Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001444
(DC/50059/2020); LP/00230/2021

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 12 August 2022	**On 29 September 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NYH
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Afshan Hashmi instructed by Kings Law Solicitors
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant claimed asylum in the United Kingdom in 2002 alleging that he was a citizen of Iraq born on 15 November 1980 with a name identified by the above initials, NYH. The appellant has since claimed that his true identity is AMR born 1 January 1977. He maintains his claim to be a national of Iraq which is not contested.

2. The appellant's application for international protection was refused on 3 December 2002 although he was granted exceptional leave to

remain on the same day and indefinite leave to remain on 19 December 2006.

3. On 1 April 2008 the appellant was naturalised as a British citizen in the name of NYH.

4. On 7 August 2019 the appellant applied for a British passport stating his true name was AMR. Enquiries made by the respondent led to notification on 24 April 2020 that the Secretary of State had reason to believe the appellant obtained his status as a British citizen as a result of fraud and was considering depriving the appellant of his citizenship.

5. On 9 October 2020 the respondent advised the appellant that she had decided to deprive him of his citizenship because it was obtained fraudulently.

6. The appellant appealed that decision which came before First-tier Tribunal Judge Atkinson ('the Judge') sitting at Bradford on 10 August 2021. Having considered the written and oral evidence and submissions made by the parties the Judge sets out findings of fact from [38] of the decision under challenge which are in the following terms:

> Findings of Fact and assessment
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> 38. I turn to the issue of whether or not the appellant is from Jalowla. I note that in the context of representations made by the appellant, he accepts that he did not give his true name and date of birth to the United Kingdom authorities in the course of his various applications, but claims that his statements as to his place of birth being Jalowla are true.
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> 39. The respondent relies on a number of documents and various aspects of the appellant's own account to show that the appellant comes from Sulaymaniyah.
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> 40. In assessing the evidence, I attach significant weight to the 1957 Registry Copy, for the reasons set out below.
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> 41. This document records the appellant's name as AWR as the family head, with a date of birth of 1 January 1977 and the place of birth as the subdistrict of Kazira, in the district of Shahbazar in the governate of Sulaymaniyah.
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> 42. The appellant submits that the document gives his place of birth as Sulaymaniyah because his parents and grandparents were registered there and that therefore the appellant was also required to register in Sulaymaniyah, even though he was born in Jalowla. I reject that submission for a number of reasons.
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> 43. First, on the face of the document it shows that the appellant's place of birth is Sulaymaniyah.
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> 44. Second, as accepted by Mr Khan, the appellant has not brought forward expert evidence or background materials which directly support his claim that it was necessary for the appellant to register his place of birth as Sulaymaniyah, despite having actually been born in Jalowla.
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> 45. Third, the background material relied on by the appellant, in the form of Landinfo report dated 16 December 2015, at paragraph 6.2, shows

that when a person moves, their family information can be transferred from one local family register to another. It also shows that if a family moves and is registered in a new family register, the old family register is still kept at the local registration office where the family used to live but a comment is then entered in both family books stating that the family has moved.

46. I find that this information supports the view that official documents show a person's actual place of birth and that, when a family has moved, entries will be made in the records stating that the family has moved. I therefore find that the Landinfo report tends to undermine the appellant's claim that the 1957 registry copy does not accurately record the appellant's place of birth.

47. Fourth, given what is said in the Landinfo report, it would be reasonable, if the appellant was born in Jalowla, to expect the appellant to be able to bring forward documentary evidence showing that he and his family had moved to, and lived in, Jalowla. However, in the present case the appellant has not brought forward such documentation.

48. Turning next to other aspects of the evidence, I find that there are a number of matters in the appellant's account that tend to undermine the credibility of his claim to have been born in Jalowla. Firstly, the appellant has given an account, which the 1957 registry copy supports, of marrying a woman known as RHP. The appellant's wife, RHP, is from the Kazira sub-district of the district of Shahbazar in Sulaymaniyah: that is the same place as the appellant's recorded place of birth. I find this aspect of the evidence tends to support the view that the appellant has married somebody from the same village in which he was born. I also find that the appellant has failed to put forward a reasonable explanation showing why, if he had lived all his life with his family in Jalowla, that he would marry someone from Kazira.

49. Secondly, the appellant claims that all his family in Iraq now live in Sulaymaniyah or nearby. I find that this aspect of the appellant's evidence also tends to support the view that the appellant was born in Sulaymaniyah. The appellant has not brought forward a satisfactory explanation for his claim that the family have now moved out of Jalowla and returned to Sulaymaniyah.

50. Thirdly, the appellant has failed to give a satisfactory explanation as to why his family moved from Sulaymaniyah to Jalowla before he was born. In oral evidence, the appellant suggested that the move was as a result of a family feud. I do not find that to be a satisfactory explanation. That is because the appellant has only now introduced the suggestion that his family was involved in a feud and made no mention of a feud in his witness statement. Further, such a claim, on its face, would appear to be inconsistent with the family having returned to their home area where the family feud originated.

