IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001998

First-tier Tribunal No: DC/00042/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 November 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

Sukhdev Singh
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms A. Imamovic, Counsel instructed by VK Solicitors
For the Respondent: Mrs Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 9 September 2024

DECISION AND REASONS

1. This is an appeal against a decision of the Secretary of State dated 3 February 2022 to deprive the appellant of his British citizenship pursuant to section 40(3) of the British Nationality Act 1981 ("the 1981 Act"). The appeal has been bought under section 40A of the 1981 Act.

2. There are three central issues:

    a. First, was it rationally open to the Secretary of State to conclude that the criteria in section 40(3) of the 1981 Act were met? The appellant applied for naturalisation as a British citizen at a time when, according to the Secretary of State, he was actively engaging in the commission of money laundering offences. By not declaring that conduct in the course of his application for naturalisation, and by declaring that he was of good character, the Secretary of State considers that the appellant's British

citizenship was obtained by means of fraud, misrepresentation or the concealment of a material fact.

b. Secondly, assuming that the Secretary of State was entitled to conclude that the section 40(3) criteria were met, was she entitled to exercise her discretion to invoke the power to deprive the appellant of his British citizenship?

c. Thirdly, would the deprivation of the appellant's British citizenship be unlawful under section 6 of the Human Rights Act 1998?

3. The appellant's appeal against the Secretary of State's decision was originally heard and allowed by First-tier Tribunal Judge Chamberlain by a decision promulgated on 11 April 2023. By a decision promulgated on 9 April 2024, Upper Tribunal Judge Mandalia set the decision of Judge Chamberlain aside, directing that the matter be reheard in the Upper Tribunal. It was in those circumstances that the matter resumed before me for the decision to be remade, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007. A copy of Judge Mandalia's decision may be found in the Annex to this decision.

Factual background

4. The full factual background is set out in the decisions of Judge Chamberlain and Judge Mandalia.

5. On 12 December 2008, the appellant applied for naturalisation as a British citizenship. He held indefinite leave to remain at the time, having done so since 11 February 2002. In the application form for naturalisation, the appellant declared that he was of good character. The form posed the following question, at point 3.12:

> "Have you engaged in any other activities which might indicate that you may not be considered a person of good character?"

6. The appellant ticked "No" in answer to that question. The application was successful. On 3 March 2009, the appellant was issued with a certificate of naturalisation as a British citizen.

7. On 21 December 2012, following a plea of guilty, the appellant was sentenced in the Crown Court at Derby to two offences under the Proceeds of Crime Act 2002 ("POCA"). He was sentenced to 42 months' imprisonment for each count, to run concurrently.

8. There are very few details about the facts of the offences. The only details relied upon by the Secretary of State, and the only details available to me, are those which are set out in the Police National Computer record of the appellant's convictions. The first offence is described as "*facilitate the acquisition/acquire/possess criminal property*", contrary to sections 329 and 334 of POCA, and were said to have been committed between 9 April 2007 and 20 June 2012. The second offence is described as "*enter arrangement to facilitate acquisition retention use or control of criminal property*", again between 9 April 2007 and 20 June 2012. Put another way, these were money laundering offences. The length of the sentences, following an early plea of guilty, suggests a degree of seriousness.

9. On 11 November 2021, the Secretary of State wrote to the appellant to state that she had reason to believe that his British citizenship had been acquired as a result of fraud. That was on the basis that the appellant had failed to disclose his involvement in money laundering offences when he applied for naturalisation as a British citizen, and prior to his naturalisation as a British citizen on 3 March 2009. The letter sought the appellant's representations, along with other details about his identity and private and family life arrangements.

10. On 23 November 2021, the appellant's then solicitors replied. The letter did not engage with the substance of the allegations relied upon by the Secretary of State but added that the appellant "vehemently denied" that he had obtained his British citizenship as a result of fraud. The letter provided other details pertaining to the appellant's private and family life.

11. By her letter dated 3 February 2022, the Secretary of State explained why she had decided to deprive the appellant of his British citizenship. In summary, she concluded that the appellant had failed to disclose his involvement in money laundering offences in his dealings with the Home Office. Despite having engaged in criminal conduct in respect of which he would later plead guilty, the appellant declared to the Secretary of State that he was of good character. He dishonestly failed to disclose his involvement in money laundering offences at the time, thereby falsely maintaining that he was of good character in circumstances when, in fact, he was not. The false declaration was, the letter concluded, material to the appellant's acquisition of British citizenship, meaning that the power contained in section 40(3) was, in principle, capable of being invoked. The letter put it in these terms:

> "You failed to disclose your involvement in money laundering offences on your application for naturalisation, instead claiming to be a person of good character. Had this been known, your application would have been considered differently and you would have not qualified for British citizenship. Therefore, your decision to intentionally deceive the Secretary of State regarding the question of good character was material to the grant of citizenship…" (para. 22)

12. The decision concluded that it would be appropriate to exercise discretion to invoke the power, and that there would be no disproportionate interference with the Article 8 ECHR rights of the appellant or his family.

The law

Naturalisation as a British citizen and deprivation of British citizenship

13. A person may acquire naturalisation as a British citizen in accordance with section 6(1) of the 1981 Act:

> "6.- Acquisition by naturalisation.
>
> (1) If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen."

14. Schedule 1 to the 1981 Act sets out the requirements for naturalisation as a British citizen. This includes at para. 1(1)(b) "that he is of good character".

15. Good character is not defined by the 1981 Act. The Secretary of State has adopted guidance from time to time on the meaning of the term. It may be found in the *Nationality Instructions*.

16. Section 40 of the 1981 Act empowers the Secretary of State to deprive a person of their British citizenship in certain circumstances:

> "(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.
>
> (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."

17. The criteria in section 40(2) and (3) operate as a condition precedent to the Secretary of State's exercise of her power to deprive a person of their citizenship. The power to deprive is discretionary ("the Secretary of State may"), with the consequence that the Secretary of State must decide whether to exercise the power to deprive, even if she is satisfied that a statutory condition precedent to doing so is met. The Secretary of State has published operational guidance to caseworkers addressing the exercise of this discretion, contained in Chapter 55 of the Nationality Instructions.

18. There is a right of appeal to the First-tier Tribunal against the Secretary of State's decision of her intention to exercise the power under section 40, rather than the deprivation order itself: see section 40A(1). It follows that, during the currency of any pending proceedings challenging a decision to make a deprivation order, the individual concerned will remain a British citizen.

19. The headnote to *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 115 (IAC) provides:

> "(1) A Tribunal determining an appeal against a decision taken by the respondent under s40(2) or s40(3) of the British Nationality Act 1981 should consider the following questions:
>
> (a) Did the Secretary of State 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 Secretary of State 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.
>
> (2) In considering questions (1)(a) and (b), the Tribunal must only consider evidence which was before the Secretary of State or which is otherwise relevant to establishing a pleaded error of law in the decision under challenge. Insofar as *Berdica* [2022] UKUT 276 (IAC) suggests otherwise, it should not be followed.
>
> (3) In considering question (c), the Tribunal may consider evidence which was not before the Secretary of State but, in doing so, it may not revisit the conclusions it reached in respect of questions (1)(a) and (b)."

Proceeds of Crime Act 2002

20. Section 328(1) of POCA creates an offence arising from entering into or becoming concerned in an arrangement to facilitate the acquisition etc. of criminal property. It provides:

> "(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person."

21. 329(1) of POCA creates the offence of the acquisition, use and possession of criminal property. It provides:

> "(1) A person commits an offence if he—
>
> (a) acquires criminal property;
>
> (b) uses criminal property;
>
> (c) has possession of criminal property."

