



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

**Case No: UI-2023-004781**  
**First-tier Tribunal No:**  
**DC/00003/2023**  
**DC/50323/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 04 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**HUSSAN AHMED ABDU, aka HASSAN KAZMUZ**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 20 August 2024**

**DECISION AND REASONS**

1. In a decision promulgated on 29 May 2024, the Upper Tribunal found an error of law in the decision of First-tier Tribunal Judge Lawrence promulgated on 8 August 2023 in which the appeal against the decision to deprive of British citizenship was allowed. For the reasons set out in the decision annexed, that decision was set aside and directions were given for a de novo hearing to remake the appeal. The background to this appeal is set out in that decision. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with Mr Abdu as the Appellant and the Secretary of State as the Respondent.
2. On the day of the hearing, neither the Appellant nor anyone on his behalf attended and there was no application for an adjournment. Prior to the hearing, there had been no contact from the Appellant to the Upper Tribunal in response to the directions given on 29 May 2024 or otherwise. I am satisfied that the Appellant had been properly served with the previous decision, including directions and with the notice of hearing; sent by post on 5 July 2024 to the Appellant's address on record with the Upper Tribunal. In all of the

circumstances and noting the Appellant's failure to attend previous hearings, it was in the interests of justice to proceed with the appeal in his absence.

### **The Respondent's decision**

3. The Respondent made a decision to deprive the Appellant of his British nationality on 16 December 2021 under section 40(3) of the British Nationality Act 1981 on the basis that the Appellant had used deception in multiple applications and communications (for asylum on 18 September 2007 and throughout his appeal against the initial refusal, for a travel document in 23 July 2009, for an application for indefinite leave to remain on 18 June 2014, to sponsor a visa application on 2 January 2015, for a travel document on 26 October 2015 and in his application for naturalisation made on 25 January 2016 which was issued on 25 May 2016) by giving his name as Hussam Ahmed Abdu, a Lebanese national born in Beirut when there was now available intelligence and a Syrian ID card confirming his real identity in which an application for entry clearance was made in 2006. The deception was material to the issue of British citizenship, in particular the good character requirement, and it was therefore decided that the Appellant should be deprived of his British citizenship.
4. The Respondent had previously sent a letter to the Appellant on 22 June 2018 notifying the Appellant of the intention to deprive him of his citizenship, further to which he responded on 26 June 2018 confirming his name as Hussam Ahmed Abdu, born on 1 January 1970, and nationality as Lebanese. The Appellant stated that he was shocked by the allegation and that his only family in the UK were his two children (who were named). The Appellant relied on an expert report by Sheri J Laizer previously submitted in his asylum appeal. A similar exchange of correspondence occurred on 6 and 9 October 2021, the only substantive difference being that the Appellant then provided copies of the birth certificates for his children.
5. The Respondent took into account these representations, but found that there was insufficient evidence to support the Appellant's claim as to his Lebanese identity. The Respondent considered that the Appellant's true identity was Hasan Kazmouz (also spelt as Hassan Kazmuz elsewhere in the documentation), born on 5 October 1969, a Syrian national. In that identity, the Appellant had made an application for entry clearance in July 2006, granted on 10 July 2006 following which the Appellant arrived in the United Kingdom and then remained here, making an asylum claim in a false identity in September 2007.
6. The Respondent concluded that the deprivation of the Appellant's citizenship would be reasonable and proportionate taking into account his representations, Article 8 of the European Convention on Human Rights, the best interests of his children pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009 and whether the Appellant would be stateless further to the deprivation decision.
7. The Respondent expressly stated that once deprived of his British citizenship, the Appellant would become subject to immigration control and may be removed from the United Kingdom; however, a further decision would follow on any decision to grant a period of leave or to remove the Appellant. An indication was given that a deprivation order would be made within four weeks of the Appellant's appeal rights being exhausted and a further decision on his status in the United Kingdom within a further eight weeks.

