IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal No: DC/00049/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12th December 2023

Before

UPPER TRIBUNAL JUDGE OWENS

Between

MRS ESHER ALI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Burrett Counsel, Instructed by Maya Solicitors
For the Respondent: Mr Clarke, Senior Presenting Officer

Heard at Field House on 19 July 2023

DECISION AND REASONS

1. The appellant is a naturalised British citizen. She claims to have been born on 1 November 1976 in Pakistan. She appeals with permission against the decision of First-tier Tribunal Judge Black dismissing her appeal against a decision dated 9 May 2019 to deprive her of British citizenship. Permission to appeal to this Tribunal was granted on 9 July 2020 by Upper Tribunal Judge Sheridan.

Background

2. The appellant claims that she was brought up in an orphanage in Pakistan and that she was forced to enter into marriage with an older man by whom she was abused. She was not able to seek protection from the police. She entered the UK as a visitor with the assistance of an agent. In her appeal witness statement she admits that the name of the bearer of the passport she used to enter the UK was Memoona Rafique.

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She asserts the agent kept the passport. On 21 May 2005 she claimed asylum in the name of Esher Ali. She was granted asylum on 27 June 2005. She applied for a travel document on 8 February 2006. On 15 June 2011 she was naturalised as a British citizen. In 2018 she travelled to Pakistan. She was interviewed by immigration officials in the UK on her return who confiscated her passport. There was subsequent unsuccessful litigation following her application for a new passport. On 9 May 2019 the respondent made a decision to revoke her British citizenship, which is the decision under appeal.

The Secretary of State's decision

3. The starting point in a Deprivation of Citizenship appeal following R(oao Begum) v Secretary of State for the Home Department [2021] UKSC 7 is the decision of the respondent. I go through the decision in some detail because it relates to whether there has been a material error of law by the judge.

4. The respondent's position is that the appellant's real identity is Memoona Rafique and that she entered the UK as a visitor with entry clearance in her real identity. Her claim for asylum was made in the false identity of Esher Ali. The passport on which the appellant entered the UK gave her date of birth as 1 November 1971 and her parents were said to be Muhammad Rufique and Zeenat Tahita. She was born in Sialkot. The application and supporting passport contain a photograph of the appellant. A visit visa in this identity was issued on 27 October 2004 valid until 27 April 2005. It is not known on what date the appellant entered the UK.

5. On 9 May 2005 the appellant claimed asylum claiming to be Esher Ali born on 1 November 1976. The appellant was photographed. The appellant declared that she could not produce her national passport nor the document she used to enter the UK. In a screening interview on 24 May 2005, she claimed she had never used any other identity. She was born in Sialkot. She did not know her mother's details, but her father was called Jafar Ali. She married Usman Ali on 12 March 2004. He remained in Pakistan. She arrived at Heathrow on 29 April 2005, but the agent held the passport. She had never held a passport of her own. She claimed that the agent made all the arrangements. She had never applied for entry clearance. She held an ID card in the name Esher Ali - document number ending 65 and had no other documents.

6. In her statement of evidence form dated 25 May 2005, she declared her name as Esher Ali and date of birth 1 November 1976. She left blank the section where she was asked if she had used any other names. She gave the same name of her husband and said that her parents were deceased and did not declare details of siblings. She claimed to have suffered persecution at the hands of her cruel husband and also degrading and inhuman treatment from the authorities of Pakistan. She declared that the information was true and accurate. A supporting statement claimed

that she was brought up in an orphanage and forced into an arranged marriage and that she was physically and mentally abused by her husband. She was assisted to leave Pakistan by an agent.

7. On 21 June 2005 in her substantive interview, she maintained the same information and provided a warrant for her arrest, a First information report and newspaper articles. On the basis of the information submitted she was recognised as a refugee and granted indefinite leave to remain in the UK on 27 June 2005 in the identity of Esher Ali.

8. On 16 February 2006 she applied for a travel document in the name Esher Ali with a date of birth of 1 November 1976. She declared that her previous passport was taken by the agent. Apart from that document the information was true to the best of her knowledge. She was issued with a travel document on 6 March 2006.

9. On 22 March 2011 she applied for naturalisation in the name Esher Ali date of birth 1 November 1976 place of birth Sialkot. When asked for her name at birth she left this section blank. She declared her parent's details as Ali Zafer and Zeenat Tahir born in 1943 and 1954 respectively. When asked to declare details of her previous marriage she stated, "Not applicable". She responded negatively when asked if she had engaged in any other activities which might indicate that she was not a person of good character. She declared that to the best of her knowledge and belief the information in her application was correct, that she had read and understood the guide Naturalisation as a British citizen and provided a passport. She was naturalised on 15 June 2011.

10. In 2018, the respondent received information indicating that the appellant's true identity was Memoona Rafique born on 1 November 1971 holder of ID card ending 22-8. On her journey back from a visit to Pakistan in 2018, the appellant was stopped and questioned both at Doha and at Heathrow airport. Her answers at Heathrow were recorded on the database and are summarised in the refusal letter. In summary, it is submitted that the appellant admitted that her real identity is Memoona Rafique but that she wanted to keep her new identity.

