Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001687
DC/00109/2020

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On Monday 27 June 2022	**On Monday 22 August 2022**

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE G BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HAXHI BAJRAMI
[NO ANONYMITY DIRECTION MADE]

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr Bajrami in person

DECISION AND REASONS

1. This is an appeal by the Secretary of State. For ease of reference, we refer to the parties as they were before the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Hanley promulgated on 16 August 2021 ("the Decision"). By the Decision, the Judge allowed the Appellant's appeal against the Respondent's decision dated 17 November 2020 depriving him of his British citizenship on account of his use of a false nationality and date of

birth. It is common ground that, when claiming asylum in the UK, obtaining leave to remain and obtaining his British citizenship, the Appellant held himself out as being a national of Kosovo born on 1 January 1983 (so that he claimed to be an unaccompanied minor when he arrived in the UK in 1990) whereas he was in fact born in Albania on 9 January 1981.

2. The Judge accepted that the precedent fact under section 40(3) British Nationality Act 1981 ("Section 40") was made out. However, based primarily on a finding that there had been a substantial and unjustifiable delay on the part of the Respondent in seeking to deprive the Appellant of his citizenship, the Judge concluded that the "strong public interest in deprivation" was displaced ([96] of the Decision).

3. The Respondent appeals on three grounds which can be summarised broadly as follows:

> Ground one: the Judge materially misdirected himself in law by failing to apply the Supreme Court judgment in R (on the application of Begum) v Secretary of State for the Home Department [2021] UKSC 7 ("Begum");
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> Ground two: the Judge failed to give adequate reasons for finding that the Respondent had failed to factor in her own delay when depriving the Appellant of his citizenship and left out of account certain evidence;
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> Ground three: the Judge when considering Article 8 ECHR failed to have regard to the public interest in "maintaining the integrity of the rights flowing from British citizenship".

4. Permission to appeal was granted by Upper Tribunal Judge Martin as a First-tier Tribunal Judge on 25 October 2021 in the following terms:

> "... 2. It is arguable as asserted in the grounds that the Judge has erred in failing to apply Begum [2021] UKSC 7. Although the Judge has referred to Begum, he has not retracted himself in the scope of the appeal, as being limited to Judicial Review principles which is an arguable error of law.
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> 3. All the grounds may be argued."

5. The matter came before us to determine whether the Decision contains an error of law and, if we so concluded, to consider whether to set it aside. If the Decision is set aside, it is then necessary for the decision to be re-made either in this Tribunal or on remittal to the First-tier Tribunal.

6. We had before us a bundle of core documents relating to the appeal and the Respondent's bundle to which we refer below as [RB/xx]. We also had some documents which were apparently submitted by the Appellant in the First-tier Tribunal but to which we do not need to make reference.

7. Mr Bajrami appeared in person. He confirmed that he is able to speak English. We explained the nature of the proceedings to him. In

particular, we confirmed that this is an appeal by the Secretary of State. It was therefore for Mr Clarke to make out the Respondent's case that the Judge has erred in law and not for him as the Appellant to demonstrate that the Judge has not done so. As a lay person, we indicated that we did not expect him to be able to deal with the submissions made as to the law and that we would ensure that we considered all legal points both for and against the Respondent's case. We indicated however that he should feel able to address us on any matters of concern to him. He did so in relation to one issue of fact to which we come below. We were satisfied that the Appellant was able to follow the proceedings and was given ample opportunity to participate. As we indicate, we also put to Mr Clarke matters of law which we considered might undermine the Respondent's case or assist the Appellant.

8. Having heard from Mr Clarke and Mr Bajrami, we indicated that we would reserve our decision and provide that in writing which we now turn to do.

DISCUSSION

9. Mr Clarke focussed his submissions on grounds one and two taken together before addressing us briefly on ground three. We deal with the Respondent's case in the same order.

10. We begin with the Judge's self-direction as to the law. The way in which deprivation appeals are to be considered post Begum is conveniently set out in the headnote of Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238 (IAC) ("Ciceri") which reads 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:
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> (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.
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> (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."

