Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00108/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC (via Microsoft Teams)	**Decision & Reasons Promulgated**
On 22 November 2021	**On 29 November 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SADAR ABDULLAH HAMASAID
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Khan instructed by All Nations Legal Services.
For the Respondent: Mr A McVeety, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By a decision promulgated on the 20 April 2021, attached hereto at Annex A, the Upper Tribunal set aside a decision of the First-tier Tribunal.
2. The matter returns to the Upper Tribunal to enable it to substitute a decision to either allow or dismiss the appeal.

Discussion

3. The background to this appeal is set out at [3 – 7] of the Error of Law decision at Annex A and does not need repeating.
4. A preserved findings from the decision of the First-tier Tribunal is that Mr Hamasaid has committed fraud for the reasons identified by the First-tier Tribunal Judge at [23] of the earlier decision, where it is written:

> 23. In conclusion, I find that the Appellant's place of birth is correctly recorded as Sulamaniyah on the documents provided with his application for his daughter's passport. I do not accept that the Appellant did not know about this and I find that he fraudulently maintained he originated from Diyala in the belief that this would be of benefit to him in his asylum claim. I find that the Respondent 's has satisfied the burden of showing that the Appellant committed fraud.

5. In support of the appellant's claim Ms Khan submitted a skeleton argument in the following terms:

> INTRODUCTION
>
> 1. On the 12 April 2021 Upper Tribunal Judge Hanson set aside the determination of First-tier Tribunal Judge Myers. The following findings were preserved:
>
> i. The Appellant committed a fraud for the reasons identified by the FTT, namely that the Appellant fraudulently maintained he originated from Diyala in the belief that this would be of benefit in his asylum claim (para. 23).
>
> ii. The Appellant's immigration history
>
> iii. The presence of family members both in the United Kingdom and Iraq
>
> iv. The Appellant was born in Sulaymaniyah (para. 23)
>
> LEGAL FRAMEWORK
>
> 2. The Tribunal has issued guidance on dealing with deprivation of citizenship appeals in the case of *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 238 that states:
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> *"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 128 (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) [1].

(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.

SUBMISSIONS

3. In relation to the first issues, the Tribunal would need to consider whether the relevant condition precedent specified in section 40 (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the Appellant of British citizenship.

4. The Appellant would submit that the relevant condition precedent has not been established in this case. The Respondent has not properly taken account of all the relevant factors she should have done, namely how leave was granted under legacy and the materiality of the deception in light of the previous adverse finding on the Appellant's credibility.

5. The finding by Judge Myers was that the Appellant had fraudulently stated he was born in Diyala to assist his asylum claim. This tactic ultimately failed. The Appellant would submit the particular deception was not material for his grant of leave or nationality. The Appellant would continue to rely on the skeleton argument submitted in the FTT that sets out why it was not relevant to his current grant. Namely that at the time of the assessment of the Appellant's case under legacy, the claim to be from a non-removable area was noted but it was also noted the Appellant had submitted an application in 2006 that was still outstanding. The Appellant's MP had written asking for a response to the said application. The application had been outstanding over three years. It is accepted the legacy programme was not an amnesty but it specifically took account of factors such as delay in dealing with a claim.

6. The Appellant relies on the Independent Chief Inspector of Border and Immigration, An Investigation into the progress made on legacy and asylum migration cases between January -March 2013[1]. It is accepted this report's purpose was not to comment on the merits of a decision. However, the report did assist in giving details of the legacy programme and

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/546773/CAAU-Report-Final-26-June-2013.pdf

highlight the deficiencies on the decision making process in legacy cases. This report expressly states :

"*4.6 Residual discretion allows caseworkers to consider whether an applicant's asylum legacy case had been 'seriously mishandled' by the Agency to the extent that a grant of ILR was appropriate. Such factors would include multiple and serious administrative delays in a case being considered through no fault of the applicant. This was an issue we raised in our inspection report on the handling of legacy and migration cases.*

4.7 The Agency accepted that there were grounds in all three cases to reconsider the type of leave that had been granted, based on the proper application of the Residual Discretion test. It added that instructions had now been issued to caseworkers that minutes must contain the reasons why the Residual Discretion either did or did not apply when granting leave".

