Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00055/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams	**Decision & Reasons Promulgated**
On Monday 24 January 2022	**On Tuesday 8 February 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR KAMAL JAF FAIEQ (AKA HAMA AMIN)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L Sanghera, solicitor of JM Wilson Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Gribble promulgated on 10 December 2020 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 16 May 2019 making a decision to deprive the Appellant of his British citizenship based on his use of deception when acquiring citizenship. The Appellant is an Iraqi national. He gave his name as Kamal Jaf Faieq when seeking asylum. He said he came from

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Kirkuk. He gave a false date of birth of 10 December 1975. His true identity has since been established as Kamal Faieq Hama Amin born 1 November 1979 in Sulaymaniyah (which is in the Independent Kurdish Region – "IKR"). Kirkuk was part of the Government Controlled Area of Iraq ("GCI").

2. The Appellant's appeal against the Respondent's decision came first before First-tier Tribunal Judge Boylan-Kemp MBE who, on 28 August 2019, allowed the appeal. The Respondent appealed to this Tribunal. In a decision made on the papers under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Upper Tribunal Judge Frances found there to be an error of law in Judge Boylan-Kemp's decision. The error was based on the failure of the Appellant to give evidence. It was said that the Judge accepted as evidence what were in fact submissions from his representative. Judge Frances pointed to the lack of medical evidence showing that the Appellant was unfit to give evidence. His failure to do so meant that his evidence could not be tested, and the Judge had failed to have regard to that factor in accepting the Appellant's credibility, particularly where an allegation of dishonesty was made against him. Judge Frances considered the Appellant's written evidence about the dishonesty alleged alongside all the other evidence and concluded that Judge Boylan-Kemp had erred in accepting the explanation provided by the Appellant's representative and had failed to consider the totality of the evidence. Judge Frances remitted the appeal to the First-tier Tribunal for re-making. The Appellant did not seek to appeal Judge Frances' decision, nor has there been any application to set it aside on the basis that it was a decision made on the papers following Fordham J's decision in The Joint Council for the Welfare of Immigrants v President of the Upper Tribunal (Immigration and Asylum Chamber) [2020] EWHC 3103. The Appellant would now be out of time to pursue either course.

3. On 14 September 2020, a case management review was held in relation to the remitted appeal. The directions made included that the Appellant would be the only person giving evidence. A Kurdish Sorani interpreter was booked for that purpose.

4. At the hearing, Ms Sanghera who also represented the Appellant at that stage, indicated to the Judge that in spite of the Appellant and an interpreter being present, he would, once again, not be giving evidence. The hearing again proceeded by way of submissions only. The Judge considered the evidence. She concluded that the Appellant had made false representations, that those had been material and that there would be no breach of the Appellant's Article 8 rights occasioned by the deprivation decision. I note that the Appellant's family (wife and young children) are said to remain living in Sulaymaniyah. The Judge therefore dismissed the appeal.

5. The Appellant has appealed on what can be condensed into five grounds. Ms Sanghera accepted at the start of the hearing before me that the first ground which turns on an issue of fact in the documents could not be

sustained on a proper reading of that document and she therefore abandoned it. In summary, ground one asserted that there was an error in the Judge indicating that there were suspicions whether the Appellant was really from Kirkuk as early as the screening interview. Ms Sanghera now accepts that this assertion is made out when one looks at the screening interview ([RB/B]).

6. I have numbered the remaining paragraphs of the grounds according to the way in which Ms Sanghera presented the Appellant's case to avoid any confusion in the discussion which follows:

Ground two ([2] and [3] of the grounds): The Judge erred by finding an inconsistency between the explanation given by the Appellant for his use of the name he gave in his asylum claim and the explanation given in a letter written by his then advisers Refugee Migrant Centre (RMC). The Judge also demonstrated bias by accepting evidence from the Respondent in a form (RR) without sight of that evidence and finding an inconsistency based on that evidence.

Ground three ([4] of the grounds): The Judge has impermissibly made a finding about the use of tribal affiliations in the part of Iraq where the Appellant says he was living (Kirkuk) without any evidential basis. This was not an issue raised by the Respondent.