11. We accept that the Judge could not have had regard to Ciceri as the decision was not issued or reported until after the Decision. We accept also that the Judge was entitled to have regard to the Court of Appeal's judgments in KV (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 2483 ("KV (Sri Lanka)") and Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 ("Laci"). Neither judgment has been expressly disapproved by the Supreme Court in Begum. KV (Sri Lanka) was not apparently drawn to the attention of the Supreme Court. Laci post-dates Begum. In any event, as Mr Clarke pointed out when we asked him about the Court of

Appeal's approach to Begum in Laci, that latter case was concerned with Article 8 ECHR whereas the importance of Begum in these appeals is as to the approach to the exercise of the Respondent's discretion.

12. We accept that, by having regard to the cases of Deliallisi (British Citizen: deprivation appeal; Scope) [2013] UKUT 439 (IAC) and BA (deprivation of citizenship: Appeals) [2018] UKUT 85 (IAC), the Judge did fall into an error by failing to have regard to what was said in Begum about the approach laid down in those cases (see [41] to [45] of the judgment). As such, the Judge's self-direction at [73(1)] to [73(4)] of the Decision is in error. It was not for him "to ask whether the Secretary of State's discretion to deprive the appellant of British citizenship should be exercised differently".

13. The Judge was not wrong to say at [73(5)] of the Decision that it was for him to decide whether deprivation amounted to a disproportionate interference with the Appellant's Article 8 rights. However, it is worthy of note that the Judge there goes on to say that "even if article 8 is not engaged, the tribunal must still consider whether the discretion should be exercised differently". We accept that the Judge has had regard at [73(6)] of the Decision to the need to accord "considerable weight" to the view of the Secretary of State and to her policy in relation to the exercise of discretion. That is however not the same thing as applying judicial review principles to the Respondent's own exercise of discretion.

14. The Judge made express reference to Begum at [99] of the Decision. Given the relevance of this part of the Decision to the Respondent's first ground, we cite that paragraph in full:

> "Ms Kugendran did not make any reference to **R (on the application of Begum) (Respondent) v SSHD (Appellant) [2021] UKSC 7** and no submissions were made on the scope of the appeal and the breadth of the tribunal's jurisdiction. **Begum** was of course a case that started in SIAC and the deprivation of British citizenship was on the basis of conducive to the public good. However approaching the appeal before me on the basis of the dicta at paragraph 71 in **Begum** I reach the same conclusion that deprivation would be unlawful because the respondent has completely failed to take into account or give any weight to the delay that has occurred in this case and the obvious impact that a process has endured for the last 13 years had on the British children born during the course of that period."

15. We asked Mr Clarke whether the Judge could be faulted for not dealing with the Begum judgment more thoroughly given the failure by the Respondent's representative to refer to it. He agreed that this oversight was "unfortunate" but (correctly in our view) pointed out that the judgment is declaratory of the law. It was not open to the Judge to overlook it or refuse to apply it simply because neither party took him to it.

16. The more important point however is whether the Judge's failure to have regard to Begum when directing himself as to the correct legal approach

can be said to be a material error in light of the final sentence of [99] of the Decision. Mr Clarke made two points in that regard. The first was that the Judge could not be taken to have applied the correct approach when he had already set out an approach which was, as we have said, in error. Second, he said that the Judge had in any event misunderstood the evidence about delay which lay at the heart of his conclusion and therefore had also erred in his conclusion that the Respondent had, in effect, failed to have regard to a relevant consideration. That then brings us on to the second ground.

17. In order to deal with the second ground, it is necessary to set out some of the history behind this appeal. The Appellant had, as we have pointed out, claimed asylum in his false identity in 2000. He was granted leave to remain to March 2004 based, it appears, either on his false nationality or his false date of birth. In February 2004, having completed four years' leave, he applied for and was granted indefinite leave to remain (ILR). Having held ILR for a year, he then applied for naturalisation which was granted in August 2006. As the Judge accepted, throughout that time, the Appellant continued to rely on being a Kosovan born in 1983 and not an Albanian born in 1981.

18. On 31 January 2008, the Appellant's wife applied for entry clearance. The application form in that regard appears at [RB/105-111]. The form continues to rely on the Appellant's false identity. We also note as it becomes relevant below that the Appellant's address is here given as "73A Station Approach, South Ruislip". As the Judge noted at [91] of the Decision, the Appellant's true identity was included in the marriage certificate. As a result, the Appellant's deception was discovered.

