**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Numbers: UI-2021-000795
DC/00024/2019

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 2 August 2022** | **On 15 November 2022** |

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**
**DEPUTY UPPER TRIBUNAL JUDGE WILDING**

**Between**

**MAHMOOD RUSHITE MOHAMMED**
**AKA**
**(1) MOHAMMED MAHMOOD RUSHITE**
**(2) MOHAMMAD MAHMOOD RASHEED**
**(3) PUSHU MAHMOOD RASHEED**
**(4) PUSHU MAHMOOD RASHID**
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr A Badar, Counsel, instructed by Gulbenkian Andonian
For the Respondent: Mr T Melvin, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant appeals under section 40A(1) of the British Nationality Act 1981 ('the 1981 Act') against the decision of the respondent dated 15 March 2019 to deprive him of his British citizenship pursuant to section 40(3) of that Act.

2. This appeal was initially considered by the First-tier Tribunal and allowed by a decision dated 13 August 2021. The respondent was granted permission to appeal to the Upper Tribunal and by a decision dated 28 June 2022 a panel (Mrs Justice Collins Rice and Upper Tribunal Judge O'Callaghan) set aside the decision of the First-tier Tribunal and directed that the resumed hearing would be undertaken in this Tribunal.

## Brief Facts

3. The appellant is a national of Iraq who was born on 21 October 1983 and is aged 38.

4. He entered the United Kingdom illegally on 19 September 2001 and claimed asylum four days later. He identified himself to the United Kingdom authorities as 'Mahmood Rushite Mohammad', and as having been born in Mosul, Iraq. At the time of his claim Mosul was situated within the Government Controlled Area of Iraq ('GCI').

5. The respondent refused the appellant's application for asylum by a decision dated 30 October 2001, issued just after the appellant turned 18. On the same day the respondent granted the appellant exceptional leave to remain ('ELR'), valid until 30 October 2005, consequent to a then existing policy concerned with Iraqi nationals. At the material time it was the respondent's policy to grant ELR to those persons arriving from Iraq who were not refugees, but who originated in the GCI. Another area of Iraq, known as the Kurdish Autonomous Zone ('KAZ') was not controlled by the Iraqi government and was considered by the respondent to be safe. It was not the respondent's policy to grant ELR to those arriving from the KAZ.

6. On 16 April 2002 the appellant signed a form in the name of 'Mohammad Mahmood Rushite', giving his place of birth as Mosul. Section 7 of the form requested details of "your last passport, travel document or any other document which you still have". In response, the appellant stated, "None". His explanation for not enclosing such documents was that he did not have any, being an illegal entrant, and the Iraqi authorities having not issued him with any documents.

7. On 12 February 2006, again in the name of 'Mohammad Mahmood Rushite', the appellant applied for and was granted indefinite leave to remain in this country.

8. On 10 March 2006 he applied in the same name for a Home Office Travel Document. The application form asked. "Have you ever held a national passport for your country of origin?" The appellant crossed the box for

"No". The appellant left blank the section which asked for full details of any other travel documents that had been "lost, stolen, submitted to the Home Office or are otherwise unavailable".

9. The appellant applied for naturalisation as a British citizen in the name of 'Mohammad Mahmood Rushite' on 23 November 2006. He again confirmed that he was born in Mosul. On 8 May 2007 he was issued with a certificate of naturalisation in the name of 'Mohammad Mahmood Rushite'.

10. In 2008 the appellant married his wife, Hero, in Iraq. Their marriage certificate is dated 24 January 2008 and identifies the appellant as 'Pusho Mahmood Rasheed', residing in Kendrawa. The appellant's wife was identified as being from Erbil, a city in the north of Iraq.

11. On 18 November 2008 the appellant's wife applied for entry clearance as the spouse of a British citizen settled in the United Kingdom. The appellant was her sponsor. His wife presented a passport accompanied by several documents, including a marriage certificate. She stated that she had met the appellant in Iraq for the first time on 2 January 2008, married him on 1 April 2008, and lived with him for four weeks after their marriage.

12. In refusing the wife's application an Entry Clearance Officer detailed concerns as to the genuineness of documents submitted.

13. On 21 January 2009 the appellant's wife made a further application for entry clearance, and on this occasion presented additional documentation including what was described as a Lebanese marriage document recording a Sharia marriage taking place between the appellant and his wife on 16 December 2008 following the issue of a marriage permit on 15 December 2008. No explanation was provided for the document being issued on 12 December 2008. The appellant's wife was identified as not having previously been married. The appellant was identified as 'Mohammed Mahmood' and his father's name as Rushite. His date of birth was recorded as 21 October 1983 and his place of birth as Mosul.

14. An Entry Clearance Officer refused the second application for an entry clearance, detailing that an ID document presented was considered to be counterfeit.

15. On 22 May 2009 the appellant's son Anas was born in Erbil, Iraq. The birth certificate records the appellant's name as 'Pusho' and the family address as being in Erbil.

16. On 6 September 2010 the appellant attended the offices of solicitors in England and signed a Deed of Change of Name, recording a change of name from 'Mohammad Mahmood Rushite' to 'Pusho Rasheed'.

17. The appellant's daughter Aya was born on 19 May 2012 in Erbil. The appellant's name is recorded as 'Pusho Mahmood Rasheed' and the family address was detailed as Erbil.

18. An identification card dated 9 July 2012 was issued to the appellant by the Iraqi Directorate General of Nationality and Civil Status, identifying him as 'Pusho' with a date of birth of 21 October 1983 and giving his place of birth as Makhmour, Erbil.

