**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: DC/00138/2019**

**THE IMMIGRATION ACTS**

**Birmingham Civil Justice Centre** **Decision & Reasons Promulgated**
**On 24th August 2021** **On 01 September 2021**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**B A-Z M A**
**(Anonymity Direction Made)**

Appellant

**and**

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

Respondent

**Representation:**
For the Appellant: Mr A Hussain, instructed by Allied Law Chambers
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**1.** The appellant is a national of Iraqi and of Kurdish ethnicity. On 15th January 2009 he was issued with a certificate of naturalisation as a British citizen. The appellant appealed the respondent's decision of 4th December 2019 to deprive the appellant of his British citizenship. His appeal was dismissed by First-tier Tribunal Judge Rowlands for reasons set out in a decision promulgated on 18th March 2020.

The background

**2.** The appellant arrived in the UK and presented himself at the asylum screening unit on 25th November 2002. On 6th December 2002, he completed a Statement of Evidence Form and attached to it, a statement made by him. He was interviewed by the respondent on 23rd December 2002. At each stage, the appellant confirmed his name, and claimed that he was born on 1st July 1984 in Rahimawa, Kirkuk. The appellant's claim for international protection was refused by the respondent for reasons set out a decision dated 16th January 2003. The respondent considered the claim made by the appellant and did not believe that the appellant would have been asked to join the Fedayeen Saddam. Nevertheless, on 16th January 2003 in a separate letter, the appellant was also informed that "*.. It has been decided, however, that it would be right, because of the particular circumstances of your case, to grant you exceptional leave to remain in the United Kingdom until 16th January 2007…".*

**3.** Thereafter, in December 2006 the appellant applied for indefinite leave to remain. He was granted indefinite leave to remain on 13th May 2007. On 9th June 2008 the appellant made an application to naturalise as a British citizen. He was naturalised as a British citizen on 15th January 2009. Again, in each of those applications the appellant confirmed his name, and he maintained that he was born on 1st July 1984 in Rahimawa, Kirkuk.

**4.** Subsequently, in 2017 the appellant applied for a passport for his daughter, who I refer to as [R]. In support of that application, the appellant provided an Iraqi ID Card and a copy of the "1957 Register", relating to him, his wife, and their daughter. Those documents too purported to show that the appellant was born on 1st July 1984 in Kirkuk. However those documents were examined and found to be counterfeit.

**5.** In April 2019, the appellant made an application to HM Passport Office to replace a passport that had been lost or stolen. He again maintained that

he was born on 1st July 1984 in Kirkuk. In support of that application the appellant provided an Iraqi ID Card, a marriage certificate, and another copy of the "1957 Register". Those documents state the appellant's date of birth to be 11th October 1982 and his place of birth to be Erbil. As a result of the conflicting information, the appellant was interviewed under caution on 23rd July 2019.

**6.** Following that interview, the respondent sent a letter to the appellant dated 3rd September 2019. The respondent said:

> "You claimed to have been born in Kirkuk, Iraq, on 01/07/1984 however an admission from you, as well as documents submitted in support of your passport application, confirm you are actually born in Erbil on 11/10/1982.
>
> This letter informs you that the Secretary of State is, as a result of this information, considering depriving you of your British citizen status under section 40(3) of the British Nationality Act 1981 (as amended by the Nationality, Immigration and Asylum Act 2002) …"

**7.** The appellant's representatives, UK & Co Solicitors made representations to the respondent under cover of a letter dated 20th September 2019. They confirmed the appellant's name and that he was born on 11th October 1982. As to the appellant's place of birth, they said:

> "It is submitted that our client's place of birth is Erbil, Iraq. Please find enclosed herewith our clients Iraqi passport and national ID card. It is shown from our client's Iraqi documents that he is originally from Kirkuk because his family civil register office are all shown to be from Kirkuk. The applicant was truthful by telling he was originally from Kirkuk, and his recent changes of his register office showing otherwise but this should not affect British citizenship…."