11. The appellant then made further representations stating that she had grown up in an orphanage, was forced into marriage, used an agent to enter the UK and that she did not make any admissions when being questioned by immigration officials. The appellant was told by the orphanage that her parents are Zeenat Tajora and Ali Zafar.

12. The respondent carried out further checks with the Pakistani authorities. Full details of both identities were provided. The Pakistani authorities confirmed that only the identity of Memoona Rafique is registered in Pakistan. The authorities provided the up-to-date ID card number for Memoona Rafique daughter of Muhamed Rafique and Tahira Zeenat. The card was issued in 2003. It was not possible to check whether the passport issued in this identity was genuine because it was

issued by an old manual system. There was no record of the marriage in Pakistan. There was no record of the ex-husband's details. It was not possible to establish whether the ID card in the name of Esher Ali was a genuine document because it is an old manual card. The document was assessed as inconclusive by the National Document Fraud Unit.

13. The respondent was satisfied that the identity of Esha Ali is not registered in Pakistan and that the appellant admitted that her real identity is Memoona Rafique. The identity card issued to Memoona Rafique is genuine. The document bears the appellant's photograph. The application for entry clearance in the name of Memoona Rafique, the photograph on the Pakistani passport in the name of Memoona Rafique and the photograph from the Pakistani High Commission in the name of Memoona Rafique all carry the photograph of the appellant. The photographs submitted with all of the applications in the name of Esher Ali and the Esher Ali ID card are also all of the appellant. The photograph submitted with the application for entry clearance in the name of Memoona Rafique is identical to the photograph submitted with the statement of evidence form. The appellant gave her mother's details in both identities. Given that the appellant claimed not to know her mother's name when claiming asylum and that she provided it in support of the application for naturalisation it is considered that she was attempting to conceal her true identity when claiming asylum. There is no record of Memoona Rafique being married.

14. The respondent asserts that the appellant assumed the identity of Esher Ali to claim asylum. She claimed to have been a victim of domestic violence at the hands of her husband. It is asserted at paragraph 27 of the decision letter that the appellant's asylum claim was based on a complete fabrication. The appellant employed deception by constructing a false version of events solely to ensure a successful asylum claim and obtain status in the UK. It is said that her whole immigration footprint in the UK has originated from a complete falsity. Had this been known at the time of her asylum claim this would have had a direct bearing on the outcome of the application. The appellant obtained indefinite leave to remain on a falsity which led to her acquiring the length of residence to naturalise. Without this she would have not met the residence requirements needed to apply for and acquire citizenship. As such the fraud she employed is directly material to the grant of British citizenship.

15. At no point did the appellant reveal her genuine identity to the UK authorities nor that she had been granted a six month visit visa in this identity. This concealment calls into question her good character. She failed to declare the use of a different name passport and visa to enter the UK. Had the relevant facts been known at the time of the application for citizenship this would have affected the decision to grant citizenship. An example of when a nationality application will be refused is when false details have been given in respect of an immigration application which leads to status being given to a person who would not otherwise have qualified. The refusal refers to various policies. Further the appellant

declared that she had read and understood the Nationality Guide which makes it clear that an applicant must declare any matter which may have a bearing on their good character, for instance using deception in dealings with the government.

16. The respondent does not accept that there is a plausible or innocent explanation for the misleading information. It is considered that the fraud was deliberate and material to the acquisition of British citizenship.

17. The decision then goes on to consider Article 8 ECHR and decides that it is not a disproportionate breach of Article 8 ECHR to deprive her of citizenship.

The appellant's position

18. The appellant's position is that her real identity is Esher Ali and that she has told the truth about her circumstances in Pakistan. She grew up in an orphanage, was forced into marriage and was abused. She did not use fraud in her asylum claim. She used an agent to create documentation to enter the UK on a visit visa. During her journey from Pakistan, she was interviewed in English without an interpreter in a stressful situation and the record of the interview is unreliable. She did not admit that her real identity is Memoona Rafique. The use of the name is not material to the acquisition of citizenship. She has not obtained nationality by deception and the condition precedent under s40 has not been established. It would be a breach of Article 8 ECHR to deprive her of citizenship because she has been in the UK for 15 years and was brought up in an orphanage with no links to her biological family.

First-tier Tribunal Decision

19. The appeal before the First-tier Tribunal took place on 3 December 2019 and was promulgated on 10 December 2019. This before the cases of Begum, Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238, Chimi (deprivation appeals; scope and evidence Cameroon) [2023] UKUT 00115 (IAC). The role of the Tribunal in deprivation of citizenship appeals is now very different to the situation before First-tier Tribunal Juge Black and I will come on to deal with this.

20. At the outset of the hearing, the judge refused an adjournment request made by the appellant in order to adduce medical evidence and to produce the original identity card. The appellant gave evidence as did a witness.