Ground four ([5] of the grounds): The Judge wrongly held against the Appellant his failure to give oral evidence at the hearing and without giving weight to the medical evidence which provided his reasons for not doing so.

Ground five ([6] and [7] of the grounds): The Judge erred by making findings contrary to this Tribunal's decision in Sleiman (deprivation of citizenship; conduct: Lebanon) [2017] UKUT 367 (IAC) ("Sleiman"). In so doing, the Judge erred by not considering that the grant of indefinite leave to remain ("ILR") was following a review within the so-called "legacy scheme". The inference from what is there said is that the Appellant would have been granted ILR even had the use of false details been discovered.

7. Permission to appeal was granted by First-tier Tribunal Judge J K Swaney on 19 May 2021 in the following terms so far as relevant:

"... 3. In an appeal against a decision by the respondent to deprive a person of their British citizenship pursuant to section 40(3) of the British Nationality Act 1981 the burden is on the respondent to show that there has been a fraud, false representation or concealment of a material fact that it material to the decision to grant citizenship.

4. In this appeal the appellant disputes that he made a false representation at all or if he did, that it was not material to the decision to grant him British citizenship. In such circumstances, it is arguable that for the judge to assume that an assertion contained in the refusal letter regarding a document (form RR) that was not produced to the judge is true amounts to an error of law on grounds of unfairness and because it does not properly recognise that the burden is on the respondent. The content of

form RR is material to the judge's consideration of whether there was a misrepresentation and if there was, whether it was material to the grant of citizenship. This is particular true where the judge identifies that the asserted content of the form is different to [sic] or inconsistent with other evidence and where the judge declines to accept the appellant's explanation in the absence of any corroborative evidence.

5. The grounds of appeal disclose an arguable error of law. The grant of permission is not limited."

8. The matter comes before me to determine whether the Decision contains an error of law. If I conclude that it does, I may set aside the Decision and, if I do so, I may either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

9. The hearing was conducted via Microsoft Teams. There were no technical difficulties affecting the conduct of the hearing. I had before me the Appellant's bundle before the First-tier Tribunal (referred to below as "AB/xx") and a core bundle of documents relating to the appeal including the Respondent's bundle (referred to as [RB/annex]). I was also taken to two letters from Newbridge Surgery dated 12 July 2019 and 17 November 2020 which were handed in to the Judge below and to which I need to have regard in relation to the Appellant's ground four. Having heard oral submissions from Ms Sanghera and Mr Clarke, I indicated that I would reserve my decision and issue that in writing which I now turn to do.

DISCUSSION AND CONCLUSIONS

Ground two

10. This was the ground which appears to have led Judge Swaney to grant permission. In light of this and since, in spite of my attempts to clarify the factual underpinning of the ground, I still found the Appellant's case somewhat unclear, I need to refer in detail to the Decision and underlying documents.

11. The error said to have been made by the Judge appears at [40] and [41] of the Decision to which Ms Sanghera took me. It is said that the Judge there identifies an inconsistency where, on Ms Sanghera's submission, there is none. The Judge dealt with what she identified as an inconsistency at [42] and [43] of the Decision. I therefore set out also those paragraphs to put the asserted error in context:

"40. The appellant's real name is Kamal Faieq Hama Amin. The name recorded is Kamal Jaf Faieq. They are not significantly different but they are not the same name. The reason for the difference is key but the explanation for the difference that the appellant has given has not been consistent. I do not have his form RR but have no reason to doubt the Home Office letter where it was said that his explanation for the false name in that form was that the interpreter at his screening interview '*told him to*'.

41. This contrasts with the account given by the RMC in their letter to the Home Office where on his behalf they accept he gave a *'made-up name'* and date of birth. The letter however also goes on to explain that *'he did not want to give his own name and date of birth because he feared being returned and having his identity revealed'*. The appellant in his witness statement says RMC did not listen to him and he did not see their letter before it was sent. He repeats that the interpreter added his tribal name and told him to drop his father's and grandfather's name.