**8.** The appellant's representatives claimed the appellant has never provided a different name and when he arrived in the UK, he was afraid that he might be identified if returned to Iraqi. They explained that on the basis of advice he received from friends during his journey to the UK, the appellant changed his date of birth so that he would not be recognised by the Iraqi intelligence agencies and their agents, and so as to protect himself in the event of removal to Iraq.

**9.** In her decision of 4th December 2019, the respondent informed the appellant that she has decided the appellant's British citizenship was obtained fraudulently and he should be deprived of that citizenship for the reasons set out in the letter. At paragraphs [8] to [34], the respondent sets out the background to her decision. The basis upon which the appellant had been granted exceptional leave to remain in January 2003, is explained in paragraph [23]:

> "… on 16 January 2003, you were granted Exceptional Leave to Remain (ELR) based on your particular circumstances until 16 January 2007. (Annex G1 to G3). The caseworker's decision to grant you with this status was based on the policy in place at that time (Annex H1 – H5) and because of their belief that you were from an area of Iraq which was controlled by Saddam Hussein. (annex H2 paragraph 3.6) The coexistent Home Office Policy, deemed the return of an individual to any area of Iraq which was judged to be under the control of the ruling Ba'athist regime unacceptable. You were granted ELR under the identity of [B A-Z M A] born in Kirkuk on 1 July 1984"

**10.** At paragraphs [36] and [37] of her decision the respondent said:

> "36. Consideration has been given to the fact you changed your date of birth when entering the country, however as you did not benefit from any grant of leave because of this, it is considered that this was not material to the acquisition of citizenship and thus disregarded.
>
> 37. Consideration has also been given to the fact that you changed your place of birth from Erbil to Kirkuk. You are granted ELR in line with the previously mentioned Iraq country policy on the understanding that you were an ethnic Kurd born in the government-controlled area (GCI) of Iraq (Kirkuk) and you feared persecution, when in fact you were born in Erbil which is in the Kurdish autonomous zone (KAZ). The grant of ELR then allowed you to gain sufficient length of residency to apply for ILR and then to naturalise. As you falsely presented to the Home Office as being from government controlled area (GCI), the decision to grant you ELR was incorrectly made on this basis on account of the false information which you have provided during the asylum process. It is considered that had the caseworker known at the time of application that you were from the KAZ area of Iraq the grant of ELR would not have been applicable to your circumstances and as such the application would have been declined. This is therefore considered a material fact in your application…."

The decision of First-tier Tribunal Judge Rowlands

**11.** The background is briefly summarised by Judge Rowlands in paragraphs [2] and [3] of his decision. The appellant gave evidence as set out in

paragraphs [4] to [7]. The appellant adopted his witness statement dated 10th February 2020. Judge Rowlands does not repeat the content of that statement in the decision, but it is useful to record that at paragraph [1] of his statement, the appellant maintained that he was born in Kirkuk. He claimed he "*.. moved to Erbil when [he] was a child and [his] birth was registered in Erbil, in Iraq..*". He claimed that his last address in Iraq was "*..in Rahimawa, Kirkuk..".* He claims in paragraph [2], that he is "*..originally from Kirkuk..*" and he was told they had moved to Erbil when he was "*..one or more years and because [his] father had been in Peshmerga Army against the Iraqi regime, the family did not register [him] in Kirkuk because they feared [they would] be persecuted because of [his] father's involvement...".* At paragraph [3] of his statement the appellant claimed:

> "When I was five, my father returned because the government announced or declared public forgiveness to all opposition except former PUK General Secretary Jalal Talabani. Therefore, my father returned home and then moved back to Kirkuk. I then started my primary and secondary schools. I have previously provided my father's ID card and my wife's that all show their place of registration...."