21. The judge firstly decided for herself if the relevant condition precedent in section 40(3) was made out in accordance with the then guidance in BA (deprivation of citizenship; appeal) [2018] UKUT 85. The judge found that it was agreed by both parties that the appellant had used both the identities of Memoona Rafique and Esher Ali. Having

considered all of the evidence in the round, including the enquiries made by the Pakistani authorities which confirmed the identity of Memoona Rafique but were inconclusive in respect of the identity of Esha Ali and the evidence of the appellant, the judge found that the appellant's true identity is Memoona Rafique, that she failed to disclose this identity in the course of her asylum claim, when she applied for a travel document and when she applied for a certificate of naturalisation. The judge found that she did so deliberately to conceal her true identity and that her British nationality was therefore obtained by means of fraud, false representation and concealment of a material fact. The judge decided that there were no factors which would mean that the respondent should have exercised his discretion differently and that there was no disproportionate breach of Article 8 ECHR to deprive her of British citizenship.

Grounds of appeal

22. The renewed grounds of appeal to the Upper Tribunal which replaced the original grounds to the First-tier Tribunal are dated 15 June 2020. The grounds do not seek to rely on the grounds before the First-tier Tribunal but seek to replace them. The grounds were drafted prior to the decisions of Begum, Ciceri and Chimi.

23. The grounds are lengthy, lack clarity and in places overlap each other.

Ground 1 – The judge erred in the approach to the legal test for deprivation

24. The judge failed to address whether the appellant obtained naturalisation "by means of" fraud in accordance with Sleiman (deprivation of citizenship; conduct) [2017] UKUT 00367 (IAC). The impugned behaviour must be directly material to the decision to the grant of citizenship. The judge needed to apply a higher level of scrutiny because of the severity of the consequences.

25. Further, the judge failed to make a finding that the respondent had proved that the appellant was dishonest. It was not enough for the appellant to have simply given incorrect information. The judge did not adequately scrutinise the respondent's evidence. The respondent was not able to establish that Esha Ali was a false identity. The respondent failed to produce the original identity card at the hearing and neglected to set out the NADRA assessment which importantly demonstrated that the Pakistani experts were unable to demonstrate that the ID card in the name of Esher Ali was a fraud.

Ground 2 - The judge misdirected herself as to whether the conduct complained of by the respondent sufficiently engaged s40(3) of the British nationality Act 1983.

26. It is submitted that the judge did not engage with the policy on deprivation at the time the decision was taken importantly 5.7.4 which states a person may use a different identity of they wish. The approach of the judge was flawed because the use of the name did not bring any material advantages, and nothing turned materially on the use of the assumed identity. The judge failed to identify the appellant's harmful conduct such that she should be deprived of citizenship. Section 40(3) did not apply in this case and the judge failed to address a key component namely whether the use of the name Esha Ali had brought the appellant any material benefit in her claim for asylum. This is reflected in the internal CID notes.

Ground 3 – There was no basis for the judge to find that fraud was perpetrated for the purposes of obtaining settlement in the UK.

27. The judge made several irrelevant findings that were not supported by the respondent's decision or the core matters to be determined. For instance, that this was a serious fraud perpetrated over number of years; that the appellant lied elaborately in pursuit of refugee status for the purpose of being able to settle in the UK by circumventing the immigration rules; and that the nature of the fraud suggests a degree of determination and motivation on the part of the appellant. The judge has failed to set out the evidential basis and the materiality of the appellant of the use of a different name. The respondent's case does not demonstrate that the appellant had carried out a serious fraud over many years or has sought to circumvent the immigration rules.

Ground 4 – The judge acted procedurally unfairly by refusing to adjourn the appeal

28. The findings of the judge at [49] demonstrate why it was procedurally unfair to continue with the appeal hearing despite both parties agreeing to the adjournment. It is submitted that given the fresh matters raised by the judge in relation to the appellant's past conduct it was unfair not to give the appellant an opportunity to present further medical evidence or to deal with the points made by the Tribunal.

29. When considering whether to adjourn, the fact that the appellant was a vulnerable witness was a relevant matter and not given sufficient weight by the judge.

Ground 5 – The findings were tainted by legal error

30. The judge found that the appellant's true identity is Memoona Rafique but fails to recognise in the context of this appeal that the appellant has not used this name for more than 14 years. She has consistently used the name Esher Ali in all of her dealings with the authorities in the UK.

31. The judge should have made a discrete finding on whether the appellant attended an orphanage in accordance with her asylum claim as this was plainly linked to the issue of identity. It is also relevant that it was not suggested that the appellant's asylum claim was a sham.

Ground 6 – The Tribunal erred in its consideration of Article 8 ECHR

32. The appellant has always used the identity of Esher Ali. She has established private life in the UK. Deprivation after such a lengthy period was plainly contrary to her right to have an identity which is Esher Ali, a British citizen. The concept of proportionality was not properly applied by the judge. There was no evidence that the respondent considered revoking her refugee status. This was not reflected in the reasoning by the judge. The judge was wrong to speculate that the appellant sought British citizenship to travel to Pakistan because she could not travel in her birth name. This finding is entirely speculative. The evidence did not show any travel to Pakistan prior to 2018.

33. In summary, the grounds assert that the judge erred by failing to make findings on whether the asylum claim was a sham and erred by finding that the use of a different name was a fraud which was material to the appellant obtaining British citizenship in light of the caselaw and background policy.

34. Attached to the grounds were various internal casenotes which do not appear to have been placed before the original judge.

Procedural history

35. The error of law hearing was listed for 9 March 2023. The appellant applied for an adjournment on the basis that counsel could not attend because he was living abroad. The application was refused twice on the basis that appeals are not listed for the convenience of counsel and the appellant had plenty of time to instruct another counsel from the same Chambers if necessary.

