**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBE**

Case No: UI-2023-004719
First-Tier No: DC/50296/2021
LD/00094/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 29th May 2024**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**SM (Iraq)**
**(Anonymity order made)**

Respondent

**Representation:**

For the Appellant: Mr Bates, Senior Home Office Presenting Officer
For the Respondent: Mr Karnik, Counsel instructed by Batley Law

**Heard at Manchester Civil Justice Centre on 21 May 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 the Respondent is granted anonymity.**

**DECISION AND REASONS**

1. The Respondent is an Iraq Kurd who naturalised as a British citizen on the 17th April 2008. On the 27th September 2023 the First-tier Tribunal (Judge Hollings-Tennant) allowed his appeal against the Secretary of State's decision under s40(3) British Nationality Act 1981 to deprive him of that British citizenship. The Secretary of State now has permission to appeal against that decision.

2. The background to this appeal can be shortly stated. The Respondent arrived in the United Kingdom in 2002 and claimed asylum using identity X. He stated that

he was from Kirkuk. He was granted 'Exceptional Leave to Remain' (ELR) in September 2002. The Respondent maintained the use of identity X throughout all of his subsequent dealings with the Home Office. He was granted Indefinite Leave to Remain (ILR) on the 21st November 2006 and naturalised as a British citizen, using identity X, on the 17th April 2008.

3. In December 2014 the Respondent wrote to HMPO asking that his passport be amended to reflect his details as being identity Y. Y was born in Ranya, part of the governate of Sulaymaniyah. His date of birth was different from that given by X. HMPO refused to alter the Respondent's details and apparently referred the matter to the Home Office. The Secretary of State considered the Respondent's actions, and explanations for them, and on the 12th November 2021 decided to strip him of his British citizenship with reference to s40(3) BNA 1981.

4. On appeal Judge Hollings-Tennant concluded that Secretary of State had been rationally entitled to conclude that the Respondent had deliberately provided false details in respect of identity X. The Secretary of State had further been rationally entitled to conclude that the deception was deliberate and material, since it led to him being granted ELR in 2002. However the First-tier Tribunal was nonetheless satisfied that there was a public law error in the Secretary of State's decision to deprive the Respondent of his British nationality. That was that he had failed to investigate or consider the Respondent's claims that between 2017 and 2020 he had been working for the British Security Services, and by his reckoning had been actively involved in combatting terrorism. These claims had been made directly to the Secretary of State who had been given multiple opportunities to verify and consider them but had failed to do so: Judge Hollings-Tennant found this to be a breach of the Secretary of State's *Tameside* duty to investigate. Moreover the asserted facts were obviously pertinent to the exercise of discretion, and they do not appear to have featured in the decision making process at all. On that limited basis, Judge Hollings- Tennant allowed the appeal.

5. The Secretary of State purports to only have one ground of appeal, but under that single heading he raises several points.

6. The first is that the Tribunal misdirected itself about its powers. It is submitted that instead of limiting itself to considering whether the Secretary of State erred in law when he exercised his discretion, the Tribunal impermissibly exercised it itself. There is absolutely no merit in that assertion, and I find that the author of the grounds has fundamentally misread the decision of Judge Hollings-Tennant. As Mr Bates accepts, the First-tier Tribunal's legal directions are unimpeachable. The Tribunal plainly directs itself to the relevant authorities, and understood what its task was. Its task was to review the decision making process undertaken by the Secretary of State. That process involved three distinct stages. The first was to establish whether the condition precedent – here deception – was met. The second was to consider whether that deception meant, taking into account all relevant circumstances, that the Respondent should be deprived of his British nationality. The final stage was to consider whether it would be a breach of his human rights to proceed with the deprivation. In respect of stage one the Tribunal found no public law error in the Secretary of State's decision. In respect of stage two, the exercise of discretion, it did. That error was that the Secretary of State had completely failed, despite numerous opportunities to do so, to consider and weigh in its decision making process the Respondent's assertions about his work for the security services. Judge Hollings-Tennant goes no further than that.

