Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00037/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 February 2021	**On 25 June 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARAM RASOL ALI
(anonymity direction not made)

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Ms G Patel, Counsel instructed by RZZ Solicitors

DECISION AND REASONS

1. I have already found an error of law in this case and gave my reasons in a Decision and Reasons dated 24 September 2020. I incorporate those reasons into this Decision and Reasons by way of an appendix. The decision in September was given as an extempore judgement and I offer that as a weak explanation for some of its syntactical shortcomings. There I explain that the respondent is referred to as "the claimant" and the appellant as the "Secretary of State".

2. I have set aside the decision of the First-tier Tribunal and directed that the appeal be redetermined in the Upper Tribunal before me and that is what I now set out to do.

3. I have been considerably assisted by skeleton arguments from both representatives.

4. On 16 April 2002 the claimant was given exceptional leave to remain in the United Kingdom. He was later given Indefinite Leave to Remain. On 4 December 2007 he was given British citizenship by naturalisation. This is an appeal against a decision on 4 April 2019 to deprive the claimant of his British citizenship under Section 40(3) of the British Nationality Act 1981. Such decisions are appealable to the First-tier Tribunal and in appropriate cases with leave, to the Upper Tribunal. It is for the Secretary of State to show that the claimant's conduct comes within the scope of the section.

5. As was explained in **Pirzada (Deprivation of citizenship: general principles) [2017] UKUT 196 (IAC)** the restrictions on the rights of appeal imposed by Section 84 of the Immigration, Nationality and Asylum Act 2002 do not apply to appeals against a decision under Section 40 of the British Nationality Act 1981. Rather, as is explained in the headnote in **Pirzada**:

> "*The grounds of appeal are, however, limited by the formulation of Section 40 and must be directed to whether the Secretary of State's decision was in fact empowered by that Section.*"

6. However, the decision in **Pirzada** was criticised in **BA (deprivation of citizenship: appeals) [2018] UKUT 00085 (IAC)** which was promulgated on 21 November 2017 and was clearly authoritative when I heard this appeal on 8 February 2021. I set out below the headnote in **BA**:

> *(1) In an appeal under section 40A of the British Nationality Act 1981, the Tribunal must first establish whether the relevant condition precedent in section 40(2) or (3) exists for the exercise of the Secretary of State's discretion to deprive a person (P) of British citizenship.*
>
> *(2) In a section 40(2) case, the fact that the Secretary of State is satisfied that deprivation is conducive to the public good is to be given very significant weight and will almost inevitably be determinative of that issue.*
>
> *(3) In a section 40(3) case, the Tribunal must establish whether one or more of the means described in subsection (3)(a), (b) and (c) were used by P in order to obtain British citizenship. As held in Pirzada (Deprivation of citizenship: general principles) [2017] UKUT 196 (IAC) the deception must have motivated the acquisition of that citizenship.*
>
> *(4) In both section 40(2) and (3) cases, the fact that the Secretary of State has decided in the exercise of her discretion to deprive P of British citizenship will in practice mean the Tribunal can allow P's appeal only if satisfied that the reasonably foreseeable consequence of deprivation would violate the obligations of the United Kingdom government under the Human Rights Act 1998 and/or that there is some exceptional feature of the case which means the discretion in the subsection concerned should be exercised differently.*
>
> *(5) As can be seen from AB (British citizenship: deprivation: Deliallisi considered) (Nigeria) [2016] UKUT 451 (IAC), the stronger P's case appears to the Tribunal to be for resisting any future (post-deprivation) removal on ECHR grounds, the less*

likely it will be that P's removal from the United Kingdom will be one of the foreseeable consequences of deprivation.

(6) The appeal is to be determined by reference to the evidence adduced to the Tribunal, whether or not the same evidence was before the Secretary of State when she made her decision to deprive.

7. On 26 February 2021 the Supreme Court handed down its judgement in **Begum (Respondent) v Secretary of State for the Home Department (Appellant) [2021] UKSC 7**.

8. It is quite plain that, following **Begum**, the authority of **BA** is, at the very least, arguably diminished. I have considered reconstituting the Tribunal for further submissions but I see no point as, for reasons that I will explained below, I can see no way in which the approach that I have decided is required by **Begum** could make any difference to the outcome in this case.

9. Although **Begum** concerned the deprivation of British citizenship the appeal began in the Special Immigration Appeals Commission and, although subject to the statute that created it and its own procedure rules, proceedings in SIAC are a kind of judicial review. Unlike the instant appeal, which is brought against a decision made under Section 40(3) of the British Nationality Act 1981the decision that in was challenged in **Begum** was made under Section 40(2) (conducive to the public good). Giving the judgement of the whole court, Lord Reed at paragraph 69 said:

> "So, for example, in appeals under section 2B of the 1997 Act against decisions made under section 40(2) of the 1981 Act, the principles to be applied by SIAC in reviewing the Secretary of State's exercise of his discretion are largely the same as those applicable in administrative law, as I have explained. But if a question arises as to whether the Secretary of State has acted incompatibly with the appellant's Convention rights, contrary to section 6 of the Human Rights Act, SIAC has to determine that matter objectively on the basis of its own assessment."

