IAC-FH-CK/SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DC/00122/2019**
('V')

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
And via Teams	**On the 28th February 2022**
On the 6th January 2022	

Before

UPPER TRIBUNAL JUDGE SMITH
UPPER TRIBUNAL JUDGE KEITH

Between

SLAYMAN BAKRI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Al-Rashid, instructed by David Grand Solicitors
For the Respondent: David Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. This is the remaking of the decision in the appellant's appeal against the respondent's decision to make an order depriving him of his British citizenship under section 40(3) of the British Nationality Act 1981.

2. By an error of law decision promulgated on 20th October 2021, we found an error of law in the decision of First-tier Tribunal Judge Franzis itself promulgated on 17th February 2021 allowing the appellant’s appeal. In short summary, we did so because the Judge directed herself that an appeal under section 40A of the 1981 Act was not a review of the respondent’s decision “but a full reconsideration of the decision whether to deprive the appellant of British citizenship.” We found that to be a misdirection following the Supreme Court’s judgment in R (Begum) v SSHD [2021] UKSC 7 (“Begum”). Our error of law decision explaining our reasons in further detail is annexed to this decision for ease of reference.

3. As a result of our error of law decision, we set aside Judge Franzis’ decision in its entirety and gave directions for a resumed hearing before us to re-make the decision. This is our decision following that resumed hearing. We have both contributed to the decision.

4. The appellant’s appeal is against the respondent’s decision to make an order depriving him of his British citizenship under section 40(3) of the British Nationality Act 1981. The decision to deprive was made on the basis that the appellant had used a false identity comprising use of a false name, date of birth and nationality. He has claimed to be Fadi Ahmed Khalil, a national of Palestine born on 5th January 1988. He is in fact Slayman Bakri, a national of Lebanon, born on 7th November 1986.

5. Putting matters neutrally, the appellant in his false identity was granted discretionary leave to remain (“DLR”) followed by settled status (“ILR”) and then citizenship.

CONDUCT OF THIS HEARING

6. This hearing was conducted in person at Field House attended by the representatives and the appellant. The appellant’s wife, Zainab Shaher, attended via audio only through “Teams”. This was therefore a hybrid hearing. Prior to the hearing, the appellant had sought an adjournment on the basis that Ms Shaher, with whom he is not cohabiting, had tested positive for COVID-19. In response, the Tribunal asked the appellant whether his wife was willing to give evidence remotely. She confirmed that while her preference would have been to attend in person, she was content to do so via Teams. On the day of the hearing, because of difficulties with Ms Shaher’s internet connection, she was unable to connect to the video hearing. However, arrangements were made for her to dial in to Teams using her telephone, so that we were able to hear her evidence and she could hear us, but without video. We indicated to her that if she had any difficulty in understanding what was said during the hearing or did not understand any questions, she should let us know straightaway. We also checked to ensure that she had her witness statement, on which she was cross-examined, before her. We also made sure that the representatives introduced themselves so that she knew who was asking her questions at each stage.

7. The appellant gave evidence with the assistance of an Arabic interpreter. At the beginning of the hearing, we checked that the interpreter and the appellant were able to understand one another, and they confirmed that they were.

8. At no stage did either the appellant, Ms Shaher or Mr Al-Rashid indicate that there were any difficulties in participating in the hearing and we were satisfied that both the appellant and his wife were able to participate effectively.

DOCUMENTS

9. We also explored with the representatives at the beginning of the hearing what documents we were being asked to consider. During the error-of-law hearing, Mr Al-Rashid had indicated that evidence in relation to the appellant’s suicide risk and wider article 8 rights would need to be considered on remaking. However, the updated evidence in the supplementary bundle before us appeared to be very limited. There was, for example, no documentary evidence in relation to the appellant’s children, other than their birth certificates, or relating to the appellant’s mental health. We checked this purely to ensure that we had not missed any relevant documents.

10. Mr Al-Rashid confirmed that other than the supplementary consolidated bundle, which contained the witness statements of the appellant and Ms Shaher in this Tribunal and before the First-tier Tribunal, as well as some limited medical evidence, the only other bundle we were asked to consider was the respondent’s bundle before the First-tier Tribunal. This latter bundle contained all the correspondence and documentation in relation to the appellant’s applications which formed the focus of the deprivation decision. In response to cross-examination from Mr Clarke, who at various stages challenged the absence of documentation on what he submitted were material issues, Mr Al-Rashid applied to adduce one additional document, a NHS letter dated 18th September 2019. The letter referred to the appellant by his false identity and provided evidence that the appellant suffered burns, as a result of exposure to flames, in 2017. We admitted that letter without objection from Mr Clarke.

11. Other than the respondent’s bundle before the First-tier Tribunal, the supplementary bundle produced by the appellant and the additional document to which we have already referred, we also considered documents submitted by Mr Clarke on 24th November 2021, which included notes from the respondent’s electronic database (“the CID notes”) and the respondent’s document: Form AN: guidance, version 1, dated June 2014, which was the guidance in force at the time of the appellant’s application for naturalisation and grant of citizenship.

FACTS, EVIDENCE AND CONSIDERATION OF THE EVIDENCE

12. Many of the facts in this case are not and cannot be disputed because they are supported by documentary evidence. However, in particular the reasons for the use of a false identity are the subject of evidence from the

appellant. We also have evidence from the appellant and Ms Shaher regarding the impact of deprivation on the appellant and his family.

13. We set out the facts in chronological order including reference to the evidence we have from both the appellant and respondent regarding the issues which are relevant to our consideration. We have regard to all the evidence before us but refer only to that which is pertinent to our determination of the issues.

Use of false identity and deception

14. The appellant entered the UK lawfully in or around 25th June 2004 using his real identity, on a visit visa. He then assumed his false identity, including the younger age, when he claimed asylum, as recorded in his Statement of Evidence Form. When he completed the form on 18th July 2004, he was (just) a minor, aged 17 years and 8 months.

15. At the time of his asylum claim, the appellant was represented by Sara Solicitors. On the appellant's account, the appellant's representative at the time, Mr Saleh of Sara Solicitors, was aware of his true name and identity and had encouraged him to claim under the false identity.

16. The respondent accepts that, as the appellant was (just) a minor at the time of his application, we cannot place weight on his actions at the time when considering the exercise of deception. However, as we will come to, that does not mean that we leave out of account the impact of the use of the false identity, in particular the false date of birth, on the appellant's immigration status.

17. Although a minor at the time of his asylum claim, the appellant was an adult by the date when the respondent reached her decision on the asylum claim on 25th February 2005. The respondent refused the appellant's asylum claim not because she did not accept his (false) identity (of which she was at the time unaware), but because she did not accept that he had a well-founded fear of persecution, even based on his false identity. However, she granted DLR based on the false age. The CID notes record the following:

> "Based on the information provided, I am refusing asylum for the reasons outlined in the Reasons for Refusal Letter but Discretionary Leave has been granted. The claimant is a minor and no reception arrangements exist for his return, we are minded to grant Discretionary Leave in accordance with a ministerial commitment that we would not return a minor unless suitable arrangements are made in place for the child's return. As no reception arrangements exist for this child's return and **solely on the basis that he is a minor** [our emphasis], exceptional leave to remain is appropriate.
>
> Decision
>
> I have therefore decided to make a discretionary grant of limited leave to remain in the United Kingdom to Fadi Ahmad Khalil for 04/02/06."

18. On the appellant's account, he retained the services of Sara Solicitors for approximately eighteen months. On 21st December 2005, the appellant made a further application for DLR, once again in the false identity, but

this time when he was in fact an adult. However, in his false identity, he remained a minor then aged seventeen years. He would not have turned eighteen on that identity until January 2006.

19. It is unclear whether this application was made on behalf of the appellant or by him personally, but he does not suggest that it was without his agreement. The appellant confirmed the subsequent lawyer involved after Sara Solicitors, Arden Solicitors, would have relied on the paperwork provided by Mr Saleh. The appellant had not revealed his true identity to this lawyer.

20. The appellant met Ms Shaher, a naturalised British Citizen, in early 2009. He then entered an Islamic (unregistered) marriage with her in 2010 and they began cohabiting on 19th February 2010. Ms Shaher acknowledges that she was aware from the very beginning of their relationship in 2009 of the appellant’s true identity and was also aware that he was using a false identity. Ms Shaher says that she did not approve of the appellant’s actions and sought to not be involved in them.

21. On 2nd February 2010, while awaiting the respondent’s decision on his application for further discretionary leave, the appellant was represented by McLee & Co Solicitors. Unaware of his true identity, they wrote to the respondent’s case resolution team asking for the appellant to be granted ILR under the respondent’s “legacy” scheme. They referred to his eligibility for consideration as someone who had been granted some form of limited leave to remain whose case would need to be reviewed, for example as an unaccompanied child or a person granted discretionary leave for medical reasons. They referred to the appellant having applied for an extension of DLR in December 2005 following the grant of initial leave (as an unaccompanied asylum-seeking child) which had expired on 5th January 2006.

22. Whilst waiting for the outcome of his legacy application, the appellant’s first child was born on 30th August 2012. The daughter is a British citizen. While the appellant uses his false identity for national insurance purposes and to obtain NHS treatment, he used his true identity when named on his children’s birth certificates. The appellant then married Ms Shaher in a registered civil marriage on 8th April 2013, again in his true identity.

23. Whilst awaiting the outcome of the review of his case including resolution of his further DLR application under the legacy scheme (in his false identity), the appellant applied separately on 5th August 2013 for further leave to remain (“FLR”) as a spouse. The application was in the appellant’s true identity.

24. The appellant says that he made this application with the assistance of someone claiming to be a solicitor called “George,” although the application form made no reference to a legal representative.

25. The appellant said in evidence that he made the application for FLR in his true identity as he had waited so long for resolution of his outstanding DLR application and legacy review. He wanted to get his life back to normal.

26. Both the appellant and Ms Shaher gave oral evidence about George and how they said he had misled the appellant. The inferences from the evidence were that George may not have been a properly qualified person and that he was giving them misleading advice. It was said that George had insisted that the appellant complete the application outside George’s office, either whilst sitting in a car or in the appellant’s own home. The appellant asserted that George said it would cost more if the application were completed in his office. Ms Shaher had considered the arrangement to be odd and was suspicious when George was adamant that he be paid in cash.

27. We found the appellant’s case regarding George to be something of a red herring and confusing. After all, George was the one adviser who (put neutrally) completed an application in the appellant’s true identity. Even the advice given by George about the potential for the respondent’s discovery of the appellant’s use of his false identity (with which we deal below) is not misleading. It may well be unprofessional for a legal adviser to allow his client to continue to use a false identity when he becomes aware of it. He perhaps should have insisted at that point in time that the appellant come clean. However, the appellant was the person who employed the deception as to identity or instructed others to do so when making applications in his false identity. George did not do so. The application in which George was complicit was the only application (other than on first entry) that the appellant made in his true identity. We therefore reject the evidence of the appellant and Ms Shaher that George’s actions were a reason or excuse for the deception. Even if all the appellant’s evidence about George is true, we do not accept that this shows that the appellant is the “victim of solicitors” as he suggested.

28. It was previously the appellant’s case that the making of the application for FLR in his true identity amounted to disclosure of that identity to the respondent. However, in the course of his oral evidence, the appellant admitted that George had advised him that it was safe for him to make this application in his true identity whilst he still had the application and review in his false identity outstanding. That was because, according to the appellant, George advised him that the two applications were dealt with by two different parts of the respondent’s department and would not be matched. Although Mr Al-Rashid maintained a position in his closing submissions that the making of the FLR application was a disclosure and relevant to the delay by the respondent in making the deprivation decision, we reject that based on the appellant’s own evidence.