7. The Appellant's case would have fallen in that category.

8. The Appellant further relies on the Independent Chief Inspector's Report An Inspection of the UK Border Agency's handing of the legacy asylum and migration cases March -July 2012[2]. This report gave examples of people who had used 'multiple examples of deception' or had been from removable nationality being granted leave under legacy. People who had committed criminal offences were being granted leave under legacy (see figure 11, p32). The Appellant submit that he still would have qualified for leave under legacy notwithstanding the finding made by Judge Myers. The Appellant acknowledges that the sample used by the Inspector was small but it was a random sample and reflective of the decision making of the Respondent. The Appellant would also submit that it was immaterial whether the Respondent accepted the criticism because the Respondent did not state the facts as found by the Inspector were wrong.

9. As for the claim about character and conduct. The Appellant would submit that the Respondent did know that the Appellant's asylum account was not accepted because he was not believed. The Appellant is not someone who has been given leave because he claimed he was born in Diyala. The Appellant would submit his place of birth was not material in obtaining leave. People whose asylum claims have been found to be untruthful have been given British nationality. In this case, the Respondent has always known that the Appellant's account of his asylum claim was untruthful. The Appellant's appeal was dismissed by Adjudicator Williams in a decision promulgated on the 8 January 2004. Judge Williams did not accept his account (RB, pM7, para. 20). This did not prevent the Respondent from giving him British nationality. The one additional point of his place of birth did not materially add to his previous claim and the Appellant would submit is not sufficient to undermine the Appellant's character.

HUMAN RIGHTS

10. The Appellant relies on article 8. Since the time of the decision of Judge Myers, the Appellant has established a family life with Jurate Orechoviene, a national of Lithuania and her son, Kajus Orechovas born on the 3 December 2008. They have settled status in the United Kingdom (UTB, p10). The couple have had an Islamic marriage on the August 2020 and live together since July 2020. They are unable to marry because the Appellant does not have his passport. The Appellant also has a daughter in Iraq called Yanj, born on the 20 November 2013. The Appellant has not been able to see his daughter since July 2017. Depriving the Appellant of his British citizenship would prevent the Appellant from marrying his partner and travelling to see his daughter in Iraq.

CONCLUSION

11. Tribunal is invited to allow the appeal.

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/546576/UK-Border-Agencys-handling-of-legacy-asylum-and-migration-cases-22.11.2012.pdf

6. The two issues that arise in relation to this matter are therefore the materiality of the appellant's fraud and secondly whether he is able to succeed pursuant to article 8 ECHR in opposing the Secretary of State's decision to revoke his British citizenship of his fraud is not found to be material.
7. It was not disputed the appellant is a citizen of Iraq. In that respect this case is slightly different from the majority of deprivation of citizenship cases where an individual claims to have been born in one country whereas the truth of the matter is that he was born in another. The principles are, however, the same. In the majority of cases the reason an applicant claims to be from country he or she was not from, for example Kosovo rather than Albania, is to deliberately enhance prospects of being permitted to remain in the United Kingdom. At the time of the war in Kosovo individuals were not being removed if they originated there and would been granted leave, rather than being removed as they would if they were Albanian nationals.
8. The appellant was born in the IKR the region controlled by the Kurds in the northern provinces of Iraq. One of the two major cities in this region is Sulamaniyah. It has not been shown by reference to the relevant country guidance case law in force that the appellant would have faced any real risk of serious harm had he been returned to his home city. Indeed he made no such claim, instead seeking asylum on the basis of his deception in claiming that he was from Diyala, an area under the control of the government of Iraq. Whilst the appellant may not have been returnable to Diyala the weight of evidence shows he would have been returnable to Sulamaniyah.
9. In relation to the first question posed by the case law, namely 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, it is necessary to consider the specific provisions of this section which read:

40 Deprivation of citizenship.

(1) In this section a reference to a person's "citizenship status" is a reference to his status as—

(a) a British citizen,

(b) a British overseas territories citizen,

(c) a British Overseas citizen,

(d) a British National (Overseas),

(e) a British protected person, or

(f) a British subject.

