Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DC/00072/2018 (V)**

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams	**Decision & Reasons Promulgated**
On Wednesday 6 October 2021	**On Tuesday 9 November 2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR KLEANTH DASHI (AKA SOKOL RUGOVA)
(ANONYMITY DIRECTION NOT MADE)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Berry, Counsel instructed by Wesley Gryk solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge I Ross promulgated on 17 February 2021 ("the Decision") dismissing his appeal against the Respondent's decision dated 31 October 2018 giving the Appellant notice of her decision to deprive him of his British citizenship. The Respondent's decision was based on the Appellant's exercise of deception. When the Appellant entered the UK in 1995 and claimed asylum, he said that his name was Sokol Rugova, that he was born

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on 18 May 1968 and that he was a national of Kosovo. In fact, he is Kleanth Dashi, an Albanian national born on 18 May 1968. The Appellant was recognised as a refugee based on his false particulars and granted indefinite leave to remain on 7 June 1999. He made an application for British citizenship in his false identity on 24 June 2002 and was naturalised in that identity.

2. In November 2005, the Appellant acted as sponsor for a visit by his mother from Albania. The production of a copy of his passport gave rise to questions asked of his mother who told the entry clearance officer when asked about this that "everyone registered as Kosovo". Her application was refused based in part on the suspicion of the Appellant's deception. The Respondent's case however is that the British Embassy in Tirana did not inform the Home Office in the UK about the deception until 2013. I will need to return to that point as the Respondent's delay in taking action is relied upon heavily by the Appellant.

3. The Appellant accepts that he exercised deception. He does not dispute that the deception was material but in essence says that due to the Respondent's inaction and his own family circumstances, the Respondent's discretion should have been exercised differently or that the deprivation would involve a breach of his Article 8 ECHR rights.

4. Judge Ross rejected the Appellant's arguments. He concluded that "the deprivation of the appellant citizenship was the correct decision in law and is proportionate" ([26] of the Decision)

5. The Appellant appeals the Decision on the following grounds:

   Ground 1: the Judge failed to give adequate and sufficient consideration to the exercise of discretion to deprive. It is said that the Judge failed to have regard to other factors relevant to the exercise of discretion such as his long-term residence, his family life and the Respondent's delay.

   Ground 2: the Judge wrongly directed himself in law by simply upholding the Respondent's exercise of discretion ([20] of the Decision). The Appellant relies on Hysaj (Deprivation of Citizenship; Delay) [2020] UKUT 00128 ("Hysaj"). The Appellant concedes however that the Supreme Court's judgment in Begum v Special Immigration Appeals Commission; Begum v Secretary of State for the Home Department [2021] UKSC 7 ("Begum") may have a bearing on the approach to be adopted by the Tribunal. He argues however that the wider factors beyond the fraud and materiality of the fraud still require to be considered by the Respondent and thereafter by the Tribunal.

   Ground 3: the Judge wrongly failed to consider the best interests of the Appellant's minor child by reference to section 55 Borders, Citizenship and Immigration Act 2009 ("Section 55").

   Ground 4: the Judge made a mistake of fact amounting to an error of law when assessing proportionality under Article 8 ECHR. At [25] of the Decision, the Judge stated that the Respondent had committed to deciding what form of leave would be

granted to the Appellant following the deprivation order whereas the Respondent's stated position was that she would consider whether to grant leave.

Ground 5: the Judge erred in lifting the anonymity order without hearing from the parties.

6. Permission to appeal was granted by First-tier Tribunal Judge Andrew on 26 March 2021 in the following terms so far as relevant:

> "..2. I am satisfied that there are arguable errors of law in this decision.
>
> 3. Ground 1. The Judge did not consider the exercise of discretion for himself but merely confirmed the findings of the Respondent.
>
> 4. Ground 2. The Judge may have misdirected himself as to the relevant test.
>
> 5. Ground 3. The Judge did not consider Section 55 in respect of the minor child.
>
> 6. Ground 4. The Judge made a mistake of fact in relation whether leave would be granted following deprivation.
>
> 7. Ground 5. I have noted what has been said. If indeed the Appellant had been granted anonymity (I do not have the whole file) then submissions should have been heard as to whether anonymity should be lifted."

7. The matter comes before me to consider whether there is an error of law in the Decision and if I so conclude to either remit the appeal to the First-tier Tribunal or re-take the decision in this Tribunal.