29. We would in any event have rejected that argument because we regard as wholly implausible the suggestion that the respondent ought to have been aware of the fact of the appellant using two identities when every detail of those two identities (name, date of birth and nationality) was different. It cannot sensibly be argued that the respondent could have been aware that the same person was using those two identities until the biometric details were matched which could only occur when the second of those applications was being resolved.

30. On 7th October 2013, the respondent granted the appellant ILR in his false identity. The CID notes set out the respondent’s consideration as follows:

> “Immigration history.
>
> The applicant arrived in the UK on 28/06/2004, he claimed asylum on 01.07.2004 this was refused on 25.02.2005 he was granted DL until 04.01.2006 when he reaches 18 years old. He submitted an application for further leave to remain on 20.12.2005 which to date is still outstanding.
>
> Basis of claim
>
> The applicant’s claim is based on the fact that he was a Palestinian refugee living in the Lebanon his parents died as a result of the village they lived in being bombed, he has no other family and would fear for his life on return because of his beliefs. Although the applicant has reiterated his claim for asylum he raised no new issues for consideration.
>
> Consideration
>
> According to the Discretionary leave policy, those who have accrued 6 years’ continuous leave including any leave accumulated by virtue of 3C leave, qualify for ILR pending the outcome of security checks. Those who meet the criteria for deportation or exclusion would not qualify for ILR under this policy.
>
> Mr Khalil submitted an application for further leave to remain on 20/12/2005. His application has now been outstanding for a period of 7 years 5 months. He has therefore accrued 8 years 4 months continuous residence in the UK. The grounds of his original grant (that he was a UASC) no longer applies, Therefore I have given consideration to chapter 53, para 353B of the IEG.
>
> Considering chapter 53, Para 353B of the IEG
>
> Character, conduct and compliance.
>
> The applicant’s security checks are clear, there is nothing adverse known about his character, conduct or associations.
>
> Length of time in the UK.
>
> The applicant’s overall residence in the UK amounts to 8 years,4 months, 11 months DL and 7 years, 5 months 3C leave, this is a substantial amount of time which the delay by the Home Office has contributed to. It should also be noted that if the application for further leave, had been considered at the appropriate time, it is likely that the applicant would have been granted further leave to remain **due to being a minor** [our emphasis].
>
> Conclusion.
>
> Taking into account all of the above factors it has been concluded that, the applicant should qualify for a discretionary grant of indefinite leave to remain in the UK due to the length of time resided in the UK the majority of which was due to the delay by the Home Office. **In addition, his character, conduct and compliance all carry weight in his favour** [our emphasis].”

31. Notwithstanding his separate application for leave to remain in his true identity, and even after the appellant had been granted ILR in his false identity, the appellant continued to pursue further applications in his false name.

32. On 16th December 2013, P Krama & Co Solicitors, unaware of the appellant’s true identity, applied on his behalf for a UK travel document so that he could travel to France. The respondent issued that document on 13th March 2014.

33. On about 6th February 2015, the appellant applied, without using a lawyer, for naturalisation as a British citizen in his false identity. The appellant now says that this application was made with the assistance of a work colleague, his restaurant manager, who was similarly unaware of his true identity. He did not use a lawyer as by this time, he had lost confidence with lawyers.

34. He claimed that his manager completed the form as while the appellant was literate, he was underconfident in his written English. He was challenged why, if he were unconfident in his written English, his email address, rather than that of his manager would have been added as the contact address on the form. He said that his manager had just added the appellant’s details.

35. Whilst we have no real reason to doubt the appellant’s evidence that he was assisted in the completion of the naturalisation application, his lack of understanding is no excuse for the use of a false identity in making that application. The appellant confirmed that the manager who is said to have assisted was unaware of his true identity. The appellant was not encouraged to use that false identity by another person. Nor is it an excuse for failing to ensure that he understood what he was signing or confirming in the completion of the form. It was incumbent on him to ensure that he had the assistance he needed to understand the contents of the form. We note that Ms Shaher gave her evidence in English and clearly speaks the language fluently. If he did not want to ask his manager for advice perhaps due to embarrassment, there is no reason why he could not have asked his wife for help.

36. The appellant also accepted in his oral evidence that there was no need for him to have applied for nationality under his false identity, having been granted ILR, other than his “greed”.

37. The appellant’s second child, a son, was born on 10th March 2015.

38. The respondent granted the appellant’s application for naturalisation on 19th August 2015. He therefore became a British citizen in his false identity. The contemporaneous CID notes record the respondent’s assessment of the appellant’s character, including whether there was any evidence of deception and dishonesty. In the absence of any countervailing evidence, the respondent concluded that the appellant met the good character requirement. The respondent also recorded the

appellant’s immigration history as we have outlined above including that he had been granted DLR as an unaccompanied asylum-seeking child.

39. It was only as a result of the consideration of the application for FLR in the appellant’s true identity and the matching of biometric details given with that application against those given with the applications in false identity that the respondent became aware of the appellant’s use of two identities.

40. On 30th March 2016, the respondent refused the application for FLR on suitability grounds as a result of that discovery noting that “whilst undertaking background checks, it has been noted that your fingerprints and facial features have been biometrically matched to an alias of Fadi Khalil”. The respondent noted the appellant’s immigration history and that all the appellant’s other applications had been made using a false identity. The appellant had demonstrated continuous deception and had provided false information, representations and had failed to disclose material facts throughout his time in the UK.

41. Six months later, on 12th September 2016, the appellant’s current solicitors wrote to the respondent asking for a “No Time Limit” passport stamp or NTL biometric residence card to be issued in the appellant’s true identity. The representatives there stated that the appellant no longer wished to benefit from his acquisition of British citizenship which he fully acknowledged was tainted with deception, preferring now to resolve the uncertainties created by the use of the false identity. The appellant’s lawyers positively advanced a case that the appellant was not a British citizen in view of his admitted deception. They cited chapter 55 of the respondent’s nationality instructions in support of their position.

42. However, on 22nd August 2017, the appellant’s representatives withdrew this application, asserting that any deprivation of citizenship would generate a statutory right of appeal. The same letter asserted that the commission of fraud was not necessarily fatal to such an appeal.

43. On 31st May 2019, the respondent wrote to the appellant, indicating that she was considering whether to deprive the appellant of his British citizenship. Whilst we note and accept that this indication came over three years after the discovery of the appellant’s two identities, we also note that there was considerable uncertainty during this period about whether the grant of citizenship in such circumstances amounted to a nullity or whether positive deprivation action was required. That was not resolved finally until the Supreme Court’s judgment in R (oao Hysaj and others) v SSHD [2017] UKSC 82 (“Hysaj”) (in December 2017). The change of the respondent’s position in that period is reflected also in the correspondence from the appellant’s solicitors in this case in the same period as we have also set out above. Any delay in instigating deprivation action is therefore explicable by legal reasons for all save about eighteen months of that period.

44. The respondent’s letter noted that while the appellant’s application for asylum had been refused, he had been granted DLR and then ILR followed by British citizenship in the false identity.

45. On 13th June 2019, the appellant’s representative responded, referring to the respondent’s delay in considering the appellant’s application for DLR. It also asserted that the appellant continued to live with his British wife and children, while acknowledging that there were difficulties in their relationship, and that he had also lived with his brother elsewhere in London at times. The correspondence did not refer to the appellant having attempted to take his own life in 2017 by setting fire to himself, although, as we come to below, he now asserts that he did so. The same letter did not make any reference to the appellant’s claimed mental health issues.

46. On 8th November 2019, the respondent issued her decision to deprive the appellant of his British citizenship. While we do not recite the whole of the reasons given (the letter runs to 14 pages) we have considered it in full. We cite particular passages where we regard it as necessary.

47. In the letter, the respondent referred to the relevant statutory provisions and nationality instructions. She noted that the burden of proof was on her, to the ordinary civil standard, to show that citizenship had been obtained by fraud. She then recited the appellant’s immigration history, concluding at §10 that his initial asylum claim was “rendered unsuccessful,” but that he was granted DLR in his false identity.

48. The respondent acknowledged the appellant’s expression of contrition in his personal letter to the respondent dated 12th September 2018. In that letter, he admitted to not using his true identity. However, he said that he was unable to speak much English (although we note he had to pass an English language test and knowledge of life in the UK test in order to make his citizenship application). The appellant said that he had sought legal advice and attributed some of the blame to his advisors who he said had not shown him the correct path to follow. The respondent noted that he had not identified those legal advisors to corroborate the fact of that advice. We note as an aside that it is not suggested that the appellant has ever made a complaint to any of his advisers or referred any of them to the regulatory authorities. He and Ms Shaher said that George had disappeared but did not say that they were unable to contact, for example, Mr Saleh, who, on the appellant’s account was responsible for the initial use of the false identity.

49. The respondent accepted that she had granted ILR in the appellant’s false identity after the appellant had applied for FLR in his true identity. However, she pointed out that the appellant had maintained the false identity and chose to withhold the fact he was making claims in both identities. We have already found that the respondent can bear no responsibility for not discovering the appellant’s true identity before she did. The respondent had also continued to make further applications, notably the application for a travel document and the application for

naturalisation. In doing so, the appellant had acknowledged in various applications that he was aware that it was an offence to make any statements or representations which he knew to be false or to obtain leave by means which included deception.

50. Mr Al-Rashid placed particular importance on §13 of the respondent's letter and so we set that out in full:

> "13. However, considering the documentary evidence that you are from Lebanon, yet you have not provided any evidence that you are from the Palestinian authority, nor that you have Palestinian ethnicity or Palestinian nationality. It therefore follows that your asylum application was a fabrication designed to elicit a grant of status to which you would not otherwise have been entitled if your identity and nationality had been known and declared. **You were granted refugee status** [our emphasis] and indefinite leave to remain under false pretences. This was a calculated fraud and a deliberate attempt to circumvent the Immigration Rules. In your letter dated 12th September 2016 you have admitted that you deceived the Home Office, therefore it is reasonable to assert that you carried out your deception because you wanted to remain in the UK."

51. It is common ground, and Mr Clarke expressly accepted, that the reference to the appellant having been granted refugee status is incorrect. We note that the factually inaccurate assertion in this paragraph is at odds with the earlier recitation of the appellant's immigration history. We will come to the effect of this error in our discussion later in this decision.

52. The respondent's deprivation decision went on to note that the appellant had signed the application for citizenship form confirming that he had read the "AN naturalisation document" and should therefore have been aware of the need to declare any other names he had used.

53. The letter went on to cite the respondent's naturalisation instructions and the need for a caseworker to be satisfied that there was an intention to deceive. The respondent considered the passage of time and the appellant's period of residence in the UK but noted the guidance at §55.7.6 of the guidance that length of residence alone would not be a reason not to deprive someone of citizenship.

54. The respondent then returned to the appellant's intention to deceive, citing section 18 of her Nationality Staff Instructions. Having considered whether to exercise her discretion in light of Aziz v SSHD [2018] EWCA Civ 1884, the best interests of the appellant's children and the impact of deprivation on the article 8 ECHR rights of the appellant and his family, the respondent concluded that deprivation would be proportionate. The respondent noted that she was not at this stage required to carry out a "proleptic" analysis about the likelihood of the appellant's removal.

55. As we have already found, there is little evidence that the appellant's use of his false identity was the fault of anyone other than him. Even if we accept that the initial use of that identity may well have been at the instigation of Mr Saleh (in spite of the lack of any complaint about his conduct to any regulator and therefore without him having the opportunity

to respond to the appellant’s serious allegations) and even accepting that the appellant was at the start a minor, he has persisted in the use of that false identity when an adult and, in most cases, using solicitors who were entirely unaware of his true identity.

