IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002242
First-tier Tribunal No:
DC/00001/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 September 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

HASAN HYZIU
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Hawkin, Counsel, instructed by Nova Legal Services
For the Respondent: Mr T Melvin, Senior Presenting Officer

Heard at Field House on 28 July 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of Judge of the First-tier Tribunal Spicer ('the Judge') to dismiss his appeal against a decision of the respondent to revoke his British citizenship. The Judge's decision was sent to the parties on 23 December 2022.

Brief Facts

2. The appellant accepts that he is a national of Albania. He was born on 27 May 1980 and is presently aged 43.

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3. He asserts that he entered the United Kingdom on 1 May 2001, when aged 20. The following day he claimed asylum, asserting that he was 'Hasan Biba', a national of the Federal Republic of Yugoslavia. He stated that he hailed from Presevo, a municipality in southern Serbia, and was born on 15 June 1984. By identifying himself as being aged 16, he was treated by the respondent as an unaccompanied asylum-seeking child. At some point he submitted a birth certificate in support of his claim. The document was subsequently found to be fraudulent.

4. He reconfirmed his false identity by means of his Self-Completion Questionnaire dated 18 May 2001, where he provided a history of fleeing the Federal Republic of Yugoslavia due to a fear of persecution at the hands of the Serbian authorities. He stated that his father was arrested in 1994 and never seen again. A cousin was said to have been shot dead by Serbian soldiers in 2000 and he himself was shot in the leg when he went to tend to his cousin. An uncle was said to have been arrested after this event.

5. The respondent refused the appellant's asylum claim by a decision dated 3 August 2001, relying upon the improved situation in the Federal Republic of Yugoslavia. Three days later, the appellant was granted four years' Exceptional Leave to Remain as an unaccompanied minor. At the date of this decision the respondent was unaware that the appellant was aged 21. The respondent relied upon the false date of birth provided.

6. The appellant reaffirmed his false identity when appealing against the decision to refuse him asylum (2001), applying for a travel document (2001), applying for Indefinite Leave to Remain (2005), applying for a further travel document (2006), and when applying to naturalise as a British citizen (2006).

7. On 3 June 2008 the appellant sponsored an application from his then fiancée – now wife - for entry clearance. She provided details of his false identity and was granted entry clearance on 18 December 2008.

8. The appellant changed his name to 'Hasan Hyziu' by deed poll on 26 January 2009.

9. On 12 May 2009 the respondent wrote to the appellant putting to him the allegation that he had obtained his status through fraud. By a response dated 3 June 2009 the appellant maintained his false identity and he adopted this position in subsequent correspondence served upon the respondent later that year.

10. His wife applied for further leave to remain in June 2009. There was a delay in the respondent's consideration of this application and both the appellant and his wife sought to challenge the delay by judicial review (CO/15328/09). The grounds of claim identified, *inter alia*, that the investigation into the appellant's nationality was "irrational" and "an abuse of process". The appellant sought an order from the High Court

prohibiting the respondent from further investigating the legitimacy of his entitlement to British citizenship. On 20 January 2010 the respondent's legal representative, the Treasury Solicitor, wrote to the appellant agreeing that the respondent would make a decision on his wife's application for further leave within 28 days, but maintained that the decision to investigate the appellant in respect of his country of origin was lawful and correct, and so would continue.

11. The respondent refused the wife's application for further leave to remain, a decision she subsequently appealed (IA/07797/2010). The appellant filed a witness statement, dated 14 July 2010, supporting his wife's appeal, asserting that the respondent was engaged in an irrational investigation as to his nationality. He stated, *inter alia:*

> '20. For the purpose of completeness, I can confirm that I am originally from Presheva in Serbia and NOT from Albania as alleged by the SSHD in his letters of 4th September and 11th September 2008 and now the Home Office in their letter of 3rs December 2009.
>
> …
>
> 23. It is regrettable that the Secretary of State speculates with the facts of my case as well as my genuine claim for asylum and then for naturalisation as a British citizen.'

12. The witness statement was signed by the appellant who declared that everything contained within it was true. The appellant's wife was ultimately successful on appeal.

13. On 15 May 2013 the respondent again wrote to the appellant asking him to provide an explanation or any mitigation as to the suspected use of a false identity. The respondent detailed:

> 'Subsequent checks we made with the relevant authorities came back negative regarding your claim that you were born in Kosovo. However, the Albanian authorities confirmed birth details in Albania for a Hasan Hyziu, date of birth 27 May 1980. Whilst the date of birth you gave differs, it is noted that the records the Albanian authorities have contain the same parental details you gave when you applied for asylum.
>
> You are offered the opportunity to provide an explanation as to why the Albanian authorities appear to have an entry in their birth records for you when you claimed to be a Kosovan national …'

14. By a letter dated 4 June 2013 the appellant accepted that he had not used his true identity when claiming asylum. He stated, *inter alia*, that he was expressly advised by his previous representatives to maintain the deception when he came to make applications for further leave to remain and to naturalise as a British citizen. He stated that he regretted following this advice.

15. The respondent considered the appellant's naturalisation as a British citizen to be a nullity and confirmed this by a letter dated 13 June 2013. The respondent's position was that from the outset the appellant had not been naturalised and so consequent to the Immigration Act 1971 he reverted to enjoying his previous grant of indefinite leave to remain.

