condition precedent was satisfied.

33. The SSHD relied on Hysaj (Deprivation of Citizenship: Delay) Albania [2020] UKUT 128. It was unclear that the decision would preclude the family receiving funding for the daughter's disability. There was powerful public interest in depriving the Appellant of his nationality. His case fell short of meeting the high threshold.

34. Mr Kotas appeared on behalf of the SSHD on 29 September 2022. In respect of the FOI he said that it did not deal with a specific case and gave an average. In any event, in terms of a coherent system it did not disclose an egregious delay or maladministration. In respect of Sleiman, he submitted that the role of the Tribunal post Begum was limited. In any event, the condition precedent was met in this case. The delay could not possibly tip the balance in the Appellant's case. The case of Sleiman was decided on a narrow basis and the SSHD did not rely on bad character

Conclusions and Reasons

The application of Sleiman

35. The UT decided in Sleiman that in an appeal against a decision to deprive a person of citizenship status, in assessing whether an 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. The UT found that while accepting the SSHD's policy (Chapter 55) was not determinative of the question of whether citizenship was obtained "by means of" fraud of false representation or concealment of a material fact, it indicated the approach of the SSHD. The UT referred to the wording of paras 55.7.3 and 55.4.2 of Chapter 55 together with the words "by means of" in s 40 (3) of the 1981 Act to conclude that the deception must be *directly material* to the grant of citizenship. The UT considered the issue in the context of the Tribunal having wider jurisdiction where the Tribunal's role was to decide for itself whether the SSHD had exercised her discretion correctly when deciding to deprive. Part of that role was for the Tribunal to decide for itself whether

the condition precedent in s.40 (3) was met. Post Begum the role of the Tribunal's jurisdiction in a deprivation appeal is limited to consideration of whether public law errors have been made by the SSHD.

36. Ms Foot argued that the Tribunal can make findings of fact on the evidence before the decision maker relying on P3. I do not accept that the Court of Appeal was suggesting that the Supreme Court in Begum had given SIAC a wider role than deciding whether there was public law error in the SSHD's decision. At [115] of P3 Laing LJ in her leading judgment referred to situations where SIAC is not confined to apply public law principles or restricted to consider material that was before the decision maker. The first being issues concerning Convention rights. There were other examples given of when SIAC could include or exclude evidence that do not have relevance in this case. (In this case the Appellant was not seeking to rely on post decision evidence save in support of his appeal on Article 8 grounds).

37. In P3 Sir Stephan Irwin referred to testing and scrutinising the evidence at [126] and Bean LJ's referred at [135] to, "proper deference [to the decision of the SSHD] in the context of properly tested evidence". Nothing in what was said in P3 supports a fact finding role for SIAC (or the Tribunal) except when considering Convention rights. What was said supports that the role of SIAC (or the Tribunal) is to consider with care the evidence that was before the decision maker in order to carry out a review of the decision on public law grounds.

38. The impact of Begum on Sleiman is that the latter now applies in a different and far more limited context because the role of the Tribunal has changed to that of a review. Whether deception (fraud) relied on by the SSHD had a *direct bearing* (in the words of para 55.7.3, Chapter 55) or was *directly material (*Sleiman) to the grant of citizenship is no longer a question which the Tribunal should answer for itself. The role of the Tribunal is not to simply accept the position of the SSHD, but it is limited to an assessment of whether the SSHD was entitled to conclude that the impugned behaviour was directly material to the grant of citizenship. The Court of Appeal in P3 reminded the Tribunal that it should consider with care the evidence that was before the decision maker when carrying out a review of the decision.

The lawfulness of the SSHD's decision applying public law principles

39. In this case the SSHD relied on two separate acts of deception or fraud committed by the Appellant. The first was deception employed in a previous application (deception 1) and the second was deception employed in the application process (deception 2). The Sleiman argument concerned deception 1. In Sleiman the deception concerned the appellant's age which was irrelevant to the grant of Exceptional Leave to Remain (ELR) and it was not even suggested by the SSHD in that case that had she been aware of the false date of birth at the time of the citizenship application she would have refused it on good character grounds.

