IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002608
First-tier Tribunal No:
LD/00252/2022
DC/50152/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 April 2024

Before

UPPER TRIBUNAL JUDGE SMITH

Between

OLTA FARRUKU
[NO ANONYMITY DIRECTION MADE]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Saleem, Solicitor, Malik & Malik solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on Wednesday 13 March 2024

DECISION AND REASONS

PROCEDURAL BACKGROUND

1. By a decision promulgated on 8 January 2024, I found an error of law in the decision of First-tier Tribunal Judge Atkins itself promulgated on 21 March 2023 allowing the Appellant's appeal against the Respondent's decision dated 6 July 2022 depriving the Appellant of her British citizenship on the basis that it was acquired by fraud/deception or making of false representations. My error of law decision is annexed hereto for ease of reference.

2. In consequence of the errors found, I set aside Judge Atkins' decision but only in part. The Respondent in his skeleton argument for this

hearing submitted that I should not have preserved the findings I did from Judge Atkins' decision. I return to that submission below.

3. As indicated at [23] of my error of law decision, both parties agreed that there was no need for further evidence as I had preserved the findings of fact made by Judge Atkins. The hearing therefore proceeded on submissions alone.

4. I had before me a bundle containing the core documents for the appeal as well as the Appellant's bundle before the First-tier Tribunal ([AB/xx]) and the Respondent's bundle also before that Tribunal ([RB/xx]). I also had skeleton arguments filed on behalf of the Appellant and the Respondent. I have read all the evidence but refer below only to that which is relevant to my consideration of the issues.

5. Having heard submissions on behalf of both parties, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

LEGAL CONTEXT/ ISSUES

6. The legislative context for the decision under appeal is section 40(3) British Nationality Act 1981 as follows:

> "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."

7. The Tribunal guidance in relation to deprivation appeals is now consolidated in the Tribunal's decision in Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 00115 (IAC) ("Chimi").

8. The guidance in Chimi is set out at [18] of the error of law decision and I do not therefore propose to repeat it.

9. In short summary, in relation to whether the condition precedent (fraud/false representation/concealment of a material fact) is met, the issue is whether the Respondent was entitled to be satisfied that it is met (following the approach in Begum v Secretary of State for the Home Department [2021] UKSC 7 – "Begum"). Similarly, in relation to the exercise of discretion, the issue is whether the Respondent has erred (in public law terms) when exercising the discretion which is his to deprive the Appellant of citizenship.

10. However, when it comes to the third issue (whether the Respondent's decision breaches Article 8 ECHR), it is for the Tribunal

to reach its own conclusions on the merits. However, when reaching that conclusion, the Tribunal is only considering the impacts of deprivation (taking into account the reasonably foreseeable consequences of deprivation). Whilst the Tribunal may consider evidence before it on this third question, it cannot revisit its conclusions on the first and second questions by supplanting the Respondent's findings for its own findings on the evidence. The issue on the first two questions is only whether the Respondent was entitled to reach the conclusions he did for the reasons he gave on the evidence he had.

FACTUAL BACKGROUND

11. Although the factual background is set out in summary form in my error of law decision, I consider it necessary to set it out in detail in order to set the submissions and my consideration of them in context.

12. The underlying deception is that of the Appellant's husband, Mr Ismet Nuzi, who is a national of Albania born on 13 June 1978. He came to the UK in 1999 claiming to be Ismet Berisha, a national of Kosovo. He claimed asylum in that identity. It appears that he was not recognised as a refugee but in 2009 he obtained indefinite leave to remain (ILR) still using the false identity and later naturalised also in that identity.

13. That the Appellant's husband obtained his citizenship by fraud is not denied. Deprivation action was taken against him. He did not appeal the decision. Mr Clarke informed me that a deprivation order was made against him on 9 November 2021. On 30 November 2021, he was granted limited leave to remain based on his relationship with his two British children.

14. The Appellant met her husband in Albania in 2011. She says that from the outset he told her that he was Ismet Berisha and that he was born in Kosovo on 13 May 1982. She denies that she knew of his real identity until he received the letter from the Respondent threatening him with deprivation action. That was in August 2020.

15. The Appellant sought entry clearance as Mr Nuzi's fiancée on 13 February 2012. Entry clearance was initially refused but granted following a successful appeal. The Appellant entered the UK on 28 October 2014. They married in the UK on 4 December 2014. The certificate shows that the Appellant's husband married his wife using the Berisha identity ([RB/308]).

16. The couple have two children born in April 2015 and February 2018. Both bear the Berisha surname. The evidence shows that between 2011 and 2020, the Appellant's husband used the Berisha identity for all his dealings with the authorities (including the marriage, registration of his children and other transactions such as purchase

of a property, employment, banking and utilities). The Appellant continued to use her maiden name (as she does now).

17. The Appellant was subsequently granted limited leave to remain as the wife of Mr Berisha. She applied for ILR again giving the Berisha identity on 15 September 2017 ([RB/230 – 300]). She was granted ILR on 13 March 2020.

