IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000640
First-tier Tribunal No:
DC/50314/2021
(LD/00188/2022)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

RABAR NAJMALDIN KHUDHUR
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Holmes, Counsel
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 19 October 2023

DECISION AND REASONS

1. The Appellant is a national of Iraq, date of birth 11 May 1984, who on 24 October 2002 claimed asylum. The Respondent refused his application in a decision dated 30 June 2004 and issued removal directions. His appeal was refused by an Immigration Adjudicator following a hearing on 16 September 2004.

2. On 3 October 2006 the Respondent wrote to the Appellant advising him that following the decision of Rashid the fact he stated he came from Kirkuk had led the Respondent to consider whether the Appellant should be granted indefinite leave to remain, but having considered the evidence such a decision had not been made in the Appellant's favour as the case did not fall within the scope of the decision.

3. On 14 December 2006 the Appellant wrote saying he wanted to bring a further asylum claim and he reiterated he came from Kirkuk, that there had been an unreasonable delay in considering his case and that he should have been granted exceptional leave to remain as he came from an area under Saddam Hussin's control. Significantly, he stated he did not come from the KAZ area and it was not possible for him to relocate there.

4. On 18 April 2007 he submitted a fresh asylum and human rights claim again stating he came from Kirkuk and that he could not return to Kirkuk and he would not be welcome in KAZ. The Respondent conceded the Appellant's claim fell into a Legacy cohort of cases and stated it would be considered in the fullness of time.

5. On 8 January 2009 the Appellant's representatives wrote to the Respondent and stated the Appellant was entitled to a grant of leave under the R(S) policy (R(S) [2007] EWCA Civ 546) as a person who had lost the benefit of a four-year country specific ELR policy unfairly as a result of a delay in deciding his case.

6. On 16 December 2009 the Appellant was granted indefinite leave to remain and was naturalised as a British citizen on 22 December 2010. When submitting his naturalisation form the Appellant repeated his personal details including the fact he was born in Kirkuk. He also repeated these details when seeking a duplicate certificate in September 2016.

7. On 13 November 2020 the Appellant applied to amend his certificate of naturalisation to match details on his Iraqi ID card. The details differed in that name, date of birth and place of birth were all different. The Respondent reviewed this application and served on him a notice of intention to consider deprivation of citizenship on the grounds of fraud. The Respondent subsequently made that decision on 30 November 2021 under section 40 of the British Nationality Act 1981.

8. The Appellant appealed this decision, and the appeal was listed before Judge of the First-tier Tribunal Hudson (hereinafter referred to as the FTTJ) on 9 January 2023 who subsequently dismissed the Appellant's appeal and upheld the order.

9. Permission to appeal was granted to the Appellant by First-tier Tribunal Judge Athwal on 9 March 2023 who found it was arguable there was an error in law because:

> "2. The grounds assert that the Judge erred in law by failing to properly take into account the R(S) policy and or failing to make findings of fact necessary to establish that the Respondent had met the burden of proof upon her; failed to take into account a material consideration-the inability of the Appellant's children to exercise their right of abode in the UK.
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> 3. The second ground raises an arguable error of law. It is arguable that the Judge failed to properly consider whether the deprivation of the

Appellant's citizenship had the 'reasonably foreseeable consequence' of maintaining the children's exclusion from the UK, dependent as they are on their father in order to exercise their own right of abode.

4. The first ground whilst weaker is also arguable. "

10. Mr Holmes adopted the grounds of appeal and reminded the Tribunal of the Appellant's immigration history before referring the Tribunal to a variety of documents which he argued were material to why the Appellant had been granted indefinite leave to remain. He stated the following:

a. On 3 October 2006 the Respondent wrote to the Appellant advising him that he had considered whether to grant him leave in light of the decision of Rashid and other cases but a decision had been reached that he was not entitled to leave.

b. The Respondent's own guidance on R(S) policy (page 422 of Respondent's original bundle) set out stage one (referred to by the FTTJ in paragraph [24] of her decision) meant the case worker should ask the following question, "Is the individual a national of a country where a policy to grant four years exceptional leave to enter or remain in the UK was in force at 1 January 2001. Mr Holmes submitted this did not distinguish where a person came from.

c. On or around 10 September 2009 a minute was recorded on the Appellant's Home Office file that "Consideration under the Sadqi judgement. Applicant arrived in the UK on 24 October 2002 and claimed asylum on the same day. Applicant was not interviewed until 16 June 2004 and was then refused on 30 June 2004. The delay was not a result of the applicant's own actions. A grant of ILR under the Sadiqi judgement is appropriate pending a clear PNC"

d. On 16 December 2009 the Respondent wrote to the Appellant revealing his appeal had been reconsidered against the policy of R(S) and that it was appropriate "to grant you ILR under the scope of R(S). This leave has been granted exceptionally outside the Immigration Rules. This means you are free to stay in this country permanently." This letter was signed by the "Legacy Team".