42. This is problematic for a number of reasons. First, the RMC wrote to the Home Office on the appellant's instructions. He says they misinterpreted what he said. I have no evidence of this. There would have been a consultation or written instructions taken before the letter was sent. I have no evidence about that consultation or those instructions. There has been plenty of time for the appellant to ask for his file of papers to be given to him. A client file has to be preserved for years and even if the firm is closed or taken over there are mechanisms to obtain it. There has been ample time for this to have happened. The file could have revealed that what he said was true; that they had misinterpreted his instructions. This would support his claim that he was given advice from an interpreter. Equally though it could have revealed that they did as he instructed and wrote to the Home Office with the truth and he deliberately did not give his full name and added a tribal name instead.

43. I appreciate that the appellant in his witness statement says he was told to drop names and add a tribal name but this was not mentioned in the form RR so the account is not consistent. Which account is correct cannot be gauged because not only do I not have his file of papers containing the consultation; the appellant did not give oral evidence to allow the account to be examined. In the absence of the old file and oral evidence, the weight I can attach to the appellant's account on this aspect is reduced."

12. I turn then to the letter from RMC dated 17 January 2019. It is not disputed by the Appellant that they were at the time advisers acting on his behalf. Although the Appellant in his grounds of appeal points to their charitable status which it is suggested affects their position, as Mr Clarke points out, they were (and still are) advisers authorised by the Office of Immigration Services Commissioner. They are therefore regulated and required to act professionally in the conduct of cases. Their letter was intended to make submissions to the Respondent explaining the Appellant's conduct in the use of false details. The salient paragraphs read as follows:

> "The facts are that our client gave a made-up name and date of birth when he came to the UK in January 2002 to claim asylum on the basis of a well-founded fear of persecution by the Iraqi regime. At the time Saddam Hussein was in power, and our client is a Kurd who had been living in Kirkuk, under control of the central government. Our client did not want to give his own name and date of birth because he feared being sent back to Iraq and having his identity revealed to the Iraqi regime. With regard to his place of birth, he believed that he had been born in Kirkuk where he was brought up by his family as a small child. He only

found out when applying for his birth certificate that he was actually born in Sulemanya. When he later came to apply for citizenship he continued to use the same details as he was unaware that he could have reverted to his true name and birth date, by using a change of name deed if necessary.

It is clear that our client had no intention to deceive when he gave incorrect details, and that his only motive was fear of the Iraqi regime. He did not impersonate the identity of another. The identity details which he gave had no bearing on his grant of asylum or citizenship. The Home Office would have made these grants if he had used the correct details."

13. I turn next to the form RR. I as Judge Gribble, do not have that form. Mr Clarke did not have a copy. What is said by Judge Gribble is taken from the Respondent's decision letter under appeal. Paragraphs [8] and [9] of that decision reads as follows:

"8. You completed a form RR requesting that an amended Naturalisation certificate was issued in your genuine identity as you naturalised using a false name, date of birth and place of birth. With this application you submitted your Iraqi Nationality Certificate and your Iraqi Identity card in your genuine identity Kamal Faieq Hama Amin, DOB 01/11/1979 born in Sulimanya Iraq.

9. You reasoned that you gave false identity when you came to the UK because your interpreter told you to. You said you had been born in Kirkuk as you had lived there before. You were afraid you would be found and returned. You confirmed that you naturalised in a false identity in Admission statement dated 17/01/2019."

14. As I pointed out to Ms Sanghera, the content of the form RR and the explanation which the Appellant is said to have given for the use of the false details at that time is largely consistent with what the Appellant now says is the reason, namely that the interpreter told him to do so. As Mr Clarke pointed out in reply, what is there said about the content of the form RR is also largely consistent with the Appellant's witness statement in this appeal which is at [AB/1-3]. In that statement he says this:

"2. … I was informed by the Home Office interpreter who was interpreting for me during my screening interview that I did not have to provide my full name of Kamal Faieq Hama Amin as it was too long and that I did not have to provide my surnames of Hama Amin. He then asked what tribe I belonged to, to which I replied Jaff. It was the Home Office interpreter who then inserted the name Jaff between my first name and second name."

