IAC-FH-CK/AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DC/00068/2019 ('V')**

THE IMMIGRATION ACTS

Heard at Field House
and via Skype for Business
On 22nd February 2021

Decision & Reasons Promulgated
On 04 March 2021

Before

UPPER TRIBUNAL JUDGE KEITH

Between

MR AZAD LATIF SHARIF
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Haq, Solicitor, Global Immigration Limited
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1) These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 22nd February 2021.

2) Both representatives and I attended the hearing via Skype, while the hearing was also available to watch, live, at Field House. The parties did not object to attending via Skype and I was satisfied that the representatives and the appellant, who gave live evidence, were able to participate in the hearing.

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3) This is the remaking of the decision in the appellant's appeal against the respondent's decision on 29th May 2019 to deprive the appellant of his acquired British citizenship. I have previously set out the gist of the respondent's decision in my decision and reasons promulgated on 6th February 2020, in which I found that a previous First-tier Tribunal had erred in law in allowing the appellant's appeal. My previous decision is annexed to these reasons, and the summary of the respondent's decision is at §§2 to 3. I do not repeat them again. I did not preserve any findings of fact in my previous decision, but given the narrowness of the issue, relating to deception, I regarded it as appropriate to retain remaking of the appeal in the Upper Tribunal.

The Hearing

4) I agreed with the representatives the documents which they wanted me to consider, and the issues that needed to be resolved.

5) The respondent provided an alpha-numerically numbered bundle, which included her deprivation decision; an earlier decision in 2003, in which she refused the appellant's asylum claim; the appellant's CSID or identity card; the appellant's application for naturalisation as a British citizen in 2008; and subsequent correspondence from the appellant's then-solicitors, lodging an appeal to the First-tier Tribunal in June 2019, in which, on behalf of the appellant, they appeared to accept that he had been advised not to provide his full correct details and had provided incorrect details for fear of persecution. The respondent also provided, loose, a number of policy documents, including its Operational Guidance note of October 2002; guidance to decision-makers on the deprivation and nullity of British citizenship, chapter 55; and guidance to its decision-makers in relation to the good character requirement for naturalisation, Annex D to Chapter 18 dated March 2005, in force at the time of the appellant's application for naturalisation in 2008.

6) The appellant provided a paginated bundle which included two written witness statements which he adopted in the hearing before me and on which he was cross-examined by Mr Clarke.

The issues in this appeal

7) I identified and agreed with the representatives the issues in this appeal. The representatives agreed that they were limited to the following two issues:

   a) 'fraud' - whether the respondent has shown, to the ordinary civil standard (the balance of probabilities) that the appellant acquired his British citizenship by fraud, as set out in the respondent's decision, for the purposes of section 40(3) of the British Nationality Act 1981. 'Fraud', in this context, means a representation dishonestly made on the appellant's part or active concealment of a material fact.

   b) 'Causation' – whether, had the respondent known of the relevant facts when she considered (1) whether to grant the appellant exceptional leave to remain in 2003 and the later application for indefinite leave to remain; (2) whether to

grant the appellant's application for naturalisation in 2008, her knowledge of these facts would have affected her decision.

8) The representatives agreed that I did <u>not</u> need to consider wider questions relating to the appellant's human rights and the proportionality of the deprivation decision. Put simply, if the respondent showed the relevant fraud and causation, Mr Haq accepted that the appellant's appeal should fail. Nevertheless, I needed to consider the evidence before me as to the relevant asserted fraud and causation afresh, and not as a 'rationality' review, as per the summary in <u>BA (deprivation of citizenship: appeals)</u> [2018] UKUT 00085 (IAC).

Other aspects of the Hearing

9) The hearing was conducted via Skype for business. I attended remotely as did the representatives and the appellant, who gave oral evidence. Whilst there were initially a small number of disruptions to the transmissions of the hearing, at each stage I checked with the appellant and the representatives whether any part of the proceedings had been missed; where the appellant initially had difficulty in hearing us, we were able to resolve this satisfactorily and I was satisfied that during his evidence, the appellant was able to see and hear us and we were able to see and hear him. He gave evidence via a translator in Kurdish Sorani and at the beginning of the hearing they had a discussion and confirmed their understanding of one another. I was satisfied therefore that both the appellant and the representatives were able to participate fairly and effectively in the hearing.

The appellant's evidence

10) The appellant began by adopting his to witness statements at pages [8] to [10] and [51] to [53] of the appellant's bundle ('AB'). I summarise the second witness statement dated 16th January 2020, as it is described as the 'amended' witness statement in virtually identical terms to the first.

11) The appellant claimed to have entered the UK on 15th December 2002 and claimed asylum on entry. The respondent refused his protection claim on 4th February 2003, but he was granted exceptional leave to remain for four years. He was then granted indefinite leave to remain on 27th February 2007, after which he obtained citizenship in July 2008.

