Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: LP/00260/2021
(DC/50021/2020)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 28 April 2022	**On 15 June 2022**

Before

C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JAZA MOHAMMED MAAROUF

Respondent

Representation:
For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Mr S Vokes, instructed by Vanguard Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, for convenience we will refer to the parties as they appeared before the First-tier Tribunal: Jaza Maarouf (appellant) and the Secretary of State for the Home Department (respondent).

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Background

2. The appellant is a citizen of Iraq who was born on 5 January 1977. He arrived in the United Kingdom on 12 February 2002. He claimed asylum on 18 February 2002 using the name "Jaza Mohammed Maroof". The appellant claimed that he was born in Kirkuk in Iraq and that he was at risk on return because of his involvement with the Ba'ath Party including that he had been employed by them as a guard. He claimed to fear the Iraqi authorities as he had been wrongly suspected of being involved in the murder of an official at the premises where he was on duty as a guard.

3. On 12 April 2020, the Secretary of State refused the appellant's claim for asylum. However, he was granted exceptional leave to remain (ELR) on 12 April 2002 under the Secretary of State's (then) policy concerning the grant of ELR to Iraqi nationals, in particular, who were from the Government controlled area of Iraq.

4. On 13 October 2006, the appellant was granted indefinite leave to remain (ILR). On 23 October 2007, he applied for British citizenship by naturalisation which he was granted on 16 April 2008.

5. In 2018, the appellant applied, whilst in Iraq, for British passports for his children. In the course of those applications, the appellant provided supporting Iraqi documents including a 1957 Family Registration document. On examination, these documents were found to contain an altered or counterfeit stamp. The appellant then withdrew his children's passport applications.

6. The appellant subsequently applied for a replacement British passport for himself and provided genuine Iraqi documents in his name "Jaza Mohammed Maaarouf". They showed that he was born in the IKR in Halabja, Al-Sulaymaniyah rather than in Kirkuk as he had said in his asylum application. He claimed that he had moved from Halabja to Kirkuk when he was 4 years old and that always considered himself as being from Kirkuk. He said that he did not realise that he was born in Halabja until 2009 when he had needed Iraqi documents in order to marry. In relation to the 1957 Family Registration document which he had previously submitted, and which was counterfeit, he claimed to have no knowledge of it and that it had been provided by an agent to him.

7. On 6 August 2019, the respondent wrote to the appellant indicating that she was reviewing his British citizenship and was considering exercising her discretion to deprive him of that citizenship under s.40(3) of the British Nationality Act 1981 ("BNA 1981") on the ground that he had obtained his citizenship by fraud. Representations were made to the Secretary of State by the appellant. On 23 September 2020, the respondent served a notice of intention to deprive the appellant of his citizenship. Her reasons for doing so were set out in her decision letter of that date.

The Appeal to the First-tier Tribunal

8. The appellant appealed to the First-tier Tribunal. The appellant's case was that he had not engaged in any fraud in order to obtain his citizenship. He claimed that he did not realise the importance of his place of birth even though he had been born in Al-Sulaymaniyah in the IKR rather than, as he had stated, in Kirkuk in the Government controlled part of Iraq.

9. In a decision dated 16 August 2021, Judge Athwal allowed the appellant's appeal on the basis that the Secretary of State did not have power under s.40(3) of the BNA 1981 to deprive the appellant of his citizenship. The judge was not satisfied that the appellant's fraud (falsely stating his place of birth) was material to the respondent's decision to grant him British citizenship. Under the relevant country policy for ELR, it was immaterial that the appellant was not born in Kirkuk as he still was accepted "to have come from" Government Controlled Iraq. Further, the Secretary of State had, contrary to the Nationality Instructions, taken into account fraud that post-dated the grant of British citizenship.

10. Finally, the judge concluded that the deprivation of the appellant's citizenship breached Art 8 of the ECHR, in particular having regard to the best interests of his children who were British citizens living in Iraq with the appellant and his wife.

The Appeal to the Upper Tribunal

11. The Secretary of State appealed to the Upper Tribunal. She did so on essentially three grounds.

12. First, the judge misdirected himself as to the relevant policy concerning the grant of ELR in force when the appellant was granted four years leave on 12 April 2002. Had it been known, at the time, that the appellant was born in the IKR rather than Kirkuk then he would not have fallen within the terms of the policy and he would not have been granted ELR, which was a necessary step in his obtaining British citizenship.

