IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000009

First-tier Tribunal No: DC/50317/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

14th February 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

LAMYA ALI BASMA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Bellara, of Counsel, instructed by Chambers Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 6 February 2024

DECISION AND REASONS

Introduction

1. The appellant is a British citizen who was registered as such on 20th January 2005. On 2nd December 2021 she was given notice under s.40(5) of the British Nationality Act 1981 that the respondent had decided to revoke her citizenship under s.40(3). Her appeal against the decision to deprive her of her citizenship was allowed by First-tier Tribunal Judge Rea after a hearing on 7th November 2022.

2. Permission to appeal was granted to the Secretary of State by Upper Tribunal Judge Macleman. A Panel of the Hon. Mr Justice Lavender and Upper Tribunal Judge Lindsley decided that the First-tier Tribunal had materially erred in law and set aside the decision and all of the findings. The reasons for this decision are set out at Annex A to this decision.

3. On 5th September 2023 and 26th October 2023 the appeal came before Upper Tribunal Panels pursuant to a transfer order to remake but unfortunately had to be adjourned.

4. The matter comes before me again pursuant to a transfer order to remake the appeal. It was agreed by the parties that there was no need to hear evidence as the statements set out the position of the appellant, and that the appeal would proceed by way of submissions only.

Evidence & Submissions – Remaking

5. The saliant facts of this case as put forward by the appellant in her statements are as follows. She is of Lebanese heritage but was born in Kabala in Sierra Leone on 26th January 1963. She moved from Sierra Leone to Lebanon in 1988 and lived there until 2004. The appellant says that her father was also born in Sierra Leone, on 16th March 1938, and thus was a British Protected Person by birth. Sierra Leone became independent in 1962. At the time of the appellant's father's birth the country of Lebanon did not exist as it only came into being as an independent state in 1943. The appellant's father registered/reregistered as a British Protected Person on 13th December 1996. The appellant also maintains that her paternal grandfather was also a British Protected Person born in Sierra Leone in 1894.

6. The appellant's position is that her father never held Lebanese citizenship and that she has never held Lebanese citizenship or Sierra Leonean citizenship. She states that she has only ever travelled on a British travel documents (a British Protected Person document issued in Beirut on 24th September 1999 and British Citizen passports issued in May 2005 and May 2015), and has never held a passport of either Lebanon or Sierra Leone. The appellant also says that she suffers from depression and PTSD as a result of living through wars in Sierra Leone and Lebanon, which she has documented with medical evidence from the Traumatic Stress Clinic of St Pancras Hospital where she receives treatment. She maintains she has not concealed anything from the respondent, and if any information she provided was not complete this is due to innocent mistake not deception. She also says that she feels unfairly treated as her sisters' (Leila Basma and Halla Basma) circumstances are the same as hers, and the respondent has not appealed the successful First-tier Tribunal appeal in Leila's case and decided to discontinue deprivation proceedings against Halla.

7. The appellant places reliance on a letter of 1st June 2023 in which the Home Office write to her sister, Mrs Hala Ali Basma (British citizen date of birth 29th October 1968) in which they state that following a letter of 3rd April 2023 when they wrote stating that they were considering depriving her of her British citizen due to fraud, false representation or concealment of a material fact, namely that she was entitled to be registered as a Lebanese citizen at the time she registered as a British citizen, but that it had been decided she would not be deprived because her case did not fall within the Secretary of State's policy.

8. The decision of the respondent dated 2nd December 2021 in relation to the appellant gives, in short summary, the following reasons for depriving the appellant of her citizenship. The primary factual basis is that the Lebanese Family Certificate dated 2004 shows that the appellant's father was registered as Lebanese under reference 1965/3749 (and was a child of a person who held Lebanese citizenship because he was born in the territory which later became Lebanon), and so she was entitled to Lebanese citizenship as a person born to a Lebanese father, and that her father did not become a British Protected Person until 1996. Further the appellant is married to a Lebanese citizen, Hassan Ahmad Chehade, and is now under his Family Certificate, dated 2017, and he is a Lebanese citizen and as a result of her marriage she is also entitled to register as a Lebanese citizen.

