



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-002734  
(DC/50043/2021); LD/00034/2022

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 February 2023  
Prepared 13 February**

**Decision & Reasons Promulgated  
On 30 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES  
DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**and**

**FATMIR KASTRATI  
(ANONYMITY ORDER NOT MADE)**

Appellant

**Appearances:**

For the Appellant: Mr A Papatotiriou, Counsel

For the Respondent: Mr E Tufan, Senior Presenting Officer

**DECISION AND REASONS**

1. This appeal is by the Secretary of State for the Home Department and we shall refer to the parties as in the First-tier Tribunal. The Appellant is a national of Albania, date of birth 1 July 1984. He appealed against the Respondent's decision dated 10 February 2021 giving notice of an intention to deprive him of British citizenship. The Appellant's appeal was

allowed by First-tier Tribunal Judge S Taylor (the Judge) for reasons given in his decision.

2. The Upper Tribunal (The Hon. Mrs Justice Thornton DBE and Upper Tribunal Frances) found that the judge had made a material error of law in finding that it was disproportionate to deprive the Appellant of citizenship in that the judge failed to consider and properly apply Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238. The decision was set aside with preserved findings of fact which were in the original judge's decision, paragraphs 1-14, but it was necessary for the judges to further consider The findings at paragraph 15 and 16 were set aside. The issues before us are the reasonably foreseeable consequences of deprivation and the exercise under Article 8 of the ECHR to assess the proportionality of those reasonably foreseeable consequences of deprivation.
3. Notwithstanding the Upper Tribunal's direction that the Appellant and Respondent were to serve any further evidence and skeleton arguments not later than fourteen days before the date of further hearing, no further statements/evidence were put forward by the parties at the hearing on 13 February 2022.

### **Relevant facts**

4. The Appellant's wife name is Fitore Morina. They married in the United Kingdom on 7 December 2015 and they have three children Elsa date of birth 18 June 2015, James date of birth 27 August 2017, and Emily date of birth 12 December 2021. The Appellant's wife had been a business administrator but at the material time she worked in administration doing paperwork for the Appellant's company.
5. The Appellant initially claimed that he entered the United Kingdom on 4 October 1999 but in claiming asylum, on 5 October 1999, he said he was from Kosovo and his date of birth was in 1983, whereas he was a national of Albania and his date of birth was 1 July 1984. The false information claim was given, it was said, on the advice of an Albanian speaking

interpreter who worked for the solicitors the Appellant was using at the time. Whilst his asylum claim was refused, the Appellant because of his age was granted leave to remain for four years. In 2000 the Appellant made an application for a travel document but failed to correct the false information that had been provided. He made an application for indefinite leave to remain in 2004, also reliant upon the false information, which was granted. The Appellant further applied for citizenship, reliant upon the same false information, which was granted in 2005. The Appellant asserted that he concealed the truth because he relied upon legal advice from his solicitors.

6. Whatever the Appellant's date of birth was, the fact of the matter was that when seeking to establish his status in the United Kingdom and in due course acquire nationality he, even as an adult, had continued with the fraudulent representations as to his identity/nationality and age. Whatever may have been the interim basis on which he was first dealt with as a child the fact was that the Appellant had knowingly used deception, repeatedly done so and there was nothing to indicate that his circumstances at any particular time meant that his deception would be irrelevant if known, nor was there any basis to obtain ILR or status in the United Kingdom and nationality but for the deception.
7. The circumstances were that the Appellant had knowingly been party to misrepresentations continuing after his initial entry into the United Kingdom and First-tier Tribunal Judge Taylor (The Judge) found those falsehoods had been the cause of his obtaining status in the United Kingdom.
8. The Judge found that the Appellant was complicit in the false representations and was satisfied that the first test in the case of Ciceri were met. Thus the Appellant was fixed with the false representations made as part of his application and subsequent applications.

### **Reasonably foreseeable consequences**

9. It was inevitable that in this case the reasonably foreseeable consequences of deprivation would be that the Appellant might not at the present time face actual removal but he would lose the benefits of nationality of which he had sought to take advantage and of which he had no expectation of receiving.
10. We found that the foreseeable consequences of deprivation would be inevitably that the Appellant would lose the benefits of status, the right to work and live in the United Kingdom and in the circumstances find it more difficult to resist removal.

