IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DC/00036/2020**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 September 2022	**On the 05 October 2022**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

PHING WOON PUN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Dhanji, Counsel instructed by Taylor Rose TTKW Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a British citizen. His date of birth is 26 April 1962.

2. In a decision promulgated on 21 April 2020 (the "error of law" decision) I set aside the decision of the First-tier Tribunal (Judge Cockburn) allowing the Appellant's appeal against the decision of the SSHD on 2 March 2020 to deprive him if British citizenship pursuant to s.40(3) of the British Nationality Act 1981 ("the 1981 Act").

3. The Appellant came to the UK on 21 April 1990 as a citizen of Malaysia. He applied for naturalisation on 30 October 2007. He was naturalised as a British citizen on 8 January 2008. On 20 April 2010 he was sentenced to six years' imprisonment. He was convicted following a trial of conspiracy to do acts that facilitate the breach of immigration law, conspiracy to sell

goods which infringe copyright trademark, money laundering and deception.

4. On 17 June 2010 the SSHD served a stage 1 deportation notice on the Appellant. The Appellant's solicitors responded on 5 July 2010 indicating that the Appellant could not be lawfully deported because he was a British citizen. There was no further communication from the SSHD until 27 January 2018 when she indicated to the Appellant her intention to deprive him of British citizenship. The Appellant's solicitors responded on 15 February 2018. On 2 March 2020 the SSHD gave notice to the Appellant of her decision to deprive the Appellant of British citizenship.

5. The error of law decision reads as follows:-

> "9. The first ground is that the judge did not apply Begum. The second ground challenges the judge's decision in respect of delay/historic injustice. While it is accepted by the Appellant that the judge did not refer to the authority of Begum, it is submitted that there was no material error because the judge reviewed the exercise of discretion on Wednesbury principles. It is unclear to me why the parties did not bring Begum to the attention of the judge. Following Begum the Tribunal has jurisdiction to consider the SSHD's discretion, but it is limited to a review on administrative law principles. Mr Slatter submitted that the judge considered the decision on that basis and did not simply exercise discretion for herself and therefore any error arising from the failure to cite Begum is immaterial. He submitted that the errors as found by the judge in the decision of the SSHD are errors which properly applying Begum would entitle the judge to review the SSHD's exercise of discretion. Mr Slatter attempted to persuade me that the judge allowed the appeal on public law grounds because the decision made by the SSHD was essentially an abuse and or unfair as found by the judge. I reject Mr Slatter's submission. The judge did not apply the proper legal test. For that reason alone she materially erred and I set aside the decision to allow the Appellant's appeal. There are, however, further errors made by the judge in respect of delay/historic injustice.
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> 10. The judge found "*clear illegality*" (see [45](b)) in the decision of the SSHD. The first reason the judge gave for allowing the appeal is the SSHD's "*significant and wholly unexplained delay*". The judge said that delay, "*is a factor that I can attach weight to in connection with the historical injustice and broader circumstances of this case"* (see [45(a)]). The judge identified historical injustice as the denial of opportunity to the Appellant to benefit from a policy that was in force until 2014 (the 14-year policy). It was submitted on behalf of the Appellant that he has been prejudiced by the actions of the SSHD because had a decision been made earlier he could have benefited from the 14-year policy that was withdrawn in August 2014. The policy was that in general the SSHD would not normally deprive a person of British citizenship if that person has been resident in the United Kingdom for more than fourteen years (it is a matter of fact that this Appellant had been in the United Kingdom by 21 April 2004).