9. The appellant is therefore said by the respondent to have deliberately falsely claimed that she was a British Protected Person (BPP) by birth from her father as he was not a BPP at this time and only became one in 1996, and falsely claimed she had not failed to obtain a citizenship to which she was entitled, but had not obtained through inaction, because she could have accessed Lebanese citizenship through her relationship with her father and her husband. She had signed that she had read the guidance which made it clear that she was signing that she could not have obtained another citizenship as well as she did not currently hold one. It is considered that these deceptions were material to obtaining British citizenship and that they were carried out when she was an adult of 41 years and she also had signed that she understood that she could lose her citizenship if it were obtained by fraud. It is acknowledged that the Secretary of State has discretion to decide not to remove citizenship, but it was found that it was reasonable and proportionate to do so.

10. The respondent's position is that it would not be a breach of the appellant's human rights for her British citizenship to be removed because this decision would not necessarily entail her removal from the UK and to the extent that the appellant loses rights to vote etc. this is proportionate given her deception and lack of entitlement to that citizenship. It is not found to be necessary to consider whether the appellant will in fact be rendered stateless by the action of depriving her of her citizenship because this is only necessary where deprivation

happens conducive to the public good, and not where this is as a result of misrepresentation or fraud.

11. Mr Melvin relied upon oral submissions, the refusal letter set out above, the respondents' review dated 30th April 2022, and skeleton arguments dated 4th September 2023, 10th November 2023 and 2nd February 2024. In summary it is argued as follows.

12. Reliance is placed on Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 00115 that the respondent did not materially err in law when deciding the condition precedent question as the unchallenged evidence before the respondent was that the appellant's father was a Lebanese citizen as per his Lebanese family certificate and that she was entitled to Lebanese citizenship as he was such a citizen when she was born; that the evidence of the appellant's current family certificate showed that she was married to a Lebanese citizen and so was entitled to Lebanese citizenship through her husband under Article 5 of the Lebanese Citizenship Law, particularly as she was resident in Lebanon from 1988, and that she was thus entitled to Lebanese citizenship even though she did not actually hold that citizenship or have a Lebanese passport of identity documents.

13. It is argued that likewise the respondent did not err in law in the exercise of discretion to deprive the appellant. It is argued that the appellant's situation is different from that of her sister, Halla Basma, because her sister was evacuated from the Lebanon on 23rd July 2006 and granted leave to remain due to the Israel-Lebanon war. Her leave was only granted for a period, further leave was then refused by the respondent, and a First-tier Tribunal Judge dismissed the appeal against further leave to remain stating in 2008 that she could have taken up Lebanese nationality. Halla Basma then applied to register as a British citizen under s.4b of the British Nationality Act 1981 on 16th December 2009 and was granted citizenship on 4th June 2010. There was also a letter from the British Embassy dated 2005 pointing out that an application for citizenship for Halla Basma should fail because her father was Lebanese. Given the respondent was on prior notice of Halla Basma's entitlement to Lebanese citizenship it was not proportionate to pursue deprivation of that citizenship. In the skeleton argument of November 2023 it is submitted when the letter of 1st June 2023 in which it was decided not proceed with deprivation action against Halla Basma refers to a policy that is reference to the the guidance Deprivation of Citizenship Version 2, which has been updated on 2nd October 2023.

14. Mr Melvin argued that the failure of the Secretary of State to appeal the decision of the First-tier Tribunal allowing the appeal of the appellant's sister, Leila Basma, dated 30th November 2023 is not to be taken as an acceptance that the decision is correct as the appeal was not lodged due to an administrative issue and consideration is currently being given to lodging an out of time appeal.

15. It is further argued that the appellant has not provided any documents relating to her three brothers. The respondent cannot, for data protection reasons, disclose material about her brothers. It is argued this is also an indication, due to the lack of material, that the family were fully aware of their entitlement to Lebanese citizenship.