13. Secondly, the judge was wrong to find that fraud by the appellant post-dated his application for British citizenship by eleven years and was, consequently, not relevant in reaching a decision to deprive the appellant of his citizenship by virtue of para 55.7.3 of the relevant Nationality Instruction (Chapter 55: "Deprivation and Nullity of British Citizenship"). The fraud occurred in 2002 prior to the grant of British citizenship in 2008.

14. Thirdly, in applying Art 8 the judge failed properly to consider the public interest of maintaining the integrity of the rights flowing from British citizenship.

15. On 6 October 2021, the First-tier Tribunal (Judge F E Robinson) granted the Secretary of State permission to appeal.

16. The appellant did not file a rule 24 response in reply to the grant of permission.

17. However, both parties filed skeleton arguments in response to directions from the Upper Tribunal dated 31 March 2022.

18. The appeal was listed for hearing at the Cardiff Civil Justice Centre. The appellant was represented by Mr Vokes and the respondent by Ms Cunha. We are grateful to both representatives for their helpful submissions.

Discussion

19. In the her skeleton argument, the respondent made an application to amend Ground 1 in order to raise the issue of whether the judge had failed properly to apply the approach set out in the case of R (Begum) v IAC [2021] UKSC 7 which requires a judge to determine an appeal against a decision taken under s.40(3) of the BNA 1981, not on the basis of a 'merits' appeal, but rather solely on the basis of public law principles (see Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238 (IAC)). The amended ground also explicitly challenges the judge's finding that the appellant's fraud was not material to the grant of ELR in 2002 because the respondent's acceptance that the appellant came from Kirkuk was based upon his false claim to have been born there.

20. It transpired at the hearing that, for reasons that are not known to us, neither Ms Cunha nor Mr Vokes had been provided with the respondent's skeleton argument and the application to amend Ground 1 that it contained. We provided the representatives with copies of the respondent's application. In the event, Ms Cunha did not pursue an application to amend the grounds and we indicated that we would determine the appeal on the basis of the original grounds upon which permission to appeal had been granted.

21. Having heard oral submissions from Ms Cunha and Mr Vokes, we indicated that we were satisfied that both Grounds 1 and 2, upon which permission was granted, were made out in substance.

22. As regards Ground 1, we reject Mr Vokes' submission that the appellant's deception in maintaining that he was born in Kirkuk rather than Halabja, Al-Sulaymaniyah was not material to the grant of ELR in April 2002.

23. We were not taken directly to the relevant policy document which the Secretary of State applied in 2002 in granting four years' ELR. Its terms are, however, summarised in the respondent's decision in para 49 by reference to the "Country Policy Bulletin Iraq 1/2009". Paragraph 3.6 of that latter document indicates that the policy from 20 October 2000 – and in effect in April 2002 – was that only failed asylum claimants "who were accepted to come from the GCI" (and not those from the KRI) were granted 4 years' ELR. That, it would appear to us, might include someone such as the appellant *if it were accepted* he had lived in Kirkuk even if he

were born in Halabja, Al-Sulaymaniyah. However, whether the appellant came from Kirkuk was not, in our judgment, determined properly, or at all, by the judge.

24. At para 48 the judge said this:

> "The refusal letter did not rebut any of the answers [the appellant] provided or question that he was from Kirkuk. I am therefore satisfied that in 2002 after considering the appellant's representations and testing his account in interview, *the respondent was satisfied* that the appellant had lived and worked in Kirkuk prior to his arrival in the UK." (our emphasis)

25. The Secretary of State took that view in the decision letter in ignorance of the appellant's deception that he was actually born in Halabja, Al-Sulaymaniyah rather than Kirkuk. The respondent's finding was dependent upon the appellant having told her the truth at the time. We do not know, and neither did the judge, what would have been the respondent's conclusion as to where the appellant came from if she had known the truth about his place of birth. The judge was wrong to conclude, therefore, that the policy applied in the appellant's favour as he came from Kirkuk because the respondent had accepted he did.

