IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003185
First-tier Tribunal No:
DC/00059/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 September 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAMAN ABDUL RAHMAN
(no anonymity order made)

Respondent

Representation:
For the Appellant: Mr A Tan, Senior Home Office Presenting Officer
For the Respondent: In Person

Heard at Manchester Civil Justice Centre on 7 September 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing the appeal of Mr Rahman against the decision to deprive him of his British nationality under section 40(3) of the British Nationality Act 1981.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Rahman as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is currently a British citizen, originally of Iraqi nationality. He arrived in the UK on 7 July 2002, clandestinely, and was arrested by the police. He claimed asylum on 8 July 2002, giving his details as Adrackman Saman, born in Kirkuk, Iraq on 1 January 1980. He completed a SEF form and accompanying statement in support of his asylum claim. In his SEF form he gave his details as Samin Adrahman, born on 1 January 1980, and named his wife as Suzan Ali living in Kirkuk and his parents as born in Kirkuk. In his statement he gave his name as Samin Abdul Raham Hama, born on 1 January 1980, claiming that he was born in Kirkuk and lived there with his parents, stating that his father was deceased and naming his wife as Susan Ali. He claimed that his father, a member of the pro-government militia group JASH, was shot and killed on 6 December 2001, and that he was in danger himself as he had refused to succeed his father as an intelligence office when required to do so by the security forces of the Iraqi regime, and had fled the country.

4. The appellant was interviewed about his asylum claim on 21 August 2002 and confirmed his name as Saman Abdul Rahman, born on 1 January 1980. His claim was refused on 6 September 2002 but he was granted exceptional leave to remain until 6 September 2006 due to the particular circumstances of his case, in which his place of birth was particularly relevant. On 9 December 2002 the appellant applied for a travel document in the name of Abdul Rahman Saman born on 1 January 1980 in Kirkuk, married to Suzan Ali who was living in Iraq, and he was issued with a travel document on 3 February 2003. On 1 August 2006 he applied for indefinite leave to remain, again in the name of Abdul Rahman Saman born on 1 January 1980, and including information that he had travelled to Iraq on holiday on 15 May 2004. He was granted indefinite leave to remain on 27 November 2006. On 6 February 2007 the appellant applied for a second travel document in the name of Abdul Rahman Saman born on 1 January 1980, indicating that he was single, and he was issued with a travel document on 30 March 2007.

5. On 15 February 2008 the appellant submitted an application Form AN to apply to naturalise as a British citizen. He stated his identity as Saman Abdul Rahman born on 1 January 1980 in Kirkuk, confirming that he was single and had never married and stating that he had travelled to Syria on 4 April 2004 and returned to the UK on 15 May 2004 and had also travelled to Iran twice between 18 April 2005 and 13 June 2007. He completed the Good Character Requirement section and the Declaration in which he confirmed that the information he had given in the application form was correct.

6. The appellant was issued with a certificate of naturalisation on 4 September 2008 and he subsequently applied for, and successfully obtained, on 19 September 2008, a British passport in the identity of Saman Abdul Rahman, date of birth 1 January 1980, place of birth Kirkuk. The passport was valid until 19 September 2018.

7. On 31 January 2020 the appellant’s passport was revoked as it was deemed to be not in the subject’s true identity. The appellant’s deception became apparent to the Status Review Unit of the Home Office after information was received regarding applications he had made for British passports for his children, in which documents submitted showed his true identity to be Saman Rahman Hama, born on 27 November 1977 in Sulaymaniyah, Iraq.

8. On 25 March 2020 the appellant sent a letter of mitigation to the Status Review Unit clarifying the details he had given upon entry to the UK and applying to amend his details to the correct identity, and providing reasons for having provided incorrect details previously.

9. The respondent, in a decision dated 10 May 2021, concluded that the appellant's British citizenship had been obtained fraudulently and that he should be deprived of that citizenship under section 40(3) of the British Nationality Act 1981. The respondent did not accept the appellant's explanation for the false information having previously been provided and concluded that he had deliberately made false representations in his previous applications. The respondent considered that the fraud was material to the acquisition of British citizenship as he would not have been entitled to the grant of ELR and ILR had his true identity, in particular his true place of birth, been known. The respondent considered that it was reasonable and proportionate to deprive the appellant of his British citizenship and that there was no breach of Article 8 in so doing.

10. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981 His appeal was heard on 11 February 2022 by First-tier Tribunal Judge Mehta. The respondent was represented at the hearing but the appellant appeared without a legal representative. He gave oral evidence before the judge in the Kurdish Sorani language, claiming that he was born in Sarchar, Suleymaniyah but that he was told by his parents that he was born in Kirkuk and that his birth was registered in Suleymaniyah, and that he had not lied to the Home Office but had genuinely believed the details he had given were correct. The appellant produced a letter from the Mayor of Kirkuk which stated that his family had lived in a rented house in Kirkuk until 2002. He claimed that depriving him of his British citizenship would disproportionally interfere with his Article 8 family and private life and that of his partner and children.

11. Judge Mehta found the appellant to be a credible witness and he accepted the appellant's evidence. He found that the appellant had done all that he could do to try to rectify his mistake and had produced credible evidence in that regard, and he found that the letter from the Mayor of Kirkuk corroborated the appellant's account of having lived in Kirkuk until he left Iraq. The judge was therefore not satisfied that the appellant had used fraud or false representation. He was satisfied that the giving of the wrong date of birth was a misunderstanding and that the appellant genuinely believed that he was born in Kirkuk at the time he was asked. The judge accordingly concluded that the conditions in section 40(3) of the 1981 were not satisfied and he allowed the appeal.

12. Permission to appeal was sought by the Secretary of State on the grounds that the judge had misapplied the law and had acted outside of his jurisdiction when finding that the condition precedent of fraud was not made out and had acted unlawfully by re-making the discretion under section 40(3) himself and failing to ask the fundamental question of whether no reasonable Secretary of State could have reached the same conclusion.

13. Permission was granted by the First-tier Tribunal.

14. The matter then came before me for a hearing. The appellant appeared without a legal representative and said that he could not speak English well and that he could not understand why he was being called back to court when his appeal had been allowed and his case had been accepted.

15. In regard to the language difficulty, there was some concern from Mr Tan and also from myself as to the appellant's lack of English given that he had been living in the UK for 20 years and, as part of the application process for naturalisation as a British citizen, had had to undertake the Life in the UK test and confirm an ability in the English language. It was clear, however, that the appellant was unable to proceed in English. The hearing was therefore put back in order to find an interpreter in the Kurdish Sorani language. The hearing then proceeded with the assistance of an interpreter. The purpose of the hearing was explained to the appellant, as were the Secretary of State's reasons for appealing the decision and the decision of the First-tier Tribunal granting permission, which the appellant claimed not to have received.

16. In regard to the appellant's claim never to have received any notification of the Secretary of State's appeal or the decision granting permission, I advised him that the court records showed that the decision had been sent to him on 26 May 2022 by post and to his email address. The appellant confirmed that both addresses were correct but maintained that he had not received any communication from the Tribunal until he received the notice of hearing for the current appeal. I asked the appellant if he would have been able to instruct a legal representative if he was aware of this appeal and he said that he did not have a legal representative and had been unable to find one to represent him through legal aid before the First-tier Tribunal and could not have afforded to pay for one privately. In response to my enquiry, Mr Tan said that he saw no reason why the appeal should not proceed today. I had to agree that the appeal ought to proceed. Even if the appellant was not aware of the Secretary of State's appeal and the grant of permission (and I cannot see how that could be the case if the decision was sent both to the correct email address and the correct postal address), I could not see how an adjournment would assist him given that the issue before me in this error of law hearing was a matter of law and legal interpretation which would best be addressed by a legal representative which he did not have. In the circumstances there was no procedural unfairness in proceeding with the appeal. Indeed the appellant did not request an adjournment in any event.

17. Mr Tan made submissions before me. He submitted that Judge Mehta had approached the appeal in an incorrect manner. He relied upon the recent authorities including the recent case of Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 00115 (IAC) which made clear that it was not for the judge to reassess the deprivation decision for himself, but that he should instead consider whether the Secretary of State had arrived at her decision on an irrational basis. Mr Tan submitted that the judge should only have considered the evidence that was before the Secretary of State when the decision was made and that he had erred by stepping into the shoes of the Secretary of State. He had erred by assessing the appellant's credibility and making findings of fact based on the appellant's evidence at the hearing, which was evidence that was not before the Secretary of State when the decision was made.