16. On 4 September 2014, the appellant completed a No Time Limit application where he detailed his true identity and submitted his genuine Albanian passport, confirming that he is 'Hasan Hyziu', born in May 1980. The application for an NTL was refused because the respondent decided that she was not able to provide a biometric residence permit in an identity which differed to the one which was granted leave to remain.

17. Following the Supreme Court judgment in *R (Hysaj) v. Secretary of State for the Home Department* [2017] UKSC 82, [2018] 1 WLR 221, the respondent wrote to the appellant confirming that the previous decision letter identifying his British citizenship as a nullity was withdrawn. It was accepted that the appellant remained a British citizen, but he was informed that the respondent would consider whether to take steps to deprive him of his British citizenship.

18. The appellant was issued with an investigation letter on 17 March 2018, and he responded by a letter dated 3 April 2018. He expressed his wish to apologise for his actions and stated that he felt guilty every day since he had entered the country. As mitigation he identified that during the relevant period many Albanians were exploited by agents who planted in them a fear that if they declared their true nationality to the United Kingdom authorities they would be removed from this country, and he was one of those individuals. He noted that he had disclosed his fraud to the respondent on 4 June 2013 via a letter from his legal representatives and the respondent had taken no deprivation action. He therefore declared that he had a legitimate expectation that no deprivation action would be taken against him. He relied upon his established private and family life in this country. He provided copies of the British passports belonging to his wife and children.

19. The respondent decided to give notice of her decision to deprive the appellant of British citizenship under section 40(3) of the British Nationality Act 1981 by means of a letter dated 8 December 2020. She noted the regularity with which the appellant had relied upon his false identity in engaging with the United Kingdom authorities over time, observing:

> '47. You supplied false identity details – date of birth and nationality – and created a fictional asylum claim around this identity. This is evidenced by your application forms, your Albanian passport, as well as by your own admission. By claiming to be a Kosovan minor you availed yourself of the immigration rules put in place to help genuine refugees fleeing persecution. Your deception regarding your identity led to a grant of ELR which you were not entitled to, which consequently enabled you to apply for ILR (settled status).

> Therefore, your deception was material to your grant of settled status – the status necessary to naturalise as a British citizen. You compounded your deception by falsely stating you had not engaged in activities relevant to the question of your character. Had the caseworker known of your prior and continued deception then it is highly likely your application for citizenship would have been refused, both on the grounds that your deception was material to your grant of settled status, and on grounds of character. It was your clear intention to deceive the Secretary of State in order to first obtain leave to remain in the UK, and then to naturalise. Not only was it your clear intention to deceive the Secretary of State but you also made a blatant attempt to obstruct the investigation into your true identity by seeking a Court Order to prohibit the Home Office from any further investigation, all the while you knew the allegation to be true. Your fraud was a clear attempt to subvert the immigration system and gain a status to which you were not entitled. Given the seriousness of the fraud and the lack of mitigating circumstances deprivation is therefore considered balanced and proportionate.
>
> 48. For the reasons given above it is not accepted there is a plausible, innocent explanation for the misleading information which led to the decision to grant citizenship. Rather, on the balance of probabilities, it is considered that you provided information with the intention of obtaining a grant of status and/or citizenship in circumstances where your application(s) would have been unsuccessful if you had told the truth. It is therefore considered that the fraud was deliberate and material to the acquisition of British citizenship.'

Decision of the First-tier Tribunal

20. The appellant was represented by Mr Hawkin before the Judge sitting at Taylor House on 22 December 2022.

21. At its core, the case advanced before the Judge was that any deception exercised by the appellant was not material to the grant of British citizenship with which the appeal was concerned. The respondent's decision to nullify the appellant's British citizenship took effect on 13 June 2013. It was the respondent's subsequent decision on 3 February 2018 to withdraw the nullity decision that resulted in the appellant "having British citizenship again". The second grant of British citizenship was said not to be related to the previous use of deception.

22. In the alternative, the appellant submitted that the deception exercised was not material because he was refused refugee status in his false identity, and in the light of the prevailing situation in Albania – not Preshevo or Kosovo – at the time, it was likely that he would have been granted refugee status in any event if he had identified his true fears of persecution in Albania to the respondent.

23. A second alternative was that the appellant would not have failed to secure status under the Legacy Programme and so the deception could not properly be said to be material.

24. The Judge found that the condition precedent was established, at [52] of her decision.

25. As to article 8 ECHR, the Judge found:

> '58. I find that the Appellant cannot succeed in his argument that, but for the delay, he would have benefitted from the Respondent's 14 year policy under Chapter 55 of the Nationality Instructions. I find that the policy is discretionary and clearly confirms 'where it is in the public interest to deprive despite the presence of these factors, they will not prevent deprivation'.
>
> 59. As regards the submission that the Appellant may have succeeded in a claim for asylum on his true identity, I note that the Respondent states at paragraph 12 of the deprivation decision that the Appellant's asylum claim was refused because by May 2001 peace was in progress in the region and many ethnic Albanians had already returned to Kosovo. I find that it is reasonably likely that this decision would have applied to the Appellant in his true identity as a citizen of Albania, as well as to his false identity.'