56. Even when the appellant had the opportunity to come clean when making the application for FLR in his true identity, he did not do so. Even if we accept the evidence about George and the advice he gave, it was the appellant’s choice to continue with the application then outstanding in his false identity and to make further applications thereafter including for citizenship when he had no need to do so. George may have given the appellant reassurance that his deception would not be discovered by the making of the application for FLR which might in turn encouraged the appellant to continue to use two identities, but it was the appellant’s choice to continue to use the false identity in the full knowledge that he was deceiving the respondent in so doing. We reject entirely the appellant’s evidence that his behaviour is somehow excused by the conduct of legal advisers.

57. We have no hesitation in concluding that the appellant used deception. We deal with the materiality of the deception and legal impact of our finding in the discussion section below.

Impact of deprivation on the article 8 rights of the appellant and his family

58. We bear in mind that the Supreme Court in Begum made clear that, whatever the legal position in relation to the consideration of the use of deception and impact of it (as to which see below), it is for us to make our own assessment of the impact of deprivation on the Article 8 rights of those involved. As we set out below, we are not here considering the impact of removal as no decision has been taken by the respondent in that regard and the appellant will have the chance to challenge any removal decision at the appropriate time. We are here considering only the evidence about the impact of deprivation itself. We therefore turn to the evidence about this which is found in the statements and oral evidence of the appellant and Ms Shaher as set out below.

59. The appellant has provided two witness statements dated 12th January and 22nd November 2021. He adopted those in oral evidence and expanded on their contents under questioning. Ms Shaher has provided one statement dated 22nd November 2021 and also provided oral evidence about the impact that deprivation would have on the family.

60. We begin with evidence about the appellant’s health. The appellant became physically unwell in December 2020, and it was discovered that he had a heart problem. He had an operation to fit a mechanical valve. He was discharged from hospital in early 2021. He has to take statins for the rest of his life. He risks a stroke if he does not do so. The appellant attends hospital for regular check-ups. The last was in December 2021. In addition to warfarin (the statin), he takes aspirin. His medical treatment

has, we note, all been given in the appellant’s false identity, but we see no reason why disclosure of that fact would lead to the withdrawal of essential medical treatment. We deal with this further in the decision below.

61. We turn then to the assertion that the appellant suffers mental health problems and has gone so far as to attempt to take his own life in November 2017 by setting light to himself in the family home. As we understood his evidence and that of Ms Shaher, she was present at the time (and suffered some trauma as a result) but the children fortunately were not.

62. We deal first with the evidence about what is now said to have been an attempted suicide. The appellant says that his mood deteriorated after the refusal of FLR in 2016. By 2017 it had become very low. Angry and depressed, he says that he poured white spirit over himself and set fire to himself, suffering burns to his hands, neck and parts of his ears, with second degree burns. He says that he had to have skin grafts to deal with the burns. He was in hospital for 20 days and was an outpatient for four months.

63. The appellant told us in evidence that he has been diagnosed as suffering from depression and was awaiting cognitive behavioural therapy (CBT) treatment. He says that he remains on the NHS waiting list for this treatment. We had no medical evidence as to the diagnosis or the offer of treatment. There has been no disclosure of the appellant’s medical notes. The appellant accepted that it would have been easy for him to produce evidence and he had many papers from the hospital. He might even have evidence on his phone.

64. Neither is there any evidence of treatment or help offered in 2017/18 to deal with what is said to have been an attempt at suicide. As we have noted, although Ms Shaher was present at the time, the children were not. However, they were living in the same house, and we find it inconceivable that some action would not have been taken by health services or social services or indeed the fire authorities if the fire were thought to have been started deliberately by someone living in a house with children. Ms Shaher’s suggestion that the consequence of the incident, in terms of mental health treatment, was that that the appellant simply joined a waiting list for non-urgent mental health treatment, is similarly not plausible.

65. We have already referred to the NHS letter which we admitted at the hearing. Whilst the letter confirms that the appellant suffered burns at that time arising from exposure to flames which is consistent with the evidence of the appellant and Ms Shaher, it offers no corroboration as to the cause of the incident. This could just as easily have been an accident. On the appellant’s own account, he was admitted to hospital for twenty days and we would have expected any medical records to have recorded the cause of the burns beyond the reference to them having been caused by fire.

66. Moreover, we also did not regard as plausible that if the appellant attempted suicide in 2017, his solicitors, with knowledge of his true identity and making representations based on his true circumstances, would not have referred to this in their correspondence dated 13th June 2019.

67. In summary, we do not find as reliable the claims about the cause of the appellant’s burns.

68. We accept on the evidence that the appellant has heart problems currently managed by the operation to insert a heart valve and continuing medication. We do not though accept the appellant’s evidence that this was all caused by stress occasioned as the result of the respondent’s actions. Whilst we accept that heart problems can be caused by stress, there is no evidence from any of the treating consultants that this was the cause of the heart problems in this case (rather than any other reason, such as a genetic defect). The appellant said this was because he had not discussed his immigration problems with the doctors treating him. As a result, though, there is no evidence as to cause.

69. Even if we accept that the heart condition was brought on by stress which might be impacted by the appellant’s immigration problems, he has only himself to blame for those problems. Further, and more importantly, there is no medical evidence to show that deprivation would exacerbate the health problems which are currently well managed.

70. We are less willing to accept that the appellant has mental health problems in the absence of evidence. Ms Shaher said that the appellant was unwilling to talk about his mental health. That may be so. However, there is no explanation for the lack of medical evidence about the appellant’s mental health. Even if he were only currently under primary care of his GP, the appellant has provided no evidence that he is taking medication for any diagnosed mental health condition. He said that he has evidence which he has provided to his solicitors, but we have none before us. He also said that his GP was unwilling to prescribe medication for mental health problems due to his medication for his heart condition. If he has consulted a GP, we would expect to see evidence. We were not satisfied by the appellant’s attempt to explain the lack of evidence. We therefore reject this part of the appellant’s case due to lack of evidence. Even if the appellant is depressed (which is not our primary finding), we have no evidence that deprivation would exacerbate his condition beyond what it is currently.

71. Both the appellant and Ms Shaher explained that, following the fire in November 2017, their relationship had suffered. Whether that was an accident as we have found or deliberate as the appellant asserts, we accept that this could well have led to some breakdown of trust between the couple. It is also consistent in part with what was said by the appellant’s solicitors in their letter in June 2019 that there were difficulties at that time in the relationship (although it is there said that the appellant

and Ms Shaher were living together at that time which is inconsistent with the evidence now).

72. Whatever the position, we accept that the appellant and Ms Shaher cohabited along with their children (after their births) until, at the earliest, November 2017. We accept Ms Shaher’s evidence that she and the appellant are trying to rebuild their relationship and that it is not permanently at an end.

73. We also accept the evidence of the appellant and Ms Shaher that the appellant continues to play an active role in the lives of their children, now aged 9 and 6 years. Ms Shaher said that other than when the appellant was ill in hospital, the appellant had never missed a school function or the children’s appointments with doctors or hospital. The appellant said that he picks the children up from school on Thursdays and Fridays and that the children stay with him from Thursday night to Monday morning. When they do so, he cooks for them and helps them with their homework. We note that there is no evidence from, for example, the children’s school about the appellant’s continued links with his children or the arrangements for picking them up from school. That would have been easy to garner, as the appellant and Ms Shaher accepted. However, we have no reason to disbelieve the evidence about the contact that the appellant has nor about the part he continues to play in the children’s lives.

74. The appellant also claimed that he provides financial support to his wife, paying on one occasion for their daughter’s private dental treatment and for private tutoring. He said that he gives Ms Shaher about £300 per month. Ms Shaher confirmed that the appellant had paid for private dental treatment. When challenged about why she and the appellant had not provided evidence about his and her financial circumstances and arrangements, she said that she had not been advised to do so. She even asserted that she had asked the appellant’s solicitors whether she should do so, but they had not responded. Even if that is true, it does not explain why she and the appellant could not have submitted such evidence without seeking advice to do so.

75. The appellant currently lives with his brother. When asked where he lived and whether he lived with his brother, the appellant first said, “something like that”, then (on our request for clarification) “nearly” and then confirmed that this is so. He does not pay rent to his brother. He said that he did not know whether his brother owned or rented the property as he did not know about his brother’s finances. Whilst we accept that the appellant may not know his brother’s precise financial circumstances, we find surprising that he would not know whether his brother rents or owns the property in which they both live. When asked whether, if deprived of citizenship and unable to work, his brother would be able to support him, the appellant said that “this couldn’t be forever” but did accept that he could do so for one or two months. We deal with the appellant’s employment below.

76. The appellant was asked why his brother had not provided a statement. After all, given the appellant’s evidence that he has staying contact with his children at weekends, his brother is in an ideal position to provide corroborating evidence about the nature and extent of the relationship which the appellant has with his children. The appellant again said simply that whilst it would be easy to get evidence from his brother, he did not know he needed it. Since we have accepted that the appellant has a continuing parental relationship with his children, such evidence was not essential in that regard. However, it would have been helpful to have evidence about the extent of the support which the appellant’s brother does and could continue to provide.

77. Turning then to the appellant’s employment, he has been and is employed as a chef in a Lebanese restaurant. His wife works at the same restaurant but in a different branch. The owner of the restaurant is aware of the appellant’s true identity, but his work colleagues are not. We sought to clarify with the appellant when he worked and whether he worked full-time or part-time. As we understood his evidence, prior to November 2017, the appellant was working hard as a chef but by November 2021 he was working only 4 hours per day. A letter written during 2021 suggested he was out of work in March 2021. In response, the appellant said he was working on and off for half days at a time. He could not sleep and therefore had to come home. He then said he was working for one week and then not working. In re-examination, the appellant said that after his heart operation, he had not been able to return to work until after the lockdown in 2021 but it remained unclear whether the appellant returned full-time or part-time. We found this evidence confusing, particularly in light of the other evidence that the appellant pays his wife £300 per month. We accept that, as a chef, the appellant may not have been able to work during the Covid-19 pandemic and may well have been furloughed. On the basis of the evidence given orally though, the appellant may well still be working only part time.

SUMMARY OF SUBMISSIONS

78. We deal with the detail of the parties’ submissions below in our discussion section. We summarise briefly the way in which the parties presented their cases.

79. Mr Al-Rashid asserted that, on the full facts of the appellant’s immigration history, the appellant’s circumstances did not satisfy the “condition precedent” test in Begum. He suggested that this was a finding of fact which we had to make for ourselves. The appellant was a minor at the time of his asylum claim and had been misled by a lawyer at that time. His deception could not be held against him due to his age. The appellant had been granted ILR under the “legacy scheme” and his false identity was irrelevant. The appellant had sought to rectify matters by using his true identity at the time of the application for FLR. Mr Al-Rashid also relied on the error in the respondent’s decision letter regarding the appellant’s status as reason why the respondent could not be satisfied that the appellant met the test. The appellant was not in the same category as

those who had wrongfully obtained citizenship via the “smooth” route of refugee status (based on a false nationality) and ILR. In relation to the exercise of discretion, Mr Al-Rashid submitted that the appellant was not in the category of those who had committed “high crimes” and could not have been expected to know that he needed to provide details of his false identity when completing the section on good character.

80. In the alternative, Mr Al-Rashid submitted that deprivation would breach the Article 8 rights of the appellant and his family. He relied on the respondent’s delay in taking deprivation action, the appellant’s health, inability to work and the impact on his family as a result. Mr Al-Rashid asserted (without any evidential support) that, as a result of the hostile environment, the appellant would not be able to access medical treatment. When challenged about the basis for that submission, he changed it to one of the appellant having to pay for medical treatment. He asserted that, in any event, the appellant would be left in limbo, unable to work, rent accommodation or even hold a bank account.

