Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000556
IA/02642/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31st May 2022	**On 2nd August 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR DALI OKA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Home Office Presenting Officer
For the Respondent: Mr A Papasotiriou, instructed by Richmond Chambers LLP

DECISION AND REASONS

1. The Secretary of State made the application for permission to appeal but nonetheless, hereinafter I shall refer to the parties as they were described before the First-tier Tribunal.

2. The Secretary of State sought permission against the decision of First-tier Tribunal Judge Cary promulgated on 18th January 2022 which allowed the appeal of the appellant against the decision of the Secretary of State dated 2nd December 2020 to deprive the appellant of citizenship under Section 40A of the British Nationality Act 1981. The Secretary of State

exercised her discretion under Section 40(3) because of the appellant's use of a false Kosovan identity in all his immigration dealings including his application for Indefinite Leave to Remain dated 16th December 2011 and subsequent grant dated 12th April 2012 of citizenship. His false details were that of Dali Oka, born on 2nd February 1985, born in Vermica, Kosovo.

3. The appellant's fraud came to light following checks by HMPO into passports issued to the appellant and he was notified of the investigation. The appellant confirmed his real identity on 20th March 2020, that being Dali Oka, born on 8th March 1984 in Surroj Kukes, Albania.

4. The grounds for permission to appeal stated that the Secretary of State's reasoning within her decision letter was threefold:

   (i) had the appellant's fraud been known at the material times of each application he would not have received his grants of status ("chain of causation"), therefore precluding him from having the necessary attributes for further applications/grants of leave, and that was highlighted at [29] of the reasons for refusal letter;

   (ii) that the appellant utilised fraud within the application for nationality itself, which was highlighted at [19] of the reasons for refusal letter, and

   (iii) that the appellant's application would have been refused on the basis of character and conduct, had the truth been known at the material time, by reference to Annex D of the Chapter 18 policy guidance, which is identified at [28] of the reasons for refusal letter.

Ground 1

5. It was submitted that the judge had misunderstood the legal test to be applied in deprivation appeals. Whilst it was recognised that the judge had correctly invoked **Begum** and **Ciceri**, it was submitted that the judge had misunderstood how they should be applied. At [42] the judge erroneously states:

> *"Not only do I have to consider if the Appellant engaged in the conduct set out in s40(3)(a), (b)or (c) but I also have to decide if the relevant facts, had they been known at the time the Appellant's application for citizenship was considered would have affected the decision to grant citizenship via naturalisation. The burden of proof of establishing the relevant facts is on the Respondent and the standard of proof is the balance of probabilities. If the discretion was not exercised correctly then it is not necessary to consider any article 8 issues."*

6. It was submitted that no such burden or legal test was applicable when considering the condition precedent under Section 40(3) as confirmed in the headnote of **Ciceri**, which stated:

"In answering the condition precedent question, the Tribunal must adopt the approach set out in [71] of the judgment in ***Begum****, (****R (Begum) v Special Immigration Appeals Commission*** *****[2021] UKSC 7****) 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."*

Ground 2: Materiality - perversity/inadequate reasoning/material misdirection of law

7. The judge allowed the appeal on the basis of the following reasoning:

(iv) the judge found at [46], the respondent's decision was taken on the basis that the appellant had been found to be a refugee and the reasons for refusal letter did not mention the appellant's appeal of the decision refusing him asylum in 2003 or his dismissed appeal;

(v) at [47], the appellant's skeleton argument states that the fraud was immaterial to the grant of citizenship and the respondent's review did not deal with this;

(vi) at [48], the appellant was in fact granted discretionary leave in 2004 on the basis of family life and the appellant made a separate application for asylum which was refused;

(vii) at [49], the Secretary of State appears to have disregarded the basis on which the appellant was granted discretionary leave in 2004 and that is a matter that carried "some weight" and

(viii) at [51], the appeal was allowed because "*the respondent cannot establish that the appellant's undoubted fraud or false representations had a material bearing on her decision as set out in her notice of 2nd December 2020*".

