



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-001953
[DC/50177/2021]; IA/10966/2021

THE IMMIGRATION ACTS

**Heard at : Birmingham Civil Decision & Reasons Promulgated
Justice Centre
On : 8 November 2022 On : 22 December 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MUHIALDIN HADI MUHIALDIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Brooks, instructed by Braitch Solicitors
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 5 March 2021 to deprive him of his British nationality under section 40(3) of the British Nationality Act 1981.

Background

2. The appellant is currently a British citizen. He is of Iraqi nationality and claims to have been born on 26 April 1973. He claims to have entered the UK

illegally on 17 May 2002. He claimed asylum on 17 May 2002 in the identity of Hadi Ameen, an Iraqi national born on 23 June 1973, with a wife Yasameen Khidir born on 5 June 1979 and a daughter Skalla Hadi Ameen born on 1 June 1998. In his Statement of Evidence Form (SEF) he gave his parents' details as Abdul Rahman Ameen (deceased) and Aisha Nadir, both born in Mosul, and he gave details of his late brother and his two sisters, also born in Mosul.

3. In an asylum statement attached to the SEF, the appellant stated that he was an Iraqi Kurdish Muslim born on 23 June 1973 in the Iraqi controlled city of Mosul. He provided reasons for having fled Iraq and for fearing return to that country. He was interviewed about his asylum claim on 5 July 2002, giving the same details and giving his last address in Iraq, in Mosul.

4. The appellant's asylum claim was refused on 9 July 2002, but he was granted Exceptional Leave to Remain (ELR) for four years. On 26 July 2002 he applied for a Home Office Travel Document giving the same details as previously and giving his place of birth as Mosul and was issued with a Travel Document on 4 February 2003 in that identity.

5. On 1 April 2006 the appellant applied for Indefinite Leave to Remain (ILR) in the UK in the same identity and giving his wife's date of birth as 6 May 1979 and his daughter Skalla as 3 December 1999, which differed from the dates of birth previously given. He also gave details of two further children, Sakar Ameen Hadi born on 22 July 2002 and Malik Ameen born on 19 October 2003. He was granted indefinite leave to remain on 19 April 2007. On 26 October 2007 he passed the Life in the UK test, and the pass notification letter gave the same details for him.

6. On 12 March 2009 the appellant applied for naturalisation as a British citizen in the same identity, again giving his place of birth as Mosul, Iraq. He gave details for his parents as Ameen Ismail born in 1922 and Aysha Nadir born in 1930, both born in Mosul, which differed from the details previously given in his SEF. He gave his wife's details as Yasameen Khadir born on 6 May 1979 in Mosul and stated that they were married on 10 October 1998 in Mosul. He completed the 'good character' requirement of the form and signed a declaration stating that the information provided was correct. The appellant was then naturalised as a British citizen on 22 October 2009 in the name of Hadi Ameen, an Iraqi national born on 23 June 1973 in Mosul.

7. On 17 May 2016 the Home Office received an application from the appellant for a duplicate certificate of citizenship in his new name, Muhialdin Hadi Muhialdon, confirming again that he was born on 23 June 1973 in Mosul and stating that he had changed his name. The appellant provided a copy of his British passport in his new name issued on 13 August 2015.

8. On 1 July 2016 the appellant submitted an overseas passport application for his son Yousif Muhialdin Hadi, a British/ Iraqi national born on 7 December 2013 in Erbil, Iraq, giving the child's mother's name as Shelan Qaader Hussein, an Iraqi national born on 2 September 1988 in Erbil, Iraq and giving his own name as the child's parent, as Muhialdin Hadi Muhialdon, a British national born

on 23 June 1973 in Mosul, Iraq and stating that he and his wife were married on 23 June 2010. With the application the appellant included his change of name deed dated 12 March 2015, a copy of the Iraqi Register of 1957 stamped 24 August 2016 giving his place of birth as Erbil and an Iraqi ID card issued on 2 March 2014 showing his place of birth as Erbil and place of registration as Erbil.