26. Mr Hawkin accepted at the hearing before this Tribunal that in respect of limbo there was no challenge to the respondent's confirmation in her decision letter of December 2020 that a deprivation order will be made within four weeks of appeal rights being exhausted, and that within eight weeks of a deprivation order being made, subject to any representations the appellant may submit, a further decision will be made either to remove the appellant or grant him leave to remain in this country.

27. As to limbo, the Judge found:

> '61. I accept that there will be a 'limbo period' during which any further applications made by the Appellant are determined. The Respondent has confirmed at paragraph 57 of the deprivation decision that a deprivation order will be made within four weeks of the Appellant's appeal rights being exhausted, or confirmation that he will not appeal, and within eight weeks of the deprivation order being made a further decision will be made either to remove the Appellant or to grant leave.
>
> 62. The Appellant's oral evidence, and that of his wife, underlined the impact that the family would experience in the short to medium term. I find that the reasonably foreseeable consequences of the deprivation decision will be that the Appellant will be unable to work on a self-employed basis or in any other employed or self-employed capacity during the limbo period and that the family will be exposed to potential financial hardship. However, the Appellant's wife is Company Secretary of his company and, as

such, it would be open to her to continue to operate the business using other contractors to carry out the work. The Appellant's wife also has skills as a hairdresser, which may provide an additional source of income. As British citizens, she and the children would have the right to apply for benefits such as Universal Credit.

63. The Appellant's wife and their children are British Citiz [Citizens]. In that period the Appellant's children will continue to attend school and will be able to exercise all the rights of their British citizenship. The Appellant's wife is permitted to work. The Appellant's wife is currently a full-time mother, and helps the Appellant with his business, but also has skills as a hairdresser.'

28. The Judge concluded:

'66. I accept Mr Hawkin's submission that the adverse consequences to the appellant of the deprivation decision are very significant. However, they are not, in my view, sufficient to tip the proportionality balance in his favour, given the heavy weight to be placed on the public interest in maintaining the integrity of British nationality law.

...

68. Mr Hawkin submitted that, having withdrawn the nullity decision on 3 February 2018 following the decision of the Supreme Court in Hysaj, the Respondent restored the Appellant's British nationality in the full knowledge of the Appellant's true identity and thus broke the causal link.

...

72. Considering all of the evidence in the round, I do not find that the delay between the Appellant's letter containing information regarding his true identity in 2011, the effect of the nullity decision, and the adverse action taken by the Respondent in 2020 is perverse, or outweighs the public interest.

73. Drawing this analysis together, I find that the decision to deprive the appellant of his British citizenship would not be disproportionate under Article 8 ECHR, even bearing in mind the best interests of the children as a primary consideration. Length of residence alone is not a reason not to deprive a person of their citizenship.

74. The Respondent's exercise of discretion in seeking to deprive the Appellant of his British Citizenship is a reasonable and proportionate response to his deception and the impact on the Appellant of such deprivation is not such as to outweigh the strong public interest in depriving him of a status and citizenship to which he was not entitled. Applying the guidance in Berdica, I find that the Respondent's maintenance of her decision up to and including the hearing of the appeal is sustainable.

> 75. The Respondent, in reaching her decision, had regard to all relevant matters and was entitled to conclude as she did'.

Grounds of Appeal

29. By means of a document drafted by Mr Hawkin, dated 5 January 2023, the appellant advanced nine grounds of appeal.

30. Judge of the First-tier Tribunal Dempster granted the appellant permission to appeal on all grounds, reasoning *inter alia*:

> '2. It is arguable that the judge should have considered the appellant's submissions on this point as part of their consideration of whether the appellant's deception was causative of the grant of citizenship and their failure to do so amounted to an error of law.
>
> 3. For the avoidance of doubt, this grant is not limited to the ground above. The other grounds may be advanced at the oral hearing.'

31. The respondent defends the First-tier Tribunal's decision by a Rule 24 response dated 26 July 2023.

Law

32. Section 40(3) of the British Nationality Act 1981 (as amended):

> (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.

33. Following the Supreme Court judgment in *R (Begum) v. Special Immigration Appeals Commission* [2021] UKSC 7, [2021] A.C. 765, the Upper Tribunal confirmed in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC), at [30], that in deprivation appeals:

> (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.

34. A Presidential panel recently confirmed in *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 00115 (IAC) that a Tribunal determining an appeal against a decision taken by the respondent under section 40(3) of the 1981 Act should consider the following questions:

(a) Did the respondent materially err in law when she decided that the condition precedent in s40(2) or s40(3) of the British Nationality Act 1981 was satisfied? If so, the appeal falls to be allowed. If not,

(b) Did the respondent materially err in law when she decided to exercise her discretion to deprive the appellant of British citizenship? If so, the appeal falls to be allowed. If not,

(c) Weighing the lawfully determined deprivation decision against the reasonably foreseeable consequences for the appellant, is the decision unlawful under s6 of the Human Rights Act 1998? If so, the appeal falls to be allowed on human rights grounds. If not, the appeal falls to be dismissed.

35. In considering questions (a) and (b), the Tribunal must only consider evidence which was before the respondent, or which is otherwise relevant to establishing a pleaded error of law in the decision under challenge.

36. In considering question (c), the Tribunal may consider evidence which was not before the respondent but, in doing so, it may not revisit the conclusions she reached in respect of questions (a) and (b).

37. The appellant contends that (a) is a live issue in this matter, as the Judge erred in concluding that the condition precedent was met.