11. Mr Holmes therefore submitted there was nothing in the above which said why the Appellant had been granted leave and he argued that the place of birth was not material to the decision and consequently the FTTJ erred in paragraph [24] of her decision when she stated the Appellant fell at Stage 1 because there was no blanket policy to grant four years exceptional leave. The Respondent had to demonstrate what motivated the decision to grant leave and based on the documents outlined above there was nothing to support the Respondent's case that the Appellant's place of birth had any relevance to the granting of leave.

12. Mr Holmes further submitted that the FTTJ erred in her approach to article 8 ECHR. If the Appellant lost his British citizenship then given he was currently living in Iraq and no longer had any leave to remain in the United Kingdom his two British children would be unable to enter the United Kingdom given their parents would only have Iraqi nationality. This appeal was different to the normal article 8 grounds where the Appellant was in the United Kingdom. As he was not and both the Appellant, his wife and children were in Iraq there was a responsibility upon the FTTJ to consider the effect of taking away his citizenship would have on the Appellant's family.

13. A Rule 24 reply had been filed and Mr Tan adopted this document and submitted that in addition the documents set out above the FTTJ, and by implication, the Respondent would have had to have regard to paragraph 3.6 of the Iraqi Country Bulletin 1/2009 issued on 12 January 2009. This paragraph made clear, and was referred to by the FTTJ in her decision at paragraph [22], "although there was no country specific blanket ELR policy it was accepted practice that all asylum seekers who were accepted as being Iraqi nationals, but who were found not to be refugees, from April 1991 to 20 October 2000, would be granted 4 years' ELR arising from factors such as the severe penalties imposed on those who had left Iraq illegally. From 20 October 2000, in light of the improved conditions in KAZ, only claimants who were accepted to have come from GCI were granted 4 years' ELR. On 20 February 2003 this changed to 6 months' ELR in view of the uncertain situation surrounding Iraq, in particular the prospect of imminent military action against Iraq. On 20 March 2003 initial consideration of all Iraqi asylum applications was suspended following the commencement of military action in Iraq. Decision-making on Iraqi asylum claims resumed on 16 June 2003, since when all Iraqi asylum applications, regardless of where the claimant originated, have been considered on their individual merits."

14. Mr Tan submitted that the Respondent's own guidance on R(S) policy had to be read alongside this document as this was the guidance the Respondent operated at the time.

15. The Appellant had originally claimed asylum in October 2002 and could therefore not benefit from the practice in place prior to 20 October 2000, but would be subject to the guidance in place between 20 October 2000 and 19 February 2003 which only granted four years exceptional leave to claimants who were accepted to have come from the GCI. Given the Appellant had deceived the Respondent on this point (claiming to come from Kirkuk when in fact he came from Erbil which was not in the GCI) the FTTJ was entitled to conclude the Appellant did not satisfy Stage one of the policy and she was further entitled to find the Appellant had obtained his exceptional leave by deceit and that the Respondent had satisfied the burden placed on her. Mr Tan submitted that it was likely that leave had been granted because he had been here seven years and because he came from a GCI.

16. The FTTJ's findings of further deceit (false name and false date of birth) were open to her when considering the process used to obtain the Appellant's naturalisation.

17. As for article 8 ECHR, Mr Tan acknowledged that this was different from most cases, but importantly there was no evidence before the Tribunal that the family intended to settle in this country. The issue had arisen when the Appellant tried to amend his naturalisation certificate using the correct details on his Iraqi ID card which is what led to the Respondent taking the steps she had done. Mr Tan submitted there was no error in law.

18. In response Mr Holmes submitted the relevant and significant documents were those identified by him earlier and although there was a policy document the documents identified by him did not state this policy document had been the reason for granting exceptional leave. There was no evidence that exceptional leave had been given for the reason advanced by Mr Tan and any reference to dishonesty over his name or date of birth was not material. Mr Holmes submitted the FTTJ went beyond her duty by making findings when the issue was simply whether the decision reached was one open to the Respondent. As for article 8 ECHR Mr Holmes reiterated that the Appellant clearly intended to bring his family over as this was why he was sorting out his own documentation.

19. No anonymity direction was made.

DISCUSSION AND FINDINGS

20. Having heard detailed submission, I reserved my decision. For the reasons hereinafter given I am satisfied there is no error of law identified in the FTTJ's decision.

21. I am grateful to both representatives for taking me through both the Appellant's immigration history and the relevant policies and procedures that were in place at the relevant time.