9. Owing to the inconsistency in the place of birth given for the appellant in the overseas passport application for his son, between his own declarations and the documentation provided, the appellant was interviewed by HMPO and was asked for an explanation for the differing places of birth. His explanation was that he was born in Mosul, but his parents moved to Erbil when he was a baby and he was raised there and so his parents had registered his place of birth as the town where they were living, Erbil. He was also asked about conflicting dates given for his marriage to his second wife, and he explained that one was a religious marriage and the other one was legal, registered on 23 June 2010, and that he remembered the legal one because it was the same as his birthday.

10. The appellant's case was then referred for consideration of deprivation of citizenship on 17 February 2017 by HMPO because of concerns that he had naturalised using false particulars. The respondent wrote to the appellant on 24 November 2020 inviting him to respond to the concerns that he had obtained his British citizen status by fraud and notifying him that consideration was being given to deprive him of his British citizenship under section 40(3) of the British Nationality Act 1981.

11. The appellant responded in a letter dated 12 December 2020, giving his correct details as Muhialdin Hadi Muhialdin born on 26 April 1973 in Erbil, and stating that he had provided false details when he first came to the UK and had invented a name because he feared that his life and the lives of his family members would be in danger if they were sent back to Iraq in their true identities. He stated that he had not disclosed his true identity subsequently because of a lack of sophistication in, and understanding of, legal matters. He referred to the fact that he had six children in the UK, all British, four of whom were born in the UK, two from his previous partner and two from his current partner, and that he and his partner lived with three children whilst the other three children lived with his ex-partner. He stated that he had strong connections in the UK.

12. In a statement of the same date, the appellant stated that the interpreter used when he arrived in the UK did not speak his language and that they did not understand each other very well. He stated that he had told the interpreter his correct date of birth, 26 April 1973. He was not asked where he was born, but was asked where he came from, and he therefore said that he was from Mosul as he had grown up in Mosul city and had lived all his life there, although he was born in Erbil. His correct date of birth was 26 April 1973 and his correct place of birth was Erbil. His father's family background was from Erbil whereas his mother's was from Mosul and his father moved to Mosul when he married his mother. Some of his siblings were born in Mosul and some in Erbil. His

family's civil status records stated Erbil because that was where his father originated from.

The Respondent's Decision

13. The respondent, in a decision dated 5 March 2021, did not accept the appellant's explanation as a justification for the misrepresentation and concluded that his British citizenship had been obtained fraudulently and that he should be deprived of his British citizenship under section 40(3) of the British Nationality Act 1981. The respondent did not accept that the appellant's lack of knowledge of the law was the reason he had provided false details, as he had legal representation at the time. Neither did the respondent accept that the interpreter had mistranslated the appellant's date of birth or asked him where he was from rather than where he was born. The respondent noted that the appellant's explanation was contradictory as his evidence in his statement was that he was born in Erbil but studied and lived in Mosul all his life, whilst he had stated the opposite when interviewed by HMPO, namely that he was born in Mosul but moved to Erbil where he was a baby and then grew up there.

14. The respondent considered that the appellant was fully aware that if he claimed to be from Mosul, which was in the Government Controlled Iraq (GCI), he would not be returned to Iraq because of the Home Office policy at the time, which was to grant ELR, whereas he would not have been granted ELR if the Home Office knew he was born in Erbil in the Kurdish Autonomous Zone (KAZ). The respondent considered that the appellant intended to deceive and that was a determining factor in the grant of ELR. He maintained the deception in his application for ILR and so the deception was material to the grant of settled status, and he also maintained the deception in his application for naturalisation, persisting in the deception for 14 years until it was discovered when he applied for a passport for his son. The respondent considered that the appellant's circumstances fell within the terms of Chapter 55 of the Deprivation & Nullity of British Citizenship guidance and that his grant of British citizenship had been obtained as a result of fraud. Having also given consideration to Article 8 of the ECHR and to the best interests of his children, the respondent concluded that it was reasonable and proportionate to deprive the appellant of his British citizenship.

Appeal before First-tier Tribunal

15. The appellant appealed against that decision under section 40A(1) of the British Nationality Act 1981. His appeal was heard on 24 February 2022 by First-tier Tribunal Judge Fenoughty. The appellant produced 12 pages of further evidence which included his solicitor's letter to HMPO dated 23 September 2020 with attachments, said to be his original Iraqi Nationality Certificate and Identity card, both of which gave his date of birth as 26 April 1973 and his place of birth as Erbil and the former giving his parents' place of birth as Erbil. The judge listed and detailed those documents, together with the remaining documents in the bundle including a witness statement for the appellant dated 15 October 2021.

