IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000643
First-tier Tribunal No: DC/50290/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 August 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HAFUZ KUPA
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms S Cunha, Senior Presenting Officer
For the Respondent: Ms A Smith, Counsel, instructed by Oliver & Hasani Solicitors

Heard at Field House on 14 July 2023

DECISION AND REASONS

Introduction

1. The appellant is referred to as the 'Secretary of State' and the respondent as 'Mr Kupa'.

2. The Secretary of State appeals a decision of Judge of the First-tier Tribunal Hendry ('the Judge') allowing Mr Kupa's appeal against a decision to deprive him of British nationality under section 40(3) of the British Nationality Act 1981. The Judge's decision was sent to the parties on 11 August 2022.

Anonymity Order

3. The Judge identified on the front page of her decision that an anonymity order was made. However, at [135] of her decision she confirmed that no order was sought, and one was not made.

4. We consider that a typographical error is to be found, unfortunately, on the front page with the failure to add the word 'not'. That such typographical error was made is supported both by Mr Kupa being named on the same page, and the clarity of the reasoning at [135]. In the circumstances, we conclude that no anonymity order was made.

5. We were not requested to make an anonymity order.

Relevant Facts

6. Mr Kupa accepts that he is an Albanian national, aged 38. He resides in the United Kingdom with his wife and their four British citizen children, who are minors.

7. He arrived in the United Kingdom on 19 September 2000, when aged 15, and informed the Secretary of State that he was an ethnic Kosovan from the Federal Republic of Yugoslavia. He provided his correct name, and slightly altered his true date of birth from 26 March 1985 to 25 March 1985,

8. The Secretary of State refused Mr Kupa's application for international protection but granted him exceptional leave to remain until 21 September 2005.

9. On 4 November 2005 Mr Kupa was granted indefinite leave to remain in his Kosovan identity. He was naturalised as a British citizen on 26 April 2007, again in his false identity.

10. The Secretary of State became aware of Mr Kupa's true Albanian identity in 2006 when he sponsored his mother and brother to visit the United Kingdom. His mother provided his Albanian birth certificate. Both were granted entry clearance.

11. Mr Kupa married his wife in Albania. Having made an entry clearance application where she detailed that her husband was born in Serbia, his wife disclosed his true identity when interviewed by an entry clearance officer in August 2010. Her application was refused, and she was subject to a ten-year automatic refusal in respect of entry. After ten years lapsed, she made an entry clearance application and was granted leave to enter as a spouse in 2021.

12. In the meantime, Mr Kupa's then solicitors wrote to the Secretary of State seeking for his certificate of naturalisation to be endorsed with his correct date of birth and nationality. The Secretary of State confirmed receipt of the amendment request by a letter dated 15 February 2013.

13. In 2015 Mr Kupa applied for his two daughters to be issued with British passports. He detailed his true identity. He subsequently made applications for British passports in respect of his son, in 2018, and third daughter, in 2020. All four children were issued with British passports.

14. The Secretary of State informed Mr Kupa that she was considering depriving him of British nationality by a letter dated 31 December 2020. Through his legal representatives Mr Kupa informed the Secretary of State as to mitigating and compassionate circumstances by a letter dated 21 January 2021.

15. By a notice dated 5 November 2021 the Secretary of State issued her decision to deprive Mr Kupa of his British nationality under section 40(3) of the British Nationality Act 1981.

First-tier Tribunal Decision

16. A hearing was held before the Judge at Taylor House on 27 June 2022.

17. By her decision the Judge noted that the appellant accepted the condition precedent, namely that he committed fraud by asserting to be a Kosovan national of the Federal Republic of Yugoslavia when claiming asylum and then relying upon this identity when securing indefinite leave to remain and later naturalising as a British citizen.

18. The Judge noted the core of the Secretary of State's case, namely that the deception was directly material to the grant of citizenship, and that if Mr Kupa had disclosed his true identity when claiming asylum, he would not have been granted leave to remain, which ultimately led to his securing British citizenship.