12) The appellant's citizenship certificate contained his first and middle name but not his 'family' or surname; an incorrect date of birth of 3rd April 1982 when his true date of birth was 3rd March 1980; and his place of birth as Kirkuk, when his real place of birth was Sulaymaniyah. He informed the respondent in a letter dated 4th December 2017 of his correct date of birth which he said had been inserted in his paperwork by those who previously represented him by mistake. He claimed to have been advised that it would cause him problems if he later sought to rectify the mistake. He accepted that he had signed the forms to confirm that the previous details were correct, but this was based upon trust that those who represented him would have accurately completed all the paperwork. He was also unable to speak, read or write English.

13) He later applied for a deed poll to 'change' his name to his true name and sent this to HM Passport Office. In relation to his place of birth, the appellant said that he had lived in Kirkuk since childhood and had always given this as his place of birth. He disputed lying as he had never grown up in Sulaymaniyah. He asserted that his exceptional leave to remain was granted based on him being a Kurdish Iraqi and not based on his place of birth.

14) In his oral evidence on cross-examination, the appellant stated that he had wanted to correct the inaccurate information which had previously been provided, which he regarded as being his date of birth, but he was advised not to do so and was too scared to do so. He was told that if he wished to correct the date of birth that he should wait until he got his status and then could tell the respondent.

15) The appellant specifically disputed the contents of his own representative's letter to the Tribunal, in which they had stated on his behalf that he had been advised that on entering the UK, he should not provide his correct personal details, for fear of being returned and identified as a non-Arab. He claimed to have become aware of this statement by his representatives for the first time in this Hearing, despite me specifically referring to it in my error-of-law decision, over a year ago, at which he was professionally represented. He said that he was aware of the hearing (which he had not attended) but denied knowing that this is what his previous representatives had stated. He added that he did not regard himself as having given a false name. He had given his correct first and middle names and had simply failed to mention his family name. First and middle names alone were often used. It was only when he received documentation from the respondent that he realised that his date of birth was incorrect and his name missed out his surname, that he was advised not to correct these mistakes and he became scared. He was aware at the stage when he applied for naturalisation in 2008 that the details provided were not correct but was too scared to correct them. Alternatively, the appellant claimed only to have become aware of his true place of birth at a later stage.

16) The appellant also claimed to be unaware of the heightened level of risk for Kurds in Government Controlled Iraq ('CGI') as opposed to the Kurdish Autonomous Zone ('KAZ') where he had been born, under the regime of Saddam Hussain, despite claiming in his asylum interview to have fled Iraq on being pressured to change his ethnicity, upon claimed arrest. He claimed that there was no difference in risk then or now and it was still risky in both areas. He disputed being aware that he had been born in Sulaymaniyah until he wanted to get married in 2010 in Iraq, when he had had to check his birth documents. Before that, there had been no need to know, to engage in normal life. He assumed that as his father had been born in Kirkuk, so had he. People often did not know their family details, such as the names of their grandparents. He had not had a Taskera and had not needed an identity document, as his life revolved around work and home and he had no access to TV or social media in Iraq, before coming to the UK. He denied needing an identity document even when he was called up for military service for 3 months in 2000, as the authorities were not concerned about identity documents for compulsorily conscripted soldiers. He disputed ever having known of a family registration book and disputed that the reason why he had said in his witness statement, supporting

his asylum claim, at Annex D of the respondent's bundle, that his father had been born in Kirkuk, was to bolster his claim. When he had referred at §[3] of that witness statement to being born in a specific district of Kirkuk, the Imam Kasim district, whereas he had been born in an entirely different city, he denied attempting to mislead the respondent. He accepted that he had later repeated incorrect information in his 2008 application for naturalisation, knowing it to be incorrect, because he was too scared to correct the inaccuracies, although he later sought to assert that he had only known that his date of birth was incorrect.

Closing submissions

The respondent

17) The respondent relied on her deprivation decision. She had established a chain of causation, specifically that had the respondent known of the respondent's true name, date of birth and crucially where he came from, she would not have granted him exceptional leave to remain and consequently he would not have obtained indefinite leave to remain. Moreover, in his application for naturalisation, he had clearly included materially false representations, in the sense that the representations had directly affected the grant of British citizenship.

18) Whilst the appellant now claimed to be entirely unaware that his former solicitors had admitted in his appeal to the First-tier Tribunal in 2019 that the appellant had deliberately attempted to mislead the respondent as early as his asylum application in 2003, his claimed lack of ignorance was not credible, bearing in mind that I had expressly referred to this in my error-of-law decision, in writing, a year ago. There were further credibility issues. First, the appellant's claimed ignorance that there was a difference in risk between the GCI and KAZ areas of Iraq been referred to expressly in the respondent's decision refusing the appellant's asylum claim at page [D] of the respondent's bundle, dated 4th February 2003, at §[6], which had referred to the 'Arabisation' policy of forcibly removing the non-Arab population, in particular from oil rich regions such as Kirkuk. In simple terms, one would expect anyone living in the country at the time to be aware of the oppression of the Kurdish peoples within GCI, where he claimed to live, in contrast to the KAZ area.