### **The Appellant's appeal**

8. The Appellant submitted an appeal against the Respondent's decision to the First-tier Tribunal on 20 December 2021. The grounds of appeal were stated to be that *"Deprivation would have a disproportionate effect. The decision is unlawful because discretion should have been exercised differently."* As to new matters, the Appellant stated: *"The Appellant has 2 children in the UK. Depriving him of his British nationality may result in the Appellant's loss of contact with the children which, in turn, will be a breach of his rights protected by Article 8. The Appellant can not live anywhere else other than the UK."*
9. Further to the filing of the initial grounds of appeal, there have been no further documents submitted by or on behalf of the Appellant to either the First-tier Tribunal or the Upper Tribunal. There is, as such, no written statement or evidence from him as to his personal or family circumstances and little more is known about his two children beyond what is contained in the Respondent's decision letter. As referred to in the decision annexed, the Upper Tribunal does have some limited medical evidence said to relate to the Appellant's non-attendance at the error of law hearing and submitted by a third party; but this has not been expressly relied on by the Appellant in relation to the substance of his appeal.

### **The hearing**

10. The Appellant did not attend the appeal nor did he make any written submissions in relation to it; as such there were no further submissions in support of his appeal beyond the brief statements in his original appeal set out above.
11. On behalf of the Respondent, Mr Melvin relied on his skeleton argument. In the decision letter, the Respondent has set out at length the reasons why she concluded that the Appellant's naturalisation was obtained by means of fraud and that the Appellant was informed of the reasons in both June 2018 and October 2021, following which he has submitted nothing more than a bare denial and an expert report from 2008. The Appellant has not identified any basis upon which it could be said that in relation to the condition precedent, the Respondent has fallen in to any public law error. To the contrary, the Appellant has only pursued his appeal on the basis that discretion should have been exercised differently and that the decision is disproportionate.
12. The Respondent submits that there was no public law error in finding that the Appellant obtained his British citizenship by deception and that there is simply insufficient evidence from the Appellant to support any claim that discretion should have been exercised differently or that the decision would amount to a disproportionate interference with his right to respect for private and family life. The Respondent is aware of the Appellant's two children, but has no information as to what contact he has with them or what role he plays in their upbringing. Similarly, there is a lack of medical evidence to show that the Appellant's health would be affected by the decision as a reasonably foreseeable consequence and nothing at all is known about whether the Appellant is employed, has property or savings that would all be relevant to such an assessment.

### **The legal framework**

13. So far as relevant to this appeal, pursuant to section 40(3) of the British Nationality Act 1981, the Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if she is satisfied if that was obtained by means of (a) fraud, (b) false representation, or (c) concealment of a material fact.

14. In Chimi (deprivation appeals, scope and evidence) [2023] UKUT 00115, the Upper Tribunal set out the questions to be addressed by a Tribunal considering an appeal against a decision under section 40(2) or 40(3) of the British Nationality Act 1981 as follows:

(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.

15. In considering the first two questions, the Tribunal must consider only evidence which was before the Secretary of State or otherwise relevant to establishing a pleaded error of law in the decision under challenge. The appropriate standard of review in deprivation cases in relation to the first question under section 40(3), which is whether the 'Secretary of State is satisfied that registration or naturalisation was obtained by means of fraud, etc' is conventional public law tools and not by subjecting it to a full merits reconsideration. This was expanded upon in paragraphs 55 and 56 of the decision as follows:

55. It follows from our conclusion that we are satisfied that when considering an appeal under section 40A(1) of the 1981 Act against a decision made by the respondent exercising the power under section 40(2) or 40(3) of the 1981 Act the task of the Tribunal is to scrutinise, using established public law criteria, whether or not the conclusion that the condition precedent to depriving the appellant of citizenship has been vitiated by an error of law. It is not the task of the Tribunal to undertake a merits-based review and redetermination of the decision on the existence of the condition precedent, as it were standing in the shoes of the respondent. This is consistent with paragraph 1 of the headnote in *Ciceri* which requires the adoption of the approach set out in paragraph 71 of the judgment in *Begum*.

