Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00073/2019

THE IMMIGRATION ACTS

Heard remotely via video (Teams)
On 19 January 2022

Decision & Reasons Promulgated
On 15 March 2022

Before

UPPER TRIBUNAL JUDGE BLUM

Between

HAZEM CINDY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr W Khan, of Fountain Solicitors
For the respondent: Mr S Kotas, Senior Home Office Presenting Officer

This decision follows a remote hearing. The form of remote hearing was by video (V), the platform was Microsoft Teams. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

DECISION AND REASONS

1. Pursuant to s.12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 the Upper Tribunal remakes the decision of Judge of the First-tier Tribunal Howorth, promulgated on 24 February 2020 and which allowed the appeal of Mr Hazem Cindy ("appellant") against the decision of the Secretary of State for the Home Department

("respondent") dated 20 June 2019 to deprive the appellant of his British citizenship under section 40(3) of the British Nationality Act 1981 ("the 1981 Act") on the basis that his British citizenship was obtained by fraud or a false representation or the concealment of a material fact. The 'error of law' decision is dated 20 October 2020.

Background

2. The appellant is a national of Iraq, born on 1 December 1980. He entered the UK on 6 March 2000 in the name of Sarhan Ahmed and claimed he was born in Mosul, a city in the north of Iraq. He claimed asylum on the basis that he had been a member of the Fedayin forces under Saddam Hussein but that he fell under suspicion of working with the Kurdish Democratic Party. In her decision dated 28 July 2001 the respondent found that answers given by the appellant in his asylum interview undermined the credibility of his claim. She also believed that the appellant had provided a forged document (an arrest warrant).

3. Although the appellant's asylum application was refused, he was granted Exceptional Leave to Remain ("ELR") until 28 July 2005. According to the Reasons for Refusal Letter of 20 June 2019 this was granted solely on the basis that the appellant originated from Mosul. At the 'error of law' hearing Mr Clarke, the Presenting Officer representing the respondent, explained that the respondent's blanket policy relating to grants of ELR to Iraqi asylum seekers changed in October 2000 so someone who originated from what is now known as the Iraqi Kurdish Region ("IKR") would not have been automatically granted ELR. The IKR includes the Governorate of Dahouk (also spelt Duhok). Mosul is not within the IKR.

4. On 15 June 2005 the appellant applied for Indefinite Leave to Remain ("ILR") on the basis that he continued to fear returning to Mosul. He was granted ILR in February 2006. The appellant applied to naturalise as a British citizen on 26 February 2007, maintaining that his place of birth was Mosul. Section 4.11 of the naturalisation application form stated:

> "Have you engaged in any other activities which might be relevant to the question of whether you are a person of good character?"

5. In respect of 4.11 the appellant ticked a 'No' box. On 11 July 2007 he was issued with a certificate of naturalisation as a British citizen.

6. The appellant moved to Switzerland in February 2010 for the purposes of work. On 12 December 2011 he changed his name by Deed Poll to Hazem Cindy. He got married in Dahouk in January 2013. The marriage certificate names him as Hazem Taher Ibrahim. His children (twins) were born in Dahouk in 2014.

7. In September 2015 the appellant applied for British passports for his two children. He was interviewed by Her Majesty's Passport Office ("HMPO") on 8 March 2016 in Birmingham. According to a Passport Application Assessment Sheet, which recorded information provided by the appellant at that interview, he identified his place of birth as Dahouk. HMPO referred details relating to the passport applications to the respondent because of the reference to Dahouk. In an email sent to HMPO dated 18 May 2016, sent from the email account provided by the appellant, he confirmed that his birthplace was Dahouk. The email sent to the appellant read:

> "Hello Mr Cindy,
>
> I have now received the documents as requested.
>
> Thank you.
>
> I note that the copy of the 1957 entry shows your place of birth as DAHOUK. Your naturalisation certificate shows MOSUL. Can you please confirm your place of birth. It would also be helpful if you can confirm your father's place of birth.
>
> …"

8. The response sent from the appellant's email account was as follows:

> "Good day,
>
> thank you so much for your Email and I would like to confirm that under Iraqi registration I have been registered in DAHOUK and my place of Birth is Iraq DAHOUK and my Father place of birth is Iraq DAHOUK I hope this is helps my application process as my copy of the 1957 entry shows my place of birth is DAHOUK."

9. Correspondence between HMPO and the appellant's solicitors (who remain instructed by him) in June 2017 indicated that HMPO had concerns with the various names used by the appellant and the fact that two different places of birth were identified. HMPO indicated in a letter of 15 June 2017 that it had referred the appellant's naturalisation as a British citizen to the respondent. A telephone interview was held on 23 October 2018 in respect of the applications by the appellant's two children to be registered as British citizens (both children have now been registered as British citizens). On 8 November 2018 the respondent wrote to the appellant stating her intention to deprive him of his British nationality. It appears that this letter was sent to an address no longer occupied by the appellant, in circumstances where he had informed the respondent that he had moved address. Information contained in correspondence between the appellant's solicitors and HMPO and UK Visas & Immigration ("UKVI") in January and March 2019 indicated that the Status Review Unit of UKVI were considering the appellant's position in respect of his British citizenship.

10. In her decision dated 20 June 2019 the respondent gave notice of her decision to deprive the appellant of his British citizenship under s.40(3) of the 1981 Act. The respondent considered that the appellant dishonestly claimed to have been born in Mosul and, if it had been known at the time of the appellant's asylum application that he was born in Dahouk, he would not have benefited from the respondent's policy extant at the time through which he was granted ELR. Nor would the appellant have been granted ILR if it was known that he was born in Dahouk when he applied for ILR. Had the appellant not stated that he was from Mosul, he would have been unable to build up enough residency to be eligible for naturalisation as a British citizen. The respondent contended that the appellant knowingly made his false representation concerning his place of birth at all stages of his asylum, ILR and citizenship applications, and that he provided false information with the intention of obtaining an immigration status in respect of which he was not otherwise entitled. The respondent therefore decided to deprive the appellant of his British citizenship.

The appeal before the First-tier Tribunal

11. The appellant exercised his right of appeal under s.40A(1) of the 1981 Act to the First-tier Tribunal. He provided a large bundle of documents running to 317 pages that included two statements, one dated 6 October 2019 and a supplementary statement dated 24 January 2020. In his appeal before the First-tier Tribunal, in which the appellant gave oral evidence remotely from Switzerland, he maintained that he was born in Mosul but that his parents were unable to register his birth in Mosul because of the Iran/Iraq war. When he got married in 2013 the authorities in Dahouk would not accept his name (Hazem Candy) and informed him that he would need to register his name in the Dahouk registry office using his father's and grandfather's name of Hazem Taher Ibrahim (I note that in his original asylum questionnaire the appellant recorded his father's name as 'Sarhan Salih', and his father's name was recorded as 'Serhan Salih' in his asylum statement). When he went to a Dahouk Court to register his place of birth as Mosul he was told that this was not possible and that he had to be registered as being born in Dahouk. Because of safety concerns the appellant claimed he was in a rush to get the paperwork sorted to enable his wife and children to join him in Switzerland. The appellant maintained that a friend wrote the email dated 18 May 2016 to HMPO stating that his place of birth was Dahouk. This friend spoke a different dialect and the words for Dahouk and Mosul were said to be similar. The appellant no longer had contact with this friend.