16. In that statement the appellant stated that he was Muhialdin Hadi Muhialdon born on 23 June 1973 in Mosul and that he had been advised by the interpreter, on his arrival in the UK, not to give accurate names and dates of birth as Saddam Hussein's regime would be able to locate him and his family if they were returned to Iraq. He stated that the documentation when his birth was registered by his father was issued in Erbil as the authorities in the areas under the control of the Iraqi government did not allow Kurdish people to register there and his birth could not, therefore, be registered in Mosul. He could not recall having stated that he was raised in Erbil. He stated that the letter and witness statement dated December 2020 had been written by someone else and he had not seen it before it was sent off. He stated further that it was not until 2014 that he was able to obtain his Iraqi documents which contained his correct name. He had obtained the documents in person from the registry office in Erbil, as Mosul was too dangerous.

17. In his oral evidence before the Tribunal, the appellant stated again that the name changes were the fault of interpreters and that the interpreter had told him to use a false name. In 2020 his solicitors had told him that it was not possible to change his date and place of birth. He stated that he was born in Mosul and went to Erbil frequently, but never lived there. His father had registered him in Erbil because of Arabisation in Mosul. After checking his mobile phone, he gave his date of birth as 26 April 1973. He said that the letter and witness statement dated December 2020 had been written by an agent and he had not read it. It was sent without him knowing.

18. It was argued on behalf of the appellant that the respondent had conflated the grant of citizenship with a claim for asylum, that the discrepancies in the date and place of birth were errors which were not attributable to the appellant, that the appellant had provided a proper explanation for giving a false name and that the respondent had failed to separate the elements which were relevant to the allegation of fraud, namely date of birth, place of birth and name, which then created a prejudicial lens and tainted the overall assessment.

19. Judge Fenoughty did not believe the appellant's claim that the information in the letter and statement of 12 December 2020 had been sent without his knowledge and approval and did not accept that the appellant had provided a credible explanation for the different date of birth which had changed throughout his evidence and documentation. The judge found that the appellant had given conflicting accounts of where he was born and raised and considered that he had failed to provide a satisfactory explanation for the inconsistencies in his various accounts and that she could not rely on his evidence as to his place of birth. As for the appellant's name, the judge found again that there was no satisfactory explanation for the different names used. The judge found that the appellant had falsely maintained that his place of birth was Mosul, whereas the letter and statement sent to the Home Office in December 2020 and the Iraqi documents all gave his place of birth as Erbil. He had given no adequate explanation for his continued deception of the British authorities as to his true name, date and place of birth.

20. The judge concluded that the appellant was genuinely registered in Iraq as Muhialdin Hadi Muhialdon born on 26 April 1973 in Erbil, that the appellant knew that he was born in Erbil, that he knew his true date of birth, that he had told the UK authorities that he was born in Mosul in the GCI knowing that he would not have been granted leave to remain if he had said that he was from Erbil in the KAZ and that the grant of ELR was based upon the false place of birth. She found that the appellant had deliberately withheld true information or given false information in his applications for ILR and British citizenship and that his application for a British passport bore his real name but a false date and place of birth. The judge was satisfied that the respondent was entitled to find that the appellant's naturalisation was obtained by fraud, false representation or concealment of a material fact and that the respondent's exercise of discretion to deprive the appellant of his British citizenship was not unreasonable. Having gone on to consider Article 8, the judge concluded that any interference with the appellant's private and family life was proportionate, and she accordingly dismissed the appeal on all grounds.

21. Permission to appeal was sought on behalf of the appellant on the grounds that the judge had failed to provide adequate reasoning for her findings and that there had been unfairness to the appellant as a result. It was asserted that the judge had placed too great a weight on the issues of differing dates of birth and names, rather than on the central issue of place of birth, and that she had failed to conduct a thorough assessment of credibility in line with the decision in KB & AH (credibility-structured approach) Pakistan [2017] UKUT 491. It was asserted further that the judge had failed to consider whether removal was a reasonably foreseeable consequence of the deprivation decision.