19. An Iraqi nationality certificate dated 3 September 2012 was issued to the appellant in the name of 'Pusho' detailing his place and date of birth as Erbil, 1983.

20. On 5 November 2012 the appellant lodged at the British Embassy in Amman, Jordan, first time travel passport applications for his two children. With the applications he presented documents in the name of 'Pusho': the Iraqi marriage certificate dated 24 January 2008 and the ID card and nationality certificate dated 9 July 2012 and 3 September 2012 respectively.

21. The appellant was called for an interview on 16 April 2013 where he identified himself as 'Pusho'. He stated that this was the name he had given when he was naturalised. When it was put to him that his naturalisation certificate stated another name and place of birth he replied, "Yes, I changed my name".

22. On 14 June 2013 the appellant applied for a British passport in the name of 'Pusho'.

23. On 22 July 2013 an Iraqi Civil/Identification Card was issued to the appellant in the name of 'Mohammad Mahmood Rasheed'. Both his place of birth and the place of issue were recorded as Mosul. His marital status was given as bachelor.

24. On 24 July 2013 an Iraqi Certificate of Citizenship was issued to the appellant in the name of 'Mohammad Mahmood Rushite', giving the same year and place of birth as he had previously asserted.

25. On 2 October 2013 the respondent wrote to the appellant detailing his personal history as known to the respondent and declaring that his British citizenship was null and void. The decision was addressed to the appellant as 'Mr Mohammad aka Pusho Mahmood Rashid' and detailed, *inter alia*:

> "However, the Secretary of State subsequently received information that indicated that your genuine identity is Pusho Mahmood Rashid born 21 October 1983 in Erbil, Iraq.
>
> ... If your genuine place of birth had been known at the time you claimed asylum on 23 September 2001, you would not have benefited from the Country Policy that was in place at the time.
>
> ... The Country Policy on Iraq at the time you claimed asylum in the United Kingdom stated that any person who originated from former Government controlled Iraq, i.e Mosul, would be granted ELR, if they were not recognised as a refugee, if it had been known that you were from an area of Iraq that was not under the control of the former Government you would not have benefited from the Country Policy and been granted a period of ELR. Erbil

was in an area of Iraq previously known as the Kurdish Autonomous Zone and considered a safe area of the country. Therefore you were not the person who the Secretary of State believed you to be.

British citizenship was awarded to Mahmood Rushite Mohammad, born in Mosul on 21 October 1983 not to Pusho Mahmood Rashid born in Erbil on 21 October 1983. If you had provided your genuine details at the time you claimed asylum you would not have been granted ELR which in turn led you to obtaining ILR. Without ILR you would not have been allowed to naturalise as a British citizen. It is evident that the false details you provided concealed your true identity and place of birth and permitted you to obtain British citizenship.

... Consequently, you are not, and have never been, a British citizen. The naturalisation certificate ... is therefore null and void and should be returned to this office for cancellation".

26. The appellant was served with the decision letter on 4 June 2014. He challenged the decision of the respondent to deprive him of British citizenship on null and void grounds by judicial review proceedings (CO/4149/2014).

27. By a judgment dated 16 July 2015 Mr Justice Warby (as he then was) refused the appellant's application: [2015] EWHC 2052 (Admin). Warby J held, at [78]-[89]:

> '78. I have reached the clear conclusion that the Defendant was right to determine that the Claimant is in reality the individual born as Pusho, in Erbil. I find that in September 2001 the Claimant falsely and fraudulently represented to the Home Office that he was MMR born in Mosul, and that those were representations that continued in force and effect up to the time the Claimant was granted citizenship. I have already explained my conclusion that the representation as to place of birth was material to the grant of citizenship.
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> 79. I reject as wholly incredible the Claimant's evidence that he arrived in the UK in possession of an Iraqi identity document in the name of MMR, which was taken from him by the Home Office and not returned. First, that is an inherently improbable account. Secondly, the Claimant made a series of statements to the authorities in and after 2001 that he had no passport and had not been issued with Iraqi documents. If the claim now made were true he would surely have said otherwise, and applied for the return of his ID document by the Home Office. Further and alternatively, he would have sought a replacement ID document from the Iraqi authorities at an early stage. In fact, he did not seek any Iraqi ID document in the name MMR until mid-2013, after he knew that his identity was under scrutiny by the British authorities.
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> 80. Moreover, the Claimant has given a series of different accounts of events. When these proceedings were started the Claimant alleged in his Grounds that he had given "his Iraqi identity documents" (plural) to the UK authorities on arrival. Within a month or so he said through his solicitors he had given in his

passport. Confronted with his earlier inconsistent statements he has changed his account yet again. I note that in addition to the valid points made by Ms Walker in this regard, the Claimant relies on a statement by his father-in-law that attributes to the Claimant an account of events which is inconsistent with his own evidence. Mr Ahmed reports that the Claimant told him in 2007 that "all his Iraqi documents had been taken from him in the UK".

81. The claim that the Claimant presented an Iraqi ID document in the name of MMR in 2001 is not just improbable, it is unworthy of belief. It is much more probable, and I find, that the Claimant arrived with no passport or identity documentation, and that this was a deliberate ploy which he adopted on the advice of the agents whom he, truthfully, explained on his arrival had been paid to arrange things.