51. In looking at the totality of the evidence, I also take account of the witness statement of Adel Lateef Sherriff. I attach limited weight to this statement. That is because it is very short and provides very little information or detail about his connection with the appellant. Nor is the statement supported by any documentation showing Mr Sherriff's own place of birth or of having lived in Jalowla at the same time as claimed by the appellant.

52. In assessing the evidence in the round, I find that the appellant's account of having been brought up and lived in Jalowla is not credible. I find that the respondent has discharged the burden of proof in showing, on the balance of probability, that the appellant was born in Sulaymaniyah. I make further findings as necessary below.

53. I further find that the appellant's naturalisation as a British citizen was obtained by means of fraud and false representation. In particular, I find that his representation that he was born in Jalowla, amounts to a deception involving dishonesty. I reject the appellant's submissions that his false representations amount to an innocent error on the basis that he was following the advice of the agent who facilitated his entry into the United Kingdom and because he feared persecution if he were returned to Iraq.

54. I reject that submission because the appellant would have been able to conceal his true identity by merely giving a false name, without also falsely claiming that he was from an area subject to control by Saddam Hussein, when in fact he was from a relatively safe area in the IKR. In falsely claiming to be from Jalowla, the appellant was thereby granted exceptional leave to remain, then indefinite leave to remain and consequently, in maintaining the fiction of his place of birth, able to naturalise as a British citizen.

55. In addition to finding that the claim of having been born in Jalowla formed an integral part of the decision to grant citizenship, I also find that, if the officials granting citizenship had known that the appellant had made serial false representations to the United Kingdom authorities, it is likely that the appellant would have been found not to have met the good character requirements applicable in citizenship cases.

56. I therefore find that the appellant's fraud and false representation was material in obtaining British citizenship.

57. I turn next to the issue of the respondent's exercise of discretion in depriving the appellant of citizenship status. In this regard I note the competing submissions from the representatives as to the scope of the appeal.

58. In the light of the Supreme Court's decision in Begum, as cited previously, I reject Mr Khan's submission, to the effect that the correct approach in appeals under section 40(3) is that of a full merits review. In that case the court reviewed the authorities relating to deprivation of citizenship, considered the specific wording of the discretion in issue as conferred on the secretary of state, and the authorities on the wider issue of the ambit of an appeal.

59. At paragraphs 67 and 68 of the judgement, the court said that tribunals cannot generally decide how statutory discretion conferred upon the primary decision maker ought to have been exercised, or exercise the discretion themselves, in the absence of any statutory provision authorising them to do so. The court went on to indicate that the ambit of the review to be undertaken by the tribunal was limited to administrative law principles, subject to considerations of human rights issues where the tribunal was under a duty to act as a primary decision maker.

60. Accordingly, applying the principles in Begum, in my view the ambit of the appeal before on the issue of the exercise of the respondent's discretion is limited to administrative law principles, albeit subject to my assessment of human rights issues. That is because sections 40 and 40A of the 1981 Act confer a discretion on the Secretary of State and the statutory grounds of appeal are expressed in general terms, without specific provision otherwise.

61. I do not accept Mr Khan's submission that the principles in Begum are confined to national security cases. That is because it is apparent from the court's analysis that consideration was given to the authorities on deprivation of citizenship cases as a whole, to the authorities relating to the ambit of an appeal in other administrative law areas and also entered into a more wide-ranging general consideration of how to determine the scope of an appellate jurisdiction.

62. I turn next to the respondent's exercise of discretion in the present case and the application of administrative law principles. The basis of the exercise of discretion is set out at paragraphs 29 onwards of the notice of deprivation. Those paragraphs show that the respondent has taken into account human rights considerations, which I deal with further below; the consequences of deprivation of citizenship in terms of the loss of entitlements and benefits such as a passport and voting; the impact on the appellant's sense of identity; and the minimal effect on the best interests of the appellant's child under section 55 of the 2009 Act, save for a potential emotional impact on the appellant's child.

63. The notice also sets out the respondent's consideration of issues relating to statelessness; the steps the respondent intends to take in respect of the appellant's immigration status and leave; and the seriousness of the appellant's actions in engaging in fraud and making false representations and the need to protect and maintain confidence in the immigration system and preserving the legitimacy of British nationality.

64. Given my summary of the respondent's considerations as noted above, I find that the decision cannot be impugned on the basis of a failure to adhere to administrative law principles.

65. Before coming to my concluded view in this appeal, I turn to my assessment of the human rights issues. I regard such assessment as being distinct from the considerations relating to administrative law principles and note that such an approach is in accordance with the Supreme Court's view in Begum.

66. In the present case, Mr Khan briefly submitted that deprivation of citizenship in this case would amount to a breach of the appellant's rights under article 8 of the human rights convention. Mr Khan did not develop this argument to any great extent. I deal with it briefly below. I do not consider it necessary to set out the authorities relating to the proper approach in article 8 cases. I also note here that I consider issues relating to the welfare of the appellant's child under section 55 of the 2009 Act are to be taken as effectively subsumed within my considerations below.