**12.** It is immediately apparent that the appellant's claim in his witness statement that he was born in Kirkuk and moved to Erbil before returning to Kirkuk is at odds with the representations made by his representatives in their letter dated 20th September 2019, that I have referred to in paragraph [7] above. Judge Rowlands records the submissions made at paragraphs [11] to [14] of his decision. At paragraphs [12] and [13] he recorded:

> "12. He had also claimed to have been born in Kirkuk and before leaving he had been living there. Having claimed this in his screening interview he confirmed it as (sic) his SEF, his full interview and in his application for indefinite leave to remain. It wasn't until 2019 that he provided documents showing his correct date of birth and, more importantly, his place of birth as being Erbil. It later turned out that, he claims that he was actually born in Kirkuk but had moved to Erbil at an early stage and lived there.
>
> 13. As a result of this information, the appellant was interviewed under caution on 23rd July 2019. In that interview he admitted that he was aware that the documents he had obtained, for the purposes of his daughters application in 2017, were documents which he knew were not reliable. He

> said that he had told the company his problem and they produced relevant documents. He said he hadn't told the truth about his identity and home background because he was scared for his life and didn't want to be sent back to Iraq. The fact that he produced false documents in his daughter's claim is not relevant to this appeal but the fact that he knew that he had been naturalised with a fake ID and information concerning his home address, even at that time, is. He confirmed that he was born in Kirkuk, but had been brought up in Erbil from a very early age."

**13.** Judge Rowlands set out his findings and conclusions at paragraphs [15] to [19] of his decision. Judge Rowlands referred to the respondent's nationality instructions at paragraph [17] of his decision, and concluded, at [18], that the appellant should be deprived of his British citizenship. He confirmed that in reaching his decision he had taken into account the status of the appellant's daughter, noting that deprivation of the citizenship granted to him, would not have a negative impact upon her. Judge Rowlands concluded, at [19], that the decision to deprive the appellant of British citizenship would not be contrary to the appellant's human rights. He noted there is no removal decision, and that if the respondent decides to proceed with removal, it will be open to the appellant to appeal that decision as being contrary to his Article 8 right to a family and private life.

The appeal before me

**14.** The appellant relies upon two grounds of appeal that are set out in the grounds of appeal dated 23rd June 2020. First, the appellant claims Judge Rowlands failed to adequately consider the appellant's entitlement to 4 years exceptional leave to remain based upon the respondent's policy in 2003, that the respondent would not rely on internal flight to the Kurdish Autonomous Zone ("KAZ") from the government-controlled area of Iraq as a reason to refuse asylum. Simply put, the appellant claims that regardless of any conclusions reached by the respondent and the First-tier Tribunal as to where he was born, whether that was Kirkuk or Erbil, the appellant's evidence was that he moved to Kirkuk (a government-controlled area of Iraq) as a young child at the age of five. He claims Judge Rowlands was therefore required to have regard to the

respondent's policy and make a finding as to whether the appellant had lived in Kirkuk prior to his departure from Iraq. If it is accepted that the appellant had, as he claims, lived in Kirkuk prior to his departure from Iraq, the appellant would have qualified for a grant of four years exceptional leave to remain in 2003 in any event. Second, the appellant claims Judge Rowlands erred in his approach to the best interests of the appellant's daughter under s55 and as to his assessment of the Article 8 claim made by the appellant. It is said that Judge Rowlands failed to appreciate or have regard to the fact that the child is a British citizen by operation of law (s2(1) British Nationality Act 1981) and Judge Rowlands failed to have any proper regard to her rights as a British citizen and how she would be affected by the deprivation of her father's citizenship. The appellant claims the strength of his human rights claim and the impact upon a relevant child was in the end relevant to the legality of the deprivation measure pursued by the respondent.

**15.** Permission to appeal was granted by Upper Tribunal Judge Kamara on 20th July 2020. She said:

> "It is, at least, arguable that the respondent ought to have drawn the judge's attention to the policy which the grounds state was in place at the time the appellant entered the United Kingdom in November 2002 and which it is argued he would have benefited from in view of him being born in Kirkuk and residing there immediately before he left for the UK"

**16.** Before me, Mr Hussain adopted the written submissions settled by him dated 23rd August 2021. He submits the appellant had claimed in his evidence that prior to leaving Afghanistan, he had lived in Kirkuk, a government-controlled area. The respondent did not reject that claim in her decision of 4th December 2019. He submits the focus of the respondent was upon the discrepancies in the documents as to where the appellant was born. He submits that even if the appellant had lied about where was born, it does not follow that that he had also lied about his claim that he had lived in Kirkuk immediately prior to his departure from Afghanistan.