12. Judge Howorth recorded the oral evidence given by the appellant during the First-tier Tribunal hearing. At [17] of her decision Judge Howorth noted;

> The appellant left Iraq when he was still a minor. In evidence the appellant stated that initially he could not remember if he had a

> CSID card prior to leaving, but subsequently stated that he had a document that allowed him to move around in Iraq. When asked how the appellant had this he stated that there was proof of birth, i.e. two witnesses had gone to court to get the proof of birth which they needed to get the ID card. The appellant stated that he couldn't remember if he brought the ID card with him when he left, but that it would have accurately recorded his place of birth as Mosul.

13. In allowing the appeal Judge Howorth observed the respondent's claim that his birth was not registered in Mosul due to the ongoing war at the time, and she found that the registration was more likely to occur in the family book relating to the appellant's father and grandfather, both of whom were born in Dahouk. Judge Howorth accepted the appellant's evidence that the authorities in Dahouk would not register his birthplace as Mosul, but she failed to give any clear reason for this conclusion. At [29] the judge stated,

> I found it interesting that the appellant stated his birth did not need to be registered in order to obtain a CSID document, prior to leaving Iraq, that he was able to obtain an internal document through having two witnesses who declared his birth at that time. There is no assistance on this point in *SMO* as it does not address those whose births have not been registered and methods of obtaining documents in this regard. I find the appellant generally credible and accept this aspect of his evidence as well.

14. The judge found the appellant's account of his friend writing the email in 2016 was likely to be true, and even if it was not true, the judge considered that the appellant was taking an "administrative shortcut stating his place of birth as Dahouk". In my 'error of law' decision I found that Judge Howorth reached her decision in respect of the core issue in dispute prior to her consideration of one of the central pieces of evidence upon which the respondent relied in deciding to revoke the appellant's British citizenship (applying Mibanga [2005] EWCA Civ 367 and MT (Credibility assessment flawed – Virjon B applied) Syria [2004] UKIAT 00307). I was additionally satisfied that the judge erred in law in respect of her assessment of the 2016 email. I found that these legal errors were material and required Judge Howorth's decision to be set aside and be remade on a *de novo* basis at a further hearing.

15. Following my error of law decision dated 20 October 2020 a hearing listed for 5 May 2021 to remake the decision was converted into a Case Management Review Hearing in light of the judgement in R(Begum) v SIAC [2021] UKSC 7 ("Begum") which was handed down on 26 February 2021. Directions were issued to the appellant to file and serve any further evidence upon which he sought to rely, and the respondent was directed to file and serve a position statement setting out, *inter alia*, her position in respect of the relevance of Begum, and to consider the explanation advanced by the appellant as to why he

should not be deprived of his British citizenship and all his supporting evidence.

16. On 16 August 2021 the respondent issued a further decision letter, to be read in conjunction with the decision letter dated 20 June 2019, to clarify and further confirm the respondent's position following a full review of the information contained in the appellant's skeleton argument and appeal bundle. A response dated 23 September 2021 was provided by the appellant to the respondent's decision letter. Following a further Case Management Review Hearing on 26 October 2021 and the promulgation of Agbabiaka (evidence from abroad; Nare guidance) [2021] UKUT 00286 (IAC) the appellant made a successful application for an emergency travel document to enable him to travel to the UK to give his evidence before the Upper Tribunal.

The hearing to remake the appeal decision

17. The hearing on 19 January 2022 proceeded remotely due to Covid-19 concerns. The appellant provided a large bundle of documents running to 319 pages which included, *inter alia*, four skeleton arguments (10 October 2019; 23 January 2020; 4 May 2021; 11 October 2021), statements from the appellant dated 6 October 2019, 24 January 2020 and the appellant's response of 23 September 2021 to the respondent's further decision of 16 August 2021, a witness statement from Daniel Balmer dated 10 September 2021, a witness statement of Derrick Rogers dated 28 September 2021, and correspondence between the appellant and/UKVI covering a period from 25 October 2015 to 9 January 2020.

18. The appellant's bundle additionally contained his Deed Poll change of name dated 12 December 2011, letters written by the appellant to UKVI on 27 February 2017 indicating his address (Rugenstrasse 1; this is the same address that appeared in his children's passport applications), and letters dated 13 May 2018 and 16 April 2018 indicating his change of address, a decision of a judge in the Dahouk Court of 1st Instance dated 18 March 2015 deciding that the surname 'Cindy' should be entered into the Civil Register, a letter written by 'Head of Identification Office in Mangesh' of the "Directorte of Nationality & Civil Affairs in Duhok" dated 21 November 2017 (the spelling of 'Directorte' in the original document was not raised as an issue at the hearing and I consequently draw no adverse inference) stating that Hazem Taher Ibrahim Cindy was born in Mosul and had been registered since 25 November 2012 at the 'registries of Identification office in Mangesh', and the 'General Directorate Of Nationality' 'Copy of entry 1957' in respect of the Civil Register in Dahouk. The bundle additionally contained a marriage certificate, an Iraqi Nationality Identification Certificate, a 'Personal Card' issued by the Public of Iraq Ministry of Interior, a Country Policy Bulletin on Iraq issued by the Home Office on 1 August 2006, a document issued in respect of a Birth Registration Awareness Campaign in the Kurdish

Region of Iraq, and an expert report by Sheri J. Laizer dated 17 June 2021.

19. The appellant additionally relied on a 5th skeleton argument dated 8 December 2021, and further witness statements from Derrick Rogers and Daniel Balmer both dated 10 December 2021 which were supported by a UK driving licence respect of Mr Rogers, and a copy of the photo page in Mr Balmer's passport.

20. The appellant gave his evidence in English from the offices of his solicitors via Microsoft Teams. He adopted all his statements. He was briefly examined-in-chief and was then cross-examined. I asked some questions in order to clarify some of the evidence before me. There was brief re-examination. I maintained a record of the appellant's oral evidence and the legal submissions made by Mr Khan and by Mr Kotas, both of who attended the hearing remotely. I have read and considered with care all the documents before me even if they are not specifically identified later in this decision. Both parties are aware of the evidence, both written and oral, that was before the Tribunal. This evidence is, in any event, a matter of record. I shall refer to this evidence only in so far as it is necessary for me to lawfully determine the appellant's appeal.

The legal framework, the approach to appeals under s.40(3) of the 1981 Act, and the issue of procedural fairness in light of Begum

21. A person may acquire naturalisation as a British citizen in accordance with s.6(1) of the 1981 Act:

> "6.— Acquisition by naturalisation.
>
> (1) If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen."