Discussion

38. I confirmed at the hearing that the appeal was dismissed, and I give my reasons below.

Ground 1 - The effect of "Majera"

39. The appellant contends that the wording of section 40(3) of the 1981 Act makes clear the importance of the words "obtained by means of", which requires there to be a causal connection between the impugned behaviour and a decision to grant citizenship. The condition precedent therefore must be directly material.

40. The appellant's position is that the respondent's decision of 13 June 2013 resulted in his British citizenship being positively nullified, and so he reverted to his previous grant of indefinite leave to remain. Consequently, he lost any enjoyment of his British citizenship. It was only after the Supreme Court judgment in *R (Hysaj) v. Secretary of State for the Home Department* [2017] UKSC 82, [2018] 1 W.L.R. 221 and the respondent's subsequent decision to withdraw the nullity decision on 3 February 2018 that the respondent took steps to reconsider the position. The appellant contends that at this time he was granted British citizenship on a second occasion. Thus, the appellant submits, the causal connection between the use of fraud and the securing of naturalisation was broken by the decision of 13 June 2013. He was regranted British citizenship in 2018 following a new decision in respect of naturalisation made in the full knowledge that the appellant had used fraud when claiming asylum and securing indefinite leave to remain.

41. In submission before this Tribunal, Mr Hawkin expressly relied upon the Supreme Court's consideration in *R (Majera (formerly SM (Rwanda)) v. Secretary of State for the Home Department* [2021] UKSC 46, [2022] A.C. 461, at [27]-[42], as to whether unlawful acts or decisions are capable of having legal effect. Mr Hawkin directed me to [27]-[29] of the judgment, detailed below:

> *(i) Are unlawful acts or decisions incapable of having legal effects?*
>
> 27. The Court of Appeal's approach to the present case, based on the characterisation of invalid administrative acts and decisions as null and void, was as I shall explain inapposite to the order of a court or tribunal such as the First-tier Tribunal. But it is also worth explaining why, even in relation to administrative acts and subordinate legislation, Haddon-Cave LJ's statement that "when an act or regulation has been pronounced by the court to be unlawful, it is then recognised as having had no legal effect at all" is, with great respect, an over-simplification of the position. Although judges have commonly used expressions such as "null" and "void" to describe unlawful administrative acts and decisions, it has nevertheless been recognised that the notion that such acts and decisions are utterly destitute of legal effect, as if they had never existed at all, is subject to important qualifications.
>
> 28. Although Haddon-Cave LJ's dictum was confined to the situation where there has been a judicial pronouncement - which I take to mean an order, since it is orders, not the reasons given for them in judgments, which have legal effects - determining that an act or regulation is unlawful, it is illuminating to consider first the position before such a pronouncement is made. A significant point was made by Lord Radcliffe in *Smith v East Elloe Rural District Council* [1956] AC 736, 769-770 , where he considered an argument that an ouster clause preventing a compulsory purchase order from being challenged after the expiry of a time limit must be construed as applying only to orders made in good faith, since an order made in bad faith was a nullity and therefore

had no legal existence. Describing the argument as "in reality a play on the meaning of the word nullity", Lord Radcliffe observed:

> "An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

29. Accordingly, if an unlawful administrative act or decision is not challenged before a court of competent jurisdiction, or if permission to bring an application for judicial review is refused, the act or decision will remain in effect. Equally, even if an unlawful act or decision is challenged before a court of competent jurisdiction, the court may decline to grant relief in the exercise of its discretion, or for a reason unrelated to the validity of the act or decision, such as a lack of standing (as in *Durayappah v Fernando* [1967] 2 AC 337) or an ouster clause (as in *Smith v East Elloe*). In that event, the act or decision will again remain in effect. An unlawful act or decision cannot therefore be described as void independently of, or prior to, the court's intervention

42. It is observed that these passages are focused upon an effective, though unlawful and void, administrative act or decision which remains in effect if not challenged before a court of competent jurisdiction. However, if the administrative act or decision is outside proscribed powers, it is null and of no effect: *R (Miller) v Prime Minister* [2019] UKSC 41, [2020] AC 373, at [69].

43. Turning to the respondent's nullity decision, it is appropriate to commence by considering the explanation of the respondent's position given by Sales LJ (as he then was) in *R (Hysaj) v. Secretary of State for the Home Department* [2015] EWCA Civ 1195, [2016] 1 WLR 673, at [19]:

> '19. The Secretary of State contends that there is an implied limitation upon her power to grant naturalisation under section 6(1) of the 1981 Act in certain cases where the applicant has fraudulently misled her as to his true identity. In support of that contention she particularly relies on authorities in this court regarding the operation of the 1948 Act which held that, notwithstanding the fact that section 20(2) provided for the Secretary of State to make an order with prospective effect depriving a person of citizenship on grounds of fraud in relation to the application, there was such an implied limitation upon the power of the Secretary of State to register a person as a naturalised British citizen which had the effect that if an individual fell within that limitation he did not become a British citizen at all, and there was no scope nor need for any order to be made to deprive him of citizenship which he never in fact enjoyed: *R v Secretary of State for the Home Department, ex p. Sultan Mahmood* (Note) [1981] QB 58 and *R v Secretary of State for the Home Department, ex p. Parvaz Akhtar* [1981] 1 QB 46. ...'

