



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003408

First-tier Tribunal No:
DC/00045/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 21 December 2023**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**QIA
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Attendance by the appellant in person
For the Respondent: Mr D Clarke, Home Office Presenting Officer

Heard at Field House on 9 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant, born on 23rd July 1977, is a citizen of Iraq. In October 2008, he was issued with a certificate of naturalisation as a British citizen and on 13th April 2021 notice was given under Section 40(5) of the British Nationality Act 1981 (“BNA 1981”), that the Secretary of State had decided to make an order under Section 43 of the BNA to deprive the appellant of his British citizenship.
2. The appellant appealed that decision and his decision was allowed at first instance by First-tier Tribunal Judge Morgan. At the outset of Judge Morgan’s decision, he stated it was not simply his role to review the Secretary of State’s decision and the judge proceeded to exercise his own independent judgment on the basis of the evidence available to him. On that basis, the Secretary of State’s appeal against the First-tier Tribunal’s decision was allowed and the decision of the First-tier Tribunal Judge was set aside on 23rd May 2023 owing to a material error of law.
3. The matter was considerably delayed because the appellant’s passport had been removed from him and he found himself to be stranded in the Netherlands unable to attend the error of law hearing and could not afford representation. Despite the Tribunal suggesting that he seek legal representation at no point was the appellant able to secure it. Following **R (Gjini) [2021] EWHC 1677 (Admin)** the appellant was ultimately provided with a passport in order that the appellant could attend in person and the matter could proceed. Although the Dutch authorities were contacted to request permission to take evidence from abroad, there was no response.

The deprivation decision

4. The Secretary of State’s decision letter identified the underlying legislative framework of Sections 40(2) (conducive to the public good to deprive) and 40(3) (acquisition of citizenship by means of fraud or false representation or the concealment of any material fact) of the British Nationality Act 1981 (BNA 1981). The decision also cited the Nationality Instructions Chapter 55 which confirmed that an innocent mistake would not give rise to power to deprive and that concealment of any material fact meant operative concealment such that it would have had a direct bearing on the decision to register or issue a certificate of naturalisation (55.4.2).
5. It was recorded that the appellant entered the United Kingdom in 2002 at the age of 25 years and claimed asylum on the basis of anti Iraq government activities with his identity as HHH born on 23rd July 1977. The deprivation decision recorded at [8] that the appellant’s ‘last country of origin’ was said by him to be Khannaqin/Khanakeen, Iraq (Annex A-SEF). On 7th October 2002, it was noted, his asylum claim was refused

because his political activity was too low level, but in a further letter he was informed on the same date that he had been granted four years of Exceptional Leave to Remain ('ELR'). His application for Indefinite Leave to Remain ('ILR') on 12th September 2006 gave the same name and dated of birth details and he signed a declaration of truth. It was also noted at [10] that the appellant, on 20th October 2002, applied for a travel document in which he declared his place of birth as Khannaqin and signed a declaration. On 8th October 2008 his application to naturalise was made again using the same details and giving his place of birth as Khannaqin. Paragraph 12 of the deprivation decision identified that as an adult the appellant declared that he had not been known by any other name, he confirmed his parents' details (born in Khannaqin) and ticked the box to state he was a person of good character and again signed a declaration that he was aware that it was an offence under the BNA 1981 to give false information and that citizenship may be withdrawn if it were found to have been obtained by fraud false representation or concealment of any material fact.

6. The Status Review Unit received a referral from Her Majesty's Passport Office on 9th May 2017, observing that the appellant had submitted first time passport applications in respect of his two children and supporting documentation which identified that his place of birth was in fact Kifri.
7. The deprivation letter stated at [14] that the false place of birth was material to his grant of ILR and subsequent British citizenship grant as Kifri was a government controlled area of Iraq. It was recorded that on 10th February 2020 the appellant confirmed that he was in fact QIA born on 10th July 1977 in Kifri, Diyala, Iraq and the reason he gave false details was that he was fleeing Iraq and was convinced that if he and his family were deported to Iraq their lives would be in danger. The reason he gave false information was his lack of sophistication in all legal matters [15]. He failed to rectify his false details because of his lack of understanding of the law in the UK. He supplied a family certificate dated 2015 showing Kifri as his place of birth, his marriage certificate giving his place of birth as Kifri and a deed poll dated 15th March 2015 changing his false name to his genuine identity [16]. It was also, however, noted that the appellant attached a statement of the same date still stating that he was born in Khannaqin and lived there until 2002 but his birth was registered in Kifri [15]. Submissions made by his legal representatives stated that his birthplace was only a matter of miles from his actual birthplace and his actual birthdate was only thirteen days different from that given in the application.
8. The appellant signed the declaration section of his ILR application stating that he was aware that it was an offence to make a false statement or representations known to be false [18]. He also signed the declaration section of his application to naturalise declaring that he was aware that to give false information knowingly or recklessly was a criminal offence. The decision added at [18] "It is noted that you only admitted the deception after you were issued with a Home Office investigation letter when the

allegation was put to you. Presumably you would not have revealed your true identity and place of birth if the deception had not been detected". The appellant had represented that Kifri and Khannaqin were both districts under Diyala governorate and 'you have lived all your life in Khannaqin.' In particular it was noted that Kifri was not under government control whilst Khannaqin was under government control ("GCI"). The decision apparently relied on the following statement at [18] 'Iraq map clearly showing Kifri and Khannaqin/Khnakeen as different areas (Annex R Page 11). It is noted that Kifri also borders Sulaymaniyah, which was not a government controlled area of Iraq. Your Iraq passport issued in 2015 states Al Sulaymaniyah (Annex R, Page 9) (sic). (I add for clarity from this passage it is clear that the map identified is from a document dated 2016).