81. Mr Clarke asked us not to accept the evidence of the appellant and Ms Shaher on its face. He reminded us of the lack of corroborating evidence as to many of the matters covered in that evidence. He submitted that the appellant and Ms Shaher were not credible witnesses. He also pointed to their evidence seeking to excuse the appellant’s use of his false identity by blaming others. By reference to the CID notes, Mr Clarke asserted that the appellant would not have been granted ILR following a review under the legacy scheme. In any event, he had also obtained DLR to which he was not entitled and made an application for further DLR relying on the false date of birth. Regardless of the “chain of causation” position, the appellant fell to be refused citizenship on grounds of his character and conduct. He had provided false and misleading information in earlier applications. Materiality of the deception was therefore irrelevant. The erroneous reference to the appellant being recognised as a refugee was not material in the context of the decision read as a whole and made no difference in any event to the assessment of the deception.

82. Mr Clarke also reminded us of the high public interest in a case where deception has been used. He pointed to the lack of evidence regarding the asserted impact of deprivation. He reminded us that we should not engage in any proleptic assessment about the impact of removal. Our assessment is limited to the impact of deprivation.

THE LAW

83. We begin by reminding ourselves of the statutory basis for the Respondent’s decision. Section 40(3) reads 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.”

84. Prior to the Supreme Court’s judgment in Begum, it was generally understood that it was for the Tribunal itself to determine whether there was a material deception (see Dellialisi (British Citizen: deprivation appeal; Scope) [2013] UKUT 439(IAC) and BA (deprivation of citizenship: Appeals) [2018] UKUT 85 (IAC) (“BA”) as cited by the Court of Appeal in R (oao KV) v SSHD [2018] EWCA Civ 2483 (“KV”) as relied upon by the First-tier Tribunal Judge in this appeal).

85. We have explained at [24] to [28] of our error of law decision why that was not and is not the correct approach following Begum. The relevant paragraphs of the judgment in Begum are set out [27] and [28] of our error of law decision and we do not repeat them. In short summary, the test is whether the respondent has erred in making findings of fact which were unsupported by any evidence; or were based on a view of that evidence that could not reasonably be held; or the respondent failed to take into account relevant matters or disregarded something which should have been given weight; or had been guilty of some other procedural impropriety. The test is whether the decision is unlawful on public law grounds or irrational to a “Wednesbury” standard.

86. We remind ourselves of the headnote in Ciceri (as set out in part at [29] of our error of law decision), which we follow in reaching our decision.

> “(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).

(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.”

FINDINGS, DISCUSSION AND CONCLUSIONS

Exercise of material deception; the “condition precedent”

87. Mr Al-Rashid submitted that the Tribunal must decide for itself whether the appellant has exercised material deception. Mr Clarke accepted that the respondent bears the burden of proving that the appellant has deceived her. We accept the latter point to be the position. However, we consider that there is some ambiguity in the use of the words “condition precedent”. That does not mean the same as a finding of precedent fact. Whilst the respondent bears the burden of establishing that an appellant has exercised deception and that the deception has led to the obtaining of citizenship, that does not mean that the Tribunal is required to make a finding on the balance of probabilities whether material deception has been exercised. Indeed, on a fair reading of [1] of the headnote of Ciceri, that is not the test at all following Begum. The Tribunal is required only to consider whether the respondent has shown that she was entitled to reach that conclusion. That is to be determined on public law grounds following Begum. To borrow the words of the Supreme Court in Begum (albeit in the slightly different statutory context), the “statutory condition which must be satisfied before the discretion can be exercised is that ‘the Secretary of State is satisfied that [the statutory condition is met] ([67]). The condition is not that ‘[the Tribunal] is satisfied…’” As the Supreme Court pointed out, “[t]he existence of a right of appeal…does not… convert the statutory

requirement that the Secretary of State must be satisfied into a requirement that [the Tribunal] must be satisfied”.

88. For that reason, Mr Al-Rashid is wrong in his submission that the Tribunal must decide for itself on a balance of probabilities whether the appellant has exercised deception on all the evidence before it. Even if he were right, though, we consider that there is ample evidence on which we can conclude that the balance of probabilities test is overcome. Before we embark on our consideration of the facts and evidence in this case, we deal with Mr Al-Rashid’s submission that the test is not simply one of balance of probabilities but high balance of probabilities. As we understood his submission, that is due to the seriousness of the allegations. However, as the Court of Appeal held in SSHD v Shehzad and another [2016] EWCA Civ 615 following the House of Lords’ decision in Re B (children) [2008] UKHL 35 “neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts” ([3]).

89. Turning then to those facts, we consider the actions of the appellant in chronological order. The appellant entered the UK on or about 25 June 2004. He used his true identity to enter as a visitor. However, thereafter, he used a false identity which he has continued to use since. The identity is false in relation to name, date of birth and nationality. The impact of the use of that identity, in particular the false date of birth, led the respondent to grant DLR to him as an unaccompanied minor. That was leave to remain to which he was not entitled on his true date of birth. While we accept that the appellant was (just) a minor at the time of his claim for asylum, he was not a minor at the date of the respondent’s grant of DLR. He knew that he was not entitled to that grant of DLR based on his true age. The grant of DLR and reasons for it could not have been clearer if one reads the decision letter setting out that grant.

90. Mr Al-Rashid submitted that the appellant could not be blamed for the deception at that time because he was a minor and was led into using the false identity by Mr Saleh, his solicitor. Even if we accept that the use of the false identity was suggested to him by the solicitor and accepting that the appellant was a minor at the time of the claim, that does not mean that we leave entirely out of account when considering the chain of causation which led to the grant of ILR and ultimately citizenship that the appellant was not entitled to DLR at this point in time.

91. Further, by the time that the appellant sought further DLR on 21 December 2005 (only months after the initial grant), he was an adult. The appellant maintained the deception in this further application. It was this application which remained pending and led to the review of the appellant’s case, at the appellant’s request, under the legacy scheme.

92. The appellant relies on the Tribunal’s decision in Sleiman (deprivation of citizenship; conduct; Lebanon) [2017] UKUT 367 (“Sleiman”) to assert that the chain of causation was broken, because grants of leave under the legacy scheme were made because of the respondent’s substantial delay,

even where people had previously been untruthful. Mr Al-Rashid did not place much reliance on Sleiman in his submissions to us or at least not to the extent that he did before the First-tier Tribunal. However, given the appellant’s reliance on this case below and the submissions we heard on this, we consider it appropriate to say something about it.

93. We begin by noting that there are some similarities between the facts of Sleiman and this case. The grant of DLR was, as here, granted due to a false date of birth being given. The further application for DLR was considered within the context of a “legacy review”. However, as Mr Clarke pointed out in his submissions, the respondent’s submissions in Sleiman were limited. That was because in that particular case the respondent had recognised by the time of the legacy review that the appellant had given two different dates of birth but had stated in terms in an internal note and in the decision under appeal that the appellant’s age was irrelevant. A concession was made as recorded at [24] of the decision in Sleiman that “the appellant’s age was irrelevant to the grant of ILR and that the grant was because of the Home Office delay”. The respondent had expressly acknowledged this in the decision under appeal (as recorded at [42] of the decision in Sleiman).

94. As Upper Tribunal Judge Kopieczek pointed out at [62] of the decision in Sleiman, the respondent could have (but did not) pursue an argument that the lie as to age did impact on the grant of citizenship and even ILR based on the fact that the appellant was not entitled to the DLR which he had wrongfully obtained as a minor. Also, by reason of the concession, there is also no reference in the decision in Sleiman to the numerous authorities bearing on the question of how legacy reviews were conducted and what was or was not considered by caseworkers in that context. Finally, the decision in Sleiman was reached prior to the Supreme Court’s judgment in Begum and therefore on the basis that the Tribunal had to consider for itself whether the deception had been material.

95. In this case, by contrast, we find that the appellant’s continued deception did lead to the grant of ILR following the legacy review for the following reasons.

96. First, the appellant in using the false identity when making the further DLR application which led to the “legacy review” and asking the respondent to consider his case based on that outstanding application continued actively to deceive the respondent when seeking that review. The appellant, an adult, chose not to inform his solicitors, who asked the respondent to deal with the application for further DLR under the legacy scheme, of his true identity. They asked the respondent to consider his application, now under the legacy scheme, but still under the false identity. At this stage, the appellant was misleading the respondent and his own solicitors and not on the advice of George, or anyone else.

97. Second, while it is correct that the respondent considered as one factor the delay in considering the appellant’s DLR application, it is also clear from the contemporaneous CID notes that the appellant’s character and

conduct were also important factors weighing in the appellant’s favour, as expressly stated. The respondent maintained the importance of character and conduct in the later deprivation decision and this appeal, in contrast to Sleiman. Even Mr Al-Rashid accepted that had the appellant’s use of a false identity been known, he may not have been granted ILR. We regard his submission that ILR “may not” have been refused as unrealistic. We struggle to see the circumstances in which the respondent would have granted ILR, bearing in mind that the application for further DLR was not made in the appellant’s true identity and that the earlier grant of DLR was obtained under a false pretext.

98. Third, as we have observed, the Tribunal in Sleiman was not addressed about the way in which legacy reviews more generally were conducted. Mr Al-Rashid suggested at one point that there was no guidance in that regard. Mr Clarke drew our attention to the judgment of Burton J in Hakemi & Ors v SSHD [2012] EWHC 1967 (Admin) (“Hakemi”). The Judge in Hakemi drew attention to the methodology of reviews in “legacy” cases at [6] and [7] of the judgment. That draws particular attention to the guidance which underlay reviews of legacy cases (Chapter 53 of the Enforcement Instructions and Guidance) which drew attention inter alia to the need to consider factors relating to a person’s personal history which might outweigh other considerations.

99. We find that the appellant did not, as he had initially claimed, make the FLR application on 5 August 2013 in his correct identity, in order to reveal his use of a false identity, or that the respondent was reasonably put on notice of that fact at the time. Although Mr Al-Rashid at one point in his submissions appeared to suggest that this remained the appellant’s position, that is not borne out on the evidence.

100. On his own evidence to us, which we find is more reliable than his earlier claim, the appellant said that, faced with a delay in the legacy process and advice that it might be quicker to resolve his status via an application in his real name, he made the FLR application based on his marriage. He was assured by his adviser (George) that the two separate parts of the respondent’s department would not connect the two applications, made in entirely different identities. Indeed, until both sets of biometric details were provided and compared, there was no possible way of connecting the two.

101. The appellant did not reveal, in his FLR application under his true identity, the use of any other identity, despite the application form asking questions about alternative names. Accordingly, the respondent was faced with two different applications, in entirely different identities. Before biometric details were provided, there was no possible link between the two. Even then, to spot the deception required the respondent to match the biometric records as she in fact did when she refused leave in the appellant’s true identity in March 2016. That though was after both the grant of ILR and the grant of citizenship. On his own evidence which we accept, the appellant, when making the 2013 application, thought that his earlier deception would not be discovered. This was not an attempt to

disclose the true position to the respondent. Had he really wished to “come clean”, he had ample opportunity to do so prior to the grant of ILR and thereafter prior to the application for naturalisation. There is no evidential basis for finding that the respondent was on notice about the deception prior to the grant of ILR or citizenship. Neither therefore is there any evidential basis for a submission that the respondent delayed in making the deprivation decision, based on the proposition that she was on notice of the deception in 2013.