22. Schedule 1 to the 1981 Act sets out the requirements for naturalisation as a British citizen. This includes at paragraph 1(1)(b) "that he is of *good character* ". Good character is not defined under the 1981 Act. The respondent has adopted guidance from time to time on the meaning of the term.

23. S.40 of the 1981 Act empowers the respondent to deprive a person of their British citizenship in certain circumstances:

> "(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."

24. The criteria in s.40(2) and (3) operate as a condition precedent to the respondent's exercise of her power to deprive a person of their citizenship. The power to deprive is discretionary ("the Secretary of State *may*"), with the consequence that the respondent must decide whether to exercise the power to deprive, even if she is satisfied that a statutory condition precedent to doing so is met.

25. There is a right of appeal to the First-tier Tribunal against the respondent's decision of her intention to exercise the power under section 40, rather than the deprivation order itself: see s.40A(1). It follows that, during the currency of any pending proceedings challenging a decision to make a deprivation order, the individual concerned will remain a British citizen.

26. Begum concerned an appeal to the Special Immigration Appeal Commission ("SIAC") under s.40A(2) of the 1981 Act against a decision by the Secretary of State for the Home Department ("SSHD") to deprive Ms Begum of her British citizen status pursuant to s.40(2) of the same Act on the basis that the SSHD was satisfied that deprivation was conducive to the public good on national security grounds. The Supreme Court concluded that the role of SIAC in an appeal against a decision taken under s.40(2) of the 1981 Act was not to determine for itself whether the statutory condition for the exercise of discretion was satisfied (that deprivation is conducive to the public good), or to assess for itself how that discretion should be exercised, but was confined to reviewing the SSHD's decision that the statutory condition was satisfied and the SSHD's exercise of discretion on more conventional public law grounds (although there was no such confinement in respect of issues arising under the Human Rights Act 1998).

27. In his skeleton argument dated 11 October 2021 Mr Khan contends that the facts in Begum were completely different to those in a decision under s.40(3) and that much of the Supreme Court's analysis did not concern s.40(3). Mr Khan submits that there is nothing in Begum suggesting that the 'classic administrative law principles' identified in paragraph 119 of that judgment apply to s.40(3) where "wholly different principles apply and national security is not at risk." Mr Khan submits that the general nature of the language utilised in the judgment was not authority for the proposition that the approach to s.40(2) was of general application to s.40(3). In his skeleton arguments Mr Khan acknowledges that the decisions in Deliallisi v

SSHD [2013] UKUT 439 (IAC) and BA (deprivation of citizenship: Appeals) [2018] UKUT 85 (IAC), which held that it was for the tribunal to establish whether citizenship was obtained by one or more of the means specified in s.40(3), a position endorsed without detailed consideration in KV (Sri Lanka) v SSHD [2018] EWCA Civ 2483, cannot survive if Begum also applies to s.40(3), but he submits that s.40(3) is materially different to that in s.40(2). This was said to be further supported by a *postscript* of Underhill LJ in Laci v SSHD [2021] EWCA Civ 769 at [40] addressing the import of Begum in a deprivation appeal, in circumstances when Begum had been handed down after the Court of Appeal's hearing on 21 January 2021, but before the judgment was handed down, on 20 May 2021. Mr Khan contends that the burden of proving fraud, deception or concealment of a material fact rests on the respondent and that there was no such burden on conducive grounds.

28. I reject Mr Khan's submissions that the principles established in Begum are confined to SIAC appeals, or conduciveness appeals under section 40(2). In my judgment, the Begum approach extends to an appeal under section 40A to the First-tier Tribunal and the Upper Tribunal against decisions taken under section 40(2) and (3). At [40] of its judgment the Supreme Court prefaced its discussion of the statutory framework governing appeals against deprivation of citizenship decisions to SIAC with the observation that there is no statutory provision governing the grounds of appeal on which an appeal to SIAC may be brought, the matters to be considered, or how the appeal should be determined. It added:

> "The same appears to be true of an appeal to the Tribunal under section 40A of the 1981 Act."

29. The starting point is that there is no express statutory provision governing the role of the First-tier Tribunal or the Upper Tribunal in an appeal under section 40A, just as there is no corresponding provision governing the same process in SIAC. Many of the general principles set out by the Supreme Court when discerning the role of SIAC on an appeal against a section 40(2) decision will, therefore, be relevant to an appeal to the Tribunal under section 40A.

30. At [43] *et seq* the Supreme Court were highly critical of the reasoning of this Tribunal in Deliallisi and BA. The Supreme Court's criticism of Deliallisi and BA was significant because they were cases concerning appeals against section 40(3) decisions. Significantly for present purposes, at [66] the Supreme Court analysed the wording of section 40(2), which provides:

> "(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."

Lord Reed continued:

> "The opening words ('The Secretary of State may…') indicate that decisions under section 40(2) are made by the Secretary of State in the exercise of his discretion. The discretion is one which Parliament has confided to the Secretary of State. In the absence of any provision to the contrary, it must therefore be exercised by the Secretary of State and by no one else. There is no indication in either the 1981 Act or the 1997 Act, in its present form, that Parliament intended the discretion to be exercised by or at the direction of SIAC. SIAC can, however, review the Secretary of State's exercise of his discretion and set it aside in cases where an appeal is allowed, as explained below."

31. The primary decision maker under s.40(3) is the respondent, not a Tribunal: "the *Secretary of State* may…" The wording in s.40(3) is identical to the operative wording in s.40(2) which was instrumental in the Supreme Court holding that SIAC is not entitled to step into the shoes of the Secretary of State. As the court noted at [67] of Begum:

> "The existence of a right of appeal against the Secretary of State's decision enables his conclusion that he was satisfied to be challenged. It does not, however, convert the statutory requirement that the Secretary of State must be satisfied into a requirement that SIAC must be satisfied."

By the same token, that approach must apply to appeals against section 40(3) decisions before the Tribunal.

32. Further, the operative decision to be taken is whether the *Secretary of State* is satisfied that the registration or naturalisation was obtained by means of fraud, false representation, or concealment of a material fact, not whether a *tribunal* is satisfied. The fact that this Tribunal and the First-tier Tribunal have substantial experience in determining the presence of dishonesty, fraud or misrepresentations in some (usually human rights) contexts, or even ascribing weight to the public interest in the maintenance of effective immigration controls (see section 117B(1) of the Nationality, Immigration and Asylum Act 2002), does not entitle it to re-take a decision which Parliament has confided in the respondent.

33. In my judgment the operative criteria to which the respondent is subject are identical in subsections (2) and (3), such that the reasoning of the Supreme Court must read across to appeals to the Tribunal. In both provisions, the role of the respondent is the same: "the Secretary of State *may by order…* if *the Secretary of State is satisfied* that…" Precisely the same discretion is confided to the respondent as with a decision under section 40(2). There is nothing to suggest that, notwithstanding the identical wording in section 40(3), a Tribunal must stray into full merits territory. Both provisions reflect the institutional competence and obligations of the respondent in relation to citizenship matters.

