IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001501

First-tier Tribunal No: DC/50099/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 22nd of October 2024

Before

UPPER TRIBUNAL JUDGE KEITH

Between

Naser Ahmed Hamedamen

(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr B Hawkin, Counsel, instructed by AVA Solicitors
For the Respondent: Ms S Cunha, Senior Home Officer Presenting Officer

Heard at Birmingham Civil Justice Centre on 24th September 2024

DECISION AND REASONS

1. These written reasons reflect the full oral reasons which I gave to the parties at the end of the hearing.

2. The appellant appeals against the decision of Judge Parkes of the First-tier Tribunal, who, in a decision promulgated on 2nd March 2023, dismissed the appellant's appeal against the respondent's decision dated 2nd March 2022 to deprive him of his British citizenship, on the basis that he had obtained that citizenship fraudulently.

Background

3. It is common ground that the appellant is an Iraqi national of Kurish ethnic origin, who was born in Pishar, Sulaymaniah, in what is now referred to as Iraqi Kurdistan Region ('IKR') of Iraq. He had claimed to have been born in Kirkuk, in

what was then the 'Government Controlled Iraq' (or 'GCI'), then under the authority of the regime of Saddam Hussein. He claimed and was later recognised as a refugee in the UK, granted indefinite leave to remain and naturalised as a British citizen. He used his correct name, but the wrong place of birth and what appears to be an incorrect date of birth. He explained this first, on the basis that he was, at the relevant time, unaware of his true place and date of birth, having lived for almost the entirety of his life in Kirkuk. Alternatively, he stated that:

> "Once I arrived here in the UK in the early of 2000, Iraq and Kurdistan zone were in the worst situation, war, world sanction on Iraq, no employment which caused hundreds of thousands to flee and migrate its almost 20 years after the new form of Iraq the political landscape's tense, divided and increasingly dysfunctional which have led the Iraqi people continue to leave the country and do anything saying anything in order to not to go back I just gave a same as most asylum seekers given did not supplied precise information however I was not sure.
>
> Therefore, in order to protect myself from being deported as I had risked my life and spent all my family fortune to get to a safe place like here, I just feared the deportation however as I stated I grew up in Kirkuk so believed to describe myself as a person come from Kirkuk but using other wrong details was to cover myself from deportation. Most asylum applicants were in the same position as fear of deportation or returning to the war zone that was a nightmare no one ever wished to dream of."

4. In her decision, the respondent said that:

> "26. It is considered that you entered the UK and claimed asylum using false details regarding the area of Iraq you were born and lived. You deceived the Home Office by failing to declare your genuine identity and personal details so that you would gain ILR in the United Kingdom on the basis that you were from a GCI Area of Iraq and benefited from Asylum Policy at that time.
>
> 27. Your asylum application was successful on 6 February 2002 and you were granted ILR.
>
> 28. If the case worker at the time knew that your were not from a GCI Area of Iraq it is highly likely your asylum application would have been refused and you would not have received ILR.
>
> 29. On this basis you would not have met the requirement to apply for Naturalisation."

The Judge's decision

5. The first issue which the Judge identified with was whether the respondent was entitled to conclude that the condition precedent in Section 40(3) of the British Nationality Act 1981 was satisfied. He directed himself to the well-known principles of Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238 (IAC). The Judge also identified that the issue was not the appellant's date of birth but his place of birth. The Judge recited the evidence, in particular the appellant's application form and witness statements. The entirety of the reasoning in the judgment was:

> "14. If the Appellant had not known his place and actual date of birth then he could not be said to have used deception in his dealings with immigration officials at the various times of their contacts. The Appellant's acceptance of his using deception makes no sense in that regard. In his accounts and earlier statements he maintained that he had refused to register as Arab as he was not willing to renounce his Kurdish ethnicity. That would imply that it was of great importance to him and that would have come from his family's attitude to the issue.
>
> 15. I do not believe that the Appellant would not have been told of his place of birth by his parents. As a Kurdish family in the hostile environment he describes and the importance of his ethnicity and culture to him his background would have been central and his place of birth, while living elsewhere, would have been relevant to the sense of identity created.
>
> 16. Having regard to the circumstances that the Appellant had described and the sense of identity that he made clear was so important I am satisfied that the Respondent was entitled to find that the Appellant knew that he had not been born in Kirkuk and that his saying so was a deliberate deception. In short the condition precedent for the exercise of the discretion by the Secretary of State was present and the Secretary of State did not err in the approach taken.
>
> 17. It was accepted that this was a narrow issue but having regard to the evidence presented I am satisfied that the evidence shows that the Appellant had used deception in the applications he made with regard to his personal background.
>
> 18. At present there is no proposal to remove the Appellant and he will remain in the UK with his family. The decision does not itself undermine the position of his wife and children although it may affect the Appellant's ability to provide for them. This is not a forward looking exercise as further proceedings may follow and different information will be available that will inform any decisions that follow from the Respondent decides to do next. In the circumstances it cannot be said that the decision to deprive the Appellant of British Citizenship is disproportionate."

The grounds of appeal

6. The appellant challenges the findings on the basis that first, the Judge's view that the appellant's family would have told him of his place of birth was speculative when it was not put to the appellant in cross-examination and this conflated his place of birth with his Kurdish ethnic identity. It also did not take into account good reasons why his family would not have told him of his place of birth, in order to protect him. The conclusion that the appellant deliberately used deception was procedurally and substantively unfair.

7. Second, the Judge did not explain how, even if any deception was deliberate, the deception was material to the grant of asylum and indefinite leave to remain.

8. Third, the appellant confirmed in his oral evidence that the account he gave in his asylum interview of 5th February 2002 of being arrested, ill-treated, and detained by the Iraqi security forces was true. That was the basis on which he

was granted asylum and if true, showed that any deliberate deception was not material.

9. Fourth, the judge had failed to consider that the respondent had put no substantive evidence before the court, whether of minutes or a contemporaneous policy or the situation on removals to the IKR, to demonstrate how her decisions in the appellant's case would have been any different had she been aware that the appellant was born in the IKR and how therefore any deliberate deception was material.

10. Permission was granted on all grounds on 28th April 2023.

The hearing before me

11. At the hearing, I first established, without criticism of the representatives that there was not an additional skeleton argument for the appellant and no Rule 24 reply by the respondent. Instead the representatives addressed me briefly and I do no more than summarise what they have said to me. In particular, Mr Hawkin on behalf of the appellant accepted that ground one was one distinct element whereas grounds two to four related to parts of the case that had clearly been before the Judge but with which he had not engaged. I raised with the representatives the well-known authority of TUI UK Ltd v Griffiths [2023] UKSC 48 , a decision of the Supreme Court, in particular the passage at §70:

> "(i) The general rule in civil cases, as stated in *Phipson,* is that a party is required to challenge by way of cross-examination the evidence of any witness of an opposing party on a material point. That extends to witnesses as to fact and expert witnesses, in simple terms to ensure a trial is fair."

I do not recite the remainder of the propositions but suffice it to say that there are also circumstances in which the rule may not apply.

The appellant's submissions

12. Whilst Mr Hawkin did not have notes of the hearing which he could show to me, he appeared below and I accept his submission as Counsel with a duty not to mislead me, that the question of what the appellant's parents would or would not have told him about his place of birth had never been put in cross-examination. In relation to grounds two to four, what he relied upon in particular was the appellant's response to the review documentation which made clear that the issue of causation and how any alleged deception was said to be material, causative or relevant, was in issue. In particular, in the appellant's response to the respondent's review it was stated:

> "It is the appellant's response that his grant of indefinite leave to remain was not on the basis on him being born in Kirkuk but rather living and fleeing Kirkuk, and therefore his asylum claim protection has been granted rightfully and that the appellant has not deceived the respondent in any way. Whether someone was born in Kirkuk or born outside Kirkuk should have no bearing on the home office granting them protection, but for the fact that the person lived and fled Kirkuk, the government-controlled Iraq. The appellant considers himself a Kirkuk resident as he spent all his childhood and young years in Kirkuk. He was only an infant when his parents moved back to Kirkuk, and he has no memories of Pishdar."