82. The reason for having no identity documents on arrival was, in my judgment, to facilitate the adoption of the false identity of MMR from Mosul. It is a reasonable and probable inference that it was known to those who arranged the Claimant's arrival that Mosul was a better place to come from than Erbil, if a person wished to claim asylum. Mr Ahmed submits that on that view it would have been enough merely to falsify the Claimant's place of birth and not his name. That, however, would have risked contradiction and exposure by reference to authentic records of the birth of Pusho in Erbil in 1983. MMR from Mosul is in my judgment probably an entirely fictitious identity, thus exposing the Claimant to much more limited risk of exposure.

83. The evidence that the Claimant's true identity is that of Pusho from Erbil is amply sufficient, in my view, to justify that conclusion. All the Iraqi documents in the case created up to the end of 2012 give that as the Claimant's identity and place of birth (where place of birth is given): the marriage certificate of January 2008, the 2009 birth certificate of the Claimant's son, and the birth certificate of Aya, the ID Card, and the Nationality Certificate of 2012. I have some doubts about the marriage certificate, given the conflicting accounts of when the marriage took place, and what happened when a marriage certificate (not necessarily the one of January 2008) was presented by Hero to the ECO in 2008. However, I find that at least the last four of the give Iraqi documents I have mentioned are authentic documents, genuinely issued by the authorities. Further, I accept that as he himself asserts, the Claimant married a woman from Erbil, and both his children were born in Erbil. The natural conclusion from all of this is that the contents of the documents are true, and the Claimant is Pusho, born in Erbil in 1983.

84. The Claimant seeks to displace that natural conclusion, by claiming that these documents are in fact the fruits of a fraud carried out by his father-in-law with his connivance, and subsequent frauds by him. I reject that contention as implausible. The various explanations given for obtaining false Iraqi ID documents in 2007 are belated, inconsistent with one another, and inherently improbable, as alleged by the Defendant. If any of these explanations were true, I would expect to have seen them

advanced sooner. What was said in October 2014 was vague in the extreme. The case advanced eight months later in June 2015 was different from what went before, and the two accounts given by the Claimant and his father-in-law were not consistent with one another. I would accept as a general proposition that conditions in some parts of Iraq in 2007 were dangerous. But there is simply no credible, coherent, and consistent account that links any such dangers with any need for the Claimant to obtain fake Iraqi ID.

85. I place weight on the fact that the alleged 2007 ID Card has not been produced, and that there is no explanation offered for its absence. If such a document had come into existence there would have been no need for the 2012 ID Card. I also place weight on the rubric contained on the 2012 Nationality Certificate, quoted at [34] above. This appears to me to indicate clearly that there was a previous certificate created in 2004, containing the same identification details. This cannot on any view be reconciled with the Claimant's case. The 2004 certificate could not relate to the alleged deceased relative of the Claimant's father-in-law as it is obvious, and accepted in the Claimant's evidence, that not all the details in his ID could have matched those of the dead relative. The probability is that the 2004 certificate was obtained by the Claimant, and that it was identical to the 2012 ID because the identity details were true. I note, further, that no date or details are given of the alleged death of the relative named Pusho, other than to say it took place in a car accident. The account is uncorroborated by any document such as a death certificate, newspaper report, or other contemporaneous record.

86. I would accept that the Amman interview of April 2013 is open to criticism. Like an interview under caution, it involved eliciting an account of events from the interviewee. Unlike the standard format of an interview under caution, however, it did not involve putting the case against the Claimant to him for his response. I shall return to the interview when dealing with fairness. At this point in the discussion, however, I accept that for the reasons just given and those advanced by Mr Ahmed I need to beware of placing too much weight on what was and what was not said during that interview. I therefore hold back from attributing importance to the peculiar answer "Because of Saddam regime", which would not of course explain the adoption of a false identity in 2007. Saddam Hussein's regime was overthrown in 2003 and he died in 2006.

87. However, the most important passage in my judgment is the question and answer in which the Claimant is recorded as referring to a "fake" ID. If that is read as a reference to the Pusho ID, as submitted by the Claimant, it represents a statement made by him before the impugned decision, asserting or admitting that the Pusho identity was a false one. In my view however, read in the context of the question and the entry clearance records, the reference quite clearly was to the ID presented by Hero in 2008, which the Home Office had concluded was "fake". That is what the Claimant was referring to in that answer, and his attempt to use this passage to bolster his claim that the "Pusho" ID was false must be rejected as untrue.

> 88. The only documents in the evidence referring to the Claimant as MMR, other than documents he has obtained from the Defendant, are the Lebanese marriage document of December 2008, the ID Card and Nationality Certificate of 2013, and the Iraqi Embassy letter of 2014. I am doubtful of the authenticity of first of these. In any event it was, on the Claimant's own case, obtained in order to facilitate the entry clearance for Hero. Similarly, the Iraqi documents of 2013 were plainly produced in order to support a case. That is not true of any of the "Pusho" documents of 2008-2012. The Embassy letter, on analysis, does no more than confirm that the Nationality Certificate says what it says. It does not represent independent corroboration of identity.
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> 89. My conclusion is that the documents of 2013 and 2014 were probably issued by the Iraqi authorities and in that sense are authentic, but that they carry little or no weight as evidence of identity. One reason I consider the 2013 documents are likely to be authentic is that the ID Card records the Claimant as a Bachelor. The probability is, in my view, that he requested that status to be recorded on the document in case the Iraqi authorities investigated the details given, and found that according to their records his wife was married to "Pusho". Quite how the 2013 documents were obtained is not clear, but I find that insofar as they purport to identify the Claimant as MMR with the identity details given, they are false. The probability is that they were obtained by dint of some form of fraud or corruption carried out by or on behalf of the Claimant. The Embassy Letter seems to me likely to be both authentic and innocent but as all it does is to confirm that another, bogus, document says what it says it effectively of no value.'