(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—

(a) fraud,

(b) false representation, or

(c) concealment of a material fact.

10. The issue therefore relates to section 40(3).
11. Submissions made by Ms Khan before both Tribunals, placing reliance upon a report from the Chief inspector of Legacy, was considered in the Error of Law decision from [17]. Whilst that report refers to some cases where those with a worse immigration history than the appellant were granted leave under the legacy programme including some who misrepresented their place of birth or origin and others who may have been removable, such cases do not create a legitimate expectation that others with similar issues would have been granted leave had their true circumstances been known. It may be that individuals with a worse immigration history including acts of deception were granted leave under the legacy programme, but it may also be a case that such deception was not known to those responsible for administrating the legacy programme as a result of which such deception and any question of removability (a relevant consideration under the assessment) would not have been factored into the decision making. The problem in this appeal is, as it always has been, that the Secretary of State was unaware of the appellant's deception until after the grant of citizenship and was therefore unaware of this act deception throughout all the earlier stages of applications he made or when leave or citizenship was granted.
12. At [18] of the Error of law hearing the terms of reference for the investigation by the Inspector are set out and noted at [19] "*it was not the purpose of the report to specifically comment upon the merits of decisions made save to identify any failures that could impact upon the scope and purpose of the inspection. It is also relevant to note the fact that the number of cases identified by the Chief Inspector referred to in the report, in particular in the section containing the comments that few cases had any significant barriers to removal mentioned by the Judge, was only 47, a very small proportion of the number considered as part of the Legacy programme.*"
13. The Legacy programme was relevant for those who had made an application for asylum prior to 5 March 2007 which was still unresolved. There was a backlog of 500,000 outstanding applications which were transferred to the Casework Resolution Directorate ("CRD"). It was hoped the CRD would resolve the cases by July 2011 and the applicants was then either granted Indefinite Leave to Remain ("ILR") or face removal.
14. It is important to note at this stage that has the full facts of an individual been known one option available to the Secretary of State was to remove them from the United Kingdom. The deception employed by the appellant in this case was therefore relevant for had his true place of birth been known he is likely to have been removed from the United Kingdom; and not granted the leave he was as a result of his deception.
15. As submitted by Mr McVeety, there is a strong possibility that some of those granted leave under the Legacy scheme based on deception may be some of those now subject to deprivation of citizenship cases where the true facts have now become known.
16. By July 2011there were still some 116,000 applications unresolved. These were transferred to the Case Assurance and Audit Unit ("CAAU") to be decided.

17. As with all cases (prior to the removal of paragraph 395C from the Immigration Rules on 13 February 2012), before a decision to remove was made in a Legacy case, regard was had to the relevant factors as set out in paragraph 395C and Chapter 53 of the Enforcement Instructions and Guidance ("EIG"). Namely, age, length of residence in the UK, personal history, including character, domestic circumstance, criminal record, compassionate circumstances and any representations received on the person's behalf. One relevant factor, as noted above, was removability. The act of deception is also relevant to the conduct and character part of the assessment.
18. It has not been made out that had the decision-maker been aware of the appellant's true place of birth, the decision would have been the same.
19. In relation to the assertion by Ms Khan there was an outstanding application that had been made in 2006 which was outstanding at the time the appellant's claim was considered under the legacy scheme, and that there was delay in relation to that matter, it has not been shown any delay was unlawful and that the application was, in any event, resolved by the grant of leave to the appellant under the legacy programme. It is not made out that if such a program did not exist and that the Secretary of State had been aware of the appellant's true circumstances the application made in 2006 would have resulted in a grant of leave in any event. It has not been made out the existence of this earlier application was sufficient to establish the matters referred to above are not material.
20. Whilst it is true that the Secretary of State knew the appellant's asylum claim was not credible as it had been already rejected what the Secretary of State did not know was the appellant's true place of birth.
21. The High Court in Hakemi and Others [2012] EWHC 1967 (Admin) also recorded that the legacy policy was not an amnesty.
22. I find the condition precedent specified in section 40(3) of the British Nationality Act 1981 exists. Moving onto the second stage of the exercise, by reference to paragraph 71 of the judgment of the Supreme Court in in Begum [2021 UKSC 7, 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, I find there is nothing irrational in the decision of the Secretary of State to deprive the appellant of his British citizenship in light of the facts as found. It is a decision which is clearly supported by the evidence. The Secretary of State therefore succeeds in relation to the second element too.
23. In relation to the third aspect, whether the rights of the appellant or any other relevant person under the ECHR are engaged, and 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, the appellant asserts that the consequences of the decision to remove his British citizenship make it unreasonable as he has been unable to get married, cannot see his daughter in Iraq, and cannot get employment as his status cannot be confirmed.