18. The Appellant applied for citizenship on 29 March 2021. In that application she gave the following details about her "current partner" ([RB/386]). She said that his name was Mr Ismet Berisha, but she also disclosed that he was also known as Mr Ismet Nuzi. However, under his town and country of birth she said this was "Pej, Kosovo". She gave his date of birth as "13 May 1982". As a matter of fact, both of those statements were untrue and on her own case she knew that to be so.

19. Under the heading of "Immigration Details" ([RB/389]), she answered "no" to the question whether there were any other details that she would like to be considered regarding the application to be registered as a British citizen.

20. The Appellant provided proof of her husband's British citizenship (although it is not clear what that was since his passport had by then been revoked). By that time, she knew that the Respondent was investigating her husband in relation to his citizenship.

21. Under the heading of "Declaration" at [RB/391], the Appellant declared that to the best of her knowledge and belief all the information relating to the application and supporting evidence was correct. As a matter of fact, that too was a lie in light of the foregoing. A warning was given in this section of the form that if any of the information was incorrect, the application would be refused and that she could be "banned from the UK and prosecuted". She could have been under no illusion about the seriousness of that declaration. The form shows that she as the applicant submitted the form. The declaration states that she is submitting the form as the applicant.

22. The deprivation decision against the Appellant's husband was made on 9 September 2021. That decision appears at [RB/441-456]. As Mr Saleem pointed out in his submissions, that letter indicated that deprivation action against her husband would not impact on the Appellant's status ([RB/454]). However, as Mr Clarke pointed out, at that time, the Appellant did not have citizenship. She was not naturalised until 16 September 2021.

23. As already noted, the Appellant's husband was deprived of nationality on 9 November 2021 and granted limited leave to remain on 30 November 2021.

24. The Appellant was sent an investigation letter on 1 November 2021. That appears at [RB/433-435]. In that letter, the Appellant was asked about her relationship with her husband and about her children. The Respondent indicated that the Appellant had provided false details about her husband in all applications and had obtained her status as a British citizen "as a result of fraud". The Appellant was asked to provide any information which she wished to be taken into account "as to the reasons for [her] false representations".

25. The Appellant responded on 15 November 2021 ([RB/436-437]). Since this letter forms the basis of the evidence which the Respondent was to take into account in the Appellant's favour when considering whether to deprive her of citizenship, I set out the relevant part of the letter in full:

> "You claim on your letter that I have falsified my husband place of birth and Nationality on the application in order to secure citizenship in UK. I would like to clarify that my husband has been living in UK since 1999, had registered himself as a UK citizen with the details I submitted in my applications. At the time of my application for citizenship I have given his legal details as he was registered at the time. Also, I have declared any other names he was known by in the same application.
>
> Furthermore, I wish to state that I have never claimed asylum and never held refugee status in UK. I came to UK on a spouse visa and have settled in UK on that basis, contrary to what you have stated in your letter. Also, in your letter dated 9th September 2021 (ref: B1023761) sent to my husband, on paragraph 64, you state that his nationality deprivation case will have no impact my status in UK. My application for British Citizenship was made on the bases of my residency rather than the marriage route, so I was not relying on my husband's British status in obtaining citizenship."

26. It is worthy of note that the Appellant did not say as she does now (in her statement at [AB/4-10]) that she was entirely unaware of her husband's true identity until he was threatened with deprivation action. Her answer appears to be a rather technical one that at the time of the application which was prior to the deprivation decision, her husband was in fact a British citizen with the Berisha identity and therefore on his case born in Kosovo in May 1982. She also suggests that by declaring the alternative Nuzi identity she had alerted the Respondent to her husband's true identity. She also asserts that her citizenship was based on her length of legal residence which may be true in the sense of having had ILR for more than one year and having been entitled to ILR based on a previous period of leave. However, having initially entered as a spouse and having been granted further leave in that capacity, those grants were directly relevant to the grant of ILR and then citizenship.

27. The Respondent issued the decision to deprive the Appellant of nationality on 6 July 2022. That decision is at [RB/535-545]. I will come to the substance of that below.

PREVIOUS FACTUAL FINDINGS

28. In my error of law decision, I preserved the findings of fact made at [53] to [70] of Judge Atkins' decision on the basis of the Respondent's failure to challenge those findings. Mr Saleem relied heavily on those findings as I will come to.

29. In his skeleton argument, the Respondent invited me to set aside my error of law decision in that regard. He argues that the findings which I have preserved were in fact challenged implicitly by the challenge to the conclusions drawn from those findings at [80] and [81] of Judge Atkins' decision (which I set aside due to error of law).

30. I do not accept that submission. The challenge was to the use made of the findings and not the findings themselves. Depending on my view of the correct approach to the issues I have to determine, the making of those findings may have been a pointless exercise on the part of the Judge. However, that does not mean that he was not entitled to record the evidence he heard or say what he thought of it. He was of course required to consider the merits of any Article 8 claim for himself. The evidence might have been relevant to any submission to be made about errors in the Respondent's decision under appeal. In the event it was not as Judge Atkins accepted that "the Respondent had sufficient evidence to take a reasonable view that the condition precedent was met" (albeit I set that finding aside in order to re-determine the issue on the correct legal basis).

