Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: DC/00055/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34	**Decision & Reasons Promulgated**
On 7 July 2020	**On 28 July 2020**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KAMAL JAF FAIEQ

(aka HAMA AMIN)

Respondent

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State for the Home Department, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Iraq born on 1 November 1979. His appeal against the decision of 16 May 2019 depriving him of British citizenship was allowed by First-tier Tribunal Judge Boylan-Kemp MBE on 28 August 2019.

2. The Secretary of State appealed on the three grounds:

   (i) the judge failed to take into account how the absence of oral evidence from the Appellant affected the weight attached to the written evidence;

   (ii) the judge accepted the submissions of the Appellant's representative in the absence of evidence from the Appellant on the availability of documents prior to 2014; and

   (iii) the judge accepted the Appellant's explanation for giving a false name in the absence of evidence independent of the Appellant and failed to give adequate reasons for her conclusions. Alternatively, taking the Appellant's evidence at its highest, the judge misdirected herself in law on the issue of dishonesty.

3. Permission was granted by Upper Tribunal Judge Gill on the grounds it was arguable the judge erred in law by treating submissions advanced on the Appellant's behalf as the Appellant's evidence. It was arguable the judge erred in treating the argument at [16] that "had the appellant had identification documentation available to him prior to his request for a birth certificate then he would not have been required to source a copy of his birth certificate in order to register his wedding in 2014" as evidence. It was arguable this was material to the outcome.

4. The hearing of the appeal was vacated due to the outbreak of Covid 19. Directions were sent to the parties on 11 May 2020 indicating that the error of law hearing would be conducted without a hearing, subject to any view expressed by the parties, and the inviting the parties to make written submissions.

5. The Respondent responded on 1 June 2020 and replied to the Appellant's submissions dated 8 June 2020 on 10 June 2020. Given the restrictions of operating in a pandemic, I extend time to comply with directions.

6. It is the Respondent's position that an oral hearing is required and it can be conducted remotely. The Respondent did not have access to the Appellant's bundle and skeleton argument. Deprivation of citizenship is a matter of significant public importance and the Respondent wished to fully present her submissions at an oral hearing and deal with any concerns the Upper Tribunal may have. The Appellant did not express a view on this matter. I have considered the views of the parties, but I am satisfied, after considering the submissions from the Respondent and the Appellant set out below, that there are clear errors of law in the decision such

that it cannot stand and must be remade by the First-tier Tribunal. The Appellant will not be prejudiced by a further hearing.

The Respondent's submissions

7. The Respondent relies on the grounds of appeal and submits the Appellant's credibility was a key issue in the appeal. The Respondent, in her decision, rejected the Appellant's evidence on all matters. The Appellant did not give evidence at the hearing and his account could not be tested in cross-examination. There was no medical evidence to show that the Appellant was unfit to give evidence. The Appellant had failed to attend his asylum interview and, in spite of his claim to fear persecution in Iraq, he returned there for five years from 2013 to 2018.

8. The Respondent submits the judge erred in law in failing to draw an adverse inference from the Appellant's failure to give evidence. Further or alternatively, the judge did not state what weight she attached to the Appellant's evidence and at best it should be given limited weight.

9. The Respondent submits the judge failed to look at the Appellant's dishonesty as a whole. He had given false information on three matters material to his identity. The judge failed to engage with the Respondent's position set out in her decision that the Appellant's evidence about his place of birth was contradictory.

10. The Appellant's representative gave evidence in her submission recorded at [16] of the decision which could not be tested in cross-examination. It was not open to the judge to accept the Appellant's assertion that the interpreter told him what to say without testing the evidence in cross-examination. The Appellant was not put forward to be cross-examined because he had no answer which would withstand scrutiny as to why he gave false details to the Respondent. The judge's failure to recognise this factor and draw an adverse inference accordingly was clearly an error of law material to the outcome of the appeal.

The Appellant's submissions

11. The Appellant submits the judge failed to refer to a medical note produced at the hearing confirming the Appellant's depression and anxiety which lead to the hearing proceeding by way of submissions

only. Unfortunately, the Appellant's representative did not obtain a copy of the medical note and the original was handed to the judge.

