



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006006
First-tier Tribunal No:
DC/00011/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued
On the 19 July 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FARUQ ALI ABDULLAH
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Diwnycz, a Senior Home Office Presenting Officer.

For the Respondent: Mr Read of Counsel.

Heard at Phoenix House (Bradford) on 14 July 2023

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Munonyedi ('the Judge'), promulgated on 22 June 2022, following a hybrid hearing at Taylor House on 26 May 2022, which the Judge allowed Mr Abdullah's appeal against the notice of 4 March 2021 that the Secretary of State had made an order under section 40(3) British Nationality Act 1981 depriving him of his British citizenship.
2. At [6 - 12] the Judge writes:
 - 6 Mr Oyedepo, representative for the Respondent submitted that as the Appellant was conducting the hearing from overseas, the Tribunal needed confirmation that the Iraqi government had approved and given consent for the matter to proceed from Iraq. Furthermore, the Respondent wished to withdraw the decision.
 - 7 The Presidential Guidance Note on Taking Oral Evidence from Abroad dated 12 May 2022 offers guidance on how to take evidence from overseas.
 - 8 The decision of the Presidential Panel of the Upper Tribunal in Agbabiaka (evidence from abroad; Nare guidance)[2021]UKUT286(IAC) offers guidance. Namely, the obligation continues to rest upon the party proposing to adduce oral evidence from overseas by video or telephone link, to establish to the satisfaction of the First tier Tribunal (IAC) that there is no legal or diplomatic barrier to their doing so.

Case No: UI-2022-006006
First-tier Tribunal No: DC/00011/2022

9. An Appellant who is unrepresented and situated within the territory of another state and who wishes to speak in support of their appeal by video or telephone, rather than simply to observe the hearing of their appeal will need to establish to the satisfaction of the First Tier Tribunal that there is no legal or diplomatic barrier to their doing so. Any submissions they wish to advance may be made in writing.
 10. The Appellant was unable to demonstrate that there were no legal or diplomatic Barriers to him giving evidence from Iraq.
 11. As this Appellant was unable to demonstrate that there were no legal or diplomatic barriers to him giving evidence from Iraq, the Appellant needed to notify the Tribunal in writing of his intention to adduce oral evidence from overseas by video link from Iraq. Once the Tribunal has received the Appellant's written notification, the Tribunal will notify the Foreign, Commonwealth and Development Office who will make the necessary arrangements with the Iraqi government to ensure that there are no legal or diplomatic barriers to the Appellant giving evidence from Iraq.
 12. The decision was withdrawn by the Respondent.
3. The Secretary of State sought permission to appeal on the basis that the Judge had erred in law in allowing the appeal on the basis she believed that the decision had been withdrawn by the Secretary of State, which was incorrect, as the decision had not been withdrawn. The grounds assert the Presenting Officer's submissions were based on how the appellant could give evidence from abroad, he was still in Iraq, with no submissions being made about withdrawing the decision under appeal. The Grounds assert the Judge simply notes the decision under appeal is withdrawn at [12] without explanation or context and that the earlier reference to withdrawing the decision at [6] appears to be added to that paragraph as an afterthought, rather than being incorporated into the body of the text. The grounds assert that had the appeal been withdrawn there will have been no point in summarising the proceedings after [6] of the decision.
4. Permission to appeal was granted by another judge of the First-tier Tribunal who also extended time. The operative part of the grant being in the following terms:
1. The application is significantly out of time. The Judge's decision was promulgated on 28th June 2022, and so any application for permission to appeal ought to have been received by no later than 12th July. The application was not received until 21st November, and so is more than 4 months late. This is a very significant delay, for which a significant explanation is required. I find that the application does set out such an explanation, which is intimately connected to the substance of the challenge as set out below. In all of the circumstances, I find that the interests of justice require that time be extended.
 2. The appellant appealed against the respondent's decision to deprive him of his British Citizenship, on the basis that he had obtained it by deception. This decision was taken when he was outside of the UK, visiting Iraq, and his passport was suspended at the same time, meaning he was unable to return to the UK. As such, when the appeal came before the Judge on 26th May 2022, the appellant joined remotely over video-link from that country.
 3. The presenting officer quite properly raised concerns in relation to this arrangement, pursuant to the decision in Agbabiaka (evidence from abroad; Nare guidance) [2021] UKUT 00286 (IAC), and submitted that the hearing could not proceed without evidence that the Iraqi authorities had consented to the appellant giving evidence from their jurisdiction. The evidence presented with the application makes clear that the presenting officer understood that the appeal had been adjourned on this basis.
 4. However, the Judge then proceeded to promulgate a decision bringing the appeal to an end on the basis that the respondent had withdrawn her underlying decision. The challenge makes clear that no such indication as given, and indeed it is very hard to see why it would have been on the facts of the case as stated in the Judge's decision. It is the respondent's submission that the Judge has erred in law through mistakenly treating the decision as having been withdrawn, when no such indication

was given by the respondent at the hearing, or otherwise. It is suggested that the audio recording of the hearing be checked in order to confirm the same.