31. I turn then to the findings which were made by Judge Atkins which were preserved. He accepted that the Appellant's husband may well not have told her of his true identity when they met or subsequently. He accepted that her English may not have been good enough to complete applications in the early stages and that the Respondent's reliance on the Berisha identity being a deception at the time of the entry clearance application might not therefore have caused the Appellant to question her husband's true identity.

32. The Judge did not accept however that the Appellant's English was sufficiently poor as not to understand her later applications. He accepted at [60] of the decision the Respondent's view that "at the very latest, by the time her application for leave to remain was made in 2020 that she would have been able to read and understand the forms". He did not however "consider that it is implausible" that she would have relied on her husband to complete the applications ([61] – there is a stray "not" in the sentence there). He did not consider that the use of the Berisha identity in those forms would have rung alarm bells ([62]) for the reasons there given. He found therefore that the Appellant had not knowingly deceived the Respondent in the earlier applications.

33. In relation to the naturalisation application, the Appellant could not of course deny that she knew of her husband's deception by that point. The Judge found that her explanation for giving the Berisha identity first on the form was "not implausible" as that was the name he had been using with the authorities. The Judge considered it important that the Appellant had also given the Nuzi identity which he considered to "strongly indicate that she was not attempting to deceive the Respondent" ([66]).

34. The Judge pointed out that the form did not include an option to give an alternative place and date of birth ([67]). The reason for that must be obvious. As a matter of common sense, a person can only be born once and therefore can only truly be born in one place on one date. The Judge then says that "there would be very little purpose" in the Appellant intending to deceive by giving the false place and date of birth ([68]). I pause to observe that the Judge does not appear to have considered the alternative condition precedent of false representations. In any event, the Appellant knew that those facts were untrue, and the Judge does not explain how the Appellant could then sign a declaration that they were true without any intention to give false information.

35. The Judge reaches the following conclusions at [69] to [70] of the decision:

> "69. Weighting all of these items together, I conclude that it is more likely than not that the information given in the form was a well-intentioned if not wholly accurate attempt to set down the true position – namely that the Appellant's husband was Mr Nuzi who had also used the name 'Ismet Berisha'.
> 70. I accordingly find that the Appellant did not intend to deceive the Respondent when she submitted her application for naturalisation."

36. Notwithstanding that conclusion, as noted above, at [75] of the decision the Judge concluded that at the time of the decision the Respondent had sufficient evidence to take a reasonable view that the condition precedent was met. As the Respondent points out in his skeleton argument, that finding was not challenged either, but I have set it aside. I have done so however because Judge Atkins did not conduct the correct assessment when leading to that conclusion. It is now for me to determine whether the Respondent was entitled to be satisfied as to the existence of the condition precedent and whether he was entitled to exercise discretion to deprive for that reason. I therefore turn to the Respondent's decision before conducting my assessment of the evidence.

THE RESPONDENT'S DECISION

37. The decision letter appears at [RB/535-545]. I refer below to paragraphs in that letter.

38. The Respondent sets out the history of the Appellant's case noting that the Appellant ought to have been on notice of the concerns about her husband's nationality when those were raised at the time of the entry clearance application ([14]). However, for the most part the Respondent relies there on the Appellant's husband's deception and not the Appellant's knowledge of the true position.

39. The Respondent then moves on to the naturalisation application. The Respondent accepts that the Appellant gave both the true and false names of her husband ([24]). However, the Respondent there also relies on the Appellant having given the false place of birth. Reference is made to the declaration made in the form regarding the truth of the information and evidence ([25]).

40. At [28] to [30] of the decision, the Respondent deals with the Appellant's representations as follows:

> "28. On the 15 November 2021 (Annex M1 to M23) you replied to our investigation letter of the 1 November 2021. You state that your spouse has been living in the UK since 1999 and that he naturalised in the identity submitted in your applications. Furthermore, at the time of your application for naturalisation you declared both his identities (Annex M1 Paragraph 1).
> 29. In respect of paragraph 64 of our Notice to Deprive letter (Annex M19) dated 9 September 2021 (M6 to M21), in which we stated that deprivation of citizenship would not have an impact on your status in the UK. At the time when we were considering the status of your spouse, you yourself were not under consideration however, our position has now changed, and we believe that it is both balanced and proportionate to pursue deprivation in your case.
> 30. Additionally, you stated that your application for British citizenship was made based on your residency and not as a consequence of your husband's status. As you were married to a British citizen your application was considered under section 6(2) of the British Nationality Act 1981, meaning that your husband's status was material to the grant of citizenship."

41. Thereafter, at [32] to [34] of the decision, the Respondent considered the case in line with his Chapter 55 guidance as follows:

> "32. Further considerations have been given to the materiality aspect of the fraud you employed. Chapter 55.7.1 states that if the relevant facts had they be known at the time the application for citizenship was considered would have affected the decision to grant citizenship via naturalisation the case worker should consider deprivation (Annex N11 Chapter 55.7.1). The relevant fact could be false details given in relation to an immigration or asylum application which led to that status being given to a person who would not otherwise have qualified and so would have affected a person's ability to meet the residence and/or good character requirements for naturalisation (Annex N11 Chapter 55.7.2 bullet point 3). If the fraud did not have a direct bearing on the grant of citizenship it will not be appropriate to pursue deprivation (Annex N11 Chapter 55.7.3).