**17.** Mr Hussain refers to the decision of Mr Justice Davis in R (Rashid) v SSHD [2004] EWHC 2465 in which the Administrative Court considered a general policy operated by the respondent since at least October 2000 that internal relocation to the former KAZ from government controlled Iraq ,would not be advanced as a reason to refuse a claim for refugee status, so long as when the individual came to the UK, they came from (Mr Ahmed's emphasis) the part of Iraq controlled by the former Baath party. Mr Ahmed submits that like the applicant in Rashid, the appellant had lived a government-controlled area (Kirkuk) prior to his arrival in the UK, having spent a short period of time in Erbil many years before. He submits the appellant, like the applicant in Rashid, was entitled to claim that if the respondent had applied the policy to the appellant at the time of his original asylum application, the appellant would, in any event, have been granted refugee status, and so a finding that the appellant was born in Erbil was not sufficient to establish that the grant of British citizenship was obtained by means of fraud or a false representation.

**18.** Mr Hussain also drew my attention to the decision of Mr Justice Collins in R (A): (H) & (HA) v SSHD [2006] EWHC 526 in which the Court considered the effect of the decision of the Court of Appeal in R (Rashid) v SSHD [2005] EWCA Civ 744. Each of the claimants was of Kurdish ethnicity and had lived in a government-controlled area. Mr Justice Collins held there had been systemic failures as to the application of the respondent's policy which not only affected the decisions but also led to the appellate authority being misled such that the claimants were deprived of the chance of having a fair decision not only from the respondent but also from the independent appellate body. He held that the claimants [A] and [H] must be granted ILR and [AH] should have been granted 4 years ELR in July 2001 when his claim was refused. Mr Hussain submits the appellant is in a similar position to [AH]. The claim made by [AH] for asylum was refused because it was not credible and not because he could internally relocate to the Kurdish Autonomous Zone. Therefore, at the time of the initial decision [AH] should have received four years

exceptional leave to remain in line with the practice for claims made by those from the government-controlled area of Iraq, at that time.

**19.** Finally, Mr Hussain submits the question for the First-tier Tribunal was whether the appellant had acted "dishonestly" when he claimed he was born in Kirkuk, having regard, subjectively, to the actual state of the appellant's individual knowledge or belief as to the facts, as set out in Ivy v Genting Casinos (UK) Ltd [2017] UKSC 67. Alternatively, even if the appellant was dishonest regarding his place of birth, the Tribunal must be satisfied that the dishonest assertion in his application for asylum, settlement and naturalisation was material to the grant of exceptional leave to remain, indefinite leave to remain, and then British citizenship.

**20.** In response to the claim made in the respondent's Rule 24 reply that the appellant had been represented at the hearing of his appeal, and that it did not form any part of his appeal before the First-tier Tribunal that the appellant would in any event have been granted 4 years ELR upon a proper application of the respondent's policy at the time of the respondent's decision in January 2003, Mr Hussein submits that it was the respondent's policy and the respondent was, in fairness, better placed than anyone to bring a policy that was relevant, to the attention of the First-tier Tribunal.

**21.** In reply, Mr Bates submits the respondent's policy was properly referred to by the respondent in her decision of 4th December 2019. The respondent explained, at paragraph [23] of her decision, that the appellant was granted exceptional leave to remain in January 2003, based on the policy in place at that time and the caseworkers belief that the appellant was from a government-controlled area of Iraq. The respondent said:

> "… The coexistent Home Office policy, deemed the return of an individual to any area of Iraq which was judged to be under the control of the ruling Ba'athist regime unacceptable…"

