Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00144/2019 (V)

THE IMMIGRATION ACTS

Heard by way of a remote hearing **Decision & Reasons Promulgated**
On 5 January 2022 **On 24 March 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HUNAR MOHAMMAD HASHIM

Respondent

Representation:
For the Appellant: Ms H. Aboni, Senior Home Office Presenting Officer
For the Respondent: Mr J. Greer, Counsel instructed by Fisher Stone Solicitors.

DECISION AND REASONS

Introduction:

1. The Secretary of State appeals, with permission, against the determination of the First-tier Tribunal (Judge Turner) promulgated on 2021. By its decision, the Tribunal allowed the respondent's appeal against the Secretary of State's decision dated 11 December 2019 to deprive him of his citizenship under Section 40(3) of the BNA 1981.

2. The First-tier Tribunal did not make an anonymity order and Mr Greer did not advance any grounds as to why such an order was necessary.

3. Whilst this is an appeal brought by the Secretary of State, I intend to refer to the parties as they were before the First-Tier Tribunal.

4. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and that this could take place via Microsoft teams. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

5. The hearing took place on 5 January 2022, by means of *Microsoft teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video as did the appellant so that he could see and hear the proceedings being conducted. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing, and I am satisfied both advocates were able to make their respective cases by the chosen means.

6. I am grateful to and Ms Aboni and Mr Greer for their oral submissions.

Background:

7. The background to the appeal is summarised in the decision of the FtTJ at paragraphs [9]-36]. The appellant is a naturalised British Citizen who claims to be from Iraq. He arrived in the UK clandestinely on 1 December 2002 and made a claim for asylum which was refused on 19 August 2004. He completed an asylum screening as having been born in Kirkuk, Iraq. The basis of his claim was that he had a well-founded fear of persecution based on political opinion imputed to him from his father whom he claimed was working for the opposition political party and who it was said was arrested by the intelligence authorities. The appellant appealed this decision which came before Judge Wilson on 2 March 2005. It is recorded in his decision promulgated on 9 March 2005 that the appellant did not attend at the hearing nor did his representatives. Having found that there was no explanation for the nonappearance of the appellant, the judge went on to consider the appeal in his absence. His appeal was dismissed.

8. A fresh claim was made on the appellant's behalf on 2 July 2007 based on significant change in circumstances in Iraq and the effects that it had on the appellant as an individual from the government-controlled area of Iraq (GCI)N in Kirkuk. It was stated that the appellant would be at risk of serious harm due to the civil war in Iraq and that he could not relocate to another area as a result of the internal conflict. Due to the policy of the Kurdish regional government (the KR G) at that time, the appellant's representative stated that he was legally unable to return to any of the KRG governorates.

9. Further contact was made to the Home Office on behalf of the appellant asking his asylum claim to be considered in the light of the Case Resolution Directorate's (CRD) policy. The appellant was issued with a letter dated 2 March 2010 informing him that he been granted indefinite leave to remain. His asylum case was reviewed in the light of the policy. He was granted a residence permit showing his identity as Hunar Mohammad Hashim born in Kirkuk.

10. The appellant applied for naturalisation on 25 November 2011 and attended the ceremony on 9 May 2011. Thereafter the appellant made an overseas passport application from Iraq for his 2 children on 14 June 2017. Her Majesty's passport office ("HMPO") suspected that the appellant may have supplied counterfeit documentation in support of the applications and invited him for an interview on 16 January 2018 and subsequently on 11 June 2018. He was subsequently informed on 14 June 2018 by HMP that they were not satisfied that he had obtained British citizenship correctly. The appellant's representative sent a letter in response to this to HMPO on 18 June 2018.

11. A letter was sent by the Home Office to the appellant on 30 August 2008 stating that the 60 stated reason to believe that the appellant had obtained his British citizenship by fraud and are the appellant by documentation. The appellant responded to this request on 7 May 2019.

12. On 11 December 2019 a decision was made to deprive the appellant of his British citizenship and full reasons are set out in the accompanying decision letter.

