



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

**Case No: UI-2022-003613
First-tier Tribunal No:
DC/50171/2021
LD/00021/2022**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 15 April 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Secretary of State for the Home Department

Appellant

and

**TAHAR ISMAILI
(NO ANONYMITY DIRECTION MADE)**

Respondent

REPRESENTATION

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer
For the Respondent: Mr Shea instructed by VRS Immigration

Heard at Birmingham Civil Justice Centre on 17 January 2024

DECISION AND REASONS

BACKGROUND

1. The appellant in the appeal before the Upper Tribunal is the Secretary of State for the Home Department (“SSH”) and the respondent to this appeal is Mr Ismaili. However, for ease of reference, in the course of this decision, as I did in my error of law decision issued on 18 October 2023, I adopt the parties’ status as it was before the FtT previously. I refer to Mr Ismaili as the appellant, and the Secretary of State as the respondent.

2. The appellant is a national of Iraq. He arrived in the United Kingdom in March 2003 and claimed asylum. Although his claim for international protection was refused and an appeal against that decision was dismissed, on 31 March 2010 the appellant was granted indefinite leave to remain outside of the immigration rules in the identity of Tahir Ismaili born on 23 October 1970 in Kirkuk. He was subsequently naturalised as a British citizen in that identity on 23 February 2011.
3. The respondent subsequently established that the appellant's true identity is in fact Taha Ismael Hussein and that he was born on 23 October 1970 in Erbil. On 25 June 2021, the respondent informed the appellant of a decision to deprive the appellant of nationality under section 40(3) of the British Nationality Act 1981. The respondent concluded that there is no plausible or innocent explanation for the misleading information that led to the grant of citizenship to the appellant. Information had been provided with the intention of obtaining a grant of status and/or citizenship in circumstances where the application would have been unsuccessful if the appellant had told the truth.
4. The appellant's appeal against that decision was allowed by First-tier Tribunal Judge Mills for reasons set out in a decision promulgated on 29 June 2022. The respondent was granted permission to appeal to the Upper Tribunal. The decision of First-tier Tribunal Judge Mills was set aside by me for reasons set out in my decision issued on 18 October 2023. This decision should be read alongside that 'error of law' decision. I directed the decision will be remade in the Upper Tribunal and that the finding made by Judge Mills that the appellant practiced deception can be preserved. It is against that background that the appeal has been listed for hearing before me.

THE ISSUES

5. As I set out in my error of law decision, the issues are:
 - a. Whether it was open to the Secretary of State to conclude that the appellant's naturalisation was obtained by means of that fraud, or false representation, applying public law principles.
 - b. Whether the decision is unlawful under s6 of the Human Rights Act 1998.
 - c. Whether the respondent materially erred in law when he decided to exercise his discretion to deprive the appellant of British citizenship.
6. The focus of the evidence and the submissions made by Mr Shea was upon the Article 8 rights of the appellant and his family.

THE EVIDENCE AND SUBMISSIONS

7. The appellant's representatives have filed and served a bundle comprising of 91 pages in readiness for the hearing before me.
8. The appellant adopted his witness statement dated 9 January 2024. The appellant claims he lived in the Shorija District, which is in Kirkuk, Iraq. He claims he was born in Kirkuk and lived in Kirkuk but was unable to register his birth there. He claims that as his father was born in Erbil, his birth was registered in Erbil. The appellant maintains that he did not act dishonestly when he applied for British citizenship. The appellant said he first came to the UK in March 2003. He married in 2012 and went to live in Norway in 2018. He said he returned to the UK to attend the hearing of his appeal before the FtT. He confirmed that he has one child who is now 10 years old and is a British citizen. He said that his wife has 'residence in the UK.'
9. In cross-examination, the appellant confirmed his wife joined him in Norway in 2019. The appellant was working and had settled in Norway at the time. The appellant was referred to the pages from his passport that appear at pages 27 to 33 of the consolidated bundle which show travel to and from Erbil, Iraq since 2017. The appellant explained he had travelled to Iraq to visit his wife and her family before his wife joined him in Norway. The appellant said he had stayed in Erbil when he visited. He confirmed that he also has an Iraqi passport and national identity document. He said that his daughter had accompanied him and his wife during one of the visits to Iraq when they lived in Norway.
10. In answer to questions asked by me for clarification the appellant confirmed his daughter was born in Erbil and his daughter and wife had joined him in Norway in 2019. He confirmed that the family have lived together in the UK since April or May 2022.
11. The submissions are a matter of record and I do not repeat them here. It is sufficient to say that in summary, Mr Bates submits the FtT judge found the appellant had practised deception. It was therefore plainly open to the respondent to find the fraud perpetrated by the appellant had a direct bearing on the grant of British citizenship. There was no public law error in the respondent's decision that the 'condition precedent' is established. As far as the appellant's Article 8 claim is concerned, the deprivation of citizenship does not necessarily mean the appellant will be removed from the UK. Mr Bates refers to paragraphs [80] and [81] of the respondent's decision, in which the respondent notes that once deprived of citizenship the appellant will be subject to immigration control, and a decision as to whether he should be granted a limited form of leave will follow within about three months. A deprivation order will be made within four weeks of the appellant's appeal rights being exhausted and within eight weeks from the deprivation order, subject to any further representations made by the appellant, a further decision to remove the appellant, or to issue leave will be made. There will be no impact upon the status of the appellant's wife and daughter. Even if the appellant is required to leave the UK, there is

evidence that the appellant, his wife, and their daughter have been able to live in Norway without any difficulties for a number of years. Finally, the respondent went on to consider the exercise of discretion as to whether to deprive the appellant of British citizenship, and again, the appellant is unable to point to any public law error in the respondent's decision.