44. The respondent's previous position in respect of the appellant was that, at the relevant time in 2013, he had never been a British citizen and so there was no scope or indeed any need to make an order to deprive him of a citizenship which he never in fact enjoyed. The purported naturalisation was treated by the respondent as never actually having happened and so was of no effect. That this was the respondent's position is identified by the fact that she recognised the earlier grant of Indefinite Leave to Remain as continuing, on the basis that her previous decision to grant settlement under section 3 of the Immigration Act 1971 was not affected by operation of section 1(1) of the 1971 Act because the appellant had never enjoyed a right of abode.

45. However, as was her position before the Supreme Court in *Hysaj*, the respondent subsequently accepted her error as to her understanding that a grant of citizenship under section 6(1) of the British Nationality Act 1981 to someone who had made false representations which did not amount to impersonation of another's identity was a nullity.

46. She accepts the Supreme Court's confirmation that such misrepresentation may render a person liable to be deprived of the grant of citizenship under section 40 of the 1981 Act, but, and this is important in the context of this appeal, the grant of naturalisation was lawful and remained valid throughout. This was clearly the respondent's position before the Supreme Court in *Hysaj,* at [17]:

> 'In such a case, in the Secretary of State's view, the grant of citizenship is valid, albeit that the person may later be deprived of it under Section 40.'

47. At [17] and [20] of its decision the Supreme Court expressly approved the reasoning of the respondent that the decision in *R v. Secretary of State for the Home Department, ex parte Ejaz* [1994] QB 496 was correctly decided. A naturalisation certificate granted by virtue of section 6 of the British Nationality Act 1981 can only be withdrawn by the respondent under the procedures set out in section 40(1) of the 1981 Act, as to allow it to be withdrawn otherwise, such as by being considered a nullity, would lead to undesirable uncertainty and injustice.

48. The respondent's decision as to nullity issued in June 2013 was without legal consequence, as the appellant's British citizenship could only be withdrawn consequent to compliance with the statutory regime established by the 1981 Act. The decision was therefore null *ab initio* by its failure to comply with statute.

49. The true position is that the appellant's naturalisation as a British citizen on 17 January 2007 was valid and by operation of section 1(1) of the Immigration Act 1971 his previous grant of indefinite leave to remain ceased to have had effect. He has continued to enjoy British citizenship ever since. Consequently, he did not lose his citizenship in June 2013 and

have it regranted to him in February 2018. He secures no benefit from the judgment in *Majera*.

50. The Judge gave cogent and lawful reasons for concluding that the condition precedent was established.

51. This ground is dismissed.

Ground 2 – The respondent's approach to Berdica [2022] UKUT 00276 (IAC)

52. Mr Hawkin withdrew this ground at the oral hearing referencing the recent reported decision of *Chimi*.

Ground 3 – "The 14-year policy"

53. The appellant contended before the Judge that 'but for' the respondent's delay, he 'would have' benefitted from the respondent's 14-year policy under Chapter 55 of the Nationality Instructions. The relevant 14-year point in time was reached on 1 May 2015, when the respondent laboured under the legally erroneous understanding that the grant of citizenship was a nullity.

54. A copy of an undated version of Chapter 55 was filed by the respondent in her First-tier Tribunal bundle at Annex MM. Upon examination, it is understood that this was the version of the Chapter in force at the date the bundle was prepared.

55. Mr Hawkin was unable to identify at the hearing that a copy of the relevant Chapter 55 Instruction in operation on 1 May 2015 was placed by the appellant's legal representatives before either the First-tier Tribunal or this Tribunal. Consequently, Mr Hawkin was unable to direct me to any relevant passage of the Instruction that was said to support the appellant's contention.

56. The impact of such failure is addressed below, as the purported 14-year policy did not actually exist in policy at the relevant time.

57. The failure by the appellant to file an archived Nationality Instruction that he seeks to rely upon is a clear breach of the obligation placed upon him, as a party to proceedings, to cooperate with the Upper Tribunal and on this basis alone the ground is properly to be dismissed.

58. In any event, upon considering Chapter 55 as in operation between 17 March 2014 and 10 September 2015, the appellant's challenge was doomed to failure. The express reference to the 14-year policy – an historic example of which is "in general the Secretary of State will not deprive of British citizenship in the following circumstances: … If a person has been resident in the United Kingdom for more than 14 years we will not normally deprive of citizenship": Chapter 55.7.2.5 of the Instruction in force from 27 February 2009 to 17 November 2009 - had been removed

by, at the latest, the time of the 17 March 2014 version: see Chapter 55.7.5.

