



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2023-003756

First-tier Tribunal No:
DC/00063/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 6th March 2024**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**KAMARAN ABDALA GHARIB
(NO ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 23 February 2024

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Munonyedi promulgated on 10 May 2023.
2. Permission to appeal was granted by Deputy Upper Tribunal Judge Welsh on 3 January 2024.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

4. The appellant is a national of Iraq now aged 42 who was born on a given date in 1982 in Sulaymaniyah. When he entered the United Kingdom during August 2001 he claimed to have been born in Kirkuk and to have been born on a given date in 1983. On 15 April 2002 the appellant's asylum claim was refused however he was granted exceptional leave to enter the United Kingdom until 11 April 2006, 'because of the particular circumstances of his case.' That leave was subsequently extended.
5. On 13 March 2008 the appellant was granted a certificate of naturalisation. Owing to an anomaly with information provided when the appellant applied for British passports for his children, the Passport Office contacted the respondent. On 28 September 2021, the respondent wrote to the appellant to inform him that revocation of citizenship was being considered and requesting further information. There was no response to this correspondence or a further request which was sent.
6. On 6 December 2021 the respondent made a decision that the appellant should be deprived of citizenship under section 40(3) of the British Nationality Act 1981 on the basis that he had made false representations.

The decision of the First-tier Tribunal

7. At the hearing before the First-tier Tribunal, the appellant did not appear and nor was he represented. The judge considered a request for an adjournment made by the appellant who stated that he was in Iraq, in Sulaymaniyah and had lost his British passport and was applying for a replacement. The judge declined to adjourn the appeal and dismissed it.

The grounds of appeal

8. The grounds of appeal while detailed, did not clearly identify arguable errors of law. What can be seen is that the appellant does not accept that the condition precedent was established because he states that he had given correct information at every stage. The first complaint relates to the judge's reliance on an unpublished policy unknown to the appellant and the presenting officer at the hearing. The second ground is that deprivation would be a disproportionate interference with the Article 8 rights of the appellant and his family. Thirdly, issue was taken with the judge's decision to proceed rather than to adjourn or hear the matter remotely.
9. Permission to appeal was granted on all three grounds.

10. The judge granting permission had reservations with the first and second grounds and made the following remarks regarding the third ground.

The application to adjourn was made in writing in advance of the substantive appeal. A Duty Judge had directed that the appellant provide evidence that (i) he had applied for a new British passport and (ii) any evidence that he had reported to the police the fact of the lost passport. The appellant complied with the direction, submitting evidence that he had indeed applied for a replacement British passport on the basis that he had lost his original document. In these circumstances, it is arguable that proceeding in absence where the appellant could be said to have been led to believe that an adjournment application would succeed if the requested evidence was supplied was unfair, absent him being given the opportunity to make any further written submissions.

11. The respondent did not file a Rule 24 response.

The error of law hearing

12. When this matter came before me, the appellant appeared in person assisted by a McKenzie friend. The appellant indicated that he required a Kurdish Sorani interpreter, which had not been booked. Ultimately, there was no need to put the proceedings back to await the arrival of an interpreter as Mr Tufan conceded that the First-tier Tribunal judge made the errors set out in the grounds. I therefore announced that the decision of the First-tier Tribunal was set aside and remitted the appeal to the First-tier Tribunal for a fresh hearing.

Decision on error of law

13. Given Mr Tufan's concession I can be brief. Ultimately, the appellant was deprived of a fair hearing of his appeal by the judge proceeding in his absence despite being aware that he was in Iraq and taking steps to acquire a replacement British passport to return to the United Kingdom. Given that the appellant was and remains unrepresented, it is obvious that he needed to attend the hearing of his appeal either in person or remotely.
14. At [9], the judge explains that she decided that the hearing should proceed because the appellant's citizenship had been revoked and he was no longer entitled to a British passport. This shows a misunderstanding of the nature of the appeal. The appeal is against a decision that the appellant 'should' be deprived of his British citizenship. Indeed, the decision letter at [43] clarifies that it is only if the appellant's appeal is dismissed, a deprivation order under section 40(3) of the BNA 1981 will be served on him. It was important that the appellant could attend his appeal as he did not accept that the condition precedent was established, and he wished to make arguments in relation to Article 8 given the extent of his private and family life which had been established over a period of decades.

15. The remaining grounds are also meritorious but there is no need to mention them given that the decision of the First-tier Tribunal is rendered unsafe by virtue of the failure to adjourn.
16. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellant was deprived of an adequate consideration of his deprivation of citizenship appeal. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore I remit the appeal to the First-tier Tribunal.

Decision

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

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Munonyedi.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 February 2024