36. On 9 March 2023 Ms Stuart King appeared for the appellant. By this point the law governing the Tribunal's approach to deprivation of citizenship appeals had changed. She applied for an adjournment because she had been instructed at short notice and the law had now changed. I agreed with Mr Clarke that the appellant had had ample time to prepare for the appeal. In particular the new caselaw was not very recent. I refused the adjournment request.

37. Counsel then became unwell and could not proceed. I note here that I found her discomfort was entirely genuine. The appeal was adjourned with directions. I directed that any application to amend the

grounds in the light of the new legal authorities should be made within 14 days of the directions being served.

38. On 5 April 2023 a written application was made to amend the grounds together with the amended grounds. At the oral hearing. Mr Burrett submitted that he still relied on the original grounds although the renewed grounds had been reframed differently. Mr Clarke did not oppose the amended grounds being admitted. He had had sight of them and there was no prejudice to the respondent. On this basis I allowed the grounds to be amended. The new grounds are:

Ground 7 – "The tribunal has made findings of fact which are based on a view of the evidence that could not reasonably be held in considering whether the condition precedent was met under section 40(3) BNA".

39. It is said in the written grounds that there was no rational basis for the Tribunal to form the view that the appellant has exercised deception in naturalising as a British citizen. There were insufficient facts for the respondent to be satisfied that the appellant has exercised deception in her application for citizenship. It is accepted that the appellant's photograph was used on the identity of Mamoona Rafique. There was no evidence to show that the appellant had already used this identity. There was no evidence that she had used the visit visa or passport of Mamoona Rafique when she entered the UK. The appellant had always used the identity of Esher Ali in her dealings with the Home Office.

40. It was unreasonable for the judge to give significant weight to the interviews conducted by the port authority given that it was accepted that the appellant was vulnerable, has mental health problems, was arriving late at night and tired and speaking in a language in which she was neither fluent nor comfortable. On any reading of the interviews, it could not be said that her identity was Memoona Rafique. It is unclear whether the interview record was accurate given the confrontational approach of the immigration officer.

41. It was not found by the judge that the appellant has exercised deception in claiming that she was at risk on return to Pakistan as a woman who was at risk of domestic violence. The appellant has claimed that she entered the UK on a false identity. She has used the name Esha Ali at all material times. The Tribunal was wrong to state at [32] that there was no doubt that the appellant was the same person and that this was not challenged by the appellant. Her evidence at its highest is that an agent may have created or utilised that identity on her behalf to enter the UK. There is no evidential basis of the Tribunal to find that the refugee claim was fraudulent even if the appellant had also used the identity of Memoona Rafique. Nothing turned on the identity of Memoona Rafique.

Ground 8 – the judge erred by failing to determine the reasonably foreseeable consequences of deprivation.

42. As a result of losing her citizenship the appellant would lose her protection from removal to Pakistan. The judge ignored this aspect of the evidence and the likely impact on her given her vulnerable status. The judge has failed to take into account that even if the appellant used a false identity, when considering proportionality, the fact that the appellant was arguably entitled to refugee status notwithstanding the use of a false identity reduced the public interest in depriving the appellant of citizenship.

Ground 9 – The judge failed to determine whether the respondent's discretionary decision under section 40(2) or 40 (3) was exercised correctly.

43. The judge erred by failing to consider whether the respondent had taken into account all relevant factors when making the deprivation decision contrary to the decision in Begum. For instance, the judge gives no consideration to the respondent's deprivation guidance at 55.7.3 and 55.7.11.7. The deception must have motivated the grant of citizenship and necessarily preceded that grant.

Rule 24 response

44. I was provided with an equally lengthy and detailed rule 24 response prepared by Mr Clarke.

45. It is argued that the appellant's grounds are misconceived. The appellant fails to understand the chapter 55 policy.

46. The rule 24 response also addresses the remainder of the grounds. I do not set them out here because they are very lengthy and I will address them below. In summary the respondent's position is that none of the grounds are made out.

Further submissions and response to rule 24

47. In essence, these submissions sought to expand on the amended grounds of appeal.

48. It was submitted that the judge erred by failing to ask the relevant question which was whether the Secretary of State had materially erred in law when deciding that s40(3) was satisfied and whether the Secretary of State erred in law when considering exercising her discretion to deprive the appellant of British citizenship. The judge erred by taking a merits-based approach rather than focusing on public law grounds. The judge failed to consider the relevant guidance on the question of materiality of the appellant's fraud when applying for citizenship and

secondly failed to apply the principles in Sleiman where it was held that the fraud had to be directly material to the grant of citizenship.

49. Mr Burrett continued to assert that there was no suggestion that the appellant had used the name Memoona Rafique following her claim for asylum or that there was anything about the failure to disclose the name which would have a bearing on her application for citizenship.