102. We also observe in passing that the appellant’s deception did not end with the application for further DLR which led to the obtaining of ILR. Even after he made the application for FLR in August 2013 and after he was granted ILR on 7th October 2013, the appellant continued to use his false identity in an application for a travel document.

103. Regardless of whether the chain of causation was broken as the appellant suggests (which submission we have rejected), as Mr Clarke points out the test is not whether the appellant obtained ILR by fraud, but whether he obtained naturalisation by fraud, false representation or concealment of a material fact.

104. Mr Clarke relied on section 18 of the respondent’s Nationality Staff Instructions. In his application for naturalisation, the appellant expressly indicated that he had never engaged in activities which might be relevant to the question whether he was a person of good character. Examples included providing false or deliberately misleading information at earlier stages of an immigration application and or process. The Instructions stated at §18.4 that a decision maker would normally refuse an application where a person had employed deception during the citizenship application process or in a previous immigration application, whether material or not. Therefore, whether the deception was material to the appellant’s previous application was irrelevant.

105. Mr Al-Rashid placed particular weight on the fact that in her deprivation decision, the respondent made an error of fact by referring to the appellant having been granted asylum on a false basis (albeit elsewhere in the same letter, she made clear that his asylum application had been refused). He argued that reference to this “smoother” route (grant of leave on asylum grounds, followed by ILR to naturalisation), compared to the legacy route which itself involved the exercise of discretion, made the appellant’s deception appear more serious than it was. This impacted on the chain of causation. It also undermined the respondent’s reasoning about that chain.

106. We have set out the passage of the decision letter on which reliance is placed in this regard at [50] above. Mr Clarke accepted that this passage is in error. In spite of the error, which is also inconsistent with the immigration history set out elsewhere in the letter, that was not an error material to the respondent’s reasoning. On any view, the appellant had lied about his nationality as well as his name and date of birth. It was a lie (about his date of birth) which had led to the grant of DLR. It was the

continuation of that lie and failure to disclose it which led (as we have found) to the grant of ILR. The ILR was obtained as the respondent found “by false pretences”.

107. The materiality of the fraud and concealment of material facts was not “exaggerated”, because of the reference to the asylum grant. If anything, the error might have operated in the appellant’s favour since the consequences of deprivation might well be more serious for a person who has benefitted over the years from a recognition of refugee status even if obtained by fraud. That is not something on which we place any weight. However, we consider the submission made by Mr Al-Rashid about the impact of the error to be neutral. The appellant’s fraud and concealment related directly to his good character, upon which his grant of naturalisation had been based. The respondent also considered the repeated deception, on multiple occasions, in different applications. Those application forms had stressed the seriousness of deliberately providing false information, which it asked applicants to acknowledge. The deceptions, despite these warnings and acknowledgments, were made at various stages of the appellant’s repeated applications, leading up to his naturalisation.

108. In relation to the exercise of discretion, Mr Al-Rashid submitted that the appellant had never been guilty of “high crimes”, akin to terrorism. He made this submission by reference to the section of the application form dealing with good character. The personal history part of that section refers to criminal convictions and involvement in war crimes and similar matters and terrorism. There then follow a number of tick boxes concerned with criminal offences which are truthfully answered in the negative. Reliance is placed on [3.18] in which the appellant was asked whether he had engaged in “any other activities” which might indicate that he was not of good character. Mr Al-Rashid said that the appellant would only have understood that question in light of what preceded it which related to crimes and other very serious issues.

109. As Mr Clarke pointed out, though, for the purposes of answering this section, an applicant’s attention is drawn to Booklet AN which provides guidance. Mr Clarke produced a copy of that booklet. At paragraph [3.19] within the section headed “Good Character” the following appears:

> “You must say whether you have been involved in anything which might indicate that you are not of good character. You must given information about any of these activities no matter how long ago it was. Checks will be made in all cases and your application may fail… if you make an untruthful declaration. If you are in any doubt about whether you have done something or it has been alleged that you have done something which might lead us to think that you are not of good character you should say so.
>
> **You must tell us if you have practised deception in your dealings with the Home Office or other Government Departments (e.g. by providing false information or fraudulent documents). This will be taken into account in considering whether you meet the good character requirement. If your application is refused, and there is**

clear evidence of the deception, any future application made within 10 years is unlikely to be successful”

[our emphasis]

110. Even if the appellant were in doubt whether his deception amounted to an issue of good character based on the form itself, this section of the relevant booklet puts the matter beyond doubt. Section [6.2] requires an applicant to confirm that he has read and understood the guidance and booklet AN. The appellant ticked that box. Any suggestion that he did not understand what he was being asked does not avail him. In any event, whether or not the respondent is entitled to rely on the appellant having lied on the form itself, is immaterial to the deception itself which the appellant was still actively exercising by completing the form in his false identity details with no reference to any alternative identity.

111. The respondent was and would have been clearly entitled to have regard to the deception if she had known of it at the time. In this regard, we refer to chapter 55 of the Nationality Instructions regarding the circumstances when the power to deprive will be exercised. Mr Al-Rashid placed particular reliance on a passage of chapter 55 of the Nationality Instructions, which we cite for completeness:

> “55.7 Material to the Acquisition of Citizenship
>
> 55.7.1 If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation.
>
> 55.7.2 This will include but is not limited to:
>
> • Undisclosed convictions or other information which would have affected a person’s ability to meet the good character requirement
>
> • A marriage/civil partnership which is found to be invalid or void, and so would have affected a person’s ability to meet the requirements for section 6(2)
>
> • 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 or registration
>
> 55.7.3 If the fraud, false representation or concealment of material fact did not have a direct bearing on the grant of citizenship, it will not be appropriate to pursue deprivation action.
>
> 55.7.4 For example, where a person acquires ILR under a concession (e.g. the family ILR concession) the fact that we could show the person had previously lied about their asylum claim may be irrelevant. Similarly, a person may use a different name if they wish (see NAMES in the General Information section of Volume 2 of the Staff Instructions): unless it conceals criminality, or other information relevant to an assessment of their good character, or immigration history in another identity it is not material to the acquisition of ILR or

> citizenship. However, before making a decision not to deprive, the caseworker should ensure that relevant character checks are undertaken in relation to the subject’s true identity to ensure that the false information provided to the Home Office was not used to conceal criminality or other information relevant to an assessment of their character.”

112. The respondent cited parts of §55 in her decision letter. She did not refer to §55.7.4. As we understood his submission, Mr Al-Rashid said that this was a failure to take into account relevant material. We do not regard that submission as well-founded. Paragraph 55.7.4 is concerned with cases where ILR has been granted for a reason unconnected with the deception. Having concluded that the appellant fell squarely within the third bullet point in §55.7.2, it was unnecessary for the respondent to refer to §55.7.4. The respondent had concluded that the appellant’s previous lie was relevant, as it related to the assessment of his good character including in the naturalisation application. Moreover, this was not merely a case where the appellant had lied about the substance of an asylum claim. His lie had directly underpinned the grants of leave to remain at every stage and was maintained when the appellant was an adult. The respondent was entitled to regard the appellant’s deception as having been maintained at every stage of the chain of causation. She was also entitled to conclude that it was relevant to his good character in respect of his application for naturalisation.

113. For the foregoing reasons, we are unpersuaded that the decision to deprive was unlawful in spite of the factual error in relation to the appellant’s immigration history. We consider also whether the respondent’s conclusion on the condition precedent was irrational. This cannot sensibly be argued. Given the appellant’s repeated applications under his false identity, including where there was no obvious need for him to do so (for example when he applied for naturalisation having already obtained ILR, which he acknowledged was purely for “greed”) the opposite conclusion would have been difficult to fathom. For that reason, also, if the test for us is to determine on the balance of probabilities whether the appellant exercised a material deception (which we do not accept to be the correct test), we would have reached the same conclusion.

114. The condition precedent in this case is therefore met. The respondent was entitled to be satisfied that the appellant had exercised a material deception (in fact several) and was entitled to deprive the appellant of citizenship in her discretion subject only to the issue whether deprivation would breach the appellant’s Article 8 rights which we now turn to consider.

Article 8 ECHR

115. We accept that where the appeal turns on whether human rights are engaged and/or breached, it is for us to reach our own assessment of the position following Begum.

116. Mr Clarke referred us to several authorities. KV supported the proposition that where deception has been used to obtain citizenship, it would only be in an unusual case that a person could legitimately complain of the deprivation of rights, where this would merely put him in the same position, had he not been fraudulent. In the case of BA the Tribunal placed significant weight on the fact the respondent had concluded that a person had employed deception. It would be rare, absent statelessness, for the ECHR or some very compelling reason to require a Tribunal to allow the appeal. The heavy weight placed on the public interest was reiterated in the case of Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 00128 (IAC). There was no need to engage in a “proleptic” assessment of the whether a person would be deported. There is no removal direction in this case. The focus of the Article 8 assessment can only be on the direct consequences of deprivation. That includes the period of “limbo” which the appellant will face whilst his status is being resolved. Any other consideration risked speculation.

117. With regard to the appellant’s claimed mental ill-health there was no medical evidence of any claimed diagnosis. The appellant and Ms Shaher were not credible witnesses. It was not credible that the appellant would not have disclosed corroborative documentary evidence if this existed. The appellant’s claim to have been so adversely impacted by the respondent’s refusal that he had set fire to himself in 2017 was supported only by a NHS letter dated some two years later and which, although it referred to the appellant having suffered burns, made no mention of any mental health issues. We were asked to draw adverse inferences from the appellant’s failure to adduce evidence which could have been readily obtained. We have done so.

118. Mr Clarke also argued that there was no documentary evidence about the couple’s two children (for example, letters from the school), from the appellant’s brother with whom he lived and who supported him, from the children’s dentist whose bills the appellant is said to have paid and the such like. Ms Shaher accepted that she knew the appellant was using a false identity. She tried to avoid questions about the appellant’s continued use of that false identity. Mr Clarke submitted that there was no reliable evidence about the adverse effects of deprivation on the appellant’s family.

119. Mr Al-Rashid argued that the impact of the appellant being placed in “limbo” would be particularly unpleasant in the context of the “hostile environment”. He would not be entitled to work, could not claim benefits and could not rent accommodation. He would have no source of income and his lack of status could place his brother with whom he lives in an invidious position (although Mr Al-Rashid did not go so far as to say that it would be illegal for the appellant’s brother to house and support him). Mr Al-Rashid did however submit that the appellant’s status would have a direct bearing on the appellant’s relationship with his children and ability to support them.

120. Mr Al-Rashid also submitted that the lack of status would impact on the appellant’s health, in particular his right to obtain treatment. Initially, Mr Al-Rashid suggested that this would lead to a withdrawal of treatment entirely. However, when we questioned his source for this submission, he accepted that this might not be right but that at best the appellant would have to pay for treatment and medication.

121. Mr Al-Rashid had relied upon the issue of delay in relation to deception. We also consider it in the context of Article 8. We have rejected Mr Al-Rashid’s reliance on what he said was a delay between the point when the respondent should have known of the use of the false identity and the deprivation decision. We have explained at [101] above, why we do not accept, based on the appellant’s own evidence, that he had any intention of disclosing his true identity when he made his FLR application in 2013. We have also explained why the respondent could not reasonably have been expected to discover the deception until she did in March 2016. She instigated deprivation action in May 2019. That followed a period of uncertainty about whether the impact of deception led to the grant of citizenship being a nullity or whether it was necessary to deprive (see Hysaj). It is also worth of note in this case that the appellant’s own solicitors in this case were asserting in September 2016 that the effect was that the grant was a nullity. The appellant was actively seeking at that point in time to withdraw reliance on the grant of citizenship and to revert to his previous ILR status.