11. Historical injustice was a matter which the judge said at [37] was a "*relevant factor in assessing whether the respondent should have exercised her discretion differently"*. At [37] the judge identified, "*a legally flawed prior decision*" as the deprivation decision because the SSHD did not have regard to the policy. The judge found at [38] that there was, "*necessary causal link between this illegality and the historic injustice, including the prejudice experienced by the appellant. The appellant was denied the opportunity to benefit from the policy whereby the respondent might have decided not to deprive him of his citizenship*". In the same paragraph the judge said that she took into account that, "*on the face of it, the appellant fell squarely within the 14 year policy*" and that "*none of the exceptions in the policy unequivocally apply to the appellant, and the respondent has not contended that he would have been excluded from the policy had it been considered in this case*". The judge concluded, "*on the evidence before me …it is more likely than not had the policy been applied to the appellant he would have benefited from it, and a deprivation decision would not have been made."* She concluded that, "*the delay and the failure to apply the policy amount to historical injustice."*

12. From what I can see this was not a case where the SSHD had erroneously declared the Appellant's British citizenship to be a nullity. In Laci v SSHD [2021] EWCA Civ 769 Underhill LJ distinguished between delay of the kind discussed in Hysaj where it arose from the SSHD's decision to pursue the nullity route. However, in this case the facts are different to those in the case of Laci. The SSHD in the case of Laci started to take action and invited representations and then having received them did nothing for over 9 years and the Appellant's passport was renewed during that period of delay. This Appellant was not informed of an intention to deprive until 2018 and the decision to deprive was made in 2020. The delay relied on by the Appellant was from 2010 when he was convicted of criminal offences until 2018 when notified of an intention to deprive (and the decision in 2020). It was the Appellant's case that the SSHD would have been aware of the Appellant's criminality in 2010 and had a decision been taken at this time, then he would have benefited from the policy.

13. The SSHD's position was that they did not become aware of the false information made by the Appellant in his application for naturalisation until 2015. This was not accepted by the judge because the SSHD had sent the Appellant a notice of intention to deport him in 2010 and therefore was aware of the Appellant's criminality at that point. While the judge may have been entitled to conclude that there was a period of unexplained delay, becoming aware of the Appellant's criminality and becoming aware of the misrepresentations in his application for citizenship are not the same. While I accept that the SSHD was sent notification of the SSHD's intention to deport which was misconceived, it cannot be so readily implied that this Appellant in this case had come to believe that the SSHD had decided not to deprive him of citizenship.

14. The judge found that there had been historic injustice. It is necessary for there to be prior illegality, for there to be historic injustice (see Hysaj [68]-[76]). Prior illegality means more than a mere unlawful decision having been taken in the past, there must be a sufficient connection between the alleged historic injustice (identified by the judge in this case as the failure to apply the policy and the delay) caused by the illegality (identified by the judge in this case as the decision of 20 March 2020 which is legally flawed because of the failure to consider the relevant policy). The problem with the finding of the judge is that the period of delay cannot reasonably start from the date that the Appellant was convicted of offences or the date that the SSHD decided to deport him. While the SSHD must have been aware of the Appellant's criminality in 2010, her case is that she did not become aware of the fraudulent application until 2015. Whether or not she should have become aware of this before 2015 is open to argument but it was not open to the judge to consider that there had been a delay since 2010.

15. The 14-year policy indicates that where it is in the public interest to deprive despite the presence of factors (including the 14-year residence which applied in the Appellant's case) they will not prevent deprivation. The Appellant's criminality was without doubt extensive and serious and was not properly considered by the judge when concluding that it was "*more likely than not that had the policy been applied to the appellant he would have benefited from it, and a deprivation decision would not have been made".* The finding is not adequately reasoned and was made without proper consideration of the public interest. The judge too readily concluded that the policy would have benefited the Appellant had it been applied. Mr Slatter relied on the judge having said that "*the respondent has not contended that he would have been excluded from the policy had it been considered in this case*". It is not surprising that the SSHD did not refer to the policy in the decision letter in 2020 as it had been withdrawn in 2014. Moreover, the letter from the Appellant's solicitors of 15 February 2020 did not raise the policy (another factor which undermines Mr Slatter's submissions that the judge conducted a review on judicial review principles). I am not sure what the *exceptions* under policy were which the judge said did not *unequivocally apply,* however, the policy stated that where it is in the public interest to deprive notwithstanding that a person has been here for 14 years this would not prevent deprivation. My attention has not been drawn to anything to support that the SSHD has at any time conceded that applying the 2014 policy, it would not be in the public interest to deprive in this case.

