



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002359

First-tier Tribunal No: DC/50110/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

21st February 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MD KAREEM AHMAD
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr C Holmes of Counsel, instructed by Parkview Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 19 February 2024

DECISION AND REASONS

1. By the decision of the Upper Tribunal (Judge Macleman) issued on 2.1.24, the appellant, an Iraqi national of Kurdish ethnicity, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Alis) promulgated 10.3.23 dismissing his appeal against the respondent's decision of 20.5.22 to give notice of deprivation of British citizenship pursuant to s40(3) of the British Nationality Act, as amended.
2. Following the helpful submissions of both representatives, I reserved my decision to be provided in writing, which I now do.
3. The relevant background is that despite earlier refusal of his claim for international protection, in 2009 the appellant was granted status on the basis of a policy applicable to claimants from Government Controlled Iraq (GCI). When asked in his asylum screening interview in 2002, the appellant allegedly stated through the interpreter that he was born in Jalawla, Iraq. Jalawla was within the

GCI. The grant of status was based on the understanding that the appellant was born in Jalawla and, therefore, could not be returned to the GCI. An applicant born within the KAZ (now IKR) would not have qualified under the policy, as they could be returned to the IKR.

4. The 2022 deprivation action arose from the appellant's alleged fraud, knowingly and intentionally deceiving the respondent so that he could remain in the UK, being eventually granted Indefinite Leave to Remain (ILR) and later naturalisation as a British citizen.
5. The alleged fraud was discovered as summarised below.
6. When subsequently applying for British passports for his two children in 2017, the appellant submitted several documents, including a 1957 Family Registration document, Iraqi birth certificates and an Iraqi identity card. When the authenticity of these documents was questioned, the appellant withdrew the application. He renewed the application in 2019, stating that his uncle had provided the previously submitted documents and claiming that he was unaware that they were not genuine. In the event, the passports were issued on the new application, recording the appellant's place of birth as Jalawla.
7. In 2021, in response to ongoing investigation into anomalies in the biographical details supplied in support of the passport applications, the appellant's representatives wrote to the respondent, stating that he was born in the village of Zarda Likaw, in the Pebaz District of Kalar Town, which belongs to Kirkuk City. He maintained that by the Anfal Operation in 1988 the Iraqi government displaced the family to Jalawla, at a time when he was about 13 years of age. On his behalf, it was denied that he had ever stated that he was born in Jalawla. In short, the appellant maintains that in interview he was not asked where he was born, only where he was from. He alleges that at the conclusion of the screening interview he tried to correct the place of birth but was told by his solicitor to leave it as was where he came from and from where he fled Iraq which was important to the Home Office. The 1957 Family Registration document recorded his place of birth as Kalar, Pybaz, Al-Sulaymaniyah, which was within the KAZ (IKR).
8. The respondent considered that the appellant had every opportunity to confirm and correct the record as to his true place of birth. The respondent rejected the suggestion that there was an error in the interview record arising from misinterpretation or legal guidance. Furthermore, he had repeatedly stated Jalawla as his place of birth over many years. Hence the deprivation of citizenship.
9. The First-tier Tribunal Judge concluded at [59] that "I am satisfied the decision to deprive the Appellant of British citizenship was one that a reasonable decision maker could have made and it was neither irrational nor a misdirection in law nor procedurally improper."
10. In summary, the three overlapping grounds assert that the First-tier Tribunal failed to apply the correct test of a undertaking review on public law principles pursuant to the guidance in R (Begum) v SIAC [2021] UKSC 7; failed to take account of material matters, namely ambiguity in the asylum interview questioning as to where he was born and/or where he is from; and failed to provide adequate reasoning as to why it is the appellant's place of birth rather than where he is from that is material to the grant of citizenship.
11. Based on the decision-making minute recording why the appellant was granted status in 2009, the grounds go on to argue that there was no causative link

between the appellant's stated place of birth and his grant of status as the issue was where he was 'from' in Iraq, not where he was born.