122. In relation to their witness evidence, we do not accept that the appellant or Ms Shaher are generally credible witnesses of candour. We remind ourselves that just because the appellant has repeatedly used a false identity and been willing to maintain that deception in the past, it does not follow that his evidence in relation to his family is untruthful. However, the lack of plausibility in various parts of their accounts, to which we refer below, undermines their credibility.

123. Dealing with family life first, there is no dispute that the appellant has family life for the purposes of article 8 ECHR with his children. However, we accept Mr Clarke’s key submission that there is a stark and inexplicable failure to adduce relevant evidence in relation to many aspects of the appellant’s family life.

124. We begin with the children’s best interests for the purposes of section 55 for the Borders, Citizenship and Immigration Act 2009. The appellant does not live with his children, although he visits them regularly. Following deprivation, he would continue to do so, which is in their best interests. Given that the effect of deprivation would be that the appellant could no longer work and could not claim benefits, we accept that the appellant would no longer be able to provide financial support for his children. However, there is no reliable evidence about the extent of those contributions, or Ms Shaher’s own financial means. We do not accept that the lack of financial support would impact on the meeting of the children’s needs. There is no evidence that Ms Shaher is financially or practically

dependent on the appellant. She runs her own household, providing for her and her children’s accommodation and needs.

125. Whilst the appellant claims to play a central role in his children’s lives, taking them to school every day, attending parents’ evenings and GP appointment; and picking them up each Thursday, to look after them each weekend, as well as making financial contributions, there is no documentary evidence to support the evidence of the appellant and Ms Shaher. There are no letters from the children’s schools, and no reference to parents’ evenings or doctor’s appointments. Where, as here, the appellant has been legally represented for an extended period, we do not accept as plausible the appellant and Ms Shaher’s repeated assertions that they were not advised to produce the information or even, on Ms Shaher’s case, that she had positively wished to do so but had not received positive encouragement from the appellant’s solicitors. We made provision at the error of law stage, on Mr Al-Rashid’s own insistence, for additional evidence. The appellant and Ms Shaher were therefore on notice as to the importance of additional evidence on remaking. We draw adverse inferences from the appellant’s failure to adduce readily available evidence.

126. In summary, the appellant’s key contribution is to see his children regularly. He will continue to be able to do so, regardless of whether he is, in his words, left in “limbo” pending any future application or decision on leave to remain. We conclude that the best interests of the appellant’s children will continue to be met, even in the event of the appellant being deprived of his citizenship.

127. In relation to family life (or private life) with the appellant’s brother, about whom we have little evidence, the appellant would remain living where he is with his brother, for free. There is no reliable evidence that his brother would face any legal difficulties in continuing to house him. There is no evidence whether the brother’s home is rented or owned nor were we taken to anything which suggests that, in either event, the appellant would not be permitted to continue to live there.

128. As with the gap in evidence about family life, there is no reliable evidence about the appellant’s ill-health except in relation to his heart treatment (but not the cause of his illness) and the single letter in relation to his burns injury.

129. Given the 2019 letter confirming that the appellant suffered extensive burns in 2017, we are prepared to accept that he did suffer such burns in 2017. However, we do not accept as reliable the appellant’s and Ms Shaher’s evidence that they were caused by the appellant setting fire to himself. First, we do not accept as plausible that if the appellant had set fire to himself in the family home, which was also the home of the couple’s young children, either Ms Shaher or the medical authorities themselves would not have instigated some sort of crisis intervention by mental health services, given the risk not only to the appellant, but also his family members. Ms Shaher’s suggestion that the consequence of the incident,

in terms of mental health treatment, was that that the appellant simply joined a waiting list for non-urgent mental health treatment, is simply not credible. The home was occupied by two very young children. The incident, if it was attempted suicide, would have caused the authorities to raise concerns at the very least about their continued welfare. Second, on the appellant’s own account, he was admitted to hospital for twenty days and we would have expected any medical records to have recorded the cause of the burns beyond the reference to them having been caused by fire if this was really an attempted suicide.

130. In summary, we do not find as reliable the claims about the cause of the appellant’s burns; that he has a diagnosed mental health illness; that his heart condition was caused or exacerbated by the respondent’s actions in refusing his application for further LTR or issuing the deprivation decision; or that he would suffer mental ill-health if deprived of his citizenship. We note in passing that the timing of what is said to be attempted suicide in 2017 could not be caused by anything other than the refusal of LTR in the appellant’s true identity in March 2016. There had been no action taken at that stage to deprive the appellant of his citizenship (although the appellant may have been aware of the potential for such action given the letter written by his solicitors in September 2016). There is though nothing in chronological terms which tends to connect the respondent’s actions even in 2016 with an attempt at suicide in 2017.

131. We do not accept Mr Al-Rashid’s submission that the appellant would be unable to access medical treatment for his heart condition. On the one hand, the appellant continues to access NHS treatment in his false identity (the 2019 correspondence refers to him by his false identity). The appellant has regular check-ups and has repeat prescriptions for warfarin. It is unclear whether the appellant pays for his medication but on the face of it there is no reason why he would not do so in common with other British citizens who are required to pay for prescription medicine. Even if he does not, Mr Al-Rashid changed his initial submission that he could not access treatment, to the proposition that the appellant would have to pay for treatment in his true identity. That may be the case, but even without his own personal income, the appellant has not demonstrated that his brother and wider support network (including Ms Shaher) would be unwilling or unable to meet these costs.

132. Aside from the issue of the appellant’s health, we accept that in relation to the appellant’s private life, the effect of deprivation would be to prevent him from working at the restaurant where he has worked for many years. He would also not be able to access benefits. However, there have been periods when the appellant has not worked in the past, following his injury. We do not speculate for how long the appellant would be unable to work. He would lack income, but not the practical support of his brother. There is no reason to think that he would be unable to see friends and to participate in society.

133. Mr Al-Rashid invited us to make an analysis of the impact of deprivation by reference to the well-known test of under Razgar v SSHD [2004] UKHL 27.

We accept that the appellant has family life with his children, and, in the article 8 sense, with Ms Shaher, even though they are not currently fully reconciled as a couple. He also has a private life. Potentially, the deprivation decision may interfere with both. Deprivation potentially has consequences of such gravity as potentially to engage the operation of article 8.

134. However, we have doubts that the appellant’s article 8 rights in respect of family life are engaged by the deprivation decision. We reiterate that in respect of family life, the status quo is largely unaffected. There are no grounds for engaging in a “proleptic” assessment, i.e., to consider whether the appellant will be removed, particularly where the respondent has yet to make such a decision, or to have the opportunity to consider any additional evidence from the appellant (which is so scant, before us).

135. The one area of impact is the appellant’s ability to work and have his own income. We are prepared to accept that his article 8 rights are engaged in respect of private life.

136. Even if we are wrong, and his rights to respect both for his private and family life are engaged, the decision to deprive citizenship is in accordance with the law. It is also clearly necessary where the condition precedent has been met, i.e., where the appellant obtained citizenship through naturalisation by means of fraud, false representation, and/or concealment of material facts.

137. The final question on which we focus is the proportionality of deprivation. Once again, we assume that both right to respect for family life and private life is engaged. We adopt a balance-sheet approach.

138. In respect of right to respect for private life, we accept that the appellant is unlikely to be able to work, at least for a period, and will not be able to access free medical treatment in his false identity, or claim benefits, but may instead have to ask his brother and support network to pay for repeat prescriptions and regular check-ups in his true identity. The appellant will continue to have the practical support of his brother, including for accommodation and daily needs, and friendship groups. He will continue to be able to access medical treatment, albeit paid for. There is no evidence that his mental or physical health will deteriorate.

139. Moreover, the appellant developed his private life in the knowledge that it was based on deception and a right to remain in the UK which was entirely premised on a false identity. The appellant’s evidence is that although he has used his true identity in relation to his family life, only the owner of the restaurant (and of course his brother) know who he really is. His work colleagues and we assume his friends know him only in his false identity. He has accessed medical treatment using his false identity.

140. Noting section 117B of the Nationality, Immigration and Asylum Act 2002, the appellant speaks English and has, until now, been financially independent (both neutral factors) but his private life was established based on his deception. As a result, we regard it as appropriate that the

weight that should be placed on his private life should be reduced. In any event, for the reasons we have explained, the impact on the appellant’s private life occasioned by deprivation will be fairly minimal.

141. Regarding his right to respect for his family life, even if engaged, the appellant will continue to see his children regularly and their needs and welfare will be unaffected by the deprivation decision. The appellant may lose the sense of contributing financially to their needs, but these will be met, as will their best interests. While the children cannot be blamed for their father’s deception, Ms Shaher was aware from the very beginning, when their relationship was established, that the appellant had obtained leave and subsequent citizenship by means of fraud etc. We reduce the weight we place on family life with her (as opposed to their children) accordingly. Ms Shaher and her children are not financially dependent on the appellant.

142. Considering the appellant’s rights to respect for his private and family life separately, and together on a holistic basis, we have no hesitation in concluding that the public interest in depriving the appellant of his British citizenship is overwhelming. The deprivation decision is proportionate and does not breach the appellant’s rights under article 8 ECHR, or those of his children or Ms Shaher.

CONCLUSIONS

143. On the facts established in this appeal, the respondent was entitled to be satisfied that appellant’s naturalisation as a British citizen was obtained by means of fraud, false representation or concealment of a material fact. Even if the test for us was whether the respondent had made out her case on deception on a balance of probabilities (which we do not accept), we would have concluded that the test is here satisfied. The requirements of section 40(3) of the 1981 Act are met.

144. The respondent’s decision to deprive the appellant of his British citizenship does not breach the rights of the appellant, his wife or children under article 8 ECHR.

DECISION

145. The respondent’s deprivation decision is upheld, and the appellant’s appeal is dismissed.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **2nd February 2022**

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00122/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th October 2021	**On**

Before

UPPER TRIBUNAL JUDGE SMITH
UPPER TRIBUNAL JUDGE KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SLAYMAN BAKRI
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the respondent: Mr M Al-Rashid, instructed by David Grand Solicitors

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which were given orally at the end of the hearing on 11th October 2021.

2. We refer to the appellant as the "Secretary of State" and to the respondent as the "Claimant", to avoid any confusion with how the parties were referred to previously by the First-tier Tribunal.

3. The Secretary of State appeals the decision of First-tier Tribunal Judge Frantzis (the ‘FtT’), promulgated on 17th February 2021, by which she allowed the Claimant’s appeal against the Secretary of State’s decision dated 8th November 2019, to make an order depriving the Claimant of British Citizenship under section 40(3) of the British Nationality Act 1981. In essence, the decision focussed on the fact of the Claimant having used a false name, date of birth and nationality, where, putting matters in neutral terms, he was granted discretionary leave to remain, followed by settled status and then citizenship. He entered the UK in 2004. Shortly after arrival, on 29th July 2004, he claimed asylum, using a date of birth of 5th January 1988. He used the name, Fadi Ahmed Kahlil and pretended to be a Palestinian national. His real date of birth is 7th November 1986, so just under 18 when he claimed asylum. He is a Lebanese national.

4. The Claimant’s appeal raised the core issue of whether the Secretary of State was entitled to be satisfied that the Claimant’s later naturalisation was obtained by means of fraud, false representation or concealment of a material fact (section 40(3) of the 1981 Act).