The hearing

22. The resumed hearing took place at the Birmingham Civil Justice Centre on 9 September 2024. The appellant gave evidence in Punjabi through an interpreter, adopting his statement dated 7 February 2023. The appellant's wife, Mrs Sital Kaur, also gave evidence in Punjabi through an interpreter, adopting her statement dated 16 March 2023.

23. It is not necessary to summarise the witnesses' evidence in any depth at this point. I will refer to it to the extent the evident is relevant and necessary to reach my findings.

Submissions

24. Mrs Arif submitted that the appellant should have volunteered his involvement in money laundering offences when he submitted his application for naturalisation. The course of conduct for which he was convicted had commenced before he naturalised as a British citizen, and certainly before he submitted the application. That meant that he was not of good character at the time he naturalised as a British citizen and that, in turn, the appellant's

declaration at question 3.12 of the application for naturalisation that he was of good character was false, she submitted. Thus, the appellant obtained British citizenship as a result of his fraud, false representation or the concealment of a material fact. Moreover, the Secretary of State's decision to invoke the power to deprive the appellant of his British citizenship was within the range of decisions rationally open to her. There would be no breach of Article 8 of the ECHR. I should dismiss the appeal, Mrs Arif submitted.

25. On behalf of the appellant, Ms Imamovic submitted that the statutory condition precedent under section 40(3) of the 1981 Act was not met. There was very limited evidence about the facts of the appellant's offending before the Secretary of State. It was for the Secretary of State to establish that the appellant had acted dishonestly by declaring that he was of good character, and the Secretary of State's evidence failed to meet that threshold. The approach of the Secretary of State was to rely solely on the appellant's convictions, to the exclusion of any other evidence establishing his dishonesty. Contrary to the position of the Secretary of State, the appellant's convictions did not speak for themselves.

26. Ms Imamovic relied on *Ullah v Secretary of State for the Home Department* [2024] EWCA Civ 201 to contend that it is necessary for the Secretary of State – and this tribunal – to make an express finding that an applicant for British citizenship had been dishonest. See paras 28 to 30 of *Ullah*, concerning the Court of Appeal's conclusion that the test from *Ivey v Genting Casinos* [2017] UKSC 67 applies in the context of appeals under section 40A of the 1981 Act. In the absence of further evidence about the nature of the appellant's role and personal culpability, that test is incapable of being met, on the facts of this matter.

27. As to the issue of the Secretary of State's discretion, Ms Imamovic submitted that the delay between the appellant's offending conduct, and the Secretary of State's decision to deprive him of his British citizenship, meant that it was unlawful. As the decision itself noted at para. 25, the appellant had been a "crucial witness" in the prosecution of other members of the conspiracy. His involvement in those prosecutions as a prosecution witness had been cited by the Secretary of State as a reason for why it had not been possible to pursue the deprivation of his citizenship earlier. That was a factor militating strongly in favour of not pursuing deprivation action against the appellant, yet the Secretary of State did not address that matter at all. Further, the appellant's assistance to the prosecution of other offenders came to an end in 2014, and there was no explanation as to why it had not been until late 2021 that the Secretary of State decided to pursue the deprivation of the appellant's British citizenship.

28. Ms Imamovic submitted that the Secretary of State's decision amounted to a disproportionate interference in the appellant's Article 8 ECHR rights, and those of his family. In evidence, the appellant explained the impact that losing his British citizenship would have on him and his family. Moreover, in light of the assistance the appellant had previously provided to the prosecution, described as "crucial" by the Secretary of state, any such interferences would be disproportionate. The appellant works and supports his family.

First issue: Secretary of State rationally entitled to conclude that section 40(3) criteria were met

29. The PNC details available to the Secretary of State, coupled with the appellant's response dated 23 November 2021 to the Secretary of State's "minded to" letter of 11 November 2021, led the Secretary of State to conclude that, on 9 April

2007, the appellant commenced a course of criminal conduct that continued until 20 June 2012. The appellant's conduct meant, in relation to his conviction under section 328(1) of POCA, that he entered into or became concerned in an arrangement which involved the facilitation, acquisition, use or control of criminal property, where he at least suspected that the property was criminal. Similarly, under section 329(1) of POCA, the appellant must have either acquired, used or possessed property which he at least suspected to be criminal. Under section 340(3)(b) of POCA, "criminal property" is defined to include a requirement that the alleged offender either knows or suspects that the property is criminal property. Since there were no further conviction details pertaining to the extent of the appellant's conduct before the Secretary of State, other than the length of the sentences (such as the sentencing remarks themselves), I will assume that it was necessary for the Secretary of State to assume the lower formulation of the offence, namely suspicion, rather than knowledge. The appellant's sentences, however, were significant, suggesting that the appellant's offences were not merely for minor conduct.

30. The appellant, of course, did not declare his criminal conduct to the Secretary of State in the course of applying to be a British citizen. On the contrary, he declared that he was of good character. On any rational view, a person who has engaged in the conduct captured by sections 328(1) and 329(1) of POCA on the basis that they suspected the property was criminal is not of good character. Thus, the appellant was *not* of good character when he declared to the Secretary of State that he *was*.

31. This prompts the central issue under the first limb of my analysis: was the Secretary of State rationally entitled to conclude that the appellant used fraud, a false representation or the concealment of a material fact (namely his bad character) in the course of applying to naturalise as a British citizen? Those concepts require the Secretary of State to be satisfied that there was personal culpability on the part of the appellant. An inaccurate declaration of good character is not necessarily a fraudulent or dishonest declaration, nor would it necessarily entail the required element of concealment. "Concealment" is a term which requires culpable non-disclosure in order to prevent disclosure of an otherwise damaging fact. The issue is not whether the appellant had committed offences of dishonesty in the first place (not least because it is possible that the offences for which the appellant was convicted could have been committed on the basis of suspected criminal property), but whether he dishonestly failed to declare his criminal conduct, such conduct being based on his knowledge or suspicion that the money he was conveying was from the proceeds of crime.

32. Subject to Ms Imamovic's submissions concerning *Ullah* which I address below, pursuant to *R (oao Begum) v Secretary of State for the Home Department* [2021] UKSC 7 at para. 70, I must scrutinise the Secretary of State's decision by reference to established public law principles. The presenting issue in *Begum* was the standard of review to be applied by the Special Immigration Appeals Commission ("SIAC") to a decision of the Secretary of State taken under section 40(2) of the 1981 Act. It is now well-established that a *Begum*-compliant public law review applies to decisions under section 40(3) as well as to those under section 40(2) (see, for example, *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 238 (IAC) at paras 29 and 30(1); and *Chimi* at para. (1)(a) of the headnote). Returning to *Begum*, Lord Reed held that SIAC has the following functions when considering an appeal against a decision under section 40(2) of the Act:

> "First, it can assess whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight, or has been guilty of some procedural impropriety. In doing so, SIAC has to bear in mind the serious nature of a deprivation of citizenship, and the severity of the consequences which can flow from such a decision. **Secondly, it can consider whether the Secretary of State has erred in law, including whether he has made findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held.** Thirdly, it can determine whether the Secretary of State has complied with section 40(4), which provides that the Secretary of State may not make an order under section 40(2) 'if he is satisfied that the order would make a person stateless'. Fourthly, it can consider whether the Secretary of State **has acted in breach of any other legal principles applicable to his decision**, such as the obligation arising in appropriate cases under section 6 of the Human Rights Act. In carrying out those functions, SIAC may well have to consider relevant evidence." (Emphasis added)

33. It follows that the central, *Begum*-compliant, question for my analysis on this issue is whether the Secretary of State erred in law, including by making findings of fact which are unsupported by any evidence, and which are based upon a view of the evidence which could not reasonably be held. In performing that assessment, I must also address whether the Secretary of State acted in breach of any other applicable legal principles, including the assessment of the required presence of dishonesty.