16. It is argued for the respondent that there were no reasonably foreseeable consequences of deprivation of citizenship which were notified to the respondent at the time of decision which made the decision a disproportionate breach of the appellant's Article 8 ECHR rights. Although there was evidence of her suffering from complex PTSD and low mood it was said that her family, children and grandchildren were assisting her with her everyday needs and there was no evidence that she was receiving any treatment for these conditions or that deprivation of citizenship was relevant to them.

17. It is argued for the appellant through the skeleton argument dated 30th January 2024 and oral submissions of Mr Bellara, in summary, as follows. It is argued that the burden is on the respondent and that public law errors are not limited to irrationality or procedural unfairness. It is argued that discretion should have been exercised not to deprive the appellant of her citizenship for the same reasons as deprivation action was not continued against Halla Basma and for the reasons Leila Basma was successful in her appeal. In particular reliance is placed on the GCID note obtained as a result of a subject access request by Halla Basma, and served and filed for this hearing, and in particular the fact that it was a factor that led to deprivation action being ceased against Halla Basma that she had declared her husband was Lebanese on the form applying for citizenship which "should have prompted further investigation prior to her grant of citizenship", and led to the conclusion, in accordance with the Deprivation of Citizenship guidance, which states that evidence previously available to the Home Office should not be used to pursue deprivation action as that would not be balanced or proportionate, not to proceed with deprivation. In relation to this appellant the respondent was told that the appellant's husband was Lebanese as this is set out in her application form B(OS) at section 6. It is argued as a result that the Secretary of State was therefore on notice at the time of grant that the appellant was entitled to apply for Lebanese citizenship due to her husband's citizenship, and as a result discretion should have been exercised in her favour not to deprive her of her citizenship as per her sister Halla Basma.

Conclusions – Remaking

18. 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.

19. The appellant has not challenged the evidence before the respondent at the time of decision in the form of a family certificate that her father, whilst born in Sierra Leone in 1938, had been a Lebanese citizen for more than ten years in December 2004. She also does not challenge that she was married to a Lebanese citizen at the time of her application, indeed she provides this information on form B(OS) when she applied for her British citizenship. The appellant does not challenge the fact, as asserted by the respondent, that she was entitled to Lebanese citizenship through both her father and husband under Lebanese citizenship laws. She does not challenge the fact that the guidance she signed she had read when applying for citizenship stated that when she signed she did not hold another citizenship this included that she was also unable to obtain another citizenship if she took the relevant action, and that she was signing she had given correct information and that if information was not correct she could face criminal penalties and her citizenship could be withdrawn if it were obtained by fraud or false representation. She does not challenge the contention that as someone entitled to Lebanese citizenship she would not have been entitled to register as a British citizen. She does not argue that she lacked capacity in some way that meant she did not understand her actions and should not be held legally responsible for her application. On this basis I find that the decision of the respondent finding that the appellant had committed a material deception when applying for citizenship, and thus that it was properly shown that it was obtained by fraud, is properly supported with evidence and not vitiated by any public law error.

20. The next question is whether the exercise of discretion to deprive the appellant of her citizenship, in accordance with the guidance on deprivation of citizenship, has been exercised without public law error. The contention by the appellant is that the action is unfair and unlawful because it is inconsistent with action which has either been ceased or was unsuccessful/ unchallenged against her sisters, Halla Basma and

Leila Basma, and in particular that their cases show that the respondent was in fact always aware of the appellant's entitlement to Lebanese citizenship and nevertheless gave her British citizenship.

21. There is a provision within the deprivation guidance which states at paragraph 55.7.10.2: "Evidence that was before the Secretary of State at the time of application but was disregarded or mishandled should not in general be used at a later stage to deprive of nationality. However, where it is in the public interest to deprive despite the presence of this factor, it will not prevent the deprivation." I find that the question for me to answer is whether the appellant's deprivation decision is made in accordance with the respondent's guidance on the exercise of discretion to make reasonable and balanced decisions, or not, and whether the exercise of discretion is more broadly vitiated by public law error. The respondent does not provide any reasons in the decision itself for not exercising discretion in the appellant's favour beyond stating that the appellant's representations in her letter of 16th November 2021 had been taken into account, as per paragraph 45 of the decision letter. This is not of itself a material error if there was nothing of substance that needed to be engaged with, so I must consider whether there was material evidence that the respondent needed to engage with for this appellant.