28. We observe the language used by Warby J in respect of the appellant's evidence: "wholly incredible", "inherently improbable account", and "unworthy of belief".

29. A third child, Honey, was born in Iraq and the appellant was named as 'Mohammad Mahmood' in the birth certificate issued on 30 September 2016.

30. The appellant's wife entered the United Kingdom unlawfully and claimed asylum on 15 August 2017. She asserted that the appellant's family had been involved in a feud with another tribe, and this would place both her and her husband at risk if they were to return to Iraq. She also relied upon article 8 ECHR in respect of her husband and their two children being British citizens, asserting that it would be disproportionate to expect her to return to Iraq on her own. The respondent refused the application for international protection by a decision dated 13 February 2018 and the appeal came before Judge of the First-tier Tribunal Norton-Taylor (as he then was), sitting in the First-tier Tribunal. The appellant and his wife gave evidence. The appellant stated that his family were subject to a blood feud which commenced in 1992, whilst living in Mosul, he had travelled to the United Kingdom in September 2001 and confirmed that he had been visiting Iraq on an annual basis since 2007, staying at his mother's home

in Mosul. He detailed that his mother and sisters had now relocated to Germany, consequent to the ongoing blood feud.

31. By a decision dated 26 April 2018 Judge Norton-Taylor refused the Refugee Convention appeal of the appellant's wife but allowed the appeal on human rights (article 8) grounds. We observe Judge Norton-Taylor's findings as to the death of the wife's parents:

> '38. I find the [appellant's wife] was born and brought up in Erbil in the IKR. She accepts this to be the case.
>
> 39. I find that the [appellant's wife] legally married Mr Mohammad in 2008 in Iraq. This fact has now been conceded by Ms Khan [Presenting Officer]. I find that the relationship is and always has been genuine and subsisting, and that the couple do in fact have three children together. These two issues have also now been conceded by Ms Khan, and in my view quite rightly so.
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> 40. **I accept that the [appellant's wife's] parents both died in a traffic accident in 2012.** That has been her consistent evidence, and it is not in fact been challenged by the Respondent. Beyond that, I have before me **death certificates** for the parents, accompanied by certified English translations. I find these to be reliable documents, and again, they have not been expressly challenged by the Respondent.'
>
> [Emphasis added]

32. In respect of the claim for international protection Judge Norton-Taylor confirmed that he did not accept that the appellant's family were engaged in a feud with another tribe:

> '44. The claimed feud is said to have begun back in 1992, and so would have been in place, as it were, at all material times relating to the appellant's case. Taking the evidence as a whole, it is also said that the opposing tribe had a presence both in Mosul and the IKR, including Erbil. Indeed, it is said that the tribe had an influence in the KDP, a leading political party in that region. Apparently, the Appellant's husband and his family were in such fear of the tribe that they had to move address on several occasions within Mosul over the course of time.
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> 45. This claimed set of circumstances stands in significant contrast to the clear evidence before me that Mr Mohammad had chosen to return to Iraq/IKR on a regular basis, and not for insignificant periods of time, since his marriage to the Appellant. I find that he did undertake such visits, and did so both when the Appellant was living in Erbil and also after she moved to Mosul in 2012. Therefore, he was going to the two primary geographical locations in which the alleged feud operated. I appreciate he would have wanted to see his wife, and I acknowledge his evidence that he undertook the visits in secret. However, it is, I find, extremely difficult indeed to see how his devotion to his wife could have overridden a serious fear of being found and very probably killed by the opposing tribe during the course of repeated visits over the course of almost ten years. Further, I do not accept that he would

> have been able to conduct the repeated visits, all of which I find lasted between about twenty days and a month, on a 'secret' basis. Mr Mohammad was flying into the country, travelling within the area, and, I find, was not reasonably likely to have remained indoors at all times. He has not actually said that he remained hidden away throughout all of the visits. It is extremely likely that prior to the Appellant's move to Mosul in 2012, Mr Mohammed was travelling between that city and Erbil in order to see the Appellant.
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> 46. All of what is set out in the preceding paragraph points so strongly to the conclusion that Mr Mohammed was not in fact in fear for his safety/life when making the visits that I find the claim feud itself never existed.'

33. We find it striking that the appellant attended the appeal of his wife and relied upon his personal history in circumstances where the First-tier Tribunal was not provided with a copy of the judgment of Warby J and so Judge Norton-Taylor was unaware of judicial findings as to the appellant's securing and subsequent 'deprivation' of British citizenship.

34. In respect of the wife's article 8 appeal Judge Norton-Taylor considered both the public interest and the children's best interests, concluding that it would not be reasonable for the children to be required to leave the United Kingdom. Consequently, he decided that it would be disproportionate to expect the appellant's wife to leave her husband and her children to return to Iraq to make an entry clearance application.

35. In the meantime, the Supreme Court handed down judgment in *R (Hysaj) v. Secretary of State for the Home Department* [2017] UKSC 82, [2018] 1 W.L.R. 221 on 21 December 2017. The Court confirmed that the respondent erred in law in her approach to various deprivation of citizenship assessments by declaring the grants of citizenship to be a nullity rather than considering them under section 40 of the 1981 Act.

36. The respondent withdrew the appellant's nullity decision by a decision dated 3 February 2018 and in doing so accepted that the appellant was a British citizen. The respondent informed the appellant that she would seek to review the situation and invited him to respond to the proposed deprivation of his citizenship, which he did through representations prepared by his legal representatives on 12 April 2014.