34. I turn to Ms Imamovic's submission, relying on *Ullah*, that it was necessary for the Secretary of State to have concluded that the two-stage *Ivey* criteria for dishonesty were met, and that it is also necessary for me to be satisfied of the same by reference to the appellant's oral evidence on the issue. The two-stage test involves (in summary), first, determining the state of the individual's actual knowledge or belief as to the facts and then, secondly, against that background, assessing whether the conduct concerned was honest by reference to the objective standards of ordinary decent people. There is no requirement that the individual must appreciate that what he has done is, by those standards, dishonest.

35. Properly understood, there is nothing in *Ullah* concerning the need for a finding of dishonesty by the Secretary of State in *Ivey* terms which is inconsistent with *Begum*. Naturally, *Begum* did not focus on the components of a finding of dishonesty by the Secretary of State, since it concerned a decision taken under section 40(2) on national security grounds, rather than a section 40(3) decision. But where the Secretary of State concludes that a person has engaged in conduct to which section 40(3) applies, there is no separate concept of dishonesty which is specific to a section 40(3) decision, and which differs from the understanding of the concept elsewhere. Indeed, dishonesty is the common thread which features throughout each of the criteria in subsection (3). For the Secretary of State to invoke the power in section 40(3), the Secretary of State must be satisfied that the criteria are met, by reference to the two-stage *Ivey* test (although it will rarely be necessary expressly to refer to those concepts: see *R (oao Balajigari) v*

Secretary of State for the Home Department [2019] EWCA Civ 673 at para. 37, and *Ullah* at para. 29)).

36. I therefore accept that in order for the Secretary of State to be entitled to conclude that the section 40(3) statutory condition precedent is met, she must be satisfied that the appellant has engaged in dishonesty pursuant to an *Ivey*-compliant assessment of dishonesty. I will turn to the impact of post-decision evidence on that issue, below; the focus of this part of my analysis is whether the Secretary of State was rationally entitled to conclude that the appellant had engaged in conduct to which section 40(3) applied.

37. On 11 November 2021, the Secretary of State wrote to the appellant stating:

> "The Secretary of State is in possession of information confirming that you failed to disclose your involvement in money laundering offences in your dealings with the Home Office, culminating in your naturalisation as a British citizen."

38. The letter invited the appellant to submit representations going to that issue, and other matters pertaining to his family ties in the United Kingdom, relevant compassionate circumstances, and any human rights issues he wanted to be taken into consideration.

39. The appellant replied through his representatives on 23 November 2021. The letter was brief. All it said in relation to the Secretary of State's allegation of fraud was the following:

> "It is vehemently denied that our client obtained his citizenship as a result of fraud. We submit he clearly disclosed all requisite information and was transparent throughout the time he applied for his citizenship, contrary to Secretary of States [sic] assertion."

40. It was against the background of that exchange of correspondence that the Secretary of State took her decision to deprive the appellant of his British citizenship on 3 February 2022. The decision recalled the appellant's response to the Secretary of State's allegations, as summarised above. It said, at para. 18, that in the appellant's representative's letter "there was no mention of your conviction and imprisonment and the reasons why you did not declare your involvement on the naturalisation application." At para. 22, the Secretary of State put it in these terms:

> "You failed to disclose your involvement in money laundering offences on your application for naturalisation, instead claiming to be a person of good character. Had this been known, your application would have been considered differently and you would not have qualified for British citizenship. Therefore, your decision to intentionally deceive the Secretary of State regarding the question of good character was material to the grant of citizenship."

41. The letter also referred to the appellant having confirmed on the application form for naturalisation that he had read and understood the relevant guidance pertaining to naturalisation, which was in the following terms:

> "You must say whether you have been involved in anything which might indicate that you are not of good character. You must give

> information about any of these activities no matter how long ago it was. Checks will be made in all cases and your application may fail and your fee will not be fully refunded if you make an untruthful declaration. If you are in any doubt about whether you have done something, or it has been alleged that you have done something which might lead us to think that you are not of good character you should say so.

42. The letter continued:

> "It is clear from this that you were expected to volunteer the fact that you have been involved in money laundering activities and by not doing so you compounded your deception."

43. This led to the following conclusion, at para. 26:

> "For the reasons given above it is not accepted [that] 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."

44. Drawing this together, analysing it through the lens of the *Ivey* criteria, the Secretary of State found that the appellant had been subjectively dishonest by failing to disclose the criminal conduct which he was at the time engaged in to the Secretary of State. She found that he had declared himself to be of good character, and declared that he understood the applicable guidance concerning the need for full disclosure of all character-based matters, while knowing that he was engaging in money laundering activity at the same time, dishonestly concealing that fact because those activities meant that he was resolutely not of good character. The Secretary of State concluded that that conduct would be dishonest by the standards of ordinary decent people.

45. Those findings were consistent with the approach in *Ivey*. I reject Ms Imamovic's submissions that the Secretary of State failed to address whether the appellant's intention was to exercise dishonesty; she did, as demonstrated by the extracts quoted above.

46. I therefore consider that the Secretary of State was rationally entitled to conclude that the appellant had been dishonest, for the reasons she gave, as explained above. In reaching that conclusion, the Secretary of State correctly approached the question of the appellant's personal dishonesty and reached a conclusion that was open to her on the evidence.

47. Ms Imamovic's reliance on *Ullah* goes further than the Secretary of State's application of *Ivey* to section 40(3) decisions; she contends that it is necessary for me to assess the two *Ivey* questions for myself, on the basis of the appellant's oral evidence, and the remaining evidence in the case. In that connection, she submitted that, even if the appellant's conduct at the time amounted to a criminal offence, he did not realise that it was. While that did not affect his substantive criminal liability, it went to his state of knowledge at the time he

applied to naturalise as a British citizen, and his understanding of the need to declare matters contrary to the good character requirement.

48. At para. 21 of *Ullah*, the Court of Appeal appeared to agree with the proposition that it was for the First-tier Tribunal to determine *for itself* whether the appellant had been dishonest in the course of making the relevant declarations when applying for naturalisation. Green LJ said:

> "…the key issue of fact before the FTT was whether the Appellant was dishonest when he ticked 'No' to the question asked in the application form as to whether he has engaged in any activities which might indicate that he might not be considered a person of good character."

49. See also para. 22 of *Ullah,* concerning a three-stage process whereby the Secretary of State adduces evidence of a *prima facie* case of deception, followed by the evidential burden shifting to the appellant to provide an explanation satisfying a minimum level of plausibility, before reverting to the Secretary of State to establish why such explanation must be rejected, to the balance of probabilities standard. Assuming that Ms Imamovic does not accept that the Secretary of State's "minded-to" exchange of correspondence with the appellant satisfies that requirement, such a process would only be possible in the event I were to conduct a full-merits review myself.

50. If I accept Ms Imamovic's submissions, my analysis would differ significantly from that required by para. 70 of *Begum*, and from *Ciceri* and *Chimi*. I must determine which approach to follow. In turn, that requires analysis of what the *ratio* of *Ullah* is, properly understood.

51. I do not accept that *Ullah* is authority for the proposition that the *Begum* approach does not apply to section 40(3) appeals, for the following reasons.