34. Mr Khan also relied on the *postscript* of Underhill LJ at [40] in Laci v Secretary of State for the Home Department [2021] EWCA Civ 769. Having outlined the key authorities concerning the deprivation of citizenship, Underhill LJ said, with emphasis added:

> "*Postscript*. When this judgment was circulated to counsel in draft, [counsel for the Secretary of State] Mr Malik drew our attention to the decision of the Supreme Court in *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7, [2021] 2 WLR 556, which was handed down subsequent to the argument before us. Begum concerns a decision taken by the Secretary of State to deprive the appellant of her nationality under section 40(2) of the 1981 Act. At paras. 32-81 of his judgment, with which the other Justices agreed, Lord Reed discusses the nature of an appeal to SIAC under section 2B of the Special Immigration Appeals Commission Act 1997, which is the equivalent of section 40A; and in that connection he discusses both *Deliallisi* and *BA* (though not *KV*, to which the Court does not appear to have referred). His conclusion is that while section 2B provides for an appeal rather than a review SIAC should approach its task on (to paraphrase) essentially *Wednesbury* principles, save that it was obliged to determine for itself whether the decision was compatible with the obligations of the decision-maker under the Human Rights Act 1998 (see para. 68). **It may be that that reasoning is not confined to section 2B or to cases falling under section 40(2), in which case some of statements quoted above about the correct approach to appeals under section 40A in the case of decisions under section 40(3) will require qualification.** But I do not think that that is something on which I should express a view here. Begum does not bear directly on the actual grounds of appeal before us, and Mr Malik made it plain that he did not wish to advance any fresh ground based on it. Rather, he was rightly concerned that we should be aware of it in the context of the more general review of the law in the preceding paragraphs. I confine myself to saying that **anything said in the authorities reviewed above about the scope of an appeal under section 40A should be read subject to the decision in *Begum***." [my emphasis]

35. In his preceding review of the authorities concerning the deprivation of citizenship, Underhill LJ repeatedly underlined the need to read the existing authorities subject to the discussion of Begum at [40] of his judgment: see [24] and [37] concerning BA; [27], concerning Leggat LJ's summary of the relevant legal principles at [6] of KV (Sri Lanka); [30], concerning [16] of KV (Sri Lanka) in which Leggat LJ held that, in an appeal under section 40A of the 1981 Act, the tribunal has to decide "…not just whether it would be rational to make [a deprivation] order *but whether it would be right to do so*"; and [32], concerning the scope of the proportionality assessment in a deprivation appeal in light of the *dicta* of Lord Mance, Lord Carnwath and Lord Sumption in Pham v Secretary of State for the Home Department [2015] UKSC 19. It is plain that the Court of Appeal

considered that many of the existing authorities may not have survived the Supreme Court's judgment in Begum, and it is apparent the Court of Appeal in Laci did not hear argument on the Begum point. In addition, at [40] the Court observed that the reasoning in Begum may not be confined to decisions under section 40(2) of the 1981 Act, thereby indicating that the earlier authorities may need to be revisited. In my judgment, there is nothing in Laci that requires me to continue to treat the full merits approach as binding; it does not survive the Supreme Court's judgment in Begum.

36. The correctness of this approach finds further support in the Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238 (IAC), a decision of the President and Vice-President of the Upper Tribunal (IAC). the first headnote reads:

> *The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.*

37. At [17] of Ciceri the Presidential panel saw no reason to distinguish between s.40(2) and s.40(3) in Lord Reed's analysis in Begum. This is a Presidential panel decision of coordinate jurisdiction, and I am not satisfied that there are powerful reasons for departing from it, (see Willers (Appellant) v Joyce and another (in substitution for and in their capacity as executors of Albert Gubay (deceased)) (Respondent) (1) [2016] UKSC 43).

38. In the respondent's position statement dated 16 August 2021, and in his skeleton argument dated 22 November 2021, Ms Kotas submitted that post-decision evidence should not be considered by the Tribunal when assessing whether the respondent's decision was lawful in the context of an appeal following Begum.

39. Proceedings under s.40A however have appellate characteristics and are not subject to the formal procedural constraints that feature in pure judicial review proceedings, such as the deprecation of rolling review. As Lord Reed held in Begum at [69], the jurisdiction of SIAC "is appellate, and references to a supervisory jurisdiction in this context are capable of being a source of confusion." The same is true of appeals under s.40A to the tribunal.

40. In practical terms, if an appellant in a s.40A appeal seeks to rely on post-decision material, such as a broader explanation of their actions leading to the alleged deception, or seeks to dispute the materiality of the deception, or to highlight additional matters relating to the consequences of deprivation, those materials may be considered by the respondent ahead of an appeal before the tribunal in any event, thereby preserving the respondent's role as the primary decision maker. This is precisely what happened in the instant appeal where the respondent made a further decision on 16 August 2021. In practical terms, while an appellant will have been presented with the opportunity to address all such matters *before* the respondent's decision, an appeal is likely to generate further material by way of explanation or refutation, as typically takes place in most appeals in this Chamber. As a public authority, the respondent is under a public law duty to keep her decisions under review by reference to any additional relevant materials placed before her. Any post-decision materials relied upon by an appellant in proceedings before the relevant Tribunal will be provided to the respondent as part of the appellate process, enabling her to review or maintain her decision in the light of those materials. Good practice in litigation before the Immigration and Asylum Chamber requires the respondent to review decisions in light of the prospect of litigation in any event. In the instant appeal the appellant produced some further evidence including statements from Mr D Rogers and Mr D Balmer. Mr Kotas was able to engage with this additional evidence and presented the respondent's position in respect of that evidence. In my judgment it would not be necessary for a further, formal written decision to be taken; all that is necessary is for the respondent to continue to be "satisfied" that the relevant criteria in section 40(3) continued to be met and that the exercise of the power remained appropriate. I therefore reject Mr Kotas' submission in relation to the scope of evidence the Tribunal is able to consider.

41. In the event that my analysis of the scope of the right of appeal under s.40(3) of the 1981 Act is wrong, I will nevertheless, in the alternative, also approach the issue of the condition precedent (whether there has been fraud or a false representation or the concealment of a material fact) on a merits basis.

42. In his submissions Mr Khan emphasised that the respondent's letter informing the appellant that she was considering making a decision to deprive him of his British citizenship was sent to an old address and that the appellant was not aware, at the time of the respondent's decision dated 20 June 2019, that such a decision was being contemplated and he did not therefore have an opportunity of advancing his explanation for the discrepancies relating to his place of birth. This, submitted Mr Khan, was procedurally unfair. He submitted that Begum required the Tribunal to first ask itself whether the respondent acted in a way in which no reasonable Secretary of State could have acted, or that she took into account some irrelevant

matter, or had disregarded something to which she should have given weight or that she was guilty of some procedural impropriety (by reference to [71] of Begum). Mr Khan submitted that, as the respondent's letter of 8 November 2018, which was intended to inform the appellant of the respondent's decision to deprive him of his British citizenship, was sent to the wrong address and was therefore not known to the appellant, he was unable to respond to the respondent and her decision was consequently unlawful because it was arrived at via a procedurally unfair manner.