15. I accept that the Judge does draw attention to a potential difference between the form RR and the statement in terms of the explanation given for the use of what is said to be the Appellant's tribal name. I will need to return to that explanation when dealing with ground three. The minor difference in evidence might be said to be simply additional evidence. It might be an embellishment. As the Judge says, she could not determine that issue because she did not hear evidence from the

Appellant. He could not therefore proffer an explanation. However, the content of the form RR is something which the Appellant himself provided. He knew what the Respondent said about the content of that form as it is in the decision letter. As the Judge says, she did not have any cause to doubt what was said in the Respondent's decision about the content of the form. Moreover, there was no obvious discrepancy between the explanation given there and now as to how the Appellant came to use the false details. The Appellant has not provided any evidence that the content of the form RR was not as the Respondent says. As I say, there is no reason why he would do so given that the explanation was broadly as he now contends.

16. For that reason, there is no procedural unfairness in the Judge's reliance on the form. If anything, the fact that the Appellant had given the same explanation (in broad terms) twice was something which helped rather than hindered his case.

17. The problem for the Appellant came rather from the letter from RMC who were his representatives. There was no reference in that letter to the Home Office interpreter having given the Appellant advice to use a false or different name. Ms Sanghera sought at one point to suggest that there was in fact no inconsistency between the letter and the Appellant's explanation and that the Judge had been wrong to categorise this as an inconsistency. As I understood her submission, it was that the Appellant had used a different name (and I note also a false date of birth) because he was afraid of being returned and identified. That might have been an additional reason. However, the failure of the RMC letter to identify the reason as being that an interpreter advised the Appellant to use the false name stands against the Appellant's evidence now that this was the main reason. It is not mentioned at all in the RMC letter. As such, it is an inconsistency in the evidence and the Judge was entitled to view it as such. The Judge was entitled to rely on that inconsistency to disbelieve the Appellant's account regarding the advice given by the interpreter. She was entitled to disbelieve the Appellant's reasons for giving a name which differed from his true name.

<u>Ground Three</u>

18. This ground challenges the Judge's reasons for rejecting the Appellant's explanation for giving a false place of birth. As I have already noted, the Respondent's caseworker expressed some doubts about whether the Appellant really came from Kirkuk in the screening interview. That is accepted. The Appellant says that he lived in Kirkuk before coming to the UK but has since learned that he was born in Sulaimanyah. The Judge did not accept his evidence that he did not know where he was born.

19. The Appellant says that the Judge has made assumptions based on no evidence that it would be unusual for the Appellant not to know where he was born particularly if tribal affiliations are not related to the place

where the Appellant was living. This ground relates to what is said by the Judge at [44] and [45] of the Decision regarding the false details given about the Appellant's place of birth:

> "44. The letter from the RMC explains also that the appellant believed he had been born in Kirkuk where he was brought up as a small child. I comment that the appellant was a man of 22 when he came to the UK (although he claimed to be 25). It would be unusual not to know where you were born especially if your tribal affiliation is not related to the place you are living in. Again, this could not be explored.
>
> 45. In respect of his place of birth I add too that the claim that the appellant only knew he was born in Suleymaniyah when he asked for his birth certificate in 2014 could not be tested because not only did the appellant not give evidence, he did not provide a copy of his birth certificate which would have shown when it was issued. He has provided his Iraqi Nationality Certificate which he obtained in 2017 but does not explain the 3 year gap in obtaining ID documents. He could also have provided a statement from his friend's father about how and why he came to tell the appellant he was not born in Kirkuk and when this was: 2014 or 2017. Again, the evidence the appellant gives about this in his statement cannot be tested because I did not hear from him. I cannot place weight on the appellant's written statement; there are contradictions and unanswered questions. There are documents he could have provided to assist but he had not."