12. In reply, Mr Shea submits any decision to deprive the appellant of his British citizenship will have a significant impact on the whole family, and their ability to continue to enjoy family life together. In particular, the appellant will be prevented from travelling to see other members of his family who are in Norway, and his wife's family in Iraq. If the appellant uses his Iraqi passport to travel to Iraq, he will be unable to return to the UK. The decision is, therefore, Mr Shea submits, disproportionate on Article 8 grounds.

DECISION

THE CONDITION PRECEDENT

13. The appellant's immigration history is set out at paragraphs [8] to [43] of the respondent's decision. The respondent referred to the information provided by the appellant regarding his name, date, and place of birth at various stages between his arrival in the UK and his naturalisation as a British citizen on 23 February 2011. The respondent refers to the representations made by the appellant in paragraphs [46] to [57] of the decision. At paragraphs [70] to [73] of the decision, the respondent said:

“70. You have given fraudulent identity details (name, date of birth, place of birth) in all your dealings with the Home Office, from your original asylum claim up to and including your application for naturalisation. This is evidenced by your Iraqi documents that you submitted when you applied to HMPO for your child's first British passport and also shown again in mitigation dated 14 November 2019 sent in via your legal representatives linking you to your genuine identity. This was clearly done in order to subvert the immigration system and gain settled status to which you were not entitled. Your fraudulent representations regarding your place of birth meant you were able to accrue a significant period of residence in the UK which was the reason you were granted ILR. Your deception can therefore be seen to be material to the grant of settled status necessary to apply for citizenship.

71. You continued this deception when naturalising and clearly had no intention of revealing the truth of your own volition. Further, you have failed to engage with the investigation into your deception or offer any mitigation. You signed the declaration on your naturalisation form after making false representations and ignored warnings that this was a criminal offence. All of which raises serious questions as to your good character. Had the caseworker been aware of these details there is no doubt your application would have been refused both because your deception was material and because of questions about your good character. Therefore, deprivation is both balanced and proportionate.

72. For the reasons given above it is not accepted there is a plausible, innocent explanation for the misleading information which led to the decision to grant citizenship. Rather, on the balance of probabilities, it is considered that you provided information with the intention of obtaining a grant of status and/or citizenship in circumstances where your application(s) would have been unsuccessful if you had told the truth. It is therefore considered that the fraud was deliberate and material to the acquisition of British citizenship.”

14. As I set out in paragraphs [19] to [21] of my error of law decision, The FtT judge considered the explanations provided by the appellant and found the appellant practiced deception at the point of claiming asylum, by stating that he was from Kirkuk in government-controlled Iraq, when he was in fact from Erbil in the Kurdish Autonomous Zone. That is a preserved finding. The judge also found that was a deception the appellant maintained repeatedly thereafter, in all of his various dealings with the Home Office.
15. On the facts there can in my judgment be no doubt that the respondent made a decision that was based upon findings of fact that were open to the respondent and which are rooted in evidence. The findings and conclusions reached by the respondent were neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence. The respondent reached a decision that the relevant condition precedent specified in section 40(2) or (3) of the 1981 Act exists for the exercise of the discretion whether to deprive the appellant of British citizenship. That was a decision that was clearly within the lawful parameters of legitimate evaluative judgment on the facts of the particular case. No public law error is identified or established.

ARTICLE 8

16. The appellant’s evidence in support of his Article 8 claim is very limited. In his witness statement dated 9 January 2024 he simply states:

“I have formed my life in the UK. My wife has been granted under EU scheme Pre-settlement. My children are enrolled in School in Manchester. We have formed our family life under Article 8. My children are british living in the UK. We all live together as a family unit in the UK.”
17. Apart from the oral evidence of the appellant that I have summarised at paragraphs [8] to [10] above, the only other evidence before me is that the appellant’s daughter, SI attends Heald Place Primary School in Manchester. There is no evidence from the appellant’s partner.
18. In the respondent’s decision, the respondent acknowledges that the loss of citizenship will result in the loss of the right of abode and with it the loss of the ability to come and go without limit of time or purpose. The respondent confirms in the decision that a deprivation decision does not itself preclude an individual from remaining in the UK. In summary, the

appellant claims the reasonably foreseeable consequences of deprivation will be that the appellant will be unable to continue his family life with his wife and daughter in the UK, and that he will be unable to visit other family members that live in Norway and in Iraq.