67. The appellant has lived lawfully in the United Kingdom for 19 years. The appellant has a child here and sadly his wife has recently passed

away. In these circumstances, I find that the appellant has an established private and family life in the United Kingdom.

68. I find that the proposed deprivation of citizenship will have consequences of such gravity as to engage the operation of article 8; that such interference is in accordance with the law and in the interests of protecting the integrity of the immigration and nationality systems.

69. In considering whether such interference is proportionate to the legitimate public end, I take account of the best interests of the appellant's child as a primary consideration. The evidence before me does not suggest that the appellant's child has any significant medical conditions, is under disability or is failing to meet any developmental milestones. Deprivation of the appellant citizenship is unlikely to lead to any significant disruption in the parental relationship.

70. So far as the appellant is concerned, no evidence has been advanced showing that he is anything other than a healthy individual with no disabilities. The appellant does not have a criminal record. As to the consequences of deprivation for the appellant, it is not necessary for the tribunal to consider the issue of whether the appellant will be granted leave to remain or whether the respondent will seek to remove him. That is because such decisions, if challenged, will give rise to further appeal rights and it is not appropriate for this tribunal to second-guess the outcome of such litigation.

71. In light of the above considerations, I find that the proposed interference is proportionate and deprivation of the appellant's citizenship would not give rise to a breach of his rights under article 8 of the human rights convention.

Conclusions relating to deprivation

72. I find that the respondent has discharged the burden of proof is showing that the appellant obtained his British citizenship by means of fraud and false representation. I find that the respondent has properly exercised his discretion in coming to the view that the appellant should be deprived of his citizenship status.

73. I also find that deprivation of the appellant's citizenship status would not result in a breach of the human rights convention.

74. I therefore dismiss the appeal.

7. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 17 January 2022, the operative part of the grant being in the following terms:

2. The grounds of appeal asserts that the First-tier Tribunal Judge failed to take the following into account: the Respondent's guidance on deprivation of citizenship (Chapter 55); relevant country guidance; the Respondent's "OGN" dated October 2002 and the authority of Rashid in relation to the Exceptional Leave policy at the time of the Appellant's application. The absence of consideration of these matters, it is argued, renders the findings at the Appellant dishonestly claimed that he was from Jalowa flawed. It is argued that Begum v Secretary of State for the Home Department [2021] UKSC 7 does not apply to the Appellant's appeal. It is also argued that the First-tier Tribunal failed to

take relevant matters in relation to Article 8 into account, particularly in relation to the best interests of the Appellant's British Citizen child.

3. The grounds are arguable. It is arguable that in finding that the Appellant's naturalisation as a British citizen was obtained by means of fraud and false representation that the Judge did not take the matters identified by the Appellant in the grounds into account and that these matters go to both whether there was fraud and whether citizenship was obtained by means of the fraud. The remaining grounds are also arguable.

8. The Secretary of State has provided a Rule 24 response dated 15 February 2022 the operative part of which reads:

2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.

3. With respect to ground 1 the respondent does not consider that the grounds are an accurate reflection of the Secretary of State's guidance. It is clear for the guidance that when a person has employed material deception deprivation is appropriate. In this case the judge made a sound, properly reasoned finding that the appellant had lied about his home area, that it was in fact in the IKR and that this was material to his grant of ILR.

4. The respondent considers that the judge did properly apply the principles in Begum in this instance as confirmed in Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 238 (IAC).

5. The respondent invites the tribunal to uphold the decision of the First Tier.

Error of law finding

9. Guidance on the proper approach to be taken by decision-makers in relation to deprivation of citizenship appeals has been provided by the Upper Tribunal in the case of Ceceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238 (IAC) the headnote of which (accurately reflecting the findings within the body of the decision) reads:

Following KV (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 2483, Aziz v Secretary of State for the Home Department [2018] EWCA Civ 1884, Hysaj (deprivation of citizenship: delay) [2020] UKUT 00128 (IAC), R (Begum) v Special Immigration Appeals Commission [2021] UKSC 7 and Laci v Secretary of State for the Home Department [2021] EWCA Civ 769 the legal principles regarding appeals under section 40A of the British Nationality Act 1981 against decisions to deprive a person of British citizenship are as follows:

(1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach

set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.

(2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.

(3) In so doing:

(a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and

(b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).

(4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in EB (Kosovo) v Secretary of State for the Home Department [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs 13 to 16 of EB (Kosovo).

(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).

(7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good.

10. Footnote 1 reads

(2) "the more time goes by without any steps being taken to remove an applicant, the more the sense of impermanence which will in the relationships formed earlier in the period will fail "and the expectation will grow that if the authorities they would have taken steps to do so", which may affect the proportionality of removal.