59. Additionally, as confirmed in the Upper Tribunal decision of *Hysaj* in respect of the 14-year policy:

> '66. There is no specified period within which an immigration decision, or a decision to deprive, must be made and a decision to deprive a person of their British citizenship, as for any immigration decision, must be made by reference to the rules and policy in force at the time it is made, and not by reference to some earlier law and policy: *EB (Kosovo) v. Secretary of State for the Home Department* [2008] UKHL 41; [2009] 1 A.C. 1159, at [13]. The respondent is responsible for deciding and formulating policy as to the practice to be followed in naturalisation and deprivation matters and enjoys discretion to reformulate policy, so long as such reformulation is within the constraints which the law imposes. The appellant did not contend before us that the respondent could not amend her policy to remove reference to the 14-year residence exception to deprivation.
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> 67. Lord Hoffman confirmed in *R (on the application of Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2008] UKHL 61; [2009] 1 A.C. 453, at [60], that a claim to a legitimate expectation can be based only upon a promise which is 'clear, unambiguous and devoid of relevant qualification.' We observe the use of the qualifying words 'in general' and 'normally' within Chapter 55.7.2.5 [later renumbered Chapter 55.7.5] and the additional qualification that the public interest may still require deprivation even if the identified circumstances militating against deprivation are established. We are satisfied that the provisions in Chapter 55 relied upon by the appellant do not establish a clear and unambiguous promise that by reaching the fourteenth year of residence a person will not be deprived of their citizenship because it is clear that the respondent qualified the identified exceptions where deprivation will not normally occur so as to permit her to weigh the public interest in proceeding to deprive with the individual facts arising. The only legitimate expectation enjoyed by the appellant is that his case would be treated in accordance with the law and policy in place at the time the relevant decision was made. Consequently, the appellant's submission that he enjoyed a legitimate expectation to be treated in a particular way under an earlier policy must fail.

60. The appellant's contention that, unlike Mr Hysaj, he did not have a criminal conviction and was not serving a prison sentence when he reached 14-years residence on 1 May 2015 does not aid him. Not only does the ground advanced fail to engage with the discretionary nature of the policy and there being no legitimate expectation of success but also, crucially, the policy did not exist at the relevant date.

61. There is no merit to this ground. It should never have been advanced.

62. The First-tier Tribunal, and this Tribunal, may have been saved from using valuable judicial resources if careful consideration had been given by the appellant's legal advisors to the document relied upon.

Ground 3(a) – Materiality and refugee status/exceptionality leave to remain

63. The appellant asserts that Albania was going through a period of economic instability when he entered this country in 2001 and it is said that country background evidence establishes that he "may" have succeeded in a claim for asylum in his true identity. It is submitted that though this submission was advanced before the Judge it was not considered.

64. I observe the appellant's witness statement dated 23 November 2022:

> '6. I was brought up in Albania and had never been outside my country before, until I left my country because of the very difficult situation the country was going through after the collapse of the pyramid schemes, which brought about the lawlessness in the country and near civil war, and then the civic unrest sparked by the assassination of a leading member of the opposition party in September 1998, which gunfire riddled in demonstrations incited by former President Sali Berisha who organised an attempted coup, and during the violence I was wounded on the 14 September 1998. As a consequence of this experience, I became depressed, and very afraid to leave the house other than attend hospital appointments with my parents. I felt unsecure (sic) and without any hope for the future.
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> 7. Consequently, my father arranged with someone, paid a large amount of money, to take me to somewhere safe. I did not expect that I would travel to the United Kingdom.'

65. Mr. Hawkin accepted that no medical evidence relating to the wound was filed in this appeal. I was informed that this may be because the injury was sustained some time ago.

66. I accept that the Judge did not address this submission and such failure is an error of law but for the reasons detailed below I do not consider such error to be material.

67. The appellant first detailed the personal history now relied upon by means of his statement dated November 2022. This is over twenty-one (21) years after he entered this country. At no previous point in time was any fear of persecution in Albania raised. It was not referenced in the letter of 3 April 2018 when his legal representatives wrote on his behalf admitting his true identity and advanced a human rights claim. I observe that this assertion as to his personal history was not advanced to the respondent before the deprivation decision was issued in 2020, despite many requests for mitigation to be advanced.

68. The appellant can properly be taken as having concluded when he entered this country in 2001 that any personal problems he may have experienced in Albania could not establish a well-founded fear of persecution as required by the 1951 UN Convention on the Status of Refugees because he advanced a wholly deceitful assertion as to his personal history when seeking to secure status in this country.

69. I also observe that there was no country guidance decision at the time establishing that a general fear of circumstances arising from the economic instability in Albania established a well-founded fear of persecution. Simply being perceived to be a supporter of the opposition was also not sufficient to establish a well-founded fear at the relevant time: *AK (Democratic Party) Albania* [2002] UKIAT 05822.

70. It is further noted, and addressed elsewhere in this decision, that the appellant has proven willing to be untruthful to both the High Court and the First-tier Tribunal on previous occasions. His willingness to lie whenever he believes that it personally aids him can properly be considered adverse when assessing his credibility.

71. This ground is dismissed.

Ground 4 – The Legacy Programme

72. The appellant asserts “that there is no evidence” that he “would not have fallen under the Legacy Programme and/or that he would have been removed” even if the respondent had been aware of his true identity.

73. Unhelpfully no copy of the Legacy Programme policy was provided by the appellant. Again, it is very difficult to see how he can properly advance a policy-based argument, or additionally consider that he appropriately abides by the duty of cooperation imposed by rule 4 of the Tribunal Procedure (Upper Tribunal) Rules 2008, when no copy of the policy was provided either to the First-tier Tribunal or to this Tribunal. On this basis alone, this ground may properly be dismissed.

74. I observed to Mr Hawkin at the hearing the background and operation of the Legacy Programme as discussed in the judgment of Mr Justice Ouseley in *R (Jaku) v. Secretary of State for the Home Department* [2014] EWHC 605 (Admin), at [7]–[16]. The Legacy Programme commenced in 2007 when the respondent faced a large backlog of asylum claims. It was not an amnesty and the guidance then in force expressly instructed decision makers to consider an individual’s personal history including any deception practised at any stage of the process. This instruction was noted by Mrs Justice King (as she then was) in *R (Geraldo) v. Secretary of State for the Home Department* [2013] EWHC 2763 (Admin), at [52].