8. It was submitted first, that the judge's findings at [49] that the Secretary of State's failure to consider the basis upon which the appellant was granted discretionary leave in 2004 carries some weight discloses a material misdirection of law as it further evidences a misunderstanding of the correct legal approach as set out in **Ciceri (deprivation of citizenship appeals: principles)** [2021] UKUT 238 (IAC) and **R (Begum) v Special Immigration Appeals Commission** [2021] UKSC 7 . Second, the finding that this alleged deficiency in the reasons for refusal letter somehow rendered the appellant's fraud immaterial was perverse and unreasoned. As set out in the introduction of the grounds, the Secretary of State's case was that the appellant would not have received his various grants of leave had his fraud been known at the material time (in addition to fraud in the application and character and conduct, as dealt with under ground 3). In relation to the discretionary leave in 2004, the judge confirmed at [52]:

> *"It is of course open to the Respondent to reconsider whether or not the Appellant should be deprived of his British Citizenship taking the relevant (and correct) factors into account and issuing a fresh decision if she is minded to do so. Not only did the Appellant lie about his nationality but he also misled the authorities into believing that he had no family outside the United Kingdom. In particular he claimed that his parents had been killed and his sister was missing yet his parents (and 5 sisters) were very much alive in Albania. If that is right it is difficult to see why the Respondent would have been prepared to grant the Appellant permission to stay on the basis of his family life when he seems to have had a family life back in Albania."*

Given that the judge finds it "difficult to see why the respondent" would have granted the leave had the fraud been known, the judge's finding that the fraud was somehow immaterial to a later grant of citizenship was unreasoned and perverse. Had the judge properly understood its function in reviewing the exercise of discretion under Section 40(3) the question it should have asked was whether no reasonable Secretary of State should have concluded that the appellant would have been refused his grants of status on account of fraud? The fact that the judge clearly concluded that it was difficult to see why the appellant would have been granted leave had the fraud been known comes nowhere close to this threshold.

Ground 3

9. There was a failure to make findings or failure to take into account relevant material. It is submitted that nowhere in the entire determination did the judge consider the Secretary of State's case in relation to the fraud within the application itself and whether that would have led to refusal of citizenship. Equally, nowhere does the judge consider the Chapter 18 policy and whether the appellant's character and conduct would have led to refusal of citizenship had the fraud been known at the material time. In this regard it should be noted that the judge accepted at [53] that the appellant had clearly lied to the authorities over a number of years.

10. It was submitted that had the judge turned his mind to the Chapter 18 policy at 9.1 and 9.5 he would have noted that the policy imparts a discretion to the caseworker that:

> *"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"*

and at [124] of **Begum** it was confirmed that the test to be applied by the Tribunal where a policy imparts such a discretion is **Wednesbury** reasonableness: "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."

11. No such test had been applied by the judge by reference to the Chapter 18 policy.

12. Secondly, had the judge considered 9.5, it would have been apparent that the policy distinguishes between fraud in the application and previous fraud and where both are relied on, as here, regardless of whether the fraud was material or not to a previous grant of leave, in the normal course of events caseworkers should refuse applications.

Submissions

13. At the hearing before me Mr Papasotiriou provided a skeleton argument and Rule 24 response which he also handed to Mr Melvin. Mr Papasotiriou effectively relied on his Rule 24 response. He emphasised that the judge found that the Secretary of State had identified and erroneously considered in [24] that the appellant was granted refugee status and that was the basis of the deprivation. Mr Melvin submitted that it was patently clear that that was not the case and that the Secretary of State had applied the correct factual matrix.

