IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002243

First-tier Tribunal Nos: DC/50111/2022
LD/00203/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR DARBAZ AHMAD ABDULLAH
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Pipe, Counsel instructed by Latitude Law
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 15 March 2024

DECISION AND REASONS

1. The Appellant is a national of Iraq born on 1 September 1983. He arrived in the UK on 6 February 2004 and claimed asylum the following day on the basis that he was an Iranian national named Bahrain Ali Muradi. He was granted leave to remain under the provisions of the SSHD's legacy policy concession on 6 January 2010 and the following year, on 7 February 2011, he became a British citizen. Thereafter, he changed his name by deed poll to Barbaz Ahman Abdullah.

2. Subsequently on 16 May 2022, due to the fact that it was discovered that the Appellant was in fact a national of Iraq, the Secretary of State made a decision to deprive him of his British citizenship. He appealed against that decision and his appeal came before the First-tier Tribunal for hearing on 3 March 2023.

3. In a decision and reasons dated 13 March 2023 his appeal was dismissed by FtTJ Andrew who, in a very short decision, found that the Appellant had exercised deception on a number of occasions and that his failure to disclose his correct name and the country from which he came showed that he is not of good character [7]. The judge considered a number of factors, including the impact on the Appellant's wife, from whom he is separated and his children and his employment but found at [16] that these factors did not outweigh the public interest in deprivation of his British citizenship.

4. The Appellant sought permission to appeal on the basis of the following grounds: firstly, that the judge failed to consider material matters and that the question of materiality based on Sleiman [2017] UKUT 00367 (IAC) and the Respondent's deprivation policy guidance meant that false representations in this case were not material given that the grant of indefinite leave to remain had been made under the Legacy Scheme on the basis of the Appellant's long residence. Secondly, that the judge made inadequate findings and gave inadequate reasons in relation to his findings of fact. Thirdly, that the judge made a material misdirection of law and failed to apply the correct approach following Begum [2021] UKSC 7 and Ciceri [2021] UKUT 238 (IAC).

5. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge C Lane in a decision dated 20 October 2023 and sent on 13 January 2024, in the following terms:

"The renewed grounds raise arguable challenges to the First-tier Tribunal's assessment of the materially of the appellant's giving a false name and nationality in the context of the operation of the legacy scheme under which he gained British nationality. All the grounds may be argued".

Hearing

6. At the hearing before the Upper Tribunal, Mr Pipe sought to rely on his grounds of appeal.

7. Mr Clarke sought to rely on case law that he had submitted in advance, in particular the case of Matusha [2021] UKUT 00175 (IAC), SK (Sri Lanka) [2012] EWCA Civ 16, Sleiman [2017] UKUT 00367 (IAC) and Chimi [2023] UKUT 00115.

8. In respect of ground 1 and the assertion that the judge failed to consider material matters in relation to the fact that leave was granted under the legacy policy concession on the basis of long residence and therefore the fraud was not material, Mr Clarke submitted that this argument fell at the first hurdle in light of the decision in *Matusha* (*op cit*) which makes clear that the legacy programme was not a concessionary policy guidance. He also drew attention to the judgment of Mr Justice Popplewell in AA (Nigeria) [2020] EWCA Civ 1296 at [34]:

"… Experienced judges in this specialised tribunal are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically, unless it is clear from their language that they have failed to do so."

9. Mr Clarke submitted that the grounds of appeal misunderstand the legacy programme. Mr Clarke sought to rely on paragraph 55.7.1 of the Nationality policy guidance which reflects the condition precedent requirement whereby the

Secretary of State needs to be satisfied that a fraud is material to the grant of citizenship and in so doing is required to look back at the statutory framework and policies that apply at that time. The Secretary of State has to be satisfied as to the residence requirements and that the Appellant is of good character. Mr Clarke submitted that *SK* makes clear at [31] and [36] how that discretion operates and that it is a subjective test for disqualification. In those circumstances, Mr Clarke submitted that the Secretary of State would have been bound to refuse the application for naturalisation had he been apprised of the full facts at the material time. The policy instructions could not require the Secretary of State to accept the good character of the Appellant.

10. Mr Clarke further submitted that one of the difficulties in the way that the Appellant advanced his case is not to take any issue with the Chapter 18 policy on good character at [42] onwards of the refusal decision where discretion and factors that need to be taken into account are set out. He also sought to rely on Part 9 of the Immigration Rules and whether there were any attempts to conceal a lie. Mr Clarke submitted that the reality is that this fraud was not known at that particular time and the Appellant had not made any challenge to the application of the Chapter 55 guidance. Therefore, it was difficult to see how the Appellant could have succeeded in the First-tier Tribunal in light of this.