19) Similarly, the appellant's claim to be unaware of the need for a CSID or identity card was also not credible, noting the bureaucratic nature of Iraq, which this Tribunal had recognised in the Country Guidance case of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) at §[336]. Even if that guidance had considered the situation more recently, there was no reason to suggest that the appellant's assertion that he would not need a CSID card or something of that nature, during the time of the regime of Saddam Hussein, an authoritarian dictator, was plausible. What was clear, at §§[13] and [14] of SMO was that there was a patrilineal system of registration and a family book where people needed to be able to identify where their birth had been registered. If the appellant knew that his father and mother were born in different places (his mother was born in Sulaymaniyah), he would similarly have known where he had his place of birth was. Even on his own account he knew he was being dishonest in his application for naturalisation, noting

that he had deliberately concealed his earlier inaccurate statement as to his date of birth because he feared being returned to Iraq.

20) In terms of the respondent's "exceptional leave to remain policy", the appellant had claimed asylum in 2002 and was granted exceptional leave to remain on 4th February 2003, a month before the US invasion, so the policy was as reflected in the Operational Guidance Note. The OGN referred to the respondent having discretion but focussed on risks to non-Arabs in GCI. As a non-Arab from the KAZ, which was regarded as safe for Kurds, these different, true circumstances would have had a direct impact on the decision to grant the appellant exceptional leave to remain.

21) Returning to the case of fraud, the appellant, in his application for naturalisation, had used a partial name, false date of birth and false place of birth and in particular at paragraph [3.12] of the application form, the appellant confirmed that he was a person of good character. Had she known of the fact that the appellant had intentionally reconfirmed incorrect details, it was likely that the respondent would not have regarded the appellant as being a person of good character and in that regard, I was referred to the 'nullification' policy, chapter [55], § [55.7] and the 'good character' guidance applicable at the time, §§ [2.1], [9.1] and [9.2].

Closing submissions of the appellant

22) The starting point was to go back to the 2003 grant of exceptional leave to remain. Whilst the appellant's asylum claim had been dismissed because his credibility was not accepted, based on the information that he had provided, he was given exceptional leave to remain. Crucially, as reflected in the case of Rashid v SSHD [2008] EWHC 232 (Admin), at §§ [13] to [15], those who had left Iraq illegally, regardless of where in Iraq they came from, were typically granted exceptional leave to remain, prior to the US invasion. Even if the appellant had lied about his place of birth, had he said that he was from the KAZ, he would still have been granted exceptional leave to remain.

23) The appellant had given incorrect information, but had, until his marriage in 2010 (after he applied for naturalisation) believed he was from Kirkuk. Considering the respondent's guidance on nullity, chapter 55, §[55.7] and in particular subparagraphs [7.3] and [7.4], even where someone had lied about their asylum claim, unless they concealed criminality, it would not have been material to the grant of indefinite leave to remain or citizenship. The appellant had given a plausible explanation that whilst he had not corrected his date of birth, he had not intentionally given a false place of birth and crucially, he had not concealed any criminality. It was also dangerous to rely on the authority of SMO which was more recent guidance as to whether the appellant was likely to have used a CSID card or other identification. The CSID at page [J] of the respondent's bundle was dated May 2015, which was consistent with his assertion that he had not used one prior to returning to Iraq.

24) When asked about the position regarding the appellant's former solicitors and their assertions as to the appellant's apparent agreement that he had deliberately provided false information, without making any criticism at all of Mr Haq, Mr Haq indicated that he could not provide an explanation. When asked, he accepted that no attempt

had been made to take a statement from the former solicitor who had completed a statement of truth in the grounds of appeal.

The Law

25) Section 40 of the British Nationality Act 1981 provides:

> *"(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—*
>
> *(a) fraud,*
>
> *(b) false representation, or*
>
> *(c) concealment of a material fact."*

26) In relation to what is meant by dishonesty, the Supreme Court considered this in a gambling context (and the use of a technique called "edge-sorting") in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. It confirmed the test, at §74, as follows:

> *"74. These several considerations provide convincing grounds for holding that the second leg of the test propounded in Ghosh does not correctly represent the law and that directions based upon it ought no longer to be given. The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."*

27) In the reported case of Sleiman (deprivation of citizenship; conduct) [2017] UKUT 00367 (IAC), Upper Tribunal Judge Kopieczek confirmed the following proposition:

> *"In an appeal against a decision to deprive a person of a citizenship status, in assessing whether the appellant obtained registration or naturalisation "by means of" fraud, false representation, or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship."*

28) Judge Kopieczek made the point that the impugned behaviour must be directly material, as opposed to indirectly material, and on the facts of that case, the appellant's misrepresentation as to his age (he claimed to have been a minor when entering the UK) was not directly material.

29) In the context of causation, I considered the respondent's Operational Guidance Note or "OGN' dated October 2002, in force at the time that the appellant claimed asylum. The relevant excerpts are as follows:

"Non-Arabs from the Kurdish Autonomous Zone

Claims from ordinary Kurds who come from the Kurdish Autonomous Zone, on the basis that they are being persecuted by Saddam Hussein's Government or because of their membership of one of the Kurdish political parties, are unlikely to engage the UK's obligations under the 1951 UN Convention. Saddam Hussein leaves control of the KAZ largely to the Kurdish political parties.