13. The appellant appealed the decision, and the appeal came before the FtTJ on 18 February 2021. The FtTJ set out the appellant's case at paragraphs [15] –[23]. The appellant stated that he arrived in the UK in 2002 when he was a minor age 17 and had been told by his mother that he was born in Kirkuk and had provided the information to the authorities during his asylum claim. He said he spent the majority of his life in Kirkuk and attended secondary school there prior to leaving Iraq. He had relied upon information from his mother which he believed to be true. Whilst the respondent relied on the Iraqi registration document stated that the appellant was born in Halabja, Sulaymaniyah it was submitted that there was no evidence other than this document suggests that the appellant was not from Kirkuk. The appellant had returned to Iraq after he was naturalised met his wife there and married and had 2 children. The appellant stated that he made an application for passports for his children whilst in Iraq and he was introduced to someone who was able to make the application on his behalf. He was living and working in Sulamaniyah at that time and knew he would have to go to Kirkuk for documentation which was difficult. He paid the man thousand dollars and provided him with the documents. The appellant signed the documents without looking at them. He later discovered that the man had produced registration documents noting his place of birth is Kirkuk as it matched the information recorded by the UK authorities. He was not aware of this at the time and

would not have authorised the application had he been aware. He was not aware the full document had been submitted and once aware of this he produced and obtained to the HMPO documentation. It was the appellant's case that he not been dishonest with regards to any information that he provided the authorities during his own immigration history the UK particularly in relation to his naturalisation.

14. At paragraphs [24]-[36] the FtTJ set out the respondent's case as set out in the decision letter. The decision having been made following the receipt of the application by the appellant for the passport to his children. The application was supported by dubious identity documents which strongly suggested that the appellant's name, date of birth and place of birth was different that claimed throughout his own immigration history. In particular the appellant claimed in his asylum application that was born was from Kirkuk. His asylum appeal was dismissed, and it was in 2010 after making further submissions representations of the appellant was granted indefinite leave to remain on the basis of the CRD policy which allowed for leave to remain to be granted outside of the rules applicants from government-controlled areas ("GCI") of Iraq. The appellant claimed that he was from Kirkuk which was a GCI area at that time. Halabja was not. Had the respondent known about the appellant's place of birth, the appellant would not have been granted leave to remain under the CRD policy and as such would not have been in the UK in order that he could then apply for naturalisation. Therefore the discrepancy was material to the grant of British citizenship. Reference was made in the decision letter to the different date of birth which the appellant stated was incorrect as a result of interpreter error when he made his claim. In relation to his place of birth, he claimed that he relied upon what he had been told by his mother before leaving Iraq and that his place of birth was recorded by the Iraqi authorities as Halabja incorrectly. The respondent considered that it was not supported by the objective evidence as explained at paragraph 23 of the decision letter. It was considered not credible that at the time he left Iraq at age 17 that he would not have known his correct date or place of birth as he would have been required to report to the registration office for military service on his 18th birthday. The respondent also took into account the questions that the appellant was unable to answer following his interviews with HMPO.

15. Representations as to mitigating circumstances were considered when weighing the decision however the respondent made the decision that the appellant knowingly and willingly secured status in the UK as a national from a GCI of Iraq and that this had been maintained. The explanations provided by the appellant had not been accepted and he had made an application which had been supported by counterfeit documents.

16. Whilst the decision to deprive citizenship is a discretionary one, noting the evidence above it was considered that the decision was both reasonable and proportionate. It was also considered that the decision would not result in the appellant being stateless.

17. At paragraph [43] the FtTJ set out the main issue in the appeal which is where the appellant was from and whether he had been dishonest about this. It was acknowledged that the appellant's name was also an issue but was not material to the decision to grant the appellant citizenship. It was however relevant to the issue of credibility (and see findings at [64]).

18. At paragraphs [44]-[64] the FtTJ set out her findings of fact and analysis of the evidence. The FtTJ's conclusion is at paragraph [61]:

> "61. Overall, I have seen no evidence to suggest to me that the Appellant had lived and grown up anywhere other than Kirkuk. I find that the Appellant has provided a reasonable explanation about his knowledge upon entry to the UK in 2002, in that he grew up in Kirkuk, attended school in Kirkuk and relied on what he had been told by his mother. Overall, I find on balance that the Appellant did not use deception when he provided information to the Respondent during the course of his immigration history. I find that it was only when he returned to Iraq after he was naturalised that he noted the fact that he was not in fact born in Kirkuk when as an adult he applied for and obtained formal documentation. As such, I find that the Appellant has not been dishonest nor used deception for the purpose of his grant of British Citizenship."

19. The FtTJ found that the appellant was honestly told the respondent in 2002 that he was born in Kirkuk and that he continued with this belief until he returned to Iraq after naturalisation. The judge found that in any event he was raised in Kirkuk and for the purpose of any asylum claim he would have been considered to have been from Kirkuk regardless of his actual place of birth. The judge therefore concluded that she did not find the relevant condition precedent in section 40(2) or (3) existed for the exercise of the discretion to deprive the appellant citizenship. The FtTJ therefore allowed the appeal.