52. The original appeal in *Ullah* was heard by the First-tier Tribunal on 22 February 2021 (see para. 14). That was before the judgment of the Supreme Court in *Begum* was handed down, on 26 February 2021. While the First-tier Tribunal did not promulgate its decision until after that date, on 4 March 2021, it appears that neither party sought to draw the attention of the First-tier Tier Tribunal to *Begum*, nor seek to modify its position in light of *Begum.* The first instance appeal proceeded on the basis of the pre-*Begum* understanding of the law, when the First-tier Tribunal was understood to be obliged to perform a full-merits assessment for itself, including by reference to post-decision evidence (see, for example, *KV (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 2483 at para. 6). The onward appeals to this tribunal (differently constituted) and the Court of Appeal appear to have proceeded on a similar basis.

53. I respectfully consider that *Ullah* is not to be read as concluding that *Begum* is of no application in relation to section 40(3) appeals (indeed, *Begum* is not mentioned in the Court of Appeal's judgment), but rather as a reflection of the timing of the hearing before the First-tier Tribunal, and the common ground concerning the approach later taken by the Secretary of State and those representing Mr Ullah in those proceedings.

54. In contrast with the position that obtained when the appeal in *Ullah* was heard by the First-tier Tribunal, the impact of *Begum* on section 40(3) appeals is now well-established. Moreover, the common ground about the need for the court to scrutinise post-decision evidence that was present in *Ullah* is absent from these

proceedings (see para. 21, "it is common ground that a finding of dishonesty in the application for naturalisation is needed…"). Mrs Arif specifically invited me to adopt a *Begum*-style public law review. Unlike the approach of the Secretary of State on the facts and chronology of the proceedings in *Ullah*, she did not agree in these proceedings that I should approach the matter on the same basis as the Secretary of State invited the First-tier Tribunal to in *Ullah*, on those facts. It was on the basis that the *Begum* approach had not been applied that Judge Mandalia set aside the decision of the First-tier Tribunal in his decision promulgated on 9 April 2024. It is on that basis that I shall conduct my analysis in these proceedings.

55. It therefore follows that the evidence of the appellant before me is, in public law terms, post-decision evidence. It does not go to the question of whether the Secretary of State was rationally entitled to conclude that the section 40(3) condition precedent was met, which is an assessment to be performed by reference to the materials that were before the Secretary of State. There are certain circumstances when post-decision evidence may be relevant in judicial review proceedings (such proceedings being the closest comparator jurisdiction for the review required in this context), but none is relevant here. One example is where post-decision evidence impugns the motive of a decision maker (see, for example, *R v Derbyshire County Council ex p Times Newspapers Limited* (1991) 3 Admin LR 241), or where the criteria in *E v R* [2004] EWCA Civ 49 are met, by reference to the *Ladd v Marshall* criteria.

56. In these proceedings, the appellant's oral evidence pertaining to the state of his knowledge at the time of the application for naturalisation does not satisfy the *Ladd v Marshall* criteria, and nor are there exceptional circumstances meriting a departure from those criteria. It is post-decision evidence and cannot form the basis of a public law challenge to an earlier decision.

57. In any event, even if I were assessing the matter for myself (and in case my analysis of *Ullah* is in error), the appellant's evidence would not have merited a different conclusion, when considered to the balance of probabilities standard. For example, at para. 6 of his statement dated 7 February 2023, the appellant said that he had no knowledge of the charges against him at the time he completed the application for naturalisation and maintained (see para. 7) that he was not aware of the investigation or the charges against him at the time of the application. That takes matters no further, since the issue is not whether the appellant had been *charged* at that point, but whether he was engaging in the underlying criminal activity. In his oral evidence, the appellant said that he began to work for the criminal gang from 2011 or 2012. I would find that that is at odds with the record of the appellant's offending conduct commencing in April 2007, over 18 months before the application for naturalisation. The appellant pleaded guilty to those charges, thereby accepting his guilt from April 2007. It appears that the appellant committed some of the offences as part of his work as taxi driver; the appellant's evidence was that he was "passing on large amounts of money". Mrs Kaur, the appellant's wife, gave evidence that he worked as a taxi-driver from 2007 to 2012, which is a date range that correlated with the date range for the convictions, and said, at para. 4 of her statement, that he had been "taking money from one place to hand it to another as per employer instructions". I also recall that the appellant received a relatively lengthy sentence following a timely plea of guilty, meaning that he must have been involved to a significant extent.

58. I would therefore find that the appellant sought to minimise his criminal past in his evidence before me, and purported to know far fewer details than he must know. He was described by the Secretary of State as a "crucial" prosecution witness in other members of the conspiracy and gave evidence for the prosecution in two related trials running until 2014. Yet despite that "crucial" role, he purported to know very little about his own conduct at that time, despite having received a sentence for what must have been a serious offence, which would have attracted a term of over five years after a trial (the appellant told me that he pleaded guilty at the earliest opportunity). I do not accept that the appellant's knowledge of the offending nature of his conduct throughout the period covered by the record of his convictions was as minimal at the time of his application for naturalisation as he now claims that it was. The appellant has had two opportunities to explain his knowledge of his past criminal conduct at the time leading to his naturalisation; first, in his representatives' letter of 23 November 2021, and latter before me. On the former occasion, his explanation was a bare denial that did not engage with the substance of the allegation about what he must have known, and been doing, in the run up to naturalising as a British citizen. Before me, his evidence was beset by the difficulties set out above. I would find that the appellant must know far more about what he did than he is prepared to accept.

59. If I were determining this matter for myself, I would therefore find that the actual state of the appellant's knowledge was that he was engaged in criminal conduct, that he knew that he was engaged in such conduct at the time of his application for naturalisation, and that he concealed that information because he knew if he disclosed it he would not have met the good character requirement. I would also find that ordinary decent people would consider that it would be dishonest not to reveal such information to the Secretary of State in the course of an application for naturalisation which places so much emphasis on the good character requirement, underlined by the specific declarations that the applicant was required to make in the course of making the application. That being so, I would find that the Secretary of State had demonstrated that the appellant had been dishonest within the meaning of section 40(3). He knew that he was not of good character because he was engaged in money laundering offences. Ordinary decent people would regard the non-disclosure of that bad character, while purporting to be of good character, to be dishonest.

60. Whichever way one reaches that conclusion, the appellant's dishonesty was plainly material to his naturalisation as a British citizen. The Secretary of State's decision states at para. 22 that:

> "had this [that is, the appellant's involvement in money laundering offences] been known, your application would have been considered differently and you would not have qualified for British citizenship."

61. So much is clear from Chapter 18 of Annex D of the *Nationality Instructions* in force at the time. See para. 24 of the Secretary of State's decision, which quotes that guidance as stating:

> "we would not normally consider applicants to be of good character if, for example, there was information to suggest: they did not respect and were not prepared to abide by the law (i.e. were, or were suspected of being, involved in crime)."

62. The above extract establishes that the appellant's criminal conduct at the time of his application for naturalisation, and subsequent criminal conduct continuing until the date of naturalisation (which he was under a continuing duty to declare), meant that he could not properly be regarded as being of "good character" for the purposes of acquiring British citizenship. The appellant's criminal conduct at the time of his application for naturalisation, and subsequent grant of British citizenship, would have disqualified him for the same, had it been known.

63. There is another reason why the appellant's concealment of his bad character contributed to the acquisition of his British citizenship by means of fraud, false representation, or the concealment of a material fact. As para. 24 of the decision goes on to explain, the relevant guidance also stated that:

> "…it should count heavily against an applicant who lies or attempts to conceal the truth about an aspect of the application for naturalisation – whether on the application form or in the course of enquiries. Concealment of information or lack of frankness in any matter must raise doubts about an applicant's truthfulness in other matters."