**22.** Here, the respondent did not accept the appellant was entitled to refugee status but nevertheless the appellant was granted 4 years ELR. Such a grant would not have been made if the appellant had come from the Kurdish Autonomous Zone. Mr Bates submits the respondent's policy was not only referred to in the respondent's decision, but a copy of the respondent's 'Iraq Policy Bulletin 1/2009 (issued 12 January 2009) was included as 'Annex H' of the respondent's bundle. That Country Policy Bulletin addresses the decisions of the Court of Appeal in Rashid, and the decision of Mr Justice Collins in R (A): (H) & (AH). Both the appellant and the First-tier Tribunal Judge were therefore aware of the policy and the litigation around it. Mr Bates submits the entire thrust of the grounds of appeal are that the respondent had not provided the policy, but that is clearly inaccurate. He submits the appellant now seeks to impugn the decision of Judge Rowlands on the basis of a claim that was not made before the First-tier Tribunal and the Judge cannot be criticised for failing to deal with a claim that was not advanced before him. Mr Bates submits the remaining grounds relied upon by the appellant are even weaker. He submits Judge Rowlands had regard to the best interests of the appellant's child and it was open to the Judge to conclude that depriving the appellant of his British citizenship would have no negative impact on her. Any entitlement she has to British citizenship arises by operation of law and depriving the appellant of his British citizenship will not impact upon her entitlement to British citizenship. Mr Bates submits the respondent confirmed in her decision of 4th December 2019 that a deprivation decision does not itself preclude an individual from remaining in the UK. He submits it was open to Judge Rowlands to conclude that in the absence of a removal decision, the decision to deprive the appellant of his British citizenship is not contrary to his human rights, noting as he did, that if the respondent decides to remove him, the appellant may appeal on the basis of his right to remain on Article 8 grounds.

Discussion

**23.** Section 40(3) of the British Nationality Act 1981 provides that the respondent 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. On appeal, the Tribunal must establish whether one or more of the means described in subsection 3(a), (b) and (c) were used by the appellant in order to obtain British citizenship.

**24.** Neither party has adduced the written text of the policy adopted by the respondent in 2002/3 when the appellant made his claim for asylum and when the respondent reached the decision to refuse the claim for asylum but to grant the appellant four years exceptional leave to remain. From the authorities relied upon by Mr Hussain it appears that even within the ranks of those whose job it was to apply it, it was not universally known. Its content is referred to in the authorities that I was referred to, and in the respondent's 'Iraq Policy Bulletin 1/2009 (issued 12 January 2009) that was included as 'Annex H' of the respondent's bundle before the First-tier Tribunal.

**25.** It is clear that since 1991, the respondent has adopted various policies to address claims made for international protection by those from Iraq. From October 2000 failed asylum seekers from a government-controlled area of Iraq were to be granted four years' ELR. It appears the policy was amended, in relation to failed asylum seekers from government-controlled areas of Iraq, in that with effect from 20th February 2003 they were to be granted only six months' ELR in light of the uncertainty about conditions in Iraq caused by the prospect of imminent military action against Iraq.

**26.** Regardless of whether the matters referred to in the grounds of appeal now advanced by the appellant were matters that the First-tier Tribunal was invited to consider, in my judgement, the difficulty for the appellant

is that his grounds of appeal and submissions made before me, all proceed upon the premise that even if he was born in Erbil, it is accepted that he had, as he claims, lived in Kirkuk from a young age, and he had therefore lived in a government controlled area of Iraq prior to his departure from Iraq and at the time of his arrival in the UK. To use the words of Mr Hussain, the appellant was therefore '<u>from</u>' a government-controlled area of Iraq, and he would therefore, in any event, have benefited from the grant of 4 years exceptional leave to remain.

**27.** However, that is to misunderstand the findings and conclusions reached by Judge Rowlands. There were plainly inconsistencies in the appellant's evidence as to where he was born and his account of events. At paragraphs [11] to [13] of his decision, Judge Rowlands refers to the evidence as highlighted in the submissions made. At paragraph [15] of his decision, Judge Rowlands said

> "I have considered all of the evidence in the case including that which I have not specifically referred to and reach the following conclusion. I am satisfied that the appellant did make a false representation not just once, but on each occasion thereafter where he continued to maintain that the facts that he had put forward were correct. I am also satisfied that he did so deliberately to avoid, as he says himself, being removed from the United Kingdom and returned to Iraq. I am satisfied that he knew that if he told the truth i.e. that he was from a Kurdish controlled area which he could have returned to safely he would not have been granted leave twice and subsequently naturalisation. I am satisfied that the fact that he came from a Kurdish controlled safe area would have made a difference. I am satisfied that he knew she should have admitted to this earlier and that he took advice knowing that there was a problem."