26. We are satisfied that this point, explicitly raised in the amended Ground 1, is implicit in the original Ground 1 which cites the respondent acceptance that appellant came from Kirkuk but contends the appellant would not fall within the policy if he was born in the IKR. Mr Vokes was able to make full submissions at the hearing on that challenge and, indeed, accepted that if the respondent had known the appellant had been born in Al-Sulaymaniyah, she would have examined the appellant's claim that he came from Kirkuk more fully.

27. In our judgment, therefore, the judge's finding that the appellant's deception was not material to the grant of ELR and thus to the grant of British citizenship was legally flawed.

28. As regards Ground 2, the respondent criticises the judge for stating (at para 55):

> "This fraud postdates the application for British citizenship by eleven years (the application was made in 2007). The Nationality Instructions state:
>
> *'Where fraud postdates the application for British citizenship it will not be appropriate to purse deprivation action.'*
>
> I am therefore satisfied that the Respondent should not have taken action on the basis of this fraud."

29. The relevant provision cited is para 55.7.5 of the Nationality Instructions.

30. It is not clear to us on what basis the judge concluded that the appellant's fraud post-dated his application for British citizenship by eleven years. The deception concerning his place of birth was initially made in April 2002 and he was granted British citizenship in April 2008.

31. In para 55 the judge referred to "this fraud" post-dating the appellant's application. However, the immediately preceding paragraphs (44-54) deal with the appellant's deception in April 2002 concerning his place of birth that led to him being granted ELR. It may be that the judge had in mind a different deception made by the appellant concerning the submission of a counterfeit 1957 Family Registration document as part of his children's application for British passports in 2018. The judge made reference to this evidence at paras 5 and 42 of his decision. The judge's reference in para 55 to "this fraud" is, however, totally disconnected from the judge's consideration of the counterfeit 1957 Family Registration document submitted in 2018 – which was eleven years after the appellant's application for citizenship in 2007 but only ten years after it was granted in 2008. It is significant, however, that the respondent did not rely upon this deception in her decision letter to justify the deprivation of the appellant's citizenship. It was the fraud (if any) relating to the appellant's place of birth which was relied on under s.40(3) and was the central issue in the appeal. She only relied on the appellant's actions in 2018 in assessing his evidence about his lack of knowledge and his honesty in relation to the relied upon fraud in 2002.

32. The judge's reasoning in para 55 is unclear. We cannot be confident that the judge has sufficiently distinguished in his reasons between the deceptions raised in the evidence and has focussed exclusively upon the materiality of the only relevant fraud relied upon before the judge, namely the appellant's place of birth.

33. For these reasons, we are satisfied, on the basis of Grounds 1 and 2, that the judge materially erred in law in allowing the appellant's appeal against the decision to deprive him of his British citizenship on the basis of fraud. The FtT's decision will need to be remade applying the approach of the Supreme Court in Begum.

34. Following our indication that this would be the outcome of the appeal, Mr Vokes invited us to preserve the judge's finding that the respondent's decision breached Art 8 of the ECHR.

35. We did not, in fact, hear any argument in relation to Ground 3 that the Art 8 decision could not stand. We do not consider, having set aside the decision, that the judge's findings in relation to Art 8 can be preserved. We indicated to Mr Vokes that any assessment of Art 8 required the judge to determine the weight to be given to the public interest when considering the appellant's circumstances in determining whether the deprivation of citizenship was proportionate. The public interest could only be determined when, and in the light of, sustainable findings as to the scope of the appellant's fraud and its materiality had been made. Since the judge's decision and findings in relation to those issues cannot be sustained, it follows in our judgment that his finding that Art 8 was breached also cannot stand and the decision has to be remade also in relation to Art 8.

Decision

36. For these reasons, the decision of the First-tier Tribunal to allow the appellant's appeal against the decision to deprive him of his citizenship under s.40(3) of the BNA 1981 involved the making of a error of law. That decision cannot stand and is set aside. In light of our conclusions, none of the judge's findings can be preserved.

37. Given the nature and extent of the fact-finding required, and having regard to para 7.2 of the Senior President Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Athwal.

Signed

Andrew Grubb

Judge of the Upper Tribunal

31, May 2022