20. I begin by noting that the Appellant says in his statement that Iraqis do not use tribal names as part of their names. As will be recalled from the above in relation to ground one, the Appellant asserts that he knew his tribal name because he says that the interpreter asked for it and gave it as part of the false name. That Iraqis do not use tribal names as part of their name is therefore nothing to the point. The Appellant clearly knew his tribal name. Moreover, he has provided (at [AB/10-11]) a document entitled "Jaff, A Kurdish Tribe". The very first sentence of that document states that "[t]he largest tribe in Sulaimaniyah Province of Iraqi Kurdistan is the Jaff Tribe". That document was no doubt included to support the Appellant's use of that name as part of the name he gave when claiming asylum and to support his account of why the interpreter had included it. Whilst I accept that the article does refer to members of that tribe residing also in Kirkuk, it may well be that it was this article which led the Judge to make a comment about the Appellant's potential knowledge about where he was born based on tribal affiliations.

21. As Mr Clarke pointed out, in any event, even if the Judge was wrong to draw on the point about tribal affiliations, the wider reasons for disbelieving what the Appellant said about his place of birth emerges from the remainder of [44] and from [45] of the Decision. There is no challenge to what is there said. Even if the Judge was wrong to take the point she did at [44] of the Decision regarding the import of tribal affiliations, she was entitled to disbelieve the Appellant's account for the reasons given at [45] of the Decision. She was also entitled to rely on the

fact that the Appellant was an adult when he left Iraq and might have been expected to know his place of birth.

Ground Four

22. As appears in some of the passages from the Decision which I have already set out, the Judge was not prepared to accept some of the Appellant's evidence because he was not willing to give evidence at the hearing. This unwillingness (or as the Appellant would have it inability) to give evidence has to be set in the context where the Appellant was aware of the potential importance of doing so in light of the reasons why the earlier allowed appeal decision was set aside. It was his opportunity to present his case and to explain any discrepancies.

23. Ms Sanghera drew my attention to [48] where the Judge drew together her findings about the credibility of the Appellant's account of the use of false details:

> "The conclusion I draw from his failure to give evidence; the lack of his old file from RMC; the lack of production of his birth certificate and a statement from his friend's father is that he has something to hide. I am satisfied that he did not give his full name on arrival in the UK; that he deliberately gave a false date of birth and he lied about his place of birth as he knew that he would be likely to be returned to Sulaymaniyah. This was no genuine misunderstanding. Looked at through the lens of 'ordinary standards' this is dishonest conduct."

24. Ms Sanghera submitted that the Judge ought not to have held the Appellant's failure to give evidence against him in light of medical evidence which suggested that he was not well enough to do so. She drew my attention to the two letters from Newbridge Surgery to which I allude at [9] above. The first dated 12 July 2019 refers to physical ailments (diabetes and a back problem) and says that the Appellant also suffers from depression and anxiety. The doctor observes that the Appellant "is trying to get his daughters and wife over here" and asks that his application be prioritised "on humanitarian and medical grounds" to help him with his medical ailments. The second goes into more detail about what are said to be the Appellant's mental health problems. It is said that the Appellant has been started on medication but there is no reference to the name or dosage of the medication. The doctor appears to be a general practitioner and not a mental health specialist. There is no reference to any formal diagnosis or how that diagnosis has been reached. More importantly, neither this letter nor the 2019 letter provide any opinion about the Appellant's ability to give oral evidence at a hearing or what adjustments might be needed to enable him to do so.

25. The Judge set out the content of these two letters at [29] and [32] of the Decision. Between those two references, the Judge also notes that the Appellant had not given evidence in the first appeal hearing (which led to the previously allowed appeal). At [33] of the Decision she went on to describe the Appellant's demeanour at the start of the hearing where it

had been expected that he would give evidence in line with the case management directions. She observed that the Appellant "was alert and was playing with his phone on entering the hearing room". She refers to a conversation between the Appellant and interpreter to check their understanding of each other. She then records Ms Sanghera's indication that she was not intending to call the Appellant having spoken to him earlier that morning. The Judge then says this:

> "33. … I expressed some surprise as the GP letter I had been handed shortly before the hearing did not say the appellant was unfit to give evidence; nor was there any other medical evidence to suggest the appellant was too unwell or vulnerable to give an account of matters. She repeated that following her consultation she was not going to call him to give evidence."