> 33. Chapter 55.7.7.1 states that the caseworker should be satisfied that there was an intention to deceive: an innocent error or genuine omission should not lead to deprivation. However, a deliberate abuse of immigration or nationality application processes may lead to deprivation (Annex N13 Chapter 55.7.7.1). It is noted that you have submitted various applications (Entry Clearance, appeal against your refusal for Entry Clearance, Leave to Remain application, settlement application) and in each you have signed declarations to confirm the accuracy of the information contained therein. It is now apparent that you were complicit in the fraud, false representation or concealment of a material fact perpetrated by your spouse), namely his falsified details relating to his place of birth and nationality, in all your dealings with the Home Office. Using your fraudulently obtained Entry Clearance, you applied for LTR and then ILR, where you persisted with your deception, but had the truth been known it is likely that you would have been refused settlement, meaning that you would not have met the mandatory requirement to possess settled status for the purpose of naturalisation. You made false declarations in each application, thus undermining your credibility as a witness and providing the SSHD with grounds to treat your uncorroborated statements with caution.
> 34. You have specified that when you made application for naturalisation you provided both your husband's identities however, you maintained that your husband's place of birth was Pej, Kosovo. When you submitted your naturalisation application, your husband was aware that he was under investigation by the Status Review Unit. You chose to continue your deception in order to illicit [sic] a grant of leave you were not entitled to. Chapter 55.7.8.4 details that in the case of an adult, the fact that an individual was advised by a relative to give false information does not indicate that they were not complicit in the deception (Annex O15 Chapter 55.7.8.4). Furthermore all adults should be held legally responsible for their own citizenship applications (Annex N15 Chapter 55.7.8.5).
>
> This contention has also been considered alongside Chapter 55.7.11-Mitigating Factors. This states that all adults are expected to take responsibility for the information they provide on acquisition of ILR and/or Citizenship and where the application claims that an interpreter advised them to provide false details this should not be accepted as mitigation (Annex N17 Chapter 55.7.11.2 bullet point 2)."

42. At [35] to [38] of the decision, the Respondent sets out the "Good Character" requirement under the guidance. As noted at [39] to [43] of the decision, he sets out the factors which are taken into account when considering whether an application for citizenship should be refused on such grounds.

43. The Respondent then reaches the following conclusions whether it is appropriate to deprive the Appellant of nationality in the exercise of his discretion:

> "44. The concealment of your husband's true identity on all applications with the Home Office was deliberate and this damages your good character. Had the caseworker known you had concealed relevant information pertinent to your application, it is considered that you would not have met the good character requirement, and the

application would have been refused. This is also the case as shown in your ILR grant as you would not have met the character requirements.
45. For the reasons given above it is not accepted there is a plausible, innocent explanation for the misleading information which led to the decision to grant citizenship. Rather, on the balance of probabilities, it is considered that you provide information with the intention of obtaining a grant of status and/or citizenship in circumstances where your application 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.
46. It is acknowledged that the decision to deprive on the grounds of fraud is at the Secretary of State's discretion. In making the decision to deprive you of your citizenship, the Secretary of State has considered the following factors, which include the representations made by yourself in your letter dated the 15 November 2021 and concluded that given your previous conduct deprivation is considered to be both a balanced and proportionate response."

DISCUSSION

44. The discussion which follows takes into account the submissions of Mr Saleem and Mr Clarke, made both orally and in writing.

Condition Precedent

45. There can be no dispute that the Appellant's entitlement to come to and remain in the UK as well as the citizenship flowing from the leave granted is based on her husband's status which was in turn obtained by fraud and deception.

46. That does not however mean that the Appellant was herself involved in or complicit in that deception. She has set out in some detail in her witness statement at [AB/4-10] what she says she knew or did not know at all relevant times and why it was reasonable for her to lack knowledge of her husband's true identity. Judge Atkins accepted her explanations for the reasons set out above.

47. There are however two difficulties with the Appellant's case on this first issue. First, the Appellant's evidence now post-dates the decision. As Judge Atkins himself accepted (albeit in a finding I have set aside) it was reasonable for the Respondent to form the view he did on the information he had at the time of the decision. That is of course the question I have to consider and the question which Judge Atkins should have considered. As the Supreme Court put it in Begum, it is not a question whether the Tribunal is satisfied that the condition precedent is met; the issue is whether the Respondent is satisfied and is entitled to be satisfied.

48. The second problem is that, whatever the position in relation to the earlier applications, the Appellant gave what was clearly false information in the application for citizenship. It is no excuse that there was no box for an alternative place and date of birth. As I

have already pointed out, there can be only one true answer to both questions as an individual is only born once. By giving the false place and date of birth, the Appellant knew full well that she was providing false information. Yet she went on to declare that the information in the form was true. As Mr Clarke pointed out, there was also a box on the form under "Immigration Details" which asked if there were any other matters in relation to the application which the applicant wished to mention but she did not use that opportunity to explain why she entered the false place and date of birth if she did not intend to deceive.