Application to stay the appeal hearing

50. Mr Burrett submitted that the law in this area has moved forward. There have been several cases including Chimi and Shyti v SSHD [2023] ECWA Civ 770 as well as U3 (Appeal no: SC/153/2018 and SC/I 53/2021). Mr Burrett submitted that the appeal should be listed behind the decision in Ahmed DC/00135/2019 which was before the Court of Appeal and in which doubts had been raised about the correct approach in s40(3) appeals,

51. Mr Clarke submitted that the President had not adjourned Chimi for the reasons set out in that decision and that guidance was helpful. I indicated that I would not stay the appeal behind Ahmed and would proceed with the error of law hearing in line with the principles in Chimi.

Oral Submissions

52. Mr Burrett's submissions were somewhat confusing and repetitive. Despite acknowledging that in respect of the issue of "the precedent fact", the function of the Tribunal is now one of review of the Secretary of State's decision on public law grounds, in both his written renewed grounds and oral submissions he continued to submit that there were errors made by the judge in her approach to factual findings rather than referring to public law errors in the decision letter.

53. For instance, he submitted that the judge erred by failing to decide whether the use of the name Esher Ali was fraudulent. He also submitted that it is not clear from the judge's decision whether the judge found the asylum claim to be sham or fraudulent. He continued to assert that the judge had failed to address the core issue of whether the fraud had a direct bearing on the appellant obtaining citizenship and had not addressed the issue of materiality in accordance with Sleiman.

54. Manifestly following Begum, Ciceri and Chimi it is not for the judge to decide for herself whether the use of the name Esher Ali was fraudulent or whether the fraud had a direct bearing on the appellant obtaining citizenship. It was for the judge to decide if the Secretary of State materially erred in law when she decided that the condition precedent was satisfied and secondly whether the Secretary of State materially erred in law when deciding to exercise her discretion to deprive the appellant of British citizenship. Or in other words whether the respondent had acted in a way that no reasonable Secretary of State

could have acted, a consideration of whether the respondent had erred in law including by finding facts which were unsupported by the evidence or based on a view of the evidence which could not reasonably be held.

55. Mr Burrett's strongest submission was that the judge erred by failing to approach the appeal on public law review basis. This submission was made in his response to the rule 24 response and orally.

56. He asserts that this was a material error because the judge did not correctly identify which issues she needed to resolve and asked herself the wrong questions. The judge has not gone through the decision made by the respondent addressing each component in turn, which is what she should have done on a review. She should have looked at what evidence was considered and whether the respondent's approach was lawful.

57. As far as I understand his submissions in relation to the failure of the judge to review the decision lawfully, they are that the respondent did not properly take into account the chapter 55 guidance and the judge failed to review this. The respondent did not consider those portions of the nationality guidance at 55.7.4 and 55.7.3. The use of a different name would not necessarily be material to obtaining citizenship according to the guidance. If the guidance of the Secretary of State was applied wrongly or not considered this would lead to the appeal being allowed.

58. He also submitted that there were internal CID notes before the respondent and in the original appellant's bundle. The respondent ignored her own internal CID notes. The judge did not turn his mind to the CID notes which indicated that the respondent had questioned whether the use of a different name would have a bearing on materiality. The judge did not take a review approach and so did not ask himself the right question. The judge's decision is flawed.

59. He submitted that it is important that the Tribunal is able to revisit the essential components. The appeal should be allowed, the decision should be set aside, and the appeal remitted to the First-tier Tribunal for re-hearing.

60. Mr Burrett addressed me on the ground in respect of Article 8 ECHR. He submitted that prior to her application for citizenship the appellant was a refugee with indefinite leave to remain. The effect of the deprivation order will be to leave her with no status. There is no direct challenge to undermine the conclusions in respect of her refugee claim and it would be a breach of her human rights to leave her with an unknown status on being deprived of nationality. There is a lack of a step-by-step approach in what the judge was deciding. The fact that the judge did not make finding that the appellant made a fraudulent claim for asylum is relevant to the Article 8 ECHR assessment.

61. He did not strongly argue ground 4 in respect of any procedural failure. He acknowledged that there was a high threshold in respect of this.

62. Mr Clarke drew my attention to how the appeal was put before the First-tier Tribunal. He submitted that whether or not the judge conducted a public law review, a public law ground of challenge is always open in a statutory appeal. A professional representative could and should have mounted a public law challenge if there were a public law error in the decision.

63. Before the First-tier Tribunal it was not argued that the respondent had not considered the Nationality Policy, nor the CID notes. There is an allusion to Pirzada and no reliance on Sleiman.

64. The judge noted that there was no challenge to the evidence put forward by the respondent. The challenge is to the decision the respondent made on the evidence. To the extent that there was any inferred public law challenge it was that the respondent's decision was irrational.

65. The judge goes through the evidence before the decision maker at [33]. The judge rejects the rationality challenge at [34] to [35] and at [36] the judge finds that the respondent has demonstrated that the appellant meets the criteria in s40(3) because the evidence is sufficient. At [36] the judge makes a clear finding that the decision was rational and therefore lawful. Mr Clarke asserts that in these paragraphs the judge has in essence carried out a public law review of the decision and concluded that the respondent's decision that the appellant has obtained British citizenship by deception is lawful. It is only at [37] that the judge turns to the appellant's credibility. The credibility findings are irrelevant.

66. Mr Clarke submitted that the grounds do not sufficiently particularise which factors were not taken into account by the judge.