19. Although I accept the appellant has travelled to Iraq to visit family, there is no evidence before me of any plans for the appellant to travel to either Norway or to Iraq in the foreseeable future. I accept, as Mr Bates submits, that in the respondent's decision an assurance is provided that the period between loss of citizenship via service of a deprivation order and a further decision to remove, or grant leave, will be relatively short. The respondent has indicated that a deprivation order will be made within four weeks of the appellant's appeal rights being exhausted. The respondent has indicated that within eight weeks from the deprivation order being made, subject to any representations the appellant may make, a further decision will be made either to remove him from the United Kingdom, or to issue leave. It is not suggested by Mr Shea that there is, in the context of this appeal, any basis upon which I should go behind that assurance.
20. The appellant lives in the UK with his wife and child. His daughter was born in Erbil, Iraq in June 2013 and is now 10 years old. She is a British citizen, and there is no question of her being deprived of her British citizenship. Although I accept the appellant has an established family life with his wife and daughter, I do not accept the decision to deprive the appellant of British citizenship has consequences of such gravity as to engage the operation of Article 8. On the evidence before me, I find the deprivation of his British citizen status would not affect the appellant during the relatively short period between loss of citizenship and a further decision to remove or grant leave. The appellant will remain living with his wife and daughter during that short period whilst a decision is reached. The appellant has previously lived in Norway and that is where he was joined by his wife and daughter. He retains an Iraqi passport and has travelled to Iraq a number of times. It is the appellant's wife's family that remain in Erbil and the deprivation of citizenship would not impact on her ability to visit her family in Iraq with her daughter.
21. My consideration of the reasonably foreseeable consequences of deprivation can be limited to the relatively short period between loss of citizenship via service of a deprivation order and a further decision to remove or grant leave. It is not necessary or appropriate for the Tribunal to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom. If a decision to remove the appellant is made by the respondent, that decision will itself carry a right of appeal; *Aziz v SSHD* [2018] EWCA Civ 1884 and it is not open to me to consider the consequences of something that has not yet happened, and may indeed, never happen.
22. Even if the decision to deprive the appellant of British citizenship has consequences of such gravity as to engage the operation of Article 8, there can be no doubt the interference is in accordance with the law, and

that the interference is necessary to maintain the integrity of British nationality law. The Court of Appeal in *Laci v SSHD* [2021] EWCA Civ 769 said, at [37 & 73], that it would only be in the most compelling circumstances that it would be right for the benefits of British citizenship to be retained notwithstanding the individual's resort to dishonesty in the course of acquiring it. The inherent public interest in maintaining the integrity of British nationality laws in the face of attempts to subvert it through dishonest conduct, and also to maintain public confidence in the naturalisation process itself, must be a very strong one. On the very limited evidence before me, it is simply not possible to conclude that the effect upon the appellant's private and family life, of the deprivation of his British citizen status, would be disproportionate to the clear public interest in that outcome.

DISCRETION

23. At paragraph [73] of the decision, the respondent said:

"It is acknowledged that the decision to deprive on the grounds of fraud is at the Secretary of State's discretion. In making the decision to deprive you of citizenship, the Secretary of State has taken into account the following factors, which include the representations made by your legal representative in their letter dated 14 November 2019 and concluded that deprivation would be both reasonable and proportionate."

24. It is not suggested that there has been any procedural impropriety by the respondent in reaching the decision. The respondent confirmed the appellant's case was referred to the 'Status Review Unit' on 17 December 2018 and the allegation that the appellant had obtained British citizenship by fraud, false representations or concealment of a material fact was put to the appellant in a letter sent on 10 June 2019. The appellant did not respond. A further letter was sent to the appellant on 21 October 2019 and a response was received from the appellant's representatives, VRA Immigration Services. The respondent referred to and engaged with the representations made in reaching the decision.

25. The Court of Appeal has been clear: deprivation of citizenship status will be the ordinary consequence of the statutory condition to s40(3) being made out: *Laci v SSHD* [2021] EWCA Civ 769.

26. It is in the end, the respondent's responsibility for deciding whether deprivation of citizenship is conducive to the public good. Standing back and looking at the respondent's decision as a whole, I do not accept that any material consideration had been left out of account in the respondent's decision letter. The respondent was not required to set out or repeat all the relevant factors when addressing the discretion. The respondent carefully set out the background to the decision identifying all the applications made by the appellant and the information that he provided at each stage. The respondent referred to the relevant guidance that was taken into account in the course of reaching the decision. Mr

Shea did not identify anything in his submissions before me that the respondent had failed to have any regard to. The respondent is not required to give reasons for reasons. There was, and is, in my judgment nothing of any significance offered by the appellant by way of mitigation that the respondent should have had regard to when considering the exercise of discretion.

27. In my judgement the appellant has failed to establish that the respondent acted in a way in which no reasonable Secretary of State could have acted. The appellant has failed to establish any public law error in the respondent's decision dated 25 June 2021 under appeal. It was a lawful decision pursuant to section 6 of the Human Rights act 1998.
28. It follows that I dismiss this appeal.

NOTICE OF DECISION

29. The appellant's appeal against the respondent's decision of 25 June 2021 is dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 March 2024