20. The SSHD appealed and permission to appeal was refused by the First-tier Tribunal (Judge Swaney) but on renewal was granted by UTJ Owens on 19 July 2021. The reasons given were as follows:

> "… it is arguable that the FtTJ erred at [54] when finding that the respondent and a previous FtTJ had found the appellant to be from Kirkuk and that this finding infected the judge's assessment of credibility.
>
> It is also arguable that the judge applied the incorrect standard of proof.
>
> All grounds are arguable.
>
> Both parties will need to be prepared to address the issue is whether the appellant would have been granted ILR in any event because he had been living in Kirkuk under the R(S) policy"

<u>The appeal before the Upper Tribunal:</u>

21. Before the Upper Tribunal, the Secretary of State was represented by Ms H. Aboni, and the appellant was represented by Mr J. Greer of Counsel who had appeared on his behalf before the FtT. Directions had been issued by UTJ Owens that both parties should file skeleton arguments dealing with the relevant issues. Mr Greer filed his skeleton argument dated 22 December 2021. There was no compliance on behalf of the Secretary of State. Ms Aboni confirmed that no skeleton argument had been filed on behalf of the Secretary of State as directed and that she therefore relied upon the written grounds.

22. I am grateful for the submissions made by each of the advocates. I confirm that I have taken them into account and have done so in the light of the decision of the FtTJ and the material that was before the FtTJ. I intend to consider their respective submissions in relation to each ground advanced by the respondent.

23. The grounds advanced on behalf of the Secretary of State have not been set out with any clarity. I have therefore distilled the grounds into 4 challenges based on the written grounds and the oral submissions made by Ms Aboni and the oral and written submissions of Mr Greer, Counsel on behalf of the appellant.

Ground 1:

24. The first ground relates to the FtTJ's assessment of the evidence set out at paragraphs [51] and [54] of her decision. In particular, it is argued that the FtTJ when making an assessment of the previous appeal decision either misunderstood the evidence or made a mistake of fact and that as a result it rendered her assessment of the evidence to be flawed.

25. It is submitted on behalf of the respondent that the FtTJ referred to the Secretary of State or a previous judge accepting that the appellant was from Kirkuk in 2002 and 2003 whereas the refusal of the asylum claim decision dated 19/8/04 rejected the credibility of his claim of events and makes no acceptance as the appellant being from Kirkuk. The decision promulgated on 9 March 2005 made no such finding that the appellant was from Kirkuk. Ms Aboni submitted that despite the asylum interview, the refusal of the asylum decision and the decision of the Tribunal, at paragraph [84] the FtTJ speculated that the acceptance of the appellant being from Kirkuk must have been as a result of questions being asked and answered sufficiently well that he had been "certainly" living in Kirkuk. She submits that the judge failed to have regard to the material within the evidence and misunderstood it and based her findings on "speculation".

26. It is further submitted it was unclear how the FtTJ concluded that the previous judge had found the appellant to be credible (see paragraph [51]) given that the appellant failed to attend the hearing and there was no finding in the decision that the appellant was a credible witness.

27. Mr Greer in behalf of the appellant relied upon his written submissions and that the FtTJ had set out the previous judges findings at [54]. He submits that in a written determination promulgated on 9th March 2005 (A's FTT Bundle, Page 56), Adjudicator AA Wilson summarised the basis on which he determined the appeal at [6]: "I have read the papers in this case". Judge Wilson summarised the Respondent's claim at [7]:

> His father was arrested on 14th November 2002. His father had been arrested by the security intelligence in Kirkuk the Appellant having no real idea why his father had come to the attention of the intelligence services. He had returned from school his mother advised him of the arrest advised him to go to his uncle's house in order to protect himself. He had stayed at his uncle's house for five to six minutes and then gone to his friend's house. Though the answer does not make it clear the subsequent question would appear to show that it was a friend of his uncle rather than the Appellant's own friend. He stayed one night there, and arrangements were then made for him to leave Iraq came first of all to Mosul then onward.

28. At paragraph [13] Judge Wilson reached the following global finding in respect of the Respondent's claim at [13]:

> 13. All the Appellant needs to do is satisfy on a lower standard of proof. Not on a balance of probabilities. The Appellant's history as set out sits well into the general objective country material. If his father was carrying out political activity contrary to the Ba'ath and had been detected it is clear and it was appropriate for the Appellant to immediately flee. There would be no particular reason for disputing the Appellant's history on arrival in December 2002.

29. Mr Greer therefore submitted that on any rational view of the evidence before the tribunal the FtTJ accurately summarised the evidence.