9. The decision stated at [20] that under the Iraq policy guidance (no date given) claimants would need to have been from the GCI and refused ELR between April 1991 and 20th February 2003 and that Iraqis from the former KAZ could also potentially fall within the scope of the Rashid judgment if a policy on internal flights was not adhered to, however 'these cases would be where: A first decision had been made or held on appeal (at the date of appeal hearing)' (sic) between 23 October 2002 and 20 February 2003. You were granted 4 years ELR on 07 October 2002 therefore your claim did not fall within the scope of Rashid Judgment'(sic).

10. The decision then proceeded at [21]

'Iraq policy guidance map clearly shows that Kifri was not a government controlled area of Iraq, Khannaqin was (Annex S Page 9). It is apparent that you presented a false place of birth when you entered the UK and claimed asylum to benefit your claim.' Again, for clarity I note this in fact referred to the Iraq Policy Bulletin v3.0 issued on 1st August 2006.

11. The deprivation letter added at [22] that a 'report issued in 2015 (Norway) confirms that Iraq identify certificates/cards stated a person's place of birth, not place of issue.'

12. Further at [23] the decision noted:

"Section 8 of the Nationality Staff Instructions in use on the date of your naturalisation application deals with deception and dishonesty. It is apparent that would have been refused British citizenship under Section 8.1 and 8.2 had the nationality caseworker been aware that you had presented a false identity and place of birth to the Home Office and continued to do so identity (sic) throughout your immigration history in the UK". (Annex U).

13. The decision identified at [24] that Chapter 55.7.1 and 55.7.2 'confirm that deprivation is both appropriate and proportionate in your case' and 'you have intentionally deceived the Home Office and withheld the material fact that you presented yourself in a false identify and place of

birth when you arrived in the UK and continued to do so throughout your immigration history’.

14. The Secretary of State set out that the appellant had been dishonest in all his representations to the Home Office and had consistently given false details ‘in relation to his place of birth to benefit from the situation in the government controlled area of Iraq’ and that if the Home Office had known ‘that there was a concealment of material facts and in fact that you gave false representation in that your place of birth was Kifri Iraq and not Khannaqin which was a government controlled area you would not have qualified to remain in the UK and so therefore failed in your ability to meet the requirements for Indefinite Leave to Remain and naturalisation.’ [25].
15. At [26] it was concluded that the fraud was deliberate and material to the acquisition of British citizenship and despite taking into account the representations made by the applicant it was decided deprivation would be reasonable and proportionate.

The legal framework

16. Section 40 of the British Nationality Act 1981, so far as material, provides:

“40 Deprivation of citizenship.

- (1) In this section a reference to a person’s “ citizenship status ” is a reference to his status as—
 - (a) a British citizen,
 - (b) a British overseas territories citizen,
 - (c) a British Overseas citizen,
 - (d) a British National (Overseas),
 - (e) a British protected person, or
 - (f) a British subject.
- (2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.
- (3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—
 - (a) fraud,
 - (b) false representation, or

(c) concealment of a material fact.

...

(6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status 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.”

17. The Upper Tribunal decision in **Ciceri (deprivation of citizenship appeals: principles) Albania (Rev1) [2021] UKUT 238** and by extension the Supreme Court’s decision in **R (Begum) v Special Immigration Appeals Commission [2021] UKSC 7** set out the relevant law in this matter. The task of the judge should be akin to a review of the Secretary of State’s decision on public law grounds.

18. **R (Begum)** at [68] sets out as follows:

“68. As explained at paras 46-50, 54 and 66-67 above, appellate courts and tribunals cannot generally decide how a statutory discretion conferred upon the primary decision-maker ought to have been exercised, or exercise the discretion themselves, in the absence of any statutory provision authorising them to do so (such as existed, in relation to appeals under section 2 of the 1997 Act, under section 4(1) of the 1997 Act as originally enacted, and under sections 84-86 of the 2002 Act prior to their amendment in 2014: see paras 34 and 36 above). They are in general restricted to considering whether the decision-maker has acted in a way in which no reasonable decision-maker could have acted, or whether he has taken into account some irrelevant matter or has disregarded something to which he should have given weight, or has erred on a point of law: an issue which encompasses the consideration of factual questions, as appears, in the context of statutory appeals, from *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14. They must also determine for themselves the compatibility of the decision with the obligations of the decision-maker under the Human Rights Act, where such a question arises.” [my underlining].