64. That policy, in my judgment, rationally entitled the Secretary of State to reach the following conclusion:

> "Had the caseworker known about you falsely stating that he had not engaged in activities relevant to the question of your character, it is highly likely your application would have been refused on character grounds alone."

65. Were I deciding the matter for myself, I would find that the appellant knew about his criminal conduct and deliberately chose to conceal it from the Secretary of State as part of the naturalisation process.

66. Drawing this analysis together, therefore, I find that the Secretary of State was rationally entitled to conclude that the appellant had obtained his British citizenship by means of fraud, false representation, or the concealment of a material fact. That conclusion is the same whether I assess the decision of the Secretary of State pursuant to a conventional public law review, or if I were to decide the matter for myself.

67. The answer to the first issue is therefore, yes, it was rationally open to the Secretary of State to conclude that the section 40(3) criteria were met, and I would find those criteria to be met were I considering the issue for myself.

Second issue: was the Secretary of State entitled to exercise her discretion to invoke the section 40(3) power?

68. Since this is a public law review of the Secretary of State's decision to exercise her discretion, I must not purport to take that decision myself. The Secretary of State's exercise of discretion must be scrutinised on public law grounds.

69. Delay is primarily relevant to the proportionality of any interference with Article 8 ECHR, and I turn to that issue below. In isolation, delay of the length at play in these proceedings does not amount to irrationality or another public law error.

70. The starting point must be the pre-decision representations made by the appellant. In his representatives' letter dated 23 November 2021, the appellant

relied on his Article 8 ECHR family life with his wife and three British children, born in 2005 (now aged 19), 2008 (now aged 16) and 2014 (aged 6 at the date of the hearing before me, now aged 7). The letter stated that it was in the best interests of the children that their father remained in the UK. It also maintained the appellant's position that he had been "transparent about his personal circumstances at the time he submitted his application for Citizenship." It did not raise the issue of delay or the appellant's assistance in criminal prosecutions.

71. The Secretary of State addressed the above factors in the context of her assessment of the Article 8 implications of her decision, and I turn to that analysis below.

72. The Secretary of State's decision was not irrational or otherwise unlawful on account of its treatment of the appellant's assistance as a crucial prosecution witness against other members of the criminal group. The Secretary of State was not invited to take that matter into consideration by the appellant during pre-decision correspondence. She was plainly aware of the appellant's assistance as a prosecution witness, having referred to it at para. 16 of her decision. The appellant's assistance meant that formal steps to deprive the appellant of his British citizenship could not commence until sometime after the conclusion of the last prosecution, as highlighted at para. 17 of the decision. The extent to which the appellant's assistance to the prosecution was a factor militating against the appellant being deprived of British citizenship was a matter of weight for the Secretary of State to determine. The Secretary of State, having plainly been aware of the assistance the appellant provided, and having not been invited expressly to address that issue, was in my judgment entitled to ascribe minimal significance to it as part of her exercise of discretion. There was no need expressly to refer to it, not least because it had not been raised by the appellant.

73. The Secretary of State's operational policy concerning the deprivation of citizenship, namely chapter 55.7.1, states:

> "If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation."

74. The decision to pursue the appellant's deprivation was, therefore, consistent with the relevant policy.

75. The Secretary of State's exercise of discretion involved no public law error.

Third issue: deprivation would not be unlawful under section 6 of the Human Rights Act 1998

76. Ms Imamovic's principal submission under this heading is that the Secretary of State delayed pursuing the appellant's deprivation for an unreasonably lengthy period of time. While, in principle, the Secretary of State was entitled to defer pursuing deprivation action against the appellant until he had finished giving evidence in the trials against his co-accused, that process concluded in 2014, submitted Ms Imamovic. The Secretary of State's decision to wait for a further seven years until taking action against the appellant renders the inevitable interference with the appellant's ECHR rights to be disproportionate.

77. I do not accept that the time taken by the Secretary of State to pursue deprivation action against the appellant significantly reduces the public interest in the deprivation of the appellant's British citizenship. While the appellant provided assistance only until 2014, that does not mean the Secretary of State was bound to initiate deprivation action at that stage. There are any number of reasons why it would not be prudent to commence deprivation action immediately. For example, it may have been necessary for the appellant to have given evidence in other trials or following the conclusion of further investigations in relation to other suspects. Alternatively, it may have been necessary to have waited for the possible resolution of any appeals, or linked criminal proceedings, such as confiscation matters. The Secretary of State's decision states that, "on 11 November 2021, the [Status Review Unit] were able to proceed with the investigation and a letter was sent to you…" In my judgment, some significance must attach to the words "were able to proceed", since it implies that the appellant's prior involvement in the criminal prosecutions as a witness meant that a degree of delay was necessary.

78. This scenario is far removed from a dysfunctional system, yielding unpredictable, inconsistent and unfair outcomes, which is the threshold to reduce the public interest on grounds of delay, pursuant to *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41.

79. The other ways in which delay is relevant to an Article 8 assessment arise from permitting an individual to remain in the country for a significant period, putting down roots of the sort protected by Article 8. Secondly, where an individual is not removed, the sense of impermanence which ordinarily attracts to an unlawful or precarious immigration status fades, and along with it there will be an increasing expectation that, if the authorities had sought to remove an individual, they would have done so already. See the summary at paragraph 20(2) of *Ciceri*. Neither category is relevant here since the appellant does not face removal, and it is necessary not to engage in a proleptic analysis of the appellant's prospective removal.

80. I therefore find that the issue of delay does not significantly diminish the public interest in maintaining the integrity of the conferral of British citizenship.

81. The remaining Article 8 submissions relied upon by Ms Imamovic related to the impact on the appellant's family of him being deprived of his British citizenship.

82. As part of this assessment, I take into account the best interests of the appellant's two minor children, aged seven and 16. Their best interests are plainly for their father to retain his British citizenship and for the *status quo* to continue. They will inevitably suffer disruption during the limbo period within which the appellant will face considerable uncertainty about his future immigration status, coupled with the loss of the right to work, and the exposure to the so-called "hostile environment".

83. Ms Imamovic relied on the appellant's residence in the United Kingdom since 2001, his history of work, and the difficulties that he will face in supporting his family (including two minor children) in the event that he loses his British citizenship. Those submissions flowed from the appellant's evidence, and that of Mrs Kaur, about the impact on the wider family. The appellant's eldest daughter has attained the age of majority and is at university. Mrs Kaur said that their elder daughter wanted to spend time studying in the EU, and that if the appellant

was no longer a British citizen, that would make it harder to travel to support here there.

84. In my judgment, the factors militating in favour of the appellant being deprived of his British citizenship outweigh those mitigating against it. The appellant's immigration status will be resolved pursuant to a separate process, and the decision to deprive him of his British citizenship is not a removal decision. In the event that the appellant is unable to resolve his immigration status satisfactorily upon the removal of his British citizenship, he will have the option of making a human rights claim which, if refused, will attract a right of appeal (it is inconceivable that such a decision could be certified as "clearly unfounded on the facts of this case, based on the evidence before me). That process will enable the appellant to make representations pertaining to why he should not be removed. The refusal letter states that within eight weeks of a deprivation order being made, a decision will be taken pertaining to the appellant's removal, deportation, or the issuing of leave to remain.