43. There is no merit in Mr Khan's submissions. Whilst I am prepared to proceed on the basis that the appellant was deprived of the opportunity of responding to the respondent's indication of her intention to deprive him of his British citizenship, and that he only became aware of it when the notice of the decision to deprive him of his British citizenship was issued on 20 June 2019, the appellant, through his right of appeal, has been given an adequate opportunity to advance his explanation and to provide any evidence he wishes to rely on to resist the respondent's decision. The existence of a right of appeal remedies any procedural impropriety there may have been in the manner in which the respondent reached her decision because an independent Tribunal will review that decision. On the particular facts of this case, the appellant was able to provide a bundle of documents running to 317 pages before the First-tier Tribunal in support of his appeal, and indeed the First-tier Tribunal allowed the appeal (albeit by making material legal errors). It cannot be said that the appellant was deprived of a fair hearing on account of any procedural defect that led to the decision under appeal. In any event, the appellant was able to provide his full explanation, and to support that explanation with evidence, including an expert report, in response to the further decision made by the respondent on 16 August 2021, which is to be read with the initial decision. This further decision fully engaged with the appellant's explanation. Moreover, for the reasons given above at [38] to [40], I have determined the circumstances in which the Tribunal can consider post-decision evidence. There has therefore been no procedural unfairness that has impinged upon the appellant's ability to have a fair appeal.

44. In a deprivation of citizenship appeal, it is not necessary to engage in a full proleptic assessment of the Article 8 compatibility of removal: see Aziz v Secretary of State for the Home Department [2018] EWCA Civ 1884 at [26], per Sales LJ, as he then was; see also headnote 3 of Ciceri. However, in light of Mr Khan's acceptance that Article 8 ECHR is not engaged by the deprivation decision, it is not necessary for me to consider in any further detail the principles governing the applicability of Article 8 ECHR considerations in this deprivation appeal. Mr Khan did submit that there was a breach of Article 6 ECHR because the respondent made her initial decision without hearing representations from the appellant, and this breached his right to be heard and his right to a fair trial. I have however considered and

rejected the contention that there was procedural unfairness resulting in an unfair hearing. In any event, Article 6 ECHR has no application in administrative decisions (Maaouia v. France (2001) 33 EHRR 42) such as those relating to immigration decisions.

45. The legal burden of proving that the appellant obtained his citizenship by fraud, or false representation, or concealment of a material fact, lies on the respondent, albeit that there is a three-stage process. The respondent first must adduce sufficient evidence to raise the issue of dishonesty. The appellant has then a burden of raising an innocent explanation which satisfies the minimum level of plausibility. If that burden is discharged, the respondent must establish to her satisfaction, on a balance of probabilities, that this innocent explanation can properly be rejected (Abbas, R (On the Application Of) v SSHD [2017] EWHC 78 (Admin)).

46. In Giri, R (On the Application of) v SSHD [2015] EWCA Civ 784, at [38], Richards LJ accepted that it was for the respondent to satisfy the court that she had discharged the burden of proof on the balance of probabilities. Further, in the context of such a case, the respondent should furnish evidence of “sufficient strength and quality” and the Secretary of State (and the Tribunal) should subject such material to “critical” and “anxious” scrutiny. The decisions in R (Balajigari and Others) v SSHD [2019] EWCA Civ 673, which concerned decisions taken under paragraph 322(5) of the Immigration Rules, Underhill LJ stated (at [37(2)]) that the rule "is only concerned with conduct of a serious character". The standard of proof is the balance of probabilities but that is to be exercised "bearing in mind the serious nature of the allegation and the serious consequences which follow…" [43].

Consideration of the evidence

47. I will first determine whether the respondent was entitled to be satisfied that there was a sufficient evidential basis before her to raise the allegation that the appellant used fraud, made a false representation, or concealed a material fact.

48. In his asylum application, including his asylum questionnaire and asylum statement, the appellant claimed he was born in Mosul. In his settlement application the appellant maintained that he was born in Mosul. In his naturalisation application the appellant maintained that he was born in Mosul. The documents provided by the appellant supporting his children’s application for British passports however indicated that he had been born in Dahouk. In his interview with HMPO in March 2016 the appellant indicated that he was born in Dahouk. When this discrepancy was put to the appellant by email, the email response stated that his place of birth was Dahouk. In her decision of 20 June 2019 the respondent explained in clear terms that, pursuant to her blanket policy in respect of grants of ELR, individuals

who originated from the IKR, which includes Dahouk, would not have automatically been granted ELR at the time the appellant was granted ELR.

49. Having regard to the above I am satisfied that the respondent was entitled to find that a prima facie case had been established that the appellant's naturalisation had been obtained by the use of fraud or by the use of a false representation related to the appellant's place of birth. In the alternative, I am in any event satisfied, adopting a merits approach to the issue of deception, that the respondent has discharged the initial evidential burden that the appellant obtained his naturalisation by being dishonest.

50. I summarise the explanation the appellant advances which he claims satisfies the minimum level of plausibility. He was born in Mosul but his parents were unable to register his birth there because of the Iran/Iraq war. There is consequently no documentary evidence from Mosul itself capable of confirming his birth. In his statement dated 23 September 2021 the appellant described how he improved his English language skills verbally after entering the UK but that his written knowledge of English was poor. He was able to become a warehouse supervisor because he had good verbal communication skills in English. He was later transferred to another warehouse where he was no longer a warehouse supervisor but a warehouse team leader and his manager, Mr Rogers, helped him with the paperwork until the appellant left the country in 2010. The appellant was able to obtain his Life in the UK test because he could click on questions and verbally listen to the questions click on the answers. When he completed his children's passport applications the appellant was helped by Mr Balmer in Switzerland and Mr Balmer wrote letters on many occasions in English and German when the appellant needed help with the language. The appellant claimed that he would go to organisations for help when filling out applications such as his Indefinite Leave to Remain and naturalisation applications.

51. After the appellant was naturalised as a British citizen, he got married in Zakho (which is in the Governorate of Dahouk) on 2 January 2013. The authorities would not accept his name as Hazem Cindy and he was told that he would have to register his name in the register office in Dahouk and use his father and grandfather's name Hazem Taher Ibrahim. He maintains that when he went to register his place of birth at a Dahouk court he was told that it was not possible to record his place of birth as Mosul and that he had to be registered as having been born in Dahouk, where his father and grandfather had been born. This is why the documents provided to HMPO in support of his children's passport applications indicated that he was born in Dahouk. It was for this reason that the entry the 1957 Iraqi certificate showed his place of birth as Dahouk. The appellant further claims that he informed the interviewing officer in respect of the interview conducted on 8 March 2016 that he was born in Mosul but the

summary of the interview did not reflect what was said and contained various mistakes. He maintains that he informed the interviewing officer in respect of the interview conducted on 23 October 2018 that he was born in Mosul, but no audio record of the interview was maintained due to Data Protection requirements.