12. In granting permission, Judge Macleman stated only that "in their renewed form the grounds are specific enough to show arguably material error."
13. At [16] of the decision, the judge made what the appellant accepts was a correct self-direction as to the relevant law, stating "In summary, the Tribunal must determine whether the SSHD's discretionary decision to deprive an individual of British citizenship was exercised correctly. The correct approach to this is not a balancing exercise, but rather a review on Wednesbury principles." The judge then went on at [17] set out the legal principles to be applied as explained in the Upper Tribunal's decision in Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238.
14. At [31] and [32] of the decision, when setting out the issues to be resolved in the appeal, Judge Alis noted that the parties had "agreed that the first issue for this Tribunal to decide was whether the decision to deprive the Appellant of British citizenship was one that no reasonable decision maker could have made and it was either irrational or a misdirection in law or procedurally improper. If the Tribunal were satisfied the Respondent could take this decision then the Tribunal should consider whether the decision to deprive the Appellant of British citizenship breached the UK's limited obligations under Article 8 of the ECHR." The judge reminded himself of the task under the heading of 'FINDINGS' at [44] of the decision, stating "I am not determining the Appellant's indefinite leave to remain or the wider issues of private and family life. When an application is made to deprive the Appellant of his British citizenship I am having to decide whether the Respondent's decision was one that no reasonable decision maker could have made and it was neither irrational nor a misdirection in law nor procedurally improper." A similar self-direction appears at [50] of the decision.
15. Mr Holmes' grounds refer to the Upper Tribunal decision in Chimi v SSHD (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 (IAC), where it was held that:

"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).*

16. Chimi was promulgated on 19.4.23, after the impugned decision of the First-tier Tribunal on 10.3.23 and Judge Alis could not have known of it. However, Mr Holmes accepts that the judge's self-direction on the principle was essentially correct.
17. The primary point made by Mr Holmes is that the Tribunal should not admit fresh evidence when undertaking the public law review of the respondent's decision. As stated at headnote (2) of Chimi, in determining whether there is a material error of law in the respondent's decision that the condition precedent is satisfied and in the exercise of discretion to deprive of British citizenship *"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."*
18. It is submitted that despite his correct self-direction, the judge admitted oral evidence from the appellant and considered matters for himself. Mr Holmes drew my attention to the findings, where at [52] the judge stated that "the burden of proof switched to the appellant to explain the discrepancy..." and [53] which contain the phrase: "the respondent has shown on the balance of probabilities that the appellant did make a false representation." Mr Holmes complains that it was not the judge's role to make such findings of fact as at [52] or [53]. As stated at [6] of the grounds, "Both passages, it is submitted, are indicative of the Judge considering matters for himself rather than engaging in a public law review. As such, the Appellant submits that the Judge has applied the wrong test."
19. It is perfectly clear from the repeated and careful self-directions that the judge was at pains to only consider "whether the respondent's decision was one that no reasonable decision maker could have made and it was neither irrational nor a misdirection in law nor procedurally improper," as stated at [44] of the decision, and effectively repeated at [48], where the judge stated, "I have looked at the evidence that the respondent had to consider and note the following about the appellant's place of birth..." The judge then went on to list the evidence that was before the respondent before stating at [49] "Against the background of this evidence, I must determine whether the respondent's discretionary decision to deprive...was exercised correctly. The correct approach to this is not a balancing exercise, but rather a review on *Wednesbury* principles." Further, at [50] the judge stated, I must consider whether the respondent 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."
20. I am not satisfied that the summary of evidence at [48] was anything more than the evidence that was before the respondent when making the impugned decision. Neither is the statement at [57] of the decision, "I find that the appellant's case was based on the fact he was born in Jalawla and lived there as against him being born in Kurdistan and then living in Jalawla," necessarily a finding of fact rather than a summary of the appellant's case. I am also satisfied that it was necessary for the judge to investigate what the evidence was that was before the respondent, particularly when there was a factual dispute about what was said, before determining whether the findings of the respondent were open on the evidence.
21. The strongest argument in favour of Mr Holmes' interpretation of the decision is at [52], where the judge suggested that "the burden of proof switched to the

appellant to explain the discrepancy and he maintained at today's hearing that he never claimed he had been born in Jalawla and he provided documents to support his claim..." and went on to state that he had to "balance this against the evidence which had been provided by the appellant over many years," before concluding at [53] "Having considered the totality of the evidence, including the findings made by the adjudicator, I find that the respondent has shown on the balance of probabilities that the appellant did make a false representation." Obviously, that finding was made after taking evidence from the appellant.