24. The appellant's witness statement in which he sets out these consequences has been properly considered together with all the relevant evidence.
25. The appellants assertions are not supported by adequate evidence. It is not made out that he cannot continue his relationship and there is insufficient supporting evidence to show he has sought permission to marry which has been refused.
26. In relation to the appellant's claim he cannot get on with his life, it has not been made out the decision will give rise to exceptional circumstances/consequences sufficient to outweigh the strong public interest. The reason the appellant is in the situation he is, is as a result of his deliberate act of deception. The decision to deprive the appellant of his British citizenship is one reasonably open to the Secretary of State on the facts now known. The deception was material.
27. Considering the normal impact upon the appellant of removal of citizenship I find the appellant has not established that the consequences have been shown to warrant a findings that the Secretary of State's deprivation decision will amount to an unwarranted interference in a protected right having undertaken the required holistic exercise and balancing the competing arguments relied upon in this appeal. It is not made out the appellant will not be able to maintain the same frequently of indirect contact with his daughter in Iraqi as he always has.
28. It is also relevant in relation to the article 8 aspect that it was not disputed the appellant and his partner entered an Islamic marriage in August 2020, having moved in together in July 2020, where they live with the appellant's partners child. It is not suggested this is not a genuine relationship which may entitle the appellant to a grant of leave pursuant to article 8 ECHR when the matter is reviewed by the Secretary of State.
29. Another important aspect is that is not suggested that removal directions have been set or are contemplated at this stage. There is therefore no evidence of any interference with a protected right as the appellant can continue his family and private life in the UK.
30. There is no evidence of undue hardship or economic deprivation sufficient to outweigh the public interest if the appellant is unable to work until his status is resolved.
31. It is not made out the direct consequences of the deprivation of citizenship will result in adverse consequences sufficient to warrant it being concluded 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.

Decision

32. I dismiss the appeal.

Anonymity.

I make no order for anonymity pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 25 November 2021

ANNEX A

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00108/2019

THE IMMIGRATION ACTS

Heard at Manchester (via Skype) **Decision promulgated**
On 8 April 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SADAR ABDULLAH HAMASAID
(Anonymity direction not made)

Respondent

Representation:
For the Appellant: Mr Walker, Senior Home Office Presenting Officer.
For the Respondent: Ms S Khan, instructed by All Nations Legal Services (Doncaster).

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Myers ('the Judge') promulgated on 21 December 2020 in which the Judge allowed the appellant's appeal against the respondent's decision to deprive him of his British citizenship pursuant to section 40(3) British Nationality Act 1981.

2. Permission to appeal was granted by another judge of the First-tier Tribunal, the operative part of which is in the following terms:

> 2. The grounds assert, in short, that the judge erred in failing to take into account the appellant's conduct and character and that there has been inadequate reasoning for the decision made.
>
> 3. The judge accepted that the appellant had exercised deception, but it does seem that the judge may not have fully engaged with the issue of deception and the character and conduct of the appellant, in obtaining British citizenship. It is open to argument that there may be a lack of reasoning for the findings made.
>
> 4. Accordingly, there is an arguable error of law.

Background

3. Mr Hamasaid is an Iraqi Kurd born in 1979, who entered the UK clandestinely in 2002, and claimed asylum stating that he originated from Diyala, an area at that time under the control of the Iraqi government. The application was refused by the Secretary of State and the decision upheld on appeal.

4. The chronology set out by the Judge shows that Mr Hamasaid's applied for exceptional leave to remain under the Legacy programme in operation at that time in 2007 and was granted indefinite leave to remain (ILR) on 2 March 2010 and on 11 May 2011 became a naturalised British citizen.

