



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DC/00016/2019

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 25 November 2020**

**Decision & Reasons Promulgated  
On 8 December 2020**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**KAMAL HAMAMIN MUHAMMAD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Raj

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. By a decision promulgated on 9 March 2020, I found that the First-tier Tribunal had erred in law such that its decision felt to be set aside. My reasons were as follows:

“1. I shall refer to the appellant as the ‘respondent’ and the respondent as the ‘appellant’, as they appeared respectively before the First-tier Tribunal. The appellant was born on 15 September 1975 in Iraq. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 8 February 2019 depriving him of his British citizenship required by way of naturalisation. The First-tier Tribunal, in a decision promulgated on 11 September 2019, allowed the appeal.

The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. I find that the decision of the First-tier Tribunal contains errors of law such that it falls to be set aside. My reasons are as follows., The judge has failed properly to identify the sub-section of section 40 of the British Nationality Act 1981 under which the decision had been taken. At [29], the judge refers to the absence of any submission made on behalf of the Secretary of State to the effect that the appellant's presence in the United Kingdom is not conducive to the public good. By doing so, the judge appears to believe that the decision to deprive the appellant of his nationality had been taken under section 40(2) of the Act; it is, however, obvious on the face of the decision that it had been taken under section 40(3), the Secretary of State being satisfied that the registration or naturalisation of the appellant as a citizen had been obtained by means of fraud false representation or concealment of a material fact. It was completely unnecessary for the judge to address the question as to whether the appellant's presence in United Kingdom was conducive to the public good. Secondly, at [30-31], the judge appears to consider that the appellant faces removal from the United Kingdom as result of the decision to deprive him of his citizenship. No removal decision has been taken. The Upper Tribunal in BA (deprivation of citizenship: appeals) [2018] UKUT 00085, provides guidance as follows:

“In both section 40(2) and (3) cases, the fact that the Secretary of State has decided in the exercise of her discretion to deprive P of British citizenship will in practice mean the Tribunal can allow P's appeal only if satisfied that the reasonably foreseeable consequence of deprivation would violate the obligations of the United Kingdom government under the Human Rights Act 1998 and/or that there is some exceptional feature of the case which means the discretion in the subsection concerned should be exercised differently.”

Further, the judge has ignored further guidance in BA which provides:

“As can be seen from AB (British citizenship: deprivation: Deliallisi considered) (Nigeria) [2016] UKUT 451 (IAC), the stronger P's case appears to the Tribunal to be for resisting any future (post-deprivation) removal on ECHR grounds, the less likely it will be that P's removal from the United Kingdom will be one of the foreseeable consequences of deprivation.”

Moreover, the judge appears to have become distracted by the judgement of the Supreme Court in Hysaj [2017] UKSC 82. As the Supreme Court made clear at [18] of that judgement, for a grant of citizenship to prove to be a nullity requires the applicant to have perpetrated a fraud so serious that the purported grant of citizenship would be of no effect. There is no suggestion in the instant appeal that any fraud, deception or concealment on the part of the appellant fell into that category. Consequently, it is unclear why the judge appears to have attached weight to the presenting officer's acknowledgement that the grant of citizenship in had not been a nullity; as section 40(3) provides, citizenship status validly granted (and, therefore, not a nullity) may be removed by order of the Secretary of State. There is no

requirement in section 40(3) for the grant of citizenship to have been void ab initio, as in Hysaj.

3. The effect of the judge's confusion and his misapplication of the appropriate statutory provisions render the decision unclear, confused and flawed by legal error. I set aside the decision. The decision will be remade in the Upper Tribunal following a resumed hearing on a date to be fixed. The parties are urged to consider the decision in BA and to be in a position to apply it to the facts in this appeal at the resumed hearing.

#### Notice of Decision

The decision of the First-tier Tribunal is set aside. The decision will be remade in the Upper Tribunal (Upper Tribunal Judge Lane) at a resumed hearing at Bradford on a date to be fixed."

2. At the resumed hearing Bradford on 25 November 2020, representatives of both parties appeared remotely by Skype for Business. I was in court at Bradford. Mr Raj, who appeared for the appellant, appeared by audio only. I was, however, satisfied that the audio communication was of sufficient quality for me to comprehend Mr Raj's submissions. Mr Raj was able to hear and see both myself and the senior presenting officer. Mr Raj expressed no concerns regarding the lack of a video connection.

3. As I noted in my error of law decision, the part of the British Nationality Act 1981 under which the decision was taken deprive the appellant of his British nationality subsection 40 (3):

"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.

The provision concerning statelessness at section 40 (4) does not apply to subsection (3) but only to (2) (conducive to the public good)."