10. In other words, SIAC should not decide for itself if "deprivation is conducive to the public good" but if the Secretary of State was entitled to reach that conclusion on the material before her. This contrasts with the approach required by **BA** which began as a statutory appeal to the First-tier Tribunal against a decision under Section 40(3) of the 1981 Act.

11. This 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 representations, or
> (c) concealment of a material fact."

12. Having reflected on the point, I find that **BA** is no longer to be followed. At paragraph 45 of **Begum** Lord Reed said that **BA** was based on a misapplication of authority. That must undermine the decision as a whole. Lord Reed then went on to illustrate how categories of appeals generally require different approaches depending on how the appeal come about. There is nothing

inherently troubling about the Tribunal having different tasks in different appeals that come before it.

13. In this appeal the Secretary of State must satisfy me that claimant's British citizenship was obtained by fraud, false representations or concealment of a material fact but if I do then, unless the subsequent decision to deprive the claimant of his status is irrational or otherwise wrong in public law, or contrary to the United Kingdom's obligations under the European Convention on Human Rights, I must dismiss the appeal.

14. When I heard the appeal it was settled law that when redetermining the appeal I had to decide if the condition precedent to justify deprivation had been established and, additionally, how the discretion whether or not to deprive the claimant if his citizenship should be exercised.

15. It was made clear in **BA** that once the condition precedent is established, (ignoring human rights issues) the appeal should be dismissed unless there is "some exceptional feature of the case which means the discretion in the subsection concerned should be exercised differently" (headnote paragraph 4). In reality I doubt if there are many cases that will be decided differently if **Begum** rather than **BA** is followed. Although I find that **BA** should not be followed I explain below that I would have reached the came conclusion if **BA** was binding.

16. The Notice of Decision shows that the appellant arrived in the United Kingdom clandestinely on 18 February 2002 and claimed asylum. He said (falsely) that his name is Aram Rasol Ali and that he was born in Kirkuk in Iraq on 1 April 1976. The claimant was refused asylum on 16 April 2002 but also on 16 April 2002 he was granted exceptional leave to remain for four years. After completing those four years he was given indefinite leave to remain and then on 4 December 2007 he was granted naturalisation. He was given a passport in his false name on 31 December 2007.

17. In his witness statement, which is undated but provided through his solicitors, the appellant said that he was born in Kirkuk but his Iraqi nationality card gave his place of birth wrongly as the governorate of Sulaymaniyah. I find that it does not matter if that is where he was born. The point is that his identity card show that he comes from Sulaymaniyah. It follows that he would not need to return to Kirkuk.

18. It is now clear beyond all possible argument that the appellant is Aram Rasol Ali who was born on 1 April 1976. He has been frank about this use of false identity and there is no argument before me to suggest that the original identity was other than false.

19. He has clearly used deception. It does not necessarily follow that the deception led to the grant of leave. Ms Patel submitted that the deception was *not* material to the decision to grant leave.

20. In his skeleton argument Mr Clarke asserts that the Secretary of State would have refused the citizenship application if the Secretary of State had known that the claimant's leave had been obtained in a false identity, the claimant having made false claims about his name and date of birth.

21. This is supported by a policy instruction identified in the in the Secretary of State's Skeleton Argument as "Chapter 55". It states:

> 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.
>
> 55.7.2.2 This will include but is not limited to:
>
> 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.

22. The skeleton argument goes on to explain that a person who has lied about his or her identity would not normally be considered a person of good character.

23. The Notice of Decision to Deprive is quite clear. At paragraph 9 it asserts that if the claimant had not pretended to have come from Kirkuk he would have not obtained exceptional leave to remain and so would not have been on a route that led to indefinite leave to remain and ultimately naturalisation. It is explained at paragraph 9 that had the claimant been frank about his origins:

> "the likelihood is that you would have been considered for removal upon the refusal of your asylum claim … and thus would not have been present in the UK to obtain ILR and ultimately naturalisation as a British citizen."

24. It was also stated later in the same paragraph:

> "However, as it has now been established that you are from Bazian, Al-Sulaimania, part of the Kurdish Autonomous Zone (KAZ), and not from Kirkuk, part of the Government Controlled Area of Iraq (GCI), it is therefore not accepted that your life was in danger as claimed".