5. On 29 March 2016 Mr Hamasaid applied for a British passport for his Iraqi born daughter which resulted in the Passport Office referring the case to the Secretary of State as the documentation provided with Mr Hamasaid's application showed his place of birth is being Shahrazor, Halancha, Sulamaniyah and not Diyala. On the 1 October 2019, the Home Office issued a notice of decision to deprive Mr Hamasaid of his British citizenship because of the discrepancy about his place of birth.

6. The Judge sets out findings of fact from [17] of the decision under challenge, noting that the first issue to decide was whether Mr Hamasaid had committed fraud in his application for nationality, the burden of proving which fell upon the Secretary of State [19]. In relation to this aspect the Judge finds at [23]:

> 23. In conclusion, I find that the Appellant's place of birth was correctly recorded as Sulamaniyah on the documents provided with his application for his daughter's passport. I do not accept that the Appellant did not know about this and I find that he fraudulently maintained that he originated from Diyala in the belief that this

would be of benefit to him in his asylum claim. I find that the Respondent has satisfied the burden of showing that the Appellant committed fraud.

7. That finding by the Judge is not challenged by either party.
8. The Judge then goes on to state between [24 – 27]:

24. The second issue I must determine is whether this fraud was material in him being granted leave to remain and ultimately obtaining British nationality. It is not in contention that the Respondent did not believe his asylum claim. It was submitted on his behalf that his grant of leave was not made under any of the policies where his place of birth was material; his leave was granted under the legacy scheme, which was a programme to resolve a backlog of 400,000 to 450,000 unresolved cases which had been in the system for many years and needed determination.

25. I was referred to the 2012 Report by the Chief Inspector on Legacy Cases. This report considered the decision making process made in dealing with these cases and found it to be defective in many areas. Fact sampling showed that few cases had any significant barriers to removal and there was evidence of inconsistent decision making. Examples were given of cases where claimants were granted leave even though their removal is possible and, in some cases, the applicants were guilty of criminal behaviour or activities meriting exclusion from the UK. The main criteria used in this decision-making process were whether the applicant had criminal convictions or activities meriting exclusion, whether there was delay on the part of the Respondent, contributing to a period of residence of four years, evidence of non-compliance by an applicant, evidence of connections to the UK, and limited prospects of enforcing removal. I accept the submission made by Miss Khan that prospects of removal was just one of six main criteria.

26. It is unclear why the Appellant was granted leave to remain, the document granting his leave goes into little detail, and does not show evidence of comprehensive assessment of his circumstances. In conclusion, I accept the submission that there is no evidence to show that the Respondent placed reliance on his place of origin in making this decision and had it not been for the misrepresentation of his place of birth he would not have been granted leave to remain.

27. I take account of the Appellant's long residence in the UK since 2002, and accept that although he has family in Iraq he has become assimilated in the UK and his main ties are to this country. Taking all factors into account, in my judgement, this is a case where discretion should have been exercised in the Appellant's favour, and I allow his appeal.

9. The Secretary of State relied on two grounds of appeal in the following terms:

Ground 1: Material Misdirection of Law/Failure to Make Findings/Failure to take into account/Inadequate reasons

It is respectfully submitted, that nowhere in the entire determination does the FTTJ engage with or make findings upon the Character and Conduct arguments advanced by the Secretary of State, either in terms of the grant under Legacy or in the Appellant's application for Citizenship.

It is an undisputed fact that the Secretary of State did not know of A's fraud at the time of A's grant of ILR or application for citizenship. The Secretary of State was therefore precluded from appropriately applying the provisions of 395C and Chapter 53, in respect of the Legacy grant, or Chapter 18 in respect of the AN.

Equally, there was no consideration of the materiality of A erroneously answering "no" to the character and conduct question @3.11 of the AN, despite the FTTJ finding that A "*fraudulently maintained that he originated from Diyala in the belief that this would be of benefit to him in his asylum claim*".

As such, the FTTJ has made no findings as to whether A fell to be refused at the material time of these grants by reference to the appropriate policies.

