IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003545
First-tier Tribunal No: DC/50086/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 May 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

KLODIAN SERANI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Lawrence Youssefian, instructed by Oliver & Hasani Solicitors
For the Respondent: David Clarke, Senior Presenting Officer

Heard at Field House on 15 February 2024

DECISION AND REASONS

1. The Upper Tribunal's first decision in this appeal was issued to the parties on 17 November 2023. By that decision, a panel comprising me and Deputy Upper Tribunal Judge Woodcraft decided that the First-tier Tribunal (Judge G A Black) had erred materially in law in allowing Mr Serani's appeal against the respondent's decision to deprive him of his British citizenship.

2. We set aside the First-tier Tribunal's decision. We decided that the appellant had on any view obtained his British citizenship by deception, but we directed that the decision on the appeal would be remade following a further hearing in the Upper Tribunal. We directed that the questions which would be addressed at the resumed hearing would be those set out

at [75](1)(b) and (c) of <u>Chimi (deprivation appeals; scope and evidence) Cameroon</u> [2023] UKUT 115 (IAC); [2023] Imm AR 1071:

(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.

THE RESUMED HEARING

3. The appeal returned before me, sitting alone, on 15 February 2024. I heard oral evidence from the appellant and submissions from Mr Clarke for the respondent and Mr Yousefian for the appellant. I am grateful to them both for their assistance, and to Mr Youssefian's solicitors for producing a consolidated bundle which rendered the task of considering the appeal considerably easier.

4. I do not propose to rehearse the background in this decision. The Upper Tribunal's first decision is lengthy and contains all that is required to understand the background and the conclusions reached to this point in the proceedings. A copy of that decision is appended to this one. I will instead focus on the evidence which I received in February and the submissions made by the advocates.

ORAL EVIDENCE

5. The appellant confirmed that his undated witness statement at pp208-213 of the bundle was true and that he wished to adopt it as his evidence in chief. He was cross-examined by Mr Clarke. He confirmed that he had produced no evidence of his wife's income from her employment at the Royal Borough of Kensington and Chelsea ("RBKC"). He said that he had not been asked for this, or for evidence of any savings. Mr Clarke suggested that this evidence would have shown that the appellant's wife could support them both if necessary. The appellant initially agreed but went on in his next answer to suggest that he and his wife had undertaken some calculations and were aware that they would have insufficient to support themselves if he could not work.

6. The appellant said that he had not been asked to provide any evidence of their debts, or their tenancy agreement. He acknowledged that the most recent evidence of his medical treatment was quite old but he said that he was subject to NHS 'queues and procedures'. Mr Clarke suggested to him that his consultant (Mr Markus) might have been able to provide an update. The appellant responded that it was just how the system worked – "you spend years just waiting", he said. Mr Clarke noted that the

appellant suggested that he required a further operation but there was no evidence of any such requirement. The appellant stated that the bullet was still in his shoulder and that it still caused him problems in his hands, neck and back. It was stuck in his scapula, he added. Another bullet had left shards in his liver and destroyed his gall bladder; he had been advised to go to University College Hospital in the event of any complications.

7. The appellant dismissed Mr Clarke's suggestion that he might have investigated private treatment. He had spoken to private clinics but it would cost £250 even for an initial consultation for ten minutes. He had not sent his records to any private clinics on learning of the likely cost.

8. The appellant accepted that the only evidence of medication was for Omeprazole, which was for a stomach problem. He said that he took other medication, however, as he was pre-diabetic. This was in tablet form. Mr Clarke had no further questions in cross-examination.

9. There was no re-examination by Mr Youssefian and I had no questions for the appellant.

SUBMISSIONS FOR THE RESPONDENT

10. Mr Clarke noted that it was to be submitted by Mr Youssefian that the Secretary of State's exercise of discretion was flawed by his failure to take account of material matters. He noted that Mr Youssefian had cited Kolicaj (Deprivation: procedure and discretion) Albania [2023] UKUT 294 (IAC) in his skeleton argument. In the respondent's submission, however, that authority was readily distinguishable and of no assistance to the appellant. Kolicaj was a case in which the appellant had been deprived of citizenship because that course was considered to be conducive to the public good, under s40(4) of the British Nationality Act 1981. The administrative procedures in such a case were different from a case such as the present, as notice was not ordinarily given to a person in the position of Mr Kolicaj. Here, the appellant had been given notice of the respondent's intention and had responded to that letter in some detail.