56. We would, however, wish to amplify this understanding of the position to provide some clarity in relation to the application of this approach in practice. In common with the observations of SIAC in paragraph 27 of *U3*, we do not consider that in paragraph 71 of Lord Reed's judgment in *Begum* he was intending to provide an exhaustive list of the potential types of public law error which it is open to the Tribunal to conclude have affected the decision on the condition precedent under consideration. We see no basis for reading what Lord Reed said in *Begum* as excluding other types of public law error which were not specifically identified from being potential grounds upon which a decision could be impugned. We see no reason to conclude that Lord Reed's reference in paragraph 71 to a consideration of whether the respondent has "erred in law" should be restricted to whether the respondent has acted in a way that no reasonable decision maker could have acted or taken account of irrelevant considerations or disregarded matters which should have been taken into account. Questions of fairness beyond procedural impropriety may be relevant to the assessment in some cases, as may the jurisdiction arising from an error of established fact derived from the case of *E v Secretary of State for the Home department* [2004] EWCA Civ 49; [2004] QB 1044, or a failure to undertake sufficient enquiries commonly referred to as the *Tameside* duty, from the *Secretary of State for Education Science v Tameside Metropolitan Borough Council* [1977] AC 1014. Thus, we would elaborate upon paragraph 1 of the headnote in *Ciceri* to make clear that the task of the Tribunal is to scrutinise the condition

precedent decision in any section 40(2) and section 40(3) decision under appeal to see whether any material public law error has been established in the respondent's decision. A public law error in the decision under challenge will be material unless it is established that the decision would inevitably have been the same without the error: *Smith v North East Derbyshire PCT* [2006] EWCA Civ 1291; [2006] 1 WLR 3315.

16. In terms of Article 8 of the European Convention on Human Rights, the five stage approach as set out in *Razgar v Secretary of State for the Home Department* [2004] UKHL 27 applies to the likely period between the deprivation of citizenship and a further decision by the Respondent as to the Appellant's status in the United Kingdom (eg as to whether he is to be granted any form of leave to remain in the alternative), which takes into account the reasonably foreseeable consequences of the decision under challenge.

### **Findings and reasons**

17. The first question to consider is whether the condition precedent was met in this case, namely whether there were any public law errors in the Respondent's decision that the Appellant obtained his British citizenship by deception, claiming on a frequent basis in his contact with the Respondent, including in his application for naturalisation, that he was a Lebanese national in the name of Hussam Ahmed Abdu when he was in fact a Syrian national in the name of Hasan Kazmuz.
18. The Appellant has not directly challenged this part of the decision, but I have in any event carefully considered whether there are any identifiable public law errors on the face of the Respondent's decision. I do not find that there are any in this case. There is nothing to suggest that the Respondent has, for example, failed to take into account any relevant considerations or failed to take into account relevant considerations; there is no error in the application of the correct law or standard and no arguable issues of fairness in the process. In particular, I have taken into account that the Appellant was notified of the potential reasons for deprivation on two occasions in 2018 and 2021, to which he responded in very brief terms that amounted to no more than a bare denial of the assertion that he was a Syrian national. Whilst the Appellant had previously been found to be credible when his appeal against the initial refusal of his asylum claim was allowed, which included consideration of an expert report in 2008, this is not binding on the Respondent in circumstances where further information came to light after this date and which was not before the expert or the Tribunal. The Respondent has given clear and cogent reasons, based on intelligence information, a Syrian ID card and a 2006 entry clearance application for the finding of deception. It was unarguably rational for the Respondent to conclude that the Appellant was in fact Hasan Kazmuz, a Syrian national and that he had used deception on multiple occasions from his first application for asylum through to his application for naturalisation by claiming that he was a Lebanese national in the name of Hussam Ahmed Abdu on the basis of this evidence.
19. The condition precedent was therefore met in this case, such that I move on to the next question to consider whether the Respondent erred in deciding to exercise her discretion to deprive the Appellant of his British citizenship. Whilst the Appellant appealed on the basis that she should not do so, there has been no particularisation of the reasons as to why not. There is, for example, no suggestion that there has been unreasonable delay in the decision, nor that the Respondent has failed in any way to comply with her own guidance on the issue. In circumstances where the Appellant has not put forward any basis to suggest that exercise should have been exercised differently and there is nothing on the

face of the decision to support the assertion, it is impossible to find that that there was any error on the basis of the second question.