49. Moreover, as I have already pointed out, the issue is whether the Respondent was entitled to be satisfied that the condition precedent was met. In circumstances where the Appellant did not use the opportunity of the prior representations to say that she lacked knowledge of her husband's true identity (at least prior to the naturalisation application), the Respondent was entitled to reach the conclusion that she had known about this. As the Respondent pointed out, the issue of the Appellant's husband's nationality was questioned at the time of the entry clearance application. Whilst I accept Mr Saleem's point that the issue was apparently thereafter resolved by the appeal (albeit quite clearly based on the false testimony given by the Appellant's husband), as the Respondent says, the questions raised at that time ought to have caused the Appellant some doubt about the truth.

50. In any event, the Respondent was unquestionably entitled to rely on the false information given in the naturalisation application. The Respondent took into account that the Appellant had given both names but rightly pointed out that the false date and place of birth were given. The date of birth might of itself make little difference but the reliance on the false place of birth which, by then the Appellant knew was the deception on which the Respondent was focussing, is entirely unexplained. The Appellant made no effort to set out the true position elsewhere in the form and by declaring the facts to be true when she knew them to be false, the Respondent was entitled to be satisfied that she had intended to deceive (in the absence of a reasonable explanation).

51. Mr Saleem also took me to the Respondent's guidance (Chapter 55) and examples given at 55.7.14 concerning deprivation of citizenship held by spouses ([RB/471]). He submitted that the first example there given was akin to the Appellant's case. That is the case of a Spanish national married to an Albanian who had exercised deception (as here) prior to the marriage. The case study suggests that deprivation action should not be taken as that spouse had gained citizenship in her own right and could not be regarded as complicit in her husband's deception. That is however a different case from the present as, as a Spanish national, the spouse would have been entitled to citizenship on that basis (based on period of residence as a European national) and did not need to rely on

marriage to acquire it. I do not therefore accept Mr Saleem's alternative submission that this renders the Respondent's decision irrational.

Exercise of Discretion

52. Mr Saleem said that the Respondent had failed to exercise discretion. That is not the case.

53. Having reminded himself that deprivation would be the usual course where there was evidence that a person had exercised deception during the citizenship application process ([42-43] at [RB/542]) and having been satisfied that the Appellant's concealment of her husband's true identity was deliberate, the Respondent concluded that this impacted on the Appellant's good character. The Respondent did not accept that there was an innocent explanation. As I have already noted, that conclusion was reached based on what the Appellant said about the deception at the time. The Respondent was entitled to reach that conclusion on the material he had.

54. Thereafter the Respondent set out his reasons for exercising discretion to deprive at [46] of the decision letter (cited at [43] above).

55. Mr Saleem was unable to offer a reason why that conclusion and exercise of discretion was unlawful. Having regard to the previous conclusions reached by the Respondent, the Respondent cannot be said to have ignored relevant information or taken into account irrelevant material. The conclusion reached on the exercise of discretion cannot be said to be irrational.

56. The position might have been different if the Appellant had used the opportunity which she was offered prior to the deprivation decision to provide a full explanation of her actions. If she had said then what she says now and in her evidence before Judge Atkins, it may be that the Respondent would have exercised his discretion differently. However, based on the explanation which the Appellant gave when asked at the time that deprivation was under consideration, the Respondent was entitled to reach the view he did both as to condition precedent and the exercise of discretion.

Article 8 ECHR

57. I accept that it is for this Tribunal to reach its own views on the Article 8 case. I accept that it can take into account evidence which was not before the Respondent. However, as it made clear at [3] of the headnote in Chimi, in so doing, it cannot revisit the conclusions reached in relation to the first two questions. I remind myself that the error made by Judge Atkins was to do precisely this.

58. Moreover, when conducting the Article 8 balance, the Tribunal is not carrying out a proleptic assessment of the likelihood of an appellant being removed. It is considering the impact of deprivation and not removal. Whether an individual will at a later stage be removed is generally an issue to be resolved at a later date. A further right of appeal will arise if removal action is taken.

59. Mr Saleem relied in this regard on the Appellant's statement at [AB/4-10] and on the summary of her evidence at [45] of the First-tier Tribunal's decision. The witness statement deals almost entirely with the deception issue rather than matters going to Article 8 ECHR. Paragraph [45] of the First-tier Tribunal's decision reads as follows:

> "The Appellant and Mr Nuzi own the property they live in. Mr Nuzi is in employment as a lorry driver and has continued in employment despite losing his British citizenship. He receives a basic rate of £600 per week and top up pay for overtime which is paid monthly. The Appellant is working part time and earning £120 per week. Her mental health is better now and she has now stopped taking medication for her depression."

60. Mr Clarke for his part relied on what is said in the decision letter at [47] onwards. Having made the point that deprivation action does not necessarily mean that an individual cannot stay and accepted however that deprivation does have certain consequences such as the loss of a right to a British passport and right to vote, the Respondent considered the best interests of the two children. It is pointed out that deprivation action will have no consequence for their status as British children. There is no issue regarding statelessness which arises in this case.

61. The decision recognises that removal may follow from deprivation action. However, in circumstances where the Appellant's husband who was responsible for the deception on which the Appellant's case is based has been granted leave based on his relationship with his British citizen children, it is difficult to conceive that the Respondent would refuse to grant leave to the Appellant on the same basis.