37. By a decision dated 15 March 2019 the respondent decided to deprive the appellant of his British citizenship. Reliance was placed upon the observations of Warby J in respect of the various documents relied upon by the appellant. The decision further relied upon various Iraqi documents where the appellant was named 'Pusho Mahmood Rasheed' and the explanation provided by the appellant of having two identities. The respondent concluded that the appellant entered the United Kingdom providing a false identity and that he deliberately attempted to mislead the respondent in his asylum claim, his wife's entry clearance applications, his application for settlement and his application for naturalisation. In the

circumstances it was considered that deprivation was both appropriate and proportionate.

38. The appellant has filed a letter from the Iraqi Consulate, London, dated 5 September 2019 confirming that he is 'Mohammad Mahmood Rasheed', according to his Iraqi civil card. A further letter from the Consulate, dated 12 December 2019, confirms that the three members of the appellant's wife and two of his children attended to apply for Iraqi identification, but were informed that the application was to be made in Iraq. The appellant was named as 'Mahmood Mohammed'.

## Law

39. Section 40(3) of the 1981 Act states as follows:

> 40 Deprivation of citizenship.
>
> (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.

40. As to the jurisdiction of the Upper Tribunal in respect of decisions under section 40(3) the Supreme Court confirmed in *R (Begum) v. Special Immigration Appeals Commission* [2021] UKSC 7; [2021] A.C. 765 that the Tribunal must determine whether the respondent's discretionary decision to deprive an individual of British citizenship was exercised correctly. The correct approach to this is not a balancing exercise, but rather a review on Wednesbury principles. Where article 8 is engaged the Tribunal must determine for itself whether the decision is compatible with the obligations of the decision–maker under the Human Rights Act 1998, paying due regard to the inherent weight that will normally lie on the respondent's side of the scales in the article 8 balancing exercise.

41. Following *Begum*, a Presidential panel of the Upper Tribunal confirmed in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC), at [30], that in deprivation appeals:

> (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.

**Evidence**

42. The appellant relies upon two witness statements; the first dated 9 September 2019 and the second dated 27 May 2021.

43. By means of his first witness statement the appellant detailed that he left Iraq because his life was in danger consequent to his brother's involvement with an opposition party in Iraq, the Iraqi National Congress. Following his brother's arrest, a maternal uncle felt that there was a real risk that the appellant would also be arrested due to his association with his brother. His maternal uncle arranged for him to leave Iraq.

44. The appellant asserts that at the time he left Iraq in 2007 he was entirely unaware that his family were involved in a blood feud with another family in Iraq. At the time the appellant was aged 17. He states that he only became aware of the feud when he returned to Iraq in 2017 and this is the reason why he did not raise the issue when claiming asylum in the United Kingdom. He explained that he was not informed about the feud because, "I was only young and my family did not want to worry me about such things".

45. He states that he had with him an Iraqi CSID card when he arrived in the United Kingdom, and this was taken from him by the respondent.

46. At paragraph 6 of the witness statement, he seeks to explain the different names by which he is known:

> '6. I would like to clarify that during the period of making these applications, the correct order of my name became confused. I claimed asylum under the name Mohammad Mahmood Rushite; this is my correct name. In 2002 I applied for (and was granted) a Home Office travel document in the name in which I claimed asylum, Mohammad Mahmood Rushite. However, in 2005 when I applied for indefinite leave to remain through a new firm of solicitors (Duncan Lewis), my name was entered onto the form incorrectly as Mahmood Rushite Mohammad. My English was very poor at the time so I did not notice the error. This error was then repeated on my application for a new travel document in 2006 and my nationality application on 23 November 2006. I did not notice the error until after these applications had been submitted. All of these applications were granted by the Respondent in the name of Mahmood Rushite Mohammad despite me claiming asylum, and therefore being issued with a travel document, under the correct name of Mohammad Mahmood Rushite. When I discussed this error with my then solicitor, Duncan Lewis, I was advised not to mention this to the Home Office in case it created problems. I was fine with my documents referring to me as Mahmood Rushite Mohammad as it did not change my identity and was very close to the name on my birth certificate.'

47. The appellant proceeds to explain the circumstances arising in the run-up to his marriage. He details that he travelled back to Erbil in 2007 with the intention of travelling on to Mosul to visit his family. He went to Erbil first

because it was not possible to travel directly to Mosul at the time. He arrived in Erbil and took a taxi to the coach station and then took a taxi to Mosul. When he arrived in Mosul, he went to visit his maternal uncle as his family had moved from the address where they had previously been living. His uncle collected all his family members and brought them to his home so that they could meet. The appellant stayed in Mosul for approximately two weeks and stayed in a different house, having been informed that it would be unsafe for him to stay in one area because he was carrying a British passport and at that time a lot of people hated westerners so he may have a hard time if he was discovered. The only identity document he had was his British passport because the respondent had possession of his CSID card. It was at this time that the family blood feud was 'hinted at' by his uncle, but it was not until he returned to Erbil that he found out the true details.

48. He was advised that it would be safer for him to reside in Erbil, and he returned there. Arrangements were then made for him to stay with distant family members. He was advised that it was not safe for him to return to Mosul, nor would it be safe for him to reside in Erbil with his name because of the ongoing blood feud and fighting in the area.