11. Mr Clarke noted that the substance of the respondent's decision in Kolicaj was set out by the Upper Tribunal at [7] of its decision. The criticisms of the respondent's decision, as set out at [61] of the Upper Tribunal's decision, flowed from the brevity of that consideration. The situation in the instant case could not be more different; the respondent had rehearsed the appellant's submissions in detail before considering them as a whole. The existence of a discretion was mentioned expressly at [54] of the respondent's decision and it was quite clear that all relevant matters had been considered.

12. Mr Clarke referred to R (Friends of the Earth Ltd) v Heathrow Airport Ltd [2020] UKSC 52; [2021] PTSR 190. Applying what had been said by the Supreme Court in that decision, it was not for the Secretary of State in his decision to work through every conceivably relevant point. It was asserted

by the appellant that the decision was inadequate when it came to the exercise of discretion but that was not so when the decision was read as a whole. Paragraph [54], on which Mr Youssefian focused his submissions, was merely a summary.

13. None of the matters referred to in Mr Youssefian's skeleton argument were material to the respondent's consideration; had they been taken into account, the decision would have been the same. There simply was not the evidence to show that the respondent had been sitting on his hands on the question of deprivation since 2015 and any delay was in any event insignificant when considered against EB (Kosovo) v SSHD [2008] UKHL 41;[2009] 1 AC 1159. There was no material error of law in the respondent's consideration of his discretion.

14. As for Article 8 ECHR, Mr Clarke submitted that there was a paucity of evidence to show that the reasonably foreseeable consequences of deportation would be disproportionate. The appellant earns £2200 per month but his wife's income for RBKC was not stated. Only his bank statements had been produced. There was no evidence of their savings or debts and no tenancy agreement or consistent rental payments could be discerned from the documents. There was insufficient evidence to show that there would be any difficulty during the 'limbo' period. The evidence about the appellant's health was also outdated and insufficient. There was nothing to show that there were ongoing investigations or treatment for the injuries sustained in a nightclub shooting. The case law was very clear on the weight to be attached to the public interest in such cases: Laci v SSHD [2021] EWCA Civ 769; [2021] 4 WLR 86, at [80] endorsing Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 128 (IAC) at [110]. The appellant was ultimately seeking to retain something he had acquired by fraud. That public interest was enhanced by the appellant's criminal conviction, as it had been in Hysaj.

SUBMISSIONS FOR THE APPELLANT

15. For the appellant, Mr Youssefian relied on his skeleton argument and submitted that his focus would be on the errors or omissions in the respondent's consideration of his discretion. He submitted that the respondent had failed to take account of obviously relevant matters, as he had in Kolicaj. The context of that case was irrelevant; the point of law was the same. If the respondent had not turned his mind to the discretion (as in Kolicaj) or had otherwise erred in law in that assessment (as here), the appeal fell to be allowed.

16. The factors which were particularly relevant to the exercise of the respondent's discretion were set out at [15] of the appellant's skeleton argument. Mr Youssefian amplified three of those factors orally.

17. The first was the appellant's long residence. The appellant was unable to quibble with the statements made at [32] of the Secretary of State's decision but the respondent had failed thereafter to consider the

relevance of long residence to the exercise of discretion. There was also an element of delay between the point at which the appellant exhausted his appeal rights (June 2004 and the point at which he was granted ILR (2009). The appellant had been removable at that point and his presence had been tolerated by the respondent. Younas [2020] UKUT 129 (IAC); [2020] Imm AR 1084 was relevant, and there had been a degree of attenuation. This was an obvious factor which the Secretary of State should have taken into account.