19. We should say at this juncture that we find the Judge's reasoning at [91] of the Decision somewhat difficult to follow. The Judge there finds the Respondent's characterisation of what occurred as the Appellant being "caught" as "not correct" because the Judge finds that the Appellant "perfectly well understood that as a result of his decision to marry an Albanian woman on 28 January 2008 and support her application for entry clearance, that he would need to disclose his true identity". If that were so, it is difficult to see why the Appellant and his wife did not "come clean" about his identity in the form. It is difficult to see how the production of a marriage certificate showing the Appellant's true identity which certificate was of course essential to an application for entry clearance as a spouse amounts to "unequivocal voluntary disclosure of the appellant's true identity" when the application form continued to insist on the Appellant's false identity. We also observe that it was not for the Judge to make his own determination of the characterisation of that event unless the Respondent's own characterisation was in some way unlawful.

20. Moving on, the next step taken by the Respondent following the discovery of the deception by the entry clearance officer was a refusal of entry clearance in April 2008. A little over one year later, on 8 May 2009,

the Respondent wrote to the Appellant informing him that he was under investigation and seeking to elicit information which the Appellant wished to be taken into account when the Respondent was considering deprivation action ([RB/119-120]). The Respondent followed this up on 2 June 2009 providing a deadline of 23 June 2009 ([RB/121]). As Mr Clarke pointed out, the Appellant failed to respond to either letter.

21. Mr Bajrami told us, apparently for the first time at this hearing, that the reason he had not responded to either letter was because he had moved from the address to which the letters were sent. That was the Station Road, Ruislip address. He said that the Respondent ought to have known that he was no longer at this address because of the interaction which the Respondent had with his wife regarding her visa.

22. We found this evidence somewhat difficult to follow given that the application form had contained the Ruislip address. We accept that the Appellant may have moved thereafter but we fail to understand how the Respondent should have known from the course of the Appellant's wife's case that the Appellant had himself moved. Although this is something not apparently drawn to the attention of Judge Hanley, we also observe that this tends to undermine the Appellant's case on delay rather than assist it as it suggests that the Respondent might not have been in a position to progress deprivation action at that time as she would not have known where the Appellant was living.

23. We also pointed out to Mr Bajrami that the next step in time by the Respondent was a letter dated 13 February 2013 which was also addressed to the Ruislip address ([RB/122-123]). Mr Bajrami told us that this letter and the two previous letters had come to his attention when they were sent to the solicitors acting in relation to his wife's visa. As appears from [33] of the Decision, the Appellant's wife unsuccessfully appealed the refusal of entry clearance in December 2008 but then entered the UK illegally in 2011 ([46]). She was granted leave to remain in 2013 ([50]). The Appellant's account of how he came to know about the letters is broadly consistent with that chronology. However, the fact remains that the Appellant had never informed the Respondent directly of his change of address. Even though this was not apparently something raised before Judge Hanley, it is difficult to see in any event how the Appellant's failure to engage with the deprivation process in 2009 and thereafter to 2013 can be laid at the door of the Respondent.

24. Even after the Appellant apparently became aware of the Respondent's action to deprive him of citizenship, it was a further two years before he replied to it. He provided the information he had been asked for in 2009 by way of a letter dated 8 February 2015 ([RB/126-129]). As we have also already noted, by then the Respondent had taken the action she considered appropriate by finding the Appellant's citizenship to be a nullity (in the February 2013 letter).

25. That brings us on to the history of the Respondent's actions in treating citizenships obtained by fraud as a nullity. The history of the litigation in that regard appears at [48] to [59] of the decision in Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 00128 (IAC) ("Hysaj"). It is worthy of note that the original nullity decision in the Hysaj case was at the same time as in this case (February 2013 - [53] of the decision in that case). The legal position was not clarified until late 2017 ([59] of the decision). A further decision was taken in Mr Hysaj's case in 2018. Although the Tribunal in Hysaj accepted that the Respondent's nullity decision had been unlawful from the outset and that the Respondent had not taken action to deprive until 2018 based on knowledge of the fraud from 2007, it did not accept that the delay arose from any illegality on the part of the Respondent nor from a dysfunctional system. That conclusion is incorporated into the guidance at [1] of the headnote as follows:

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

As set out at [10] above, that guidance is now repeated in Ciceri ([5] of the headnote).