Saddam's spies do infiltrate the KAZ but would normally only target high profile opponents. As previously noted, the KDP and the PUK each control their own areas within the KAZ, and although there has been conflict between the PUK and KDP in the past, that is no longer the case. Relations between the two parties have improved in recent years and they are now working closely with each other. The PUK and KDP have convened a joint Parliament that now appears to be fully functional. In the light of the Maghdeed determination referred to above, caseworkers should no longer argue that if a Kurd experiences difficulties with one of the two parties, then it is possible for them to move to the area controlled by the other party……

C. In all cases where the caseworker has decided that asylum should not be granted, the caseworker must go on to consider whether exceptional leave to remain (ELR) is appropriate to provide protection for reasons outside the scope of the 1951 UN Convention or for individual humanitarian or compassionate reasons. In considering individual claims based on the following, caseworkers may consider it appropriate to grant ELR. This list is not exhaustive.

Consequences of illegal departure from government-controlled Iraq

In an apparent effort to convince citizens living abroad to return to the country, government radio announced in June 1999 an amnesty for teachers who left the country illegally after the Gulf War. Shortly thereafter the Revolutionary Command Council decreed a general amnesty for all citizens who either had left the country illegally or who had failed to return after the period of exile had expired. In October 1999, Justice Minster Shabib Al-Maliki announced that authorities may seize assets belonging to citizens living outside the country who did not return in response to the amnesty decree. A special ministerial committee was formed to track and monitor citizens inside the country who received money from relatives living abroad. A November 1999 law provides for additional penalties for citizens who attempt to leave the country illegally. Under the law, a prison term of up to 10 years and "confiscation of movable and immovable property" is to be imposed on anyone who attempts to leave illegally. Similar penalties face anyone found to encourage or assist persons banned from travel, including health care professionals, engineers, and university professors. In 2000 the director of the Real Estate Registration Department stated that pursuant to the decree, the Government confiscated the property of a number of persons. The Government severely restricts foreign travel by journalists, authors, university professors, doctors, scientists, and all employees of the Ministry of Information. Security authorities interrogate all media employees, journalists, and writers upon their return from foreign travel.

The UK endorses UNHCR's position on returns to government-controlled Iraq which is that "… the

return of rejected Iraqi asylum seekers to the Government controlled areas of Iraq should be voluntary. Forced returns, especially from western countries, may result in arrest, detention and possibly in degrading and inhuman treatment."

Non-Arabs from government-controlled Iraq

There are reports that since 2001 the Iraqi government has accelerated its ethnic cleansing campaign (Arabisation Programme) against the country's non-Arab citizens particularly in

Iraq's main oil producing province, Kirkuk, and the other predominantly Kurdish districts of Khanaqin and Sinjar at the edge of government-controlled Iraq near the KAZ. Security forces demand that a family change its ethnicity from "Kurdish" or "Turkoman" to "Arab". Non - Arabs are being evicted from the area and forced to move to the KAZ. According to the US Committee for Refugees, the majority of those displaced in this way remain in the KAZ where they have relatives or the support of persons sharing the same language and culture.

There is generally free travel for non-Arabs between government-controlled Iraq and the KAZ and the authorities there will, except in the case of high-profile opponents of the Iraqi government, be both able and willing to provide adequate protection. The authorities in the KAZ have however made it clear that they would only re-admit to the territory they control those who can show that they were previously resident there. Internal flight for other Iraqis to the KAZ is not therefore a viable option."

30) I also considered the following guidance applied by the respondent in relation to nullity, chapter 55:

55.7 Material to the Acquisition of Citizenship

55.7.1 If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation.

55.7.2 This will include but is not limited to:

- *Undisclosed convictions or other information which would have affected a person's ability to meet the good character requirement*
- *A marriage/civil partnership which is found to be invalid or void, and so would have affected a person's ability to meet the requirements for section 6(2)*
- *False details given in relation to an immigration or asylum application, which led to that status being given to a person who would not otherwise have qualified, and so would have affected a person's ability to meet the residence and/or good character requirements for naturalisation or registration*

55.7.3 If the fraud, false representation or concealment of material fact did not have a direct bearing on the grant of citizenship, it will not be appropriate to pursue deprivation action.

55.7.4 For example, where a person acquires ILR under a concession (e.g. the family ILR concession) the fact that we could show the person had previously lied about their asylum claim may be irrelevant. Similarly a person may use a different name if they wish (see NAMES in the General Information section of Volume 2 of the Staff Instructions): unless it conceals criminality, or other information relevant to an assessment of their good character, or immigration history in another identity it is not material to the acquisition of ILR or citizenship. However, before making a decision not to deprive, the caseworker should ensure that relevant character checks are undertaken in relation to the subject's true identity to ensure that the false information provided to the Home Office was not used to conceal criminality or other information relevant to an assessment of their character."