18. The second was the consequence of the appellant's false identity. Mr Youssefian acknowledged the Upper Tribunal's first decision, but he maintained the submission that the appellant had not benefited from the false identity; he had not obtained nationality by means of his deception. This was another obvious matter which was relevant to the exercise of the Secretary of State's discretion.

19. The third factor was the Secretary of State's delay in taking action on the appellant's deception once it had come to light in 2015. It was clear from the departmental records that there had been a delay of some six and a half years from that point. That was *prima facie* evidence of considerable and unexplained delay. It seemed that nothing was happening in the appellant's case for all that time. It would have been open to the respondent to provide evidence that nullity action was under consideration, for example, but there was nothing. Delay was relevant to discretion just as it is to Article 8 ECHR and this was a 'glaringly relevant' factor which the Secretary of State had overlooked. It was also notable that the appellant's wife had been granted leave to remain as a spouse during the period of delay. There was no evidence to show that the Secretary of State had acted on information which had only been received in 2021. If the appellant's behaviour was so serious, one would have expected the Secretary of State to have acted much sooner. In failing to do so, the Secretary of State permitted the appellant's ties to strengthen, thereby significantly reducing the public interest in deprivation. None of this was considered by the Secretary of State in the decision under challenge.

20. In relation to Article 8 ECHR, Mr Youssefian relied on the same factors. He acknowledged that there was limited evidence in support of a freestanding Article 8 ECHR argument. He did submit, however, that the appellant's criminality was irrelevant to the assessment, and that Hysaj was distinguishable in that regard.

21. I reserved my decision at the conclusion of the submissions.

ANALYSIS

22. The Upper Tribunal explained in its first decision why it had concluded that the appellant had obtained British citizenship by deception and I will proceed straight to the second question posed by Chimi.

(i) Did the Secretary of State materially err in law when she decided to exercise her discretion to deprive the appellant of British citizenship?

23. Paragraph 54 of the Secretary of State's decision is in the following terms:

> "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 citizenship, the Secretary of State has taken into account the following factors, which include the representations made by you in your letter to the Home Office dated 08 February 2022 and concluded that deprivation would be both a reasonable and proportionate step to take."

24. The way in which that paragraph is expressed, and particularly the words 'the Secretary of State has taken into account the *following* factors' caused Mr Youssefian to submit before me that the respondent's decision is flawed for failing to have regard to a host of matters which were material to the exercise of discretion required by s40(3) of the British Nationality Act 1981. I accept Mr Clarke's submission, however, that the letter is infelicitously expressed, and that a fair reading of the document as a whole shows that the decision maker had the statutory discretion, and many factors relevant to it, firmly in mind throughout.

25. Paragraph 54 of the Secretary of State's decision contains the only mention of the word 'discretion' but it is plain from other parts of the letter that the discretionary nature of the decision was well understood by the decision maker. It was evidently not thought that deprivation followed inexorably from a conclusion that the appellant had obtained British citizenship by deception. I note in that connection that there is reference to the mitigation advanced by the appellant at [31], [32] and [34]. It is also notable that the respondent made reference at [32], [49], [52] and [61] to consideration of whether deprivation was unfair, unreasonable or disproportionate, all of which were proper components of the discretionary exercise required by the 1981 Act.

26. It is for that reason that I reject Mr Youssefian's submissions that the only consideration of discretion is to be found at [54], or that anything which was not mentioned *after* [54] of the respondent's decision was not taken into account when the discretion was exercised. Mr Clarke is correct in my judgment to submit that the letter should be considered as a whole and that any such consideration shows that most, though not all, of the matters highlighted at [15] of Mr Youssefian's skeleton argument were taken into account by the Secretary of State when exercising the statutory discretion to deprive the appellant of his citizenship. Mr Youssefian helpfully focussed on only three of those matters in his oral submissions, but I will consider each of the points taken in the skeleton argument.