52. In his statement dated 6 October 2019 the appellant claimed that the email sent from his email account on 18 May 2016 was written by a friend. The appellant was trying to explain to his friend that his true place of birth was Mosul but that he (the appellant) was registered as having been born in Dahouk. In the appellant's statement dated 24 January 2020 he explained that his friend wrote the email because the appellant's written English "was not that good" and he (the appellant) "was trying to explain that my true place of birth was Mosul but my place of birth was registered in Dahouk when I was trying to bring my wife to Switzerland." In the appeal before the First-tier Tribunal, and subsequently in his statement of 23 September 2021, the appellant claimed that he and his friend spoke different dialects (the appellant spoke the Badini dialect and his friend spoke the Sorani dialect) and that this was confusing when having a conversation. The appellant lost contact with his friend and has been unable to find him.

53. I am prepared to accept, both on a merits approach and a review approach, that that the appellant has given sufficient evidence of an innocent explanation to shift the burden back to the respondent (the legal burden of proving dishonesty always remains in the respondent). I will now consider, in the context of the 3rd stage approach endorsed in, *inter alia*, Majumder and Qadir v SSHD [2016] EWCA Civ 1167 and R(Abbas) v SSHD [2017] EWHC 78 (Admin), whether the respondent had discharged the burden of establishing on the balance of probabilities that the appellant's explanation can properly be rejected.

54. I begin my assessment of whether the appellant made a dishonest false representation, both on a review approach and a merits approach, by considering the documentation relating to his birth. The respondent noted in her further decision of 16 August 2021 that the legitimacy of the 1957 Family Registration documents provided by the appellant in support of his children's passport applications was never questioned by HMPO as all the security features were present. None of the documents provided by the appellant in his appeal, save for the letter written by 'Head of Identification Office in Mangesh', dated 21 November 2017, indicate that the appellant was born in Mosul. The Iraq Republic Ministry of Interior, Entry 1957 Civil Register', and the Iraqi Nationality Identification Certificate, and the Personal Card all identified the appellant's place of birth as Dahouk.

55. The letter written by 'Head of Identification Office in Mangesh', dated 21 November 2017 is the only document produced by the appellant asserting that he was born in Mosul. It became apparent through questioning of the appellant during the remaking hearing that it was

he who informed the author of the letter of his birth in Mosul. There was nothing to suggest that the author of the letter relied on any information other than the appellant's own word as to his birthplace. In these circumstances the respondent was entitled to place little weight on this document, and, on a merits approach, I find I can attach little weight to the assertions in this letter.

56. The appellant contends that his parents were unable to register his birth in Mosul because of the Iran/Iraq war. He relies on a report by Sheri Laizer dated 17 June 2021. Ms Laizer is an expert on the Middle East and North Africa.

57. I accept Ms Laizer's evidence that many children who were born in Mosul were not registered between 1980 and 1991 because of the regional conflicts. This supports the appellant's claim concerning his lack of registration in Mosul. Ms Laizer does not however comment on the ease of registering a child's birth after this period. Given the importance of the CSID, which is required to access financial assistance from the authorities, employment, education, housing and medical treatment (SMO & Ors (Article 15(c); identity documents) Iraq CG [UKUT] 00400 (IAC), (at [341],[376])) and which is the physical manifestation of an individual's official registration record, which is a record of the individual's birth, it is surprising that the appellant's birth would not have been registered. Further, although the appellant's account of being a member of the Ba'ath party and a member of the Fedayin forces was not accepted as being credible, it would nevertheless be unlikely, given the importance of the CSID, that somebody could become a member of either organisation without having any formal identification documents. The appellant also claimed to have been a taxi driver in Iraq, and the relevant Country Guidance cases indicate that a CSID card is required to access employment (headnote 28(iii) of SMO).

58. In his oral evidence at the remaking hearing the appellant said that he did not have any CSID card when he left Iraq and he claimed that his first CSID card was issued to him in 2012. In Judge Howorth's decision, the relevant extract of which is set out at paragraph 12 above, the appellant accepted that he had "a document that allowed him to move around in Iraq" and that he obtained this because "two witnesses had gone to court to get the proof of birth which they needed to get the ID card." In his oral evidence before me he claimed that the ID card he mentioned in the First-tier Tribunal hearing was "some kind of internal document with my name on it." The appellant later said that he could not remember if he had any identity document with him when he came to the UK. When a letter from Howe and Co dated 5 June 2000, which was addressed to the Home Office and related to the appellant's asylum application and which referred to enclosed documentation including "Client's identity card confirming nationality", was put to the appellant he said it had been a long time and he couldn't remember.

59. There is no clear evidence relating to the ID document held by the appellant before he left Iraq, and I must exercise considerable caution in drawing any adverse inference based on the appellant's vague evidence concerning this ID card. I am not however satisfied that the appellant has been fully candid in his evidence relating to whether he had an identity card when he came to the UK. Even cautioning myself, and having regard to the length of time that has elapsed since the appellant's asylum application, given the importance attached to identity documents in Iraq, and given the clear importance of having official documents to support his asylum claim, it is not credible that the appellant would have forgotten whether he had an official identity card with him when he came to this country.

60. In her report Ms Laizer states that "it would be very easy for the Kurdish authorities in Dohuk to register any child as born there if the father and/or grandfather of paternal line was already registered there." She cites as support a personal example where a Personal Status Court judge wrote her citizenship down as 'Iraqi' to make it easier for her to get married, and the position of Kurds who were born abroad to parents who had gone into exile. Ms Laizer does not cite any other evidence or give any reference in support of her general assertion, and her personal example bears little resemblance to the facts of the instant appeal. Even accepting Ms Laizer's assertion that it is easy to register a child as born in Dahouk if the child's father and/or grandfather were already registered there, Ms Laizer does not comment on the appellant's assertion that he was actually prevented from registering his birth as having occurred in Mosul and that he was required to, in effect, give a false place of birth.

61. Ms Laizer writes:

> "Mr Cindy's name would just be added to the register page under his father's name as being from Dohum. The Kurdish authorities would not care that his birth can have taken place in Mosul or anywhere else. It must also be remembered that many Kurdish children were born when their parents were on the run from danger. The father's birthplace is what counts."

62. Ms Laizer again does not provide any evidential support or give any evidential reference in support of this particular assertion. More significantly, Ms Laizer does not engage with the appellant's fundamental assertion, which materially differs from the examples she cites, that, when he went to register his place of birth at the Dahouk Court, he was told that it was not possible for him to record his place of birth as being Mosul. Despite producing various official documents from the authorities in Dahouk, the appellant has not provided any official explanation as to why, if he was born in Mosul, this could not be identified in the official documentation, or why the authorities in Dahouk would require him to identify his place of birth as Dahouk even if this was not correct. Nor is there any evidence from

the authorities in Dahouk that they refused to register the appellant's true place of birth as Mosul.