Legacy

It is respectfully submitted that the FTTJ's consideration of the Legacy programme @25 and 26 is inadequately reasoned. It is submitted that fraud was not irrelevant to the Legacy programme. The FTTJ erroneously conflates mere place of birth with fraud @26. These are not the same, as the latter speaks directly to character and conduct, an issue expressly pursued in the decision letter.

It is submitted that the Legacy programme was not an amnesty, as found in ***Hakemi* [2012] EWHC 1967.** The FTTJ's failure to consider character and conduct by reference to r395C and Chapter 53, was therefore material.

Citizenship

It is further submitted, as is evident from the RFRL, that this was not a mere chain of causation case but in fact a case that involved issues of fraud/character and conduct specific to each progressive stage of status achieved by A; regardless of what came before in the chain of events. It is therefore submitted that this case is distinct from cases such as ***Sleiman (deprivation of citizenship; conduct) [2017] UKUT 00367 (IAC).***

In Sleiman the case advanced by the Secretary of State was of incredibly limited scope, the SOS failed to suggest that A's fraud would have resulted in a refusal of ILR or citizenship due to character or conduct. The SOS's limited case was set out expressly @42 of Sleiman by reference to @20 of the decision under appeal:

> "*The crux of this deprivation argument is, if you had not deceived the Home Office by making yourself appear to be a minor when you applied for asylum, you would have been returned to Lebanon when your asylum was refused and you would not then have been in the United Kingdom to submit a FLR application, and would not have met the requirements to naturalise as a British Citizen.*"

At paragraph 62 UTJ Kopieczek noted the absence of any reliance by the SOS on deception being relevant to the grant of ILR, "*A counterargument, however, could be that whilst his age was irrelevant to the grant of ILR under the Legacy scheme that does not mean to say that the deception as to age, was similarly irrelevant.*" In this regard, the UTJ confirmed @63 "*That potential counter argument however, was not advanced on behalf of the respondent*".

Equally, @65 UTJ Kopieczek noted in respect of the application for nationality itself

"*It is not suggested by the respondent that had the false date of birth been known by her at the time of the citizenship application, the application would have been rejected on the ground that the appellant had not shown that he was of good character.*"

It is therefore submitted that the failure to consider the fraud within the AN, and the character and conduct arguments advanced, renders the determination unsafe.

Ground 2: Material Misdirection/Inadequate Reasons

It is respectfully submitted that the FTTJ's findings @27 that discretion should have been exercised differently is wholly un-reasoned, while also failing to follow binding authority from the Court of Appeal in respect of the weight accorded to the Public Interest in Deprivation cases.

It is submitted first, that there is simply no reference to or application of the relevant policies, in particular, Chapter 55, Chapter 18, and the AN Guidance. It is simply not possible to understand how the FTTJ reached his conclusion.

It is further submitted that in the case of *KV [2018] EWCA Civ 2483* the Court of Appeal confirmed @19,

*19. Where, as in the present case, it is established not only that deception was used but that, without it, an application for naturalisation as a citizen would not have been granted, it seems to me that it would be an **unusual case** in which the applicant can legitimately complain of the withdrawal of the rights that he acquired as a result of naturalisation. That is because the withdrawal of those rights does no more than place the person concerned in the same position as if he had not been fraudulent and had acted honestly in making the application. The position may be different, however, in a case where, as a result of naturalisation, the individual has lost other rights previously enjoyed which will not or may not be restored if he is now deprived of his citizenship.*

Equally in *BA (deprivation of citizenship: appeals) [2018] UKUT 00085 (IAC)* @43 the Upper Tribunal found,

*We consider the Tribunal is in a position to take its own view of whether the requirements of subsection (3) are satisfied. If they are, then the points made in paragraph 43 above will apply in this class of case also. The Tribunal will be required to place significant weight on the fact that the Secretary of State has decided, in the public interest, that a person who has employed deception etc to obtain British citizenship should be deprived of that status. Where statelessness is not in issue, it is likely to be only in a **rare case that the ECHR or some very compelling feature** will require the Tribunal to allow the appeal.*

This position was further confirmed by the President in *Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 00128 (IAC)* @18:

> *The Tribunal held in BA that consequent to such weight, where statelessness is not in issue. It is likely to be **only in a rare case that the ECHR or some very compelling feature will require an appeal to be allowed. The circumstances in such a case would normally be exceptional in nature.***

It is submitted that the FTTJ has failed to identify anything unusual, rare or compelling, so as to outweigh the public interest.