16. Mr Slatter referred to an abuse of power; if this is what the judge found, it is not adequately reasoned. There is, in any event, no properly identified abuse of power. I conclude that the judge erred when concluding that the deprivation decision is illegal as a result of delay/historic injustice/the 14-year policy.

17. The judge did not identify or apply the correct test. The judge exceeded her jurisdiction and did not apply Begum. Having found the decision of the SSHD unlawful, the judge went on to exercise

discretion for herself which she is not permitted to do. In doing so she identified the test as whether there are "exceptional circumstances" arising from the decision of the SSHD (see [44] and [45]) so that discretion should have been exercised in the Appellant's favour. This is not the test to be applied. This is a clear application of the pre-Begum principles which have now been reformulated by the UT in Ciceri in the light of Begum. It is an application of the test applied in BA (deprivation of citizenship: appeals) [2008] UKUT 00085 and KV (Sri Lanka) v SSHD [2018] EWCA Civ 2483. The judge at [17] under the heading "legal framework" states that she considered the guidance in Hysaj (Deprivation of Citizenship: Delay), "*as the approach that should be adopted by Tribunal decision makers in assessing the respondent's exercise of her discretion*". The judge also referred to authorities relied on in the Appellant's skeleton argument including, Aziz and Others v SSHD [2018] EWCA Civ 1884 and Deliallisi (British citizen): deprivation appeal: Scope) [2013] UKUT 00439. The latter advocated an approach which the Supreme Court in Begum said was wrong.[1] The judge applied the wrong legal test and for this reason alone the decision must be set aside.

18. The findings of the judge in respect of delay cannot be said to amount to public law error within the narrow definition in Begum. Moreover, the findings in respect of delay and historical injustice are inadequately reasoned and disclose a failure to apply what the UT stated in Hysaj.

19. Mr Slatter submitted that any error would not be material to the outcome because the appeal should be allowed on Article 8 grounds on the evidence before the judge. However, the First-tier Tribunal did not make findings in respect of Article 8. There has not been an appeal on Article 8 grounds. Mr Slatter asked me to allow the appeal on a ground that was not advanced before the First-tier Tribunal and without a hearing".

6. The First-tier Tribunal found the condition precedent with reference to s.40(3) of the 1981 Act was satisfied. There was no cross-challenge to this. The Appellant was not truthful in his application form about his criminal conduct; notwithstanding that he had not been convicted at the time he made the application of any offences and that he was convicted after he was naturalised. At [18] of the SSHD's decision it was accepted that the Appellant was not convicted of his crimes at the time he made the application. The SSHD's position was that he was at that time aware he was being investigated. It is asserted by the SSHD that at the time of being naturalised the Appellant "portrayed yourself as being of good character when you knew that you were not". The First-tier Tribunal said at [24] of its decision that "What is evident is that the Appellant engaged in offending behaviour before he applied to naturalise. He accepted that the

[1] In Deliallisi (British citizen): deprivation appeal: Scope) [2013] UKUT 00439, the UT said that "*An appeal under section 40A of the British Nationality Act 1981 against a decision to deprive a person of British citizenship requires the Tribunal to consider whether the Secretary of State's discretionary decision to deprive should be exercised differently. This will involve (but not be limited to) ECHR Article 8 issues, as well as the question whether deprivation would be a disproportionate interference with a person's EU rights*". However, Lord Reed in Begum found the reasoning in Deliallisi to be fallacious, see [43].

actions resulting in mortgage fraud took place in August 2007, and a raid in November 2007 gave rise to the conviction for employing illegal workers in 2009". The judge found that the Appellant was clearly aware of his offending behaviour when he made an application for naturalisation.

The Legal Framework

7. Section 40 of the British Nationality Act 1981:

"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) 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.

(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of–

(a) fraud,

(b) false representation, or

(c) concealment of a material fact.

(4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.

