



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: **UI-2023-005154**
First Tier No: DC/50303/2021
LD/00043/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 August 2024

Before

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE METZER KC

Between

ABDULBASAT MOHAMAD AMIN
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: In person (Mr Najar appeared as the appellant's litigation friend)

For the Respondent: Mr Terrell, Senior Presenting Officer

Heard at Field House on 1 May 2024

DECISION AND REASONS

1. By a decision Dated 10 February 2024, the Upper Tribunal found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. Our reasons and the directions which the Tribunal made subsequently are set out below:

We shall refer in this decision and in the subsequent directions to the appellant as the 'respondent' and to the respondent as the 'appellant' as they appeared respectively before the First-tier Tribunal. The appellant is a male citizen of Iraq. He appealed against a decision of the Secretary of State dated 22 November 2021 depriving him of his citizenship under s40(3) of the British Nationality Act

1981 on the grounds that it was obtained by deception. The First-tier Tribunal (Judge Loke), in a decision dated 12 October 2023, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. At [10-11] of her decision, Judge Loke provided a useful summary of the cases of both parties as advanced before the First-tier Tribunal:

The Respondent's reasons for depriving can be summarised as follows:

- (i) The Respondent found that the Appellant's genuine identity was Namiq Hama Amin Rahim born 1 July 1973 in Sirwan.
- (ii) The Respondent noted that the process of Arabization under Saddam Hussein's regime had started in 1975, two years after the Appellant's birth in 1973.
- (iii) The Respondent noted there was no explanation as to why the Appellant's places of birth noted in his nationality certificate are Sirwan, when the Appellant claims they settled in Halabja.
- (iv) The Appellant's 1957 General Record showed his father as being alive in 2019, when the Appellant claims he was killed during Saddam Hussein's regime.
- (v) The Appellant admitted paying a soldier for his Iraqi ID card and nationality certificate in 1992. Thus they are not accepted as being reliable documents. The Appellant's Iraqi passport, while genuine was obtained by these unreliable documents.
- (vi) In the Appellant's application form for a travel document on 9 March 2007 he stated he had never had any other passport or travel document despite his Iraqi passport issued on 22 December 2005.
- (vii) The documents the Appellant obtained in 2016 to apply for L's passport were found to be counterfeit and the Appellant has never produced new copies of these documents.
- (viii) There is insufficient evidence of the Appellant's identity as Abdulbasat Mohamad Amin from Jalawla.
- (ix) Had the Respondent been aware of the Appellant's true identity and coming from Sirwan, the Respondent would not have granted the Appellant ELR.
- (x) The Respondent concluded there had been fraud and that this fraud was deliberate.
- (xi) The Respondent considered Article 8 and section 55, and noted that the Appellant had two children. Nonetheless the Respondent considered deprivation was proportionate and reasonable.

The Appellant's case can be summarised as follows;

- (i) The Appellant maintains that he is Abdulbasat Mohamad Amin from Jalawla.
- (ii) The Appellant claims that he was amongst the Kurds that were expelled from Jalawla during Saddam Hussein's regime. His father then settled in Halabja and changed the Appellant's name to Namiq Hama Amin Rahim.
- (iii) Halabja was attacked by the Baath regime and the Appellant's family returned to Jalawla. The Appellant's family tried to change the Appellant's name back to his original name and after paying money to a soldier they issued him with a new identity card in the name Abdulbasat Mohamad Amin, however they made a mistake in recording his date of birth as 1 January 1973 instead of July, and recording his father's place of birth as Sirwan/ Halabja instead of Jalawla. The Appellant remained in Jalawla until he entered the United Kingdom on 22 June 2002.