63. The respondent has placed a great deal of weight on the email correspondence of 18 May 2016 as set out in paragraphs 7 and 8 of this decision. I first note the straightforward nature of the requesting email and the relatively simple language used. The appellant contends that his written knowledge of English is poor and that this must be considered when assessing the relevant emails. The respondent noted that the appellant would have successfully completed a course of study in ESOL with citizenship and that, at the time of his naturalisation application, he was a warehouse supervisor, indicating that he had a good command of English, both written and verbal. The appellant has produced two statements each from Mr D Rogers and Mr D Balmer. Mr Rogers claimed to have assisted the appellant with paperwork due to his limited English writing skills, and that whilst the appellant's verbal speaking skills were very good, his knowledge of written English was not very good. Mr Rogers notes that the appellant was nevertheless able to complete the minimal paperwork that was essential for his role as a warehouse supervisor. As noted by Mr Kotas, Mr Rogers did not attend the hearing and it is therefore difficult to gauge with any precision his view of the appellant's particular proficiency in written English in 2010. Whilst some weight can be attached to Mr Rogers' statements, the lack of detail and precision as to the level of the appellant's English proficiency prevents his evidence from having greater probative force.

64. Mr Balmer said that he assisted the appellant in writing letters and filling in applications in English and German because the appellant's knowledge of English and German was not very good. Mr Balmer's statements do not however provide any further detail or clarification as to the appellant's actual level of proficiency in English, or indicate whether, in his opinion, the appellant would or would not have been capable of reading and replying to the relatively clear and straightforward email sent in May 2016. Nor did Mr Balmer specifically refer to helping the appellant fill out the application forms in respect of the British passport applications for his children. In his oral evidence the appellant claimed that Mr Balmer wrote a letter to UKVI dated 27 February 2017 and two letters to HMPO dated 13 May 2018 and 16 April 2018, which were signed by the appellant, but there was no specific evidence from Mr Balmer that he wrote these particular letters. Whilst Mr Balmer's statements do attract some weight, as with those of Mr Rogers, that weight is limited in terms of its probative value by the relative vagueness and imprecision of the assertions in the statements. The respondent noted that there was no indication that the appellant's ILR and naturalisation applications had been completed by third parties. Given that the appellant lived and worked in the UK for approximately 10 years I find that the respondent was entitled to conclude that any deficiency in the appellant's proficiency in written English is unlikely to have impacted upon his ability to

understand the clear and simple terms of the email sent on 18 May 2016. Approaching this on the merits assessment, I would in any event reject the appellant's claim that his lack of proficiency in English caused him to get a friend to write the email and that he did not appreciate the content and implications of the email for the reasons already given.

65. By way of explanation for the assertion in the email that he was born in Dahouk, in his evidence before the First-tier Tribunal judge the appellant claimed that the words for Dahouk and Mosul were similar. There is no evidence before me that the words for these two cities is similar, and this explanation was not subsequently advanced. The appellant relies on Ms Laizer's report which states that the Badini dialect and the Sorani dialect of Kurdish are distinctive. She claims that mistakes can very easily creep in through lack of attention to details. I accept Ms Laizer's claims relating to the differences between the two Kurdish dialects. She was not however privy to what the appellant claims he said to his friend, and her evidence is based on the appellant's own assertion that his friend spoke a different dialect. I note that no mention was made of a different dialect in either the appellant's first statement dated 6 October 2019, or his second statement of 24 January 2020. If a difference in dialect was the reason for the alleged misunderstanding the respondent could reasonably have expected this to have been identified early on. As the appellant claims he cannot locate his friend there is no evidence from him, and therefore no direct evidence that could have been placed before Ms Laizer relating to the alleged misunderstanding. Nor, as pointed out by Mr Kotas, is Ms Lazier able to comment on whether the appellant's proficiency in English was so poor that he required his friend's assistance.

66. There are other concerns relating to the appellant's explanation for the email. The appellant claims that he was trying to explain to his friend that his true place of birth was Mosul, but that it was registered in Dahouk when he was attempting to bring his wife to Switzerland. In his statement of 24 January 2020 he states:

> "This was not clearly explained to HMPO but I was trying to say that I was registered in Dahouk but not born there."

67. Given the explanation provided by the appellant, it is surprising that there is no reference to Mosul at all in his email reply. The respondent was entitled to find that it was not credible that, if the appellant had specifically mentioned Mosul to his friend, explaining that he had been born in Mosul but that he had to be registered in Dahouk, that this would not be detailed in the email. Adopting a merits approach, and for the same reasons, I find the absence of any reference to Mosul in the appellant's email reply incredible. Nor is it credible that the appellant would not have checked or proof-read the email, or at the very least asked his friend to, before it was sent to ensure that it

did contain a reference to Mosul and to ensure that his explanation was accurate given the importance of the applications the emails related to. The respondent further notes that the email reply contains a reference to both the appellant being registered in Dahouk and to being born in Dahouk. There was therefore a clear distinction between registration and actual place of birth. This militates against any alleged misunderstanding as to where the appellant was actually born. There is also an absence of any independent or documentary evidence that the appellant has made any attempt to locate his friend. In his oral evidence the appellant claimed that he tried his best to locate his friend, that he tried to get in contact with his friend through his friend's previous address and through other mutual friends, but his friend had moved town. The appellant has not however produced any evidence of the attempts he claims he made to try and locate this person. There is no evidence for example of any correspondence from the appellant to mutual friends, no evidence of any attempted email contact, nor was there any evidence of any search that he had undertaken to try and locate this person.

68. In assessing whether the respondent has discharged the burden of proving that the appellant obtained his naturalisation by means of false representation as to his place of birth I note the appellant's assertion that in his interviews dated 8 March 2016 and 23 October 2018 he informed the interviewing officer that he had been born in Mosul. No copy of the October 2018 interview is available due to Data Protection requirements. The Passport Application Assessment Sheet however relating to the interview on 8 March 2016 records the appellant as having indicated that his place of birth was Dahouk. No reference is made anywhere in the document to Mosul. If the appellant had informed an officer that he was born in Mosul it is reasonable to expect this relevant information to have been recorded.

69. In assessing whether the respondent has discharged the burden of proving that the appellant obtained his naturalisation by means of false representation as to his place of birth I have additionally considered matters that go to the appellant's general credibility, as this has some relevance to the weight that should be attached to the appellant's explanation. I note first that the respondent found the appellant's claim to be a member of the Fedayin to be incredible, that other aspects of his claim were implausible, and that he produced a forged document. I have also considered the appellant's account of his change of name. In the Passport Application Assessment Sheet that summarised the appellant's telephone interview on 8 March 2016, which was contained in the appellant's bundle of documents prepared for the remaking hearing, the appellant is recorded as having said that, prior to his visit to the UK, his name was Hazem Taher Ibrahim, which was never changed to any other name. He claimed asylum in a brand-new name, 'Sarhan Ahmed', and then changed his name from this to Hazem Cindy by Deed Poll. The appellant contends that the summary of the interview contains

mistakes and he denies having said that he claimed asylum in a brand new name, but he does not advance an explanation as to how the interviewer could have made these mistakes.