31) Annex D to Chapter 18 of the respondent's "good character" guidance for naturalisation applications at the time stated:

"2. Aspects of the requirement

2.1 We would not normally consider applicants to be of good character if, for example, there was information to suggest:

- *they did not respect and were not prepared to abide by the law (i.e., were, or were suspected of being, involved in crime) (see paragraphs 3 and 4); or*

- *their financial affairs were not in order (e.g. failure to pay taxes for which they were liable) (see paragraph 6); or*
- *their activities were notorious, and cast serious doubt on their standing in the local community (see paragraph 7); or*
- *they had practised deceit, for example, in their dealings with the Home Office, Department for Work and Pensions (DWP) or HM Revenue & Customs (see paragraphs 6 and 8); or*
- *they had assisted in the evasion of immigration control (see paragraph 9) …*

9. Deception

9.1 It should count heavily against an applicant who lies or attempts to conceal the truth about an aspect of the application for naturalisation - whether on the application form or in the course of enquiries. Concealment of information or lack of frankness in any matter must raise doubt about an applicant's truthfulness in other matters.

9.2 We should take into account the intentions of any concealment. If it is on a minor matter, not relevant to the decision, it may be overlooked. If it relates to a criminal conviction, we should only be prepared to overlook the deception if there are good reasons which we accept as genuine - such as a misunderstanding of the effect of the Rehabilitation of Offenders Act or that applicants have good reasons for not wishing to disclose their past to someone, such as a referee or a spouse/civil partner, who would see the application form, and the applicant is open at interview and otherwise suitable for naturalisation. However, if the deception is serious and deliberate, particularly if the applicant did not co-operate in our enquiries, or if it contributes to other doubts about the decision, then the application should normally be refused. For guidance on how to deal with applications where the applicant has failed to declare an impending prosecution please see paragraphs 3.7.6 above."

32) Finally, I was referred to, and considered the authority of Rashid, in relation to the application of the Exceptional Leave policy at the time of the appellant's application:

"11. The Policy background. Iraqi asylum seekers from northern Iraq – in particular those of Kurdish ethnicity – who had a well-founded fear of persecution in the area of Iraq formally under the control of Saddam Hussein ("the GCA"), might well have had no such fear in the Kurdish Autonomous Zone ("the KAZ") even when Saddam Hussein was in power. However, from around 1991 onwards, the Secretary of State had a policy not to argue that individuals from the GCA could relocate to the KAZ in order to seek protection from Saddam Hussein's regime as a reason for denying them refugee status, i.e. the KAZ Policy.

12. The background to and origins of the KAZ policy were explained in the Secretary of State's evidence in the case of A,H & AH. For the reasons explained in that case the KAZ policy had not been adequately disseminated within IND whilst it was still applicable.

13. However, from 20th March 2003, following military intervention in Iraq and the removal of Saddam Hussein and the Ba'ath regime from power, the KAZ policy came to an end because it was redundant. In short, there was no longer any issue of internal relocation away from the GCA to the KAZ once Saddam Hussein's regime in the GCA had been removed.

14. In addition to the KAZ policy, there had also been a policy in place until the fall of Saddam Hussein in relation to the Secretary of State's grant of ELR to Iraqi failed asylum seekers, i.e. the ELR policy.

> 15. *Under the ELR policy, those individuals from Iraq whose claims for refugee status had been refused were, with few exceptions, granted ELR. Primarily, this was because of the Secretary of State's recognition of the severe penalties imposed by Saddam Hussein's regime on those who had left Iraq illegally."*

Findings of fact

33) The representatives agreed that in line with Ivey, it is necessary for me to consider what was in the mind of the appellant and also objectively, whether his conduct was dishonest. The claimed dishonesty is in relation to three aspects; misrepresentation about the appellant's date of birth; his name; and his place of birth. On the one hand, the appellant says that the date of birth was initially recorded incorrectly because he had relied upon a solicitor to complete the form. The solicitor had done so incorrectly, and the appellant was of limited education, unable to read, write or speak English. His use only of his first and middle name, omitting his family name was explained because a mixture of names could be used. The incorrect place of birth was explained because he genuinely believed that his place of birth had been Kirkuk and there was no need for him to have had a CSID or other ID before he had left Iraq in 2002, given his limited life at the time, which revolved around his work and family.

34) Having considered all of that evidence in the round, I find that the respondent has shown that the appellant was dishonest, when he claimed asylum in 2002; when he applied for ILR; and in 2008, when he had applied for British naturalisation. I find him to have been dishonest, in the sense that he knew at each of these times what his true place of birth was; his true date of birth; and his true full name; and he intentionally provided misleading information in relation to all three on each occasion. In making these findings, of critical importance, I have considered the application to the First-tier Tribunal made by the appellant's former solicitors, dated 10th June 2019, a copy of which is in the final part of the respondent's bundle. The appeal was completed and signed by Mr Naeem Baig, a solicitor, of Lei Dat & Baig Solicitors. The declaration which Mr Baig signed stated that:

> *"I, the representative, am giving notice of appeal in accordance with the appellant's instructions and the appellant believes that the facts stated in this appeal form are true".*

35) The grounds of appeal continue at §§[6] and [7] that the appellant was brought to the UK by an agent, and with the information given to him by those who he lived with and travelled and he:

> *"was told not to provide full correct details, otherwise if detected and returned back to Iraq it is very likely that he would be easily detected and found to be a non-Arab Iraqi i.e. Kurdish national, and due to his well-founded fear of persecution, resorted to providing incorrect data."*

36) §[7] continued:

> *"Therefore, he continued to give details that were slightly not in accordance with his correct details. He accepts that his date of birth was incorrect and his place of birth was Sulaymaniyah, but because he lived in Kirkuk he gave this as his place of birth."*