The FtT’s decision

5. The FtT allowed the Claimant’s appeal. It is important to note that the FtT promulgated her decision before the Supreme Court handed down its judgment on 26th February 2021 in R (Begum) v SSHD [2021] UKSC 7. At §2, the FtT noted that this was a “full consideration” of the decision whether to deprive the Claimant of British citizenship under a false identity. The FtT asked herself whether the relevant condition precedent specified in section 40(3) existed. In doing so, the FtT said that she had to decide whether citizenship was obtained by means of one or more of the specified grounds.

6. At §16, the FTT reminded herself of R (KV) v SSHD [2018] EWCA Civ 2483. She directed herself that an appeal under section 40A of the 1981 Act is not a review of the Secretary of State’s decision “but a full reconsideration of the decision whether to deprive the appellant of British citizenship.” (Original emphasis). She referred, at §19, to the authority of Sleiman (deprivation of citizenship; conduct: Lebanon) [2017] UKUT 367 (IAC), for the proposition that the phrase “by means of” meant that the impugned behaviour “must be directly material to the decision granting citizenship.” (Original emphasis).

7. The FtT referred to the Secretary of State’s guidance to case-workers, in particular chapter 55: “Deprivation and nullity of British citizenship,” and section 8.4 of chapter 18, Annex D: instructions to case-workers on good character, relevant to naturalisation applications. The FtT noted that the Claimant’s asylum claim had been refused, but that he was granted discretionary leave owing to his (false) age and was subsequently granted ILR under the Legacy Scheme. The grant of ILR followed a delay of nearly 8 years. The Claimant had applied in December 2005, using his false identity, and the Secretary of State decided on 15th July 2013 to grant him ILR. The Claimant had then applied for naturalisation, again using his false

identity on 15th February 2015. He was granted naturalisation on 19th August 2015. Separately, on 16th May 2013, he applied using his real identity for leave to remain as a spouse. The Secretary of State refused this on 30th March 2016, on suitability grounds. At §27, the FtT recorded that the Claimant’s solicitor then wrote to the Secretary of State on 12th September 2016, saying that the Claimant no longer wished to benefit from the acquisition of British citizenship, which he fully accepted was tainted by deception. In an accompanying letter, the Claimant admitted his deception. However, in later correspondence 4th September 2018, the Claimant’s representative wrote to clarify that in light of Sleiman, the Claimant disputed that his use of a false identify was directly relevant to the grant of ILR or British citizenship.

8. At §30, the FtT concluded that the Secretary of State had demonstrated that the Claimant’s conduct in claiming asylum using a false identity and then continuing to use that identity, while an adult, was conduct capable of engaging section 40(3). However, she went on to consider, at §35, whether his citizenship or prior leave was obtained “by means” of his conduct. She concluded that it was not. At §36, she concluded that there was no evidence before her that “the [appellant] would have been returned to Lebanon when his asylum claim was refused it is, it seems to me speculative to seek to go any further.” The Claimant had not been granted leave to remain directly following refusal of his asylum claim, but was afforded a short period of leave, which he then applied to extend. He had been granted ILR under the Legacy Scheme owing to the delay in resolving his application for further discretionary leave. The FtT went on to refer to the authority of Hakemi & others v SSHD [2012] EWHC 1967 and the fact that absent criminality, ILR would generally be granted if someone had resided in the UK for at least 6 years. At §41, the FtT concluded that for concealment to be relevant, it had to relate to criminality or some other information relevant the assessment of good character. The Secretary of State’s decision pointed to no such conduct other than the fact of use of a false identity.

The grounds of appeal and grant of permission

9. The Secretary of State appealed on four grounds:

   7.1 The FtT had failed to consider the Secretary of State’s view that the Claimant had committed three acts of deception: his use of a false identity in claiming asylum; second, his use of that identity in obtaining ILR; and finally, when he applied for naturalisation, he had been asked whether he had engaged in activities which might be relevant to good character, to which he had he answered, “no.”

   7.2 Second, the FtT had erred in considering the likelihood of the Claimant’s removal, which was irrelevant to the issue of whether the Claimant would have been granted discretionary leave. In the alternative, the FtT’s reasoning was perverse.

   7.3 Third, the FtT had erred in considering factors such as the Secretary of State’s delay in deciding his explication to extend his leave, as the

issue of delay was not relevant if he had no outstanding application in his true identity. The legacy programme was not an amnesty, and grants under that programme considered peoples’ personal histories, including their character and conduct.

7.4 Fourth, the FtT had erred in her analysis of chapter 55. It did not support the proposition that obtaining citizenship in a false identity could not be the basis for depriving the Claimant of his citizenship.

10. First-tier Tribunal Judge Chohan granted permission on 15th March 2021. The grant of permission was not limited in its scope. Upper Tribunal Judge Plimmer then directed the parties on 28th July 2021 to reformulate the issues, including by reference to R (Begum). In doing so, the Secretary of State added to ground (1) the challenge that the FtT had erred in failing to apply R (Begum). Instead, she had substituted her view for whether the Claimant had obtained citizenship by means of deception. Grounds (1) and (4) became one ground; grounds (2) and (3) became a second ground.

The hearing before us

The Claimant’s submissions

11. We considered the Claimant’s Rule 24 response and the parties’ written and oral submissions, which we have considered in full and on which we comment below.

12. The Claimant disputed that he had engaged in multiple deceptions. When completing the application form for naturalisation, the Claimant’s denial of any facts relevant to good character was in the context of questions [3.12] to [3.18] of the form, which related to “high crimes” such as terrorism and genocide.

13. In relation to causation, even on his true date of birth, the Claimant had been a minor when he applied for asylum, although Mr Al-Rashid accepted that the Claimant was an adult by the date of the grant of discretionary leave, and he further accepted that a person who would become 18 within six months of an application (as in the Claimant’s case on his true date of birth) would not have been granted leave to remain as an unaccompanied minor.

14. Nevertheless, the FtT had been entitled to rely on the proposition in Sleiman on causation, by which she was bound (although Mr Al-Rashid accepted that it was only persuasive authority) about the need for the deception to have been directly material to the grant of citizenship. This Tribunal in Sleiman had specifically considered chapter 55 and the circumstances of an initial grant of discretionary leave, based on false details, where ILR had later been granted (still in ignorance of the true details) based on delay. We should assume that the FtT, as a specialist Tribunal, was aware of the authorities relevant to the appeal (see AA (Nigeria) v SSHD [2020] EWCA Civ 1296).

15. In oral submissions, (and not advanced either in the Rule 24 response or his written skeleton argument), Mr Al-Rashid argued that R (Begum) only

applied to deprivations of citizenship under section 40(2) of the 1981 Act, not deprivations under section 40(3). Mr Al-Rashid did not suggest that we should depart from Ciceri (appellant citizenship appeals: principles) [2021] UKUT 00238 (IAC); nor did he suggest that the headnotes in Ciceri were inaccurate. Instead, he submitted that when properly read, Ciceri supported a distinction between sections 40(2) and 40(3). The approach under section 40(2) was that set out in R (Begum), namely a review restricted to considering, when deciding whether the condition precedent has been met, whether the Secretary of State has acted in a way in which no reasonable decision-maker could have acted, or whether she has taken into account some irrelevant matter or has disregarded something to which he should have given weight, or has erred on a point of law. A Tribunal must also determine for themselves the compatibility of the decision with human rights, where such a question arises – see §68. In contrast, for section 40(3), the task for a Tribunal remained as set out in KV (Sri Lanka) – namely the Tribunal must decide for themselves whether citizenship was obtained by means of deception.

16. The discussion in R (Begum), particularly at §§68 to 70, had focussed on section 40(2). That was in the context of matters of national security. The public interest considerations in these matters meant that the Secretary of State was entitled to appropriate deference by the Courts and Tribunals, in any review. The same public interest considerations did not apply in section 40(3) cases.

17. The Supreme Court in R (Begum) had considered reviews by the Special Immigration Appeals Commission (‘SIAC’). The Supreme Court had acknowledged, at §75, the “fallacy” of assuming that SIAC’s jurisdiction was uniform, without regard to the nature of the decision under appeal or the terms of the relevant statutory provisions. The same principle applied to the FtT.

18. While it might be argued that if the Supreme Court had intended to draw a distinction between sections 40(2) and 40(3), they would have said so, the converse was also true. R (Begum) did not reflect a changed understanding of the law that was relevant to the Claimant, when Ciceri was properly understood.

19. In relation to Ciceri, its reasoning was limited to cases where the causal link between the deception and grant of citizenship was not disputed. At §17, the application of R (Begum) was accepted as applying “for present purposes.” Ciceri had focussed on the impact of delay in making a deprivation decision, rather than the causal link between conduct and deprivation. In the Claimant’s case (as in Sleiman), causation was the key issue. The Claimant had applied for leave to remain as a spouse in his true identity as early as 16th May 2013. The Secretary of State therefore had his true details before granting him citizenship. Ciceri did not assist the Secretary of State, as it was (1) not on point; and (2) it was consistent with a distinction between sections 40(2) and (3).

The Secretary of State’s submissions

20. Mr Clarke submitted that the reasoning in §§66 to 68 of R (Begum), which discussed the wording of section 40(2), plainly applied to materially identical wording at section 40(3). While the FtT could not be faulted for not having applied R (Begum), her understanding of the law, as she had applied it, was now understood to be wrong. She had applied the “full review” principles in asking whether the Claimant had obtained citizenship by means of deception, rather than asking herself whether it was open to the Secretary of State to have reached that conclusion, when considering whether the condition precedent was met.

21. Without minimising the remainder of the Secretary of State’s grounds, while the FtT had cited chapter 18, she had failed to engage adequately with its content and had almost seemed to suggest that there was an inconsistency between it, and chapter 55. chapter 18 made clear (at §8.2) that a decision maker should normally refuse an application where a person had attempted to engage in deception.

22. In relation to ground (3), the FtT had erred in relying on Hakemi & others for any supposed proposition that the Secretary of State would disregard any concerns around character if the Claimant had been in the UK for at least six years.

23. In relation to the proposition that the Claimant had not engaged in deception when completing the application form for naturalisation, because the “good character” question was posed and answered in the context of “high crimes” (see questions [3.12] to [3.18]) Mr Clarke also directed us to question [6.6], in answer to which the Claimant had confirmed that any certificate of citizenship might be withdrawn if it were found that it had been obtained by fraud, false representation or concealment.

Discussion and conclusions

24. We deal first with Mr Al-Rashid’s contention that R (Begum) does not apply to section 40(3) cases and that Ciceri was not on point. We reiterate that this was raised for the first time at the hearing before us. It is not disputed that the FtT had carried out a full consideration, rather than the more limited review as endorsed by the Supreme Court in R (Begum) and which we have already explained. It is entirely understandable that the FtT did so, as her decision was promulgated before R (Begum).

25. We reject Mr Al-Rashid’s contention that the requirements for a Tribunal’s review, as explained in R (Begum), do not apply to deprivations under section 40(3), for several reasons.

26. First, we remind ourselves of what the Supreme Court said at §66 to §71 of R (Begum), in relation to the wording of Section 40(2), which is just as apt, in our view, to the wording in section 40(3). The statutory provisions state:

> “40(2)The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

40(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—

(a) fraud,

(b) false representation, or

(c) concealment of a material fact.”

27. At §§66 to 71 of R (Begum), Lord Reed stated:

“66. In relation to the nature of the decision under appeal, section 40(2) provides:

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

The opening words ("The Secretary of State may ...") indicate that decisions under section 40(2) are made by the Secretary of State in the exercise of his discretion. The discretion is one which Parliament has confided to the Secretary of State. In the absence of any provision to the contrary, it must therefore be exercised by the Secretary of State and by no one else. There is no indication in either the 1981 Act or the 1997 Act, in its present form, that Parliament intended the discretion to be exercised by or at the direction of SIAC. SIAC can, however, review the Secretary of State's exercise of his discretion and set it aside in cases where an appeal is allowed, as explained below.