(3) Delay may "reduce the weight otherwise to be accorded to the requirements of firm and fair immigration control, if the delay is shown to be the result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes".

11. Ciceri was heard on 30 June 2021 and published on 16 September 2021. It therefore represents the correct legal position prevailing at the date of the hearing of this appellants appeal before the Judge on 31 August 2021, when the decision was promulgated, albeit that the Judge did not have the benefit of being able to read the judgment.

12. The first ground relied upon by the appellant asserts the approach adopted by the Judge in assessing the overall reliability of the appellant's evidence was unfair, unreasonable, and inadequate, as there are exceptional features in the case which should have enabled the Judge to find in favour of the appellant.

13. I find that the Judge clearly considered the evidence with the required degree of anxious scrutiny and that the findings made are supported by adequate reasons. It was also accepted by Ms Hashmi at the Error of Law hearing that the Judge's approach and structure of the determination is in accordance with Ceceri. I find no procedural unfairness or irregularity in relation to this issue.

14. Asserting the Judge should have reached a different decision or come to different conclusions on the evidence does not establish legal error per se. It is not disputed that the appellant maintained that he was from Jalowla in Iraq. I have set out above the Judge's findings in relation to this claim which is that the appellant was really from Sulaymaniyah governorate. I find that is finding within the range of those available to the Judge on the evidence.

15. This is an important finding as Jalowla is in Diyla governorate which extends from the north-east of Baghdad to the Iranian border which, despite being greatly affected by the conflict in Iraq, is within the government-controlled area. Sulamaniyah, by contrast, is in the Kurdish -controlled area of Iraq, and always has been.

16. In relation to Chapter 55 of the respondent's guidance on deprivation, the claim the Judge "entirely avoided Chapter 55 in favour of the appellant" has no arguable merit.

17. The Judge considered the appellant's explanation and argument why the claim he had made, using the false identity, was not material to the accusation of citizenship. At paragraph 55.7.2 of Chapter 55 one finds reference to statements material to the acquisition of citizenship, which can include but are not limited to:

- undisclosed convictions or other information which would have affected the person's ability to meet the good character requirement.

- A marriage/civil partnership which is found to be invalid or void, and so would have affected the person's ability to meet the requirements for section 6 (2).
- False details given in relation to an immigration or asylum application, which led to that state is 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.

18. The guidance accepts that if fraud, false representation or concealment of a material fact did not have a direct bearing on the grant of citizenship it would not be appropriate to pursue deprivation action, but the view of the Secretary of State and the Judge was that the fraudulent statements and concealment of the appellants true identity and place of origin was material and had a direct bearing on the grant of citizenship.

19. This finding arose based upon the Secretary of State's policy at the relevant time to grant leave to Kurds who originated from the government-controlled area ruled by Saddam Hussein. Those from the Kurdish region, the IKR, did not benefit from such an approach as it was accepted that they could be returned safely to that region. Although the appellant asserts any national of Iraq would have been granted leave at that time it is not made out this would have been the case for the appellant, as Kurd from the IKR, had the decision maker known the true facts of the case.

20. The Judge's finding that the deception was deliberate is not disputed as it was the appellant's application for a British passport which led to the discovery of his true identity and other matters, and there is no evidence to support a claim of innocent error or genuine omission by the appellant in claiming that he was somebody he was not.

21. Chapter 55.7.11 sets out mitigating factors but there was no evidence of physical or mental impairment or third-party responsibility for the appellant's actions. There is reference to the ECHR at 55.7.11.6 which shall be considered further below.

22. The grounds also suggest the Judge erred in forming adverse credibility finding on the basis of the content of the Iraq in 1957 Registration Document, due to this document giving a different place of birth from that which the appellant claimed. The grounds refer to a finding in the previous country guidance case of SMO [2019] UKUT 400 at paragraph 345 and 385. That decision has, of course, been replaced by SMO [2022] UKUT 00110 which in relation to the 1957 Registration document states:

The 1957 Registration Document

115. It is fair to observe that the reference to the 1957 Registration Document in the June 2020 CPIN came as something of a surprise to those who have followed the course of country guidance decisions on Iraq. The CSID, the Laissez Passer and the supporting or certification letter have all featured in the background material, in one form or another, for some time. That cannot be said of the 1957 Registration

Document and we do not know of, and were not referred to, any other background material originating from outside the UK in which this document is described or considered.

116. It is a hallmark of this case that the respondent's evidence is presented in a piecemeal and unorthodox fashion. As will already be apparent, much of the evidence upon which she relies consists of email and other exchanges between British and Iraqi officials. There are no witness statements made by these officials. There are minutes of one meeting which took place on 4 September of an unspecified year. The remaining minutes which have been adduced are almost entirely redacted. There is no correspondence from the Government of Iraq on headed paper. Whilst there is reference to litigation in the correspondence, it is far from clear that the Iraqi authorities were apprised of the specific task facing the Tribunal or the precedential nature of the litigation. The Tribunal is nevertheless invited to sift through this correspondence and to issue country guidance which will affect the protection claims of all those who seek international protection from Iraq. This is particularly so in relation to the 1957 Registration Document.