67. It is asserted that the appellant's challenge in relation to materiality is not made out. The respondent decided that the residence requirements would have not been met but for the fraud which is the chain of causation argument. At paragraph 28 the respondent decided that the appellant's concealment of the fraud within her application for naturalisation called into question her good character. Had the respondent known of the deception when deciding the nationality application, it would have been refused in accordance with 55.7.1. The respondent correctly applied the chapter 55 policy and the chapter 18 policy. It was not argued that the respondent's approach to these policies was unlawful before the First-tier Tribunal.

68. Under the policy the respondent will refuse an application for British citizenship if there is evidence that the application has employed fraud either during the citizenship application or in a previous

immigration application. The respondent's position was that the appellant had used fraud both in a previous application which was material to her acquiring leave to remain and thus acquiring sufficient residence to apply for nationality and in the nationality application itself. It was rationally open to the respondent to find that the appellant would have been refused on account of the schedule 1 character requirement.

69. Any challenge the exercise of this policy must be on a Wednesbury basis. No such challenge was made before the First-tier Tribunal.

70. The failure to look at Sleiman makes no difference, and this issue was not raised in any event. The respondent did exercise his discretion rationally.

71. Mr Clarke strenuously objected to the appellant "crowbarring" in the CID notes when these were not before the First-tier Tribunal. He referred to the Ladd and Marshall test. Further there is nothing in the CID notes which would render the respondent's decision unlawful.

72. Mr Clarke submitted that he had dealt with the Article 8 ECHR point in detail in the rule 24 response. In summary the loss of citizenship entails losing protection against removal. Further it is not possible for the appellant to argue that the fraud did not take place when carrying out the Article 8 ECHR balancing exercise. The respondent had already found that the refugee claim was fraudulent. Further it was not argued at the First-tier Tribunal that if the appellant were removed to Pakistan, she would encounter serious harm nor that one of the reasonably foreseeable consequences would be to lose her protection. In any event, she had recently travelled to Pakistan safely. The law in relation to Article 8 ECHR both prior and after Begum is clear that it will only be in rare cases that it would be a disproportionate breach of Article 8 ECHR to deprive of citizenship. The judge found no exceptional features. The appellant put forward a very limited case in her skeleton argument in respect of Article 8 ECHR. If the respondent decides to remove the appellant, she will be entitled to raise a human rights claim.

73. In relation to Ground 7, these have been reframed but in fact refer to errors by the judge.

74. In response Mr Burrett repeated that the judge had not had regard to the guidance and did not engage with it. The judge conflated aspects of the credibility issues with the use of a different identity. The respondent did not show that the asylum claim was fake. Unless a sham asylum claim was established the fraud of using a different name was not material to the deception.

Discussion and Analysis

75. I start with the assertion of procedural unfairness at Ground 4 of the renewed grounds. The renewed grounds submit that it was unfair of

the judge not to adjourn the appeal. Mr Burrett did not pursue this ground, but he did not explicitly state that it was no longer relied on, so I deal with it briefly. I do not understand why [49] highlights why it was procedurally unfair to continue with the appeal as this was not explained nor elaborated on. Secondly, I do not agree with the assertion that the judge raised fresh matters in respect of the appellant's past conduct. In the original decision it was asserted that the appellant lied about her identity and the basis of her asylum claim in order to obtain refugee status and then perpetuated the lie and her false identity throughout subsequent applications and also that she lied on her application for nationality. The judge did not raise fresh matters. The judge did find that the appellant was a vulnerable witness.

76. The application to adjourn was in order to obtain further medical evidence and in order for the respondent to produce the original identity card. At [8] the judge considered the overriding objective of the rules. At [9] the judge found that there was a copy of the identity document in the bundle and the Tribunal would not be able to determine whether the original was genuine or not. The Pakistani authorities had already confirmed that they were unable to authenticate this document. The judge in my view reasonably concluded that the production of this document was not necessary to determine the appeal fairly.

77. The judge gave detailed consideration to the adjournment request in order to obtain medical evidence from [8] to [10]. The judge was entitled to take into account that there was only a possibility of obtaining a medical report, no steps had yet been taken to obtain a medical report and there was no submission on the specific purpose of the medical report. There was insufficient evidence that the appellant was not fit to give evidence, she had provided evidence to her instructing solicitors, she would be treated as a vulnerable witness, and she was accompanied by those who could support her. There was evidence of depression and suicidal ideation, and the appellant was on medication. The judge decided that the appeal should proceed and found that precautions could be taken to assist the appellant. Counsel was given an opportunity to take instructions on how to proceed with the hearing and confirmed that there were no specific requests for managing the appeal. The appellant was informed that she could move around if she were in pain. No medical report has been produced to date. The grounds do not particularise how the unfairness manifested itself. It is not asserted that the appellant was not able to give evidence or was misunderstood. I am satisfied that the judge took into account relevant considerations and properly decided that he would proceed with the appeal fairly without adjourning for more medical evidence. This ground is not made out.

Ground 7- misdirection

78. Given the date of the hearing and decision it is unsurprising that the judge did not apply public law principles because the case of Begum

fundamentally changed the considerations that are to be applied by the Tribunal in deprivation decisions.