30. Further, or in the alternative, even if the respondent could establish that the FtTJ did make a mistake of fact, it was not material to the outcome on the basis that the FtTJ makes a single, passing reference to the previous determination at [54]. He submits that the FtTJ engaged with the other evidence before the Tribunal in a careful and measured manner at paragraphs [55] to [64].

31. I have considered those submissions. The FtTJ set out at paragraph [43] that the advocates agreed that the main issue in the appeal was where the appellant was from and whether he was dishonest about this. Whilst it was acknowledged that his age and name had been in issue, the parties agreed that it was not relevant to the decision to grant citizenship butt was relevant to his credibility. With that in mind the FtTJ went on to address the issue of place of birth between paragraphs [44]-[64]. In undertaking that assessment the FtTJ addressed the recent written documentation including the 1957 registration document which stated that the appellant's place of birth was Halabja rather than Kirkuk (at [44]-[45]). At [50] the FtTJ considered the CSID card issued 22nd Jan 2018 which gave

the place of birth as Halabja. The FtTJ found at paragraph [52] that documentation produced in this evidence set out that the appellant was born in Halabja. At paragraph [51] the FtTJ set out the appellant's history provided on arrival.

32. The grounds challenge the FtTJ's assessment of this paragraph and also by reference to paragraph [54] which also refers to his previous history. Having considered those two paragraphs in the light of the previous evidence, I accept the submission made by Mr Greer that the FtTJ did not make a mistake of fact, nor did she misunderstand the evidence as submitted on behalf of the respondent. At [51] the judge stated that the appellant claimed asylum when he entered the UK in 2002 and that the appellant was found to be a credible witness and was also accepted as being from Kirkuk. Ms Aboni submitted that this is not the case and that the appellant's claim had not been tested in the Tribunal and therefore had not been accepted by the respondent. However the FtTJ at paragraph [51] did make reference to this and was plainly aware that he had not given evidence at the hearing. The judge also set out that it was unclear what documents were provided to demonstrate that he was from Kirkuk, and it was also unclear whether it had been accepted by the respondent that he was from Kirkuk. At paragraph [54] the FtTJ also stated that either the respondent or the past the judge in 2002 accepted the appellant was from Kirkuk and went on to state:

> " as noted above, the respondent or a Judge of the First-tier tribunal in 2002 or 2003 accepted that the appellant was from Kirkuk. This must have been as a result of the appellant being asked questions about Iraq and his home area and the appellant being able to answer questions sufficiently well to establish this fact to the lower standard in that appeal. This would suggest that the appellant, even if he had not been born in Kirkuk, had certainly been living in Kirkuk."

33. Mr Greer has referred the Tribunal to the decision of Judge Wilson promulgated on 9 March 2005. At [7] the judge referred to the appellant's account given in interview as the basis of his claim. In particular that his father had been arrested by the security intelligence forces in Kirkuk. At paragraph [12] Judge Wilson referred to the appellant's account in interview giving an accurate position of what he feared on arrival, despite the respondent delaying in the consideration of his claim. At [13] the judge directed himself by the correct standard of proof and that "the appellant's history as set out sits well in the general objective country material. If his father was carrying out political activity contrary to the Ba'ath and had been detected it is clear and it was appropriate for the appellant to immediately flee. There would appear to be no particular reason for disputing the appellant's history on arrival in December 2002." At paragraph [14] the judge referred to the appellant's claim and that by the spring of 2003 when in "normal events his asylum application should have been considered that there was no longer any current fear from the regime which he fled. That remains the position and indeed the regime is now extinct. There is a transitional authority there has been democratic elections in a former handover

to the new democratic regime which will take place shortly. There is nothing therefore to show that he has a current fear of the regime."

34. Whilst the FtTJ set out later that there had been no evidence of direct threats to him and that his mother was still living in the home area or that the risk from individuals was "vague and non-specific" the judge nonetheless appeared to accept as credible the underlying factual basis given by the appellant as to where he had been living with his family which was in Kirkuk and that as a result he had to flee the area travelling to Mosul and then to the UK (and are set out at paragraph 7 of the decision of Judge Wilson).

35. Whilst the respondent is correct to state that the appellant had not attended the hearing this did not preclude Judge Wilson from considering the factual account provided in light of the country objective material which he did at [13] where he noted that the appellant's history (which included the account of being in Kirkuk) sat well with the general objective material and that he found "no particular reason for disputing the appellant's history given on arrival in December 2002". In undertaking the assessment Judge Wilson had taken into account the interview responses and the responses in the SEF where the appellant had set out his personal and factual history.