20. The final issue is therefore whether, when considering the reasonably foreseeable consequences of deprivation, there would be a disproportionate interference with the Appellant's rights to respect for private and family life contrary to Article 8 of the European Convention on Human Rights.
21. It is, in the context of an appeal in which the Appellant has not engaged with the process nor filed any evidence in support of his claim, impossible to identify what the reasonably foreseeable consequences of the decision would be for him for that relatively short period, indicated to be up to 8 weeks, before the Respondent takes a further decision either to grant leave or remove the Appellant.
22. The only information known about the Appellant's private and family life is that he has two children. Nothing is known about their relationship or level of contact, but in any event there is nothing to suggest that in that interim period before a further decision is taken, the loss of British citizenship would, of itself, have any impact at all on his ability to continue whatever contact he currently has. There is simply no information at all on which to determine whether there would be any disproportionate impact on the Appellant's health/access to any medical treatment, ability to work, financial circumstances or any other aspect of his life.
23. In the absence of any relevant information from the Appellant as to his circumstances, it is impossible to conclude that there would be any specific adverse reasonably foreseeable consequences of the decision to deprive him of his British citizenship (beyond those generic impacts as to status and so on identified by the Respondent in the decision letter) and as such, also impossible to conclude that the impact would be disproportionate in all of the circumstances. The appeal has therefore to be dismissed on the final question, on human rights grounds.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it was necessary to set aside the decision.

The decision on the appeal is remade as follows:

The appeal is dismissed on all grounds.

**G Jackson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**22<sup>nd</sup> August 2024**



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

Case No: UI-2023-004781

First-tier Tribunal No: DC/00003/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

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**Before**

**UPPER TRIBUNAL JUDGE JACKSON**  
**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**HUSSAN AHMED ABDU**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Wain, Senior Home Office Presenting Officer  
For the Respondent: No attendance

**Heard at Field House on 16 April 2024**

**DECISION AND REASONS**

1. The Secretary of State for the Home Department appeals with permission against the decision of First-tier Tribunal Judge Lawrence promulgated on 8 August 2023, in which the Appellant's appeal against the decision to deprive him of his British citizenship dated 16 December 2021 was allowed. For ease we continue to refer to the parties as they were before the First-tier Tribunal, with Mr Abdu as the Appellant and the Secretary of State as the Respondent.
2. The Appellant's nationality and personal details are disputed. The Appellant claims to be a national of Lebanon, born in Beirut on 1 January 1970 or 1979 and the Respondent claims that his true identity is Hassan Kazmuz, born on 5 October 1969 in Aleppo and is a Syrian national. The Appellant made an asylum claim in the United Kingdom on 19 September 2007 which was ultimately accepted following an appeal on 11 December 2008. Various further applications were made up to and including one for naturalisation as a British citizen on 25 January 2016, which was granted on 25 June 2016.

3. The Respondent made a decision to deprive the Appellant of his British nationality on 16 December 2021 under section 40(3) of the British Nationality Act 1981 on the basis that the Appellant had used deception in multiple applications and communications (for asylum as above and throughout his appeal against the initial refusal, for a travel document in 23 July 2009, for an application for indefinite leave to remain on 18 June 2014, to sponsor a visa application on 2 January 2015, for a travel document on 26 October 2015 and in his application for naturalisation) by giving his name as Hassan Ahmed Abdu, a Lebanese national born in Beirut when there was now available intelligence and a Syrian ID card confirming his real identity in which an application for entry clearance was made in 2006. The deception was material to the issue of British citizenship.
4. Judge Lawrence allowed the appeal in a decision promulgated on 8 August 2023 on the grounds that the Appellant had not been given a fair opportunity to respond to allegations of deception as to his identity and had not been provided with a copy of the Syrian ID card nor the intelligence report. It was found that when the Respondent found that the condition precedent had been met, he had not taken into account the previous Tribunal finding that the Appellant was Lebanese nor that he had been found to be credible. Further, the Respondent had not given sufficient reasons as to why it was considered that the Lebanese identity was false rather than the Syrian identity, had not given sufficient reasons about the resemblance in the photographs referred to in the intelligence report and had not considered that the entry clearance application a year before the asylum claim may have been circumstantial.