62. The Respondent sets out the proposed timetable for considering status following deprivation. The deprivation order would be made within four weeks and a decision to remove or grant leave within eight weeks from the deprivation order. Although Mr Saleem submitted that the period is much longer in practice, there is no evidence about this put forward in this case. I am aware from other cases that there is a FOI response provided by the Respondent in those cases which suggests that the period may be much longer on average but that was not included in evidence in this case. Furthermore, that evidence does not tally with the facts of this case. The Appellant's husband was granted leave to remain within weeks of a deprivation order having been made.

63. The Respondent of course says that the interference with the Appellant's Article 8 rights must be balanced against the public interest. The Appellant accepts this is so. However, Mr Saleem's submissions came perilously close to inviting me to make the self-same errors as made by Judge Atkins by revisiting my conclusions under the first two heads. He said that the Appellant had maintained her own true identity throughout. That is of course correct but does not have any relevance to the deception which underlies the deprivation action. I also accept that the Appellant entered into the relationship after the deception began. I have already considered that when looking at the condition precedent. I have considered what the Appellant now says about her part or otherwise in the deception. However, I can only consider whether the Respondent was entitled to be satisfied of the deception based on the information which he had at that time.

64. Similarly, Judge Atkins' findings regarding the Appellant's credibility can have no bearing on the public interest. I can only consider the public interest based on my conclusions on the first two issues. The Respondent was entitled to be satisfied that the Appellant had exercised deception/provided false representations and in the exercise of his discretion that she should be deprived of her citizenship. That then is the public interest against which interference must be weighed.

65. I have also taken into account in that regard the Respondent's initial stance that the Appellant's status would not change due to the deprivation action against her husband. However, as Mr Clarke pointed out, that was prior to the Appellant having obtained citizenship.

66. None of those matters can mitigate against the public interest as Mr Saleem suggested should be the position. They are all relevant to the first two issues only and, once those issues have been determined against the Appellant as they have been, the public interest is fixed. Deprivation action is in the public interest for the reasons set out at [51] of the decision letter ([RB/544]) – "the need to protect and maintain confidence in the UK immigration system and the public interest in preserving the legitimacy of British nationality").

67. Mr Saleem was not able to offer any strong reasons weighing against the public interest. The Appellant's husband has limited leave. He is working and can continue to do so. Whilst the Appellant does work part-time, even if the period between deprivation and grant of limited leave were longer than stated, there is no evidence that the family would be left short of funds. Mr Saleem accepted that the Appellant's husband is the main breadwinner. The status of the couple's children will be unaffected by deprivation action.

68. Balancing the interference with the Appellant's rights caused by deprivation against the public interest and taking into account the likely period between deprivation and grant of leave or removal action (which is unlikely but would in any event give rise to a further right of appeal), I am satisfied that deprivation is proportionate. Deprivation does not breach the Appellant's Article 8 rights.

CONCLUSION

69. For the foregoing reasons, the Appellant's appeal is dismissed.

NOTICE OF DECISION

The Appellant's appeal is dismissed.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber
27 March 2024

ANNEX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002608

First-tier Tribunal No:
LD/00252/2022
DC/50152/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

……08/01/24……

Before

UPPER TRIBUNAL JUDGE SMITH

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SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

OLTA FARRUKU
[NO ANONYMITY DIRECTION MADE]

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr M Saleem, Solicitor, Malik & Malik solicitors

Heard at Field House on Tuesday 2 January 2024

DECISION AND REASONS

BACKGROUND

1. This is an appeal by the Secretary of State. For ease of reference, I refer to the parties as they were in the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Atkins promulgated on 21 March 2023 ("the Decision") allowing the Appellant's appeal against the Respondent's decision dated 6 July 2022

depriving the Appellant of her British citizenship on the basis that it was acquired by fraud.

2. I enquired of Mr Saleem at the outset why an anonymity direction had been made by Judge Atkins. He was unsure why that was the case. He made clear that he had not sought that direction nor did he consider there to be grounds for an anonymity direction. I concur with that view and I have therefore lifted the earlier anonymity direction. The Appellant shall henceforth be referred to by her full name rather than by initials.

3. The Respondent gave the Appellant notice of his intention to deprive her of her citizenship on the basis that she was complicit in a fraud perpetrated by her husband, whose true identity is that of Mr Nuzi, a national of Albania. He had claimed asylum under the false identity of Ismet Berisha, a national of Kosovo. He obtained leave to remain in that identity and subsequently British citizenship. The Respondent has successfully deprived Mr Nuzi of his British citizenship. He remains in the UK with leave based on the British citizenship of his and the Appellant's two children.

4. The Appellant came to the UK in 2014 as Mr Nuzi's partner. At that time, she gave his identity as Ismet Berisha. She claims that she knew nothing of his identity as Mr Nuzi until August 2020 when he was given notice of the Respondent's intention to deprive him of citizenship. The Appellant made applications for leave to remain in March 2015 and September 2017 giving the Berisha identity. She made an application for indefinite leave to remain on 23 February 2020 also giving the Berisha identity. Following the discovery of her husband's fraud, the Appellant applied for British citizenship. She did so giving the Berisha identity but disclosing that her husband was also known as Mr Nuzi. However, she also gave as her husband's details his date and place of birth given in the Berisha identity. The Appellant said that she relied upon her husband to complete applications in her name as his English was better than her ability and that he understood the immigration system better.