8. The hearing before me took place via Microsoft Teams. There were no technical difficulties affecting the conduct of the hearing. I had before me a core bundle of the documents relevant to the appeal, a bundle of authorities submitted by Mr Clarke and a Note prepared for this hearing by Mr Berry. I heard oral submissions from both Mr Berry and Mr Clarke, and I am grateful to them for their very clear exposition of what is relatively recent case-law as it is said to apply to this case.

DISCUSSION

ANONYMITY: GROUND 5

9. I begin with the Appellant's fifth ground. As Mr Clarke submitted and I accept, the Judge's discharge of the anonymity direction without notice is not capable of undermining the substance of the Decision. If that direction was improperly discharged, then the appropriate course was to write to the Tribunal to prevent publication of the Decision in its un-anonymised form. As it is, although First-tier Tribunal decisions might be searchable electronically, they are not generally published and I am far from persuaded that the discharge of the anonymity direction has had any impact on the Appellant at all.

10. I was however surprised to see the making of an anonymity direction in this case in the first place. It does not involve an asylum claim. The Appellant made clear in his evidence to Judge Ross as recorded at [13] of the Decision that he was not pursuing any asylum claim. Although there is a minor child of the Appellant's family, as I will come

to, it is not necessary to say very much about the circumstances of that child and Judge Ross did not do so (indeed that he did not refer to that child's best interests forms the basis of one of the Appellant's grounds).

11. I therefore enquired as to the basis of the anonymity request. I was taken to the request made on 15 February 2019 when the appeal was lodged. The reason behind the request was said to be because the appeal would involve disclosing facts about the Appellant's personal history and might have an impact on him in relation to, for example, employment if his involvement became known. It was said that the Appellant's identity might be known to staff at the Tribunal. Anonymity was granted by the First-tier Tribunal on 14 March 2019 without reasons being given.

12. I indicated to the parties that I was minded to review the appropriateness of the anonymity direction and to consider its discharge. Mr Berry submitted that I should continue the direction because of the existence of a minor child whose welfare might be impacted if indeed the appeal did have an impact on the Appellant's future employment. Mr Clarke indicated that the Respondent's position was largely neutral. However, he did point out that the application as made was based not on a risk to the Appellant but in order to protect knowledge of his own behaviour. Mr Clarke invited me to discharge the anonymity direction.

13. Presidential Guidance Note No. 2 of 2011 of the First-tier Tribunal (Anonymity Directions) says the following about the grant of anonymity:

> "4. The power to direct anonymity is derived from article 8 ECHR and such directions should be made where public knowledge of the person or the case might impact on that person's protected rights. An interim anonymity direction is more likely to be appropriate during initial stages of an appeal to enable the parties to prepare their cases without interference or hindrance. At the CMR or at the substantive hearing the Immigration Judge should review the application for anonymity and direct whether the appellant should be granted anonymity. There may well be appeals where no application is made by either party but the court will self direct that anonymity should be granted.
>
> 5. Anonymity directions will often, if not always, be made where the appeal involves:-
>
> i) a child or vulnerable person
>
> ii) evidence that the appeal concerns personal information about the lives of those under 18 and their welfare may be injured if such details are revealed and their names are known
>
> iii) there is highly personal evidence in the appeal that should remain confidential
>
> iv) there is a claim that the appellant would be at risk of harm and that by publishing their names and details it may cause them harm or put others at real risk of harm
>
> v) publication of the determination may be used subsequently to support a sur place claim.
> <u>First tier</u>
>
> It is unusual, (but not unknown) for the determinations of the first tier to be published. If anonymity is granted the determination should give brief reasons why anonymity is granted with fuller reasons if either party objects."

14. The Upper Tribunal's Guidance Note 2013 No. 1: Anonymity Orders states as follows:

"6. The starting point for consideration of anonymity orders in UTIAC, as in all courts and tribunals, is open justice. This principle promotes the rule of law and public confidence in the legal system. UTIAC sits in open court with the public and press able to attend and nothing should be done to discourage the publication to the wider public of fair and accurate reports of proceedings that have taken place.

7. Given the importance of open justice, the general principle is that an anonymity order should only be made by UTIAC to the extent that the law requires it or it is found necessary to do so. …

9. UTIAC has power to make an anonymity order or otherwise direct that information be not revealed, where such an order is necessary to protect human rights, whether (for example) the private life of a party subject to the jurisdiction or the life, liberty and bodily integrity of a witness or a person referred to in proceedings. The Tribunal may also make such an order where it is necessary in the interests of the welfare of a child or the interests of justice would otherwise be frustrated.