### **The appeal**

5. The Respondent appeals on three grounds as follows. First, that the First-tier Tribunal misdirected itself in law as to the approach to whether the condition precedent in section 40(3) of the British Nationality Act 1981 was met, which was limited to rationality grounds and it was not permissible for the First-tier Tribunal to substitute its own decision as primary decision-maker on this. A matter of procedural fairness was not one of reasonableness which entailed a higher standard. Further, the First-tier Tribunal had failed to properly consider the Respondent's minded to letters dated 22 June 2018 and 6 October 2021 and that the Appellant's response was only a bare denial.
6. Secondly, that the First-tier Tribunal erred in law in failing to make adequate findings on public law errors; that it was impossible from the decision to discern what errors were found. The Appellant had not disputed that the evidence met the threshold, with the First-tier Tribunal decision being based wholly on new evidence.
7. Thirdly, that the First-tier Tribunal erred in law in reaching findings which were irrational, which assessed the evidence for itself and in considering that the Appellant's circumstances for not attending the hearing were relevant when looking at whether the condition precedent was met.
8. The Appellant did not attend the hearing before us. There was an email sent the evening before the hearing from an Ali Hassan, unsigned, which stated that the Appellant was not feeling well and can not attend the appeal. There was no explanation as to who the email was from or what relationship, if any, he had to the Appellant. Attached to the email was an unsigned letter dated 15 April 2024 from Dr Pat Redman stating that the Appellant is not well enough to attend the Tribunal as he had had a fall the day before hurting his back and head, for which



he attended A&E and his mobility has been further reduced (on top of background mobility issues due to chronic pain). There is a discharge note from A&E dated 14 April 2024 referring to an 'NE event' and longstanding mobility and pain issues for which further investigation is suggested.

9. There was no contact directly from the Appellant and no request for an adjournment by him or on his behalf. We considered whether in any event it was appropriate to adjourn this hearing, but at this error of law stage where the issues were very clearly set out and where the Appellant had not to date engaged at all with his appeal, including not filing a rule 24 response, we concluded that it was in the interests of justice to proceed.
10. In oral submissions, Mr Wain went through the evidence that was before the First-tier Tribunal, which included the minded to letters which identified the name of a Syrian national said to be the Appellant and that that identity was used for an entry clearance application in 2006 and the similar further minded to letter; as well as the Appellant's responses. Also included was the Appellant's earlier appeal documents, the Syrian ID card and intelligence report. It was submitted that there was a clear and fair procedure followed to allow the Appellant to respond to the allegations, to which he gave no more than a bare denial and did not engage with his own appeal on this. Further, it was not unreasonable for the Respondent not to have provided the intelligence report prior to the decision.
11. Mr Wain submitted that the First-tier Tribunal exceeded its jurisdiction by assessing the merits of the decision rather than whether there was an error of law in it on Judicial Review grounds, as per paragraph 55 of Chimi (deprivation appeals, scope and evidence) [2023] UKUT 00115. Further, the First-tier Tribunal erred in assessing for itself the reliability of the intelligence report, the country expert report previously before the earlier Tribunal and the reliability of photographs and also in paragraph 23 held it against the Respondent that the Appellant had not responded but also found that oral evidence may not have had a bearing on the decision as this would be post-decision evidence.

### **Findings and reasons**

24. In Chimi, following the review of earlier authorities, the Upper Tribunal confirmed that the first question to be addressed in an appeal against a deprivation decision made under section 40(3) of the British Nationality Act 1981 is the condition precedent one, which is whether the 'Secretary of State is satisfied that registration or naturalisation was obtained by means of fraud, etc' and in doing so, a Tribunal must review the Respondent's conclusion using conventional public law tools and not by subjecting it to a full merits reconsideration. This was expanded upon in paragraphs 55 and 56 of the decision as follows:

55. It follows from our conclusion that we are satisfied that when considering an appeal under section 40A(1) of the 1981 Act against a decision made by the respondent exercising the power under section 40(2) or 40(3) of the 1981 Act the task of the Tribunal is to scrutinise, using established public law criteria, whether or not the conclusion that the condition precedent to depriving the appellant of citizenship has been vitiated by an error of law. It is not the task of the Tribunal to undertake a merits-based review and redetermination of the decision on the existence of the condition precedent, as it were standing in the shoes of the respondent. This is consistent with paragraph 1 of the headnote in Ciceri which requires the adoption of the approach set out in paragraph 71 of the judgment in Begum.