**28.** Judge Rowland was satisfied that the appellant did make a false representation on several occasions and did so deliberately to avoid, as he said himself, being removed from the United Kingdom and returned to Iraq. Judge Rowlands describes in that paragraph, the truth being; the appellant was <u>from</u> (my emphasis) a Kurdish controlled area which he could have returned to safely. Judge Rowlands states that he was satisfied that; *"... The fact that he came <u>from</u> (my emphasis) a Kurdish controlled safe area would have made a difference."*. I emphasise the use of the word "from" by Judge Rowlands in that paragraph, because it

addresses the submission made by Mr Hussain that the relevant policy did not require consideration of whether internal relocation was reasonable, so long as when the individual came to the UK, they came "from" the part of Iraq controlled by the former Baath party. Properly read, Judge Rowlands considered the evidence before the Tribunal and not only rejected the appellant's claim as set out in his witness statement dated 10th February 2020 that he was born in Kirkuk, but also rejected the claim that the appellant came from Kirkuk. Judge Rowlands expressly states that he was satisfied that the appellant came from (my emphasis) a Kurdish controlled safe area. Judge Rowlands did not therefore focus solely upon where the appellant was born and in reaching his decision he had proper regard to the appellant's subjective and actual knowledge at the time he made the false representations.

**29.** I reject the claim made by Mr Hussain that the appellant's position is analogous to the position of Mr Rashid in R (Rashid) v SSHD and of [AH] in R (A): (H) & (HA) v SSHD. In Rashid, the claimant was born in Arbil, in northern Iraq in July 1983, which had subsequently become part of the KAZ. In 1987, at the age of four, he moved to Makhmur in southern Iraq, an area under the control of the Baath regime. In her decision refusing his asylum claim, the respondent had accepted that the claimant would have protection concerns in the area still controlled by the Baath regime, but went on to say that there were areas in the Kurdish Autonomous Zone where he would not have a well-founded fear of persecution and it would be reasonable to expect him to go there. On appeal, the Adjudicator did not accept that the appellant had given a credible account of why he left Iraq and concluded that in any event, he would be removed to the KAZ, and his removal there would not be unduly harsh. The Immigration Appeal Tribunal refused permission to appeal on the basis that although the Adjudicator had not given a reasoned explanation for his finding that the claimant had no fear even in his home area, that was immaterial because it was open to the Adjudicator to find that it would not be unduly harsh for the appellant to internally relocate to the

KAZ. At paragraph [20] of his judgment Mr Justice Davis referred to an extract from the respondent's decision stating that from October 2000, there was in existence within the Home Office a general policy that internal relocation to the former KAZ from government-controlled Iraq would not be advanced as a reason to refuse a claim for refugee status. That was on the basis of the stance adopted by the Kurdish authorities of not admitting to their territory, those who were not previously resident in that area because of a lack of infrastructure and resources. In Rashid, there was therefore no doubt that the claimant was from a government-controlled area and in accordance with the respondent's policy, which had not been consistently applied by caseworkers and presenting officers, the claimant had found himself in the position he was in, because of the wrongful failure on the part of the respondent to apply the policy to him as it should have been applied at the time of his initial application. Similarly, [AH] was from a government-controlled area of Iraq and it was the respondent's unlawful failure to apply a relevant policy that applied, that justified the intervention of the court.,

**30.** Here, Judge Rowlands, having heard evidence from the appellant found that the truth is that the appellant was from a Kurdish controlled area and that the fact that he came from a Kurdish controlled safe area, would have made a difference to the determination of his claim. It is not suggested by the appellant that there was a policy in force in January 2003 that an individual who had come to the UK from a Kurdish controlled area would have been granted 4 years' ELR regardless of the outcome of his claim for asylum. In fact, the 'Iraq Policy Bulletin 1/2009 (issued 12 January 2009) that I was referred to and which was before First-tier Tribunal Judge Rowlands states:

> "3.6 Although there was no country specific blanket ELR policy it was accepted practice that all asylum seekers who were accepted as being Iraqi nationals, but who were found not to be refugees, from April 1991 to 20 October 2000, would be granted 4 years' ELR arising from factors such as the severe penalties imposed on those who had left Iraq illegally. From 20 October 2000, in light of the improved conditions in KAZ, only claimants who were accepted to have come from GCI were granted 4 years' ELR. *(my*

> *emphasis)* On 20 February 2003 this changed to 6months' ELR in view of the uncertain situation surrounding Iraq, in particular the prospect of imminent military action against Iraq. On 20 March 2003 initial consideration of all Iraqi asylum applications was suspended following the commencement of military action in Iraq. Decision-making on Iraqi asylum claims resumed on 16 June 2003, since when all Iraqi asylum applications, regardless of where the claimant originated, have been considered on their individual merits.

**31.** Therefore, since 20th October 2000, only those who were accepted to have come from the government-controlled area of Iraq were granted 4 years' ELR. The grant of four years ELR made to the appellant in January 2003 was made upon a proper application of that policy. However, on the findings made by Judge Rowlands, the respondent was not someone who came from the government-controlled area of Iraq, and it follows that it was open to Judge Rowlands to conclude that the fact that the appellant came from a Kurdish controlled safe area, would have made a difference. Properly read, in my judgment, it was open to Judge Rowlands to conclude that the appellant should be deprived of the British citizenship which resulted from his naturalisation for the reasons given in his decision.

**32.** In reaching his decision, I am satisfied that Judge Rowlands had adequate regard to the best interests of the appellant's daughter, who it seems, at the time of the hearing before the First-tier Tribunal, was living in Iraq. It appears that since the decision of Judge Rowlands promulgated on 10th March 2020, the appellant's daughter, [R], who was born in Erbil on 21st May 2012, has been issued with a passport as a British Citizen. The deprivation of British citizenship has not prevented the appellant's daughter securing a passport as a British citizen. That however is a matter that post-dates the decision of the First-tier Tribunal but is a factor that the respondent will no doubt have regard to, when she reaches a further decision as to whether to pursue removal of the appellant to Iraq or to grant the appellant some other form of leave to remain.

**33.** In Aziz v SSHD [2018] EWCA Civ 1884, Sales LJ (with whom Sir Terence Etherton MR and Sir Stephen Richards agreed) said, at [25] to [28] that, at least in the usual case, the issues of whether the appellant should be deprived of his or her citizenship and whether they should be removed are distinct, and that it was neither necessary nor appropriate for a Tribunal considering the deprivation question to conduct a "proleptic assessment" of the likelihood of a lawful removal.

**34.** As Judge Rowlands said at paragraph [19] of his decision, in so far as the human rights claim is concerned, if the respondent decides to remove the appellant, it will be open to the appellant to claim that his removal would be contrary to Article 8.

**35.** An appellate court should resist the temptation to subvert the principle that they should not substitute their own analysis of the evidence for that of the Judge by a narrow textual analysis which enables it to claim that the Judge below misdirected themselves. It is not a counsel of perfection. An appeal to the Upper Tribunal is not an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits.

**36.** Having carefully considered the decision of Judge Rowlands I am quite satisfied that the appeal was dismissed after the Judge had carefully considered all the evidence before him. In my judgement, the findings made by Judge Rowlands, albeit brief, were findings that were properly open to him on the evidence before the Tribunal. The findings and conclusions reached cannot be said to be perverse, irrational or findings that were not supported by the evidence. There is in my judgement no material error of law capable of affecting the outcome.

**37.** It follows that I dismiss the appeal.

**Notice of Decision**

**38.** The appeal is dismissed, and the decision of First-tier Tribunal Judge Rowlands stands.

Signed **V. Mandalia** Date: 25th August 2021

**Upper Tribunal Judge Mandalia**