49. The appellant further details:

> '12. Mohammed told me that many years ago, as a result of a land dispute with another family, my grandfather had been killed when I was very young and that following the killing of my grandfather my father and my older brother had killed two of the family members of those involved in my grandfather's killing. As a result of the blood feud, I was told by Mohammed that it was not safe to use my real identity in Erbil and that it was also not safe to reveal that I was now a British citizen as the chances of me be targeted by the family were very high. I trusted Mohammed's judgement as I had been away from Iraq for a long time and in my culture you give respect to the elders in your family when they offer you advice.
>
> 13. Whilst in Erbil I was introduced to Mohammed's daughter Hero Mohammed Aussman. I liked her very much and it was proposed by my mother that we should get married; I agreed. Mohammed (Hero's father) was happy for us to marry but was worried that myself and Hero could be in danger if my identity became known and therefore suggested that I use a different name to marry under. Mohammed provided me with a new Iraqi identity card under the name of a relative of his who had died in a car crash some years earlier. My photo was used but the ID was in the name of Pusho Mahmood Rasheed from Makhmour, Erbil.
>
> 14. Using this ID I married Hero and our marriage certificate was issued listing my name as Pusho Mahmood Rasheed from Makhmour, Erbil. I was advised that by using this name it would mean that it would be safer for me to travel around Erbil and other areas of Iraq. Mohammed was worried about his daughter being dragged into the dangers of my family's blood feud and therefore I agreed with his suggestion – again I trusted him as he

was an elder family member and this is what you do in my culture. At the time I didn't even consider that it would create difficulties for me in the future. I was just following my in-laws advice and I can now see that this was a bad idea as it has given me a lot of problems.

15. Following my marriage to Hero, I travelled back to the UK and would go back and visit Hero in Erbil. On 18 November 2008 we made an application for Hero to join me in the UK but this was refused by the Home Office. It was not until then that I realised that changing my name and us getting married using that name would cause a problem. I was still getting used to the way things are done in the UK and although I now realise that this was the wrong thing to do, at the time I didn't realise the problems that it would cause.

16. In an attempt to fix the situation, on 12 December 2008, Hero and I travelled to Lebanon and we were re-married in a Sharia ceremony; this time I used my real name of Mahmood Rushite Mohammed which was how my name was listed in my British passport. Hero was pregnant with our first child and we were very eager to get everything sorted so that we could all move to the UK and live in safety as a family. I thought that by us marrying again using my real name I could then bring my wife to the UK before my son was born.

17. On the 21 January 2009, Hero made a new application for entry clearance into the UK so that she could join me but again this was refused. The situation was getting ever more complicated and I just wanted for my wife to join me in the UK.

18. On 22 March 2009 our son, Anes, was born. When his birth was registered it was done listing my name as Pusho Rasheed. This was done by my wife and her family as I was not there at the time. They registered Anes using my name as Pusho Mahmood Rasheed because they were still in Erbil and my father-in-law was very worried about his daughter and new born grandson being in danger because of my family's feud. He also didn't want people to know his daughter's husband, and grandson's father, was a British citizen because this could also create problems for them.

19. In a further attempt to sort out these problems and enable me to bring my wife and baby to the UK, on 6 September 2010 I changed my name by deed in the UK from Mahmood Rushite Mohammad to Pusho Rasheed. I was travelling to Iraq occasionally so I thought this might make things easier if the name in my British passport matched the name that I had been using in Iraq.

20. On 19 March 2012 our daughter, Aya, was born and again her birth certificate states her father's name as Pusho Rasheed. This was for the same reason that Anes' birth had been registered using this identity. On 9 July 2012, in-line with my legal change of name in the UK, I was issued with a new Iraqi CSID card stating my name as Pusho Rasheed from Erbil and on 3 September 2012 an Iraqi Nationality Certificate was issued using these details. Although I knew these details to be incorrect as I was not from Erbil but from Mosul, I did this because my name had been legally

changed in the UK and it would therefore make travelling in Iraq easier and safer.

21. In 2012 my wife Hero and my children went to live with my mother in Mosul. This was because Hero's parents died in a car accident and they didn't have anyone in Erbil to support them. In 2014 Mosul became under the control of ISIS so this was a very worrying time for me and I was not able to see them throughout this time. During the occupation, my family managed to flee to a village called Mala Kagha close to Makhmoor town; it was a bit safer there but it was still on the outskirts of Mosul so I was still very worried for their safety. They stayed living with my mother until they returned back to Mosul in July 2017 and then they left Iraq on 1 August 2017 with the help of Hero's maternal uncle.

22. On 5 November 2012 I applied for British passports for my children through the British Embassy in Amman as there was no consul in Iraq at the time. I returned to the UK but I returned again and on 16 April 2013 I was called in for an interview at the British Embassy in Jordan in relation to these applications. As part of these applications I disclosed my marriage certificate in the name of Pusho Mahmood Rashid and my identity documents in the same name. I also submitted my change of name deed. These applications were refused but I still have an ongoing case with the Home Office over this issue.

23. In approximately 2005 new rules came into place in Iraq requiring all citizens to apply for new CSID cards as they brought in new cards with holograms on them – these new cards were not introduced into the Kurdistan Region of Iraq (KRI) until a later date. I travelled to Mosul on 22 July 2013 (in advance of the occupation by ISIS) to see my family, and during this time was issued with a new Iraqi CSID card with my correct name of Mohammad Mahmood Rushite this also confirmed that I was born in Mosul. In order to get this document, I had to attend a police interview with my mum who had sign a statement confirming that I was her son, I then had to attend an interview at the Civil Registry where my details were checked and confirmed. In order to do this the Civil Registry compared my identity against the Civil Registry book which had the details of all my family members in Mosul including old photos of me that had be submitted when I was given my original CSID document which the Home Office took from me when I claimed asylum. You will see that all of my family CSID cards (including mine) that have been submitted to the Respondent and are included in the Respondent's bundle, they state register 926M page 84; this refers to where our details can be located within the Civil Registry book in Mosul. I was also able to obtain a new Iraqi passport in my correct name, Mohammed Mahmood Rushite.'