40. The first period of leave that the Appellant was granted was on 29 May 2009, having been in the United Kingdom since 1988. The SSHD'S decision to grant him leave outside of the IR reads "*your leave has been granted exceptionally, outside the Immigration Rules. This is due to your strength of connections in the United Kingdom, and length of residence in the United Kingdom*". The SSHD made a number of findings in the decision to deprive. These can be summarised:

    1. Had the truth been known of the Appellant's genuine identity he would not have been able to remain in the United Kingdom and qualify for any kind of leave,
    2. Given that he is from Albania the Appellant's removal could have been facilitated
    3. The Appellant was able to remain in the United Kingdom and accrue residence which ultimately resulted in him being grated ILR, and
    4. The deception was material to the grant of status with reference to para 55.7.1 of Chapter 55.

41. Mr Clarke submitted that the Appellant was an adult from Albania at the material time. The possibility of him being removed was not as remote as removal of the appellant in Sleiman (where the SSHD's case was that had the appellant not lied about his age, he would have been returned to Lebanon which the UT found to be speculative). I agree with Mr Clarke that the chances of the Appellant having been removed to Albania as an adult had it been known by the SSHD that he was Albanian were far less speculative than removal of a child to Lebanon. Moreover, the fact that he was able to remain here enabled the Appellant to accrue leave. This was a conclusion which the SSHD was unarguably entitled to reach. The finding that deception was material to the grant of leave, is not irrational when viewed in a broad sense. The four findings of the SSHD summarised above were not so remote as to amount to irrelevant matters or findings that were unsupported by any evidence or based upon a view of the evidence which could not reasonably be held. They were relevant factors which the SSHD was permitted to take into account when considering how to exercise discretion.

42. I accept, however, that the SSHD in the decision did not address whether deception 1 had a *direct bearing* (or whether it was *directly material*) to the grant of citizenship in the context of Chapter 55 para 55.7.3 following Sleiman. This may have amounted to a material omission or a failure to apply relevant policy if the SSHD had decided to pursue deprivation action solely on the basis of deception 1 so as to amount to a public law error. However, in this case the argument does not assist the Appellant for the following reasons.

43. The SSHD did not use deception 1 as a reason by itself to deprive. The SSHD relied on deceptions 1 and 2. The deception in the application process had a direct bearing (it was directly material) to the grant of

citizenship. The causal link between deception 2 and the grant of citizenship was intact. If the SSHD did not make a discrete assessment of deception 1 in the context of para 55.7.3, this cannot amount to a material public law error because the decision to deprive in the context of both deceptions 1 and 2 does not disclose a departure from the policy (Chapter 55) or public law error generally.

44. In respect of deception 2, Ms Foot's argument was two fold; (1) the SSHD applied the wrong policy (Chapter 18) and, in any event, (2) A rational application of the correct policy in this case would not entitle the SSHD to deprive. I reject both arguments.

45. The SSHD accepted that the wrong policy with reference to Chapter 18 was inadvertently placed in the RB. Furthermore, the decision letter does not does identify the policy cited therein. However, I find that a proper reading of the SSHD's decision disclosed no support for the contention that the SSHD applied the wrong policy. The decision letter states as follow:

> Section 9 of the nationality staff instructions in use on the date of the naturalisation application deals with deception and dishonesty. It is clear that you would have been refused British citizenship under s.9.1 and 9.5 had the nationality caseworker been aware that you had presented a false identity to the Home Office and continued to use that identity throughout your immigration history (Annex V, page 25 – 26).

46. The references in the decision letter to paras 9.1 and 9.5 of Chapter 18 would make no contextual sense applying the policy which was in the RB. Those same paragraphs in the correct policy have relevance to the decision. Reference to them in the decision letter makes contextual sense. I am satisfied that the SSHD applied the correct Chapter 18 policy albeit the wrong policy was placed in the RB.