10. Parties may apply for an anonymity order or UTIAC may consider making one of its own volition. Where anonymity is an issue, the UTIAC judge should deal with the matter as a preliminary issue and decide, first, the extent of any anonymity order made, if any.

11. A decision to make an anonymity order where not required by law may require the weighing of the competing interests of an individual and their rights (for example, under Articles 3 or 8 of the ECHR or their ability to present their case in full without hindrance) against the need for open justice.

12. An anonymity order will not be made because an appellant or witness has engaged in conduct that is considered socially embarrassing to reveal. In particular, that the fact that someone has committed a criminal offence will not justify the making of an anonymity order, even if it is known that such a person has children who may be more readily identified if the details of the person are known."

[my emphasis]

15. I have considered the impact on the Appellant's private life which publication of my decision might have. I recognise that it may have some impact on his employment. The exercise of deception may well be frowned upon by some employers and affect the Appellant's employability. However, as the Upper Tribunal's Guidance Note makes clear, it is not the function of this Tribunal to make an anonymity direction to protect an appellant against the impact of his own behaviour. That is in essence what the Appellant is asking (and has asked) the Tribunal to do. This is not a case where the Appellant denies the deception which he has exercised. There is therefore no reason to do as Mr Berry suggests by making an anonymity direction while the appeal is ongoing. Whatever the ultimate outcome of this appeal, the fact remains that the Appellant has exercised deception. The only question in the appeal is whether his circumstances are such that he should not be deprived of his citizenship in consequence.

16. I have also taken into account the position of the Appellant's child. However, as I will come to, there is no reason to go into any detail about that child and I am satisfied that the child's welfare is not impacted by the discharge of the anonymity direction.

17. For those reasons, I am satisfied that it is appropriate to discharge the anonymity direction. I am fortified in my conclusion by the fact that all the cases to which I was taken in legal argument which involve deprivation are not the subject of an anonymity direction even though some of those involve minor children. I add that, although Judge Ross was wrong not to raise this with the parties before discharging the anonymity direction, the First-tier Tribunal's own guidance note suggests that it was appropriate for him to review anonymity at that stage. Since I have now dealt with that issue though, I need say no more about this nor about the Appellant's fifth ground.

GROUNDS 1 AND 2

18. Grounds 1 and 2 concern the way in which the Judge approached his consideration of the exercise of discretion, and I therefore take them together. Before I turn to look at the substance of those grounds, it is necessary to set out some of the case-law concerning this issue.

19. The Appellant's grounds rely on Hysaj. The guidance given in that case has to be read now with what was said by the Supreme Court in Begum. I do not need to set out the judgment in Begum as, since that judgment, this Tribunal has provided guidance about how the principles derived from that judgment are to be applied by the Tribunal. The guidance is to be found in Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238 (IAC) ("Ciceri"). The approach to be adopted is as follows:

> "(1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.
>
> (2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.
>
> (3) In so doing:
>
> (a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and
>
> (b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).
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> (4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in EB (Kosovo) v Secretary of State for the Home Department [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs 13 to 16 of EB (Kosovo).

(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).

(7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good."

20. The Decision in this appeal pre-dates Ciceri and Begum. However, given the guidance and principles derived from Ciceri and Begum, it can no longer be argued that the Judge erred in his approach of reviewing whether the Respondent's discretion was properly exercised (as he stated at [21] of the Decision).

21. The starting point for Judge Ross and therefore also for me is whether the Respondent took into account irrelevant considerations, failed to take into account relevant ones or made a decision which was irrational (to the Wednesbury standard). Faced with that submission by Mr Clarke, Mr Berry adjusted his submissions to attack the Respondent's decision and it is therefore appropriate for me to look at that decision letter.

22. As I have already set out, the main complaint made by the Appellant in grounds 1 and 2 is that the Judge (or now the Respondent) failed to take into account when considering the exercise of discretion, the Respondent's own delay in taking a decision to deprive and the Appellant's private and family life circumstances.

23. Mr Berry directed my attention to one paragraph only of the decision letter. At [27] of the decision letter, the Respondent says this:

"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 your legal representative in their letter dated 27/09/2018 …and concluded that deprivation would be both reasonable and proportionate."