19. The Judge considered Mr Kupa's contention that the public interest in his being deprived of British citizenship was significantly reduced by the unexplained delay of at least nine years in action being taken against him. She directed her attention to the Court of Appeal judgment in *Laci v. Secretary of State for the Home Department* [2021] EWCA Civ 769, [2021] Imm. A.R. 1410 and observed, *inter alia*:

> '95. The first significant disclosure was that made by the appellant's fiancée, Resmie Visha, in 2010 when she applied for entry clearance. She was interviewed by an ECO on 17 August 2010 at the British Embassy in Tirana, and notes of the interview were included in the respondent's bundle. She had initially sought to rely on the appellant's Kosovan/Serbian identity, but during the course of the interview, when the interviewer put to her that the appellant was in fact Albanian, she produced the appellant's real birth certificate. There was a conversation between the interviewer and Ms Visha which made clear that the appellant had presented in the UK as Serbian/Kosovan, when he was in fact Albanian.
>
> 96. On 6 September 2010, the UKBA wrote to Ms Visha, refusing her application for entry clearance. The letter stated that it '*appeared as thought your sponsor had obtained his British passport through deception*.' The letter went on to say that no action had been taken because he was a minor at the time, but then went on to comment that he has maintained his deception thereafter, including in his application for citizenship …

97. On 21 December 2012, Karis Law … wrote to the Home Office … Ms Smith pointed out that the appellant's correct date of birth was recorded in the reply letter, and an enclosure which had been sent in by Karis Law was returned to them. This was described as 'Republic of Albania personal certificate', which appears to have contained the appellant's actual date of birth and place of birth.

98. Ms. Smith argued that this meant that the SSHD had been fully aware of the deception from 2010, or at least, definitively from 2012 …

…

108. The situation for this appellant was somewhat different, because he has not formally been notified that deprivation was being considered. What had happened in his case, Ms Smith argued, was than he had specifically disclosed his initial fraud to the Home Office, but then nothing further had occurred until the deprivation decision was made in 2020.'

20. The Judge concluded:

'126. Although Mr. Marcantonio-Goodhall argued cogently that the SSHD should not be expected to 'join the dots' when an appellant made a partial disclosure about a past deception he had made, there was little doubt that the Entry Clearance Officer at the Embassy in Tirana in 2010 had quite specifically identified the appellant's deception. This was made quite clear in the decision letter to Resmie Visha, and I find it difficult to understand why this was not reported to the Home Office in London and thence to the SRU.

127. The later disclosure by the appellant's solicitor in 2012 should also have alerted the Home Office as it was a specific disclosure that the appellant had not given the correct information about himself previously. I accept that I do not know what the original letter said, and whether any further documents were sent after the Home Office reply on 13 February 2013.

128. I accept that the Home Office is a large organisation, and that there may be no clearly established process of transferring information from one section to another. However, it was notable that, even when the SRU was indisputably notified of the deception in 2015, it took a further five years for a deprivation decision to be made.

> 129. Had a deprivation decision been made in 2010 or in 2012, the appellant would have had little argument against it, as he would have been in the UK for only 10 or 12 years, had no family, and was yet to acquire his specific work skills. The delay in making the decision was, therefore, significant in this case. In the time since 2010, the appellant clearly established his life in the UK more conclusively such that, by the time of this hearing, he had lived in the UK for 22 years.
>
> …
>
> 131. There was no dispute that the appellant had given false information when he entered the UK and had perpetuated this thereafter. This was, of course, reprehensible, and any difficulties he may face as a result would be of his own making. I accept that the integrity of the system of naturalisation has to be maintained, and that the public interest is a very significant factor when considering appeals such as this. However, I had to balance this, taking account of the delay in making a deprivation decision, against the fact that the appellant had lived in the UK for 22 years, and that his earnings funded the home in which his family lived. It was clear that even if his wife found work instead of him, that without skills and without access to welfare benefits, she would struggle to support a family of six people.'

21. The Judge found that the deprivation decision was a disproportionate interference with Mr Kupa's protected article 8 rights.

Grounds of Appeal

22. The respondent's grounds of appeal are advanced in general terms:

    i) The Judge failed to take into account Chapter 55.5.1 of the Nationality Instructions which states that 'there is no specific time limit within which deprivation procedures must be initiated. A person to whom s.40 of the 1981 Act applies remains indefinitely liable to deprivation.'

    ii) It was incumbent upon the Judge to recognise the margin of appreciation afforded to the United Kingdon when assessing the public interest in the deprivation of citizenship/article 8 balancing exercise.

iii) The Judge failed to lawfully engage with the guidance provided in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC).

Discussion

23. Ms Cunha properly acknowledged that the Secretary of State's primary challenge was in respect of Chapter 55.5.1 and its lack of consideration by both the Judge and the Court of Appeal in *Laci*.

24. A copy of Chapter 55 was placed in the Secretary of State's bundle before the Judge, at Annex V. However, we note that whilst the representatives before the Judge made submissions as to the judgment in *Laci* we are unable to identify any reliance upon Chapter 55.5.1 advanced by the Secretary of State at the hearing. Nor was it referenced in the respondent's review, dated 29 March 2022.