50. By means of his second witness statement the appellant attached an undertaking document from his father-in-law dated 9 June 2015, accompanied by a certified translation, which was provided to the High Court. The appellant further details:

> ‘9. I am not saying that my father-in-law is to blame for this issue, as I am equally at fault for blindly agreeing to whatever I was told to do. Having the shock of being told that my life could be in danger in Iraq and having not lived there since I was 17 years old, meant that I could only rely on my relatives and follow what they told me to do.
>
> 10. Looking back, I can see how stupid and foolish I was for doing this. The simple application of trying to apply for my wife to join me became a mess and now I am facing the possibility of having my British citizenship taken away from me.’

51. We observe that the June 2015 undertaking document signed by the appellant’s father-in-law, Mohammed Aussman Ahmed Al Amri, details:

> ‘Mr Mohammad Mahmmood Rasheed, who is my relative as his mother is from my family, returned from Britain in 2007. He came to my house in Arbil [sic] and wanted to go to Mosul to his family home and he did not have any Iraqi documents on him. He said that all his Iraqi documents had been taken from him in the UK. He wanted to go back to his family in Mosul with his British Passport. I advised him not to return to Mosul since the security situation was very atrocious and terrorists were threatening people’s [sic] live [sic] and killing people. I advised him to stay with us until I find a solution for him.
>
> I have a relative in Makhmoor who had a son called Pusho Mahmmood Rasheed. The son had died two months before in a car accident. I went there [Makhmoor] and took the ID card of the deceased from my relative. Only mother’s name and the date were different [from Mohammad’s]. We issued a [new] ID card [for Mohammad] from the Department of Civil Status [impersonating Pusho]. A month later I approved his marriage to my daughter. Once again he wanted to return to Mosul, but I did not allow him. Therefore, he did the marriage register in Arbil [sic] using the identity of the new identity card. We did all these arrangements because he had only a British Passport on him and the security situation in Mosul was appalling, and people were getting killed on a daily basis at the hands of terrorists. That is why we did not allow him and his wife to go back to Mosul.’

52. At the hearing before us the appellant gave oral evidence. He again confirmed that it was his father-in-law who had secured the new identity to protect him from harm.

53. During cross-examination by Mr Melvin the appellant confirmed that he had not been aware of the blood feud until 2007 but accepted that his grandfather was killed as a result of the blood feud and that several members of his family had taken revenge on the other family resulting in a death. He explained that he was not aware of the blood feud because children “are not told about these things”. When asked why he was not personally informed until he was aged 24, he replied that his mother had not told him about events in case he himself got involved in the blood feud. He was only told about matters by his father-in-law because of the concerns as to his safety.

54. The appellant was asked as to how his father-in-law was able to prepare a witness statement in June 2015 in relation to High Court proceedings in London when he had been killed in a car accident in 2012. The appellant stated that his father-in-law had not died in the accident, only his mother-in-law. He was reminded of wife's evidence before Judge Norton-Taylor that she had relocated to Mosul with her two eldest children to live with the appellant's family because both of her parents having been killed. The appellant's simple response was that this was a mistake by her solicitor.

55. Mr. Melvin asked the appellant about the death certificate his wife had provided both to the respondent and the First-tier Tribunal confirming that her father had died in 2012. The appellant informed us that he was not aware of what his wife had said at the hearing. He was asked about the inconsistency in the evidence with his wife asserting that her parents had died in 2012 whilst he stated that his father-in-law was alive in 2015. He initially informed us that he had no knowledge of his wife having relied upon a death certificate in her appeal, but ultimately his position was that she must have relied upon false documents and that he was telling the truth about his father-in-law being alive in 2015.

56. We confirmed with Mr. Badar our understanding that the appellant's position was that the appellant's wife had deliberately used false documents in her appeal before Judge Norton-Taylor. Mr. Badar confirmed that was the appellant's position as established by his evidence.

57. There is no witness statement from the appellant's wife before us and she did not attend to give evidence.

## Decision and Reasons

58. At the outset we confirm that we have considered the evidence presented by the appellant in the round, whether expressly referred to in this decision or not, including documents placed in two hearing bundles prepared by the appellant running to seventy-two and sixteen pages respectively.

*Adjournment request*

59. At the outset of the hearing the appellant requested an adjournment to secure further time to deal with the preparation and presentation of his evidence. Mr Badar explained on behalf of the appellant that he would wish for the appellant's wife to attend to give evidence particularly in respect of article 8 and family life. Additionally, Mr. Badar wished for the appellant to have further time to address the findings made by Warby J in 2015.

60. We refused the request at the hearing, expressing our concern as to the late notice of the adjournment application. This appeal has proceeded for several years, and the appellant was made aware at the panel hearing held on 5 April 2022 that this matter would be reheard by the Upper

Tribunal at a future date. He has enjoyed plenty of time in which to prepare his human rights appeal. In any event, the appellant subsequently withdrew reliance upon his article 8 appeal.

61. Further, we were unimpressed by the late request for further time to address the findings of Warby J, noting that the judgment was handed down approximately seven years ago, and these proceedings have been ongoing for some three years. During such time the appellant has been content not to provide a copy of the High Court judgment to Judge Norton-Taylor, and during these proceedings decided not to address the judicial findings in either of his witness statements. We were satisfied that with the respondent ready to proceed it was not in the interests of justice to adjourn the hearing.