14. Mr Papasotiriou confirmed that as set out by **Begum** at [71], it was for the Tribunal to assess whether the Secretary of State had disregarded materiality. At no point in the notice of deprivation had the Secretary of State considered whether the fraud was material and whether there was a lawful basis for depriving the appellant in that case. On her own cited policy on good character the fraud had to be material. In his submission, the Secretary of State did not consider materiality in regard to the application for leave and only in relation to the refugee status when depriving citizenship. There had been no assessment of the materiality, as the First-tier Tribunal had correctly concluded. The judge had only applied the **Wednesbury** grounds as required and had not considered the underlying factual basis for himself. There were no findings of fact made by the judge, merely a recitation of the immigration history and no burden applied. Reading the decision as a whole, the judge did not overstep that which he should have done.

15. Mr Melvin submitted that looking at the refusal letter in depth, it had given numerous reasons and the undisputed fact was that the appellant had persisted in deception for over twenty years. The deception was clearly material and that was clear in the refusal letter.

16. I invited the parties in the event that I would find an error of law as to whether they wished to make further submissions and Mr Papasotiriou submitted in his skeleton argument that should an error of law be found the matter should be decided before the Upper Tribunal. He had no further submissions to make, having taken instructions from his client as I permitted him to do.

Analysis

17. As pointed out at the outset of the hearing, the judge made the following direction at [42]:

> *"I must first determine whether the Respondent's discretionary decision under S40 (3)to deprive the Appellant of his British citizenship was exercised correctly. Not only do I have to consider if the Appellant engaged in the conduct set out in s40(3)(a), (b)or (c) but I also have to decide if the relevant facts, had they been known at the time the Appellant's application for citizenship was considered would have affected the decision to grant citizenship via naturalisation. The burden of proof of establishing the relevant facts is on the Respondent and the standard of proof is the balance of probabilities. If the discretion was not exercised correctly then it is not necessary to consider any article 8 issues."*

18. That demonstrates a misdirection of law at the outset. The judge's task was not to establish whether the relevant facts would affect the decision to grant naturalisation.

19. At [46] the judge stated the following:

> "*The Respondent's decision was clearly taken on the basis that the Appellant had been found to be a refugee within the meaning of the Refugee Convention. There is no mention in the decision letter of the Respondent's subsequent application for leave to appeal the decision of the Immigration Appellant Authority let alone to the result of that appeal*."

20. The basis of the argument on behalf of the appellant as it appeared before the First-tier Tribunal to the judge was that the appellant maintained that his dishonesty was not material to his acquisition of citizenship. That is clear from the skeleton argument before the First-tier Tribunal in particular at [26] onwards. It was submitted that the Secretary of State erroneously omitted to consider that in fact the appellant's appeal was finally dismissed. He did not ultimately succeed in his claim for asylum because although it was allowed in the First-tier Tribunal, it was subsequently overturned. The judge recorded that "*such evidence as I have seen suggests that the appellant was granted discretionary leave to remain on the basis of his relationship with his aunt and her family"* [47]. At [49] the judge stated:

> *"I consider there is merit in the criticisms made by Mr Papasotiriou. At the very least the respondent appears to have disregarded the basis on which the appellant was granted permission to stay in the United Kingdom in 2004 and that is a matter which she should have given some weight."*

21. The judge, however, ignored the threefold reasoning within the decision.

22. First at [29] of the deprivation decision, as set out in the grounds, that had the appellant's fraud been known at the material time of each application, he would not have received his grants of status.

23. In fact, the decision clearly sets out that the appellant was granted discretionary leave but makes no mention of the appellant being granted discretionary leave on the basis of asylum. The Secretary of State in her decision recorded the immigration history of the appellant at [24] in relation to his claim for refugee status but also stated:

> "*It was only through deception that you acquired indefinite leave to remain and therefore were able to meet the mandatory requirement to possess settled status for the purpose of naturalisation."*

24. Secondly, it was cited by the Secretary of State that the appellant used fraud within the application for nationality itself and that was highlighted at [19], specifically where it stated: "*Using this fraudulently acquired ILR, you completed a Form AN on 16th December 2011 in order to naturalise as a British citizen*".