11. In relation to the legacy programme, Mr Clarke reiterated that the Secretary of State did not know about the fraud at the material time. He noted that the judgment in Hakemi [2012] EWHC Admin 1967 and reference to paragraph 395C of the Immigration Rules were mentioned in the skeleton argument before the First-tier Tribunal. *Matusha* at [11] to [27] makes plain that the legacy programme was not a discretionary policy, that there was a range of seriousness including and from the false filing of documents and being a failed asylum seeker up to the more serious end of the scales which could include lies about a person's nationality or age and this protects the most vulnerable and undermines the integrity of the Refugee Convention. He submitted that the Appellant squarely falls within what the President says about this in *Matusha* and that this ground of appeal is wholly misconceived. The Secretary of State could not have conceded the point as he did not know about it and so it was not possible for him to exercise discretion and the Appellant could not have succeeded on the basis of his age and length of residence.

12. In relation to reliance upon the case of *Sleiman* Mr Clarke submitted that this failed because it does not assist the Appellant on the facts of the case because in that case his only fraud was that he lied about his date of birth, he was from Lebanon and was a minor and no issues of good character arose, see [63] and [65]. It was not suggested by the Secretary of State that a false date of birth would have resulted in him being rejected on the basis of his character, whereas as is clear in this case from the refusal letter at [39] onwards with regard to Chapter 53 that the Secretary of State must consider evidence of deception. At [40] the specifics of false representations might not have been material but the fact that repeated false representations were made would have been material and this is very clear in the application for naturalisation which was specifically invoked at [42] of the refusal onwards. Mr Clarke submitted that there had been concealment of a material fact as well as the making of false representations and the Appellant expressly lied when asked about good character, see 3.12.

13. Turning to the judge's approach Mr Clarke submitted that the judge considered the issues of fraud and risk at [5] to [7] and then set out the Appellant's case,

concluding that he was not of good character. He submitted that whilst short the decision did not deviate from the case law so therefore Mr Clarke submitted that there was no material error of law in relation to ground 1, that that was misconceived. Ground 2 in relation to reasons he submitted it was apparent the judge's findings are adequate. The judge found that the Appellant only confirmed his nationality when he had already been caught out and he should be deprived of his citizenship. The information previously provided in 2016 was wholly misleading and the correspondence from 13 May 2019 at page 460 of the bundle makes clear that false details were still relied upon by him at that point. Mr Clarke submitted it was open to the judge to find that the Appellant did not come clean until after his false representations were put to him and there was no evidence that he would have come clean at any point. In relation to ground 3 it was submitted the way the judge had framed the decision meant that he was clearly mindful of the jurisdiction at 3 and reference was made to *Begum* and *Ciceri*. Whilst Mr Clarke accepted there was no express finding by the judge as to the public law error and the rationality of the condition precedent, Mr Clarke submitted that given his earlier submissions it was difficult to see how there could be any other outcome on this appeal.

14. In his reply Mr Pipe accepted in relation to ground c. that the judge did direct herself at [3] as to the judgments in *Begum* and *Ciceri* but did not in fact actually apply them. Mr Pipe reiterated that the judge did not make a proper finding as to the public law principles applying the condition precedent as set out in *Begum* and the way the argument was advanced is that the judge was invited to grapple with those concessions. All the judge says in terms of discretion at [16] is that there was nothing unlawful in the Secretary of State's position. Mr Pipe submitted that the judge had not gone far enough and failed to grapple with those issues.

15. In relation to ground b. Mr Pipe submitted that the judge had not made proper findings of fact. With regard to the submission that the Appellant had been misleading in respect of HMPO, Mr Pipe sought to rely on page 482 of the bundle, an extract from the Appellant's passport interview dated 31 March 2016 where he did disclose his true identity and nationality. He submitted that this was before the judge and she did not deal with it so he did not agree that the Appellant had been misleading in relation to HMPO. He submitted that it was incumbent upon the judge to engage with this interview in her findings. In relation to the Legacy Programme argument Mr Pipe drew attention to the Legacy grant at page 324 of the Appellant's bundle, also to page 167 of the bundle which shows that there was no bar to removals to Iran at that time, and the file note at AB 103.

16. Mr Pipe accepted that in *Matusha* the former President rejected the contention that the legacy was a concessionary policy but rather it was clearing the backlog. There was guidance to caseworkers to exercise discretion and Mr Pipe submitted at [7] that the judge failed to engage at a necessary level with the arguments before her. As ground b. submits there was a risk of a mischaracterisation of the Appellant's case and the judge failed to make appropriate findings. He submitted that the case was not bound to fail because the judge needed to but had failed to grapple with the public law error.

Decision and Reasons

17. I reserved my decision which I now give with my reasons.

18. With regard to the first and second grounds, the issue is whether the fact that the Appellant was granted leave under the legacy programme made any material difference in terms of the exercise of deception. I have had regard to the judgment in *Matusha* which was a case concerned with the deprivation of ILR of an Albanian national who had falsely claimed to be Kosovan and had been granted ILR under the provisions of the legacy programme. The panel of the Upper Tribunal gave detailed consideration to the legacy programme at [11]-[27] concluding at [27] that "*the character and conduct of a person was still a relevant factor in assessing a case under the Legacy Programme. The programme did not operate as a general amnesty regardless of a person's behaviour. The nature and extent of any negative factors were relevant to the exercise of discretion."* The panel held at [31] that the caseworking notes make clear that the decision to grant ILR was based on false information given to them by the applicant when he first claimed asylum, and that the decision was made in ignorance of a relevant fact, ie that the lie concerning his age and nationality, a deception he continued to maintain.