37) The appellant asserts that he was entirely unaware of this issue until having been raised in cross-examination by Mr Clarke before me. However, I do not regard this as a plausible explanation noting that, not least, I specifically raised the point in the error-of-law decision in §[11], annexed to this decision, and the appellant was represented at that hearing. More importantly and without an explanation, the statement of truth which has been attested to by his then-solicitor, Mr Baig, is not one in which there has been any subsequent witness statement, for example suggesting a misunderstanding of instructions. In other words, there is a signed notice by a solicitor, attesting to the appellant's belief in the stated grounds, for which a there is a specific explanation as to why the appellant intentionally mislead the respondent, on advice from those he was travelling with to the UK, which is entirely inconsistent with the appellant's current claimed ignorance. There is simply no explanation for that inconsistency and no explanation for why evidence, which could have been readily adduced, namely a witness statement from Mr Baig as to any confusion on instructions, has not been provided.

38) I also regard it as telling and it undermines the appellant's assertion that he was unaware of the difference in level of risk between the KAZ region and GCI, that paragraph [6] seems to reflect a difference in risk of return. In other words, if he was returned to Iraq it was very likely that he would be easily detected and found to be a non-Arab Iraqi i.e., of Kurdish ethnic origin, in GCI, as opposed to the KAZ.

39) Whilst it is possible (just) that the appellant's lack of the use of a GCID card is not inconsistent with SMO, which is a far more recent authority, Mr Haq realistically accepted that there was nothing in support of the appellant's contention, beyond his oral assertion, that ID documents were not regarded as a necessary normal part of life, in pre-2002 Iraq, during the regime of Saddam Hussein. Moreover, it does not begin to explain the major inconsistency in the correspondence from Mr Baig. The obvious explanation for Mr Baig's correspondence is that its contents are in fact accurate and the appellant intentionally gave a dishonest date of birth, partial name and place of birth being Kirkuk in CGI, as opposed to Sulaymaniyah in the KAZ. Even on the appellant's own account, by the later date of 2008 when he applied for naturalisation, he was aware, albeit I find that he was aware substantially earlier, that the date of birth was incorrect and he was inconsistent in his own evidence before me about inaccuracies in the remainder of the details.

40) Considering further the appellant's application for naturalisation in 2008, when he completed the part of the form at box [3.12], which asked whether he had engaged in any other activities which might indicate that he may not be considered a person of good character, he ticked "No." I am satisfied that the appellant knew at the time, not least because he was deliberately including incorrect information in other parts of the form (his full name, date of birth and place of birth) that he also knew that the respondent might consider these activities as indicating that he was not of good character. The appellant's deliberate misstatements were, at each stage, to achieve his end goal of naturalisation: when he applied for asylum; when he applied for indefinite leave to remain; and when he applied for naturalisation.

41) I considered the appellant's contention that even had his true full name, date of birth and place of birth been known, he would have been granted exceptional leave to remain, in light of the policy as discussed by the High Court in Rashid, above. I did so, also considering the OGN, to which I have also referred. While Rashid refers, at §[15], to people from Iraq whose claims for refugee status had been refused were, with few exceptions, granted ELR, I noted that was not without exception. Moreover, the OGN clearly distinguishes between 'Non-Arabs' (i.e. those of Kurdish ethnic origin) from the KAZ; those GCI; and the KAZ authorities' willingness to admit those of Kurdish ethnic origin to the KAZ. It also includes (regardless of ethnicity), the section on those who had illegally left CGI illegally, and rejects the idea of forced returns to GCI. It does not, however, suggest that there could not be returns to the KAZ for those of Kurdish ethnic origin who were from the KAZ or with connections to the KAZ. While the appellant continues to assert that regardless of his place of birth, he was brought up in CGI and suffered adverse interest there, the respondent rejected his account in her decision of 4th February 2003. Had the respondent known of the appellant's true place of birth and possible continuing connections to the KAZ at the time she was considering granting him exceptional leave to remain, I find that instead, the respondent would have given active consideration to returning the appellant to the KAZ, which Rashid does not rule out and which is consistent with the OGN, which has whole sections of it (relating to the discussion about those from the KAZ and those from GCI) which would otherwise be redundant. I find that the appellant's concealment of his relevant details was directly material, in the 'Sleiman' sense, to the grant of ELR and subsequent ILR.

42) I considered finally Mr Haq's suggestion that in the naturalisation application, the appellant would not have failed the "good character" test, because, by reference to Chapter 55, he had not concealed criminality, and the guidance, particularly at § [55.7.4] indicates that those who had lied about their circumstances might still be granted British nationality. However, I accept Mr Clarke's submission that while someone may have lied in their asylum claim more generally, there may have been a different route to settlement, such as a concession in relation to family life and they might still then be granted citizenship. Where, as here, the very basis for the grant of ELR was on the basis of false details, that would be material to the grant of citizenship, as anticipated in §[55.7.2] and consistent with serious and deliberate deception as outlined in §[9.2] of Annex D of Chapter 18, cited above. Such deception is clearly not limited to concealment of criminal convictions.