79. As set out in the decision of Muslija (deprivation; reasonably foreseeable consequences) [2022] UKUT 337, this Tribunal must directed itself to the correct standard of proof and to the cases of Begum v SIAC [2021] UKSC 7 and Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238 and thus to the fact that the task before it is to determine whether the Secretary of State had made findings of fact which were unsupported by any evidence or irrational or otherwise susceptible to any other public law challenge when determining whether the claimant's citizenship was obtained by fraud, false representation or concealment of material fact. As per Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 00115 the next issue which the Tribunal must considered is whether there was any error of law in the decision of the Secretary of State to exercise her discretion to deprive the claimant of her citizenship. The consideration of the lawfulness of the decision making of the Secretary of State must be based solely on the evidence before the Secretary of State at the time of decision-making. If the condition precedent under s.40(2) or s.40(3) had been found to be lawfully established and discretion lawfully exercised the Tribunal should move on to consider whether rights of the claimant under the ECHR were engaged, and if so whether the decision of the Secretary of State was proportionate in light of the reasonably foreseeable consequences.

80. Mr Clarke's position is that the grounds are misconceived and none of the grounds are made out. There is no error in the approach of the judge. The judge did review the decision on a public law basis notwithstanding her self-direction to the contrary. The decision should stand.

81. Mr Burrett's position is that the judge misdirected herself in respect of the law and there were public law errors made by the respondent which were not identified by the judge. The decision should be set aside, re-made and dismissed or set aside and remitted to the First-tier Tribunal.

82. The difficulty for Mr Burrett is that as Mr Clarke points out, none of his written grounds of appeal including the amended grounds of appeal actually assert that the judge erred by "failing to ask the relevant question which was whether the Secretary of State had materially erred in law when deciding that s40(3) was satisfied". This was worded in this way only in the response to the rule 24 and further submissions, and he did not apply for permission to amend the grounds for a second time. I remind Counsel of the need for procedural rigour and the care that Counsel needs to take in drafting grounds.

83. Nevertheless, Ground 9 did assert that the judge erred by failing to ask herself whether the Secretary of State erred in law when considering exercising her discretion to deprive the appellant of British citizenship

and there are references in the earlier grounds to the respondent failing to take into account policies.

84. I take into account Mr Clarke's detailed arguments about the judge's treatment of the decision, nevertheless a judge's self-direction is core to a decision and of great importance. In this appeal the judge clearly misdirected herself at [19] when she referred to BA (deprivation of citizenship appeal) [2018] UKUT 00085 (IAC) and at [25] and this is an "obvious" error.

85. The judge erred by failing to approach the appeal in the way set out at [79] and ask the relevant question which is set out above at [54]. Instead, the judge decided for herself whether the precent fact of the deception was made out rather than approaching the decision of the Secretary of State from a public law perspective.

86. I am satisfied that the judge erred by carrying out a full merits-based appeal and making findings rather than conducting a review to consider whether it was open to the Secretary of State on the evidence before her to conclude that the appellant had obtained her British Nationality by deception. I am also satisfied that at [33] which Mr Clarke submits is the public law review of the decision the judge goes slightly further by taking into account a factor at (vii) which was not raised by the respondent in the decision letter. The judge clearly refers to there being no suggestion in the appellant's evidence that her friend helped her obtain a false identity document as well as a false passport and that her clothing in the identity document is not identical to that in her visa application which suggests that the photographs were taken on different occasions when it would have been expected that it would have been the same photograph. This does not form part of the respondent's decision. It is an observation and reason given by the judge which indicates that she is carrying out his own assessment as to whether the precedent fact is made out. Further the judge goes on at [35] to consider the appellant's motivation. On this basis I find that there is an error of law in the judge's approach.

Materiality

87. In respect of that aspect of the appeal which deals with the materiality of the fraud and the discretion of the Secretary of State, I am satisfied that there will only be a material error in the judge's decision if the grounds establish that the original decision contained a public law error which should have been identified by the judge.

88. Grounds 1, 2 ,3 and 5 of the amended grounds relate to purported errors made by the judge in the assessment of the evidence and application of the law. These in general do not purport to identify any public law error in the decision itself. If the judge took into account immaterial considerations when making her own findings, or failed to make findings on matters at issue, or failed to apply anxious scrutiny,

this was not material to the outcome of the appeal because that was not her task pursuant to the review approach. The assertion that the judge herself did not engage with policy on deprivation and the internal CID notes is not a material error.

89. Insofar as Ground 2 asserts that the respondent failed to establish whether Esher Ali was a false identity because the original ID card was not produced at the hearing, this is not a public law error. The respondent had sight of the document when making the decision. The respondent confirmed that it was not possible to establish whether the card was a fraud. There is no public law error not to have produced this document at the hearing. The production of the original document at the hearing would have inevitably made no difference to the respondent's decision.

90. There was no public law challenge to the outcome of the NADRA assessments. Witness statements were provided from Immigration Liaison Officers confirming the details and outcomes of the NADRA assessments and the respondent was manifestly entitled to rely on those witness statements. The production of the NADRA assessments at the hearing would inevitably have had no impact on the outcome of the decision.