19. At [71] of **R (Begum)** the Supreme Court clarified the obligations of the Tribunal when dealing with an appeal against a decision under Section 40(2) as follows:

“71. Nevertheless, SIAC has a number of important functions to perform on an appeal against a decision under section 40(2). First, it can assess whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight or has been guilty of some Appeal Number: UI- 2022-003408 5 procedural impropriety. In doing so, SIAC has to bear in mind the serious nature of a deprivation of citizenship, and the severity of the consequences which can flow from such a decision. Secondly, it can consider whether the Secretary of State has erred in law, including whether he has made findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held. Thirdly, it can determine whether the Secretary of State has complied with section 40(4), which provides that the Secretary of State may not make an order under section 40(2) ‘if he is satisfied that the order would make a person stateless. Fourthly, it can consider whether the Secretary of State has acted in breach of any other legal principles applicable to his decision, such as the obligation arising in appropriate cases under section 6 of the Human Rights Act. In carrying out those functions, SIAC may well have to consider relevant evidence. It has to bear in mind that some decisions may involve considerations which are not justiciable, and that due weight has to be given to the findings, evaluations and policies of the Secretary of State, as Lord Hoffmann explained in *Rehman* and Lord Bingham reiterated in *A*. In reviewing compliance with the Human Rights Act, it has to make its own independent assessment”,

20. Further, when considering the Secretary of State’s policy, [124] of **Begum** confirmed that the test to be applied by the Tribunal where a policy imparts such a discretion is also **Wednesbury** reasonableness as follows “The question how the policy applies to the facts of a particular case is generally treated as a matter for the authority, subject to the *Wednesbury* requirement of reasonableness”.
21. As confirmed in the headnote of **Ciceri** when considering the condition precedent under Section 43:

“Following *KV (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 2483, *Aziz v Secretary of State for the Home Department* [2018] EWCA Civ 1884, *Hysaj* (deprivation of citizenship: delay) [2020] UKUT 00128 (IAC), *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7 and *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769 the legal principles regarding appeals under section 40A of the British Nationality Act 1981 against decisions to deprive a person of British citizenship are as follows:

- (1) 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.
- (2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.

22. Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 (IAC) clarified as follows:

- (1) A Tribunal determining an appeal against a decision taken by the respondent under s40(2) or s40(3) of the British Nationality Act 1981 should consider the following questions:
 - (a) Did the Secretary of State materially err in law when she decided that the condition precedent in s40(2) or s40(3) of the British Nationality Act 1981 was satisfied? If so, the appeal falls to be allowed. If not,
 - (b) Did the Secretary of State materially err in law when she decided to exercise her discretion to deprive the appellant of British citizenship? If so, the appeal falls to be allowed. If not,
 - (c) Weighing the lawfully determined deprivation decision against the reasonably foreseeable consequences for the appellant, is the decision unlawful under s6 of the Human Rights Act 1998? If so, the appeal falls to be allowed on human rights grounds. If not, the appeal falls to be dismissed.
- (2) In considering questions (1)(a) and (b), the Tribunal must only consider evidence which was before the Secretary of State or which is otherwise relevant to establishing a pleaded error of law

in the decision under challenge. Insofar as Berdica [2022] UKUT 276 (IAC) suggests otherwise, it should not be followed.

- (3) In considering question (c), the Tribunal may consider evidence which was not before the Secretary of State but, in doing so, it may not revisit the conclusions it reached in respect of questions (1)(a) and (b).

The Hearing

23. The appellant attended in person. He had no representation because he said he could not afford it. He gave evidence via a Kurdish Sorani interpreter and confirmed that he could understand and communicate in the language. He had a friend assisting him. He explained that when he moved to this country, he was very scared and so changed his name and that reflected many people who came from Iraq because they were frightened to give their correct name when coming to this country.
24. Mr Clarke very fairly went through the evidence and the decision letter with the appellant and identified the use of fraud and his use of a false identity. It was stated in the decision that the appellant was not born in Khannaqin as claimed, and Mr Clarke referred to the Iraqi passport issued to the appellant in 2015. The decision letter stated that Kifri was not under Iraqi government control at the relevant and thus the appellant had merely attempted to boost his asylum claim. At [20] of the decision letter it was pointed out that exceptional leave to remain would have been refused if his place of origin was known at the time. The chapter 18 policy at [23] was identified and that required someone to be of good character when applying. At this point Mr Clarke recognised that the Chapter 18 policy in the bundle did not reflect [23] as stated in the decision letter. Mr Clarke also stated that he was not sure where [8.1] and [8.2] came from.
25. Mr Clarke alluded to [24] and [25] of the decision which referred to chapter 55 of the staff instructions which dealt with deprivation of British citizenship, specifically Section 55.7.1 and 55.7.2, which confirmed that deprivation was appropriate and proportionate in the appellant's case because he had intentionally deceived the Home Office and withheld material when presenting himself in a false identity and a false place of birth when he arrived in the UK and continued to do so. Mr Clarke submitted that the Secretary of State had made an informed decision and [25] was the key paragraph and set out the reasons why drawing it together the appellant had made false representations and this would have affected his ability to meet the citizenship criteria.
26. Mr Clarke submitted there were two ways in which the fraud was material:
- (1) in relation to the residence requirement; and
 - (2) in relation to good character.