25. Thirdly, at [28] of the deprivation letter that the appellant would have been refused on the basis of character and conduct by reference to Annex D of the Chapter 18 policy guidance. That was identified at [28] of the reasons for refusal letter. That clearly sets out that:

> *"It is clear that the subject would have been refused British citizenship under section 9.1, which states that caseworkers should count heavily against an applicant any attempt to lie or conceal the truth about an aspect of the application for naturalisation."*

26. The judge wholly ignored those sections of the reasons for refusal letter when concluding at [49] that the respondent had disregarded the basis on which the appellant was granted permission to stay in the United Kingdom in 2004 and that was a matter which she should have given some weight.

27. On careful consideration of the refusal decision, the reference to the claim of asylum at for example at [24] was merely a recitation of his history and the fact that he had persistently claimed to have been an Albanian citizen and that he was not entitled to a grant of refugee status. The reasons for refusal letter at [25] stated:

> *"You persisted with the deception in your naturalisation application and ticked the box to indicate you had not done anything to suggest you were not of good character. Had you told the truth in your naturalisation application, it is likely you would have been refused citizenship on character grounds, therefore the deception was material in that you should not have had settled status, nor would you have been deemed to be of good character over your deception over many years."*

28. It is quite clear that the Secretary of State has identified materiality at the very least in this section and the Secretary of State made no fundamental error in her understanding.

29. In sum, the judge wholly omitted to consider the proper basis of the deprivation of citizenship.

30. Thus, in accordance with ground 2, it is correct that the Secretary of State did not fail to consider the basis upon which the appellant was granted discretionary leave in 2004 and thus this therefore could not carry weight. This in itself disclosed a material misdirection of law as it misunderstood the correct legal approach. It was open to the Secretary of State to make that finding on the evidence before her.

31. The Secretary of State's case was in relation to ground 2 that the appellant would not have received his various grants of leave had his fraud been known at the material time.

32. As made out by ground 3, nowhere in the entire determination does the judge consider the Secretary of State's case in relation to fraud within the application itself and whether that would have led to a refusal of citizenship. That said, bearing in mind my findings in relation to ground 1 and 2, particularly ground 1, I find an error of law in the decision, and it should be set aside.

33. I invited both parties to make submissions in the event that I found an error of law and set aside the decision, and little was added, save that a few matters were clarified by Mr Papasotiriou, and he wished to rely on the statement of the appellant and the evidence as it was before the First-tier Tribunal.

34. Mr Melvin merely submitted that the decision should be overturned.

Analysis

35. The deprivation of citizenship is serious matter which can entail severe consequences.

36. At [71] of **R (Begum)** the Supreme Court clarified the obligations of the Tribunal when dealing with an appeal against a decision under Section 40(2):

> *"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"*,

The headnote of **Ciceri** in relation to exercise of discretion under 40(3) states 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."*

37. The notice of decision to deprive nationality under Section 40(3) of the British Nationality Act 1981 stated at [3]: "Following our investigations, and on the basis of the evidence presented, the Secretary of State has decided that you did in fact obtain your British citizenship fraudulently." At [7] she stated: "Having considered all the available information, including your representations, it is considered that citizenship was obtained by fraud."

38. The appellant's immigration history was recited from his entry to the United Kingdom on 3rd November 1999, his claim for asylum and his completion of the application details, giving false identity details of one Dali Oka, born on 2nd February 1985 in Vernica, Kosovo. It was recorded at [8] that his parents had been killed and that he had repeated the same

false identity details in his screening interview questionnaire. His claim for asylum was rejected but his appeal allowed on 28th August 2003 [11]. At [12] it was stated that he was granted discretionary leave on 2nd November 2004, and it was stated "it was decided discretion should be exercised in your favour" and made reference to Annex H. At Annex H is the letter of grant of discretionary leave to remain and that is very clear that the appellant did not qualify for leave to remain in the United Kingdom under the Immigration Rules and made no reference to granting asylum status but that he had been granted discretionary leave to remain. The refusal does engage with the detail that his appeal was allowed and subsequently overturned, and does not have to engage with that level of detail bearing in mind the references to documentation which was annexed and included in the bundle, and further it does not state that the appellant was recognised as a refugee.