47. Chapter 18 (para 9.1) instructed caseworkers to count **any** attempt to lie or conceal the truth about an aspect of the application for naturalisation whether on the application form **or** in the course of enquiries. Paragraph 9.5.1 stated that it was aimed at applicants employing fraud ***either*** during the application process **or** in a previous immigration application ***and*** in both cases the fraud was directly material to the application for citizenship.

48. The thrust of Ms Foot's argument was that properly applying the policy there must be deception in both the application and in a previous immigration application and both acts of deception must be directly material to the acquisition of leave, in the absence of which it was not open to the SSHD to deprive. In her submission the deception in respect of the application process was not directly material to the acquisition of leave and therefore the policy cannot rationally apply to this Appellant notwithstanding that the deception relating to bad character was directly material. I reject Ms Foot's submission that the reference to ***both*** at bullet point three should be read as requiring both examples of fraud or deception identified at bullet points one and two to apply. This

interpretation ignores the use of the words ***either*** and ***or***. Ms Foot's interpretation would suggest that there must be two acts of deception or dishonestly which must be directly material before deprivation. There is no support for this. The SSHD did not misdirect herself as to the meaning of Chapter 18 or depart from it. Moreover, I take into account that it is a statutory requirement that an applicant is of good character (s.6 of the Nationality Act 1981) which undermines the argument advanced on behalf of the Appellant.

Article 8 ECHR

49. My consideration of Article 8 is limited (Aziz v SSHD [2018] EWCA Civ 1884). I am able to take into account post-decision evidence to decide this ground of appeal. The UT in Hysaj addressed the "limbo period" in the context of Article 8 ECHR. I take into account the following paragraphs:

> 107. The appellant's articulated concern is that deprivation will adversely impact upon not only his life, but also that of his wife and children. He contends that the expected 'upheaval' in their lives will be accompanied by financial and emotional concerns. Such upheaval is a consequence of the appellant losing rights and entitlements from his British citizenship that he should never have enjoyed.
>
> 108. The Court of Appeal has confirmed that article 8 does not impose any obligation upon the State to provide financial support for family life. The ECHR is not aimed at securing social and economic rights, with the rights defined being predominantly civil and political in nature: *R. (on the application of SC) v Secretary of State for Work and Pensions* [2019] EWCA Civ 615; [2019] 1 W.L.R. 5687, at [28]-[38]. The State is not required to grant leave to an individual so that they can work and provide their family with material support.
>
> 109. The time period between deprivation and the issuing of a decision is identified by the respondent as being between six to eight weeks. During such time the appellant's wife is permitted to work. She accepted before us that she could seek employment. She expressed concern as to the impact her limited English language skills may have on securing employment but confirmed that she could secure unskilled employment. She confirmed that her husband could remain at home and look after their children. The appellant accepted that his wife is named on the joint tenancy and will continue to be able to lawfully rent their home upon his loss of citizenship and status. In addition, the children can access certain benefits through their citizenship. Two safety nets exist for the family. If there is an immediate and significant downturn in the family's finances such as to impact upon the health and development of the children, they can seek support under section 17 of the Children Act 1989. If the family become destitute, or there are particularly compelling reasons relating to the welfare of the children on account of very low income, the appellant's wife may apply for a change to her No Recourse to Public Funds (NRPF) condition.

> 110. 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. That deprivation will cause disruption in day-to-day life is a consequence of the appellant's own actions and without more, such as the loss of rights previously enjoyed, cannot possibly tip the proportionality balance in favour of his retaining the benefits of citizenship that he fraudulently secured. That is the essence of what the appellant seeks through securing limited leave pending consideration by the respondent as to whether he should be deported. Although the appellant's family members are not culpable, their interests are not such, either individually or cumulatively, as to outweigh the strong public interest in this case.

50. I had the benefit of hearing the Appellant give evidence. His evidence can be summarised: the impact of the decision would be that he is without leave for several weeks. This would have a significant negative impact on his mental health. He has always had mental health problems. He has frequent suicidal thoughts. The decision would have adverse consequences on his family's well-being and have financial implications for them too. The Appellant is self-employed. During a period in limbo he would not be permitted to work. He pays the household bills including rent. His wife does not work. She has leave until November 2022. She looks after their children. She has no qualifications. The children are British citizens. His daughter, L, has a congenital absence of one arm. She is bullied. The family is depressed about the prospect of the Appellant losing citizenship which would bring an uncertain future. Taking away his British citizenship would be like taking his life.