26. Although the decision under appeal in this case was not taken until 17 November 2020, the Respondent was not inactive during that time. On 3 February 2018, the Appellant was informed that the nullity decision was withdrawn, and that consideration would be given whether to deprive the Appellant of his citizenship ([RB/152]). A further letter was sent on 17 March 2018 ([RB/153-154]). Representations were made on the Appellant's behalf on 5 April 2018 ([RB/155-157]). The Appellant changed solicitors in June 2019 and his new solicitors made further representations on 19 July 2019 ([RB/158-160]). The Respondent therefore made a decision within about two and a half years from the start of the consideration process on this second occasion.

27. We turn back then to the Decision. We accept that the Judge sets out a chronology at [10] to [24] of the Decision which is broadly consistent with that set out above save that the Judge has had no regard in that section to the history of the litigation in Hysaj nor that, in terms of the legality of the process as the Respondent understood it at that time, the effect of the letter dated 13 February 2013 was that the Appellant's citizenship had come to an end and that he had no right to remain in the UK.

28. Having recorded the impact on the Appellant and his family of the lengthy period between the discovery of the fraud and the decision under

appeal, the Judge reached the following conclusions about what he saw as a lengthy delay at [90] to [95] leading to his conclusion at [96] of the Decision as follows:

> "90. The decision letter says nothing directly about delay in taking deprivation proceedings. At paragraph 35 there is a reference only coming to the respondent's attention because of the wife's application in 2008 and that 'the Home Office would have considered taking deprivation action earlier if it could have done so'. Although the decision letter sets out the chronology of the various letters that have been written and steps taken in the nullity action and subsequent deprivation action, there is a failure to acknowledge the very long period of time that this has taken. There is a failure to give any explanation for extremely long periods of inactivity on the respondent's part. In my judgment the delay is so gross and obvious that it is a matter deserving of consideration and weight.
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> 91. The respondent characterises the appellant as a person whose deception 'had been caught' (see paragraph 31 of the decision letter). In my judgement that is not correct. I find that the appellant perfectly well understood that as a result of his decision to marry an Albanian woman on 28 January 2008 and support her application for entry clearance, that he would need to disclose his true identity. His true identity was recorded on the marriage certificate [R104]. I take into account that the entry clearance application form provided the false identity, but that of course was the identity in which the sponsor had obtained British citizenship. It may be that if it had not been for this marriage, the appellant may have chosen to keep quiet about his origins and true identity. I do not speculate.
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> 92. I find that the appellant and his wife through the documentation they submitted at the time of her interview in 2008 made unequivocal voluntary disclosure of the appellant's true identity.
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> 93. Indeed, the immigration judge hearing the wife's appeal in December 2008 held:
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> > 'I accept the point made by the sponsor that he knew that his deception in obtaining a British passport would be exposed when his birth certificate and marriage certificate were submitted with the Appellant's application for entry clearance' (see above for full relevant extracts from that determination).
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> 94. It is a real measure of the excessive period of time that this matter has been outstanding that the immigration judge hearing the wife's appeal in December 2008 noted the submission that the respondent had not taken any action to deprive the sponsor of his nationality even though the sponsor [sic] had known of the deception since April 2008.
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> 95. There is a very high and strong public interest in preventing fraud in the immigration system and preventing applications for naturalisation based on deception and false information. This has been emphasised in numerous cases (see for example **Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 00128 (IAC)** at paragraph 110).
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> 96. In my judgement there are two factors at play in this appeal which are interrelated and I have reached the conclusion that cumulatively the best interests of the children and the delay which has occurred since 2008 are deserving of sufficient weight to displace the strong public

interest in deprivation where fraud such as practised by the appellant has been carried out."