43) In summary, I find that the respondent has shown that the appellant was subjectively dishonest at each stage of his application for status; that his conduct was, by objective standards, dishonest; and that the conduct was directly material at each stage to the grant of ELR; ILR; and British Citizenship. I conclude that the respondent was, in the circumstances, entitled to deprive the appellant of his British citizenship. The representatives agreed before me that no appeal was pursued on wider human rights grounds.

Decision

44) The appellant's appeal against the deprivation of his citizenship fails and is dismissed.

Signed: *J Keith*

Upper Tribunal Judge Keith

Dated: **3rd March 2021**

TO THE RESPONDENT
FEE AWARD

The appeal has failed and so there can be no fee award.

Signed: *J Keith*

Upper Tribunal Judge Keith

Dated: **3rd March 2021**

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00068/2019

THE IMMIGRATION ACTS

Heard at Birmingham CJC **Decision & Reasons Promulgated**
On 24 January 2020 **On ________________________**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

AZAD LATIF SHARIF

Respondent

Representation:
For the appellant: Mr A Haq, Solicitor
For the respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are a written record of the oral reasons given for my decision at the hearing.

2. This is an appeal by the appellant, who was the respondent before the First-tier Tribunal, and who I will refer to as the Secretary of State. The respondent was the appellant before the First-tier Tribunal, and to avoid confusion, I will refer to him as the Claimant. The Secretary of State appeals against the decision of First-tier

Tribunal Judge Borsada (the 'FtT'), promulgated on 5 August 2019, by which he allowed the Claimant's appeal against the decision by the Secretary of State dated 29 May 2019 (the 'Decision') to deprive him of his acquired British citizenship, pursuant to section 40(3) of the British Nationality Act 1981. The gist of the Decision was that the Claimant, originally an Iraqi national, had obtained exceptional leave to remain (February 2003), followed by further leave to remain (February 2007) and naturalisation as a British citizen (July 2008) In doing so, at each stage he confirmed his place of birth as being Kirkuk, in Government-controlled Iraq ('CGI'), as opposed to his true place of birth, Sulaimaniya, in the Kurdish Autonomous Zone ('KAZ'). He only revealed this when he applied for passports for his children and enclosed documents in 2018, disclosing his true date and place of birth. In response to correspondence from the Secretary of State dated 23 August 2018 that she was considering depriving him of his citizenship, the Claimant's representatives replied on 10th September 2018, asserting that a date of birth in his 'paperwork' was added by a representative, and he had limited English and was later told that it would '*cause too many problems to rectify the mistake*', while the incorrect place of birth was explicable because he had been brought up for most of his life in Kirkuk. The Claimant disputed that he had been dishonest.

3. Following the Claimant's representations, the Secretary of State made the Decision, concluding that the Claimant had obtained initial and subsequent periods of leave and naturalisation on the basis of fraud. The Secretary of State noted that prior to his naturalisation, the Claimant had stated his real place of birth in a marriage certificate issued in the KAZ, in contrast to the details provided in his application for naturalisation.

<u>The FtT's decision</u>

4. Of note, in his appeal to the FtT, the Claimant's representatives wrote, in grounds of appeal dated 12 June 2019, ([6]) that he was told *'by those he lived with and travelled with not to provide full correct details otherwise if detected and returned back to Iraq it is very likely that he would be easily detected and found to be a non-Arab Iraqi.'*

5. Neither the Claimant nor his representatives attending the FtT hearing and the FtT based his findings and conclusions on the written evidence and submissions from the Presenting Officer. The FtT noted that fear of persecution had led the Claimant to provide "slightly incorrect information", i.e., an incorrect date and place of birth. The FtT concluded that it was not clear what advantage the Claimant would gain and he had provided cogent reasons for the 'mistakes' ([6]). She was not satisfied that the Secretary of State had proved dishonesty. There was not sufficient evidence that Iraqi Kurds from the KAZ as opposed to the CGI would have been returned ([7]), which would have resulted in exceptional leave having been refused.

<u>The grounds of appeal and grant of permission</u>

6. The Secretary of State lodged grounds of appeal which are essentially that the FtT had taken the Claimant at his word about his assertions that he had not been dishonest, and failed to consider what the Claimant had said in his asylum interview

about his place of birth. Even if he had a motive for being dishonest, namely fear of persecution, that did not prevent there from being dishonesty.

7. Upper Tribunal Judge Martin, sitting as a First-tier Tribunal Judge, granted permission for the Secretary of State to appeal, on the basis that it was arguable that the FtT had taken the Claimant at his word, and had placed too much weight on untested evidence. The grant of permission was not limited in its scope.

The hearing before me

The Secretary of State's representations

8. Mrs Aboni asserted that the FtT's assessment in relation to whether the Claimant had been dishonest was clearly insufficient, particularly in light of the Claimant's representative's correspondence. The FtT had indeed simply taken the Claimant at his word. This was material because if the respondent had been aware that the Claimant was advancing a false identity then this would have affected the decision to grant exceptional leave to remain. Because the respondent was in ignorance of the Claimant's true identity and place of birth, she had been unable to make an informed assessment. That was why the deception was material to the grant of leave to the Claimant.

