IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000100

First-tier Tribunal No: DC/50165/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1 September 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HOSHMAND HALMAT AHMAD
(aka BAZRGAN MOHAMMED MIRO)
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Patel instructed by RZZ Solicitors.
For the Respondent: Mr A McVeety, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 28 June 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge McCall ('the Judge'), promulgated following a hearing at Manchester on 17 December 2021, in which the Judge dismissed the appellant's appeal against the notice given by the Secretary of State dated 12 May 2021 of her intention to deprive him of his British citizenship under section 40(3) of the British Nationality Act 1981 as she was satisfied that the registration of naturalisation had been obtained by means of false representations.
2. The appellant is a male citizen who was born in Iraqi on 1 February 1981, although the Judge also notes he has provided an alternative date of birth of 1 July 1978.
3. The Judge notes a preliminary issue being raised at the hearing by Miss Patel on the appellant's behalf when she sought an adjournment as two previous applications had been made to the Tribunal to enable the appellant to appear by live link from Iraq which had been refused. Miss Patel renewed the application requesting that if a live CVP link could not be facilitated on the day the case should be adjourned for the link to be set up.

4. The Judge noted that the application was in two parts, firstly whether an order should be made for a Common Video Platform (CVP) link to be granted and, if so, whether the matter needed to be adjourned for the link to be facilitated and, secondly, in all circumstances, whether it was fair to proceed in the absence of the appellant if a live link was not granted.
5. The appellant has travelled to Iraq, and it was from there he wished to give his evidence. At [14] the Judge finds no documents had been provided or brought to his attention that confirm that the Tribunal had the authority to exercise its powers in Iraq and that the Judge was therefore satisfied that he did not have permission from the Iraqi authorities to receive evidence from Iraq. The Judge was satisfied that proceeding to hear evidence without such authority would not be in the public interest for the reasons set out in case law and declined to make a direction that a live CVP link be used in this case.
6. The Judge considers the second issue from [15] noting that no application had been made for the appellant to be allowed the opportunity, in the absence of the grant of a CVP link, to appear in person at a face-to-face hearing.
7. Having considered the submissions and relevant case law the Judge writes:

> 18. I am satisfied the Appellant did not make a CVP link application at the earliest available opportunity. I am satisfied the Appellant did not set out in a written statement of the reasons why (if any) he was prevented from attending a hearing in person. I am satisfied the Appellant and his representative did not act in a timely manner to enquire whether evidence can or could be received by live link to the Tribunal from Iraq. The Appellant has had the time and opportunity to draft a detailed statement addressing the issues in the case and to produce evidence in support of that application. Miss Patel submits the Respondent wishes to cross examine the Appellant on that evidence however Mr Royle opposed the application to adjourn and therefore accept he would not have the opportunity to do that. The Appellant's statement therefore stands as his evidence in chief and in the circumstances he has not been prevented from giving evidence before the Tribunal. In the application to adjourn Miss Patel did not cite any points or aspects of the evidence that she would wish to clarify with the Appellant nor did she refer to any questions that she would be seeking leave to put to him in his evidence in chief. That being the case the Appellant if present would adopt his evidence and then be offered in cross examination to the Respondent. Mr Royle, on behalf of the Respondent accepted he would prefer the matter to proceed than put questions to the Appellant. I find the Appellant has not therefore been deprived of presenting his case.
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> 19. I am also conscious of the fact that hearing time in the Tribunal is precious, particularly when faced with a backlog of appeals created by the Covid Pandemic. There is public interest in such cases and there is an expectation that matters listed for hearings should proceed unless it would be unfair to do so. I am satisfied that the Appellant and his representatives have had ample time and opportunity to prepare for this hearing. The Appellant has had an opportunity to provide evidence and a statement in support of his claim. The Appellant is legally represented. From the information available to me the Appellant has previously held Iraqi travel documents in the form of a passport. The Appellant has not applied for entry clearance to attend the hearing and therefore he has not been prevented from appearing. He has assumed, wrongly, that a CVP link would be granted as a matter of course and that is an assumption that he and his legal representatives should not have made. In all the circumstances I am satisfied it is fair to proceed without directing a CVP link and it is also fair to proceed in the absence of the Appellant.

8. The Judge sets out findings of fact from [33] of the decision under challenge. The Judge noted one main issue in the appeal related to the location of the village of Zewa in Iraq. The Judge noted at [34] that the tribunal had not been

presented with any evidence to show there was a village of Zewa attached to or located near Shkhan as had been claimed by the appellant.