24. That paragraph cannot be read in isolation. I suggested to Mr Berry that it should be read with what follows since the Respondent herself says that she took into account those factors. Mr Berry's response was that this could not be correct as those were all matters of law arising independently of the British Nationality Act 1981 (Article 8 ECHR, Section 55 and Statelessness). That submission is unsustainable. The indication

that those paragraphs were factors taken into account when making the decision to deprive makes clear that they are relevant to the exercise of discretion even if those arise under different legal provisions from the British Nationality Act 1981. The submission is also difficult to square with the Appellant's case that, for example, his length of residence and family circumstances are factors relevant to the exercise of discretion.

25. The decision letter cannot be divided up in this way. It has to be read as a whole. Prior to paragraph [27], the Respondent set out in considerable detail her consideration of the factors relevant to the exercise of discretion. Those include not only the extent of the deception practised but also the history of the deprivation and the history of the Respondent's policy in relation to deprivation (including reference to her nullity policy). The Respondent goes on at [21] to [24] to set out the representations made by the Appellant's then solicitors including reference to delay and the Appellant's (and his family's) Article 8 rights. At [25] of the decision letter having referred to the way in which the deception emerged and the previous notification to the Appellant of the investigation into his deception, the Respondent says this:

> "Your submissions in response to this letter rely heavily on article 8 of the ECHR and your family and private life you have built up whilst residing in the UK. The submissions also attempt to blame the delay in dealing with deprivation/nullity decisions in general and claim it would be unfair to apply the current deprivation policy to you. However, at no point did you attempt to admit the deception you had used, it was only when you received the letter of 28/08/2018, that you finally admitted to your genuine details. Therefore, the delay in dealing with the issues surrounding your use of false details cannot be blamed on the HO for failing to deal with your case and we cannot act retrospectively in making a decision on deprivation, we can only consider your case in line with current policy and guidance. Deprivation is therefore applicable in this instance."

At [30] of the letter, the Respondent makes clear that she only became aware of the deception in 2013 as a result of information then received from the British Embassy in Tirana.

26. The Respondent therefore considered the submissions relating to delay but rejected them on the basis that the Appellant had not admitted to his deception until confronted by the discovery of it and the Respondent had not in any event been aware of it until 2013 and the decision to deprive was taken in 2018. Although I would accept that it is not entirely clear that the delay between 2013 and 2018 arose as a result of the delay caused by the litigation relating to the "nullity" policy, the inclusion of reference to that litigation at [19] to [21] of the decision letter as well as the timing of the delay between 2013 and 2018 suggests that this may have been the cause. Even it was not, as Mr Clarke pointed out, the delay is in the order of five years which is roughly the same as that in Ciceri. In fact, as Mr Clarke also pointed out, the facts of this case are not dissimilar to those in Ciceri (see [5] to [7] of the decision in that case).

27. As I have already noted, the Respondent then went on at [28] to [31] of the letter to deal with the Appellant's and his family's Article 8 rights and the best interests of the Appellant's minor child. I can ignore the paragraphs regarding statelessness as no point is taken in that regard. The Respondent makes the point that, although

deprivation will lead to a loss of immigration status, that does not mean that a person is unable to stay in the UK and the decision is not a removal decision. The only impact which has to be considered is, as the Respondent says, that arising from deprivation. The Respondent takes into account that the Appellant has a minor child and an adult child both of whom are British citizens. She points out that neither will lose their British citizenship. She assesses that there will be no "significant effect" on the children's best interests as their and their mother's status will be unaffected and "nor is there any evidence that it will impact on their education, housing, financial support or contact with [the Appellant]".

28. For completeness, I also refer to [35] of the decision letter where the Respondent notes that the period between deprivation order and a further decision to remove or grant leave will be relatively short. No deprivation order would be made until the Appellant's appeal rights are exhausted and there is a commitment to making a further decision within eight weeks thereafter whether to remove or grant leave. The Respondent concludes at [36] of the decision letter that having balanced the impact of deprivation against the public interest, it would be "reasonable and proportionate" to deprive the Appellant of his citizenship.

29. I therefore return to where I began in relation to the Appellant's first and second grounds concerning the exercise of discretion. Mr Berry's refocussed submissions as to the Respondent's own exercise of discretion do not have merit for the reasons which I have set out above. The Respondent had regard to the asserted delay. She rejected the argument that there had been delay. She had regard to the Appellant's and his family's position, to the best interests of the children and to the possible "limbo" between the making of the deprivation order and the grant or refusal of leave to remain.