The Claimant's representations

9. Mr Haq submitted that the FtT had correctly identified that the burden of proof on deception rested on the Secretary of State, which she had failed to discharge. The Claimant had grown up in Kirkuk and he would have got exceptional leave regardless of growing up either in Kirkuk or in the area of the KAZ. I discussed with Mr Haq the provision of a Country Policy Bulletin produced by the Secretary of State dated 2009, and in particular paragraph [3.6] which stated:

> *"From 20 October 2000, in light of the improved conditions in KAZ, only claimants who were accepted to have come from GCA were granted four years ELR."*

10. Mr Haq invited me to consider that the Claimant was from the GCI as although he had been born in Sulaimaniya he lived in Kirkuk. The FtT had considered, and answered the questions of dishonesty and materiality. He referred me to the well-known authority in relation to the requirement that dishonesty or the impugned behaviour must be directly material to the decision to grant citizenship, namely the decision of Upper Tribunal Judge Kopieczek in the case of **Sleiman (deprivation of citizenship; conduct**) **[2017] UKUT 00367 (IAC)**. I canvassed with Mr Haq whether the conclusion in that case, which related solely to an incorrect age might be distinguished on the basis that certain concessions or lack of arguments had been advanced by the Home Office in that case. In particular, the Secretary of State had not argued that an incorrect age had led to the grant of British citizenship, whereas here, the combination of incorrect age and place of birth were potentially relevant to whether a false identity was being advanced Mr Haq reiterated that **Sleiman** was authority before the proposition that there had to be direct causation between the deception and the grant of citizenship and the FtT had bee entitled to conclude that there was no such causation here.

Discussion and conclusions

11. There were two issues before the FtT. The first was whether the Claimant had been dishonest. The second was whether, if he was, this was material to the grant initially of exceptional leave to remain and a subsequent grant of naturalisation. In relation to the question of dishonesty, I conclude that the FtT's reasoning was inadequate. First, in the Claimant's grounds of appeal to the FtT, there was an express reference to the Claimant being told by those he lived with and travelled with not to provide 'full correct details', otherwise he would have been detected and returned back to Iraq. There is no consideration by the FtT of how this is reconcilable to the Claimant's explanations for the mistakes over his place and date of birth being entirely innocent. The FtT refers at paragraph 4(iii) to the Claimant's contention that it was fear of persecution that led to his providing 'incorrect data' and that he therefore continued to give "slightly incorrect information". The FtT did not explain why this would not constitute dishonesty, even if the motivation for that dishonesty was understandable. Effectively, the FtT has erred in law in conflating the motives around dishonesty, which might be understandable, with the issue of whether the Claimant had been dishonest and his reasoning about the lack of dishonesty was not adequate.

12. Dealing with the second issue of material causation, the FtT dealt with this briefly at paragraph [7], referring to searching in vain amongst documents provided by the Secretary of State about her policy at the time in respect of grants of exceptional leave to remain. He added:-

> *"It is not clear to me therefore that even if there was such a policy in place in 2003 that it was specifically applied to the appellant's case and represents the reasons for the grant of exceptional leave. This in my view is a vital and necessary piece of evidence and its absence means that the respondent has not met the burden or standard of proof in this regard."*

13. While the FtT was not referred to it, I conclude that the FtT erred in failing to consider the authority of **Rashid v SSHD [2008] EWHC 232 (Admin)**, and background material referenced in that case, which deals at least in part with the background to the Secretary of State's policy on how she treated individuals seeking assistance from the GCI.

14. The lack of consideration of **Rashid,** together with the lack of consideration of the effect of advancing a false identity, as opposed to merely a false age, did amount to an error of law by the FtT when he considered the causation between the alleged deception and the grant of exceptional leave to remain and subsequent British citizenship.

Decision on error of law

15. **In the circumstances, I conclude that the decision of the First-tier Tribunal contains an error of law, such that it is not safe and cannot stand. I therefore set it aside without preservation of findings of fact.**

Remaking and adjournment

16. Given the narrowness of the factual issues between the parties, I regarded it as appropriate and in accordance paragraph 7.2 of the Senior President's Practice Statements that the Upper Tribunal remakes the decision on the Claimant's appeal.

17. However, Mr Haq informed me that the Claimant is currently in Sulaimaniya and unable to leave Iraq because the authorities there will not permit him to do so as there is a discrepancy between the date and place of birth in his British biometric details and his Iraqi passport. It is unclear when he will be able to return to the UK but Mr Haq accepted that the remaking cannot be postponed indefinitely, so he will need to make arrangements for any remaking hearing, and seek a variation to the directions, where he deems necessary.

18. The resumed remaking decision will be listed before the Upper Tribunal on the first available date after 9 March 2020, time estimate 3 hours, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal, with a Kurdish Sorani interpreter.

19. The Claimant shall no later than 4 PM on 24 February 2020 file with the Upper Tribunal and served upon the Secretary of State's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

20. The Secretary of State shall have leave, if so advised, to file any further documentation she intends to rely upon and in response to the Claimant's evidence; provided the same is filed no later than 4 PM on 2 March 2020.

Signed J Keith Date: 5 February 2020

Upper Tribunal Judge Keith