19. Mr Pipe directed me to the caseworking notes in respect of this Appellant, at AB 103 dated 15.3.22. which is his response to the assertion of deception and the intention to deprive him of his British nationality. The implementation minute of 22 October 2009 regarding the grant of ILR under the legacy programme does not contain any caseworking notes but rather indicates that ILR was granted outside the Rules following consideration of chapter 53 of the Enforcement Instructions and Guidance.

20. Chapter 53 of the EIG, cited at [7] of *Hakemi* provides *inter alia*:

"*53. Extenuating Circumstances*

It is the policy of the Agency to remove those persons found to have entered the United Kingdom unlawfully unless it would be a breach of the Refugee Convention or ECHR or there are compelling reasons, usually of a compassionate nature, for not doing so in an individual case.

53.1 Illegal entrants and persons subject to administrative removal action under section 10 of the 1999 Act

Full account must be taken of all relevant circumstances <u>before</u> a decision to remove is taken on a case.

The factors to be considered are the same as those outlined in paragraph 395C of the Immigration Rules.

53.1.1 Instructions on applying paragraphs 364 to 368 and 395C of the Immigration rules

53.1.2 <u>Before a decision to remove is taken on a case, the case-owner/operational staff must consider all known relevant factors (both positive and negative</u>). It is important to cover the compassionate factors in the transcription of the interview and to record them and the fact that you have discussed them with the UKBA officer authorising removal, on the local file minute or IS126E and UKBA internal database records (CID). Removal should not be considered in any case which qualifies for leave under the Immigration Rules, existing policies or where it would be inappropriate to do so under this policy.

Relevant factors are set out in paragraph 395C of the immigration rules and in the guidance below, but ***this list is not exhaustive …***

53.1.3 Relevant Factors in paragraph 395C.

(i) The consideration of relevant factors needs to be taken as a whole rather than individually, for example, the length of residence may not of itself be a factor, but it might when combined with age and strength of connections with the UK.…

Length of residence in the United Kingdom

For those not meeting the long residence requirements elsewhere in the immigration rules, the length of residence is a factor to be considered. In general, the longer a person has lived in the UK, the stronger their ties will be with the UK. However, more weight should be attached to the length of time a child has spent in the UK compared to an adult…

• Any other case where delay by UKBA has contributed to a significant period of residence. Following an individual assessment of the prospect of enforcing removal, and where other relevant factors apply, 4-6 years may be considered significant, but a more usual example would be a period of residence of 6-8 years".

(emphasis added)

21. Paragraph 395 of the Immigration Rules then in force provides:

"*Before a decision to remove under section 10 is given, regard will be had to all the relevant factors known to the Secretary of State, including:*

(i) age;

(ii) length of residence in the United Kingdom;

(iii) strength of connections with the United Kingdom;

(iv) personal history, including character, conduct and employment record;

(v) domestic circumstances;

(vi) previous criminal record and the nature of any offence of which the person has been convicted;

(vii) compassionate circumstances;

(viii) any representations received on the person's behalf."

(emphasis added)

22. AB 104 provides:

“this case looks to be a deprivation as ABDULLAH lied in his asylum claim about being an Iranian national. Received ILR under the Legacy scheme where character was a relevant consideration. Maintained false details when applied for

naturalisation. Changed name after naturalisation. Nothing raised in mitigations which would prevent deprivation."

23. I find that, in line with the Upper Tribunal's decision in *Matusha* which is also reflected in the caseworking notes and the express terms of paragraph 395C that the character of the applicant was a material consideration in the assessment of whether or not to grant ILR (or any form of leave) under the Legacy Programme, which was in essence the application of paragraph 395C of the Immigration Rules and chapter 53 of the Enforcement Instructions and Guidance.

24. The central argument put forward on the Appellant's behalf was that the Judge materially erred in dismissing his appeal because the false representations in this case were not material given that the grant of indefinite leave to remain had been made under the Legacy Scheme on the basis of the Appellant's long residence. I find that is not a sustainable argument in light of *Matusha,* the caseworking notes in this Appellant's case and my analysis above.

25. I further do not consider that any failure to review the rationality of the condition precedent as per *Chimi* would have made any material difference to the outcome of the case. There is no question but that the Appellant obtained British citizenship on the basis of fraud. Had the Respondent been aware at that point that the Appellant had exercised deception in relation to his underlying asylum claim and nationality the application would have been refused on the basis of his character. This is clear from AB 104. The judge considered the proportionality of the decision with regard to the impact on the Appellant's family life with his children and former wife and his private life (employment) and concluded that any breach of his article 8 right was outweighed by the public interest in deprivation.

Notice of Decision

26. I find no material error of law in the decision and reasons of the First tier Tribunal Judge, whose decision is upheld.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 April 2024