27. Under cross-examination the appellant stated that when he left in 2002 nowhere in Iraq was safe. When asked why he did not move north to Kurdistan he stated that in their eyes people like him work for “mercenaries”. He was aware of the Arabisation policy but had done nothing and the appellant insisted that as he was a Kurd without property in Khannaqin he was not targeted. He asserted that he was living in Khannaqin when he left in 2002 and where he had always lived. He stated that sections of Kifri and Khannaqin were either under the government or under the control of freedom fighters and was disputed territory. He did agree that Kifri had not always been under government control and when questioned about the document’s identity the appellant confirmed that they suggested that he was born in Kifri, but in fact, he still maintained he was born in Khannaqin. He asserted the documents were registered in accordance with his father’s status, which had been registered in Kifri and Iraq was a complicated country and the practices could not be compared with those of the United Kingdom. When asked why the 1957 family document referred to a birth certificate from Kifri Hospital (although the wording is obscured by the stamp) he replied that he thought this may have been a mistake. The appellant also stated that when he completed the naturalisation form, he did not read it.
28. At the close of the appellant’s evidence, it was suggested that the person assisting the appellant wished to give evidence. Mr Clarke objected to the oral evidence of the person who had been supporting the appellant by the name of SN. He had sat through the oral evidence of the appellant and had not made known his desire to give evidence or submit a witness statement until the appellant had completed his evidence. Despite a court direction in relation to the submission of further evidence, at least fourteen days before the substantive hearing, the appellant had not produced a witness statement from this individual. When the proposed witness could not produce proof of his identity and Mr Clarke objected to the fact that his identity could not be checked at the hearing, I directed in the interests of justice and fairness that he should not be permitted to give evidence. In any event, it was not clear that it could add anything of relevance.
29. Mr Clarke submitted that when looking at the appellant’s 1957 family document dated 26th May 2015 it was produced by the Sulaymaniyah authorities and this suggested that the appellant was born in a district administered by the Kurdish authorities. The Republic of Iraq identification document dated 26th January 2014 showed a place of birth as “Kifri/Diyala” and a reference to Sulaymaniyah and that his passport issued in 2015 also referenced Sulaymaniyah.
30. In submissions Mr Clarke submitted that the appellant would have been aware of the policy of de-Arabisation and claimed accordingly. The appellant chose to maintain a fraud over a number of years and had ample opportunity to correct the record. I was invited to find that he was not credible. Mr Clarke did however accept that the appellant could not leave illegally from the government controlled area if he were in Khannaqin.

Once the appellant had secured four years ELR, he was then eligible for ILR and I was reminded of paragraph 322(2) of the Immigration Rules such that the appellant should normally be refused if fraudulent representations had been made. The appellant had lied in the applications and failed to disclose the correct information. The use of false identity was simply dishonest.

31. Mr Clarke nonetheless accepted that the policy in the Secretary of State's bundle was incorrect and where it stated 8.1 and 8.2 it would appear to be 9.1 and 9.2.
32. Further, looking at chapter 18 an appellant would not normally be found of good character if he had practised deceit with the Home Office.
33. Mr Clarke referred to the United States Institute of Peace report entitled Iraq's disputed territories: a view of the political horizon and implications for US policy, written by Sean Kane, first published in 2011 ('the Peace report'). This was submitted for the remaking hearing and admitted. The map in relation to Diyala, in which both Kifri and Khannaqin were located, showed that between 2003 and 2008 Sulaymaniyah above Diyala was run by the PUK. A dotted line (the green line on the map) separating Sulaymaniyah and Diyala was described on map 1 as the "2003 green line (approximate)". This was the border between Kurdistan and the government controlled area of Iraq. This line suggested that parts of Diyala were run by the authority in Sulaymaniyah, that is the Kurdish region. The dotted line showed Kifri in the Kurdistan region and Khannaqin below the dotted line and therefore run by the Iraqi authorities.
34. Map 3 in the Peace report again showed the 2003 green line (approximate) and showed by slanted lines districts and subdistricts claimed by the 2006 Draft Kurdistan Region Constitution. In other words, after the 2003 invasion of the USA and the UK the border of the Kurdish region was brought south. The de jure and the de facto lines were not the same and the de facto lines were moving.
35. Mr Clarke suggested however that the text of the Peace report identified that at all times Kifri between 1991 and when the appellant left in 2002, was under Kurdish control. Difficulties arose because some parts of the districts of Khannaqin were under Kurdish control but he submitted that Kifri was under Kurdish control from 1991 albeit that Khannaqin city was located only post 2003 in an area of Kurdish presence. The appellant would have known that he would be subject to 'Arabisation' in the government controlled area of Khannaqin and hence he maintained that he came from there.
36. Although Mr Clarke defended the decision, he appeared to accept that the writing and contents could have been improved.