51. The Appellant's GP in a letter of 10 June 2020 states that the Appellant has had mental health problems since he came to the United Kingdom and that he is prescribed antidepressants. On 8 June 2020 he presented with suicidal ideation and longstanding depression. He reported to the doctor that his ongoing suicidal thoughts had been triggered by being denied a passport to visit his mother. He was unable to visit his mother in Albania who was unwell.

52. In the Appellant's wife's witness statement she expressed concern that the Appellant will harm himself.

53. It would have been preferable had the SSHD indicated whether the Appellant would be granted leave on deprivation of his citizenship. Without such an indication, I do not underestimate the level of disruption arising from the uncertainty of not knowing for sure what the outcome will be. However, the Appellant's family would not be expected to leave the United Kingdom during the period of uncertainty. Of course, there will be financial implications for the Appellant and his family. The Appellant will not be able to work lawfully. His wife will have to step into his shoes and I accept that this may mean a reduction in the family income. I have had regard to paras 108 and 109 of Hysaj.

54. The evidence supports that the Appellant has long standing depression. Deprivation will entail a period of uncertainty during which there may be a deterioration in the Appellant's mental health. I find that the cause of the Appellant's longstanding depression is not the possibility of deprivation of citizenship. He has had depression since he came to the United Kingdom. There are likely to be other causes and reasons to explain his mental health problems. I take into account that the Appellant has mentioned suicide to his GP. There was no psychiatric evidence evaluating the risk to the Appellant of suicide following a decision to deprive. It is not clear from the evidence just how the Appellant's mental health problems (including suicidal ideation) can be attributed to the possibility of deprivation. While deprivation is likely to have some adverse impact on the Appellant's already poor mental health, the evidence does not establish that suicidality is likely to increase as a result of deprivation or that there will be a meaningful deterioration in his mental health so as to amount to a breach of the Appellant's Article 8 rights. There is an absence of medical evidence of a causal link between the Appellant's mental health and deprivation.

55. I appreciate that cases are fact sensitive. The guidance in Hysaj has to be considered in the light of the Appellant's mental health problems. However, I do not find that the evidence of mental health problems considered in the round, can amount to "more" (with reference to para 110 of Hysaj).

56. While considering "more" in this context I have taken into account the FOI letter. However, it gives a generic answer. It does not give specific details about how long it will take to resolve this Appellant's situation. The Appellant is not a foreign criminal. He has British citizen children here. However, I consider proportionality on the basis that the limbo period may well be in excess of that envisaged in Hysaj.

57. There was no evidence that the Appellant will lose the rights he previously enjoyed. I have taken into account that the Appellant sent a pre-emptive letter to the SSHD. However, he committed deception when he was an adult and he made a number of applications using false details over a period of time. I do not find the evidence of the Appellant's mental health and all the factors on which he relied including an extended limbo period undermine the significant weight to be placed on the public interest.

58. The evidence does not establish that a period of time after deprivation and before the SSHD has decided whether or not to grant leave would result in consequences that would breach the Appellant's rights under Article 8.

59. The SSHD did not make material findings of fact that are unsupported by any evidence or based on a view of the evidence that could not reasonably be held. Any failure by the SSHD to apply para 55.7.3 of Chapter 55 in respect of deception 1 was not material to the outcome. It is highly likely that the conduct complained of did not make a significant difference to the outcome of the SSHD's decision. The SSHD rationally concluded that the

condition precedent existed for the exercise of discretion whether to deprive the Appellant of citizenship.

60. The decision to deprive the Appellant of British citizenship was open to the SSHD. The same decision does not breach the Appellant's rights under Article 8.

Notice of Decision

The appeal is dismissed.

Signed *Joanna McWilliam* Date 20 October 2022

Upper Tribunal Judge McWilliam