25. As observed by this Tribunal in *Lata (FtT: principal controversial issues)* [2023] UKUT 00163 (IAC), and acknowledged by Ms Cunha, the First-tier Tribunal can properly expect clarity as to the remaining issues between the parties by the date of the substantive hearing. It is a misconception that it is sufficient for a party to be silent upon, or not make an express consideration as to, an issue for a burden to then be placed upon a judge to consider all potential issues that may favourably arise, even if not expressly relied upon. The reformed appeal procedures that now operate in the First-tier Tribunal have been established to ensure that a judge is not required to trawl though the papers to identify what issues are to be addressed. The task of a judge is to deal with the issues that the parties have identified.

26. We note that the Chapter 55.5.1 challenge was not advanced by the Secretary of State when seeking permission to appeal from the First-tier Tribunal. The grounds, dated 18 August 2022, were concerned solely with what is now ground 3 before us.

27. We are satisfied that this issue was not advanced before the Judge and was raised for the first-time before this Tribunal. As confirmed in *Lata*, unless a point is one which is *Robinson* obvious – and as confirmed in *Miftari v. Secretary of State for the Home Department* [2005] EWCA Civ 1603 the Secretary of State is not able to rely upon a *Robinson* obvious point - a judge's decision cannot be alleged to contain an error of law on the basis that a judge failed to take account of a point that was never raised for their consideration as an issue in an appeal. Such an

approach would undermine the principles clearly laid out in the Procedure Rules. For this reason, we dismiss ground 1.

28. In any event, the Secretary of State's reliance upon Chapter 55.5.1 is misconceived. Whilst the respondent herself provides by her policy no time frame in which to make a decision, it is well-established that delay may be relevant in matters to be considered under policy: *R (FH and Others) v. Secretary of State for the Home Department* [2007] EWHC 1571 (Admin). The general approach to delay and the lessening of the public interest is addressed in *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41, [2009] 1 A.C. 1159. Lord Justice Underhill simply confirmed the same in *Laci* when concluding that it was self-evident that the extraordinary length of the delay reduced the public interest in deprivation.

29. It is appropriate to observe the Secretary of State's position before the Court of Appeal, at [77], is not consistent with that advanced in the present grounds:

> '77. In any event, whether or not the Appellant's case on delay draws significant support from *EB (Kosovo)*, it is important to appreciate that it has never been part of the Secretary of State's case that the FTT was wrong to attach weight to this factor.'

30. We note that the approach adopted by the Secretary of State before the Court of Appeal is consistent with established principles as to delay and the decision-making process.

31. As we observed to Ms Cunha at the hearing, the Secretary of State has failed to advance a cogent challenge to the Judge's careful consideration of the impact of delay upon the public interest in deprivation, in which she appropriately observed the guidance of the Court of Appeal in *Laci*, and so this ground is properly to be dismissed.

32. We consider it appropriate to detail our conclusion that upon substantive consideration the remaining grounds do not enjoy merit for the reasons detailed below.

33. Ground 2 is, ultimately, closely aligned with ground 1 and suffers from the same failure to engage with the established principle that delay in decision-making may, dependant on the facts arising, reduce the public interest in deprivation. That a margin of appreciation exists

when the Secretary of State undertakes her assessment does not, as here, prevent the reduction in the public interest where no steps to deprive are taken for at least nine years after the deception is identified, and during such time Mr Kupa continued with his life, to the extent that his wife and children joined him in this country. It was reasonably open to the Judge to conclude on the facts that the delay arising in this matter was significant.

34. Ms Cunha did not pursue ground 3 with any vigour, and she was correct to do so. The Judge did not misdirect herself as to the guidance in *Ciceri*. In addition to the finding as to delay, the Judge made clear findings that on the particular facts arising Mr Kupa would lose his employment during the limbo period, and this could lead to the loss of the family home, which in turn would have an adverse impact upon four minor children. Further, it was found as a fact that if Mr Kupa's wife secured employment, she would struggle to support a family of six, in circumstances where she could not access welfare support. We observe that these findings of fact are not challenged by the Secretary of State.

35. In such circumstances, grounds 2 and 3 as advanced are properly to be dismissed.

Decision

36. The decision of the First-tier Tribunal sent to the parties on 11 August 2022 is not subject to material error of law. The decision stands.

37. The Secretary of State's appeal is dismissed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 August 2023