75. I am satisfied having read the relevant policy as identified in those two judgments that it was more likely than not that the respondent would have taken an adverse view to the appellant’s lies and would have refused

indefinite leave to remain if he had come clean. I reach this conclusion being mindful that the appellant had exercised deception upon arriving in this country and in continuing his deception he embarked upon a judicial review challenge in 2010 seeking that the respondent be prohibited from undertaking what was said to be an irrational investigation into his nationality.

76. However, even if the respondent may have decided to exercise discretion in favour of the appellant under the Legacy Programme, he would then have been required to establish that he met the good character requirements of the naturalisation policy, which relate to paragraph 1(1)(a) of Schedule 1 to the 1981 Act. This was not engaged with at all in the appellant's grounds or before the First-tier Tribunal. The appellant would have been required to satisfy the good character requirement in paragraph 1(1)(b), which is a requirement that cannot be waived: *R v. Secretary of State for the Home Department, ex parte Fayed* [1998] 1 WLR 763. The respondent would have to be satisfied that the appellant was of good character and the test for disqualification is subjective: *SS (Sri Lanka) v. Secretary of State for the Home Department* [2012] EWCA Civ 16, at [31]. The real question advanced by this ground is whether the respondent would have granted naturalisation if the appellant had revealed his true circumstances when he came to apply for British citizenship, having hypothetically been successful under the Legacy Programme. In other words, would the respondent have granted the appellant British citizenship if he had known that he had lied in his asylum application and had pursued his lies by means of judicial review proceedings.

77. Mr Justice Kenneth Parker held in *R (Kurmekaj) v. Secretary of State for the Home Department* [2014] EWHC 1701 (Admin) that the respondent had been entitled to refuse an application for naturalisation on the basis of good character where the applicant's earlier immigration applications, which had led to him being able to make the naturalisation application, had been based on fraud. This was despite the applicant, who was granted indefinite leave to remain under the Legacy Programme in his Kosovan identity, having given true particulars of his Albanian identity when applying to naturalise.

78. The ground as advanced fails to engage with the discretionary nature of the respondent's powers in respect of nationality. There is no merit to this ground.

Grounds 5, 6, 7 and 8

79. These challenges address related issues in respect of judicial consideration of article 8. The appellant relies upon the personal circumstances of his wife and children, the best interests of his children and finally upon his own lengthy period of residence in this country and what he claims to be the overall delay of the respondent dealing with the issue of deprivation.

80. As observed at the hearing, ground 8 simply amounts to a reformulation of the previous three grounds.

81. The fundamental difficulty for the appellant is that the article 8 consideration in this matter relates solely to the period of limbo between the date he is deprived of citizenship and the subsequent date when the respondent decides whether he can stay in this country or alternatively requires him to leave. The grounds fail to grapple with the confirmation by the respondent in her decision letter that she expected to conclude her consideration as to leave to remain three months after the exhaustion of appeal rights in respect of the deprivation order, subject to any representations made.

82. As noted above there was no challenge by the appellant before the First-tier Tribunal as to the period of limbo being three months. It was to this short period of time that the First-tier Tribunal focused its attention in respect of article 8 at [53]-[75].

83. The Upper Tribunal confirmed in *Hysaj*:

> 105. 'Limbo' is convenient shorthand for the appellant's concern that he faces an uncertain period awaiting a decision. Though he has enjoyed lawful presence in this country for many years through his fraud, he is being returned to the position he would have been in at the time the respondent considered his application for international protection if he had been truthful as to his personal history. He has no identifiable claim for international protection and his wish is to remain here on the basis of established private and family life rights. There is no requirement that he enjoy temporary leave whilst a decision is made on possible deportation action.
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> ...
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> 107. The appellant's articulated concern is that deprivation will adversely impact upon not only his life, but also that of his wife and children. He contends that the expected 'upheaval' in their lives will be accompanied by financial and emotional concerns. Such upheaval is a consequence of the appellant losing rights and entitlements from his British citizenship that he should never have enjoyed.
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> 108. The Court of Appeal has confirmed that article 8 does not impose any obligation upon the State to provide financial support for family life. The ECHR is not aimed at securing social and economic rights, with the rights defined being predominantly civil and political in nature: *R. (on the application of SC) v Secretary of State for Work and Pensions* [2019] EWCA Civ 615; [2019] 1 WLR 5687, at [28]-[38]. The State is not required to grant leave to an individual so that they can work and provide their family with material support.