Conclusions

37. In terms of Section 40(2) it is clear that the appellant gave a false name and date of birth at the outset of his application and it was on the basis of fraud that the Secretary of State proceeded. That is evident from the decision. The appellant accepts that he gave a false name and date of birth. He also made false declarations on his applications including that of naturalisation. Although the legislative provision is referenced, nowhere is it set out in the decision that the deprivation decision was taken on the basis of being conducive to the public good further to Section 40(3).
38. Turning to the exercise of discretion as identified above this however is also subject to public law considerations.
39. In a nutshell, when exercising discretion, I consider that the decision maker failed to give anxious scrutiny to the underlying documents which founded the appellant's ELR and ILR applications, applied policy guidance which was not in place at the time of his asylum application or at the time of the grant of his ELR, applied maps which postdated his departure from Iraq in order to fix where he lived/was born and failed to appreciate the very fluid boundaries in relation the contested areas. Further the Secretary of State apparently failed, despite assertions to the contrary at paragraph 27 of the decision letter that his representations had been taken into account did not engage with those representations. In sum, the Secretary of State took into account irrelevant matters and disregarded matters which should have been given weight and which I explain below, and as a result factual errors crept into the deprivation decision which also found public law errors.
40. The decision letter correctly identified the appellant gave a different name and a different date of birth, that being thirteen days later than his actual date of birth. However, there are various important factual errors in the decision. As acknowledged in the decision, the concealment of any fact meant "operative concealment". The decision stated that the appellant claimed his last country of origin was Khannaqin, Iraq (Annex A) and his last address was Hayy Al-A'amel in Musafir. The appellant gave his nationality as Iraqi, which was correct.
41. Much of the detail in his asylum claim was given in a separate handwritten statement by the appellant. He identified that he was Kurdish in his application. He also claimed that his return would infringe his Articles 2, 3, 5, 6 and 8 rights. He consistently stated in his asylum interview that he worked in a restaurant in Khannaqin until his departure and even identified the driving time from Khannaqin to Baghdad. There followed a refusal of his asylum claim on 7th October 2022 on the basis that his political activities on behalf of the Iraqi National Accord were at a very low level and there would be little interest by the authorities. His account however was not disputed and his credibility not challenged. On the very same date, on 7th October 2022, he was granted status of Exceptional Leave to Remain. It was stated that "It would be right, because of the particular circumstances of your case to grant you Exceptional Leave to Remain". The appellant did not appeal his asylum

claim refusal. Critically, this grant was not based on which particular area the applicant came from. Contrary to the deprivation decision at [24], I cannot locate in the documents where the appellant stated in his SEF and as asserted in the decision that on entry, he claimed he was born in Khannaqin. As stated at [8] of the decision and by contrast with the later factual statements in the decision, in his asylum claim and SEF, he presented Khannaqin as his last 'country of origin' that is where he last lived. That has not been challenged and indeed his credibility was not challenged on this point.

42. On 12th September 2006 the appellant made an application for ILR signing the declaration at the close of the form, again claiming his identity to be HHH and signed a declaration that he was aware it was an offence under the Immigration Act 1971 to make a false statement or representation.
43. However, the deprivation decision states that "It is noted that your false place of birth Khannaqin/Khanakeen was material to your grant of ILR and subsequently British citizenship as it was a government controlled area of Iraq". I cannot however locate anywhere on the ILR application form that the appellant declared that he was born in Khannaqin. The applicant had previously stated in his SEF on his asylum claim that his last address in his country of origin was "Khannaqin" and that he was Iraqi. Contrary to the decision letter at [14] he had not given his place birth as Khannaqin at this pivotal point. He was given Exceptional Leave to Remain on the basis I have described above and not on the basis that he was born in a particular place in Iraq. As Mr Clarke acknowledged, the "particular circumstances" were not identified.
44. The grants of ELR and ILR were not clear on what they were based other than his particular circumstances and made no reference to his place of birth being determinative. The decision rightly noted that when applying for naturalisation on 8th October 2008 he again gave false information as to his name and date of birth and in his naturalisation application he gave his place of birth as Khannaqin. However by this time he already had ELR and ILR not, according to the documentation in the bundle, on the basis that he was from Khannaqin as opposed to Kifri. This does not appear to be factored into the discretion considerations. There was no suggestion in the decision that the application for the travel document influenced the grant of ELR or ILR.
45. The Status Review Unit received a referral from HMPO on 9th May 2017 and when responding, the appellant in a letter dated 10th February 2020, requested that his details be amended to place of birth, Kifri, Diyala, Iraq and with his correct name and date of birth as 10th July 1977. Curiously, although he requested that his place of birth be amended to Kifri, he continued to confirm in the statement attached that in fact he was born in Khannaqin and lived his life there and in his passport his place of birth was Diyala and further Kifri and Khannaqin are both in the district of Diyala. He stated although he was born in Khannaqin his birth was registered in

