IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002284
UI-2023-002286
First-tier Tribunal No: DC/50306/2021
DC/50307/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 August 2023

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellants

and

ZAMIR BLINI
IRMA BLINI

Respondent

(NO ANONYMITY ORDER MADE)

Representation:
For the Appellant: Ms S. Cunha, Senior Home Office Presenting Officer
For the Respondent: Mr A. Chakmakjian, instructed by A J Jones Solicitors

Heard at Field House on 17 August 2023

DECISION AND REASONS

1. For the sake of continuity, I will continue to refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.

2. The appellants appealed the respondent's decision dated 26 November 2021 to deprive them of British citizenship with reference to section 40(3) of the British Nationality Act 1981 ('BNA 1981') on the ground that naturalisation was obtained by means of fraud, false representation, or the concealment of any material fact. The appeal was brought under section 40A(1) of the BNA 1981.

3. First-tier Tribunal Judge Atreya ('the judge') allowed the appeal in a decision sent on 06 June 2023. The judge considered the appellants' immigration history and concluded that it was open to the respondent to find that they had obtained

© CROWN COPYRIGHT 2023

naturalisation by means of fraud, false, representation, or the concealment of a material fact. The condition precedent was made out. The judge went on to consider whether deprivation would amount to a breach of human rights. She considered the family circumstances and the unusual fact that both parents were being deprived of citizenship. The judge noted that the decision letter stated that a decision would be made relating to leave to remain within 8 weeks of the deprivation order being made. However, she considered that the information contained in a Freedom of Information Request (FOI) response dated 31 August 2021 contradicted this statement. The FOI suggested that, on average, it took the Status Review Unit 303 days to grant temporary leave following an earlier decision to deprive citizenship on grounds of fraud. The judge concluded that the family, which still had two children under 18 years of age, was likely to face 'extreme hardship' if the appellants were unable to work for a prolonged limbo period. The judge made clear that the starting point was the 'considerable public interest' in deprivation. When she weighed this against the risk of destitution that the family might face during a potentially lengthy limbo period, she concluded that deprivation would amount to a disproportionate breach of Article 8 of the European Convention on Human Rights (ECHR).

4. The Secretary of State applied for permission to appeal to the Upper Tribunal. The grounds make a series of point that are not clearly particularised, but the following points can be discerned:

(i) The First-tier Tribunal failed to have regard to the submissions made by the respondent's legal representative regarding the weight that should be given to the FOI response. The judge erred in finding that the FOI response indicated that there could be a potential limbo period of 303 days. The respondent produced a copy of the Presenting Officer's 'hearing minute' of the hearing to support the assertion.

(ii) The First-tier Tribunal's finding that there was a public law error in the decision letter in assessing the impact on the appellants' children was irrational and inadequately reasoned. The judge failed to consider relevant case law which emphasised that significant weight must be placed on the public interest in deprivation, including *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 128 (IAC) [106]-[110].

(iii) The First-tier Tribunal's finding that the respondent's decision in relation to the assessment of section 55 and/or Article 8 issues more generally were was 'arbitrary and unlawful ' [40] was inadequately reasoned, and in any event, immaterial.

5. I have considered the First-tier Tribunal decision, the evidence that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my findings.

Decision and reasons

6. Following the decisions in *R (on the application of Begum) v SIAC & Ors* [2021] UKSC 7, *Ciceri (deprivation of citizenship; delay)* [2021] UKUT 238 (IAC), and *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 115 (IAC), a court or tribunal should consider whether the Secretary of State's

decision relating to the condition precedent required under section 40(3)(a)-(c) to deprive a person of citizenship is lawful with reference to the full range of administrative law grounds before going on to consider human rights issues.

7. A decision to deprive a person of citizenship is not a human rights decision. Nor is an appeal under section 40A(1) BNA 1981 based directly on human rights grounds. However, the Secretary of State's exercise of discretion under section 40(3), denoted by the word 'may' rather than 'must', is subject to the duty under section 6 of the Human Rights Act 1998 ('the HRA 1998') not to act in a way which is incompatible with a right under the European Convention of Human Rights ('ECHR'). The above cases make clear that when it comes to the assessment of human rights, the court or tribunal, which is also subject to the same duty, can consider for itself whether the reasonably foreseeable consequences of deprivation are likely to amount to a breach of a right under the ECHR. It is only in this limited way that human rights issues can be considered in an appeal against a decision to deprive a person of citizenship.