Error of law

10. The case before the Judge was that set out in the Secretary of State's decision dated 1 October 2019. At [19] of that document it is written:

19. It has been established that you are not entitled to ILR in your true identity under either Rashid or Sadiqi. This leaves Chapter 53 as the consideration under which your application for Leave Outside the Rules (LOTR) would be decided. Chapter 53 concerns further exceptional circumstances, claiming that removal would be inappropriate, as distinct from Leave to Remain (LTR) on the basis of family or private life.

11. The refusal then proceeds to consider the relevant provisions in relation to which it is written at [23]:

> 23. In addition to the false representation of being born in Jabara imparting a material impact on the decision to consider [and subsequently grant) you under Chapter 53, it also raises severe doubts as to your ability to satisfy the "good character" requirement of Chapter 53. The relevant guidelines set out in 53.1.2 states that the caseworker should consider, "*an individual's character and conduct, regard must be given to whether;*
>
> - *there is evidence of criminality that meets the criminal casework (CC) threshold*
> - *the individual has been convicted of a particularly serious crime (below the CC threshold) involving violence, a sexual offence, offences against children or a serious drug offence*
> - *there are serious reasons for considering that the individual falls within the asylum, exclusion clauses, or*
> - *it is considered undesirable to permit individual to remain in the UK in light of exceptional circumstances,* ***or in light of their character, conduct or associations****, or the fact they represent a threat to national security.*

12. The issue of Mr Hamasaid's conduct was therefore before the Judge. The Legacy programme required consideration in addition to Chapter 53 of paragraph 395C of the Immigration Rules. Although this provision was deleted on 13 February 2012, and replaced by a new paragraph, 353B, it was in force at the relevant date that Mr Hamasaid was granted ILR under the Legacy scheme and subsequently naturalised.

13. Paragraph 395C set out certain factors that the UK Border Agency should consider before making a decision to remove someone from the UK. Those factors are:

- the person's age
- how long he or she has been living in the UK
- any ties he or she may have to the UK (e.g. family, work and other associations)
- his or her personal history (including character, conduct and employment record)
- his or her domestic circumstances
- any criminal record
- any compassionate circumstances
- any representations made to the UK Border Agency on the person's behalf.

14. The above factors are wide-ranging and not intended to be an exhaustive list.

15. The Judge clearly did not consider in any detail, if at all, the issue of character and conduct or engage with the specific arguments advanced by the Secretary of State, either in terms of the Legacy grant or application for citizenship, raised in the refusal notice.

16. It cannot be disputed that the Secretary of State did not know of Mr Hamasaid's fraud at the time of the grant of ILR or citizenship as it is only

the finding of the Judge above that established that Mr Hamasaid had acted fraudulently in providing false details

17. The Judge instead referred to the November 2012 report from the Chief Inspector of Legacy Cases to which further reference was made by Ms Khan in her submissions to the Upper Tribunal cross-referenced to her skeleton argument before the Judge. The Judge notes the criticism of decision-makers responsible for assessing cases under the Legacy Programme in the report.

18. Although the Judge appears to treat the failings identified in the Chief Inspectors report as being determinative of the cases, it is important to consider the terms of reference of that investigation which was:

> 3.4 The purpose of this inspection was to inspect the efficiency and effectiveness of the handling of legacy asylum and migration cases, making recommendations for improvement where necessary. The inspection focused on:
> • the progress the Agency was making against its targets regarding clearance of legacy asylum and migration backlog cases;
> • the actions the Agency was taking to resolve cases in the asylum and migration controlled archives; and
> • whether 'live' asylum cases had been reviewed and taken to the furthest possible conclusion.