39. At [13] the decision continues that: "*Following this you completed an extension of stay in the United Kingdom on 28th September 2007*" and "*within this application, you <u>again</u> completed the same false details, Dali Oka Agim, born on 28th February 1985, nationality Federal Republic of Yugoslavia"*. Thus clearly referring back to the original claims and application details. The decision letter pointed out that section 7.7 of the application asked whether the appellant had engaged in any activities which might indicate he may not be considered a person of good character and he had checked "no". Further applications for extension of stay were referred to at [16] and [17]. It was noted that he was granted indefinite leave to remain. The decision effectively recorded that throughout his applications (which were referenced) he provided the same false details, confirming that he was from Kosovo and declared these to be true to the best of his knowledge. On 12th March 2011 he was granted Indefinite Leave to Remain exceptionally outside the Immigration Rules.

40. At [18] the decision recorded that "using this fraudulently acquired ILR, you completed a form AN on 16th December 2011 in order to naturalise as a British citizen". The decision recorded this application was completed by signing the declaration confirming that he understood that to give false information knowingly or recklessly on the form was a criminal offence.

41. Finally, at [22] it was recorded in the decision that following an investigation and notification that his British passport had been revoked as being obtained by fraud, his solicitors made representations on 20th March 2020 confirming his genuine identity was that of Dali Oka, born on 8th March 1984 in Surroj, Albania.

42. The decision letter is clear, detailed and comprehensive and has not made findings of fact which are inaccurate or unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held.

43. Paragraph [24] does not demonstrates that the decision letter proceeded on the basis that the appellant had been granted refugee status but

merely recorded that he would not have been entitled to a grant of refugee status or indefinite leave to remain as a Kosovan. That was an observation. Indeed, it stated by way of clarification: "It was only through deception that you acquired indefinite leave to remain and therefore was able to meet the mandatory requirement to possess settled status for the purpose of naturalisation." That clearly sets out the materiality.

44. Additionally, at [25] it states:

> *"You persisted with the deception in your naturalisation application and ticked the box to indicate you had not done anything to suggest you were not of good character. Had you told the truth in your naturalisation application, it is likely you would have been refused citizenship on character grounds, therefore the deception was material in that you should not have had settled status, nor would you have been deemed to be of good character over your deception over many years."*

45. The decision proceeds to address from [26] onwards the policy guidance of Chapter 18, section 9, where it states:

> *"It is clear that the subject would have been refused British citizenship under section 9.1., which states caseworkers should count heavily against an applicant any attempt to lie or conceal the truth about an aspect of the application for naturalisation",*

and at [29] it states:

> *"It is clear you set out to deceive the Secretary of State so you could remain in the United Kingdom. You persisted with the deception over twenty years and only admitted the truth after evidence of the fraud had been put to yourself. It is reasonable to assume that you would have continued to deceive if he had not been caught."*

46. The Secretary of State considered whether there was a plausible innocent explanation and noted that although he was a minor when he first came to the UK, when applying for ILR and naturalisation he was an adult.

47. The Secretary of State at [31] made clear that she had taken into account the following factors which included the representations made by his legal representatives.

48. Overall bearing in mind the question to be asked, the Secretary of State gave unarguably cogent reasons for her decision and her reasons were based on evidence, which was not challenged that the appellant had given false details at the outset, and relied on those details throughout a series of applications and made false declarations within the applications. The Decision letter demonstrates that it did not take into account irrelevant information. The view of the Secretary of State was clearly one that could reasonably be held and the decision within the range of reasonable

responses. She also addressed the matter in accordance with section 55 of the Borders Citizenship and Immigration Act 2009 and Article 8.