30. On the basis of the law as it is now understood, the task of the Judge was to review the Respondent's decision and to form his own view about the proportionality of deprivation. The latter exercise though is confined to the impact of deprivation and not removal. It is not a "proleptic" assessment of the future prospect of removal (see [3(a)] of the guidance in Ciceri).

31. I turn then to the Decision. In relation to the delay, the Appellant's evidence was that he thought that by giving the correct information to the entry clearance officer in 2005 he was contacting the Home Office ([11] of the Decision). The Respondent submitted that this could not be viewed as contact with her ([16] of the Decision).

32. Having noted that the deception and materiality of that deception were accepted, the Judge continued as follows:

> "20. I find that the appellant came to the UK as a fully grown adult aged 24 years old and chose to make an asylum claim using false information, pretending to have had to flee persecution in Kosovo. Further, I find that the appellant maintained his deception for many years and deliberately failed to contact the Home Office in order to set the record straight. I do not accept that in making a visit visa application for his mother in 2005, the appellant intended to 'come clean' about his true identity with the Home Office. The appellant could

> have, over the course of 20 years contacted the Home Office directly or instructed solicitors to do so. I find that when he made the visit visa application for his mother online to UKVI, he likely expected the application to go through unnoticed.
>
> 21. Given the very significant length of time which the appellant allowed to pass before disclosing his true identity, the appellant's maturity and lack of any mitigating circumstances, I find that the Respondent's discretion was properly exercised."

33. The Judge can no longer be criticised as the Appellant's second ground suggests for reviewing the Respondent's exercise of discretion. That is indeed now the correct approach.

34. Mr Berry submitted that the Judge's reasoning was inadequate in relation to that exercise of review. However, as Mr Clarke pointed out, the only factors on which the Appellant relies as going to the exercise of discretion are delay and the impact on the Appellant's and his family's private and family life (which incorporates also the best interests of the minor child). The latter factor is considered I would accept after the Judge's conclusion regarding discretion, and I consider that below when looking at the Appellant's third and fourth grounds. However, the Decision has to be read as a whole (as I have concluded is also the position in relation to the decision letter).

35. Mr Berry also said the Judge's reasoning at [20] of the Decision related only to the Appellant's motivation and intention in 2005 and not to the delay itself. I reject that submission. The Judge had been told that the Appellant considered the visa application and production of a copy of his passport to the entry clearance officer to be notification to the Respondent. The Judge rejected that as being the position. The position was therefore as set out in the Respondent's decision letter. Although the Judge did not expressly refer to that letter in relation to the date when the Respondent became aware of the deception, he did note at [6] of the Decision that the Home Office had obtained the Appellant's birth certificate from the British Embassy in Tirana which can only be taken from [30] of the decision letter. The Judge was therefore making a finding that there was no culpable delay by the Respondent which would affect the exercise of her discretion.

36. Mr Berry referred in his oral submissions to a number of paragraphs in the judgment of the Court of Appeal in Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 ("Laci"). Although that judgment post-dates by some months the Supreme Court's judgment in Begum, as appears at [40] of that judgment, the Court of Appeal was not referred to the Supreme Court's judgment as it was handed down after the conclusion of the hearing in Laci. The Court of Appeal's attention was not drawn to Begum until the draft judgment was circulated. As such, the Court of Appeal did not hear argument about the applicability of Begum to appeals under section 40(3) British Nationality Act 1981 ("Section 40(3)"). As the Court of Appeal itself accepted at [40] of its judgment, some of what it had said previously about the correct approach to appeals in relation to Section 40(3) might "require qualification". Underhill LJ declined to express a view in that regard. That view has now been taken by this Tribunal in Ciceri. Although the judgment in Laci is clearly binding on this Tribunal, what is said about the Tribunal's approach to the exercise of discretion now has to be read in light

of the guidance in Ciceri and some caution is required in relation to comments made in the judgment in Laci about earlier judgments in this sphere (see the Court of Appeal's own remarks at [24], [27], [30], [32] and [37] of the judgment).