*Decision on substantive appeal*

62. Mr Badar identified the scope of the appellant's appeal before us. He confirmed that there was no challenge to the lawfulness of the respondent's decision reached on the evidence that was placed before the decision-maker. Additionally, upon the appellant having accepted in his oral evidence that his wife would be able to work whilst he was awaiting a decision on leave to remain following deprivation and that whilst his wife worked he could care for their children; the article 8 appeal was not pursued.

63. The sole issue before us is whether considering the evidence now placed before this Tribunal, including the appellant's oral evidence as well as the documentary evidence relied upon, the appellant can establish that the respondent could not now take the same view as to deprivation.

64. The appellant's case rests heavily upon the evidence 'presented' by the appellant's father-in-law prepared for High Court proceedings in 2015, namely that his father-in-law secured the identity of a nephew to help keep him safe. The document was signed by both the appellant's father-in-law and his lawyer, Ahmed Khasro Khidr, a member of the Iraq-Kurdistan Bar Association, who also stamped the document with his attorney stamp and dated the document 9 June 2015.

65. The content of the document causes real difficulty for the appellant because the chronology outlined by the appellant's father-in-law is inconsistent to that presented by the appellant. The former confirms that the appellant arrived at his home in Erbil having travelled from the United Kingdom, wishing to return to Mosul. He advised the appellant not to travel to Mosul because the situation was not safe, and it was then that the suggestion of securing a different identity was canvassed. The appellant's evidence is that he did travel to Mosul, was there for a period of two weeks staying with an uncle and only became aware of the true situation and risk to him through the blood feud when he returned to Erbil and was advised by his father-in-law to adopt a new identity.

66. However, we are satisfied that ultimately absolutely no weight can be placed upon the father-in-law's evidence. The appellant's wife presented evidence in the form of death certificates, accompanied by certified translations, to Judge Norton-Taylor confirming that both her parents died in a road traffic accident in 2012. These certificates were accepted to be genuine by both the respondent and Judge Norton-Taylor. We are now being asked by the appellant to find that the death certificate in regard of his wife's father is a false document, whilst that of his mother-in-law is genuine. The appellant is content that we consider his wife to have used a false document to secure success in an appeal, permitting her to remain in this country.

67. We can see no reason as to why the wife should rely upon a false death certificate for one parent and produce a genuine certificate for another. The deaths of her parents were not germane to her case for international protection, nor her human rights appeal. Her refugee appeal was entirely founded upon the appellant's purported blood feud, and the death certificates simply went towards her evidence that she resided with her in-laws for a period of time before travelling to the United Kingdom.

68. We are satisfied that when the discrepancy as to dates was put to the appellant by Mr. Melvin, he said the first thing that came into his mind in an ineffectual effort to continue relying upon what he knows to be a false document. It is striking that in order to protect his own position, he was content to potentially damage his wife's position as to her status in this country.

69. We are fortified in our conclusion that the appellant was making up his evidence on the spot as to this issue by our observation of his first witness statement where he details at paragraph 21 that his wife's parents died in a car accident in 2012.

70. We find that the undertaking document purportedly signed by the appellant's father-in-law is a false document, and the appellant knew it was false when he sought to rely upon it before the High Court and again before us. Such brazen act significantly undermines his credibility.

71. We note that significant concerns have been raised in the past as to the appellant's credibility. The adverse observations of Warby J, before whom the appellant gave evidence, are detailed in strong terms. Having heard the appellant give evidence we have concluded that he is a man to whom lying and deceit come very easily. He has consistently failed to be truthful, either in his dealings with the respondent, or to several judges over two decades. He exhibits no concern as to his constant willingness to be untruthful; continuing to lie, to use false documents and to seek to manipulate in order to secure his continued presence in this country. We find that the appellant is a man who is simply unworthy of belief and is a person who is knowingly prepared to use false documents in court proceedings.

72. We are satisfied to the required standard, namely the balance of probabilities, that he is **Pusho Mahmood Rasheed**, an Iraqi national who was born in Erbil and that he knowingly used a false identity to ultimately secure both status and then nationality in this country. We find that he was aware when seeking international protection that a false claim of originating from the CGI, and seeking to benefit from the respondent's policy, was the only means of securing leave in this country. He was aware that the truth as to his personal history would result in his removal back to the KAZ. The appellant's naturalisation was obtained by means of fraud, false representation or concealment of a material fact.

73. Our conclusion is that upon considering his oral evidence and the documents now relied upon the appellant has come nowhere close to establishing that the respondent could not now come to the same conclusion as she reached in her decision of 15 March 2019. Indeed, the only proper conclusion to draw from the evidence before use is that the respondent is correct in identifying the appellant's true identity. We dismiss the appellant's appeal.

74. It is appropriate that we confirm in our decision that we accept the appellant's wife to have filed with the First-tier Tribunal genuine death certificates in 2018 concerning her parents.

**Notice of Decision**

75. By means of a decision dated 28 June 2022 this Tribunal set aside the decision of the First-tier Tribunal promulgated on 13 August 2021 pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.

76. The decision is re-made. The appeal is dismissed.

Signed: *D O'Callaghan*
**Upper Tribunal Judge O'Callaghan**
Date: 1 September 2022

**TO THE RESPONDENT**
**FEE AWARD**

The appellant's appeal has been dismissed. No fee award is made.

Signed: *D O'Callaghan*
**Upper Tribunal Judge O'Callaghan**
Date: 1 September 2022