27. It is suggested at [15](a) of the skeleton argument that the respondent failed to have regard to the fact that the appellant's 'underlying lies' had no bearing on the decision to grant him ILR. I reject the premise of that submission for the reasons given at [34]-[40] of the first decision. The

'underlying lies' were obviously material to the grant of ILR and to the decision to naturalise the appellant as a British citizen, as we went on to explain at [41]-[60] of the first decision. The respondent reached the same conclusions in the decision under challenge, at [35]-[37] and [38]-[41].

28. At [15](b), (c) and (d) of his skeleton, Mr Youssefian submits that the respondent left the appellant's length of residence in the UK out of account in the exercise of his discretion. He notes that the appellant had lived in the UK for 24 years in total; that he had accrued 11 years before being granted ILR; and that the respondent had taken no action to remove the appellant for five years when he was present without either leave or any extant claim for leave.

29. I accept that length of residence in the United Kingdom is a relevant consideration in the exercise of the Secretary of State's discretion under s40(3). So much is clear from paragraph 55.7.6 of the Nationality Instructions, which provide that "Length of residence in the UK *alone* will not normally be a reason not to deprive a person of their citizenship." Implicit within that statement is an acceptance that length of residence will be a relevant consideration in the decision to deprive. That approach was endorsed by the Court of Appeal (Underhill LJ, with whom Newey and Baker LJJ agreed) at [54] of <u>Laci v SSHD</u>.

30. I accept Mr Clarke's submission, however, that the Secretary of State had the appellant's length of residence firmly in mind when he reached the decision under challenge. The respondent directed himself to the statement from the Nationality Instructions at [6]. He set out the appellant's immigration history in detail at [8]-[19] of the decision and made reference in [19] to the appellant's "23 years residence in the UK." There is further reference to the appellant's reliance on his length of residence at [25] of the decision. At [31], the respondent noted that the appellant had 'resided in the UK for over 20 years' but went on to attach less significance to that residence because it had been founded on a series of lies. A similar conclusion appears at [37], where the respondent states that the appellant's "connections in the UK and length of residence are in fact directly attributable to your deception." At [32], the respondent confronted the appellant's submission head on, and concluded as follows:

> "You raise your long residence in the UK, stating that you have lived in the UK for over 20 years, and that it would be unfair and unreasonable to pursue deprivation now when no action has been taken in this time. However, as Chapter 55 states, length of residence will not normally be a reason not to deprive a person of their citizenship (Annex 1C, Page 7, 55.7.6). Furthermore, 55.5.1 states that there is no specific time limit within which deprivation procedures must be initiated. A person to whom S.40 of the 1981 Act applies remains indefinitely liable to deprivation (Annex 1C, Page 5, 55.5.1). Therefore, your residency provides no mitigation."

31. There then followed consideration of the former "14 year policy", at [33]. It is clear that the respondent took careful account of the appellant's length of residence throughout the decision. It is wholly unrealistic, with respect to Mr Youssefian, to suggest that the respondent somehow overlooked the fact that the appellant had been in the UK for more than twenty years when he decided in the exercise of his discretion to deprive him of citizenship. What was evidently more significant to the Secretary of State was that the appellant's residence was built upon pillars of dishonesty from the outset.

32. I do not consider that it was incumbent on the Secretary of State to mention separately the period during which the appellant was removable from the United Kingdom. He took into account the appellant's overall length of residence and he was not required to give separate consideration to this particular period of time, which was of scant relevance to the statutory discretion under consideration. I reach the same conclusion in relation to the later period of time (post-naturalisation) relied upon by Mr Youssefian at [15](h) of his skeleton argument.

33. Mr Youssefian submits at [15](f) of his skeleton that the respondent failed to take account of the fact that the appellant 'came clean' about his lies when confronted with the point. This is said to be another matter which was left out of account by the respondent. It was not. There is clear reference to the appellant's admissions at [19] of the letter. It is clear from [29], as it is from other parts of the letter, that the respondent attached little weight to the appellant's decision to 'come clean', given that he only did so when the allegation was put to him, having maintained the lies for the previous two decades or more. That was a permissible approach which shows clearly that the respondent had in mind the fact that the appellant had accepted his deception.