Kifri. As Mr Clarke pointed out during the hearing, the identity card recorded the appellant's place of birth was Kifri, Diyala but the appellant again confirmed during the hearing and insisted that he "opened his eyes in Khannaqin", despite the registration in Kifri. I note this document was in fact produced on 26th May 2015, some 38 years after his birth. The appellant maintained throughout his evidence and despite being cross-examined closely on it that he was actually born in Khannaqin. I accept that this oral evidence at the hearing was not before the Secretary of State but the appellant was merely reiterating what he had submitted earlier to the Secretary of State in writing and notwithstanding the documentation cited by the Secretary of State such as marriage certificate, family certificate and birth certificate the appellant continued to maintain he was born in Khannaqin. The appellant also stated that his family had moved to Khannaqin before he was born. He still maintained that he was registered with the place of birth in Kifri because his father's civil status was in Kifri. Whatever I make of this evidence, the decision maker did not adequately consider at [22], that the appellant had throughout explained why his place of birth was listed as Kifri rather than Khannaqin and it is not apparent that the land info documents published many years after his birth in 2015 do confirm that a family certificate would show a place of birth, not registration.

46. The crucial point is that both Kifri and Khannaqin were in the disputed territories of Northern Iraq, which was according to the documentation before the Secretary of State was "Arabised during Baath Party rule in Iraq". In his statement of December 2020, the appellant asserted that Kifri and Khannaqin were part of the disputed territories and they were both administrative districts of Diyala and under the control of the Saddam Hussein regime and that during the invasion of 2003, the American Special Forces supported the Kurdish Peshmerga driving forces southwards to take control. The United States of America's invasion of Iraq took place on 20th March 2003 and the Iraq government collapsed within 3 weeks.
47. At [20] to [22] the decision identified that:

"20. Iraq policy guidance states that claimants would need to have been from the (GCI) and **refused ELR by the Secretary of State between April 1991 and 20 February 2003** (when the practice was to grant 4 years ELR to claimants from GCI). Iraqis from the former KAZ could also potentially fall within the scope of the Rashid judgment if a policy on internal flight was not adhered to. These cases would be where: A first decision had been made or held on appeal (at the date of appeal hearing), **between 23 October 2002 and 20 February 2003**. You were granted 4 years ELR on 07 October 2002 therefore your claim did not fall within the scope of Rashid Judgement (Annex S).

21. Iraq policy guidance map clearly shows that Kifri was not a government controlled area of Iraq, Khannaqin was (Annex S, Page 9). It is apparent that you presented a false place of birth

when you entered the UK and claimed asylum to benefit your asylum claim.

22. Iraq document report issued in 2015 (Norway) confirms that Iraq identity certificates/cards state a person's place of birth, not place of issue (Annex T, Page 15-18), it is noted that your 1957 family certificate states your place of birth as Kifri, Iraq, therefore confirming that you were born in Kifri, Iraq and not Khannaqin/Khanakeen as claimed throughout your immigration history in the UK."
48. First it was not clear which policy guidance the decision maker was referring to at [20] above when referring to "Iraq policy guidance". No date was given.
49. Secondly, at [20], the decision maker did not address the fact that even if the appellant were born in Kifri, and took no account of his declaration at the outset that he was last living and working in Khannaqin. According to the decision maker those from the former KAZ, could also have been within scope. The appellant's decision was only 13 days prior to the Secretary of State's own policy and indeed could have appealed although the appellant presumably did not because he was in fact granted ELR.
50. Thirdly, at [21] the Iraq policy guidance map referred to as Annex S and relied on, was a map locating which area Kifri and Khannaqin were located but dated from 2006, which postdated the appellant's asylum claim. The document at Annex S appeared to be from Iraq Policy Bulletin v3.0 Issued 1 August 2006. That does not identify the location of Kifri or Khannaqin at the relevant date. Indeed, it shows Kifri as being in the 'liberated' area of Iraqi Kurdistan which rather supports the appellant's claim at the time that both Kifri and Khannaqin were disputed territories.
51. Not only did the deprivation decision rely on Iraq Policy dated 1st August 2006 which was not policy at the time of the asylum, ELR or ILR decisions but even so and additionally it made no acknowledgement of 3.2 of the policy which stated that IND's policy from 1st October 2000 to 20 March 2003 (when all Iraqi decision making was suspended) was not to rely on such relocation. areas and suggests that there had been liberated from the Iraqi government.
52. The decision continued at [23]:

"23. Section 8 of the Nationality Staff Instructions in use on the date of your naturalisation application deals with deception and dishonesty. It is apparent that would have been refused British citizenship (sic) under Section 8.1 and 8.2 had the nationality caseworker been aware that you had presented a false identity and place of birth to the Home Office and continued to do so identity throughout your immigration history in the UK. (Annex U) (sic)."