(4A) But that does not prevent the Secretary of State from making an order under subsection (2) to deprive a person of a citizenship status if–

(a) the citizenship status results from the person's naturalisation,

(b) the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory, and

(c) the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory.

(5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying–

(a) that the Secretary of State has decided to make an order,

(b) the reasons for the order, and

(c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).

(6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status 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".

8. Headnote of the case of Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238:

"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".

The resumed hearing

9. Mr Dhanji relied on his skeleton argument of 9 September 2022. There was no further evidence submitted on behalf of the Appellant. The matter proceeded by way of submissions. The Appellant had not requested an interpreter for the hearing before the Upper Tribunal; however, it came to

light that he thought that one would be attending to assist him. Mr Dhanji indicated, having taken instructions from his instructing solicitor in court, that the Appellant was happy to proceed without an interpreter.

Conclusion

10. Whether the condition precedent exists is not an issue for consideration by the Upper Tribunal. The First-tier Tribunal found that it did exist. The Appellant was not truthful in his application form. There was no cross -challenge to this finding of First-tier Tribunal.

11. The Appellant relied on the SSHD's delay from 17 June 2010 (when the SSHD communicated to him in a letter from UKBA an intention to deport him) until 27 January 2018 (when the SSHD communicated to him her intention to deprive him of British citizenship), a period in excess of eight years. At [23] of the SSHD's decision letter the following is stated "the misrepresentation only came to the SSHD's attention as a result of an investigation into your criminal activity in 2015". The extent of the delay as far as the SSHD is concerned was according to Mr Clarke three years which was not unreasonable.

12. I do not accept Mr Dhanji's submission that the delay is one of eight years. Mr Dhanji relied on Laci v Secretary of State for the Home Department [2021] EWCA, although he accepted that the facts were not the same. In Laci the appellant was served with an intention to deprive letter in 2009 to which he responded, admitting fraud, and then he heard nothing from the SSHD for nine years. The SSHD's misconceived intention to deport this Appellant cannot be equated with intention to deprive. The first time the Appellant became aware that the SSHD wanted to deprive him of citizenship was in 2015. Applying the facts in Laci to this case, the delay is three years.

13. The Home Office department dealing with deportation was aware of the Appellant's criminality in 2010. However, it is not reasonable to calculate the period of delay from the Appellant's conviction. It is reasonable to expect a period of time after conviction for the relevant department of the Home Office to became aware of the Appellant's criminality and time to piece together the available information and to reach a conclusion. It cannot be inferred from the knowledge of the Appellant's criminality by those responsible for deportation decisions in 2010 that the department responsible for deprivation decisions would be aware that the Appellant had fraudulently obtained British citizenship. The sequence of events supports that the SSHD made a mistake thinking that the Appellant was not a British citizen in 2010 and that communication between government departments was slow. Action has been delayed but I do not accept that there has been a period of unexplained delay of eight years as maintained by the Appellant.

14. Mr Dhanji said that the delay was of the first kind identified by Lord Bingham in EB (Kosovo); namely that the Appellant is more likely to

develop personal and social ties.[2] It is difficult to see how the first and second kind of delay apply in the absence of a decision to removal. Mr Dhanji did not argue that the delay fell into the third category identified in EB (Kosovo). I have, however, considered whether the Appellant was entitled to think that had the SSHD meant to deprive him she would have done so because if so this would weigh in his favour in the proportionality assessment. I attach some weight to the period of time that the SSHD has taken to communicate their intention to deprive to the Appellant together with the misconceived stage 1 deportation letter, but I do not accept that it amounts to a delay of the nature described by Lord Bingham or otherwise so that it should be afforded considerable weight.