56. We would, however, wish to amplify this understanding of the position to provide some clarity in relation to the application of this approach in practice. In common with the observations of SIAC in paragraph 27 of U3, we do not consider that in paragraph 71 of Lord Reed's judgment in *Begum* he was intending to provide an exhaustive list of the potential types of public law error which it is open to the Tribunal to conclude have affected the decision on the condition precedent under consideration. We see no basis for reading what Lord Reed said in *Begum* as excluding other types of public law error which were not specifically identified from being potential grounds upon which a decision could be impugned. We see no reason to conclude that Lord Reed's reference in paragraph 71 to a consideration of whether the respondent has "erred in law" should be restricted to whether the respondent has acted in a way that no reasonable decision maker could have acted or taken account of irrelevant considerations or disregarded matters which should have been taken into account. Questions of fairness beyond procedural impropriety may be relevant to the assessment in some cases, as may the jurisdiction arising from an error of established fact derived from the case of *E v Secretary of State for the Home department* [2004] EWCA Civ 49; [2004] QB 1044, or a failure to undertake sufficient enquiries commonly referred to as the *Tameside duty*, from the *Secretary of State for Education Science v Tameside Metropolitan Borough Council* [1977] AC 1014. Thus, we would elaborate upon paragraph 1 of the headnote in *Ciceri* to make clear that the task of the Tribunal is to scrutinise the condition precedent decision in any section 40(2) and section 40(3) decision under appeal to see whether any material public law error has been established in the respondent's decision. A public law error in the decision under challenge will be material unless it is established that the decision would inevitably have been the same without the error: *Smith v North East Derbyshire PCT* [2006] EWCA Civ 1291; [2006] 1 WLR 3315.

25. The three grounds of appeal in this case all concern, in one way or another, whether the First-tier Tribunal properly followed the approach set out above. For the reasons set out below, despite the fact that the First-tier Tribunal gave an appropriate self-direction in accordance with *Chimi* (including quoting from the same paragraphs we have set out above) we do not find that it did resulting in a material error of law in the decision.
26. In paragraph 22 of the First-tier Tribunal decision, it is found that the Appellant had not had a fair opportunity to respond to the assertion that he obtained British citizenship by deception as in the minded to letters, the Respondent had not provided the intelligence report, the Syrian identity card, nor the entry clearance application from July 2006. The Appellant had only responded to those letters with an assertion that his Lebanese identity was the true one. It was then noted in paragraph 23 that the Respondent's full case was set out in the decision letter which had not been responded to by the Appellant, and he did not attend the hearing maybe because he was unwell but also maybe because the Respondent's case was the truth; but in any event, oral evidence would not have had a bearing on the decision.
27. In his appeal to the First-tier Tribunal, the Appellant had filed a notice of appeal with the stated grounds that deprivation of his British citizenship would be disproportionate and the Respondent's discretion should have been exercised differently. The Appellant also raised what he stated was a new matter, namely Article 8 of the European Convention on Human Rights, that loss of his citizenship may result in loss of contact with his two children and that he can not live anywhere except the United Kingdom. There was no challenge to the condition precedent being met and no procedural fairness issues raised. Thereafter, as noted in the decision, the Appellant did not submit any further documents in support of his appeal and did not attend the First-tier Tribunal hearing.

28. The Respondent's first minded to letter dated 22 June 2018 included the following statements:
- "... The Secretary of State has reason to believe that you obtained your British citizenship as a result of fraud, false representation or concealment of a material fact.
- The Secretary of State has received information which suggests that your true identity is actually Mr Hasan Kazmouz and you are a Syrian national and not a Lebanese refugee.
- We have evidence that you have applied for and obtained entry clearance at the British Embassy in Damascus, Syria as Mr Hasan Kazmouz."
29. In the second minded to letter dated 6 October 2021, the Respondent includes a similar statement and more specifically asserts that the Secretary of State has received information which suggests that the Appellant's genuine identity is "Hasan KAZMUZ, date of birth 05 October 1969, nationality Syria" and informs the Appellant that despite his previous representations, deprivation action is still being considered. In both letters, the Appellant was invited to confirm his identity and make further representations. On 26 June 2018, the Appellant confirmed his Lebanese identity and said he was shocked about the allegations, referred to his two children and the expert report previously relied upon in his appeal. The Appellant did not seek any further information from the Respondent about the allegations, nor ask for evidence relied upon as to the Syrian identity and has at no point during this appeal suggested that he did not have sufficient information to respond to the allegations; nor that having seen the evidence, he would have been in a position to make any response other than the bare denial that he had previously submitted.
30. In these circumstances, we find the First-tier Tribunal's conclusion that the Respondent had not given the Appellant a fair opportunity to respond to be irrational on the evidence before it. In two separate letters, the Respondent had given sufficient information for the Appellant to be able to make representations as to his identity and as to possible deprivation of his citizenship. There was no assessment by the First-tier Tribunal of what standards of fairness were required in this case, nor why they were not met with the information that was contained in both minded to letters.
31. Whilst we accept that in principle there may be a public law error on procedural fairness grounds, in this case the First-tier Tribunal went further than it was permissible to do in considering this given that the Appellant has never asserted any procedural unfairness, nor even raised the condition precedent question as a ground of appeal; and in any event no procedural unfairness had been established on the evidence before the First-tier Tribunal.
32. In paragraphs 24 and 25 of the First-tier Tribunal's decision, it was found that the Respondent had disregarded matters which should have been taken into account, namely the previous Tribunal decision finding that the Appellant was Lebanese based on his oral evidence and expert evidence supporting his account. The Respondent's decision however expressly set out details of the previous Tribunal decision and referred to the expert report; with reasons as to why it is not accepted that the Appellant is a Lebanese national based on information which had come to light after the earlier appeal, namely intelligence and documentary evidence in the form of a Syrian identity card and entry clearance application in 2006. The correct question for the First-tier Tribunal was whether in these circumstances, could the Respondent have rationally come to