34. It is submitted at [15](g) of the skeleton argument that the respondent failed to have regard to the fact that the appellant would lose his employment with the Embassy of the State of Qatar in the event that he was deprived of his British citizenship. There is no express reference to that point in the letter, although it was clearly raised by the appellant's representatives in their response to the Secretary of State's initial letter. I do not accept that it was left out of account by the Secretary of State, however. The respondent noted at [31] that the appellant had been able for two decades to access the benefits that come with leave to remain and British citizenship. He made reference to the appellant's employment at [34]. At [56], the respondent noted that the appellant would lose 'a number of other entitlements and benefits' in the event that he was deprived of British citizenship. It is fanciful to suggest that the respondent overlooked the fact that the appellant would not be able to work during the 'limbo' period in reaching the decision under challenge.

35. Mr Youssefian's final submission is that the respondent left out of account the fact that the appellant would be unable to access medical treatment on the NHS in the event that he was deprived of his citizenship. I do not

accept that submission either. The respondent made reference to the injuries which the appellant suffered when working as a doorman at a nightclub in Islington in 2005 at [34]. The respondent's conclusion was that the appellant's health issues did not 'constitute a mitigating circumstance which should prevent deprivation action'. That is a clear indication that the appellant's health issues, such as they are, were taken into account by the respondent in considering his statutory discretion.

36. It will have been noted that I have not yet considered the point mentioned at [15](e) of Mr Youssefian's skeleton argument. In that paragraph, he submits (as he did orally) that the respondent left out of account his own delay in considering whether to deprive the appellant of his nationality. I have done so because I accept that Mr Youssefian is correct in his submission that this point was left out of account by the Secretary of State and that it was a relevant consideration in the discretionary consideration required by s40(3) of the 1981 Act.

37. Mr Clarke noted that Kolicaj was a different type of case, and that what was said in that decision about the respondent's obligation to consider the exercise of his discretion was said in a different context. I accept that submission but only to a point. What is clear from Chimi and Kolicaj is that the Tribunal (whether the FtT or the Upper Tribunal) is required in both types of case (under s40(2) or s40(3)) to consider whether the respondent considered his statutory discretion *and* whether that exercise was vitiated by public law error, including the failure to take relevant matters into account. Mr Youssefian is entitled to submit, therefore, that the respondent left relevant matters out of account in considering the discretion to deprive the appellant of his British citizenship.

38. Mr Clarke also submitted, as I understood him, that the respondent was only *required* to consider the matters which he was required by statute to consider. There are two difficulties with that submission. Firstly, that the 1981 Act does not contain any indication of the matters which will be relevant to the exercise of the discretion in s40(3). Secondly, it is clear from Friends of the Earth v Heathrow Airport, on which Mr Clarke relied, that the duty to consider relevant matters extends beyond matters to which the statute specifically refers; the duty also extends to matters which are obviously material to the matter at hand: [117]-[121] refers. The test in deciding whether a consideration is so obviously material that it must be taken into account is the familiar Wednesbury test: [119] refers.

39. Here, therefore, the question is whether the respondent was rationally bound to take account of his own delay in considering the exercise of his discretion under section 40(3) of the 1981 Act. There was no reference to delay in the appellant's representations. Nor could there have been; the delay was not known to the appellant at that stage and only arises for consideration now because of the GCID records which were disclosed under the Subject Access Request procedure. In my judgment, however, the answer is clear. It is well established on authority that delay might be relevant in this context and the respondent was obliged to consider the

issue for himself. To this point, therefore, I am with Mr Youssefian that a relevant matter was left out of account by the respondent.

40. It remains the case, however, that there is scant information about the events between 2015 and 2021. It appears to be the case (from the GCID minute on which Mr Youssefian relied at the hearing) that the respondent opened the deprivation consideration on 7 October 2015 and concluded it on 20 April 2022. As we observed in the first decision, however, it is not clear that the respondent had the necessary information to progress deprivation on the first of those two dates. Mr Youssefian submitted that the passage of 6.5 years was 'prima facie evidence of delay' but there is nothing to show that the Secretary of State could have taken a deprivation decision in 2015.