22. The appellant applied for her British citizenship on 13th August 2004 and was granted British citizenship on 20th January 2005. Halla Basma and Leila Basma applied for and obtained their citizenships later than the appellant. It is necessary to consider the reasoning and evidence in relation to these two later decisions to conclude whether the decisions that they should not be deprived of citizenship/had unlawfully be deprived of citizenship are of any relevance to the appellant's decision.

23. Halla Basma applied for British citizenship in 2009 and obtained it in 2010. From the GCID Case Record Sheet dated 1st June 2023 it is clear that at the time Halla Basma applied and was granted British citizenship there was a decision of the First-tier Tribunal dated 1st December 2008 stating she was entitled to Lebanese citizenship and a letter from the British Embassy in Lebanon dated 2005 (no precise date) that said she was entitled to Lebanese nationality. In the context of these documents, and in the context of the fact that Halla Basma had declared that her husband was Lebanese, I find that the Home Office concluded that it was aware of her entitlement to Lebanese citizenship at the time she was granted British citizenship, and it would not be reasonable to pursue deprivation proceedings against her not withstanding there being an element of fraud in her original application in declaring that her father was a BPP and not Lebanese.

24. Leila Basma, as set out at in the decision of the First-tier Tribunal Judge LU Chinweze at paragraphs 6 to 10 following a hearing dated 21st November 2023, applied for registration as a British citizen in August 2010; she was then initially refused in September 2010 as she was said

to be Lebanese by descent from her grandfather, but Leila Basma then responded stating that this was an error in her completing the application form, and her grandfather was not Lebanese as he was born before 1925 and thus before Lebanon existed and providing evidence of Halla Basma's grant of citizenship, which in turn led to a decision of the respondent granting her British citizenship in February 2010. In his conclusions Judge Chinweze found that the respondent erred in law in making the decision to deprive Leila Basma of her citizenship because, as per paragraph 52 of the decision: "The respondent has always been aware that the appellant is married to Lebanese national and did not have Lebanese nationality. The respondent was aware that this was another potential route to Lebanese citizenship as it is set out in degree no. 15. The appellant did not conceal this information from the respondent, nor did she apply for British citizenship on the basis that she was unable to obtain Lebanese citizenship through marriage." On this basis it is found that the decision of the respondent fell into public law error for failure to take into account relevant material and by failing to reason his decision sufficiently.

25. When this appellant applied to register as a British citizen, on form B(OS), which is in the respondent's bundle, in August 2004 she declared both her period of residence in Lebanon between 1988 and 2004 at section 8, and, at section 6, she declared her marriage to her husband and that he was a Lebanese citizen. I find that decision depriving the appellant of her citizenship errs in law for failure to engage with this information and as to why it did not alert the respondent at that time, as it is accepted it did with her sister Halla Basma in the GCID note, that she was entitled to Lebanese citizenship. I find that there needed to be an explanation as to why, applying the policy guidance of the respondent at 55.7.10.2, discretion was not exercised in the appellant's favour to discontinue deprivation action as being inconsistent with a reasonable and balanced decision on this point. This was also the material that troubled Judge LU Chinweze when allowing Leila Basma's appeal.

26. I therefore find that the respondent has materially erred in law in making an insufficiently reasoned decision following his own policy guidance in light of his own accepted understanding of Lebanese nationality law as set out in the GCID note relating to Halla Basma, which I therefore find makes the decision making irrational and unlawful due to a failure to consider relevant material in relation to the exercise of discretion.

27. As I have found that the appellant is entitled to succeed on the basis of her challenge to one of the condition precedents, namely the exercise of discretion, I do not need to consider whether the decision is proportionate under Article 8 ECHR.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. The Panel of The Hon. Mr Justice Lavender and Upper Tribunal Judge Lindsley set aside the decision of the First-tier Tribunal and all of the findings.