85. Thus, the central issue for my consideration under this heading is whether the "limbo" period between the deprivation order taking effect and the resolution of the appellant's immigration status would itself amount to a disproportionate interference in the appellant's Article 8 human rights, and those of his family. That assessment must take account of the reasonably foreseeable consequences of the deprivation order taking effect, pursuant to *Muslija (deprivation: reasonably foreseeable consequences)* [2022] UKUT 337 (IAC). Headnote (4) to *Muslija* states:

> "Exposure to the 'limbo period', without more, cannot possibly tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship. That means there are limits to the utility of an assessment of the length of the limbo period; in the absence of some other factor (c.f. "without more"), the mere fact of exposure to even a potentially lengthy period of limbo is a factor unlikely to be of dispositive relevance."

86. I find that the public interest in the maintenance of the integrity of the system of conferring – and depriving – British citizenship, and the need to deprive this appellant of his British citizenship outweigh the impact of exposure to the "limbo period" that the appellant and his family will face. The best interests of the appellant's minor children are a principal consideration which are capable of being outweighed by the cumulative force of other factors militating in favour of depriving the appellant of his British citizenship. The appellant will not face removal and will have the opportunity to regularise his status in due course, coupled with the prospect of being able to challenge any unfavourable decision from within the United Kingdom. The appellant's wife will be able to continue to work and to service the mortgage on their property.

87. While the appellant's eldest daughter seeks to study abroad, she is presently studying in the United Kingdom. In any event, the appellant would not be required to accompany her throughout the entirety of any overseas studies, and there is no evidence before me that he would not be able to travel on a visa issued to him as a citizen of India, as opposed to the United Kingdom. To the extent that the appellant would be unable to travel internationally at all during the "limbo" period, I do not consider that that is capable of amounting to the "more" that is required to tip the balance against depriving the appellant of his British citizenship. In any event, the appellant's eldest daughter is an adult, and it

is open to her to decide to stay in the United Kingdom during the “limbo period” which her father will be subject, or to choose to study outside the United Kingdom and to be visited by only her mother, or other persons not subject to the “limbo period” restrictions.

88. Drawing this analysis together, having considered the matter for myself with anxious scrutiny, I conclude that the decision to deprive the appellant of his British citizenship would not be unlawful under section 6 of the Human Rights Act 1998. It would be a proportionate and reasonable response to the public interest in depriving this appellant of his British citizenship.

Conclusion

89. In conclusion, I find:

a. it was rationally open to the Secretary of State to conclude that the criteria in section 40(3) of the 1981 Act were met, on the basis that the appellant’s British citizenship was obtained by means of fraud, misrepresentation, or the concealment of a material fact;

b. the Secretary of State’s exercise of discretion was not unlawful;

c. the decision would not be unlawful under section 6 of the Human Rights Act 1998.

90. This appeal is dismissed.

Notice of Decision

The decision of First-tier Tribunal Judge Chamberlain involved the making of an error of law and is set aside.

I remake the decision, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, dismissing the appeal.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 November 2024

Annex – decision of Upper Tribunal Judge Mandalia

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-001998

First-tier Tribunal No: DC/00042/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Secretary of State for the Home Department

Appellant

and

Sukhdev Singh
(NO ANONYMITY DIRECTION MADE)

Respondent

REPRESENTATION

For the Appellant: Mr P Lawson, Senior Home Office Presenting Officer
For the Respondent: Ms E Rutherford, instructed by Immigration Advisory Services

Heard at Birmingham Civil Justice Centre on 23 November 2023

DECISION AND REASONS

INTRODUCTION

1. The appellant in the appeal before me is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is Mr Singh. However, for ease of reference, in the course of this decision I adopt the parties' status as it was before the FtT. I refer to Mr Singh as the appellant, and the Secretary of State as the respondent.

2. The appellant is an Indian national. On 11 February 2002, he was granted indefinite leave to remain in the UK. On 12 December 2008 he applied for

naturalisation as a British citizen and on 3 March 2009 he was issued with a certificate of naturalisation as a British citizen.

3. In February 2013, the respondent was notified that the appellant had been sentenced to a 42 month term of imprisonment for his role as a courier in a money-laundering ring between 9 April 2007 and 20 June 2012. That prompted a referral to the Status Review Unit (SRU) for the respondent to consider whether the appellant should be deprived of his British Citizenship. An investigation was unable to commence immediately because due to ongoing trials in which the appellant was a crucial witness. On 11 November 2021, the appellant was sent a letter informing him that he had failed to disclose his involvement in money-laundering offences and the respondent was considering depriving him of his British citizenship. The appellant's representatives responded under cover of a letter dated 23 November 2021. The appellant denied that he obtained his British citizenship as a result of fraud and claimed he has disclosed all relevant information and had been transparent throughout. He also referred to the presence of his wife and three children all of whom are British citizens.

4. On 3 February 2022 the appellant was notified by the respondent of the decision to deprive him of nationality under section 40(3) of the British Nationality Act 1981. In summary, the respondent claimed that in his application for naturalisation, he was asked whether he has engaged in any other activity which might indicate that he may not be a person of good character. The appellant had answered "No". The appellant had declared in his application that he had read and understood the 'Guide to Naturalisation as a British Citizen' and that he understood that a certificate of citizenship may be withdrawn if, *inter alia,* it is found to have been obtained by fraud, false representation or concealment of any material fact. The respondent claims the appellant failed to disclose his involvement in money-laundering offences between 9 April 2007 and 20 June 20012. The respondent claimed that had his involvement in money laundering offences been known, the appellant's application would have been considered differently and he would not have qualified for British citizen. The respondent claims the appellant's decision to intentionally deceive the Secretary of State regarding the question of good character was material to the grant of citizenship. The appellant was expected to volunteer the fact that he had been involved in money laundering activities and by not doing so, he compounded the deception. The respondent said:

> "Had the caseworker known about you falsely stating that you had not engaged in activities relevant to the question of your character, it is highly likely your application would have been refused on character grounds alone."

5. The respondent noted the appellant had become involved in money laundering on 9 April 2007, and his involvement continued until 20 June 2012. His involvement had therefore commenced two years before he was naturalised as a British citizen. The respondent concluded that the appellant provided information with the intention of obtaining a grant of status and or citizenship in circumstances where his application would have been unsuccessful if he had told the truth. The fraud was deliberate and material to the acquisition of British citizenship.

6. The appellant's appeal against the respondent's decision was allowed by First-tier Tribunal Judge Chamberlain for reasons set out in a decision promulgated on 11 April 2023.

THE GROUNDS OF APPEAL

7. The respondent advances three grounds of appeal. First, the respondent refers to the decision of the Upper Tribunal in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00023, and claims the judge failed to conduct a review of the respondent's decision applying public law considerations as set out in *Begum* [2021] UKSC 7, *at [66] to [72]*. The respondent claims the judge decided for herself whether the appellant's naturalisation as a British citizen was obtained by one of the means set out in s40(3) of the British Nationality Act 1981, based on evidence before the Tribunal that was not previously before the respondent, rather than to review the respondent's decision on public law grounds.

8. Second, the respondent claims the appellant was convicted of an offence under s329 of the Proceeds of Crime Act 2009, which requires the prosecution to establish the appellant acquired property, which, as he knew or suspected, constituted or represented others' benefit from criminal conduct. 'Property' is defined in s340 of that Act as criminal property if; (a) it constitutes a persons benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and (b) the alleged offender knows or suspects that it constitutes or represents such a benefit. The respondent claims it is therefore perverse for the judge to conclude that the appellant was unaware that he was working for a criminal gang or that he was unaware that what he was doing was illegal. The respondent claims the judge gave inadequate reasons for concluding that the PNC printout of the appellant's conviction may not reflect the appellant's offending but may instead reflect the time that the gang was operating.