36. Having considered the decision of Judge Wilson it has not been established by the respondent that Judge Turner misunderstood the evidence. At [54] Judge Turner had stated was that it was accepted that the appellant was from Kirkuk and "this must have been as a result of the appellant being asked questions about Iraq and his home area and the appellant being able to answer questions sufficiently well to establish this back to the lower standard in that appeal." Judge Turner was not referring to the appellant being questioned at the hearing but plainly referred to the appellant's responses given during his questioning in the substantive interview and from the screening form. Judge Wilson set out at paragraph [12] that he accepted the appellant's history as given on arrival in 2002. In my view it was reasonably open to the FtTJ when looking at the decision of Judge Wilson to find that the appellant's history had been accepted by the judge and in particular his early history of being in Kirkuk and that the problems had emanated from that area. I accept the submission made by Mr Greer that this was not a mistake of fact but a legitimate and reasonable reading of the early decision of Judge Wilson. Thus it was open to FtTJ Turner to reach the assessment on the evidence the judge Wilson had accepted the appellant's previous history based on the appellant being able to answer questions about Iraq and in particular his own area. It was therefore open to the FtTJ to find that the earlier evidence was sufficient to demonstrate that the appellant, even if he was not born in Kirkuk had been living in Kirkuk in 2002. Therefore there has been no error of law established in the FtTJ's assessment of the previous judge's findings. I also observe that this was not determinative of the appeal and the judge was entitled give some weight to this evidence in her overall assessment.

Ground 2:

37. The second ground advanced on behalf of the Secretary of State relates to paragraph [56] of the FtTJ's decision. Ms Aboni submits that the FtTJ erred in law by failing to engage with the point made by the presenting officer at the hearing that the appellant had given inconsistent evidence concerning the whereabouts of his mother and that this had rendered the FtTJ's assessment of the evidence to be flawed.

38. In support of the grounds, the respondent has set out an extract from the presenting Officer's hearing minute which states: " App says his mother now lives in Sulamaniyah that relationship broke down in 2004 because she was about to remarry. App says she moved from Kirkuk to Sulamaniyah in late 2000's-how can you know about this if relationship already broken down – he had no reasonable answer to this point. She would have been a good witness as his mother as to where he was born."

39. It is submitted that the judge failed to deal with this discrepancy or misunderstood the submission made by the presenting officer. In the renewal grounds, a further extract is set out and it is submitted that whilst the judge considered the plausibility of the appellant having had a breakdown in the relationship with his mother, the judge failed to address the inconsistencies in his evidence.

40. In support of ground 2, the Secretary of State relies upon an extract of the PO's hearing minute and secondly as set out in the renewed grounds, an extract from the record of proceedings from the presenting officer. It is submitted on behalf of the respondent that whilst the judge considered the plausibility of the appellant having a breakdown in his relationship with his mother, the judge failed to address the inconsistency as highlighted above on an issue that clearly was put to the appellant and upon which submissions were made.

41. Mr Greer on behalf of the appellant submitted that this was no more than a disagreement with the FtTJ's reasoning and that a proper reading of paragraph [56] in its entirety demonstrates that the judge made an accurate and complete note of the two competing submissions. The judge preferred the submissions advanced on behalf of the appellant and gave adequate reasons such as to entitle the respondent to understand why this was the case.

42. Mr Greer also pointed to the evidence relied upon by the respondent which included the presenting officers internal memo and that the respondent had not provided a complete record of proceedings nor sought a transcript of the hearing which was recorded. There was also not a witness statement and thus had not proved the matters claimed in the grounds to be a reliable account what happened at the hearing. He submitted that the respondent is put to proof in this respect (see, for example [23] of *MH (review; slip rule; church witnesses) Iran* [2020] UKUT 125 (IAC) (11 March 2020)).

43. Having considered the submissions I am satisfied that there is no error on the basis on which ground 2 is advanced. As Mr Greer submits the grounds are founded principally on the presenting offices hearing minute which is by way of an internal memo usually left on the hearing paper file and also

a partial extract from the presenting officers notes of the hearing. No transcript of the proceedings has been sought nor has the full record proceedings been provided. Additionally, there has been no witness statement from the advocate concerned which is the way in which evidential matters in dispute are properly set out. Thus the evidence relied on by the Secretary of State is incomplete and therefore cannot be seen as a verbatim or accurate record of the questions asked in cross-examination or the answers given.