The Judge's reasoning, which I have already outlined and do not propose recite, did not engage with the question of causation or materiality at all and therefore grounds two to four were also indicative of an error of law.

The respondent's response

13. In response, simply put, Ms Cunha says that the appellant's case has shifted substantially and crucially from the evidence that was before the original decision maker. She was not in a position to challenge any suggestion of a lack of cross-examination on the issue of what the appellant had or had not been told but as §48 of the refusal decision made clear, the respondent had not accepted the appellant's claim to have been unaware of his place of birth and that had always been the respondent's position and the appellant was clearly on notice of the point. In particular, as part of the staged decision letters there was the June 2021 letter, a response to it, a second letter and a response to that, the second letter being 10th August 2021, and the responses being at pages H2 and O3. In none of these was it ever suggested that the appellant was unaware of his true place of birth until 2011. That was raised in simple terms for the first time at the hearing and any lack of cross-examination had to be seen in that context.

14. In relation to any questions of the causation, whether even if the statement was dishonest, it was immaterial to the grant of asylum and any relevant policy, I had to bear in mind that none of that had been argued before the original decision maker. All of this was relevant because of the well-known authority of Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 00115 (IAC), which I come on to discuss later in my reasons but the gist of which is that the Judge 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 in relation to the condition precedent. Even if it were proper to have considered all of the evidence, Ms Cunha says that none of that would have been material and ultimately that the Judge would have been bound to have reached the same decision. The authority for that proposition and the limits on the so-called 'Sleiman' principle was considered in Onuzi (good character requirement: Sleiman considered) [2024] UKUT 00144 (IAC). In simple terms, any chain of causation being broken was likely to be relevant in cases where there had been full disclosure, and the Secretary of State had nevertheless exercised a discretion to grant leave to remain or naturalisation. Where questions around good character had been dishonestly concealed, whether the fact of negative behaviour might not be directly relevant to an earlier grant of leave was unlikely to make a material difference.

15. Ms Cunha briefly touched upon the question of the application of TUI, with a need for greater flexibility in circumstances different from a negligence claim. In immigration cases, there was often a greater degree of procedural flexibility for all parties.

Discussion and conclusions

16. I turn to grounds two to four first and then ground one, as I found that a more challenging one.

Grounds two to four

17. I accept that the question of the respondent's historic policy on grants of leave from those born in the IKR and the materiality of any conduct in relation to a

deprivation decision were not issues that had been specifically raised in the two witness statements to which I have been referred, in response to the two first stage letters of 10th June and 10th August 2021. However, they were undoubtedly raised in terms in the appellant's response before the Judge. How then should the Judge have responded to those issues, and was it sufficient to say that because they had not been raised before the primary decision maker the Judge could not have considered them? The answer is found in Chimi. As headnote (2) and §75 of that case confirms, a Tribunal must only consider evidence which was before the Secretary of State, or which is otherwise relevant in establishing a pleaded error of law in the decision under challenge. When that proposition is considered carefully, the Judge's error on these grounds becomes apparent. State. Evidence that the appellant was only aware of his true place of birth when he got married 2011 was not before the respondent. However, evidence which must have been before the respondent was her own policies. Those policies were the framework for the decisions to grant asylum, in the context of any returns to the IKR. To that extent, the decisions to grant the appellant asylum, ILR and later British citizenship are all based on that policy. That must have been evidence that was before the respondent, as otherwise, the respondent would be ignoring and would not have considered her own policy. In that context, the question of the basis of the grant of protection, raised in the appellant's response, related to policy evidence which was before the respondent at the time of her decision. Similarly, it was raised before the Judge and is not engaged with, crucially when considering the respondent's conclusion on the existence of the condition precedent and any question of discretion.