26. As a result of that exchange, the Appellant and his representative were on notice that the medical evidence did not deal with the issue it needed to address regarding the Appellant's ability to give evidence. It is therefore scarcely surprising that when dealing with that evidence immediately prior to her conclusions at [48] which I have set out above, the Judge said this:

> "47. I come to the evidence from the 2 GP letters. They tell me little save their clinical opinion that the appellant is depressed, which I accept, and their opinion that having his wife join him will help. They do not say that he is too unwell to give evidence, or that in order to give evidence he will need adjustments which would of course have been accommodated. The conclusion I reach is that Mr Faieq has not told his GP that his appeal is actually about a claim that he lied about his name, date of birth and place of birth. So, while I accept that he is anxious about his situation there is no medical evidence at all to suggest he is unfit to give evidence and explain the position."

27. The Judge has fairly summarised the medical evidence. As she there concluded, it does not show that the Appellant was too unwell to give evidence. As I have already pointed out, it had been expected from the case management review that the Appellant would give evidence. The Judge drew the attention of the Appellant's representative to the deficiencies in the medical evidence which did not demonstrate his inability to give evidence. The Judge has identified in the passages I have set out why she was unable simply to rely on the Appellant's written evidence because it raised questions which could not be answered due to the Appellant not giving oral evidence. There were issues of credibility. The Appellant's evidence could not be tested. The Judge was therefore entitled to draw inferences from the failure to give evidence alongside the other reasons she gives at [48] of the Decision for not believing his account.

Ground Five

28. Ms Sanghera did not initially make submissions on this ground. When Mr Clarke raised this omission, however, she indicated that she was not

abandoning the ground. I permitted her to make submissions in reply but also, in fairness to the Respondent, allowed Mr Clarke to reply to those submissions.

29. This ground turns on the basis on which the Appellant was granted ILR. This appears from a letter at [RB/E] dated 21 February 2007. That is a letter written by the "Iraqi Judgment Consideration" team which, as appears in the heading, was part of the "Asylum Casework Directorate". It is addressed to the Appellant's former solicitors at the time and states as follows:

> "Thank you for your letter of 15/02/2007 on behalf of your client Mr Kamal Jaf Faieq who has been refused asylum in the United Kingdom.
>
> Mr Kamal Jaf Faieq's case has been reviewed in the light of the Court of Appeal judgment in the case of *Bakhtear Rashid* and the High Court cases of *(A) (H) and (AH).* The specific details of Mr Kamal Jaf Faieq's asylum case have been considered on that basis and it has been decided that it would be appropriate to grant Mr Kamal Jaf Faieq ILR under the scope of *(AH)…."*

30. The Appellant's ground five is very briefly pleaded and asserts only that the Judge's findings are contrary to Sleiman and that the Judge took no account of the grants of ILR to others under "the legacy scheme".

31. Mr Clarke reminded me of the judgment in Hakemi and others v Secretary of State for the Home Department [2012] EWHC 1967 (Admin) which sets out some of the background to the "legacy scheme". I do not need to refer to the detail of what that judgment says about that scheme because it simply does not apply to the Appellant's case for a number of reasons. First, at the date of the letter to the Appellant, the unit which came to deal with legacy cases had not been set up. The decision was taken to transfer to that team outstanding applications prior to 5 March 2007 ([1] of the judgment in Hakemi). The Appellant's case was not outstanding at that date. It was determined in February 2007. Second, that team was titled "Casework Resolution Directorate" and not either "Iraqi Judgment Consideration" or "Asylum Casework Directorate" ([1] of the judgment). Third, as appears at [6] and [7] of the judgment in Hakemi, review of "legacy cases" was undertaken against paragraph 395C of the Immigration Rules and chapter 53 of the Enforcement Instructions and Guidance and not specific case law of the Court of Appeal and High Court as in the Appellant's case. As such, it is readily apparent that this was not a "legacy case".