70. The information recorded above is inconsistent with the appellant's account of having to use his grandfather's and father's name when he registered with the Dahouk authorities, because his name would have been Hazem Taher Ibrahim. It is also inconsistent with the appellant's evidence, contained in his statements, that his birth name was Sarhan Ahmed. The name given by the appellant in his asylum application for his father (Sarhan Salih or Serhan Salih) is also inconsistent with his father's name (Taher Ibrahim) in the Iraqi Nationality Certificate and the 1957 Iraqi Civil Registry certificate. In his oral evidence the appellant claimed that his father adopted the name Sarhan Salih for safety after the Kurdish uprising in 1991 to stop him being attacked by pro-Kurdish parties. The appellant never however mentioned any of this in his asylum application.

71. Nor is the appellant's explanation for changing his name credible. I fully accept that the appellant was legally entitled to change his name, and that his name was lawfully changed. In his statement of 6 October 2019, the appellant claimed that he never liked his previous name, that he was struggling with this name and that he changed it for his personal safety and for his family safety. The appellant has not provided any reasonable explanation as to why his family's safety would have been compromised if he continued to use the name 'Sarhan Ahmed'. No mention was made in the statement of any difficulties the appellant encountered in airports, as he claimed in his oral evidence, such as being questioned for an hour or more because he used the name 'Sarhan Ahmed'. It is not apparent why the use of this name would cause the appellant to be interviewed for an hour or more at airports. In his oral evidence he said it was because his father worked for Saddam Hussein, but the appellant was found to be incredible in his asylum claim and, in any event, it is not readily apparent how or why the appellant's name would be linked with someone who worked for Saddam Hussein. Whilst the credibility of the explanation given by the appellant for changing his name is not directly relevant to whether his claim to have been born in Mosul was dishonest, it is a factor, albeit a relatively small one, that goes to his general credibility and therefore the weight that can properly be attached to evidence relating to the May 2016 email.

72. I have considered the appellant's explanation for the inconsistencies in respect of his place of birth and his assertion that he was born in Mosul and was not dishonest in his protection, ILR and naturalisation applications. I remind myself once again that the burden of proof rests on the respondent, that the respondent must furnish evidence of "sufficient strength and quality" in support of her allegation of dishonesty, and that she and the Tribunal must consider that evidence with anxious scrutiny. For the reasons set out in the above

paragraphs, which I have holistically considered, I am persuaded that the respondent did discharge the burden on heer and that she was entitled to conclude that the appellant was dishonest and that he did not make an innocent error when stating that he was born in Dahouk in his email of May 2016. In reaching her conclusion the respondent took account of the evidence made available to her and the explanation provided by the appellant, she did not have regard to irrelevant factors, she did not err in her legal approach to the evidence before her or the test for establishing dishonesty, and she did not make a decision that no reasonable Secretary of State could have reached in finding that she could attach weight to the clear assertion in the May 2016 email that the appellant was born in Dahouk. In the alternative, on a merits approach I find, again for the reasons detailed above and applying the anxious scrutiny test, that the appellant was deliberately dishonest in saying that he came from Mosul rather than Dahouk.

73. The appellant nevertheless contends that the respondent's policy at the time he was granted ELR was not to return Iraqi citizens to the government-controlled area of Iraq, nor to advance internal flight to the IKR, and that there was no correlation between the appellant's place of birth and his grant of ELR. Thus, the appellant would in any event have been granted ELR and his naturalisation was not obtained by means of a false representation. The appellant relies on a Country Policy Bulletin on Iraq issued on 1 August 2006. Section 3.6 of the Policy Bulletin indicates that, although there was no country specific blanket ELR policy it was accepted practice that all Iraqis, who were found not to be refugees, from April 1991 to 20 October 2000, be granted for years ELR. However, from 20 October 2000, in light of the improved conditions in what is now referred to as the IKR, the Policy indicated that only claimants from the government-controlled area of Iraq were granted for years ELR. The appellant was granted ELR in August 2001. If the respondent was aware that he came from the IKR, the Policy Bulletin suggests that he would not have been granted ELR. Mr Khan submits that it is unclear on what basis the applicant was granted ELR as the decision letter does not state the basis. The respondent has however made it clear from her decisions to deprive the applicant of his British citizenship that he was granted ELR based on the respondent's policy at the time, and this reasonable assertion is not undermined by any evidence produced by the appellant. I am satisfied that the respondent was entitled to conclude that, but for the appellant's dishonesty, he would not have been granted ELR, and that his impugned behaviour was directly material to the decision to grant citizenship.

74. Even if this analysis is wrong, I find that the respondent was entitled to be satisfied that the applicant's impugned behaviour was directly material to the decision to grant citizenship. In his naturalisation application the appellant was specifically asked whether he had engaged in any other activities which might be relevant to the

question of whether he was a person of good character (section 4.11; see paragraph 4 of this decision). In respect of 4.11 the appellant ticked a 'No' box. The appellant was however dishonest in claiming to have been born in Mosul when he was born in Dahouk. His answer at section 4.11 was a clear false representation, and the respondent was certainly rationally entitled to treat it as a false representation as she did in her further decision of 16 August 2021. I am consequently satisfied that the appellant's naturalisation was obtained by means of fraud or false representation, and that the respondent was, in any event, entitled to so find.

75. It is finally necessary to determine whether, in the manner in which she exercised her discretion under s.40(3) of the 1981 Act, the respondent acted in a way in which no reasonable Secretary of State could have acted, or whether the respondent took into account some irrelevant matter or disregarded something to which she should have given weight, or had erred on a point of law, including making an error of law when arriving at a finding of fact.

76. I have already considered and rejected, for the reasons given above, Mr Khan's submissions relating to the failure to inform the appellant of the respondent's intentions to deprive him of his British citizenship, occasioned because the respondent used the wrong address. This did not materially undermine the appellant's ability to have a fair hearing. In reaching her decision the respondent properly considered the appellant's immigration history and the evidence he advanced in support of his case. The respondent properly referenced her policy 'Chapter 55: Deprivation and Nullity of British Citizenship' and applied that policy. The respondent was entitled to find that the appellant's dishonesty was deliberate and significant. The respondent was aware of the entitlements and benefits that accompanied British citizenship, and that he held British citizenship since 2007, and that he had not been residing in the UK since 2010. There was little in the way of independent or objective evidence relating to the appellant's immigration status in Switzerland or the consequences of the deprivation decision. In these circumstances I am satisfied that the respondent was entitled to exercise her discretion to deprive the appellant of his British citizenship.

Notice of Decision

The appellant's against the Secretary of State's decision, taken under s.40(3) of the British Nationality Act 1981, to deprive the appellant of his British citizenship, is dismissed

Signed D.Blum

Upper Tribunal Judge Blum

Dated 10 February 2022