> 109. The time period between deprivation and the issuing of a decision is identified by the respondent as being between six to eight weeks. During such time the appellant's wife is permitted to work. She accepted before us that she could seek employment. She expressed concern as to the impact her limited English language skills may have on securing employment but confirmed that she could secure unskilled employment. She confirmed that her husband could remain at home and look after their children. The appellant accepted that his wife is named on the joint tenancy and will continue to be able to lawfully rent their home upon his loss of citizenship and status. In addition, the children can access certain benefits through their citizenship. Two safety nets exist for the family. If there is an immediate and significant downturn in the family's finances such as to impact upon the health and development of the children, they can seek support under section 17 of the Children Act 1989. If the family become destitute, or there are particularly compelling reasons relating to the welfare of the children on account of very low income, the appellant's wife may apply for a change to her No Recourse to Public Funds (NRPF) condition.
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> 110. There is a heavy weight to be placed upon the public interest in maintaining the integrity of the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship. That deprivation will cause disruption in day-to-day life is a consequence of the appellant's own actions and without more, such as the loss of rights previously enjoyed, cannot possibly tip the proportionality balance in favour of his retaining the benefits of citizenship that he fraudulently secured. That is the essence of what the appellant seeks through securing limited leave pending consideration by the respondent as to whether he should be deported. Although the appellant's family members are not culpable, their interests are not such, either individually or cumulatively, as to outweigh the strong public interest in this case.

84. I observe that [110] of *Hysaj* was approved by the Court of Appeal in *Laci v. Secretary of State for the Home Department* [2021] EWCA Civ 769, [2021] Imm. A.R. 1410, at [80].

85. Ground 5 goes no further than restating the appellant’s case before the First-tier Tribunal. He relies upon his wife’s limited ability to engage with the manual side of his business, that his wife has not worked as a hairdresser in the United Kingdon, the age of the children and that his wife is the children’s primary caregiver. Cogent and lawful reasons were given by the First-tier Tribunal that during the short limbo period, the appellant could sub-contract his work to another person. No explanation was given by the appellant as to why someone else would not work for the sum he himself seeks for his labour. Lawful reasons were given as to the ability of the appellant’s wife to seek and secure employment during the limbo period as well as observing that the appellant’s wife and children, being British citizens, can seek welfare support to ensure that they continue to be accommodated and provided with basic resources.

86. Ground 6 baldly challenges as fundamentally flawed the First-tier Tribunal's finding that the children's best interests should not outweigh the public interest. This ground fails to engage with the short duration of the limbo period, which was not challenged, nor does it seek to explain as to how the best interests of the children can properly aid the appellant in respect of the reasonably foreseeable consequences of the deprivation decision in circumstances where the children will continue to live with their parents at the family home and will continue to attend school. The high point of any concern on the part of the children identified by the First-tier Tribunal was that the stress of their parents during the limbo period 'might' in turn impact upon them, at [64]. No cogent submission was advanced by the appellant as to how such conclusion was unreasonable, or 'fundamentally flawed'. There is no merit to this ground.

87. Ground 7 references article 8 and delay, asserting that the delay between 2011 to 2020 was extraordinary, and in combination with other identified matters should have tipped the proportionality balance in the appellant's favour. The First-tier Tribunal properly considered the guidance of the Upper Tribunal in *Hysaj*. Consideration was given to the respondent's approach to nullity flowing from the identification of the law having previously taken a wrong turn, and that rule of law values indicate that the respondent was entitled to take advice and act in light of the state of law and circumstances known to her at the relevant time. The benefit of hindsight does not lessen the significant public interest in the deprivation of British citizenship acquired through fraud or deception. The conclusion reached by the First-tier Tribunal as to the impact of delay on article 8 and the limbo period was reasonably open to it, and therefore lawful.

88. As explained above, ground 8 is a reformulation of previously pleaded grounds. It is appropriate to return to the decision in *Hysaj,* at [110]: "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."

89. Whilst grateful to Mr Hawkin for his submissions, all grounds are properly to be dismissed.

Postscript

90. Despite dismissing the appellant's appeal I consider it appropriate to record that both the First-tier Tribunal and this Tribunal have considered the appellant's article 8 rights through the prism of the respondent's position before the First-tier Tribunal, namely that deprivation of citizenship would be undertaken within four weeks of the appellant being appeal rights exhausted and then consideration as to whether he can remain in this country would be undertaken within two months thereafter,

subject to the receipt of further representations. I have no doubt that the respondent was content with such a short timeframe because it is established that the appellant's wife and three minor children are British citizens, and no criminal conviction arises which may require further consideration. The respondent can properly observe that both the First-tier Tribunal and this Tribunal would expect efforts to be made to ensure that the required decisions were issued within the timeframe provided.

91. I also consider it appropriate to address Mr Hawkin's contention during the hearing, no doubt made on instruction, that save for the use of the false identity the appellant had led a blameless life in this country. Such contention fails to engage with the regularity of the appellant's engagement in deliberate falsehood in his dealings with the United Kingdom authorities over many years. Of particular concern is that he approached the High Court seeking to secure an order that the respondent be prevented from investigating his personal history, at a time when he himself knew that he was relying upon a false identity, which was a brazen act borne out of, at best, a cavalier attitude to the justice system. Additionally, the appellant provided a signed witness statement to the First-tier Tribunal in 2010 when seeking to ensure that his wife remained in this country, the contents of which he knew to be untrue when he declared, "everything I have said is true and to the best of my knowledge". That the appellant sought to underplay his actions through counsel before this Tribunal strongly suggests a concerning lack of insight into the serious and detrimental nature of his conduct. In the circumstances, I find that it cannot properly be said that save for the use of the false identity the appellant has led a blameless life whilst residing in this country.

Notice of Decision

92. The decision of the First-tier Tribunal dated 23 December 2022 does not contain a material error of law.

93. The appellant's appeal is dismissed.

94. There is no anonymity order.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 August 2023