8. The judge made sustainable and unchallenged findings relating to the condition precedent. She found that the appellants obtained naturalisation by way of fraud, false representations, or concealment of any material fact. She concluded that it was open to the Secretary of State to consider deprivation on this basis.

9. However, the judge went on to find that the decisions letters also contained public law errors in relation to matters that related to human rights issues. This approach was not consistent with the guidance given in *Begum*, *Ciceri* and *Chimi*. There is no point in challenging the exercise of discretion with reference to human rights grounds on administrative law principles because the tribunal can consider the substance of any human rights arguments and decide for itself whether the decision to deprive is unlawful under section 6 HRA 1998. For this reason, pointing out a technical deficiency in the decision letter is unlikely to make any material difference to the appeal if a judge has concluded that the decision to deprive would not in any event be unlawful under section 6 of the HRA 1998. Conversely, if a judge concluded that deprivation would amount to a breach of human rights any technical deficiency in the decision letter would also be immaterial.

10. In so far as the second and third grounds seek to challenge the judge's finding that there was a public law error in the Secretary of State's decision relating to issues that related to human rights, I agree that this was an erroneous approach. However, for the reasons given above, any error in purporting to finding a public law error is not material to the decision because the judge made those findings in the context of a full Article 8 assessment where she weighed the public interest considerations against the impact that the decision was likely to have on the family during any limbo period. The references to case law made in the second ground are generalised and amount to little more than an assertion that the public interest should have been given greater weight i.e. a disagreement with the balance struck by the First-tier Tribunal.

11. The key point relied on by the respondent is contained in the first ground. This relates to the judge's assessment of the potential 'limbo period' between the time when the appellants' appeal rights are exhausted and consideration of whether they should be granted leave or removed.

12. In respect of the first ground the respondent relies on a note from the Presenting Officer who represented the Secretary of State before the First-tier Tribunal. The note summarises submissions that are said to have been made to the First-tier Tribunal in relation to the FOI response dated 31 August 2021, which the judge took into account when considering the potential length of any limbo period.

13. The note suggests that the Presenting Officer submitted that it was arguable that the 8 week period contained in the decisions letters was 'achievable'. The FOI response made clear that the data only went up to 31 December 2020 and included all limited leave grants that might not include human rights issues. There was no breakdown of the type of claims that were made and no mention of how long it took for appellants to make representations. The note goes on to suggest that the following submission was made:

> 'The timescales within the FOI is also a mean figure which makes it likely that the figure for simpler claims has been distorted and dragged up by unusual claims which have complex issues/representations.'

14. The Presenting Officer went on to refer to the general statements made about the weight to be given to the limbo period in *Muslija (deprivation: reasonably foreseeable consequences)* [2022] UKUT 337 (IAC). The judge's starting point in her Article 8 assessment made clear that she had taken into account what was said in *Muslija* [29]. The Presenting Officer's note concludes with the following:

> 'The decision with regards to LTR will not be considered until the apps are ARE, the apps are free to work, the apps have savings and the two adult children are working as well. it's (sic) most likely given the presence of underaged BC children it is most likely (sic) that the HO will grant LTR.'

15. It is unclear whether the note of the submissions was prepared in advance to be used as an *aide memoire* during the hearing. It does not appear to be fully contemporaneous note in the sense that it does not contain a record of the questions and answers asked of the witnesses. The note stating that it was submitted that the appellants would be 'free to work' does not make sense. If the appellants were both deprived of citizenship they would not have any status in the UK and it is unlikely that they would be permitted to work. This appeared to be the judge's central concern. Nor does the appellant's bundle appear to indicate that the couple had any savings. If evidence to that effect was given orally at the hearing there is no note of it. Therefore, it is somewhat unclear whether all of the submissions contained in the note were in fact made to the judge. The respondent does not appear to have applied for a copy of the judge's note of the proceedings.

16. Even if all the submissions relating to the FOI were made to the judge, most of the points were drawn from the FOI itself in a paragraph immediately after the two paragraphs which were quoted by the judge at [31] of the decision. At the date of the decision to deprive the information about the length of the limbo period contained in the FOI was nearly a year old. At the date of the hearing the information was over two years old.