53. At the hearing, Mr Clarke accepted that he did not know to which instructions the decision maker was referring to. It appeared the wrong document had been included in the bundle. It is not clear that the decision maker was applying relevant provisions in the decision.
54. The decision concluded that the appellant's application would have been refused had the caseworker been aware of his false identity and place of birth and at [25] stated:

"25. You have been dishonest in all your representations to the Home Office and have consistently given false details in relation to your place of birth to benefit from the situation in the government-controlled area of Iraq and gain immigration status. If the Home Office had known that there was a concealment of material facts and in fact and that you gave false representation in that your place of birth was Kifri, Iraq and not Khannaqin, Iraq which was a government controlled area, you would not have qualified to remain in the UK and so therefore failed in your ability to meet the requirements for Indefinite Leave to Remain and Naturalisation, therefore deprivation is both appropriate and proportionate. You perpetrated a deliberate fraud against the UK immigration system, your failure to declare your genuine place of birth was material to you gaining ELR, ILR and British Citizenship that you would not have met the requirements for if the truth was known" (sic).

The decision proceeded that under chapter 55 it was appropriate and proportionate to deprive the appellant of citizenship.

55. The deprivation decision at [25] stated 'you perpetrated a deliberate fraud against the UK immigration system, your failure to declare your genuine place of birth was material in you gaining ELR, ILR and British Citizenship that you would not have met the requirement for if the truth was known' (sic).
56. The decision was therefore predicated on the fact that the appellant had initially given his place of birth as Khannaqin when in fact his grants of ELR and ILR were based on the documents I have described above.
57. Even if that were not the case, the documentation provided to the Secretary of State shows that both Kifri and Khannaqin were in the contested areas and the border, I am not satisfied, was fixed at the relevant time. That fact is underlined by the documentation produced by Mr Clarke and I note that this was evidence produced post the decision when I am to consider the decision on judicial review principles. The decision itself referred to maps which postdated the appellant's departure from the relevant area and further to deprive the appellant of the Rashid policy on the basis that his claim was decided a matter of days before the Rashid policy took effect was irrational bearing in mind the other errors in

the decision. Crucially, it is not clear on what basis the appellant's ELR was made and his ILR stemmed from his ELR.

58. Mr Clarke suggested at all times Kifri, between 1991 and when the appellant left in 2002, was under Kurdish control. The difficulty highlighted by the submissions was the very fluid nature of the border pre 2003. The area was disputed territory between the Iraqi government and the Kurdish authorities and as Mr Clarke rightly identified, the border post 2003 was moving south. Technically de jure it appeared that Kifri was in the Kurdish region but as Mr Clarke very fairly pointed out the de facto and de jure borders varied. As the Peace report states even in 2011:

'Iraqi's Constitution is 'unhelpfully vague on both the current boundaries of the Kurdistan region and which areas outside it are under dispute. The official boundary of the Kurdistan region is the green line, the ceasefire line that the Iraqi Army unilaterally established after quelling the 1991 Kurdish uprising. The green line is captured in Article 55.A of Iraq's 2004 Transitional Administrative Law as "the territories that were administered by that government [the Kurdistan Regional Government, or KRG] on 19th March 2003 in the governorates of Dahuk, Erbil, Sulaymaniyah, Kirkuk, Diyala and Ninawa". This definition makes it clear that the KRG's administrative writ extends beyond the three governorates of Dahuk, Erbil and Sulaymaniyah, which are typically thought of comprising the Kurdistan region proper. Unfortunately, it does not identify which areas of Kirkuk, Diyala and Ninawa are included in this definition and no authoritative rendering of the green line exists.'

59. Some elements of the report were contradictory; for example, although stating that both the districts of Khannaqin and Kifri were split by the Green Line and the northern portion was administered by Sulaymaniyah since 1991 it also stated that after April 2003 the KRG took effective control of Khannaqin and Kifi districts in the north of Diyala. Clearly, either way, Kifri was on the very border of the thick dotted line and the de jure disputed territory. Even the green line was marked on the maps as 'approximate' and the post 2003 Kurdish push south was described as significant.
60. As I have identified above, the Iraq map relied on in the deprivation decision (Annex R) in fact dates from 2016 but what is stated in the report in which this map appears from the NGO Co-ordination Committee Governorate for Diyala for Iraq ('NCCI report') updated in 2016 is the following:

'Following the defeat of Iraq in the 1991 Gulf war uprisings broke out in the Shia governorates of southern Iraq and the Kurdish majority areas in the north. Kurdish forces managed to take most of the northern Kurdish majority areas. The uprisings were however violently crushed, which triggered an international response in form of a safe haven in northern Iraq, guaranteed by the US, Great-Britiain and France. From this safe haven the later Kurdistan Region of Iraq was formed, but the Kurdish

population living outside this area including the Kurds living around Kifri and Khanaqin was one more targeted by a forced relocation campaign.