the conclusion, taking into account the history and new evidence, that the Appellant used deception as to his identity to obtain British citizenship. Instead, a value judgment was made as to the weight to be given to different evidence, particularly that from the previous appeal.

33. The remainder of the decision, in paragraphs 26 to 30 find that the Respondent has not given adequate reasons for certain matters, including why it was thought that the Syrian identity was the correct one rather than the Lebanese identity; why the intelligence source was considered reliable; how the Syrian identity card came to be in the possession of the Respondent and that the photographs relied upon do not depict a distinguishing facial mark. Further, it is said that the entry clearance application was a circumstantial matter which could only reasonably be given minimal weight. These findings are all akin to an assessment of the Respondent's decision on the merits rather than identifying overall, whether the conclusion reached by the Respondent was one which contained public law errors or one which was rationally open to the Respondent to make. The weight to be attached to evidence is, save for a consideration of whether it is perverse, a matter for the primary decision-maker and not the First-tier Tribunal in an appeal such as this where the standard of review is not on the merits.
34. We further bear in mind, as set out above, that all of the findings in this appeal by the First-tier Tribunal relate to the first condition precedent which was not challenged or raised at all by the Appellant in his appeal and were points raised and relied upon solely on the volition of the First-tier Tribunal Judge. The First-tier Tribunal decision does not at any point consider the material available and decision as a whole to ask or make findings generally as to whether it contained a public law error, or specifically whether it was a reasonable or rational decision that was open to the Respondent to make on that evidence. Instead, the First-tier Tribunal goes beyond the remit of a public law review of the decision and analyses for itself parts of the evidence and weight that it thought should be attached to various parts of it. That was a material error of law, contrary to the correct approach set out in Chimi to an appeal under section 40(3) of the British Nationality Act 1981. For these reasons, it is necessary for the First-tier Tribunal decision to be set aside for a de novo hearing, which will be listed in the Upper Tribunal.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

We set aside the decision of the First-tier Tribunal.

### **Directions**

1. The appeal to be relisted for a de novo hearing before UTJ Jackson on the first available date, with a time estimate of 2 hours. If the Appellant requires an interpreter, he must notify the Upper Tribunal with the language and dialect required as soon as possible.
2. On the basis that there is medical evidence that the Appellant has mobility problems, the hearing to be listed as a hybrid hearing on the assumption that it may be easier for the Appellant to attend that way. The Appellant to confirm to the Upper Tribunal within 21 days as to whether he would prefer to attend the hearing remotely. He is of course welcome to attend in person at Field House.

3. Any further evidence upon which the Appellant wishes to rely is to be filed and served no later than 21 days before the relisted hearing. If the Appellant intends to give oral evidence in support of his appeal, this must include a written statement, accompanied by a statement of truth and be signed and dated by him to stand as evidence in chief.
4. Any further evidence upon which the Respondent wishes to rely is to be filed and served no later than 14 days before the relisted hearing.

G Jackson

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**20<sup>th</sup> May 2024**