3. I remake the appeal by allowing the appeal on the basis that the decision of the respondent is flawed by public law error.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th February 2024

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The claimant is a British citizen who was registered as such on 20th January 2005. On 2nd December 2021 she was given notice under s.40(5) of the British Nationality Act 1981 that the Secretary of State had decided to revoke her citizenship under s.40(3). Her appeal against the decision to deprive her of her citizenship was allowed by First-tier Tribunal Judge Rea after a hearing on 7th November 2022.

2. Permission to appeal was granted to the Secretary of State by Upper Tribunal Judge Macleman on 14th February 2023 on the basis that it was arguable that the First-tier judge had erred in law in making his own decision rather than treating the condition precedent issue as open to challenge only on public law grounds; and further had arguably failed to consider the Secretary of State's guidance and had arguably misunderstood the decision of the Secretary of State and part of the evidence.

3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so to decide whether any such error was material and the decision should be set aside. The hearing took place with Mr Bellara appearing by video link but there were no problems of audibility or connectivity.

Submissions – Error of Law

4. In the grounds of appeal, skeleton argument and in oral submissions from Mr Whitwell it is submitted for the Secretary of State, in summary, as follows.

5. Firstly, it is argued, as set out in the decision of Muslija (deprivation; reasonably foreseeable consequences) [2022] UKUT 337, that the First-tier Tribunal should have 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 was 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 First-tier Tribunal ought to have considered was 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 ought to have been based solely on the evidence before the Secretary of State at the time of decision-making or evidence necessary to establish the pleaded error of law. Then, if the condition precedent under s.40(2) or s.40(3) had been found to be lawfully established and discretion lawfully exercised the First-tier Tribunal should have moved 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. Instead, it is argued, the First-tier Tribunal made its own findings on the issue of the condition precedent to deprivation contrary to these authorities.

6. This error, it is argued, is exemplified by the fact that there is repeated use of the phrase “I find” at paragraphs 5 and 9, and by the wording of the ultimate conclusion of the decision: “I am not satisfied that the Respondent has established the relevant condition precedent to the exercise of the discretion under section 40(3) of the British Nationality Act 1981”. It is also argued that new arguments, not before the Secretary of State at the time of decision-making, relating to the lack of clarity of the form were also considered at paragraph 5 of the decision. Attention was drawn to the fact that the claimant’s skeleton argument before the First-tier Tribunal set out older decisions (for instance BA (deprivation of citizenship: appeals) [2018] UKUT 85) which took an approach, now established to be erroneous, in which the First-tier Tribunal was guided to reach its own position on both whether the condition precedent was established and on the exercise of discretion.

7. Secondly, it is argued that the First-tier Tribunal made findings failing to consider material evidence and made findings unsupported by evidence. At paragraph 5 of the decision the First-tier Tribunal found that the claimant declared she was a BPP by birth because of a misunderstanding, when this was based on a speculative interpretation of definitions within the form and when there was no evidence put forward by the claimant to support this finding, and when contrary to the contention the claimant had no help completing the form she had the guidance booklet B(OS) and had signed that she had read and understood this guide on the registration application form.

8. Thirdly, it is argued that the First-tier Tribunal failed to understand evidence, failed to consider material matters and gave inadequate reasons. In the Secretary of State’s decision depriving the claimant of citizenship it is set out that she was not a BPP because she was in fact entitled to Lebanese citizenship through her father. The letter referred to in paragraph 6 of the decision of the First-tier Tribunal, from the Lebanese authorities, states that there is no ID card in the claimant’s father’s name, and not in the claimant’s name, contrary to what was found by the First-tier Tribunal. It is argued that it is not sufficiently reasoned by the First-tier Tribunal as to why the “family extract of civil status” document was given no weight when its contents were not

disputed and it was issued by the Lebanese authorities in the same way as the letter which was given some weight. No weight was given by the First-tier Tribunal to the issue of the claimant being entitled to Lebanese citizenship through her Lebanese husband when the Secretary of State had provided an extract of Lebanese Nationality Law and nothing was provided in rebuttal by the claimant and so, it is argued, this should have sufficed. It is also said that, as the application was considered at the Embassy in Beirut, checks were not carried out at the time by IND, a matter which was considered relevant in Ciceri, at paragraphs 34 to 35 of that decision, to the consideration of the reasonableness of the Secretary of State's decision-making.