7. The second point raised in the grounds is that the First-tier Tribunal considers material that was not before the decision maker. This too, is quite misconceived. The First-tier Tribunal rightly records that the Respondent had brought his work for the security services to the attention of the Secretary of State as long ago as the 26th February 2021. It is true that he did not give any significant detail about it at that time, for the simple reason that he did not think he needed to, given that the claims could easily be verified directly by the decision maker: as he puts it, "this is confidential information which affects the safety of myself and my family, but if the Home Office contacts Counter Terrorism it should be possible to verify this". It was for this reason that Judge Hollings-Tennant found the omission to consider this matter intertwined with the *Tameside* failure. Furthermore this appeal had been repeatedly adjourned to give the Secretary of State the opportunity to consider the point: despite this delaying proceedings by some ten months, this was never done. That is the point made by the Tribunal. Matters plainly relevant to the exercise of discretion were brought to the attention of the Secretary of State; those matters could have been investigated and they were not; there is no indication on the face of the decision that they were given any weight at all when the discretion was exercised. That was the public law error that it found.

8. The third point raised is that the Tribunal misunderstood what public law error the Respondent (then the Appellant) had been pleading. The grounds assert that:

> "The error in law pleaded was that the SSHD failed to consider or give weight to the innocent explanation given by the Appellant for the deception. This was found to be without error; thus it is confusing why the FTTJ attached weight to factors which were not relevant to the meeting of the condition precedent in the discretion"

Reference is then made to the decision in Balajigari et al v SSHD [2019] EWCA Civ 673.

9. I have to confess that I did not understand this aspect of the grounds. As far as I could tell, and Mr Bates agrees, the author of the grounds perhaps conflated the arguments over whether the condition precedent was met with arguments over whether the discretion was exercised lawfully. Those were, under s40(3) of the Act, two distinct exercises. It was perfectly possible for the Tribunal to find, as it did, in the Secretary of State's favour in one, and the Respondent's favour in another.

10. The final submission made in the grounds is that there was some perversity in the Tribunal attaching weight to the Respondent's alleged work for the security services when that had not affected his decision to use identity X one way or the other. Again, the author of the grounds has perhaps misunderstood the decision. All that the First-tier Tribunal says is that the Respondent's work for the security services was a matter that should have been considered by the Secretary of State when he was considering whether to deprive him of his British nationality.

11. None of the grounds have been made out and the appeal of the Secretary of State is therefore dismissed.

12. On the 14th May 2024 the Respondent's solicitors uploaded to CE file a 'rule 24 response' drafted by Mr Karnik containing a challenge to the First-tier Tribunal's findings on the s40(3) 'condition precedent'. This in essence states that the Tribunal erred in law in finding for the Secretary of State on this point. There is a time limit for such challenges. Pursuant to rule 24 (2)(a) of the Tribunal Procedure (Upper Tribunal) Rule 2008 any 'cross appeal' (ie a challenge to findings made by the successful party) must be made within 1 month of permission having been granted to the losing party. Mr Karnik acknowledges that the application is late – some six months late. He submits however that Batley Law were waiting for legal aid to be granted to enable them to draft the rule 24 and that in those circumstances time should be extended. It is not right that a hard pressed legal aid firm should have to draft pleadings without any guarantee that they will be paid. Mr Karnik submitted that it is in the interests of justice that this Tribunal consider his grounds.

13. I refused to extend time so as to consider this 'cross appeal'. Whilst I have every sympathy for "hard pressed legal aid firms" it was of course open to Batley Law to file holding grounds back in November 2023. No details have been provided as to why it took so long to secure legal aid. Firms routinely draft and file grounds of appeal without funding being firmly in place and I am not satisfied that it is in the interests of justice to permit new grounds to be advanced before this Tribunal some 6 months out of time.

**Decisions**

14. The decision of the First-tier Tribunal is upheld, and the Secretary of State's appeal is dismissed.

15. There is an order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
20th May 2024