During the 2003 invasion of Iraq American Special Forces supported Kurdish Peshmerga fighters in their drive southwards. Kurdish forces seized control over most of the disputed areas, including Kifri and Khanaqin. Many Arab settlers brought in during the Arabization campaign fled these areas, fearing bloodshed and combat while groups of Kurds and other minorities who had been forced to leave during the Arabization campaign returned. Arabe settlers who did stay in the disputed areas faced threats and discrimination, sometimes leading to forced eviction. Homes and lands occupied by Arabs who fled or were forced to leave were taken over by Kurdish families, often relatives of Peshmerga fighters’.

61. This evidence was before the Secretary of State and yet only relied on selectively for example reliance on the map to show the different map lines and location of Kifri and Khannaqin. This however dated from 2016 and the fact that Kifri bordered Sulaymaniyah which was not a government controlled area did not mean that Kifri was part of the KRG. Nor was it acknowledged that Diyala area was seemingly infused with conflict. This NCCI report nonetheless was consistent with the appellant’s claim that both Kifri and Khannaqin were both in Diyala a disputed territory between the Kurds and the Iraq government and it was after 2003 that Kurdish forces moved into Kifri and Khannaqin
62. I can understand that Mr Clarke was attempting to demonstrate from the Peace report that reliance on maps from 2006 and 2016 was in fact immaterial because the conclusion would not have been any different in accordance with judicial review principals, such as encapsulated under Section 16(3)(e) of the Tribunal, Courts and Enforcement Act 2007, however I cannot agree with that because of the lack of clarity over the borderline at the relevant time notwithstanding the split throughout the region of Diyala. The Peace report itself dates from 2011 and the maps in the Peace report indicated that the Kurdish border of Sulaymaniyah had moved south between 2003 and 2008, which was not surprising but that movement postdated the appellant’s arrival in the UK. The documents to my mind do not confirm the status of Kifri city even though Mr Clarke submitted that the southern part of the Kifri district only was under the government control authority. Additionally with reference to the green line Map 1 included a reference attached, which stated “All locations approximate and do not imply endorsement or acceptance”.
63. It was not in dispute that the appellant was a non-Arab Kurd. Further, the appellant has always maintained and been consistent that he worked in Khannaqin. In his SEF the appellant stated that he was born in Iraq and that his last place of residence in Iraq was Khannaqin. That was not challenged. He left Iraq in July 2002 and claimed asylum on 23rd August 2022. Thus, moreover, and even if Kifri were in the KRG, Mr Clarke did accept that if the appellant had lived in Khannaqin, the government controlled area, until his departure and the appellant would have been

eligible for ELR in the first place. The appellant could not have been subject to relocation to the Kurdish area because he had not lived there at the time. Rashid [2005] EWCA Civ 744 at [4], identified that had the appellant been living in a government controlled area he would not have been removed from the UK because the Kurdish region would not accept Kurds from other regions if they had not been previously living in the Kurdish region. From October 2000 the policy of relocation could not be advanced as a reason to refuse refugee status. It was the case that the Kurdish region was not admitting people who were not previously resident and further, if the appellant, Mr Clarke accepted, were residing in Khannaqin he would have been granted Exceptional Leave to Remain.

64. The relevant policy, The Operational Guidance Note Iraq, October 2002 (which did not have maps) was not used in the decision. This stated that:

‘Non-Arabs from government controlled Iraq

There are reports that since 2001 the Iraqi government has accelerated its ethnic cleansing campaign (Arabisation Programme) against the country's non-Arab citizens particularly in Iraq's main oil producing province, Kirkuk, and the other predominantly Kurdish districts of Khannaqin and Sinjar at the edge of government controlled Iraq near the KAZ. Security forces demand that a family change its ethnicity from "Kurdish" or "Turkoman" to "Arab". Non - Arabs are being evicted from the area and forced to move to the KAZ. According to the US Committee for Refugees, the majority of those displaced in this way remain in the KAZ where they have relatives or the support of persons sharing the same language and culture.

There is generally free travel for non-Arabs between government-controlled Iraq and the KAZ and the authorities there will, except in the case of high profile opponents of the Iraqi government, be both able and willing to provide adequate protection. The authorities in the KAZ have however made it clear that they would only re-admit to the territory they control those who can show that they were previously resident there. Internal flight for other Iraqis to the KAZ is not therefore a viable option.’

65. Mr Clarke submitted that even if there had not been the mistakes made the decision would have been the same. I am not so persuaded as the Immigration Rule paragraph 322(2) in force at the relevant date states that the grounds on which the application to vary leave to enter or remain should normally be refused was the making of false representations or the failure to disclose any material fact for the purposes of obtaining leave to enter or a previous variation of leave. The deprivation decision was correct that the appellant gave false details when he applied for naturalisation itself but as I have depicted, the changing landscape and borders of Iraq and the history of this claim is more complicated than acknowledged in the deprivation decision and to my mind relevant and fundamental facts and policy were not properly addressed when discretion was exercised.

66. From my observations, the decision letter was flawed on public law grounds in relation to the exercise of discretion and I therefore allow the appeal

Notice of Decision

QIA's appeal is allowed.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

19th December 2023