18. A second aspect of Chimi is what is relevant to establishing a pleaded error of law. The question here was what was the pleaded error of law. The error of law set out in the appellant's response to the respondent's review is of causation, or what is termed the 'Sleiman' issue. The appellant argues that he was granted asylum on the basis of where he lived and not on the basis of where he was born and therefore the Sleiman issue is in play. That is undoubtedly a question of a pleaded error of law in the decision under challenge. It is distinct from additional evidence, which well not have been before the original decision maker, namely when precisely the appellant claimed to have learnt of his true place of birth.

19. The Judge did not consider the application of the respondent's policy and the issue of causation. On that basis, grounds two to four disclose errors of law. What the Judge did was to conclude that the respondent's conclusion that there had been deliberate deception was made out and that was, in the context of proportionality, an end to the matter. He did not engage with the remaining issues of causation or policy.

20. In considering the question of materiality, I considered Onuzi and the question of good character. What Ms Cunha has sought to argue is that even if there are errors, they would have made no difference and that is because of the limitations on Sleiman. However, on the question of materiality the test under ASO (Iraq) v SSHD [2023] EWCA Civ 1282 is whether any court would have been bound to have reached the same decision. Headnote (3) of Onuzi makes clear that whether negative behaviour may or may not have been directly relevant to an earlier grant of leave was unlikely to make any material difference to an assessment, under section 40(3) of the 1981 Act, but that is not the same thing as a Tribunal being bound to have reached the same decision. It may well be on re-making that a Tribunal does reach precisely the same decision, namely through an assessment of causation, nevertheless the discretion was one that the

respondent was unarguably entitled to exercise and reach, but I cannot be satisfied in this case that a Tribunal would have been bound to have reached that decision, notwithstanding the limits on Sleiman as a result of Onuzi. As a consequence, the errors in relation to grounds two to four are material.

Ground one

21. I turn then to ground one, which I found more challenging to discern an error of law. On the one hand, I accept that the appellant was not specifically asked about what his parents would have told him about his place of birth. I am acutely aware, as per TUI, of the general proposition that a witness should be cross-examined, if their evidence is contradicted, but as the Court made clear, there is an element of flexibility. I am also aware, as Ms Cunha urged me to consider, that the respondent's decision had made clear that it did not accept that the appellant had been truthful when he claimed not to have known of his place of birth. This is aside from any issue or an assessment of when he claimed to have learnt of this and in what circumstances, because, as I repeat, that was not evidence before the original decision maker. However, I am satisfied that the Judge's conclusion went beyond a mere assessment of whether he accepted the respondent's challenge and went on to make specific findings as to what the appellant would have been told by his parents. I am very conscious of not "island hopping" between passages of evidence, as counselled against by the Court of Appeal in Volpi v Volpi [2021] EWCA Civ 464, but where there is a specific finding as to what the appellant would have been told by his parents and that was not something on which he was cross-examined, I am satisfied that notwithstanding procedural flexibility in immigration cases, this amounted to a procedurally unfair aspect of the hearing, such that that finding is not safe and cannot stand.

Disposal of the appeal

22. I canvassed with the representatives how the underlying appeal should be resolved. Ms Cunha points to the substantial period of time since the original decision and the narrow issues, and so sought for remaking to be retained in the Upper Tribunal, while Mr Hawkin points out that one of my conclusions was that there had been a procedural error. I am satisfied that the procedural error (ground one) had the effect of depriving the appellant of a fair hearing. That is an exception to the general principle of retaining remaking in the Upper Tribunal, as per §7.2(a) of the Senior President's Practice Statement. I also bear in mind that although the scope of the necessary findings is likely to be limited, there are no preserved findings. This is a further reason for remitting remaking to the First-tier Tribunal.

23. I therefore remit remaking back to the First-tier Tribunal in Birmingham, to a judge other than Judge Parkes.

Notice of decision

24. **The decision of Judge Parkes contains errors of law, such that it is not safe and cannot stand. I set it aside without preserved findings.**

25. **I direct that remaking of the appeal is remitted back to the First-tier Tribunal in Birmingham, to be decided by a judge other than Judge Parkes.**

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17th October 2024