117. The June 2020 CPIN contains reference to the 1957 Registration Document at 2.6.15. What is reproduced under that paragraph is apparently a communication from an unnamed Iraqi official from an unspecified date in April 2020. That communication is then reproduced at Annex I of the CPIN. In response to the question about CSIDs (the answer to which has already featured in our earlier analysis) the Iraqi authorities stated:

> CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a 'Registration Document (1957)' which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.
>
> The registration document (1957) must be applied for on the applicant's behalf by a nominated representative in Iraq. In order to start the application, the individual requiring documentation would normally provide at least one copy of a national identity document (see above list Q1, FAS) and complete a power of attorney (to nominate a representative in Iraq) at the Iraqi embassy along with the embassy issued application forms. If they have no copies of identity documents they also would need to complete a British power of attorney validated by the FCO and provide parents names, place and date of birth to their nominated representative in Iraq.
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> Once issued the nominated representative will send the registration document (1957) to the applicant in the UK. The process takes 1-2 months.
>
> The HO cannot apply for documentation other than Laissez Passers on someone's behalf but the embassy is willing to check to see if the individual already holds documents and provide copies if necessary.

118. There were further exchanges between the British and Iraqi authorities after this first mention of the document. Counsellor Wael Alrobaaie of

the Iraqi Embassy in London featured in those exchanges, as he did in many of those considered in our first decision.

119. There was a series of emails between the counsellor and the respondent's Returns Logistics team on 8 April 2020. There was a conversation between the two sides on 7 April 2020. So much is clear from the first of the emails. No record of that conversation has been adduced. At 0901 in the morning of 8 April 2020, however, the officer in the Returns Logistics team asked Counsellor Alrobaaie to 'confirm the document Iraqi nationals are being advised to apply for from the UK is called a '1957 Civil Registration Document'?' He then asked whether 'this is also known as a Iraq Citizenship ID or Iraq Residency card'.

120. Counsellor Alrobaaie's response was comparatively lengthy and need not be set out in its entirety. As well as confirming that Iraqi passports could be issued by the Iraqi authorities in the UK (and in Amman and Dubai), and that the INID could only be issued to those who enrolled their biometrics in Iraq, he said the following about the 1957 Registration Document (which we have reproduced verbatim):

> The Registration Document 1957 is temporarily document to be used as alternative document in the event of loss or damage to the CSID or when a long period has passed since its issuance and it is not possible to attend Iraq to get the Iraqi National card.
>
> (…)
>
> The Registration Document 1957 is used as alternative document for the purpose of issuing the passport and it is a temporary solution for Iraqis abroad, but the embassy does not issue this document, we issue the power of attorney to the applicant and he send it to his representative in Iraq in order to apply for his registration document 1957 and then the representative can send the original copy of the registration document 1957 to the applicant abroad in order to use it with embassy.

121. Later that day, two further questions, both of which related to the INID, were then posed to Counsellor Alrobaaie by email. His response, which was also sent on 8 April 2020, contained the following:

> Any Iraqi passport can be issued according to the applicant's Iraqi documents (CSID or Iraqi National card and Iraqi citizenship certificate), the 1957 registration document will be used an alternative solution instead of the CSID, and the applicant can use his 1957 registration document with his Iraqi citizenship certificate to issue the Iraqi passport. This is also the procedures in Iraq.
>
> (…)
>
> When they apply for a passport and they have an old CSID, the Passports Department will provide them with the support letter to use it with their local departments to issue the 1957 document and they will apply for the passport and submit the 1957 document.
>
> Generally speaking the CSID is valid and recognized in all other transactions and applications with the Iraqi Departments regardless of the issuance date except for the case mentioned above to issue the passport. So in some cases the 1957 document is presented as an alternative to the old CSID in order to issue the passport from inside or outside Iraq.

122. In a subsequent email exchange in May 2021 (seemingly in preparation for this hearing), another counsellor from the Iraqi Embassy attempted to clarify some confusion about the 1957 Registration Document and its relationship to the Electronic Registration Document, to which we will turn below. Whilst promising to 'discuss in detail the difference between registration documents in our next meeting', the counsellor confirmed that the Electronic Registration Document 'is unrelated to the 1957 document'.

123. On 22 July 2021, the Iraqi Embassy responded to three further questions from the respondent. The first question related to the 1957 Registration Document, the second and third to the Electronic Registration Document. The first question was as to 'the exact mechanism by which returnees can use the 1957 registration document [RD] to apply for other documents such as passports or an INID card once they have returned to Iraq'. The Embassy's (verbatim) response to that question was:

> The returnee can use the 1957 document as a prove of identity when they arrive however to apply for other documents such as INID or passport they don't need this document. They can simply go to the ID department (where the family book exists) and ask to issue the INID then the passport.