9. In the Rule 24 response and in oral submissions made by Mr Bellara for the claimant it is argued, in summary, as follows. It is argued that the First-tier Tribunal rightly gives proper reasons why the Secretary of State has not established the condition precedent to remove the claimant's citizenship on the basis of fraud, finding that there was no evidence that the claimant had acted dishonestly in completing the application form. This is done by an examination of the registration application form and the documents before the Secretary of State. It is argued that proper reasons were given for not giving weight to the Secretary of State's documents relating to Lebanese nationality law, as they were not accompanied by an expert report, a source or translation. Whilst in the Rule 24 notice it is argued that the First-tier Tribunal did apply Begum, as it considered whether the Secretary of State had made findings of fact unsupported by any evidence or which were based on a view of the evidence which was not reasonably held, it was submitted by Mr Bellara that he left this issue to the Upper Tribunal to decide.

10. At the end of the hearing we indicated to the parties that we found that the First-tier Tribunal had erred in law but that we would set out our decision in writing. We informed the parties that no findings were preserved from the decision of the First-tier Tribunal due to the wrong approach having been taken to the appeal, as argued in the Secretary of State's first ground. Both parties favoured remittal to the First-tier Tribunal for remaking, but we informed them that we found that the extent of remaking was not so great as to warrant this, particularly as it was noted that the skeleton argument before the First-tier Tribunal had set out no arguments that the foreseeable consequences of deprivation of citizenship would amount to a breach of the ECHR. We appreciated that Mr Bellara submitted that it was likely that some argument, and possibly evidence, on this basis might be put forward at the remaking hearing, but we found nevertheless that the extent of remaking made the Upper Tribunal the appropriate forum for remaking.

Conclusions – Error of Law

11. We find that there is no direction by the First-tier Tribunal that Begum and Ciceri should be followed, or that the task before the First-tier Tribunal was to determine whether the Secretary of State, in making her

decision to deprive the claimant of her citizenship, had made findings of fact which were unsupported by any evidence, or which were irrational or otherwise susceptible to any other public law challenge. We also find that this was not the approach the First-tier Tribunal took either, but rather the Tribunal considered whether it found itself that the condition precedent for discretion under s.40(3) had been met, and decided that it had not been, giving its own reasoning based on the evidence before the First-tier Tribunal, which was not clearly confined to that which was before the Secretary of State.

12. The decision of the First-tier Tribunal commences at paragraph 3 of the decision on the basis that: "I am not satisfied that the Respondent has established the relevant condition precedent specified in section 40(3) of the British Nationality Act 1981 for the exercise of discretion to revoke British citizenship and I therefore allow the appeal. I have reached this conclusion for the following reasons." This approach is confirmed in the final paragraph of the decision at paragraph 12. Throughout the decision, for instance at paragraphs 5, 9, 10 and 11 of the decision, the First-tier Tribunal states "I find", thus clearly indicating that the First-tier Tribunal Judge was, contrary to the correct legal approach, making his own findings on the issue of whether the condition precedent for deprivation of citizenship was met.

13. In these circumstances we find that the decision and all of the findings must be set aside and the appeal must be remade afresh applying the approach summarised in Chimi. There is no need to examine the other contended errors in these circumstances.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. We set aside the decision of the First-tier Tribunal and all of the findings.

3. We adjourn the remaking of the appeal.

Directions:

1. Any documentation relevant to remaking on which either party wishes to rely (bearing in mind what is said as to the limitation of relevant evidence on the issue of the condition precedent and the exercise of discretion to deprive at (2) of the headnote in Chimi, and with respect to any human rights arguments at (3) of the headnote in Chimi) must be filed with the Upper Tribunal and served on the other party 10 days prior to the remaking hearing date.
2. If an interpreter is required the claimant's solicitors must request one promptly on receipt of the notice of hearing.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5th June 2023