15. Any period of delay cannot be considered anywhere near as egregious as that identified in Laci where the Appellant could reasonably have assumed that the SSHD did not intend to deprive him of citizenship. The effect of any period of delay in this case is more likely to have been that the Appellant hoped that he had got away with it rather than having reasonably concluded that the SSHD had decided not to deprive. Underhill LJ at [51] in Laci said, concerning the SSHD's inaction, that it was simply not a case where the SSHD could have taken action but did not do so. However, in in the Appellant's circumstances this was unarguably the case. In Laci the SSHD had started to take action but then having received submissions from the appellant did nothing. A stage 1 deportation letter is not the same as an intention to deprive and no doubt the Appellant's solicitors advised him that it remained open to the SSHD to deprive him. The delay cannot be characterised as wholly unexplained and nor is it extraordinarily long.

16. When assessing proportionality I take into account that deprivation will disrupt the Appellant's day to day life. He did not seek to rely on further evidence that was not before the First-tier Tribunal that heard his appeal over two years ago. He did not rely on Article 8 of the ECHR before the First-tier Tribunal .

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[2] In the speech of Lord Bingham at [13] -[16] he says that delay may be relevant in one or more of three ways, namely:

(1) that the longer an applicant remains in the country the more likely they are to develop close personal and social ties and put down roots of a kind which deserve protection under article 8;

(2) that the more time goes by without any steps being taken to remove an applicant the sense of impermanence which will imbue relationships formed early in the period will fade "and the expectation will grow that if the authorities had intended to remove the applicant they would have taken steps to do so", which may affect the proportionality of removal;

(3) that it may "reduce the weight otherwise to be accorded to the requirements of firm and fair immigration control, if the delay is shown to be the result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes".

Lord Hope agreed. At para. 27 he expressed particular agreement with Lord Bingham's point that "the weight which would otherwise be given to the requirements of firm and fair immigration control may be reduced if the delay is shown to be due to a system which is dysfunctional". Likewise, at para. 32 Lady Hale says:

"I agree that prolonged and inexcusable delay on the part of the decision-making authorities must, on occasion, be capable of reducing the weight which would normally be given to the need for firm, fair and consistent immigration control in the proportionality exercise."

17. Mr Dhanji did not refer me specifically to evidence from the Appellant or his family that would support his case under Article 8. He relied primarily on the delay factor rather than the period of limbo (while the SSHD make a decision whether to grant leave or seek to deport the Appellant). In any event, Mr Clarke drew my attention to [110] of Hysaj, where the UT stated;

> "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."

18. The "more" that Mr Dhanji relied on was delay; however, this is not sufficient to tip the balance in favour of the Appellant in this case for the reasons that I have given. Moreover the Appellant did not disclose the fraud to the SSHD and continued to deny it in representations. I was not referred to any specific evidence concerning the impact of deprivation on the Appellant's Article 8 rights. However, I accept that the determinative question in this assessment is proportionality; however, the role of the Tribunal is limited (Aziz v SSHD [2018] EWCA Civ 1884). The evidence does not establish that the decision breaches the Appellant's rights under Article 8.

19. Mr Dhanji submitted that in answering the condition precedent question the SSHD must adopt the approach in Begum [2021] UKSC 7 at [71]:

> "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".

20. Mr Dhanji submitted that the SSHD failed to take into account the delay when exercising discretion and therefore disregarded something that should have been given weight. I reject that the decision discloses public law error. While the decision of the SSHD does not specifically refer to the issue of delay, the representations made by the Appellant's solicitors in response to being informed of the intention to deprive do not address it either. In any event, I have made findings about the nature and the impact of the delay in this case and on a basis of those findings I conclude that there is no public law error identified that is capable of making a difference to the outcome in the Appellant's case.

21. Mr Clarke relied on the SSHD's policy (Chapter 55: 55.5) which in summary sets out that there is no specific time limit within which deprivation procedures must be initiated and that a person remains indefinitely liable to deprivation. As a matter of common sense there is in my view nothing controversial about the policy. The Appellant has not advanced a case on the basis that the decision is in breach of the SSHD's policy. The policy however cannot be used in order to justify an unreasonable or unexplained delay, for example like that in the case of Laci. However, the policy has no bearing on my decision. The Appellant did not rely on any issue arising from the SSHD's policy.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed *Joanna McWilliam* Date 26 September 2022

Upper Tribunal Judge McWilliam