44. Furthermore, the extract as it stands in the renewed grounds does not appear to be consistent with the record of the evidence set out by the FtTJ at paragraph [56]. The judge recorded that the appellant's evidence was that he lost contact with his mother in 2004 after he left Iraq and that his mother had chosen to marry another man after his father passed away and that the appellant was not happy about this. The judge stated additionally "he stated that he presumed that she had moved to Sulamaniyah which was where his stepfather was from.." Whilst the point made by the respondent is that the appellant having lost contact with his mother in 2004 would not have known that she moved to Sulamaniyah years later, this fails to take into account the appellant's evidence was recorded by the judge that he had "presumed she had moved to Sulamaniyah which is where his stepmother was from" . This does not correspond with the extract set out in the respondent's renewal grounds.

45. Having read paragraph [56] I accept the submission made by Mr Greer. The grounds rely on a partial and selective quotation of paragraph [56] and the respondent has not properly evidenced the material necessary to demonstrate the factual assertion made in the grounds. As set out above, the FtTJ's recording of the evidence at [56] is not consistent with the extract set out in the grounds.

46. Furthermore a proper reading of the paragraph demonstrates that the FtTJ set out and had regard to the evidence given by the appellant as to whether he contact with his mother and expressly set out the presenting officer's submission made in this regard. The judge then set out the opposing submission by the appellant's counsel which led to the judge undertaking an assessment of the competing submissions made but reaching the conclusion that she preferred the submissions made on behalf of the appellant and gave reasons for doing so as follows "I agreed with the submissions from Mr Greer. It is not implausible for the appellant's mother, a widowed female left alone in Iraq to wish to marry again for support. It is further plausible for the appellant to be unhappy about this given that he may feel that it was dishonourable to his late father." The judge also considered the submission made by the presenting officer that the appellant's mother would have been a very useful witness. In this respect the judge found "I do not find it was a convenient fact of the appellant had lost contact with his mother but the opposite. I do not find that this aspect of the appellant's evidence undermined his credibility."

47. Consequently it has not been demonstrated that the FtTJ erred in law in the way the respondent asserts in relation to ground 2.

Ground 3:

48. I now turn to ground 3. It is submitted on behalf of the respondent that at paragraph [57] the FtTJ stated that it was "reasonably likely" that the appellant was not aware of his true place of birth until after he returned to Iraq post 2012. This was despite finding some of the appellant's evidence on the documents to be "questionable" as set out in the decision at [48] and at [50] regarding his evidence that he did not know th details on his CSID card relevant to employment and access to services which the FtTJ stated undermined his credibility.

49. It is submitted on behalf of the Secretary of State that despite setting out the correct standard of proof at [38] which is the "balance of probabilities" the judge reached her assessment on the evidence by employing a lower standard of proof when considering the evidence of the appellant of that being "reasonably likely" as demonstrated at paragraphs [57] and also at [61] and [63] when undertaking an assessment of the production of false documents.

50. Ms Aboni submits that the FtTJ applied the incorrect standard of proof of a "reasonable likelihood" rather than the "balance of probabilities" when undertaking the factual assessment and therefore was a material error of law which undermined the decision reached.

51. Mr Greer on behalf of the appellant submitted that the FtTJ directed herself properly at paragraph [38] in respect of the appropriate standard of proof and there is no reason to conclude that the FtTJ departed from that lawful self-direction at any point.

52. In his written submissions, he sets out that the reference to aspects of the appellant's account being *reasonably* likely must be put into their proper context and that the use of the word *"reasonably"* is nothing more than a form of expression as the word is used to refer to specific aspects of the appellant's account. The use of this word when referring to discrete aspects of the appellant's account does not indicate the imposition of a lower standard of proof when reaching conclusions in respect of the ultimate issue in the case.

53. He further submits that decision must be read as a whole and in his oral submissions accepted that the judge did make reference to the phrase "reasonably likely " but that this was not the judge changing the standard of proof but was a form of expression that the judge had used for the credibility of the appellant's account. Mr Greer, in his oral submissions expressly highlighted paragraph [61] and the way in which the judge expressed her finding in respect of the relevant issue in the case and that the judge had applied the civil standard. He submitted that the determination should be read as a whole and that it was apparent from the manner in which the FTT expressed its finding in respect of the ultimate issue in the case that Judge Turner has applied the correct civil standard.

54. In summary he submits that the judge found that there were strands of the appellant's evidence which were reasonably likely to be true and when drawing all of the evidence together as set out at paragraph [61] the evidence given by the appellant was more likely than not to be true. Therefore the FtTJ did not in law.