37. I do not however need to consider the judgment in Laci in any detail as I did not find the references to that judgment of any substantial assistance. Mr Berry sought to draw an analogy with the facts of this case as regards delay. The Respondent was in that case said to have been made aware of the appellant's true identity when he sponsored his mother's visit visa in 2007 ([45] of the judgment). As appears from [6] of the judgment, the appellant was then informed of the Respondent's intention to deprive in 2009. However, nothing was done then for nine years ([8] of the judgment). The appellant's British passport was renewed in 2016 ([45] of the judgment). That is not this case. As I have already concluded, Judge Ross accepted that the Respondent had not been aware of the Appellant's deception until 2013 when she was provided with the Appellant's birth certificate by the British Embassy in Tirana. The Appellant himself did not admit to the deception until confronted with the evidence. Judge Ross did not accept that the Appellant's provision of his British passport when sponsoring his mother's visa application amounted to contact with the Respondent or admission of his deception.

38. Moreover, Underhill LJ emphasised at [83] of the judgment in Laci that "in all ordinary circumstances [migrants who obtain British citizenship on the basis of a lie] can expect to have [citizenship] withdrawn". The judgment in Laci has to be viewed in the context of what Underhill LJ described as a "remarkable" delay. It is not authority for the proposition that any delay by the Respondent affects the exercise of her discretion. The Court of Appeal's judgment also has to be read in the context of a determination whether the First-tier Tribunal Judge had made an error of law when taking that delay into account in allowing the appeal. The Court of Appeal was not deciding the appeal for itself.

39. For the foregoing reasons, I am satisfied that the Appellant's first and second grounds do not disclose any error of law. Although pre-dating Begum, Judge Ross' approach to the exercise of discretion is in accordance with the principles there set out and with the guidance in Ciceri. The Judge considered the delay but rejected the argument that the delay (if there was any) impacted on the exercise of discretion. That was a conclusion which he was entitled to reach on the evidence.

GROUNDS 3 AND 4: ARTICLE 8 ECHR AND SECTION 55

40. I turn then to the third and fourth grounds. There is some overlap between the issues there raised and those raised in the first and second grounds because, as I have already concluded, although the Tribunal is required to consider for itself whether Article 8 is breached by the deprivation decision, that factor is also part of the exercise of the Respondent's discretion. As I have already indicated, although the Judge's analysis in relation to Article 8 ECHR comes after his consideration of discretion, the Decision has to be read as a whole. For that reason, not only is the Judge's assessment in relation to Article 8 and Section 55 part of the consideration of the exercise of discretion but the

Judge's conclusion in relation to delay which is considered in relation to the exercise of discretion has to be read into the assessment which follows. In other words, when looking at Article 8 ECHR, the Judge was not required to take into account delay because he had already found that there was no relevant delay.

41. Having directed himself that the issue was the proportionality of the decision to deprive and having regard to the "significant public interest" in deprivation in such cases, the Judge carried out his proportionality assessment at [24] and [25] of the Decision as follows:

> "24. I accept that the appellant has led a useful and constructive life in the UK and that he has developed a strong family and private life here. However, I have to bear in mind that whilst I should take into account the foreseeable consequences of the deprivation of the appellant's citizenship, the appeal is not in relation to any intention to remove the appellant from the UK. I am only concerned with the deprivation decision.
>
> 25. I find that whilst the effect of the deprivation will be that the appellant loses his British citizenship, his wife and children will remain British citizens. There is no suggestion that the family will have to leave the United Kingdom. The Secretary of State has made a commitment in paragraph 34 of the decision letter that consideration will be given as to what form of leave will be granted to the appellant once the deprivation order has been made. Alternatively, it is open to the appellant immediately to make a human rights application for indefinite leave to remain based on the length of his presence in the UK and family life."

42. I accept as Mr Clarke conceded that the Judge has misunderstood the Respondent's decision letter. She did not say that the Appellant would necessarily be granted leave to remain. She said that she would consider whether to do so or to remove. The Judge was not of course required to consider the likelihood of removal but only the impact of the deprivation decision itself. As Mr Clarke submitted therefore and I accept, the impact was a period of eight weeks between deprivation and the Respondent's consideration whether to remove or to grant leave.

43. Mr Berry again took me to what is said in Laci about this period of "limbo". As the Court of Appeal said at [38] of the judgment the consequences of being in limbo "will be in principle relevant to the exercise of the common law discretion under section 40(3) and to the extent that they constitute an interference with the appellant's article 8 rights they will need to go into the proportionality balance". That accords with what I say above about the relevance of the human rights factors to the exercise of discretion by the Respondent and also to the Judge's review of that discretion.