19. It was not the purpose of the report to specifically comment upon the merits of decisions made save to identify any failures that could impact upon the scope and purpose of the inspection. It is also relevant to note the fact that the number of cases identified by the Chief Inspector referred to in the report, in particular in the section containing the comment that few cases had any significant barriers to removal mentioned by the Judge, was only 47, a very small proportion of the number considered as part of the Legacy programme.

20. There is also no reference in the judgement to the Secretary of State's response to the Chief Inspectors report, some recommendations of which were rejected outright, some accepted partially, and some accepted wholly, when assessing how this material should be factored into the decision-making process.

21. The Legacy programme was never considered to be an amnesty for those who applied as confirmed in Hakimi [2012] EWCA Civ 1967. That decision was upheld by the Court of Appeal in SH (Iran) [2014] EWCA Civ 1469, against which permission to appeal was refused by the Supreme Court on 3 November 2015. It was recognised in SH (Iran) that the Legacy Programme was no more than an operational programme, which did not in itself confer any rights or expectations upon those is cases it considered. As founded by Simler J. in her judgement in the High Court at [38] "*the policy applicable to the cases in the legacy programme to be applied by CRD (and later CAAU) remained at all material times the general law as it stood at the time of consideration of the applicant's case in the same way as elsewhere in UKBA. The Legacy programme created no new rights.*" The general law as it stood at the time when Mr Hamasaid's application was considered under the Legacy programme require consideration of Chapter

53 and paragraph 395C, which required proper consideration of Mr Hamasaid's character and conduct.

22. I find the Secretary of State has made out her argument that the Judge has materially erred in her decision on Ground 1, in failing to consider a very important aspect of the case and in believing it was not necessary to do so, which is a material misdirection of law, and failing to make any findings upon this important aspect of this appeal.

23. In relation to Ground 2, there is arguable merit in the respondent's assertion that the finding of the Judge that this is a case in which discretion should have been exercised in the appellant's favour is inadequately reasoned.

24. I find that the Secretary of State has established legal error material to the decision for the reasons set out in the Secretary of States grounds seeking permission to appeal and in the grant of permission to appeal to the Upper Tribunal.

25. Although at the conclusion of the hearing Ms Khan submitted that if this was the Tribunal's finding the case should be remitted to the First-tier Tribunal to be considered afresh in light of the guidance given by the Supreme Court in Begum (Respondent) v Secretary of State for the Home Department (Appellant) [2021] UKSC 7 that submission did not specifically identify any aspect of that judgement that would make it appropriate for the appeal to be remitted rather than for the matter to be retained within the Upper Tribunal. To enable the correct venue to be identified the following directions shall apply to the future management of this appeal:

i. The decision of the First-tier Tribunal shall be set aside.
ii. The finding at [23] of that decision that Mr Hamasaid has committed fraud for the reasons identified by First-tier Tribunal shall be a preserved finding as shall be Mr Hamasaid's immigration history and presence of family members, both in Iraq and in the United Kingdom, and his correct place of birth in Iraq.
iii. In light of Miss Khan submissions that following the decision of the Supreme Court in Begum [2021] UKSC 7 the matter should be remitted to the First-tier Tribunal for guidance to be given in relation to how deprivation of citizenship cases are to be handled, notwithstanding the guidance in Hysaj [2020] UKUT 000128 having been provided by Presidential panel of the Upper Tribunal, but such submission failing to identify what aspects of the Supreme Court judgement was specifically being referred to and how it is argued they materially alter the approach currently adopted in such cases, Mr Hamasaid's representative shall no later than 4 PM 7 May 2021 sent to the Upper Tribunal and to the Secretary of States representative details submissions of how it is said the decision of the Supreme Court alters the current guidance. The Secretary of States representative shall no later than 4 PM 21 May 2021 sent to the Upper Tribunal and to Mr Hamasaid's representative and response to the submissions made in accordance with the direction above.

iv. The matter shall be further considered by Upper Tribunal Judge Hanson in light of such representations on the first available date after 24th May 2021, on the papers, who shall give further directions relating to the future conduct of this appeal.

Decision

26. **The Judge materially erred in law. I set the decision aside. This appeal shall be case managed in accordance with the directions set out above.**

Anonymity.

27. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson
Dated 12 April 2021