5. Having set out the evidence given by the Appellant and her husband, Judge Atkins made findings of fact at [53] to [70] of the Decision. He concluded that the information given in the application for British citizenship was "more likely than not …a well-intentioned if not wholly accurate attempt to set down the true position – namely that the Appellant's husband was Mr Nuzi who had also used the name 'Ismet Berisha'" ([69]). He concluded that the Appellant had not intended to deceive the Respondent when making the application for citizenship. As Mr Saleem pointed out, the Respondent has not challenged those findings.

6. However, Judge Atkins then went on (as he was required to do) to consider whether the Respondent's decision to deprive the Appellant of citizenship was vitiated by public law error (adopting the approach set

out in Begum v Secretary of State for the Home Department [202]1 UKSC 7 ("Begum"). The Judge referred in that context to the guidance given by this Tribunal in Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238 (IAC) ("Ciceri"). Adopting the Begum approach, Judge Atkins found at [75] of the Decision that, "at the time of the decision, the Respondent had sufficient evidence to take a reasonable view that the condition precedent was met". In other words, Judge Atkins found that the Respondent's decision that the Appellant had perpetrated a fraud was one which was rationally open to him and not vitiated by any public law error.

7. Having made that finding, the Judge went on to consider the proportionality of deprivation under Article 8 ECHR, again apparently following the approach set out in Ciceri.

8. The Judge noted the weight to be given in the proportionality balance to "maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraud" and that this was relevant to deprivation being conducive to the public good ([78]). However, having set out that public interest, the Judge went on to find at [81(c)] of the Decision that there was no fraud by the Appellant such that the public interest should be given less weight. He therefore allowed the appeal "for those reasons".

9. The Respondent appeals the Decision on the basis that the Judge has materially misdirected himself in law. The foundation of the ground is that the Judge has made contrary findings at [80] to [82] of the Decision when compared with the findings at [53] to [70] of the Decision. It is submitted that the Judge has "unlawfully remade the SSHD's discretion under s.40(3) under the guise of an Article 8 fact finding exercise". It is argued that the Judge has failed to apply the case-law set out in Begum and Ciceri by remaking the deprivation decision in circumstances where no public law error was made by the Respondent when reaching his decision.

10. Permission to appeal was refused by First-tier Tribunal Judge Adio on 15 May 2023 for the following reasons so far as relevant:

> "..3. Despite what is said in the grounds supporting the application for permission to appeal, the judge made adequately reasoned and sustainable findings of fact with regards to Article 8. The judge made general findings of fact on the evidence at paragraphs 53 to 70 and then applied those findings in the analysis concerning whether the condition precedent was met under Section 40(3), and subsequently in dealing with Article 8. The judge applied the correct legal framework and found on the evidence that the Respondent had sufficient facts before her to decide that the condition precedent is satisfied. The judge noted that it is correct that Mr Nuzi lied about his identity when seeking asylum, then further leave, then nationalisation (should read naturalisation). Those lies were repeated in the Applicant's application over the years. Some of the false information was included in the Applicant's application for naturalisation when she says she completed and did so in full knowledge of the fraud. However, the judge noted as part

of the findings that that in itself does not mean that the Applicant did so with the intention to deceive the Respondent. The judge found with regards to Section 40(3) the Secretary of State's conclusion is not susceptible to public law challenge. Those reasons are contained at paragraph 72 of the judge's decision.

4. However, moving on to Article 8, the judge is entitled to assess proportionality for itself [sic] using the balance sheet approach. In doing so, the judge sets out factors applying to the Applicant and those applying to the Respondent at paragraphs 80 and 81 respectively. A key aspect in the finding of the judge is that it is apparent on the evidence before the judge that there was no fraud committed by the Applicant. The Applicant should not suffer the consequences of Mr Nuzi's fraud with which she was not involved and for which he has been deprived of his own citizenship. The judge found that the Applicant did not intend to deceive the Respondent when she submitted any of her applications including the application for naturalisation. This is the reason the judge placed less weight on the aspect of the public interest. It in no way goes against the fact that a condition precedent existed in the first place on the facts before the judge. As part of the findings made by the judge at paragraph 66 the Applicant also included Mr Nuzi's correct name (referring to the time of the application for naturalisation). The judge stated that by doing so, the Applicant made it plain on the face of the form who her husband really was and this strongly indicates that she was not attempting to deceive the Respondent.

5. The judge has made a distinction between why the condition precedent was satisfied under Section 40(3) and on the other hand, why the appeal should be allowed under Article 8 for the reasons given by the judge. There is no arguable error of law."

11. The Respondent repeated his application for permission to appeal to this Tribunal on essentially the same grounds but this time referring to the guidance given by this Tribunal in Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 00115 (IAC) ("Chimi"). The decision in Chimi was promulgated on 19 April 2023 and therefore after the Decision and after the Respondent's application for permission to the First-tier Tribunal.

12. Permission to appeal was granted by Upper Tribunal Judge on 11 August 2023 in the following terms:

"The appellant became aware of her husband's false identity on 20th August 2020 but completed her own application in 2021 for naturalisation and at the very least gave his false date and place of birth in her own application.