22. The Appellant's immigration history has never been disputed. The Appellant accepts he gave false details about his place of birth when he applied for asylum and he failed to correct that falsity when either he or his representatives, on his behalf, made applications for leave or liaised with the Respondent over leave.

23. In giving permission to appeal Judge Athwal gave leave on both grounds but noted the R(S) ground was weaker.

24. Turning to the first ground, Mr Holmes submitted that the FTTJ erred over her approach to the R(S) policy document. Mr Holmes argued that nothing in the letters or minutes suggested that place of birth was a material factor in the Respondent's decision to grant leave. Mr Tan submitted the Respondent's decision to grant leave followed their own policy document which stated that any person who claimed to be Iraqi and had claimed

asylum between 20 October 2000 and 19 February 2003 (and had been refused) was entitled to four years exceptional leave to remain only if they came from the GCI. The previous policy which gave all failed asylum seekers from Iraq four years exceptional leave to remain did not apply to this Appellant because he only applied for asylum in October 2002.

25. In a detailed decision the FTTJ carefully set out the background and also cited the various documents and policies that existed at the time. I am asked to find that because the R(S) policy did not mention place of birth at the Stage One question and there was nothing endorsed in his minutes as to why he had been given leave save it followed the Sadqi judgement the FTTJ had erred in finding the Respondent had demonstrated on the balance of probabilities the material fact (the deception).

26. I am satisfied the FTTJ reached a finding open to her because it was always the Respondent's position that the Appellant had lied about his place of birth and their own guidance which would assist them to apply the policy made it clear that the Appellant would only be granted leave if he came from the GCI.

27. The Appellant lied about where he came from and the FTTJ was satisfied that any decision maker with the policy and guidance would not have granted him exceptional leave if he/she had known the Appellant came from Erbil or some other place outside the GCI. The FTTJ did not make her own finding on this issue but applied the guidance to the policy which is what she concluded the Respondent would have done. Armed with those documents and the acceptance the Appellant had lied the FTTJ was entitled to find the decision taken by the Respondent was one that was open to her.

28. Turning to the second ground of appeal it is important to remember that when considering article 8 ECHR in the context of a deprivation appeal the issue for the Judge is whether the decision to deprive the Appellant of his British citizenship breached the UK's limited obligations under Article 8 of the ECHR.

29. The FTTJ was aware that the Appellant's two children were both born in Kurdistan on 16 December 2015 and 22 March 2017. They have always lived in Kurdistan with their mother and the Appellant has himself been living in Kurdistan since either September 2020 or July 2017 depending on which statement is accepted as being correct. In considering article 8 ECHR the FTTJ acknowledged that the act of removing his citizenship had the potential effect of preventing him returning to the United Kingdom and in preventing him this would also prevent his children (and wife) accompanying him.

30. The FTTJ weighed up the information known about the Appellant and his family and concluded that it was not disproportionate to deprive him of his citizenship. Moreover, the FTTJ carried out a balancing exercise and took into account the following:

a. The Appellant has not lived in the United for a considerable period of time.

b. The Appellant is still an Iraqi citizen who chose to marry and have children with his wife in Kurdistan where they and their extended families live.

c. Neither the Appellant's wife nor his children have ever been to the United Kingdom.

d. As Iraqi citizens they all have access to public services.

e. If he loses his Brtish citizenship then he will lose his right to enter and remain in this country without restriction.

f. His two children are British and at the date of the previous hearing were aged 7 and 5 respectively. Neither had any understanding of their status as British citizens given their ages. Their home has always been in Erbil and their lives are settled with their parents and extended family.

31. Having considered all the above the FTTJ concluded that the deprivation action must be considered against the public interest in protecting the integrity of the immigration system. The FTTJ concluded it was therefore proportionate to deprive the Appellant of his citizenship.

32. Mr Holmes argued both the original decision and review approached this issue as if the Appellant and children were in this country. Whilst that may be the case the FTTJ clearly was aware the whole family was in Iraq and she approached the article 8 issue from that position.

33. Mr Holmes argued that the FTTJ erred by failing to have regard to the reasonably foreseeable consequences of the making of such an order. The FTTJ did assess the best interests of the children and had regard to section 55 BCIA 2009.

34. The FTTJ concluded for the reasons she gave that the children's best interest were to remain in Kurdistan where they had always lived.

35. I am satisfied that the FTTJ did consider the unusual matrix of these facts and in particular the Appellant was living in Iraq.

36. Balancing the issues, the FTTJ reached a conclusion that I am satisfied was open to her.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on points of law. I uphold the decision.

Deputy Judge of the Upper Tribunal Alis