5. It is also said, and I accept, that the decision to treat the appeal as withdrawn is what lead to the lengthy delay in the application for permission to appeal being lodged. This is because withdrawn cases are routinely returned to caseworking units, and so the case was not brought to the attention of the 'Allowed Appeals Review Team' (AART) until much later, once the case-working team realised the mistake and referred it on to AART.
 6. I find that the grounds do disclose an arguable error of law in the Judge's decision, and that the interests of justice require both that time be extended, and that permission to appeal be granted.
5. A submission that the above respondent wished to challenge the decision to extend time at the outset of these proceedings was rejected. The judge granting permission gives adequate reasons for why time was extended, the proceedings are still ongoing, no application via a judicial review or otherwise to challenge the rationality of the decision was made despite the grant of permission to appeal being dated 30 December 2022. For the reasons stated below it was also wholly correct and appropriate to grant permission to appeal in the interests of justice.

Discussion and analysis

6. Case management directions given by the Upper Tribunal as part of the listing process included obtaining a recording of the hearing before the Judge to enable consideration to be given to what was actually said at the appeal. I have been able to listen to that recording and advised advocates at the start of the hearing of what that recording revealed.
7. At the outset of the hearing the Judge indicated she required the appellant, who appeared remotely online from Iraq, to clarify certain aspects of his case. After being asked a number of questions by the Judge the Home Office Presenting Officer indicated to the Judge she was not entitled to receive evidence from the appellant, by reference to a recent authority. There is discussion between the Judge and the Presenting Officer about the authority in question after which the Judge withdraws from the hearing room to look up the relevant authority and to consider the matter further. The Judge returned to the hearing room and at approximately 15 minutes 55 seconds into the hearing stated that the Home Office may have withdrawn the decision but wished to continue with the appeal. The Judge then goes on to discuss with the appellant the options that he has if he wishes to continue with the appeal, which are either to indicate he wishes to have a face-to-face appeal or whether he wishes the appeal to be determined on the papers in which case he will have to provide the documentary evidence he is seeking to rely upon. The Judge indicates, having considered the relevant authority which is referred to in the grounds seeking permission to appeal, that if the appellant wants a face-to-face hearing notice will have to be given to the appropriate government department to enable them to communicate with the authorities in Iraq to find out whether they have any objection to the appellant giving evidence from within their territory. There was an exchange with the appellant who indicated that if the Home Office returned his passport to him he could come to the UK and appear in person with the Judge indicating that was not possible and that the Home Office are not likely to return the passport to him unless his appeal succeeded.
8. There is nothing in the transcript of the hearing to show the Presenting Officer withdrew the decision under appeal at all. It is not clear what the Judge means when she refers to the Presenting Officer withdrawing the decision yet wishing to continue with the appeal, as it is the deprivation decision which is under appeal.

9. I find there is merit in the application for permission to appeal and grant of permission to appeal. Having considered the factual matrix of this case I find the Judge has made an error of law in finding the Secretary of State has withdrawn the decision under appeal which is the sole basis on which appears the Judge allowed the appeal. There is insufficient reasoning in the decision to establish why the Judge came to the conclusion that the decision had been withdrawn. I was not referred to anything by either advocate that would indicate a source other than the Presenting Officer for such a position. I therefore find the Judge materially erred in law.
10. I set the decision of the Judge aside. Other than the issue regarding the point concerning withdrawal the remaining statement the Judge made to the appellant is legally correct. As the appellant had not sought the advice of the appropriate authorities to give evidence from abroad, as at that stage was a litigant in person and may not have appreciated the need to do so, the appropriate way for Judge to have proceeded would have been to get the appellant to confirm the mode appearing required and then adjourned for the appropriate time to either allow necessary enquiries to be undertaken or, if the appellant wanted the appeal to be determined on the papers, for him to file such additional evidence as was needed.
11. In discussion with Mr Read as to disposal, as it appears appropriate to remit the appeal to the First -tier Tribunal to enable them to communicate with the above respondent to ascertain his view on mode of hearing, and for due process to take its course once a response is received, Mr Read indicated he had no instructions from the solicitors in Bradford instructing him on this point. I therefore consider it appropriate to remit the appeal to the First-tier Tribunal sitting at Bradford. If it is felt another venue is more appropriate the necessary applications for transfer can be made to the Resident Judge at Bradford IAC.

Notice of Decision

12. The Judge erred in law in a manner material to the decision to allow the appeal. I set the decision of the Judge aside. There are no preserved findings. The appeal shall be remitted to the First-tier Tribunal sitting at Bradford to be heard afresh by a judge other than Judge Munonyedi.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 July 2023