9. The Judge records at [37] his finding the Reasons for Refusal letter is less than helpful in terms of specifying exactly where the various villages and towns referred to by the appellant in his evidence are actually located.
10. Drawing together the threads of the evidence, and answering the question of whether the appellant had used deception, the Judge writes at [48 – 49]:

> 48. I have gone into some detail in regard to the evidence before me because of the number of inconsistencies in the Appellant's claims and applications over the years. After careful consideration of all of the evidence I am satisfied that the Appellant's true identity is Bazrgan Mohammed Miro and that he was born on 1 July 1978 in the Province of Duhok. I also find the Appellant lived in Duhok up until the time he left Iraq in order to come to the UK to claim asylum. I find that the Appellant has deliberately provided false information during his original asylum claim in 2002 and also during his application for ELR and in his application for British naturalisation in 2009. That false information included his name, his date of birth, his place of birth and his last address in Iraq. I find the Appellant has not been a resident in the village of Zewa or in Shkhan in the Ninawa Province, the same Province in which Mosul is situated. I find the Appellant provided false information during his original asylum application as he had been informed that applicants from Mosul and the surrounding area receive more favourable treatment from the Respondent. After providing the false identity and additional details the Appellant was successful in his applications but as a result was then forced to live out a lie in all future applications and he made no legitimate attempt to rectify the records. I do not accept the Appellant's claim that the change of name deed by deed poll was an error on the part of his lawyers at that time. I find the Appellant chose that option in order to live under his actual name without alerting the Respondent.
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> 49. In answer therefore to the first question raised by the parties, has the Appellant used deception? I am satisfied the answer to that question is yes.

11. The Judge finds the appellant was aware he was making false declarations in his application and at [52] finds the appellant perpetrated the deception in his original asylum claim in order to obtain ELR, he then continued with that deception to obtain ILR, and then finally naturalisation. The Judge therefore finds the deception was material to the grant of leave arising from those applications.
12. The Judge notes at [56] that following the successful naturalisation application in 2009 the appellant, in the same year, returned to Iraq where he has remained since. The Judge finds, having considered all the evidence, no error in the manner in which the Secretary of State exercised discretion in the impugned decision [56].
13. The final question considered by the Judge is whether the decision is proportionate. The Judge records the issues that were raised in support of the appellant's case but concludes having weighed up the competing elements at [63] that the decision is proportionate.
14. The appellant applied for and was granted permission to appeal by another judge of the First-tier Tribunal, on the basis it was said to be arguable the Judge misdirected himself as to the burden and standard of proof about whether the appellant used deception and whether the deception was material as set out in ground 2, although did not limit the grant to this ground only.
15. The appeal is opposed by the Secretary of State.

Discussion and analysis

16. Ground 1 asserts the Judge erred in law in failing to adjourn the case. The grounds assert the adjournment application was made to await the outcome of the decision by the Foreign, Commonwealth & Development Office (FCDO) as to whether consent could be granted for the taking of evidence from the appellant from Iraq as per the recent decision of the Upper Tribunal in Agbabiaka [2021] UKUT 286. The grounds assert the appellant's solicitors had made the request to the FCDO on 13 December 2021. The grounds assert the refusal of the adjournment deprived the appellant of his right to a fair trial in that it denied the appellant the opportunity to give evidence in person by the CVP platform.
17. Miss Patel in her submissions claimed the Judge could have benefited from receiving oral evidence and makes reference to [35] in which the Judge finds that the appellant had not explained why he provided a false date of birth on the first occasion he tried to enter the UK when he was stopped. There is also reference to [37] in which the Judge finds that the appellant's witness statement was unclear and deliberately vague. Miss Patel submitted the Judge could have benefited from being able to speak to the appellant as a result.
18. I find no merit in this ground. The Judge clearly considered the arguments put forward for the adjournment, some of which are repeated in the submissions before the Upper Tribunal. The Judge was entitled to find on the basis the appellant's witness statement stood as his evidence in chief that the appellant had had the opportunity to set out his case in full. There may have been merit in Miss Patel's argument before the Judge that the appellant not attending denied the Home Office Presenting Officer the opportunity to cross examine, had the Presenting Officer not taken a pragmatic view before the Judge that he preferred to proceed with the evidence that they had rather than to have the opportunity to test the appellant's evidence further. No such allegation of unfairness is made by the respondent on this point in any event.
19. It does not establish legal error by suggesting the Judge would have benefited from hearing oral evidence from the appellant and the fact the Judge did not have that opportunity, on the facts of this case. A reading of the determination and the manner in which the Judge analysed these issues shows this is an experienced judge who is well aware of the importance of a fair hearing and the overriding objective. The Judge would have been aware, as all First-tier Tribunal judges should be, that if an appellant is not present but an issue arises requiring his or her presence the judge can of their own motion if required adjourn the proceedings and give a direction that the individual attends. The Judge did not consider it was necessary or appropriate to do so and so. Referring to comments made by the Judge in the decision, which is the Judge's view of the evidence, does not establish that unfairness arose.
20. In relation to the fact a decision from the FCDO was awaited, the Judge again properly took this into account and was clearly concerned about the delay by the appellant or his representatives. The Judge notes at [8] that the legal representatives only acted in November 2021. Miss Patel's argument before the Judge was that the appellant had acted upon receipt of the notice of hearing. The Judge also notes in addition to the delay, that it was not unreasonable to expect the appellant to have acted sooner bearing in mind he lodged the appeal against the deprivation decision some time prior to November 2021 to have made initial enquiries about whether he will be able to give evidence from abroad. As the Judge cannot be said not to have taken relevant aspects into account or not to have given adequate reasons in support of the findings made in arriving as the overall conclusion it was not appropriate to adjourn, I find no legal error material to the decision to dismiss the appeal in relation to Ground 1.
21. Ground 2 asserts the Judge erred in findings regarding the burden of proof in a deprivation case, claiming the Judge erred by failing to set out in the