124. Despite its comparatively recent arrival as a feature in the evidence, we are satisfied that the 1957 Registration Document does exist, and that it has existed for some time. It is essentially nothing more than an official copy of the relevant entry in the Family Book, and it is clear from the background material that this facility has been available for some time. We note, in particular, Landinfo's confirmation in 2015 that 'any Iraqi could obtain a copy of their page in the family registry', as cited at 5.1.6 of the June 2020 CPIN.

125. Dr Fatah was familiar with the document, although he had not previously seen the version he was initially shown by Mr Thomann. During the course of his evidence, the reason for that became apparent. Dr Fatah had previously seen a version of the 1957 Registration Document which he called the 'family version'. This includes the names of all of the family members who are included on the family's page in the Family Book. (The reference to the year 1957 is explicable by reference to the major census which took place in that year, and the need for the family to have an entry in the register at that point, failing which they would not be considered to be Iraqi, as Dr Fatah explained.) Also available is the individual version of the Family Book record, which contains only the details of the requesting individual.

126. Dr Fatah explained that the family version of the 1957 Registration Document is in common use in Iraq. It is used, for example, when an individual requires a document to demonstrate the composition of their family. He gave the specific example of an individual who sought to establish his entitlement to a pension. Dr Fatah was surprised at the assertion that the 1957 Registration Document might be of any assistance to an otherwise undocumented individual. The real dispute between the parties is therefore not as to the existence of this document; it is as to its utility.

127. The respondent has accepted throughout that the 1957 Registration Document cannot be used for travel, whether by land or air. She maintains that the 1957 Registration Document provides an additional means, before return to Iraq, of obtaining a passport and an additional means of accelerating the re-documentation process (both INID and CSID) on return to Iraq: closing submissions, at [18] and [24]. The appellants contend, however, that the 1957 Registration Document is of limited assistance to an otherwise undocumented individual. We consider Mr Bazini to be substantially correct in that submission.

128. The distinction between the family version and the individual version of the 1957 Registration Document is not one which is considered in any of the correspondence we have detailed above. There are clearly two different versions of the document, however, and we accept what we were told by Dr Fatah about the family version being the more commonly used. In modern-day Iraq there might be a variety of reasons why a member of a household would wish to be in possession of a document which shows the composition of their family, as recorded in the all-important Family Book.

129. We think that the distinction between the two versions of the document is an important one. The family version of the 1957 Registration Document might be requested by any member of the family, who would need to attend the relevant Civil Status office, provide proof of their identity and the details of their Family Book entry. On provision of that information, they would be able to obtain the family version of the 1957 Registration Document. That would contain their own details and those of any other family member who is entered into the same record in the Family Book. We accept that that document would be of assistance to an individual in the UK who sought to apply for an Iraqi passport. According to Dr Alrobaaie's email of 8 April 2020, a person with a 1957 Registration Certificate and an Iraqi Nationality Certificate could be issued with a passport by the Embassy in London. We have no reason to doubt that.

130. An undocumented person in the UK who has no contactable family members in Iraq would have to make arrangements to obtain the individual version of the 1957 Registration Document, since there would be no family member who could request the family version. An individual in this position would have to secure a representative in Iraq and would have to give them power of attorney. We have no reason to doubt Dr Fatah's wholly logical evidence that the Iraqi authorities will only grant a power of attorney upon production of an acceptable form of identity document, which would most likely be a passport, CSID or INID (although we note Dr Fatah's evidence, at [71] of his report, that an original CSID and an Iraqi Nationality Certificate, in addition to other documents, are required by the Iraqi Embassy in the USA). Where the individual is undocumented, therefore, that is not a realistic option. They could in principle arrange a power of attorney to be granted in the UK and that would, in accordance with the emails from the Iraqi authorities, be acceptable to them for the purpose of appointing a representative who could apply for a 1957 Registration Document. Again, however, it is difficult to see how an individual without acceptable proof of identity in this country could hope to grant power of attorney to a person in Iraq. For a truly undocumented individual

without contactable family members in Iraq, therefore, the likelihood of obtaining an individual 1957 Registration Document is remote.

131. Dr Fatah made another point orally and at [69] of his report. He could not understand why a person who had been unable to secure a CSID from the UK would be any more likely to secure a 1957 Registration Document. With respect to Dr Fatah, to make that point is to overlook two considerations. Firstly, in the vast majority of cases, an Iraqi asylum-seeker will have made no attempt to secure a CSID and the fact that they do not hold a CSID sheds little if any light on their ability to secure a 1957 Registration Document. Secondly, many undocumented individuals in the UK could not hope to obtain a CSID in this country, or on return to Iraq, because the CSA office at which they are registered only issues the INID.