22. Permission was granted in the First-tier Tribunal, although without any detailed reasons.

Hearing and Submissions

23. The matter then came before me for a hearing and both parties made submissions.

24. Mr Brooks raised three grounds of appeal. Firstly, he submitted that the judge had erred in law by considering the merits of the appellant's case rather than focussing on the respondent's decision and the evidence before the respondent, contrary to the guidance in Begum, R. (on the application of) v Special Immigration Appeals Commission & Anor [2021] UKSC 7. She heard oral evidence from the appellant which was clearly not evidence before the respondent when the decision was made. Secondly, he submitted that the judge had erred by giving undue focus to irrelevant matters, by focussing on the misrepresentations as to the appellant's date of birth rather than the place of birth, which was the relevant issue. Thirdly, Mr Brooks submitted that the judge had erred by failing to undertake a proper credibility assessment in line with the principles in KB & AH and by failing to have regard to the consistency of the appellant's evidence. She had failed to consider that the appellant had consistently said that he was born in Mosul and to consider the explanation given in his interview with HMPO, at page 187 of the respondent's appeal

bundle, namely that he was born in Mosul but that his family moved to Erbil when he was a child and therefore gave the town where they were living in the registration document. That should have been weighty evidence when the only evidence on the other side was the unsigned letter and statement of 12 December 2020 which the appellant claimed had been written by an advisor and sent off without his knowledge. The respondent had given undue weight to those documents and had not assessed the appellant's credibility properly, reaching a decision that no reasonable Secretary of State could have reached.

25. Mr Williams submitted that the judge clearly separated out the issues of name, date of birth and place of birth and clearly focussed on the issue of the appellant's place of birth as the material matter. She did not focus on immaterial matters. The judge was faced with a number of documents in which the appellant provided declarations that he was born in Mosul, but also had official documents stating that he was born in Erbil in addition to a letter and statement in which he confessed to deception in regard to his place of birth and stated that he was not only registered in Erbil but actually born in Erbil. The judge did not accept the appellant's claim that the letter and statement were sent in error without his knowledge and gave proper reasons for doing so. The judge therefore clearly identified the relevant issue to be determined. She found that the condition precedent had been met and that the misrepresentation was material to the grant of ELR and ILR. Although the judge considered oral evidence at the hearing, that was in the context of assessing, from the appellant's point of view, the evidence before the Secretary of State. There was no error in the judge's approach in considering the issues as to the appellant's name and date of birth as she was assessing the evidence as a whole.

26. In response, Mr Brooks submitted that the judge clearly gave weight to inconsistencies in the appellant's account of his date of birth and therefore focussed on that matter, which was not a material matter.

Discussion and conclusions

27. I find no merit in any of the grounds. The judge's decision was a very detailed and comprehensive one and included a full and careful assessment of the evidence in the relevant context. Contrary to Mr Brooks' submissions, the judge's approach was entirely consistent with that set out in Begum and I reject the assertion that she conducted a merits-based assessment rather than a review of the respondent's decision. The judge specifically and appropriately directed herself to the relevant matters when setting out the respondent's submissions in that regard at [30] and when considering the proper approach confirmed in Begum, at [77] and [78] of her decision. Although the judge had regard to the appellant's oral evidence which, as Mr Brooks submitted, was not evidence considered by the respondent when making her decision, I agree with Mr Williams that that was simply in the context of assessing, from the appellant's point of view, the evidence which was before the respondent. There was nothing erroneous in that approach and, on the contrary, the appellant had the benefit of an opportunity to respond to the discrepancies relied upon by the respondent in the evidence.

28. As for the assertion that the judge focussed on immaterial matters, I consider that that was simply not the case. An analysis of the appellant's differing accounts of his date of birth and name, as well as his place of birth, was a necessary part of a consideration of the reliability of the evidence as a whole, both oral and documentary, and therefore the judge quite properly considered all of these matters under her heading of credibility. Whilst recognising the inevitability of some overlap, the judge made it clear at [67] that she was considering each element separately, having recorded at [63] Mr Brooks' assertion that the respondent had failed to do so and subsequently, at [80], rejecting that assertion. The judge made it clear throughout her decision that the material issue was the misrepresentation as to the place of birth, specifically stating that to be the case, at [73] and [74], and giving clear reasons for that at [75(v)] and [75(vi)]. At [81] to [83] she summarised in clear terms her findings on the materiality of the place of birth, before concluding at [84] that the respondent had been entitled to find that the appellant's naturalisation had been obtained as a result of that misrepresentation. The judge's decision was accordingly clearly focussed upon the relevant issues and there is no merit in the grounds asserting the contrary.

