



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004091

First-tier Tribunal No:

DC/50144/2022

LD/00019/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On the 05 December 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAZAN XHEZAJ

(ANONYMITY DIRECTION NOT MADE)

Respondent

Decided without a hearing on 21 November 2023

DECISION AND REASONS

Introduction

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Maurice Cohen (the judge), promulgated on 23 August 2023. By that decision, the judge allowed Mr Xhezaj's appeal against the Secretary of State's decision to make an order depriving him of his British citizenship, pursuant to section 40(3) of the British Nationality Act 1981, as amended.

2. In allowing the appeal, the judge adopted what is said in the Secretary of State's grounds to have been a "traditional merits-based review". This, it is asserted, was erroneous and inconsistent with the binding authority of R (oao) Begum [2021] AC 765, and subsequent judgments of the Court of Appeal. The correct approach was to have applied public law principles to the questions of whether the condition precedent had been established and whether the Secretary of State had lawfully exercised his discretion.

The rule 24 response

3. Following the grant of permission, Mr Xhezaj's representatives, Karis Solicitors, provided a rule 24 response, dated 14 of November 2023. They conceded that the judge had materially erred in law for the reasons set out in the Secretary of State's grounds of appeal.
4. The response went on to suggest that the judge's decision be set aside and the appeal be remitted to the First-tier Tribunal for a complete rehearing at which all relevant issues could be considered in light of the current legal landscape relating to deprivation of citizenship.

The Secretary of State's reply

5. By an email dated 17 November 2023, a Senior Presenting Officer confirmed that the Secretary of State had no objection to the method of disposal suggested in the rule 24 response.

Decision on error of law and disposal

6. I am entirely satisfied that the concession made by Mr Xhezaj's representatives in the rule 24 response was appropriate. It is clear that the judge erred in his approach to the appeal, as contended in the grounds of appeal. Although some of the authorities relevant to deprivation appeals had not been published at the time of the hearing before the judge, others had been, including Begum.
7. In light of the erroneous approach, the judge's decision must be set aside.
8. There is no utility in preserving any findings made and I do not do so.

9. This is a case in which remittal to the First-tier Tribunal is appropriate. There needs to be a wholesale assessment of all relevant issues within the applicable legal framework.

Anonymity

10. There is no basis for making an anonymity direction in this case and I do not do so.

Comment

11. The fair and efficient administration of justice may sometimes seem like a throw-away line which is rarely exemplified in practice. However, I would commend Karis Solicitors for their conduct in these proceedings. They have acted with real professionalism in appreciating the strength of the challenge brought against the judge's decision in light of the applicable legal framework. They have not sought to simply sit on their hands, as it were, and wait to see what might occur at the error of law hearing. Rather, they have been proactive and helped to ensure the fair and efficient administration of justice in this case.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the First-tier Tribunal

- (1) This appeal is remitted to the First-tier Tribunal (Taylor House hearing centre) for a complete rehearing before a judge other than First-tier Tribunal Judge Maurice Cohen;
- (2) The issues for the First-tier Tribunal to determine on remittal will include:

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- (a) the factual basis relating to the condition precedent under section 40(3) of the 1981 Act;
 - (b) the factual basis on which the Secretary of State exercised his discretion;
 - (c) the lawfulness (applying public law principles) of the exercise of the discretion;
 - (d) if appropriate, how the lawful exercise of discretion should be weighed against the reasonably foreseeable consequences for Mr Xhezaj , with reference to Article 8 ECHR and section 6 of the Human Rights Act 1998
- (3) The First-tier Tribunal will issue appropriate case management directions in due course.

H Norton-Taylor

Judge of the Upper Tribunal

Immigration and Asylum Chamber

Dated: 21 November 2023