132. In order to investigate the utility of the 1957 Registration Document, however, let us suppose that an otherwise undocumented individual is able to obtain either an individual or a family version of that document. It is not suggested by the respondent that it can be used for travel in Iraq, whether by land or by air. The document might be of assistance in the UK as part of an application for a passport. But the passport is not a document which is likely to be accepted as a form of identification at all checkpoints in Iraq. That was the conclusion we reached at [380] in our first decision and we have not been invited to revisit it. The passport might obviously be used to facilitate onwards travel by air but we doubt that makes a material difference to a person who has no other documents and no family in Iraq. Such a person would need to make the journey from Baghdad, Erbil or Sulaymaniyah to their home area, and would need to provide an acceptable form of identification document in order to pass through checkpoints. Neither the 1957 Registration Document itself nor the passport would fulfil that requirement.

133. It is not altogether straightforward to conceive of a situation in which a 1957 Registration Document might be of significant assistance to an undocumented individual seeking to remedy that predicament. Where that person is registered at a CSA office which still issues the CSID, a person who could obtain a 1957 Registration Document through their family would, as Dr Fatah suggested, probably bypass that procedure altogether and seek to have a CSID issued instead.

134. Where an undocumented individual is registered at a CSA office which has transferred to the digital INID system, they would be required to attend the office in person to enrol biometrics as part of their INID application. In the event that they had been able to obtain a 1957 Registration Document, it would serve as confirmation of their Family Book details but that would be of little assistance if they were without other identification which would enable them to travel to the CSA office.

135. The most that can be said, in our judgment, is that an undocumented individual's likely ability to obtain a 1957 Registration Document might, depending on the facts of the individual case, be of some relevance to their ability to obtain a recognised form of identity document. The type of case in which it might offer some assistance is possibly as follows.

136. An undocumented individual from Baghdad has documented family there with whom he is in contact. His local CSA office has transferred to the digital INID system. His family would, at his request, be able to secure the family version of the 1957 Registration Document from that office. They would not be able to secure a CSID for him because the CSA has installed INID terminals and they could not secure an INID for him because he is required to attend in person. On return, he would have to travel only a short distance and would not be required to cross any checkpoints, notwithstanding the two checkpoints which were said in AAH (Iraq) to be in the immediate vicinity of the airport. He could attend the CSA office with his family and the family version of the 1957 Registration Document in order to apply for an INID and he could be supported by family in Baghdad whilst his application was processed. Even in these circumstances, we query whether the 1957 Registration Document adds anything of substance to the equation because the CSA office would be able to identify the relevant page in the Family Book from the identity documents of the family members. We are not able to discount the possibility that it might assist in the application, however, as it provides the officer considering the INID application with a single reference document containing a number of the details required for the INID.

137. Ultimately, therefore, the utility of the 1957 Registration Document is comparatively limited. It has for some years been a part of the landscape and it might properly be considered as part of the range of options available to an otherwise undocumented individual. It is not a solution in itself to the difficulties that individual would encounter on return to Iraq. The likelihood of an individual obtaining a 1957 Registration Document prior to their return to Iraq is not, without more, a basis for finding that the return of an otherwise undocumented individual would not be contrary to Article 3 ECHR.

23. The Judge's findings do not undermine the purpose of the documentation provided in terms of the family register. The challenge is really to the Judge's conclusion that the weight of evidence supported a finding the appellant was born in Sulaymaniyah. If that was what the 1957 registration document said, which reflected the entries in the family book, the Judge was entitled to take that as being true. This has not been shown to be a finding outside the range of those available to the Judge on the evidence.

24. The claim the Judge again failed to take into account or to give weight to certain parts of the evidence is without merit.

25. The grounds also assert the Judge failed to take into account and apply the respondent's Operational Guidance Note dated October 2002 that was provided in the appeal bundle. It is argued the Judge erred in assessing the risk associated to the appellant's life when he claimed asylum in the UK and failed to engage with the policy. The finding of the Judge is that the appellant is not from a government-controlled area of Iraq but from the IKR. There was nothing before the Judge that could be said to be determinative to show that a person who claimed asylum in the UK who was from this region of Iraq would face a real risk on return.

26. The grounds assert the Judge also failed to consider the authority of Rashid in relation to the Exception leave policy at the time of the appellant's application which the appellant submits seemed to suggest that deception was immaterial to the appellant claim. It is also claimed the Iraqi policy bulletin of 2006 post-dated the Court of Appeal judgement in Rashid [2005] EWCA Civ 744, and that when the appellant lodged his asylum claim on 16 October 2002 there was no blanket policy in force and that the incentive to dishonestly claim the appellant was from Jalowla, which the decision-maker regarded as being present, did not therefore exist.

27. The Judge did find that a dishonest claim was made which is a finding of fact.

28. In relation to Rashid, in TN and MA (Afghanistan); AA (Afghanistan) [2015] UKSC 40 it was said that the principle in Ravichandran was sound; on an asylum appeal, the subject matter was whether the claimant met the criteria of the Refugee Convention. In Rashid, the claimant was unfairly denied refugee status when he applied for it, but refugee status was not bound to endure forever. The effect of the decision in Rashid was to give the claimant a right that he did not need for his personal protection. Since the Rashid exception to Ravichandran lacked a satisfactory principle, it was impossible to state its scope with any degree of clarity. The Ravichandran principle applied on the hearing of asylum appeals without exception and Rashid should no longer be followed. The question of whether a claimant qualified for asylum status was not a question of discretion. It was to be decided on the evidence before the tribunal or court.