### **Proportionality**

11. The circumstances which address proportionality were as follows. First, the length of time the Appellant had been in the United Kingdom. Second, the extent to which he had as a fact put down roots here. He had come to the United Kingdom in 1999 and, in the knowledge of what was effectively uncertain status within the United Kingdom founded upon the representations that he had made, he had married an Albanian national in 2015. Third, He had three children in the United Kingdom, all of whom were British nationals. Fourth, the Appellant's wife had limited leave to remain in the United Kingdom dependent upon the Appellant's status. Fifth, if the Appellant lost his citizenship then the almost inevitable consequence was that his wife would lose her right to remain.
12. Sixth, the Appellant's three children are aged as follows, Elsa date of birth 18 June 2015, James date of birth 27 August 2017 and Emily date of birth 12 December 2021. The children, born in the United Kingdom, are British nationals and in education. The youngest child may now be in nursery education but the evidence did not reveal the up to date position.
13. Seventh, the best interests of the children remain in being with their mother and father and to this extent they have been in the United Kingdom a number of years and have in all probability made friends and the two eldest ones enjoyed school life.

14. Eighth, one of the consequences of the loss of citizenship would be that the Appellant would lose the ability to work and gather an income to enable him to maintain the mortgage which he now has.
15. Ninth, the Appellant had an electrical engineering business which employed two full-time workers and two subcontractors. The Appellant's business involved commissioned electrical works which need to be certified. The Appellant is accredited to certify but the certification appears to be given to the company and it is then up to the company to provide the person who can sign off or certify the electrical works carried out for various employers.
16. The Appellant has provided the annual accounts of the business and it is unclear to what extent if the Appellant was unable to work it would be possible to employ someone to carry out the certification process, assuming that the two full-time employees or subcontractors were not able to do such work. No figures were provided as to what the direct financial consequences would be of having to employ such a person nor what effect it would have if an outside contractor who was approved to certify carried out that element of the work. The Appellant's general assertion, in his brief evidence before us, was that it was not financially viable so that the company could not afford such an exercise and that it would be difficult to find someone to carry out such work either as an employee or part of their work as an employee or as an independent self-employed contractor. There were no prospective costings provided.
17. The Appellant said in general terms it would be difficult to find someone so qualified and that it would be almost 'impossible' to do so but he gave no evidence of any attempts to find such a person, nor the likely costs, nor whether it truly was 'almost impossible' to find such an employee which the business could financially stand .
18. It was unclear to what extent the Appellant was essentially the gatherer of business for the company or to what extent simply, employees, could tender for the work. Ultimately the Appellant by reference to the accounts

identified that his wife and himself drew a salary from the company together with the two employees and paid two self-employed workers.

19. It was an unknown quantity how long it would take to resolve the issue of working in the United Kingdom in the future and the Appellant's essential case was that it could not be proportionate given delays that were in contemplation as reflected in the case of Muslija [2022] UKUT 00337. We were reminded that the Appellant had originally rented the accommodation where he lived but that in the meantime he had moved forward and obtained a mortgage. The Appellant's case was that without the income from the business he and his wife would have difficulty supporting themselves with their children and he would not be able to continue to pay a mortgage on the property.
20. The loss of the business was forecast by the Appellant although there was no evidence of any attempts, with accountant's help or otherwise, to see how he could properly address in the meantime the situation, nor was there any exercise in what benefits might be obtained for his wife and children albeit there was nothing to suggest that they could not continue to live in the UK or remain in education here.
21. Having weighed such information of which the opportunity had been given to produce but had not in substance been addressed in any meaningful way, other than some supplementary questions from the Appellant's representative, we concluded on the totality of the evidence that it was not disproportionate, to the needs of maintaining immigration control and its integrity, to deprive the Appellant of citizenship. Accordingly, in the context of Ciceri, we concluded that the decision was not disproportionate.
22. We were aware that removal of the Appellant was another matter to be addressed in due course but we did not find that the time which the Appellant has managed to gain in the United Kingdom showed that the maintenance of immigration controls did not in this case remain a valid objective.

**DECISION**

The appeal is dismissed.

**ANONYMITY ORDER**

No anonymity order was or is made.



Signed

Date

Deputy Upper Tribunal Judge Davey

**FEE AWARD**

If a fee has been paid, the appeal has failed and in the circumstances no fee award is appropriate.



Signed

Date

Deputy Upper Tribunal Judge Davey