29. Although as we have noted above, the Judge had no regard to the history of the litigation in Hysaj regarding nullity decisions when dealing with the chronology, he did have this to say about that action and case at [97] and [98] of the Decision:

> "97. I can readily see that the respondent took nullity action against the appellant. In that sense the appellant was aware that his citizenship was in jeopardy and that the Home Office were engaged in some action against him. But it was not until 13 February 2013, nearly 4 years after the initial investigation letter that a nullity decision was made. During that time the appellant was able to continue to travel on his British passport [see evidence of the flight provided in his bundle at 30].
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> 98. After the nullity decision on 13 February 2013 no action was taken against the appellant. He was left unlawfully in the UK, in limbo, unable to work and unable to properly function and provide for his family. That situation endured for 3 years [sic] until the respondent withdrew the nullity decision on 3 February 2018. The respondent had concluded that the naturalisation was not a nullity and accepted that the Court of Appeal's decision in **Hysaj** in 2015 could not be upheld. At some point in the litigation in the UKSC the respondent conceded the case and as a result the appeal was allowed by consent on 21 December 2017 in **Hysaj [2017] UKSC 82**. It took the respondent nearly a further 3 years to make a deprivation decision (17 November 2020). The consequences of the appellant's fraud have been hanging over him since 2008. He has not been responsible for this protracted state of affairs and has not contributed in any significant way to the manner in which time has passed over the last 13 years. In my judgment the length of time that the respondent has taken to resolve the consequences of the fraud are capable of falling within paragraph 16 of **EB (Kosovo) v SSHD [2008] UKHL 41** where Lord Bingham identifies delay as relevant in reducing the weight 'accorded to the requirements of firm and fair immigration control…' I have accepted the enormous stress that the appellant has suffered throughout this process and there has been a significant human cost and very substantial impact on his family, including his children. This is not just a question of financial loss, which in itself may not be sufficient to displace the public interest, but a level of anxiety, stress and uncertainty that has in a very real sense impacted on the appellant and all members of the family."

30. We accept that the Respondent has not expressly considered delay in the decision under appeal. That may well be because none of the representations made on the Appellant's behalf prior to the decision under appeal raised this as an issue. It was said that if the Respondent had not first issued a nullity decision, the Appellant may have been able to avail himself of the previous 14-year policy (since withdrawn) but that is not a delay allegation. However, the Respondent did set out the chronology in accurate detail and could not be said to have been unaware when reaching her decision that the case had taken a long while to reach the stage of a deprivation decision.

31. The Judge however failed to have regard to certain matters. He appears to have considered one of the longer periods of delay between the nullity decision and the withdrawal of that decision to be relevant. It is difficult to square what is said about that at [98] of the Decision with the guidance given in Hysaj about the impact of a period of that length and for that reason. The Judge's conclusion at [98] about that period of "delay" is contrary to the guidance given at [1] in Hysaj which is not considered.

32. We struggle in any event to identify what is said to be a culpable delay by the Respondent in that paragraph. The Respondent had taken a decision in 2013 the effect of which was thought at that time to be that the Appellant no longer had citizenship nor indeed any right to remain in the UK (as the Judge appears to accept). The only relevant "delay" could have been in removing the Appellant. However, the Judge has not taken into consideration that the Appellant could and should have left nor indeed that he could either have applied to regularise his stay or challenged the nullity decision. It is unclear therefore why the Judge considered that the Appellant had "not contributed in any significant way to the manner in which time has passed". We note incidentally that the period during which the nullity decision remained in place was five years and not three years as stated.

33. As Mr Clarke pointed out, the Respondent's policy guidance in relation to deprivation (Chapter 55 at [RB/184-205]) makes clear that "[t]here is no specific time limit within which deprivation procedures must be initiated…". The Judge has had no regard to that policy when considering what he regarded as "delays". At worst the delays by the Respondent were between April 2008 and May 2013 in the first instance and December 2017 and November 2020 in the second. We consider what is said about those.

34. As we have pointed out above, there does not appear to have been any evidence that the Appellant had not received the letters in 2009 until 2013 as he now says was the position (see in that regard [97] of the Decision). Having become aware of those letters as the Appellant now says in 2013, he nevertheless still failed to respond until 2015 (by which time the nullity decision had been made in any event). It is unclear why the Judge does not regard that failure to respond as a delay to which the Appellant contributed.

35. We have some difficulty in understanding the Judge's reasoning at [91] and [92] as we have already observed. Although, as the Judge says, the previous Judge in the Appellant's wife's appeal did accept that the Appellant considered that his deception would be uncovered by his wife's application, the previous Judge also considered that the Appellant (there "the sponsor") had deliberately included his false details in the application form ([33] of the Decision recording [54] of the previous decision). That is difficult to reconcile with the Judge's finding that the

Appellant had made an "unequivocal voluntary disclosure" of his true identity.