49. In accordance with **Ciceri** there is to be no proleptic analysis of the appellant's circumstances but a consideration of the deprivation of citizenship in terms of Section 6 of the Human Rights Act as follows:

'(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.

50. When considering the five-stage test in **Razgar v SSHD** [2004] UKHL 27 the deprivation of citizenship is on the face of it, a breach of his family/private life and the interference is sufficient to engage Article 8. The deprivation decision is however in accordance with the law and necessary for the protection of rights and freedoms of others including the upholding of the immigration system. I turn to proportionality.

51. In terms of Section 55 and the best interests of the children it was clear that the appellant had two children born in 2012 and 2018 but there is no indication that the deprivation of his citizenship would have any significant effect on the best interests of the children, and both are very young there was no evidence that they would have any real understanding of the deprivation. Even if they were an emotional effect on the children and there was no indication that they would be deprived of housing, financial support or contact with the appellant. They would appear to be the children with his former wife Valmira Hallaci (also stated to be Kosovan). The photographs did not depict the children. There was no indication of where the children lived and no mention of them in the appellant's witness statement.

52. The documentation in relation to his current wife shows she has been granted settled status and has Indefinite Leave to Remain and the right to work. Indeed she was working as at October 2021 as a pay slip was provided. It would appear that she married the appellant on 23rd July 2021 with knowledge that his citizenship was to be revoked which occurred on 20th November 2020. Her witness statement merely stated that she would do 'anything to keep him with me'. There was no further evidence as to any effect of the deprivation of citizenship on her.

53. The appellant in his witness statement himself stated that he had not worked since the pandemic and, as Mr Papasotiriou confirmed during the hearing, there was no reason why the wife could not work. Indeed, she was training to be an accountant. A deprivation of citizenship decision itself does not preclude an individual from remaining in the UK and although deprivation may ultimately culminate in a decision to remove the appellant it is not necessary at this point to take into account the impact the removal would have on him and his family.

54. No detailed analysis is required in relation to statelessness but even taking the matter at its highest, if the decision under Section 40(3) had the consequences of rendering him stateless and, bearing in mind the seriousness of the undermining of the immigration system, that would be

proportionate, given the seriousness of the fraud and the need to protect and maintain the confidence in the UK immigration system and the public interest in preserving the legitimacy of British nationality. There was no evidence before me that the appellant's Albanian citizenship had indeed been lost and there was confirmation in the papers that he had returned on numerous occasions to Albania to visit his family.

55. As indicated by the Secretary of State and a factor I take into account is that there was clarity regarding the period between loss of citizenship via service of the deprivation order and the further decision to remove. It was stated that a deprivation order would be made within four weeks of the appeal rights being exhausted (and I note until that time the appellant can work) and that further within eight weeks from the deprivation order being made, subject to any representations he may make, a further decision either to remove him from the United Kingdom or commencing deportation action or issuance of leave will be taken.

56. In the intervening period of any form of limbo, I am not persuaded that the deprivation of citizenship, on the evidence before me, would be disproportionate breach of any human rights (including for that of the wife or children) or that there is not a clear timeline for further procedures set out by the Secretary of State. I take into account in the balancing exercise the Secretary of State's position that weight should be afforded to the maintenance of an effective immigration system and its protection from being undermined through fraudulent applications.

57. The grounds as set out by the Secretary of State are made out. There is a material error of law in the First-tier Tribunal decision. I therefore set aside the decision of First-tier Tribunal Judge Cary and remake the decision and substitute a decision that the appeal be dismissed for the reasons given above.

Notice of Decision

Mr Dali Oka's appeal is dismissed.

No anonymity direction is made.

Signed Helen Rimington Date 16th June 2022

Upper Tribunal Judge Rimington

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Helen Rimington Date 16th June 2022

Upper Tribunal Judge Rimington