55. I have carefully considered the submissions of the parties.

56. The relevant legal framework is set out as follows:

> 40 Deprivation of citizenship.
>
> (1) In this section a reference to a person's "citizenship status" is a reference to his status as-"
>
> (a) a British citizen,
>
> (b) a British overseas territories citizen,
>
> (c) a British Overseas citizen,
>
> (d) a British National (Overseas),
>
> (e) a British protected person, or
>
> (f) a British subject.
>
> (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.
>
> (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.

57. The issue in the appeal relates to section 40(3) of the BNA Act. In relation to the first issues, the Tribunal would need to consider whether the relevant condition precedent specified in section 40 (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the Appellant of British citizenship.

58. Judge Turner set out the relevant law at paragraph [38] of her decision (see *KV (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 2483). Since that decision the law has been clarified in the decision in R (Begum) v SIAC (see paragraph [71]):

> "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.

59. In support of her submissions, the respondent points to 2 paragraphs in the decision at [57] and [63]. At [57] the FtTJ states "it is reasonably likely that the appellant was not aware that his birth was registered as Halabja until after he returned to Iraq after 2012..". At paragraph [63] which is after her concluding paragraph at [61]], the FtTJ repeats that earlier sentence from paragraph [57] by reference to him having only discovered his place of birth on return to Iraq. There is therefore only one reference to "reasonably likely".

60. Having read the decision as a whole, I accept the submission made by Mr Greer that the FtTJ did not apply a lower standard of proof as can be seen from her omnibus conclusion at [61]:

> 61. Overall, I have seen no evidence to suggest to me that the Appellant had lived and grown up anywhere other than Kirkuk. I find that the Appellant has provided a reasonable explanation about his knowledge upon entry to the UK in 2002, in that he grew up in Kirkuk, attended school in Kirkuk and relied on what he had been told by his mother. Overall, I find on balance that the Appellant did not use deception when he provided information to the Respondent during the course of his immigration history. I find that it was only when he returned to Iraq after he was naturalised that he noted the fact that he was not in fact born in Kirkuk when as an adult he applied for and obtained formal documentation. As such, I find that the Appellant has not been dishonest nor used deception for the purpose of his grant of British Citizenship".

61. Having considered the submissions made by the advocates, I prefer those made by Mr Greer and that the terminology used by the FtTJ of "reasonably likely" was a form of expression used by reference to discrete aspects of the appellant's account and is not an indication that the FtTJ applied a lower standard of proof. The use of the phrase "I would find on balance that the appellant did not use deception" is consistent with the correct standard of proof as being "the balance of probabilities" As the judge had earlier set out at paragraph [38]. The judge proceeded on the basis that it was for the respondent to establish that the appellant obtained citizenship by deception which is by convention a factual analysis. Whilst the FtTJ did not have the advantage of the decision in Begum, it has not been argued on behalf of the respondent that the judge erred in law in the nature of the assessment undertaken. Ms Aboni on behalf of the respondent made no reference to the decision of Begum and the respondent has not sought to amend any ground of challenge on that basis. The FtTJ clearly considered the evidence relied upon by the respondent and the factual findings as set out in the decision letter some of which she plainly accepted (see paragraphs [50], [52][64]) but reached

the conclusion that the overall decision was based on a view of the evidence which was not correct or in other words could not reasonably be held upon the evidential assessment made.

Ground 4:

62. It is submitted on behalf of the respondent that the finding made by the FtTJ at [62] that the appellant would be treated as from Kirkuk under the R(S) policy was “speculative” and “unreasoned”. The written grounds (onward grounds) refer to the policy at Annex J and that a distinction was drawn between those from the GCI and KAZ and that the representations lodged by the appellant refer to the appellant as from Kirkuk and therefore the GCI and that the distinction between the 2 areas and the requirement to have been considered to be from (that is born in) the GCI is clear as this rendered relocation to the KAZ as unfeasible. No further explanation is provided in the written grounds and no further oral submissions were made in respect of the policy and ground 4.

63. Mr Greer on behalf of the appellant submitted that the respondent had not placed the policy in question before the tribunal and had not proved that the FtTJ “is mistaken as a matter of fact” (see written submissions at paragraph 20) In his oral submissions he stated that there had been no policy documents put before the judge and therefore the respondent was not able to establish a mistake of fact. He further submitted that the judge’s comments were “obiter” because the judge found that at all material times he had believed that he was from Kirkuk and that even if there was any error made, it was not material to the outcome.

64. I have considered the submissions made by the advocates as set out above. Both parties were expressly directed to file skeleton arguments, Mr Greer on behalf of the appellant complied with that direction and at paragraph [5] of the directions of Upper Tribunal Judge Owen she set out that both parties would need to be prepared to address the issue as to whether the appellant would have been granted ILR in any event because he had been living in Kirkuk under the R(S) Policy. The directions were not complied with by the respondent and whilst a skeleton argument was filed on behalf of the appellant, it did not address the policy in any substantial way.