determination that the burden of proving the deception and whether it was material rests upon the respondent not upon the appellant. The grounds assert the Judge erred in accepting an assertion made by the respondent at face value in relation to the location of Zewa and rejected the appellant's representative's assertions in relation to location. This ground argues the Judge placed the burden upon the appellant at [51] and [52], failed to consider relevant aspects, and argues the Judge failed to consider that the respondent bore the burden of proof of the deception and whether it was material which meant the Secretary of State was required to show the basis on which the appellant was granted ELR was due to any policy in existence.

22. It is not an error for a Judge not to set out a self-direction in relation to the burden and standard of proof. In appeals such as this, where the burden and standard has been established in decisions of the highest courts in the UK the question is whether there is evidence the Judge did not apply the burden and standard of proof correctly.
23. The Judge considers the issue of the location of the village and makes reference to this at [33 – 34]. Miss Patel was asked whether she did more than is set out by the Judge in the hearing to which she confirmed she did not.
24. The weight to be given to the evidence is a matter for the Judge.
25. It is not made out to the Secretary of State was required to prove the deception beyond reasonable doubt, which is the criminal standard of proof. The burden upon the Secretary of State was to show why the appellant had been deprived of his British nationality by rational reasons.
26. I have seen in the bundle a letter that was before the Judge stating the appellant had been granted ILR due to his particular circumstances. Letters granting any form of leave, status, or settlement tend to be in short form as opposed to Reasons for Refusal letters which set out the reasons an individual has not been granted the status they seek. Those appellants circumstances would include statements made by him in relation to his alleged identity and home area.
27. It was submitted by Mr McVeety that what the Judge finds is that it was the appellant's false statements that led to the grant of ELR, later ILR, and naturalisation as there was no evidence of any other circumstances that would have justified the grant of leave on any basis. The Judge took into account the evidence in relation to location and was entitled to place the weight on it evidence the Judge thought was appropriate.
28. I do not find it made out that the Judge has reversed the burden and standard of proof. The Judge properly addressed the reasons why the appellant had been granted leave, subsequent naturalisation, and what he was told about why the Secretary of State found it appropriate to deprive him of his British citizenship. The Judge, having considered that evidence, found that the decision was justified. There is nothing to support the contention that the Judge expected the appellant to prove anything that he was not legally required to do. It has not been made out the Judge's conclusion is not based on the evidence, is irrational or unfair, when the evidence is considered as a whole. In relation to weight, the Judge also had evidence the appellant has used deception and lied. The Judge was therefore entitled to assess what weight should be given to the evidence as a whole, which the Judge clearly did.
29. Ground 3 asserts the Judge failed to consider a material matter claiming that although at [48] the Judge made a finding in relation to the appellant's true name and date of birth he failed to consider that the respondent had accepted in her decision at [20] that the appellant's use of a false name and date of birth was not material to the grant of ELR. The grounds argue notwithstanding the location point the Judge failed to consider the materiality of the error, especially

as the respondent had failed to provide the minute as to why the appellant had been granted ELR. The grounds argue, inter alia, the Judge failed to consider the appellant may have been granted status not based on his place of birth but based on where he originated from prior to leaving Iraq and if that was the case Judge failed to consider the respondent had not satisfied the Tribunal that there was deception which was material to the grant of leave.

30. Miss Patel was asked by me whether the appellant had informed the Secretary of State despite claiming the last place he was from was in the government-controlled area of Iraq his home area was actually in the IKR where he is now? It was confirmed the appellant had stated he was from a government controlled area which I find led to the grant of exceptional leave to remain.
31. The appellant's deception is related to his true identity and also to his place of location within Iraq. The policy of the Secretary of State at the relevant time, as recognised by the Judge, was that Iraqi Kurds from government controlled areas were granted leave to remain. Those from the IKR, where no real risk existed at that time to Kurds would be returned. Even if there was any merit in the claim the appellant's false name and date of birth was not material, there is no merit in the claim that the evidence provided relating to location was not material. That is the reference in the decision to the grant of leave being made on consideration of all relevant circumstances.
32. Miss Patel referred me to the case of MS (judicial interventions; complaints; safety concerns) Bangladesh [2023] UKUT 00114 but that case is concerned with providing guidance about the role of judges. I do not find it made out the Judge conducted the hearing in anything other than a fair manner in all the circumstances and do not find this decision assists the appellant.
33. Having considered all the available material with the required degree of anxious scrutiny I find that the appellant has failed to establish legal error material to the decision to dismiss the appeal.

Notice of Decision

34. No legal error has been made out in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 August 2023