22. Up to this point, the decision had faithfully followed the public law review approach and the conclusion at [51] that the judge was satisfied that on the evidence summarised at [48] the respondent was entitled to take the deprivation decision, for the reasons enumerated in that paragraph, is sustainable. I have to accept that thereafter the judge appears to have gone on to make an assessment of the evidence based at least in part on the appellant's oral evidence. The question is whether this was justified or amounted to a material error of law. In that regard, I note this phrase from the headnote in Chimi which qualifies the prohibition on considering evidence not before the respondent: "or which is otherwise relevant to establishing a pleaded error of law in the decision under challenge." I also note that the second ground of appeal is that the First-tier Tribunal decision is in error for failure to take account of material matters, namely the ambiguity between a question where someone is from and where they were born. In pursuing this ground, Mr Holmes appeared to be wanting to have his cake and eat it. He objected to the judge considering matters for himself but then complained that he failed to take into account certain other evidence relating to the difference between place of birth and where a person was born. Nevertheless, I am satisfied that to be able to conduct an assessment of *Wednesbury* rationality of the impugned decision, the judge needed to determine what evidence was in fact before the respondent when the decision was made. This investigation was relevant to the pleaded error of law. I am satisfied that this justified hearing evidence from the appellant, for example, as to what was said in interview. In Chimi, where evidence was also taken from the appellant, *de bene esse*, the Upper Tribunal stated at [83], "Had it been for us to decide, we would have concluded on the balance of probabilities that the appellant had knowingly used fraud to obtain the French birth certificate and that all subsequent steps up to and including the acquisition of British citizenship were built upon that fraud." The Upper Tribunal also stated, "We state clearly that we would have reached the same conclusion (as the Secretary of State) if it had been open to us to stand in the shoes of the Secretary of State and subject this aspect of her decision to the kind of full merits review which was required pre-*Begum*." In that light, taking evidence from the appellant in this case is not of itself an error of law. If the conclusions drawn from that evidence amount to no more than a finding that the appellant did represent what the respondent asserts was falsely represented, that is not outside the bounds of the rationality review.
23. Even if such a finding may not have been strictly necessary to answer the public law review question, it was undoubtedly open for the First-tier Tribunal to determine what the facts were upon which the impugned decision was made before being able to determine whether the respondent was entitled to consider the appellant's statements amounted to a false representation. Better phrased, the judge might have concluded that on the evidence it was rationally open for the respondent to conclude that a false representation had been made. The argument as to the semantic difference between where a person is from and where they were born does not assist the appellant at all as it was clear that until he was forced to concede otherwise, he was maintain both birth and from in

Jalawla in the knowledge of the advantage this conferred on him. Mr Holmes' additional argument as to whether the respondent relied on 'from' or 'place of birth' for the purpose of the policy has no traction as the point, purpose and justification of the GCI policy was plain, to relate to those who could not safely be returned to the GCI, as opposed to the IKR.

24. Having carefully considered the decision of the First-tier Tribunal, I am not satisfied that the judge was making a full merits-based review of the evidence that was before the First-tier Tribunal, or considering matters for himself as alleged in the grounds. However, if I am mistaken in my understanding of the purpose of the discussion and conclusions at [52] to [58] of the decision and if the judge did exceed the bounds of a public law review, I am satisfied that the error is not material to the outcome of the appeal as the judge had already found at [51] and repeated at [59] that the "decision to deprive the appellant of British citizenship was one that a reasonable decision maker could have made and it was neither irrational nor a misdirection in law nor procedurally improper." In any event, as the findings were no different to those made by the respondent, they are not material to the issue of rationality which was resolved on cogent reasoning set out in the decision.
25. It follows that the first ground must fail and, given what I have set out above, the second cannot stand.
26. Similarly, the third ground cannot succeed. This asserts that "the underlying deprivation decision, and the Judge's decision, fail to give adequate reasons as to why it is concluded that it is the Appellant's place of birth as opposed to where he is from in Iraq that is material to his grant of citizenship". The appellant's case on interview was clearly that he was born and was from Jalawla, a place to which he could not be returned at that time. As the respondent submitted, the appellant had ample opportunity to clarify or correct his place of birth but instead chose to keep silent, as that was to his distinct advantage.
27. Whilst the grounds assert ambiguity in the questioning of the appellant and his answers, in particular between where he was from as opposed to where he was born, the grounds also miss the point of the public law review test. The question is whether on the information recorded as provided by the appellant and never corrected by him, despite opportunities to do so, was it within the range of rational responses open to the respondent on that evidence to deprive him of citizenship? Put another way, can it be said on the evidence before the respondent that the conclusion that the information provided was deliberately false was one which that no reasonable decision maker could have made? Unarguably, as stated above, to answer that question, the judge was entitled to investigate what in fact was the evidence or information before the respondent and upon which the impugned decision was made. Clearly, the judge did not make a finding as to where the appellant was born, or where he came from, only as to what was said or asserted by him. It follows that this ground cannot succeed.
28. In the circumstances, I find no material error of law in the decision of the First-tier Tribunal.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 February 2024