65. Whilst Mr Greer has submitted that the policy was not before the FtTJ, there was a copy of the relevant policy set out at Annex J and was also referred to in paragraph 14 of the decision letter. That would account for the FtTJ having made reference to the policy in her decision at paragraph [62]. At [62] the FtTJ considered the policy as “ an additional point “ to her omnibus conclusion at [61] that the appellant was brought up in Kirkuk, having grown up there, attended school there and was living there before he left Iraq and in the context of the factual analysis the judge considered that regardless of his place of birth it was more likely than not that he would have been treated as “from” Kirkuk for the purposes of any asylum claim or consideration of return or relocation in any event.

66. The FtTJ made a brief reference to the policy stating "noting the RS policy, there does not appear to be clear reference the appellant needing to demonstrate that he was born in a GCI of Iraq but rather that he was from such an area. Logic would suggest that this was correct. I have found that he was from Kirkuk, even though born in Halabja therefore he would or should have granted indefinite leave to remain under the RS policy on this basis in any event".

67. The policy at Annex J and summarised at paragraph 14 of the decision letter refers to the R(S) Policy "country specific four-year ELR policy" and that it related to Iraq (Government Controlled Iraq (GCI))claimants only. The rationale behind the policy related to the decision in *R(S)* [2007] EWCA Civ 546. The policy sets out that an individual does not have to apply under the policy although it appears that the appellant's representative did make representations in relation to the policy set out in the letter dated 1/10/2008. The appellant fell within the policy as he was a national of a country (Iraq) whilst the policy to give 4 years exceptional leave to remain was in force at 1 January 2001. The appellant met this as he was from Kirkuk. In this respect, the representations stated that they relied upon the copy decision of Judge Wilson. His application was refused on 19 August 2004 and dismissed on 9 March 2005 and the initial asylum claim was made prior to the expiry of the date of the relevant policy. The asylum claim was made on 1 December 2002 with the policy expiring on 20 February 2003. A decision was not made on his case until 19 August 2004 when the policy had expired. This is reflected in paragraph 14 of the decision letter.

68. It is right as the respondent's written grounds state that the policy makes a distinction between those from the GCI (Government Controlled Iraq) and the KAZ and the policy only applied to those from the GCI. However the point made by the FtTJ was at the policy did not make any clear reference to the appellant to demonstrate that he was born in the GCI but whether he was from such an area. The FtTJ took into account that she had found that the appellant was from Kirkuk on the basis that that was where he had lived and had been brought up as a child even though he was born in Halabja and that this was sufficient to demonstrate that he was from such an area. Ms Aboni on behalf the respondent did not seek to argue this ground any further as directed by Judge Owen and no country materials were provided as to the circumstances at the relevant time in the GCI or the KAZ.

69. When looking at paragraph [62] the interpretation was one reasonably open to the FtTJ based on the analysis that someone who was for all intents and purposes been brought up in a particular part of Iraq, that is the GCI, that he would be considered to be from that area, or as his home area, when assessing return and relocation. I agree with the observation made by Judge Swaney that the respondent had not identified any specific provision in the policy where that is a requirement or any provision which states that people born elsewhere but had lived in Kirkuk would be ineligible. In this context I note that the earlier representations submitted

on behalf of the appellant in 2007 referred to the evidence in civil war in Iraq and that the appellant met the requirements of humanitarian protection as there was internal armed conflict in Kirkuk and throughout Iraq. Reference was made also that he would not be returned to another area in Iraq as it would be unduly harsh and unreasonable because of internal conflict and the difficulties likely to be faced by displaced individuals. What was also said that he could not legally be returned to the KRG but that even if he gained entry it would be likely that he would be expelled from the area and be at risk of serious harm and treatment contrary to articles 2 and 3.

70. Therefore it has not been demonstrated as the grounds assert that the FtTJ at [62] made an assessment on a "speculative basis" or "without reason". However, even if the judge had erred in that assessment, as Mr Greer points out it would be immaterial to the outcome in the light of the conclusion reached that the condition precedent necessary under s.40(3) had not been satisfied.

71. For those reasons, I have reached the conclusion that the decision of the FtTJ did not involve the making of an error point of law and the decision of the FtTJ shall stand.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision of the First-tier Tribunal stands.

Signed Upper Tribunal Judge Reeds
Dated : 21 February 2022