9. Third, the respondent claims the judge erred in exercising residual discretion under s40(3), based upon the appellant's oral evidence, without due regard to the significant public interest where the appellant has obtained his British citizenship by fraud. There is, the respondent claims, a significant public interest in the maintenance of the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct. The respondent claims it was perverse for the judge to suggest that the respondent had not taken into account the fact that the appellant had assisted the police, without identifying any public law error in that regard. The respondent claims the appellant was required to establish that no reasonable Secretary of State could have reached the conclusion reached. The fact that the appellant assisted the police only after his conviction, cannot, the respondent claims, rationally lead to a conclusion that the appellant should be allowed to retain citizenship obtained by fraud.

10. Permission to appeal was granted by First-tier Tribunal Judge Roots on 16 May 2023.

THE HEARING OF THE APPEAL BEFORE ME

11. Mr Lawson adopted the grounds of appeal. He submits, the Judge appears to have ignored material evidence. The respondent had referred to the information recorded on the PNC in the decision and the PNC printout that was before the Tribunal confirms the offence for which the appellant was convicted took place over a five-year period. As the appeal was not concerned with a decision to deport the appellant, the sentencing remarks were not before the FtT. The Judge

found the appellant to be credible and accepted, at [24], the appellant's evidence that he did not become involved transporting money until 2011. That finding is contrary to what is set out in the PNC printout that confirms the appellant's conviction. Mr Lawson submits that if the appellant had been honest about his offending when he made his application for naturalisation as a British citizenship, the application would have been refused for the reasons set out in the respondent's decision.

12. In reply, Ms Rutherford submits the judge reached findings that were open to her. The first issue was whether the condition precedent is met by failing to disclose the conviction. When the appellant made his application for naturalisation on 12 December 2008, he had not been convicted of any offence, although she acknowledges the respondent's guidance confirms the relevant conduct is not just limited to a conviction. She submits the judge was entitled to have regard to the absence of any sentencing remarks to explain the offence and put the conviction in context. The appellant has consistently maintained that he was only involved since 2011, and that he had no knowledge about anything that had happened before. At paragraph [13] of her decision the judge referred to the appellant's case, and at paragraph [14], the judge noted that apart from the information set out on the PNC, the respondent has not provided any other evidence to show that the appellant was involved from 9 April 2007. The appellant, Ms Rutherford submits, therefore was challenging the accuracy of the PNC and it was open to the judge to accept the evidence of the appellant and his wife that he was not involved with the gang until 2011.

13. As far as the exercise of discretion is concerned, Ms Rutherford submits section 40(3) of the 1981 Act provides a discretionary power to deprive a person of citizenship status when the condition precedent is met. At [31], the judge said that the respondent should have taken into account the fact that the appellant had assisted the police in bringing other criminals to justice. She submits the judge identified factors that the SSHD failed to have regard to. The appellant had entered a guilty plea, and he was a crucial witness that assisted with the conviction of others. The judge was entitled to say that the SSHD has disregarded something to which she should have attached weight and find that the SSHD should have exercised the discretion differently, given the reasons why there was a delay of over eight years before considering whether or not to deprive the appellant of citizenship.

DECISION

14. Before addressing the grounds of appeal and the submissions made by the parties it is useful to set summarise the legal framework. The BNA 1981 as far as is relevant here states:

> "40. …
>
> (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.

…

(5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying—

(a) that the Secretary of State has decided to make an order,

(b) the reasons for the order, and

(c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).

…

40A Deprivation of citizenship: appeal

(1) A person—

(a) who is given notice under section 40(5) of a decision to make an order in respect of the person under section 40, or

(b) in respect of whom an order under section 40 is made without the person having been given notice under section 40(5) of the decision to make the order,

may appeal against the decision to the First-tier Tribunal.

…

15. Section 40(3) of the BNA 1981 therefore provides that the respondent 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. On appeal, the Tribunal must establish whether one or more of the means described in subsection 3(a), (b) and (c) were used by the appellant in order to obtain British citizenship. The provision has a rational objective, which is to instil public confidence in the nationality system by ensuring any abuse is tackled and dealt with accordingly. The objective is sufficiently important to justify limitation of fundamental rights in appropriate cases.

16. In *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC) the Upper Tribunal set out the overarching law regarding deprivation of citizenship and the task of the Tribunal. The President referred to the principles set out by Leggatt LJ in *KV (Sri Lanka) v SSHD* [2018] EWCA Civ 2483 and the way in which the principles must be read in light of the judgments of the Court of Appeal in *Aziz v SSHD* [2018] EWCA Civ 1884, and *Laci v SSHD* [2021] EWCA Civ 769, and more fundamentally, in light of the judgment of Lord Reed in *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7. The Upper Tribunal reformulated the relevant principles in paragraph [30] of its decision as follows:

"30. Our reformulation is as follows.

(1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the 1981 Act 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 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). 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 EB (Kosovo) (see paragraph 20 above).

(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."

17. The decision of the Supreme Court in *Begum* was concerned with deprivation of citizenship where the Secretary of State is satisfied that deprivation is conducive to the public good. The condition precedent in such an appeal is that 'the Secretary of State is satisfied *(my emphasis)* that deprivation is conducive to the public good'. In a s40(3) case, the condition precedent is that 'the Secretary of State is satisfied that registration or naturalisation was obtained by means of fraud, etc'. At paragraphs [66] and [67] of Lord Reed's judgment in *Begum*, he refers to the statutory language which indicates that Parliament has conferred the exercise of this discretion on the Secretary of State and no-one else. The statutory language used in s40(2); "if the Secretary of State is satisfied that" is replicated in section 40(3).

18. The judge heard evidence from the appellant and his partner, Mrs Sital Kaur. She found them to be honest and credible witnesses. At paragraphs [12] and [13] of her decision, the judge summarised the respondent's reasons for depriving the appellant of British Citizenship and the appellant's case:

> "12. On 8 February 2013 the Respondent received notification that in December 2012 the Appellant had been sentenced to 42 months imprisonment for his role as a courier in a money laundering ring between 9 April 2007 and 20 June 2012. This prompted a referral for the Appellant to be considered for deprivation of his British citizenship. "The investigation was unable to commence immediately due to the ongoing trials in which [the Appellant was] a crucial witness." The Respondent proceeded with her investigation in November 2021. As the Appellant had failed to disclose his involvement in money laundering offences, the Respondent considered that he had obtained his British citizenship through fraud.
>
> 13. The Appellant's case is first that he was not involved with the money laundering gang until 2011, and secondly, he did not realise that what he was doing was not legitimate in any event."

19. At paragraph [14] of her decision the judge said:

> "The Respondent's case is that the Appellant was already involved in money laundering when he applied for citizenship. I have considered the evidence of the Appellant's involvement. The only evidence I have to show that the Appellant was involved from 2007 is the information from the PNC (page 125 RB). The dates for the commission of the offence on the charge sheet are "09/04/07 – 20/06/12". The Respondent has not provided any other evidence to show that the Appellant was involved from 9 April 2007. In particular, she has not provided the sentencing remarks…"

20. Having considered the evidence before the Tribunal, the judge concluded at [24]:

> "Taking all of the above into account, I accept the Appellant's evidence that he did not become involved transporting money until 2011. I find that he was not transporting money when he made his application for British citizenship. I accept the Appellant's evidence that the PNC record does not reflect his involvement, although it may reflect the time that the gang as a whole was operating. Further, I find that the Appellant was unaware that he was working for a criminal gang, and that what he was doing was illegal. I find therefore that he did not obtain his British citizenship through fraud, one of the means specified in section 40(3), and the condition precedent does not exist."

21. In a s40(3) case, the condition precedent is that 'the Secretary of State is satisfied that registration or naturalisation was obtained by means of fraud, etc'. The judge found that the condition precedent has not been established. She reached that conclusion having accepted the appellant's evidence that he did not become involved in transporting money until 2011, and he did not realise what he was doing was illegal.