Having read the First-tier Tribunal decision carefully, it is clearly arguable, particularly from [63] onwards that the judge incorrectly applied the law on deprivation (R (Begum) [2021] (UKSC) 7, and which in turn tainted the Article 8 findings. No least this is shown by the judge's approach and contradictory reasoning, for example, at [72]

'Some of the false information was included in the Appellant's application for naturalisation, which she says she completed and did so in full knowledge of the fraud. But that if (sic) itself does not mean that she did so with the intention to deceive the Respondent'.

All grounds in the challenge as detailed are arguable."

13. The matter comes before me to decide whether the Decision contains an error of law. If I conclude that it does, I must then decide whether to set aside the Decision in consequence. If I do so, I must then go to on re-make the decision or remit the appeal to the First-tier Tribunal for re-making.

14. Having heard submissions from both parties, I indicated that I accepted that the Decision contains errors of law in relation to the Judge's analysis at [71] onwards of the Decision. I indicated that I intended to set aside that section of the Decision but saw no reason to interfere with the Judge's findings of fact on the evidence which he heard. I therefore preserved those findings at [53] to [70] of the Decision. On that basis, it was agreed that the decision could be re-made on the basis of submissions only and I gave directions for those to be filed in writing and for a further hearing to deal with those submissions. Those directions are set out at the end of this decision.

15. I indicated that I would provide brief reasons for my decision in writing which I now turn to do.

DISCUSSION

16. As Mr Saleem accepted, the Judge was required to consider whether the Respondent's decision was vitiated by public law error (adopting the Begum approach). As Mr Saleem also correctly pointed out, the Judge was required to consider not only whether the Respondent was entitled to be satisfied that citizenship had been obtained by fraud but whether the exercise of his discretion to deprive was vitiated by public law error. In that regard, Mr Saleem drew my attention to [3] of the Decision where a submission is recorded that the Respondent should have exercised discretion differently.

17. As Judge Atkins rightly pointed out at [3] of the Decision, that submission was misconceived in the way it was put. It was not for the Judge to substitute his own discretion for that of the Respondent.

18. However, that submission made in an alternative way is something which the Judge could and should have considered. The position is now made clearer by the guidance given in Chimi which reads as follows:

> " (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)."

19. Whilst I accept Mr Saleem's submission in relation to the exercise which the Judge ought to have undertaken, that does not assist the Appellant. The Judge having understood the Appellant's submission as a request to exercise discretion for himself rightly rejected that submission but did not subsequently understand that, when reviewing the Respondent's decision in the first part of the analysis, he should consider whether the exercise of discretion itself contained any public law error. The Judge jumped straight from the finding at [75] of the Decision that the condition precedent was met to the Article 8 proportionality assessment.

20. Further, in so doing, Judge Atkins has done exactly what the guidance in Chimi (at (3) of the headnote) says must not be done. When conducting the proportionality assessment under Article 8 ECHR, the Judge was bound to adopt the findings already made about the legality of the Respondent's decision. By making the (inconsistent) finding that there was no fraud (at [81(c)] of the Decision), the Judge was seeking to circumvent the Begum approach and to substitute his own finding for that of the Respondent. As was said in Begum, the issue for the Judge was not whether he was satisfied that there had been fraud but whether the Respondent was entitled to be so satisfied. Once the Judge had reached the conclusion that the Respondent was entitled to be so satisfied, that was the underlying public interest which had to be considered when assessing proportionality.

21. The Judge clearly cannot be criticised for failing to apply the guidance in Chimi as that was not promulgated until after the Decision. However, that guidance now makes clear why the Judge's approach was in error. Accordingly, the Decision contains an error of law. I accept that the error is material as, without the reduced weight being given to the public interest, it is difficult to see how the Judge could have decided the proportionality balance in the Appellant's favour.

22. I therefore set aside the part of the Decision containing the error but preserve the findings of fact made by the Judge which are not challenged by the Respondent.

23. On that basis, since there is no need for further evidence, I have given directions for the filing and service of written submissions on both sides.

CONCLUSION

24. The Judge has made an error of law when conducting the analysis at [71] onwards of the Decision and in particular when allowing the appeal on the basis that the deprivation decision was a disproportionate interference with the Appellant's Article 8 rights. I set aside [71] to [82] of the Decision. I preserve the findings of fact at [53] to [70] of the Decision. The appeal is retained for re-making in this Tribunal with the directions set out below.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Atkins promulgated on 21 March 2023 involves the making of an error of law. I set aside [71] to [83] of the Decision. I preserve the findings at [53] to [70] of the Decision. I make the following directions for the rehearing of this appeal:

DIRECTIONS

1. **By no later than 4pm on Tuesday 30 January 2024, the Appellant shall file with the Tribunal and serve on the Respondent, her written submissions in relation to the re-making of the decision.**

2. **By no later than 4pm on Tuesday 27 February 2024, the Respondent shall file with the Tribunal and serve on the Appellant, his written submissions in response.**

3. **The re-hearing of this appeal is to be listed before UTJ Smith for a face-to-face hearing on the first available date after Monday 4 March 2024, time estimate ½ day. No interpreter is required.**

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 January 2024