67. The statutory condition which must be satisfied before the discretion can be exercised is that "the Secretary of State is satisfied that deprivation is conducive to the public good". The condition is not that "SIAC is satisfied that deprivation is conducive to the public good". The existence of a right of appeal against the Secretary of State's decision enables his conclusion that he was satisfied to be challenged. It does not, however, convert the statutory requirement that the Secretary of State must be satisfied into a requirement that SIAC must be satisfied. That is a further reason why SIAC cannot exercise the discretion conferred upon the Secretary of State.

68. As explained at paras 46-50, 54 and 66-67 above, appellate courts and tribunals cannot generally decide how a statutory discretion conferred upon the primary decision-maker ought to have been exercised, or exercise the discretion themselves, in the absence of any statutory provision authorising them to do so (such as existed, in relation to appeals under section 2 of the 1997 Act, under section 4(1) of the 1997 Act as originally enacted, and under sections 84-86 of the 2002 Act prior to their amendment in 2014: see paras 34 and 36 above). They are in general restricted to considering whether the decision-maker has acted in a way in which no reasonable decision-maker could have acted, or whether he has taken into account some irrelevant matter or has disregarded something to which he should have given weight, or has erred on a point of law: an issue which encompasses the consideration of factual questions, as appears, in the context of statutory appeals, from *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14. They must also determine for themselves the compatibility of

the decision with the obligations of the decision-maker under the Human Rights Act, where such a question arises.

69. For the reasons I have explained, that appears to me to be an apt description of the role of SIAC in an appeal against a decision taken under section 40(2). That is not to say that SIAC's jurisdiction is supervisory rather than appellate. Its jurisdiction is appellate, and references to a supervisory jurisdiction in this context are capable of being a source of confusion. Nevertheless, the characterisation of a jurisdiction as appellate does not determine the principles of law which the appellate body is to apply. As has been explained, they depend upon the nature of the decision under appeal and the relevant statutory provisions. Different principles may even apply to the same decision, where it has a number of aspects giving rise to different considerations, or where different statutory provisions are applicable. So, for example, in appeals under section 2B of the 1997 Act against decisions made under section 40(2) of the 1981 Act, the principles to be applied by SIAC in reviewing the Secretary of State's exercise of his discretion are largely the same as those applicable in administrative law, as I have explained. But if a question arises as to whether the Secretary of State has acted incompatibly with the appellant's Convention rights, contrary to section 6 of the Human Rights Act, SIAC has to determine that matter objectively on the basis of its own assessment.

70. In considering whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight, SIAC must have regard to the nature of the discretionary power in question, and the Secretary of State's statutory responsibility for deciding whether the deprivation of citizenship is conducive to the public good. The exercise of the power conferred by section 40(2) must depend heavily upon a consideration of relevant aspects of the public interest, which may include considerations of national security and public safety, as in the present case. Some aspects of the Secretary of State's assessment may not be justiciable, as Lord Hoffmann explained in Rehman. Others will depend, in many if not most cases, on an evaluative judgment of matters, such as the level and nature of the risk posed by the appellant, the effectiveness of the means available to address it, and the acceptability or otherwise of the consequent danger, which are incapable of objectively verifiable assessment, as Lord Hoffmann pointed out in Rehman and Lord Bingham of Cornhill reiterated in A, para 29. SIAC has to bear in mind, in relation to matters of this kind, that the Secretary of State's assessment should be accorded appropriate respect, for reasons both of institutional capacity (notwithstanding the experience of members of SIAC) and democratic accountability, as Lord Hoffmann explained in Rehman and Lord Bingham reiterated in A, para 29.

71. Nevertheless, SIAC has a number of important functions to perform on an appeal against a decision under section 40(2). First, it can assess whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight, or has been guilty of some procedural

impropriety. In doing so, SIAC has to bear in mind the serious nature of a deprivation of citizenship, and the severity of the consequences which can flow from such a decision. Secondly, it can consider whether the Secretary of State has erred in law, including whether he has made findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held. Thirdly, it can determine whether the Secretary of State has complied with section 40(4), which provides that the Secretary of State may not make an order under section 40(2) "if he is satisfied that the order would make a person stateless". Fourthly, it can consider whether the Secretary of State has acted in breach of any other legal principles applicable to his decision, such as the obligation arising in appropriate cases under section 6 of the Human Rights Act. In carrying out those functions, SIAC may well have to consider relevant evidence. It has to bear in mind that some decisions may involve considerations which are not justiciable, and that due weight has to be given to the findings, evaluations and policies of the Secretary of State, as Lord Hoffmann explained in Rehman and Lord Bingham reiterated in A. In reviewing compliance with the Human Rights Act, it has to make its own independent assessment.”

28. The Supreme Court’s central reasoning, that the wording of Section 40(2) refers to the Secretary of State being satisfied, as opposed to SIAC being satisfied, is just as applicable to section 40(3), which includes identical wording. Mr Al-Rashid placed emphasis on the sentence at the end of §75, which states:

> “75. As for the judgment of Lord Woolf CJ in Secretary of State for the Home Department v M, it concerned an appeal under section 25 of the Anti-terrorism, Crime and Security Act 2001 ("the 2001 Act"), which is no longer in force. Mitting J quoted Lord Woolf's statement at para 15 that "SIAC's task is not to review or 'second guess' the decision of the Secretary of State but to come to its own judgment in respect of the issue identified in section 25". But section 25 of the 2001 Act, providing a right of appeal against decisions made under section 21, was a very different provision from section 2B of the 1997 Act, as it applies to decisions made under section 40(2) of the 1981 Act. Section 21(1) of the 2001 Act enabled the Secretary of State to issue a certificate in respect of a person if he "reasonably … (a) believes that the person's presence in the United Kingdom is a risk to national security, and (b) suspects that the person is a terrorist". Under section 25, SIAC "must cancel the certificate if … it considers that there are no reasonable grounds for a belief or suspicion of the kind referred to in section 21(1)(a) or (b), or … it considers that for some other reason the certificate should not have been issued". The Lord Chief Justice correctly analysed the effect of a provision in those terms. But section 2B of the 1997 Act and section 40(2) of the 1981 Act are materially different. <u>The fallacy which appears to underlie Mitting J's reasoning is an assumption that SIAC's jurisdiction is uniform, without regard to the nature of the particular decision under appeal or the terms of the relevant statutory provisions.</u> [Our emphasis].”

29. That does no more than emphasise the point (already made at §69) that the nature of the applicable legal analysis depends upon the nature of the

decision under appeal and the relevant statutory provisions. The reference at §75 had been to entirely different acts and wording, in contrast to the obvious commonality between the wording in sections 40(2) and 40(3). If we had any doubt on that issue (which we do not), we need only refer to the first two headnotes of Ciceri, a reported Presidential decision of this Tribunal:

> “(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.”

30. The fact that the condition precedent was accepted in Ciceri does not qualify the general application of the guidance. Mr Al-Rashid advanced a contrary position by virtue of the phrase “for present purposes” at §17:

> “17. In addition and more fundamentally, Leggatt LJ's statement of principles must now be read in the light of the judgment of Lord Reed in R (Begum) v Special Immigration Appeals Commission [2021] UKSC 7; [2021] Imm AR 879. Although Lord Reed was considering the nature of an appeal to the Commission under section 2B of the Special Immigration Appeals Commission Act 1997, that provision is the equivalent of section 40A and we see no reason to distinguish between those provisions for present purposes. [Our emphasis].”

31. That ignores the reference in the first headnote, to section 40(3), through the lens of the law understood at §71 of R (Begum). Had it been the contrary intention of the Upper Tribunal to distinguish sections 40(2) and (3), the Upper Tribunal would have made this clear in the headnote. If Ciceri did not apply to cases where the condition precedent was disputed, as Mr Al-Rashid contends, that would have rendered the first headnote entirely redundant.

32. Returning to grounds (1) and (4) of the Secretary of State’s appeal, we conclude that there is no reason to depart from the guidance in Ciceri, which confirms the application of R (Begum) to section 40(3) cases. The FtT clearly did not apply R (Begum) to her analysis and instead, she asked herself the wrong question when considering whether the condition precedent was met, and also when analysing chapters 18 and 55. Her

error is entirely understandable, as R (Begum) had not been promulgated, but it is a material error, nevertheless. Instead, at [§42] and [43], the FtT suggested that it was open to the Secretary of State to have mandated deprivation in her guidance, rather than indicate the normal course of action for decision-makers, but she had not done so. This illustrates the materiality of the FtT’s error, as it was for the Secretary of State to exercise discretion based on her satisfaction of relevant facts under section 40(3).

33. In relation to grounds (2) and (3) and the issue of causation associated with Sleiman, we return to the point that the proposition in Sleiman must be read in context of the review mandated by R (Begum) and the subject of guidance in Ciceri. Any consideration of a break in causation needs to review the Secretary of State’s conclusion that naturalisation was obtained by means of deception. The error in relation to ground (1) infects consideration of the causation issue.

34. In summary, we accept the Secretary of State’s submission that the FtT began by applying an incorrect understanding of the law to her review of the entirety of the issues before her, which renders all her findings and conclusions unsafe.

35. We canvassed with the representatives how we should deal with remaking. Mr Clarke was neutral, while Mr Al-Rashid urged us to remit to the First-tier Tribunal, on the basis that human rights issues (including a possible suicide risk and in relation to the Claimant’s family) had not been full explored by the FtT. We did not accept Mr Al-Rashid’s submission. Noting paragraph 7.2 of the Senior President’s Practice Statement, we reminded ourselves that in considering the Claimant’s rights under the ECHR, it is not usually necessary or appropriate to conduct a “proleptic” assessment of the likelihood of the Claimant’s removal (see headnote (3) of Ciceri). The Claimant was not deprived of the opportunity to put his case to the FtT. The necessary fact-finding, albeit very important, is discrete. It is accordance with the overriding objective that we retain remaking in the Upper Tribunal.

Decision on error of law

36. The FtT’s decision contains errors of law. Those errors are capable of affecting the outcome of the appeal. For that reason, we are satisfied that it is appropriate to set aside the FtT’s decision without preserving any findings of fact.

Disposal

37. With reference to §7.2 of the Senior President’s Practice Statement, for the above reasons, it as appropriate that the Upper Tribunal remakes the FtT’s decision which has been set aside.

Directions

38. The following directions shall apply to the future conduct of this appeal:

a. The parties shall have until 4pm on **22nd November 2021** to file with each other and this Tribunal any additional evidence on which they wish to rely, noting that this is an appeal against deprivation of citizenship, not against a removal decision. Mr Al-Rashid indicated that he may wish to call evidence in respect of the Claimant’s partner and children, while Mr Clarke indicated that he would make enquiries in relation to the GCID notes, relevant to the various decisions granting leave and naturalisation.

b. The parties shall, by 4pm on **6th December 2021,** lodge with each other and this Tribunal updated skeleton arguments.

c. The Resumed Hearing will be listed before Upper Tribunal Judges L Smith and Keith sitting at Field House on the first open date after 4th January 2022, time estimate **half a day** to enable the Upper Tribunal to re-make the decision.

d. The Claimant shall no later than 14 days before the Resumed Hearing, file with the Upper Tribunal and serve upon the Secretary of State’s representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

Notice of Decision

The decision of the First-tier Tribunal contains errors of law and we set it aside, without preserved findings of fact.

We retain remaking in the Upper Tribunal.

No anonymity direction is made.

Signed J Keith Date: 15th October 2021

Upper Tribunal Judge Keith