- (iv) The Appellant used this identity card when claiming asylum. He attempted to correct his date of birth, however his date of birth was always recorded as 1 January 1973.
 - (v) The Appellant denies fraud. The Appellant states due to his parents he has two identities in Iraq. In Jalawla he is known as Abdulbasat Mohamad Amin born 1 January 1973, and in Halabja he is Namiq Hama Amin Rahim born 1 July 1973.
 - (vi) The Appellant denies using counterfeit documents to apply for his daughter's passport. He has requested that they be returned to him for verification checks with the embassy.
3. Granting permission, L J Murray wrote:
1. The application is in time. The grounds of appeal assert that the First-tier Tribunal Judge (FTTJ) misdirected herself in concluding that the public law approach did not apply unless the issue of fraud was conceded/established. It is asserted that the FTTJ impermissibly stepped into the shoes of the Respondent and conducted a merits based assessment (Ground 1). The Respondent also argues that the reasoning was inadequate given that the Appellant held ID documents in different names and with different dates of birth and/or the reasoning is irrational (2).
 2. It is arguable that the FTTJ erred in conducting a merits based assessment in relation to the condition precedent specified in section 40 (3) of the BNA 1981 and that the reasoning was in any event inadequate with regard to the documents in light of the discrepancies highlighted in the grounds.
 4. The appellant attended the initial hearing in the Upper Tribunal and was assisted by a Kurdish Sorani court interpreter. The appellant was accompanied by a McKensie Friend, Mr Najar. We are grateful for the contribution of Mr Najar and would welcome any assistance he may be able to offer the appellant at the resumed hearing. We have considered a number of documents prepared by Mr Najar and arranged for copies of those documents to be provided to Mr Terrell.
 5. We find that the First-tier Tribunal erred in law such that its decision falls to be set aside. We have reached that decision for the following reasons.
 6. We find that the judge failed to apply the principles set out in *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 115 (IAC) which was promulgated (19 April 2023) before the First-tier Tribunal promulgated its own decision (October 2023). We acknowledge that the decision in *Chimi* is not strictly binding on the First-tier Tribunal but, so far as we are aware, it has not been successfully challenged on appeal to the Court of Appeal and we consider it be an accurate exposition of the correct law in deprivation appeals. At [49] of *Chimi*, the Upper Tribunal considered 'the Condition Precedent Question':

The first question which falls to be addressed concerns the Tribunal's examination of the Secretary of State's conclusion as to the condition precedent for deprivation. Where the decision was taken under s40(2), the condition precedent is that 'the Secretary of State is satisfied that deprivation is conducive to the public good'. In a s40(3) case, the condition precedent is that 'the Secretary of State is satisfied that registration or naturalisation was obtained by means of fraud, etc'. In our view it is clear that the Tribunal must review either conclusion using conventional public law tools, rather than by subjecting it to a full merits reconsideration.

7. The Upper Tribunal in *Chimi* found that (i) there 'there is nothing in either the statutory language or the applicable reasoning to distinguish appeals under section 40(3) of the 1981 Act from appeals under section 40(2) of that Act ' [51]; (ii) the Supreme Court having rejected the approach in *Deliallisi* and *BA must*, therefore, have adopted the 'different approach' adopted in *Pirzada*, which [Lord Reed] cited at paragraph 44, that "[t]here is no suggestion that a Tribunal has the power to consider whether it is satisfied of any of the matters set out in sub-sections (2) or (3); nor is there any suggestion that the Tribunal can itself exercise the Secretary of State's discretion.'" [52]; (iii) 'there is nothing in the nature of the decisions which are made under section 40(3) which renders them unsuitable for scrutiny applying a public law error approach. Furthermore, the language of section 40A which provides an appeal against decisions reached under both of these sections without differentiation does not contain any specific provision which would support a wider, full merits, appeal jurisdiction.' [53].
8. We respectfully agree with those reasons. The instant appeal concerns a deprivation decision taken under section 40(3). It follows that the condition precedent of the use by the appellant of fraud to obtain naturalisation as a British citizen has to be determined by the First-tier Tribunal by the application of public law principles and not a merits test.
9. At [20-21] the First-tier Tribunal Judge wrote:
 20. It was advanced by the Respondent in submissions that the question of whether there was a fraud was to be decided by the Tribunal on public law grounds. The Respondent relied on *Begum* [2021] UKSC 7.
 21. I have considered this submission and have rejected it. It is correct that the question of the condition precedent, namely whether the fraud was material to the grant of citizenship, according to *Begum* and *Ciceri* (deprivation of citizenship appeals: principles) must be decided on public law grounds. However the question of whether there is a fraud in the first place is a different issue. There is no authority which indicates that the underlying issue of fraud is also subject to public law principles in deprivation cases.
10. We find that the judge erred in law by determining 'the question of whether there is a fraud in the first place' by a merits analysis of her own. We find that she should have considered that question by reference only to public law principles, as *Chimi* clearly indicates.
11. We have considered whether the First-tier Tribunal's error might be immaterial to the outcome of the appellant's appeal. We have concluded that it would be more practical and, given that the appellant is not legally represented, easier for him to comprehend, if we set aside the First-tier Tribunal's decision and then consider the submissions which both parties may wish to make on the remaking of the decision. Those submissions will focus on whether the Secretary of State's decision is vitiated by public law error. As we understand the appellant's case, he claims that, in order to protect himself when a child, he acquired an identity in addition to that which he has since birth. He claims that the Secretary of State has been aware of his dual identities for much, if not all, of the time he has lived in the United Kingdom; indeed, he asserts that the Secretary of State has used both his true date of birth and that of his assumed identity when granting the appellant periods of leave to remain. It is, of course, for the appellant to make his own case at the resumed hearing but it appears likely that he will

argue that the Secretary of State acted irrationally and unlawfully by depriving the appellant of his British nationality for having used an identity of which the Secretary of State was, or should have been, aware.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The decision shall be remade in the Upper Tribunal following a hearing *de novo*.