36. Neither do we understand the reason given for finding an excessive delay at [94] of the Decision. The previous Judge merely noted that no action had been taken at that time based on the submission made by the Appellant's wife's representative "that there was no evidence that any action had been taken to deprive" the Appellant of citizenship. That is not a finding by the previous Judge that this period (of about nine months at that stage) was a delay let alone an excessive one.

37. Following the Supreme Court's decision in Hysaj in late 2017, the Respondent sought representations from the Appellant in relation to deprivation. The request for those representations was made promptly. Although we accept that the response was also made promptly, that was followed a year later by further representations from another firm of solicitors. The decision under appeal followed some eighteen months after. There is in any event a significant difference between a delay of some eighteen months or even of two and a half years and one of thirteen years which the Judge appears to have attributed wholly to the Respondent without adequate reasons and without taking into account all the evidence or relevant guidance.

38. There is a further reason why we find the Respondent's grounds to disclose errors of law which brings us back to ground one and on to ground three.

39. Mr Clarke accepted very fairly in relation to ground three that he found it difficult to follow what was there said because in his view the Judge had not dealt with Article 8 ECHR at all. We pointed out that the Judge had made reference to EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41 at [98] of the Decision which might suggest that the Judge was considering delay in the context of Article 8 ECHR. However, when [90] to [98] are read in context, it appears to us that what the Judge was there considering was the exercise of discretion and not Article 8 ECHR. That is underlined by what is said at [99] of the Decision where the Judge considers Begum. We do not therefore need to say more about ground three.

40. We agree however that the Judge's approach at [90] to [98] does disclose an error by the Judge's replacement of the Respondent's discretion with his own. At [90] of the Decision, the Judge finds that " [i]n [his] judgement the delay is so gross and obvious that it is a matter deserving of consideration and weight" (our emphasis). He finds at [91] of the Decision, that the Respondent's characterisation of the uncovering of the Appellant's deception is not "[i]n his judgment…correct" (our emphasis). He concludes at [96] that "[i]n [his] judgement there are two factors at play…" (our emphasis) (being the delay and impact on the children). All of that shows that the Judge was exercising the discretion for himself (which is unsurprising given his self-direction at [73] of the Decision).

41. We have carefully considered whether the errors can be said to be material in light of the final sentence at [99] of the Decision. However, having concluded that the Judge has also made errors in his analysis of the delays by failing himself to have regard to relevant factors, failing to have regard to relevant guidance and failing to provide adequate reasons, we conclude that the errors as set out in the Respondent's grounds one and two are made out.

42. Mr Clarke made reference in the course of the hearing to some evidence which was before the Judge which had not been before the Respondent. We accept that is so when the Decision is read with the representations which had been made prior to the decision under appeal. Applying judicial review principles, the Respondent's decision can only be impugned based on evidence which was before her (although further evidence can and must be taken into account when assessing proportionality under Article 8 ECHR). For that reason, though and taking account also of the Appellant's (new) evidence about why he did not respond to the letters in 2009, it would be appropriate for the Respondent to review the case and for all factual findings to be reconsidered in the appeal in light of that review. Mr Clarke accepted that the appeal should for that reason be remitted to the First-tier Tribunal for a full reconsideration of all issues.

43. At the end of the hearing, Mr Bajrami asked that his identity be anonymised when this decision is promulgated. We explained to him that applying the principles of open justice, good reason is required in order to justify anonymity directions. He said first that he was embarrassed by what had happened in the past. We explained that this was not good reason to anonymise his identity. He then explained that there was a particular incident referred to in the Decision which he did not want to be disclosed. We confirmed to him that the paragraph in question was not one to which we needed to refer. On that basis, we were satisfied that no anonymity direction was necessary or appropriate.

CONCLUSION

44. In conclusion therefore, we find that there is an error of law disclosed by the Respondent's first and second grounds. We set aside the Decision. It is not appropriate to preserve any part of the Decision for the reasons we have identified above. As the appeal will have to be redetermined entirely afresh, it is appropriate to remit the appeal to the First-tier Tribunal to be re-heard.

DECISION

We are satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Hanley promulgated on 16 August 2021 is set aside. No findings are preserved. The appeal is remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge Hanley.

Signed L K Smith Dated: 29 June 2022
Upper Tribunal Judge Smith