22. The judge had before her the PNC print setting out the record of the appellant's conviction. The PNC records the appellant was convicted on 21 December 2012 at Derby Crown Court of facilitating the acquisition/acquiring/possession of criminal property "on 09/04/07 – 20/06/12" contrary to sections 329 and 334 of the Proceeds of Crime Act 2002. He was also convicted on the same day of entering into an arrangement to facilitate the acquisition/acquiring/possession of criminal property "on 09/04/07 – 20/06/12" contrary to sections 328(1) of the same Act. Ms Rutherford submits that from what is said by the judge in paragraphs [15] to [24] of her decision, it can reasonably be assumed that the judge accepted the appellant's claim that the PNC printout is not an accurate record of the appellant's conviction. At paragraph [24], the judge said that she accepts the appellant's evidence that the PNC does not reflect his involvement, although it may reflect the time that the gang as a whole was operating. The judge also found the appellant was unaware that he was working for a criminal gang, and that what he was doing is illegal.

23. There are in my judgement three difficulties with that submission. First, at paragraph [16] of the respondent's decision dated 3 February 2022 the respondent expressly said that the appellant had been sentenced to 42 months imprisonment for his role as a courier in a money-laundering ring between 9 April 2007 and 20 June 2012. The appellant had prepared a witness statement dated 7 February 2023. He confirmed in paragraph [3], that in 2012, he was charged and later convicted in December 2012 and sentenced to imprisonment for 42 months. He claimed in that statement that at the time of his application for naturalisation, he had no knowledge of charges or conviction against him. In that statement he did not challenge the respondent's claim of his involvement in the offences between 9 April 2007 and 20 June 2012. The issues in the appeal before the FtT were set out in a skeleton argument filed and served on behalf of the appellant dated 14 March 2023. In the summary, at paragraph [3], it was acknowledged that on 21 December 2012 the appellant was convicted under the Proceeds of Crime Act 2012 and sentenced to 42 months imprisonment. It formed no part of the appellant's claim as set out in the 'Schedule of Issues' in paragraph [4] of that skeleton argument, that the appellant challenges the claim made by the respondent that the appellant was sentenced to 42 months imprisonment for his role as a courier in a money-laundering ring between 9 April 2007 and 20 June 2012. Second, the PNC printout that was before the FtT was evidence of the

appellant's conviction and sentence from an official source as referred to in the respondent's decision. The PNC sets out the offence for which the appellant was convicted beyond reasonable doubt. It appears the judge sought to go behind the conviction by reaching her own view as to the appellant's culpability. Third, the offences for which the appellant was convicted required the prosecution to establish the appellant acquired property, which, as he knew or suspected, constituted or represented others' benefit from criminal conduct.

24. The First-tier Tribunal was required, in the end, to ask itself whether it was open to the Secretary of State to conclude that naturalisation was obtained by one of the means identified using conventional public law principles, rather than by subjecting it to a full merits reconsideration as the judge did here. Applying the reasoning from paragraph 68 of Lord Reed's judgment in *Begum*, the jurisdiction of the Tribunal does not extend to the possibility of the Tribunal making the decision afresh. The Tribunal does not have jurisdiction to consider for itself whether it is satisfied of any of the matters set out in s40(3) or to exercise the Secretary of State's discretion. Consistent with paragraph 1 of the headnote in *Ciceri*, it is not the task of the Tribunal to undertake a merits-based review and a redetermination of the decision on the existence of the condition precedent, as it were, standing in the shoes of the respondent.

25. I accept that in paragraph [71] of his judgment in *Begum*, Lord Reed set out examples of the public law errors that the Tribunal might conclude has affected the respondent's decision as to the precedent condition. For example, whether the respondent has acted in a way in which no reasonable Secretary of State could have acted, or, made findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held. However, as Lord Reed said, the Tribunal also has to bear in mind that some decisions may involve considerations which are not justiciable, and that due weight has to be given to the findings, evaluations and policies of the Secretary of State. There can be little doubt that in reaching the decision here, the respondent was entitled to have regard to the convictions recorded against the appellant and as far as the particulars of the offences are concerned, the dates between which it is said the appellant committed the offences as set out in the PNC record.

26. In my judgment, rather considering whether the respondent had made findings of fact which are unsupported by any evidence or were based on a view of the evidence that could not reasonably be held by reference to public law principles, it is clear the judge carried out a merits-based assessment of the evidence, imposing upon the respondent an obligation to establish that the appellant had secured naturalisation as a British citizen by means (a) fraud, (b) false representation, or (c) concealment of a material fact. The decision is vitiated by a material error of law and must be set aside.

27. Although the judge went on to say, at [25], that she did not need to proceed to consider Article 8, she went on, at paragraphs [26] to [32], to say that the respondent should have taken into account other considerations when exercising the SSHD's residual discretion in section 40(3), and that the respondent has disregarded matters to which due weight should have been given. The judge referred in particular to two factors. First, the delay of eight and a half years between the respondent becoming aware of the appellant's offending and conviction and second, the assistance provided by the appellant to the police to bring other criminals to justice.

28. I accept 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). The delay here was connected to the second factor that is relied upon by the appellant. That is, the assistance that he provided to the police. He continued to assist the Police with enquiries, identifying other individuals involved when he was in prison, and he gave evidence in two trials after he had left prison.

29. At paragraphs [16] of the respondent's decision, the respondent referred, in passing, to the delay that had occurred following the referral to the Status Review Unit, noting the investigation was unable to commence immediately due to the ongoing trials in which the appellant was a crucial witness. In addressing Article 8, the respondent accepted the appellant held British citizenship since 2009 and that loss of citizenship will have an impact on his identity. However, the respondent said the misrepresentation only came to the Secretary of State's attention as a result of the appellant's conviction and the Home Office would have considered taking deprivation action earlier if it could have done so. At paragraph [36] of the decision, the respondent said:

> "The effects of deprivation action on you [and your family members] must be weighed against the public interest in protecting the special relationship of solidarity and good faith between the UK and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality. Having weighed those effects, it has been concluded that it is reasonable and proportionate to deprive you of British citizenship."

30. The judge concluded the decision to deprive the appellant of his British citizenship is not in accordance with section 40(3), both with regards to the existence of the condition precedent, and with regards to the exercise of residual discretion. The Judge found the respondent should have exercised her discretion differently but failed to have adequate 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.

31. I am satisfied that reading the decision as a whole, the decision of the FtT is vitiated by material errors of law and must be set aside.

DISPOSAL

32. As far as disposal is concerned, the appropriate course is for the decision to be remade in the Upper Tribunal. The Upper Tribunal will have to determine whether it was open to the Secretary of State to conclude that the appellant's naturalisation was obtained by means of (a) fraud, (b) false representation, or (c) concealment of a material fact, applying public law principles. If the Tribunal concludes the condition precedent is satisfied, the Upper Tribunal will go on to consider whether the respondent materially erred in law when she decided to exercise her discretion to deprive the appellant of British citizenship, and if not, whether the decision is unlawful under s6 of the Human Rights Act 1998.

NOTICE OF DECISION

33. The decision of Judge Chamberlain to allow the appeal is set aside.

34. The decision will be remade in the Upper Tribunal. The appeal will be listed for hearing (before Judge Mandalia if possible) on the first available date after 21 days with a time estimate of 3 hours.

35. If the appellant intends to give evidence and an interpreter is required, the appellant's representatives shall notify the Tribunal within 7 days, and identify the language required.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 February 2024