18. The appellant, in response, said that he did not understand why he was in court when the Home Office had been present at the hearing before the judge. He said that he had paid to rectify the information previously given about his identity and that he had a British Nationality certificate and passport which did not contain any mistakes. He had done nothing wrong and had committed no offence.

Discussion

19. In the recent case of Chimi, the Upper Tribunal considered the authorities addressing the role of the Tribunal in deprivation cases and set out its views in relation to the nature of the appeal jurisdiction of the FTT (and UTIAC when called upon to re-make a decision) in an appeal from a deprivation decision made pursuant to sections 40(2) or 40(3) of the 1981 Act.

20. With regard to the first question arising in deprivation cases, the 'condition precedent question', the Tribunal said as follows, at [55]:

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

21. With regard to the second question, the respondent's discretion, the Tribunal said as follows at [59]:

> "it is clear that this part of the Tribunal's enquiry must also be undertaken in accordance with what was said by Lord Reed in *Begum*. The Tribunal must therefore consider whether the respondent erred in law when deciding in the exercise of her discretion under s40(2) or 40(3) to deprive the individual of their citizenship. It is not therefore for the Tribunal to consider whether, on the merits, deprivation is the correct course. It must instead consider whether, in deciding that deprivation was the proper course, the respondent materially erred in law. "

22. Although the case of Chimi was decided after Judge Mehta's decision, it summarised and endorsed the principles set out in the other authorities to date, including the leading cases of Begum, R. (on the application of) v Special Immigration Appeals Commission & Anor [2021] UKSC 7 and Ciceri (deprivation of citizenship appeals: principles) Albania [2021] UKUT 238.

23. As the Secretary of State's grounds acknowledge, the judge referred to those relevant authorities in his decision. Further, at [21], the judge correctly identified that the role of the Tribunal, in accordance with those authorities, was to undertake a review, rather than a re-determination of the exercise of discretion by the respondent. However, in spite of that self-direction, the judge did not appear to apply those principles and guidance. Rather, he proceeded to do exactly what he had said the authorities required him not to do, namely stepping into the shoes of the Secretary of State and re-assessing the deprivation decision for himself.

24. Mr Tan referred in particular to the findings at [32] to [35] where the judge made findings of fact following his own assessment of the appellant's evidence at the hearing. That evidence consisted of the appellant's own denial of the allegation of fraud and the claim that the discrepancies in his date and place of birth had been nothing more than a mistake, and his reliance upon a letter from the Mayor of Kirkuk as mentioned at [33]. Those same matters were considered by the Secretary of State in response to the appellant's letter of 28 March 2021, at [23] and [25] of the deprivation decision. In those paragraphs the Secretary of State provided reasons for rejecting the appellant's explanation for the discrepancies and for rejecting his claim

that there had been a simple mistake, finding there to be no plausible innocent explanation for the misleading information leading to the decision to grant citizenship. At no point did the judge consider whether those conclusions were vitiated by an error of law on the basis that the respondent had acted unreasonably, irrationally, unlawfully or unfairly, or if he did, at no point did he provide any reasons for concluding that she had. Instead, the judge substituted his own decision for that of the respondent following the oral testimony of the appellant which had not been before the Secretary of State when the decision was made, but which in any event merely repeated the same assertions made in the letter and supporting evidence that had been considered by the respondent when making the deprivation decision. This was a clear misunderstanding and misapplication of the law and, as such, was a material error of law.

25. In the circumstances, as the respondent properly identified in her grounds, the judge misapplied the law and acted outside of his jurisdiction when making his decision. As such his decision cannot stand and has to be set aside in its entirety. The Secretary of State's appeal is accordingly allowed. It seems to me, given the extent of the judge's errors, that the most appropriate course is for the case to be remitted to the First-tier Tribunal for a *de novo* hearing, for the decision to be re-made on a proper application of the law as set out in the relevant authorities.

Notice of Decision

26. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Mehta.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 September 2023