25. Ms Patel did not call evidence. She made submissions. She said there were three grounds. First, the admitted deception was immaterial; second, that discretion should have been used differently; and third, the impact of deprivation was too severe. As I understood the argument the reference to "too severe" supported the claimant's contention that the decision was an unlawful interference with his "private and family life". Clearly, given the time that he has been in the United Kingdom, he has established significant "private and family life" but this is not a decision to remove him or refuse him leave to remain. For the purpose of the article 8 of the European Convention on Human Rights I have to consider if the decision to deprive him of his acquired British citizenship is a disproportionate interference with his private and family life.

26. Ms Patel said that the appellant claimed asylum in 2002 but he was unsuccessful. No clear reasons were given for his grant or exceptional leave. The decision refusing his asylum claim said that the claimant could go to the Kurdish Autonomous Area. In the circumstances there was no basis for saying that if the claimant had told the truth to the Secretary of State that the outcome would have been different. If followed, she said, that the deception had not been shown to be material.

27. Mr Clarke, in accordance with Directions, assembled a considerable number of possibly relevant background papers. The one that is most pertinent here is

entitled UK Home Office Border Agency, Iraq Policy Bulletin 1/2009, 12 January 2009. At the risk of condescending, "GCI" is an acronym for "Government Controlled area of Iraq". At 3.6 it says:

> "Although there was no country specific blanket ELR policy it was accepted practice that all asylum seekers who were accepted as being Iraqi nationals, but who were found not to be refugees, from April 1991 to 20 October 2000, would be granted four years ELR arising from factors such as the severe penalties imposed on those who had left Iraq illegally. From 20 October 2000, in light of the improved conditions in KAZ, only Claimants who were accepted to have come from GCI were granted four years ELR".

28. The policy then went on to say how even that concession was reduced further.

29. It follows that the claimant's leave in 2002 was likely to have been given directly as a consequence of his claim to have come from Kirkuk, which was part of the GCI, being believed. The fact that this was not spelled out in the grant is not reason to assume that the claimant had not benefitted from the relevant policy.

30. In the absence of clear contrary evidence, I am entirely satisfied that the Secretary of State had no blanket policy of giving ELR in 2002.

31. If follows that I am satisfied that it is clear beyond argument that his grant of leave was on the basis of his deception. There is really no more to be said on that point.

32. As I have explained above, I do not accept that I have any power to consider the Secretary of State's exercise of discretion except on judicial review grounds.

33. However, if I had the power to apply my own discretion on this point I would have come to the same conclusion as the Secretary of State. This claimant entered the United Kingdom and sought asylum on a falsehood about his place of residence in Iraq. The United Kingdom assigns considerable resources to honouring its obligations under the Refugee Convention and there is considerable public concern about the social consequences of immigration. In order to promote confidence in the system of immigration control and to discourage abuse, those who are shown to have lied materially in their applications for protection should be seen to lose any advantage that they have gained. Further, it is not fair to those who might want to establish themselves in the United Kingdom but who are not willing to lie to achieve that end that those who are known to have lied are seen to prosper.

34. It is perfectly fair to point out that the claimant has lived responsibly, as far as we know, for seventeen years or so in the United Kingdom and has made a home there. These are points that are relevant in the event of a decision to remove him or in the event of him seeking leave to remain on human rights grounds but there is no removal decision in this case. The decision is to deprive him of a benefit that he would not have got if he had told the truth.

35. I see no merit in any suggestion that the impact of deprivation was too severe. It leaves him without status in the United Kingdom but that of itself does not amount to much. I accept that being without status can be a very significant restrain on a person's right to live unhindered by the state which is precisely

what article 8 exists to protect. However the right is qualified and there was no evidence that being without status would be unduly burdensome in this case. He can apply for leave to remain if he wishes and then his human rights, or those of his family members, if any, can be considered fully. Similarly any decision to remove him can be challenged on human rights grounds. The fact that the claimant is obliged to leave the United Kingdom, or risk living there without permission or set about making a claim for permission to remain is, I find, no more than the just consequence of his deception being discovered. It is not in any sense, too severe.

36. There is nothing in the “limbo position” created by depriving him of the citizenship he should never have had, which makes the decision wrong.

37. I have a considerable bundle of policy documents which may have proved extremely useful in different ways but the important one has been identified and that satisfies me that this is a case where the admitted deception was material, the subsequent decision to deprive him of citizenship was clearly within the range of lawful responses open to the Secretary of State (and, in my independent judgement, appropriate in every way) and the consequences of the decision are wholly proportionate.

38. I dismiss this appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 24 June 2021

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00037/2019

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 23 September 2020	.....

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARAM RASOL ALI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr D Clarke, Home Office Presenting Officer
For the Respondent: Ms G Patel, Counsel instructed by RZZ Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against a decision of the Secretary of State to deprive him of his British nationality.