41. I very much doubt, in any event, that it would have been appropriate for the Secretary of State to take such a decision before 21 December 2017. That was the date on which the Supreme Court handed down judgment in Hysaj v SSHD, clarifying that the proper course in a case such as this was not to treat the applicant's British citizenship as a nullity but to make an appealable decision to deprive him of the same. Whatever information might have come into the Secretary of State's hands in October 2015, the proper course was not to treat the appellant's nationality as a nullity but to await the outcome of the test case and to make a decision thereafter. Had the Secretary of State done otherwise, he would have risked a volte face of the kind described in the representations which were sent to the Secretary of State in response to his initial letter:

> "By 2013, the Secretary of State changed the approach given to these cases and instead issued a number of decisions including Hysaj, Bakijasi and Kaziu, cancelling their British nationality and treating the same as a nullity. The outcome of that litigation was given by the Supreme Court on 21 December 2017 Hysaj and others v SSHD [2017] UKSC 82 thus the Secretary of State has since withdrawn the nullity decisions."

42. Mr Youssefian is correct in his submission that there is no evidence from the Secretary of State about what was (or was not) happening in the appellant's case between October 2015 and January 2022, when the 'minded to deprive' letter was sent. For the reasons I have given above, there need not be any explanation for the first two years; the respondent was evidently, and quite properly, awaiting the final outcome of the test case litigation. After that, however, there was a period of some four years (from December 2017 to January 2022) in respect of which there is no explanation from the Secretary of State about what was happening in this appellant's case. I accept that that was a relevant consideration which was left out of account by the Secretary of State. The decision displays a public law error, but it remains to consider whether that error was material.

43. There is obviously no statutory framework which guides the assessment of materiality in this context. The familiar frameworks in s31 of the Senior

Courts Act 1981 and s16 of the Tribunals, Courts and Enforcement Act 2007 are of no direct application when the Upper Tribunal is exercising its appellate jurisdiction. The appropriate question is not, therefore, whether it is highly likely that the outcome for the applicant would not have been substantially different if the relevant matter had been taken into account. I will instead borrow the higher threshold for materiality which is found in cases such as Detamu v SSHD [2006] EWCA Civ 604 and Simplex GE Holdings Ltd v Secretary of State for the Environment [2017] PTSR 1041: that the outcome would inevitably have been the same even if the relevant matter was taken into account.

44. That threshold is readily crossed in this case. It is apparent from the tone of the Secretary of State's letter that he attached great significance to the appellant's dealings with the Home Department over the years. He had used a false nationality and date of birth in all of his interactions with the department and the Secretary of State took a dim view indeed of the appellant's 'persistent and repeated use of false details over many years': [45] of the letter refers. Given the significance which is attached to the public interest in such cases, and given the comparatively limited amount of delay in this case, it is inconceivable that the Secretary of State would have exercised his discretion differently if he had taken his own delay fully into account.

45. I am reinforced in that conclusion by the analysis at [58]-[59] of the decision under challenge. The respondent there considered whether he would have deprived the appellant of his citizenship even if he was rendered stateless by that decision. Whilst it is a serious matter indeed to render an individual stateless, the respondent's conclusion was that to do so would be

> "a reasonable and proportionate step to take given the seriousness of the fraud, the need to protect and maintain confidence in the UK immigration system and the public interest in preserving the legitimacy of British nationality."

46. In my judgment, it is inevitable that these considerations would have outweighed the delay in the decision making process if that point had been considered by the Secretary of State. Indeed, it is clear from the tenor of the letter as a whole that the Secretary of State would have reached the same conclusion in this case even if he had taken each of Mr Youssefian's factors at their highest and weighed them explicitly against the public interest in deprivation. As Mr Clarke submitted, relying on [80] of Laci v SSHD, there is simply nothing in this case which might have persuaded a rational Secretary of State to allow the appellant to retain that which he had obtained by fraud.