44. However, the extent of the judge's consideration of the impact of the "limbo" period depends on what evidence there is before him. It must also be remembered that Laci was an appeal to the Court of Appeal in relation to whether the judge in that case had made an error of law and whether the Upper Tribunal had been wrong to interfere with the assessment made. It was not a proportionality evaluation carried out by that court. The First-tier Tribunal Judge in Laci had allowed the appeal, but the Upper Tribunal had found there to be an error in the decision, set it aside and remade the decision dismissing the appeal. The Court of Appeal's judgment regarding the First-tier Tribunal's reasoning needs to be read in that context.

45. If one turns to look at what the Court of Appeal said about the relevance of the "limbo" period, therefore at [70] of the judgment, it is evident that the importance of this factor turned very much on the evidence which the First-tier Tribunal Judge had relating to the appellant's employment. The First-tier Tribunal Judge found as a fact that the deprivation would affect the appellant's ability to continue to work and to provide for his family ([45] of the judgment citing [19] of the appeal decision). Mr Berry suggested that this would also be the position here. However, that submission has to be read in the context of the submissions made to Judge Ross.

46. The submissions made by Mr Berry to Judge Ross are recorded as being that "the appellant would satisfy the requirements for a grant of indefinite leave to remain based on his length of residence in the UK" ([18] of the Decision). Mr Berry submitted therefore that there would be no point in taking deprivation action. No doubt that is why the Judge found in the alternative at [25] of the Decision that the Appellant could make an immediate application for indefinite leave.

47. Although Mr Berry is also recorded as saying that "at least temporarily" the Appellant would be in the UK unlawfully and would not be allowed to work, the Judge considered that at [25] of the Decision and found that the Respondent would make a decision after the deprivation order was made. Although Judge Ross (wrongly) thought that decision would be what form of leave to grant rather than whether to grant leave, that does not affect the extent of the "limbo" period between deprivation and the Respondent's determination of status. The evidence in the bundle suggests that the Appellant may be self-employed. I accept that he may not be allowed to work during the period between deprivation and consideration whether to grant leave. However, there is little evidence about his earnings when compared with those of his wife who would be able to continue to work. The available evidence which admittedly dates back to 2017 is that the Appellant earns in the region of £25,000 per annum. There is no evidence about his wife's earnings.

48. Mr Berry is also recorded as having submitted that the Appellant was responsible for a mortgage and has a minor child still living at home. The Judge noted that the children would remain British citizens. The evidence in relation to the mortgage is recorded at [14] of the Decision. The Appellant's mortgage relates to a rental property and not the family home. That home is said to be owned by the Appellant and his wife. It is recorded at [15] of the Decision that the mortgage in relation to the family home is in the sole name of the Appellant's wife.

49. I accept also (as Mr Clarke also conceded) that the Judge does not expressly mention Section 55. Mr Berry submitted to me that the child's interests would be impacted because the Appellant is unlikely to be able to work. I repeat what I have already said about the lack of evidence regarding the Appellant's wife's ability to provide for the family. As I have already noted, the Judge in any event took into account that the period between the deprivation order and the Respondent's decision as to status would be a short one.

50. I accept that the Judge has made a mistake of fact which amounts to an error of law in relation to the Respondent's intentions and also failed expressly to mention the child's best interests. Mr Clarke invited me to find however that such errors would not affect the outcome. Given that the period between deprivation and the Respondent's decision as to leave would in any event be short and that, as the Judge says, the child is a British citizen whose own status would not be impacted (and there is a lack of evidence about the impact of the Appellant being unable to work), I accept that the errors made are not ones which would change the outcome.

51. On finding an error of law, the Tribunal may (but need not) set aside a decision of the First-tier Tribunal (section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007). I am satisfied that, although there are errors made by Judge Ross when assessing the position under Article 8 ECHR, those are not such as to affect the outcome. I decline to set aside the Decision for that reason.

CONCLUSION

52. The Appellant's first and second grounds fail to identify any errors of law in the Decision. Although he has identified errors in his third and fourth grounds, those errors are not ones which would affect the outcome. I therefore decline to set aside the Decision. The appeal therefore remains dismissed.

DECISION AND DIRECTIONS

The Decision of First-tier Tribunal Judge Ross promulgated on 17 February 2021 does not involve the making of a material error on a point of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

Signed: *L K Smith*

Upper Tribunal Judge Smith

Dated: 11 October 2021