Directions

1. The respondent shall, **no later than 4.00pm on 7 March 2024**, file at the Upper Tribunal and serve on the other party a skeleton argument addressing the issues outlined in paragraph [10] above and which shall include a chronology of the appellant's dealings with the respondent since his arrival in the United Kingdom.
2. The appellant shall, **no later than 4.00pm on 28 March 2024** file at the Upper Tribunal and serve on the other party a skeleton argument confined only to the outstanding public law issues in the appeal. The appellant's skeleton argument shall state whether the appellant agrees the chronology provided by the respondent and, if not, shall detail any disagreement.
3. The resumed hearing shall be listed at Field House on **the first available date after 1 April 2024 (time estimate: 2 hours; Kurdish Sorani interpreter)** before either Upper Tribunal Judge Lane or Deputy Upper Tribunal Judge Froom.
3. The resumed hearing took place at Field House on 1 May 2024 before Upper Tribunal Judge Lane and Deputy Upper Tribunal Judge Metzger KC. Once again, Mr Najaf attended as the appellant's litigation friend and Mr Terrell, Senior Presenting Officer, appeared for the Secretary of State. The appellant did not give evidence. We heard submissions and then reserved our decision. We wish to record our thanks to Mr Najaf whose assistance to the appellant was again helpful to the Tribunal.
4. It is the appellant's case that he used two identities; Namiq (his true identity) when he lived in the IKR and Abdulaset (a false identity) when he lived in Iraq but outside the IKR. Mr Terrell submitted that the appellant had not mentioned that he had an alternative identity until 2019. He submitted that the Secretary of State was entitled to consider that the appellant had not been truthful in his dealings with the Home Office since there was no evidence that the appellant had ever explained to any Home Office official that he had two identities or his reason for using such identities in Iraq. Mr Terrell further submitted that the appellant had at all times in his dealings with the Home Office been at liberty to tell it the truth regarding his identity but he had chosen not to do so. Moreover, the failure or deception on the part of the appellant was material; each identity carried with it a different place of birth, which, in turn, had significant relevance to the appellant's chances of being granted leave to remain. Had the Secretary of State known the appellant's true identity, it is very unlikely that the appellant would have been granted exceptional leave to remain in the first instance. That grant of leave was at the start of a chain of applications which had led

ultimately to the award of British citizenship to the appellant. At times, certain areas of Iraq were unsafe for returnees whilst others (for example, with the IKR) were safe. Such differences significantly influenced the likelihood of an Iraqi asylum seeker being granted some form of leave to remain. Mr Terrell submitted that the appellant would have known this and consequently sought to gain by achieving an immigration status to which he was not entitled by means of relying upon a false identity. Mr Terrell submitted that the Secretary of State had throughout acted in accordance with her own policies on the grant and revocation of citizenship; the appellant was a person lacking good character as a consequence of his use of deception.

5. The Tribunal permitted Mr Najaf to offer comments on behalf of the appellant who remained silent throughout the proceedings. Mr Najaf said that the appellant had never had any opportunity to disclose his true identity to the Secretary of State or to explain why he had used two identities in Iraq.
6. We find that we agree entirely with the submissions of Mr Terrell. We reject the argument advanced by Mr Najaf on behalf of the appellant that there had ever been an impediment to the appellant informing the Secretary of State prior to 2019 that he possessed two separate identities. We do so because no credible reasons have been given by the appellant for not disclosing his deception sooner. Assessing the evidence as a whole, we find that the appellant chose to allow the Secretary of State to proceed on the basis of an identity which the appellant knew throughout was false. We accept Mr Terrell's submission that the appellant's deception lay at the beginning of a chain of causation which led to his being granted British citizenship. As Mr Terrell submitted, it was open to the Secretary of State to consider that the appellant had sought to deceive her and the deprivation of the appellant's nationality which resulted from that deception was wholly within the range of decisions available to her. We find therefore that the appellant's appeal against the decision of the Secretary of State should be dismissed and we remake the decision accordingly.

Notice of Decision

We have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 22 November 2021 is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 2 July 2024