12. The Appellant submits the judge did properly address her mind to the lack of oral evidence. The Respondent did not rely on the lack of oral evidence in submissions at the hearing and therefore she should not be able to raise the matter on appeal. The Appellant submits the judge did not specifically refer to the Appellant's signed witness statement, but she was specifically directed to it in the skeleton argument and in submissions. The Appellant's representative did not give evidence but made submissions in accordance with the skeleton argument and the Appellant's witness statement.

13. The Appellant provided a detailed written account supported by documentary evidence. The Respondent was given the opportunity to respond to the Appellant's submissions and there was no procedural unfairness in the conduct of the proceedings. The judge gave adequate reasons for her conclusions and the Respondent's grounds were merely a disagreement with her findings.

Conclusions and reasons

14. The Appellant accepted he gave a false name, false date of birth and false place of birth in his application for asylum made in 2002 and his naturalisation application in 2008. The Appellant did not attend his substantive asylum interview and his application was refused. The Appellant was granted indefinite leave to remain in February 2007 and was issued with a certificate of naturalisation on 21 August 2008. The Appellant returned to Iraq in 2013 and lived there until 2015.

15. The medical note on the court file, dated 12 July 2020, from the Appellant's GP confirmed the Appellant was suffering from diabetes and back pain which was being treated with medication. The note stated the Appellant also suffered from depression and anxiety. There was insufficient evidence to show that the Appellant was unfit to give evidence. The judge made no reference to the medical note.

16. The Appellant did not give evidence at the hearing before the First-tier Tribunal and therefore he did not adopt his witness statement as evidence in chief. The explanations offered therein could not be tested in cross-examination. The judge failed to state the weight she

attached to the Appellant's evidence in his witness statement, given the lack of oral evidence, and to give reasons for that conclusion.

17. The decision letter made a clear allegation of dishonesty specifically rejecting the Appellant's explanations. The issue before the judge was dishonesty and the Appellant's credibility was crucial. The judge erred in law in failing to explain why she accepted the Appellant's explanations, given in his witness statement, when his account was specifically rejected by the Respondent and his credibility was clearly an issue in the appeal.

18. It was apparent from the record of proceedings that the Respondent did rely on the lack of oral evidence from the Appellant in her submissions. The Home Office Presenting Officer submitted that the Appellant had the means to obtain documents prior to 2014 and he had not been put forward to give evidence so that he could be questioned about this. The Respondent was not given the opportunity to respond to the Appellant's submissions.

19. The Appellant's explanation for giving a false name was that the interpreter at the screening interview had told him his name was too long and had removed his grandfather's name (Hama Amin) and added his tribal name (Jaf). There was insufficient evidence to support the Appellant's explanation that, because the interpreter was a Kurdish Sorani speaker of Iranian origin, it was common cultural practice to insert the tribal name. On the Appellant's own evidence, he knew that the name given in his screening interview and maintained in his application for naturalisation was false and he made no attempt to correct it.

20. There was background evidence before the judge to show that the Jaff (not Jaf) tribe were from Sulamaniyah. The Appellant claimed that he was born in Kirkuk. His explanation for giving a false place of birth was that he had lived in Kirkuk as a boy and was not aware he wasn't born there until he applied for a birth certificate in 2014. The judge erred in law in accepting the explanation given by Appellant's representative at [16] in the absence of evidence from the Appellant and in the light of the background evidence.

21. The Appellant admits that he deliberately gave a false date of birth in order to prevent his removal to Iraq. The judge erred in law in finding that it was not material. The Appellant was able to obtain his birth certificate with his correct date of birth. The birth certificate showed his place of birth as Sulamaniyah. The Appellant could not be removed from the UK because it was accepted he was from a Government Controlled Area of Iraq and could not relocate to a Kurdish Autonomous Zone. He was granted indefinite leave to

remain on the basis he was from Kirkuk. The Appellant would not have been granted indefinite leave under this policy if he had informed the Home Office he was from Sulamaniyah.

22. The judge erred in law in failing to consider the totality of the evidence in assessing whether the Appellant had been dishonest. On his own evidence, the Appellant knowingly gave false information and failed to correct the misleading information given in his asylum interview and in his application forms.

23. I find that the First-tier Tribunal erred in law and I set aside the decision of 22 August 2019. The matter is remitted to the First-tier Tribunal for re-hearing. None of the judge's findings are preserved.

Notice of decision

Appeal allowed

No anonymity direction made.

J Frances

Signed Date: 7 July 2020

Upper Tribunal Judge Frances