47. In summary, I reject Mr Youssefian's submission that the Secretary of State left a host of material matters out of account when exercising the discretion to deprive the appellant of his citizenship. One relevant matter (delay) was left out of account but consideration of that matter would

inevitably have resulted in the Secretary of State exercising his discretion to deprive the appellant of the citizenship which he clearly obtained by fraud.

(ii) 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?

48. It will be apparent from my summary of the advocates' submissions that relatively little was said about Article 8 ECHR before me. Mr Youssefian did not seek to submit that the 'limbo period' would be any longer than was suggested by the Secretary of State at [60] of the decision under challenge. He tacitly accepted, therefore, that a decision to deprive would be taken within four weeks of the appellant exhausting his appeal rights and that a decision on deportation or discretionary leave would be taken within eight weeks thereafter, subject to any representations made by the appellant.

49. It is beyond argument that the deprivation of citizenship will represent some interference with the appellant's private life in the UK. The real question is whether that interference is a proportionate step.

50. The difficulty for the appellant, as was quite clear from cross-examination and from the Mr Youssefian's frank response to Mr Clarke's submissions, is that there is very little evidence on which I could conclude that the reasonably foreseeable consequences of deprivation during that limbo period would be disproportionate.

51. The appellant would be unable to work but there is no adequate evidence to show that this would cause him and his wife unjustifiable hardship. There is no documentary evidence of their current rent or mortgage or of the amount they currently spend on bills, although I note that the 2021-2022 Utility Warehouse bills in the bundle show a combined charge for energy, telephone and broadband of under £100 per calendar month and the single British Gas bill for the first half of 2022 records energy costs of £128.

52. I know that the appellant earns more than £2000 per month as a result of his work for the Qatar Embassy but I do not know how much his wife earns as a result of her work for the Royal Borough of Kensington and Chelsea. There is nothing to show whether they have any savings, or any debts. The appellant expressed concern during his oral evidence about their joint ability to keep their heads above water if he was not entitled to work but there is no proper evidence on which I could conclude that they would be in such difficulty if he could not work for three months.

53. The appellant would, as I have already mentioned, be unable to access all but emergency healthcare on the NHS during the limbo period. As Mr Clarke noted, however, there is no adequate evidence to show that he requires any care. There appear to be no immediate plans to take any

further steps in relation to the injuries he suffered in 2005 and the limited and outdated medical evidence before me suggests that the only medication he takes Omeprazole, which might be obtained over the counter. There is reference in the medical evidence to the appellant being pre-diabetic but no confirmation that he is on medication to prevent the development of the condition.

54. In considering whether the consequences for the appellant will be unjustifiably harsh, therefore, there is very little evidence to show that the effect of the limbo period would even be harsh, let alone unjustifiably so. I accept that it would be unsettling for the appellant and his wife, who have grown accustomed to the freedoms enjoyed by a couple who are both British citizens, but there is a paucity of evidence to demonstrate that the effects of deprivation would go much beyond that during the limbo period.

55. It is doubtless for that reason that Mr Youssefian sought to submit in reliance on the factors that I have set out above – and particularly delay - that the public interest in deprivation is somewhat reduced. In my judgment, however, any such reduction is insufficient to deplete the public interest to the extent required. It is not clear when the Secretary of State obtained information which enabled him to act; he was required to wait for the outcome of the test case litigation which was in progress between 2015 and 2017; and the delay which occurred thereafter was regrettable, not extreme. Taking that delay together with the other factors set out in the appellant's skeleton argument, including the appellant's length of residence in the UK, it is entirely clear that the public interest in deprivation outweighs the matters on the appellant's side of the scales.

56. In the circumstances, I conclude that both of the questions posed at the start of this decision should be answered in the negative and I dismiss the appellant's appeal.

Notice of Decision

The decision of the First-tier Tribunal having been set aside, I substitute a decision dismissing the appellant's appeal.

Mark Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 April 2024