29. The third ground relied upon by Mr Brooks was that the judge erred in her credibility assessment by failing to give weight to the consistency of the appellant's account, throughout his evidence, that his place of birth was Mosul. Mr Brooks relied upon the principles set out in KB & AH in that regard. However, the judge clearly recognised, at [72], that the appellant had given Mosul as his place of birth in the majority of his evidence. She nevertheless gave cogent reasons for finding that the appellant had deliberately misrepresented his place of birth and that the respondent had been entitled to conclude as such. At [69] the judge noted that, whilst the appellant had initially repeatedly stated that he was born in Mosul, there were no documents confirming Mosul as his place of birth, yet there were documents giving his place of birth as Erbil, namely the two Civil Status ID cards. Indeed, as Mr Williams submitted, there were further documents referred to by the judge at [31], including the Iraqi Nationality Certificate and the copy of the 1957 Iraqi Civil Registry document stamped 24 August 2016 which gave the appellant's place of birth as Erbil.

30. In addition, the judge noted, quite properly, that the appellant had provided conflicting accounts of where he was born and conflicting explanations for the differing accounts. Mr Brooks submitted that the judge had ignored the appellant's explanation given at his interview with HMPO, at page 187 of the respondent's appeal bundle, where the appellant explained that whilst he was born in Mosul his father had registered him as born in Erbil as that was where he had moved when he was a baby and where he had been raised. However the judge referred to that interview at [12] and [34] and noted that in a subsequent letter and statement of 12 December 2020 submitted to the Home Office the appellant had admitted to having misrepresented his place of birth and confirmed his correct place of birth to be Erbil and stated that he grew up in Mosul and lived there all his life, which was the opposite to what he had said at the interview. Although the appellant sought to resile from that letter and statement the judge, for reasons properly given, rejected his reasons for so doing. It is also relevant to note that in his appeal statement of 15

October 2021 the appellant denied having stated he was born and raised in Erbil and claimed that his birth was registered in Erbil because the Iraqi government did not allow Kurdish people to register in Mosul, and in his oral evidence before the judge he said that he had never lived in Erbil. Whilst that was evidence which was not before the respondent at the time the decision was made, it was nevertheless a further reflection of the unreliability of the appellant's evidence to which the judge was entitled to have regard in assessing the rationality of the respondent's decision.

31. Accordingly, as the judge properly found, the appellant's own evidence as to his place of birth was internally inconsistent and was also inconsistent with the documentary evidence. Those inconsistencies were relied upon by the respondent in reaching her decision and the judge properly found that the respondent was entitled to conclude that the appellant had deliberately misled the authorities as to his place of birth in order to benefit from the Home Office policy in relation to those born in the GCI. Given the extent of the inconsistencies in the appellant's evidence, both as regards his own place of birth and that of his family members, and in relation to his identity in general, and considering the materiality of the misrepresentation as to his place of birth, the judge was fully and properly entitled to conclude, as she did at [84], that the condition precedent was established for the exercise of discretion by the respondent to deprive him of his British citizenship. Such a conclusion was entirely consistent with the approach set out in Begum and was fully and properly open to the judge on the evidence available and for the reasons cogently given.

32. Mr Brooks made no submissions on the final written ground of appeal which asserted that the judge failed to consider whether removal was a foreseeable consequence of the deprivation decision. Clearly, he was right not to do so as the judge gave consideration to that matter at [88] and [89]. In any event that was plainly not the focus of the appeal and the judge properly focussed on the relevant matters as identified by the respondent at [29] of the judge's decision.

33. For all of these reasons I do not find that Judge Fenoughty erred in law. She followed the correct approach when assessing the relevant matters before her, as consistent with the caselaw, and reached a decision which was fully and properly open to her. I therefore uphold her decision.

DECISION

34. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to dismiss the appeals stands.

Signed: S Kebede

Upper Tribunal Judge Kebede
2022

Dated: 10 November