17. It is reasonable to infer that at the date of the 'snapshot' taken by the FOI response that there might have been operational difficulties in 2020 contributing to delays as a result of the pandemic. It is at least possible that the picture might have improved by the date of the hearing in 2023. But even if it had, the

respondent had not produced any evidence to show that the average time for decision making following deprivation had changed since the end of 2020.

18. I bear in mind that the figures contained in the FOI response related to the average time for decision making. This could mean that some cases might have taken significantly longer than 303/257 days or significantly less than that. However, there was no way for the judge to tell with any confidence how long this particular type of case might take. Even if she had recorded the limitations of the 'snapshot' pointed out in the FOI and by the Presenting Officer I find that it would not have made any material difference to her overall finding. The judge noted the undertaking given in the decision letter. However, she also found that there was no evidence to show that the waiting time for a further decision was likely to have reduced since the 'snapshot' taken on 31 December 2020. For these reasons, I conclude that it was within a range of reasonable responses to the evidence for the judge to find that the waiting time in limbo was likely to be much longer than the period stated in the decision letter [32].

19. I observe that the Presenting Officer's note suggests that a brief submission might have been made that the appellant's adult children would be able to work. The first appellant's statement said that his son worked with him but their daughter was not working because she had just had a baby. The judge failed to consider this submission in assessing whether the family were likely to face destitution during a temporary limbo period. However, this is not a matter that has been pleaded or particularised in the respondent's grounds of appeal.

20. I also note that the grounds of appeal refer to the decision in *Hysaj* (2020), and quote what was said about alternative forms of support under the Children Act 1989 at [109]. This was only cited for the general proposition relating to the weight to be given to the public interest when assessing a potential limbo period in the context of a challenge to the judge's finding that there was a public law error in the decision letter in relation to Article 8/section 55. The Presenting Officer's note indicates that the judge was referred to other aspects of *Hysaj* but not the observations made at [109], which were general findings on the facts of the case and did not form part of the main reasoning of the decision.

21. Although both of those points might have been relevant to the assessment of whether the family were likely to face such serious hardship in the limbo period, the evidence indicates that only one of the points might have been argued. Even then, it appeared to amount to no more than a bare assertion in submissions. There is no evidence to indicate whether the Presenting Officer cross-examined the appellants about other potential sources of income during the hearing to find out whether the two young adult children in the household really could earn enough to support the family during a limbo period.

22. In my assessment these points were not so obvious that a judge would be obliged to consider them if a party does not cross-examine the witnesses on them or formulate clear submissions. Save for some limited exceptions, which do not apply in this case, the principles in *R* (*Robinson) v SSHD* [1997] EWCA Civ 3090 generally avail an appellant rather than the respondent, who should be in a position to put the arguments she relies on in full to a court or tribunal. The purpose of the '*Robinson* obvious' principle is to prevent a breach of the United Kingdom's obligations under the Refugee Convention or the European Convention.

23. I have taken this brief detour simply to acknowledge that there is at least one point arising from the evidence attached to the grounds, that might have been relevant to the Article 8 assessment, which was not considered by the judge. The general observation in *Hysaj* at [109] might also have been relevant. However, the courts have made clear that procedural rigour is important when points of law are being pleaded: see *Talpada v SSHD* [2018] EWCA Civ 841 and *TC (PS compliance – 'issues based' reasoning) Zimbabwe* [2023] UKUT 00164 (IAC). These points do not appear to have been argued before the First-tier Tribunal in any meaningful way and are not particularised in the grounds of appeal before the Upper Tribunal. Nor was there any application to amend the grounds.

24. The facts of this case are somewhat unusual because both parents in the family are subject to decisions to deprive them of British citizenship. In many other cases of this kind at least one parent is not subject to deprivation and is still able to work. It is clear that the judge was concerned about the impact on the family, and in particular the two youngest children, if both parents were unable to work while waiting for a further decision. Despite the limitations of the FOI, it was open to the judge to find that the limbo period was likely to be longer than stated in the decision letter. Given that both parents would be deprived of status at the same time, the judge's conclusion that the impact of the decision was likely to be sufficiently serious to outweigh the public interest in deprivation was not outside a range of reasonable responses to the evidence. Another judge might have come to a different conclusion, but this judge's decision could not be said to be irrational.

25. For the reasons given above, I find that the grounds as pleaded do not disclose a material error of law in the First-tier Tribunal decision. The decision shall stand.

Notice of Decision

The First-tier Tribunal decision did not involve the making of an error on a point of law

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 August 2023