29. This decision was not known by the authors of the 2006 policy but if that had been based upon Rashid that too would arguably have been something that was wrong to follow. The point the Supreme Court reinforced was whether a person was entitled to the remedy they seek in a claim was something for them to prove and establish on the facts which is the approach adopted by the Judge.

30. The suggestion in the grounds that the appellant had been brought up with his family in Jalowla, notwithstanding that his and his family records show his place of birth as Kazira in Sulamaniyah is, in reality, mere disagreement with the Judge's conclusions in the alternative. The argument the Judge came to the findings that he did without any evidential foundation is not supported when the decision and evidence is read as a whole.

31. The assertion in the grounds that the Judge also erred as Begum v the Secretary of State for Home Department [2021] UKSC 7 does not apply to the appellant's appeal is without merit when it clearly is applicable to the extent set out in Cercei. Asserting the Judge should have ignored the guidance of the Supreme Court provided in Begum, a judgement in which was handed down on 26 February 2021 prior to the decision under challenge and relied instead upon the earlier decision of BA (deprivation of citizenship: appeals) [2018] UKUT 85 which was promulgated on 21 November 2017 prior to Begum is

without merit. The Judge was required to apply the law that applied at the date of the hearing and promulgation of the determination.

32. The grounds challenge the Judge's assessment of the article 8 aspects of the appeal and the Judge's conclusion that any interference will be proportionate. It was not made out that the appellant or the family will be placed in a position of destitution and the claim in the grounds that the Judge completely failed to address the best interests of the appellant's child is a claim without merit as a reading of the determination clearly shows. There was no removal direction made and nor has there been to date. The grounds are, in effect, a disagreement with the weight the Judge gave to those aspects of the family circumstances that the appellant is claiming should have been given greater weight.

33. The grounds also assert the Judge failed to attach particular way to a second witness who provided a copy of his passport but it is not made out the Judge failed to take all the evidence into account from this witness on any other source. Criticising the Judge for not taking the opportunity to clarify a number of points is a claim without merit when the appellant was clearly represented by counsel in proceedings that are, by their nature adversarial.

34. The claim the Judge failed to undertake the required balancing exercise has no arguable merit. That the decision may be not that that the appellant would prefer does not mean that there is any unfairness or procedural irregularity in the manner in which the Judge considered the evidence.

35. The grounds assert a failure of the respondent to disclose internal documents but there is no evidence of an application being made to compel production or adjournment application before the Judge to enable further evidence to be produced, if considered relevant.

36. The Judge considered section 55 and the best interests of the child, as noted above. The Judge clearly took into account all the competing interests and arguments but found that, although the matter of paramount importance, the best interests were not found to be the determinative issue. As found in Ceceri the Secretary of State's conclusions in relation to deprivation, having undertaken the necessary balancing exercise, deserve due weight to be given to the same for the reasons provided in that determination.

37. The issue of delay was considered but not found to be of a sufficient degree to entitle the appellant to succeed. That is a finding within the range of those available to the Judge.

38. The finding of the Judge that the relevant condition precedent specified in section 40 of the British Nationality Act 1981 exists for the exercise of discretion whether to deprive the appellant to his British citizenship is a finding open to the Judge on the evidence. The Judge clearly approached that question by reference to the judgement in Begum and it is not made out that the findings and conclusions reached by the Judge are unsupported by the evidence or based on a view that could not be reasonably be held by the Secretary of State.

39. The Judge then clearly considered the rights of the appellant or other relevant family members, including the child, and decided for itself that depriving the appellant of his British citizenship would not constitute a violation of any rights contrary to section 6 of the Human Rights Act 1998 in a way that was not compatible with the ECHR.

40. The Judge's determination of the proportionality of the assessment has not been shown to be outside the range of conclusions reasonably open to the Judge on the evidence including when factoring in any element of delay.

41. This is not a case in which the Judge was able to conclude that the Secretary of State had acted in a way which no reasonable Secretary of State could have acted, taken into account some irrelevant matter, disregard something which should have been given weight, had been guilty of some procedural impropriety, or had not complied with section 40(4). It has not been made out the Judge acted in such a way when dismissing the appeal either.

42. I find the appellant fails to make out legal error material to the decision to dismiss the appeal.

43. It appears the appellant has already made an application for leave to remain in the United Kingdom pursuant to article 8 ECHR which, in light of the presence of a British citizen child, is likely to be granted to him at which point the family can continue with their life in the United Kingdom albeit that the appellant will no longer be a British citizen.

Decision

44. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

45. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed……
Upper Tribunal Judge Hanson

Dated 17 August 2022