32. The headnote in Sleiman reads as follows:

> "In an appeal against a decision to deprive a person of a citizenship status, in assessing whether the appellant obtained registration or naturalisation 'by means of' fraud, false representation, or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship."

While I accept that the headnote does not restrict the proposition there set out only to legacy cases, the decision itself concerns those cases. The conclusion in that case that the appellant would have been granted ILR under the legacy scheme irrespective of the false details provided also has to be read in the context of what is said at [7], [42], [62] and [63] of the decision where it is recorded that the Respondent's own notes had indicated that the appellant's age in that case (which was false) was not relevant to the grant of ILR.

33. I refer then to the basis on which the Respondent said that she granted ILR in the Appellant's case. This is set out at [13] of the Respondent's decision under appeal as follows:

> "On 21/02/2007 you were informed by the Home Office that it was appropriate to grant you ILR under the scope of (AH) [ANNEX E]. To summarise this judgment, it was deemed unfair to expect someone from a Government Controlled Area of Iraq (GCI) to relocate to a Kurdish Autonomous Zone (KAZ). Therefore, based on the fact you were from Kirkuk (a GCI) you were granted ILR. At this point in your immigration, the material fraud occurred. You should have informed the Home Office that you were in fact from Sulimanya. If you had, he would not have been considered for ILR under this policy."

34. The judgment in R (A), (H) and (AH) v Secretary of State for the Home Department is at [2006] EWHC 526 (Admin). I have read that judgment and the summary of what the case decides as set out in the decision letter appears to me to be accurate. More importantly, the Appellant has not disputed the accuracy of that summary.

35. The Judge dealt with Sleiman and whether the Appellant would have been granted ILR if the Respondent had been aware of his true identity details. Having reached the conclusion she did about the deception at [48] of the Decision (cited at [23] above), the Judge said this:

> "49. I therefore find the condition precedent is met and the appellant has behaved fraudulently, made false representations and misrepresented a material fact. The case of **Sleiman** sets out that any fraud or false representation must be directly material to the decision to grant of citizenship.
>
> 50. It is clear that the deception about his place of birth was material to his grant of ILR and here the guidance is clear that such a deception leading to a grant of ILR 'may' be relevant. It is highly relevant in this case because if the truth were known about his place of birth the appellant would not have been granted ILR. The guidance at 55.1.3.2 and 55.7.2 is clear that if the relevant facts had been known; that the appellant had given false details; he would not have been granted ILR under the legacy scheme.
>
> 51. In this case Mr Faieq obtained ILR through operation of the legacy scheme on the basis that Kirkuk was a contested area. He would not have obtained leave on any basis had the truth been known; that he was from the IKR which was a place to which people were being returned."

36. Although I accept that the Judge was wrong to refer to the Appellant having obtained ILR through the legacy scheme, that error is immaterial. It is also not the error said to be identified by the Appellant's ground five. Indeed, that ground repeats the error and relies on the grant of ILR being under the legacy scheme when it is patently obvious from the grant letter and the deprivation decision that this is not the case.

37. There is no error identified by the Appellant's fifth ground. The Judge has recorded the proposition arising from Sleiman. She has considered that in context of the Appellant's case. Although she wrongly refers to the "legacy scheme", she clearly identifies that, if the Respondent had known that the Appellant's place of birth was within IKR and not GCI, he would not have qualified for the grant of ILR. For that reason, she was entitled to conclude that the deception was material.

CONCLUSION

38. The Appellant's grounds do not disclose errors of law in the Decision which are capable of affecting the substance of the Decision. I therefore uphold the Decision. The Appellant's appeal remains dismissed.

DECISION

I am satisfied that the Decision does not involve the making of a material error on a point of law. I uphold the Decision of First-tier Tribunal Judge Gribble promulgated on 10 December 2020. The Appellant's appeal therefore remains dismissed.

Signed L K Smith Dated: 26 January 2022
Upper Tribunal Judge Smith