2. This is a case where it is very easy to become confused and, if I may be permitted the colloquialism, to lose the wood in the trees. In an effort to keep it simple I will summarise the case. I hope what I say is factually right. It is accepted that the claimant has been given British nationality, it is accepted that he originates from Iraq and it is accepted that he has in his dealings with the British authorities provided a name, date and place of birth that he knew to

be false. He has at least had the courage to make that plain in a witness statement.

3. When the case got to the First-tier Tribunal both parties were confronted by the First-tier Tribunal Judge, having given thought to the case, indicated that had the solution. She referred to a case of the High Court decided by Forbes J. and reported as **Rashid [2008] EWHC 232 (Admin)**, in which Forbes J., with the help of Counsel, summarised the appropriate policy provisions relating to Iraqi asylum seekers at the material time. According to that decision, the present claimant would have been given everything that he was given regardless of his true date of birth, nationality, place of origin or anything apart from being Iraqi and if that was right then it something that may very well impact significantly on the subsequent decision to deprive him of his nationality. This was a new point. It had not occurred to either of the parties; it was not the way the claimant's case was going to be argued and it was not the way the Presenting Officer had come prepared to deal with it.

4. The Presenting Officer asked for an adjournment. The Presenting Officer had difficulty, either directly or through another, seeing a copy of the High Court decision. That is unfortunate but it happens sometimes in these days with electronic communications, we have not yet reached total success but more realistically the Presenting Officer wanted an opportunity to consider the position carefully and no doubt take specific instructions. I do not think it is controversial when I say this, it is certainly my experience, that working out what policies are in force at a particular time can prove extraordinarily tedious and difficult and it is easy to make mistakes. It is not something to be done in a hurry "on the hoof".

5. The First-tier Tribunal Judge refused to grant an adjournment. I am satisfied, with respect, that that was clearly wrong. When a point of this kind is taken, and one wonders quite why a judge wants to take points of this kind rather than leaving it for the parties, it is imperative that both parties have every opportunity to address it and answer it if possible. There is an important rider to add to that. It is that on the face of it, it does seem that the decision in **Rashid** is extremely helpful to the claimant but I am not satisfied that it is a decision that should be relied upon for determining what policy was in force at the time.

6. In saying this I am not being disrespectful of a decision which is not strictly binding on me but rather I recognise Forbes J was determining the case before him, not ruling on what policies were in force at a particular time.

7. In this appeal, which has very important consequences for the claimant, the precise terms of the policy may well be highly material and a blanket description that was no doubt, if I may say so respectfully, wholly sufficient for the decision that Forbes J had to make should not necessarily be seamlessly transferred into another decision. It is not what he was purporting to do and it should not be relied on for that purpose.

8. The short point is that Mr Clarke has produced an internal document in draft form suggesting very strongly that there was no blanket policy up to the critical date in 2000. Mr Clarke says that the policy changed in October 2000 so that any cases considered after that would not benefit from the blanket policy. This

is clearly not reconcilable immediately with the view taken by Mr Justice Forbes.

9. Ms Patel has considered her position. Clearly, she wants to take advantage of the decision that has been made in her client's favour and clearly wants to rely on the decision of the High Court which is wholly helpful to her. However, I am satisfied that it was wrong of the judge to spring this on the parties and then not give an opportunity to adjourn and I am also satisfied that it would be wrong to hold Mr Clarke to the information he has been able to produce today without giving a further opportunity. I say this because the document he was able to produce was produced at the last minute in response to something produced by the appellant's representative the night before. This is not criticising anybody, it is just explaining why I am content not to insist that the case goes ahead on the information I have got, I do not think that would be fair to the Secretary of State and the Secretary of State is entitled to fairness as much as anybody else.

10. It follows that I set aside the decision of the First-tier Tribunal and I direct the case be redetermined in the Upper Tribunal. I am not going to make tight directions because I do not find that they generally help anybody but I am going to insist that both parties identify all documents relied upon and produce copies in support of the policy they say that was in force at the relevant time no later than 21 days after today (23 September 2020), not after this order is sent out and I encourage the parties to make written submissions. I do not require them but I think it would be helpful and hope that that can be done.

11. If it is the claimant's case that he wishes to rely on evidence that has not been served on the Tribunal previously then he is reminded that an appropriate application must be made. As I said in the hearing room, I am not closing down the possibility of further evidence from the claimant, I am simply saying that the procedures must be followed. I hope that is clear. The case will be heard by me unless exceptional circumstances prevent that.

Notice of Decision

12. The First-tier Tribunal erred in law. I set aside its decision and I direct that the appeal be redetermined in the Upper Tribunal before me.

13. I further direct that the parties identify all documents relied upon in support of their contention that a particular policy was in force at a particular time and serve copies on each other and on the Tribunal no later than 5:00 pm on 14 October 2020.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal Dated 24 September 2020