4. The Secretary of State's decision letter of 8 February 2019 gives particulars of the false representations made by the appellant. The fact that the appellant made those false representations is not disputed. The appellant had claimed at his screening interview on 2 January 2002 that his name was Aram Akram Walli, that his date of birth was 10 August 1975 and that his place of birth/home area of Iraq was Jawala in Government Controlled Iraq (GCI) (as it was then described). The appellant's application for asylum had been refused but he was granted exceptional leave to remain on 23 May 2002 in accordance with the Secretary of State's policy in force at that time. On 23 July 2008, the appellant was issued with a certificate of naturalisation as a British citizen. In November 2017, when making an application for his children to be issued with British passports, the appellant had stated that his name was Kamal Hamamin Muhammad,

his date of birth is 5 September 1975 and that he was born in Halabja, Al Sulaimanayah which is in the Kurdish Autonomous Zone (KAZ). It is the respondent's case that the appellant would not have been granted exceptional leave to remain in 2002 had been known that he was from the KAZ as opposed to the GCI; at the time, the respondent view, expressed in its published policy, that those individuals whose home area was the GCI faced a real risk if returned whilst individuals from the KAZ did not.

5. Having instructed legal representatives, the appellant made representations regarding his reasons for using false information. First, the appellant claims that he used a false name in order to avoid detection by supporters of Saddam Hussein at the time active in Europe and the United Kingdom. Secondly, he was aiming to protect members of his family in Iraq. Thirdly, the appellant claims that he did not himself complete the forms submitted to the Home Office and was unaware that he should notify his correct name at any stage in his applications. Finally, the appellant stated that he believed that he should not be deprived of his nationality because other applicants had been allowed to amend their names in nationality records without having their status revoked.
6. In the decision letter at [17], the respondent noted that the appellant had been asked whether he had used other names in his screening interview but it made no response. Moreover, the appellant had signed the form including the *declaration 'I have had my name nationality, date birth in my preferred language and dialect read back to me and I declare that this information is true.'* As regards the need to protect his family, the respondent noted [16] that the appellant had travelled to Iraq on at least four occasions prior to 2008 and had used his true name in July 2009 when he had married his second wife. At [15], the respondent also records that, in addition to falsely indicating that he was from a part of Iraq to which he could not be returned at the time of his application for asylum, by maintaining the use of a false identity he had effectively prevented the respondent from re—documenting the appellant to enable his return to any part of Iraq. The appellant's use of the false identity had, therefore, been material in his eventual naturalisation as a British citizen.
7. At the resumed hearing, Mr Raj submitted that the appellant arrived in the United Kingdom 'in a terrible state.' His position had been similar to that of the Jews fleeing from Nazi Germany in the 1930s. The appellant had no choice but to change his identity in order to protect himself from the followers of Saddam Hussein. Mr Raj submitted that any deception had to be shown to have been central to the grant of citizenship; in the case of the appellant, what had been central to his use of a false identity had been his need to protect himself and his family; it had not been any need to deceive the British immigration authorities.
8. I consider the submissions made by both parties very carefully. I reject Mr Raj's submission that the use of false details by the appellant had not been central to the grant of a certificate of naturalisation to him. I accept submissions made by Mrs Pettersen, who appeared for the Secretary of

State, and the reasoning contained in the decision letter from which I quoted above. I am satisfied that, by giving a false place of birth/home area, the appellant was fully aware that, given the political and security situation in Iraq the time of his application for asylum, he would be granted some form of leave to remain and further that this would not have been the case had he indicated his true place of birth, namely the KAZ (as it was then described). The appellant was aware that his deception would be central to his claim for leave to remain in the United Kingdom whether or not his primary motive for deceiving the respondent had been to protect himself and his family. Indeed, the appellant's claim that he has faced a real risk from the supporters of Saddam Hussein had not been accepted by the respondent nor has any finding that the appellant's claim is genuine been made by a judicial decision maker. I do not accept that it has ever been established that the appellant as ever had a genuine subjective fear of the Saddam Hussein regime or its followers nor is it likely that any such finding would have been made at any time during the appellant's residence in the United Kingdom given that his place of origin is the KAZ. I am satisfied, therefore, that, in the wording of section 40 (3) of the 1981 Act, the appellant obtained a certificate of naturalisation by means of a false representation/concealment of a material fact (i.e. his true place of origin within Iraq).

9. Since the error of law decision was made in this case, the Upper Tribunal has given further guidance in *Hysaj (Deprivation of Citizenship: Delay)* [2020] UKUT 128 (IAC). Headnote [7] provides:

*There is a heavy weight to be placed upon the public interest in maintaining the integrity of the system by which foreign nationals are naturalised and permitted to enjoy the benefits of British citizenship. Any effect on day-to-day life that may result from a person being deprived of British citizenship is a consequence of the person's fraud or deception and, without more, cannot tip the proportionality balance, so as to compel the respondent to grant a period of leave, whether short or otherwise.*

There is at present no immediate threat to the appellant's continued residence within the United Kingdom and the question of his rights under Article 8 ECHR does not arise. Even if it did, I am not satisfied that the appellant has shown that his rights would suffer a disproportionate interference in light of the very strong public interest articulated by the Upper Tribunal in *Hysaj*.

10. Accordingly, I dismiss the appellant's appeal against the decision of the Secretary of State's dated 8 February 2019.

### **Notice of Decision**

This appeal was dismissed.

Signed

Date 27 November 2020

Upper Tribunal Judge Lane