91. Insofar as it is asserted at Ground 2 that nothing turned materially on the assumed identity and that the respondent failed to demonstrate the materiality of using a false name, this ground is misconceived. Mr Burrett's submissions are based on the assertion that the use of the name is the only fraud perpetrated by the appellant. He even went as far as to submit that the respondent did not assert that the asylum claim was made on a false basis despite the clear wording of the refusal letter. It is the respondent's clear position in the decision that it was the whole factual basis of the claim for asylum, which was fabricated not just the appellant's use of a different name, and this was the fraud which was material to the grant of status. The decision letter could not make this any clearer as set out above as I pointed out to Mr Burrett.

92. The grounds repeatedly overlook the respondent's position on the sham asylum claim.

93. Grounds 3 and 5 are immaterial because these are asserted errors by the judge rather than public law errors. It is immaterial whether the judge made a clear finding that the appellant did or did not attend an orphanage. The respondent was satisfied from the evidence that the appellant is Memoona Rafique who has two parents and who has never been married and that her claim for asylum was manufactured.

94. The amended grounds continue to assert that the judge has made errors. It is asserted that the judge's finding that the appellant exercised deception is irrational. Any such error by the judge is immaterial. The issue was whether the respondent's conclusion that the appellant had

obtained her citizenship by deception was legally flawed. I see nothing of merit in this ground. The respondent established that the appellant had used her photographs in both identities and in particular used the same photograph for her entry clearance application and screening interview in the asylum claim. The only logical inference is that she was the person who had supplied the photograph.

95. In my view the only grounds which assert that the decision contains public law errors are in Ground 7 which asserts that there was insufficient evidence for the respondent to be satisfied that the appellant exercised deception in her application for citizenship and Ground 9 which asserts that the respondent had insufficient regard to her deprivation policy at chapter 55.

96. I am not satisfied that the grounds establish that the respondent had acted in a way that no reasonable Secretary of State could have acted, nor that she had erred in law including by finding facts which were unsupported by the evidence or based on a view of the evidence which could not reasonably be held.

97. The threshold for irrationality is very high. It is manifest from the decision letter that the respondent had careful regard to the facts and the documentary evidence and statements made by the appellant in her applications. The respondent was clearly reasonably entitled to conclude from the evidence before her that the appellant was Memoona Rafique and that she had used a false identity and made up a sham asylum claim to obtain refugee status and then had failed to declare this on her application form.

98. The guidance in place at the time of the Secretary of State's grounds states at 55.7.3 that if the fraud, false representations or concealment of material fact did not have a bearing on the grant of citizenship it will not be appropriate to pursue deprivation action. 55.7.4 states that a person my use a different name if they wish "unless it conceals other information relevant to an assessment of their good character or immigration history, it is not material to the acquisition of indefinite leave to remain". In this case the respondent clearly had regard to her own policy guidance at paragraph 30 to 32 of the decision letter and I can find nothing to indicate that the policy was applied incorrectly. It was not just the appellant's use of a different name in her asylum claim, it was the whole basis of the claim that the respondent considered to be a fraud. This would inevitably lead to the respondent concluding that she had obtained her status by deception leading to her to obtain sufficient residence to meet the requirements for obtaining nationality. The respondent was lawfully entitled to decide that the chain of causation was made out and that further the appellant had failed to declare in her application for British nationality that she had used depiction in a previous application. The reference to Sleiman is entirely misguided. That case concerned a completely different factual matrix and secondly the respondent in that case did not rely explicitly in the failure

to be honest in the nationality application form as in this case. There was no material error in the judge finding that the condition precedent had been made out in these circumstances.

99. Finally, the respondent had her CID notes before her when making the decision, the CID notes were not fully disclosed in the bundle before the First-tier Tribunal and in any event, those notes disclosed relate to the respondent's observations during the decision-making process before coming to the final decision which demonstrate that if anything the respondent had proper regard to her own policies. This is not a public law error.

100. I am not satisfied therefore that the error by the judge in applying the incorrect test was material to the outcome of the appeal because the grounds do not disclose any public law errors made by the respondent that the judge failed to identify, and which would have led her to conclude that the respondent's decision was unlawful.

Ground 8 – Article 8 ECHR

101. This ground is very weak. I agree with Mr Clarke's submissions set out above at [72]. The Article 8 ECHR claim was poorly particularised in the original appeal skeleton argument apart from continuing to assert that she has no links to her biological family and was the victim of an abusive relationship (which was found not to be the case) it was said she had lived in the UK for 15 years and considers the UK to be her home. The appellant did not produce evidence in the appeal of what the foreseeable consequences would be. Since the respondent had concluded that the appellant had obtained her refugee status by deception it was reasonably open to the judge to find that it was proportionate to deprive her of citizenship. The argument that she would lose her protection from a claim which had been found to be false is nonsensical. The appellant had been found not to have been brought up in an orphanage or forced into an abusive marriage. The appellant had recently returned safely to Pakistan. She had made no further assertion in her appeal that she would be at risk in Pakistan. The judge took into account that she would have an opportunity to make a fresh human rights claim at [53]. The judge was clearly lawfully entitled to find that the deprivation of her citizenship was proportionate. This ground is not made out.

Notice of Decision

102. The appeal is dismissed. The decision of the First-tier Tribunal is upheld.

R J Owens

Judge of the Upper Tribunal

Immigration and Asylum Chamber

12 December 2023