IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006383

First-tier Tribunal No:
DC/50148/2022
LD/00205/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12th June 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

AMEN MAHMOUD HAMA Al-QADIR
also known as
AMIR MOHMOUD MOHAMMED

Appellant (in the FtT)

and

Secretary of State for the Home Department

Respondent (in the FtT)

Appellant present; no representative. Interpreter in Kurdish Sorani

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 29 May 2024

DECISION AND REASONS

1. This decision refers to parties as they were in the FtT.

2. The appellant arrived in the UK on 25 September 2002. He sought asylum in the identity of Amir Mohmoud Mohammed, date of birth 15 September 1984, place of birth Doz, Salahdeen Province, Iraq. After various proceedings, he was naturalised as a British citizen on 20 November 2009.

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3. The appellant travelled to Iraq and obtained an Iraqi passport, issued on 20 August 2015 in the identity of Amen Mahmoud Hama Al-Qadir, date of birth 15 September 1978, place of birth Kifri, Dialah, Iraq.

4. The respondent's "notice of decision to deprive of nationality under section 40(3) of the British Nationality Act 1981", dated 29 June 2022, (p 45/285 UT bundle) narrates at [20] that the respondent "became notified that you were wishing to amend your naturalisation certificate in regard to your date of birth". This led to further enquiries and communications, culminating in the decision, which explains in detail why it is held at [31] to be highly likely that if deception had been known, the application for naturalisation would have been "refused on good character alone"; at [32], that the appellant used fraud; that if the truth had been known, it is "very likely" he would not have been granted exceptional leave to remain in November 2002, and "extremely likely" that naturalisation would have been refused in 2009; at [33], that the fraud was deliberate and material to the acquisition of citizenship; and at [34], acknowledging that the matter is discretionary, that "deprivation would be both reasonable and proportionate".

5. The decision then proceeds to article 8 of the ECHR, pointing out that deprivation of citizenship does not equate to removal or deportation.

6. FtT Judge Joshi allowed the appellant's appeal by a decision dated 8 December 2022.

7. The FtT's decision sets out the crucial part of section 40 of the 1981 Act: …

> (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.

8. The FtT also cited the crucial part of the headnote in *Ciceri* (deprivation of citizenship appeals: principles) [2021] UKUT 00238 (IAC): …

> 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.

9. The FtT then said at [31]:

> Considering all the evidence in the round, on a balance of probabilities, I find that the Respondent has not dispelled its burden of proof in showing that the Appellant has made false representation, concealed material information, or committed fraud that has *materially* [emphasised] impacted on the Appellant being granted his exceptional leave to remain, his indefinite leave to remain and ultimately his grant of citizenship.

10. The reasons follow. The FtT considered that the appellant had given an unsatisfactory, evasive and self-contradictory account of his use of two identities. However, it held at [38] and [45] that it was very likely that the appellant would have been granted exceptional leave to remain if his genuine identity had been known; and at [46] that false representation was not material to the grant of citizenship.

11. The SSHD's first ground of appeal to the UT cites *Begum* [2021] UKSC 7, from which *Ciceri* follows, and submits that despite its "empty invocation" of *Ciceri*, the FtT erred as to its jurisdiction, and "did not apply any recognisable public law review of the SSHD's decision".

12. The second ground of appeal is that the FtT did not review the SSHD's reasoning on the appellant failing to meet the good character requirement.

13. Mr Mullen submitted further to ground 1 that the FtT entirely failed to take a public law approach, and on ground 2 that the use over the years of two identities was as clear a case of deception as there could be. He asked for the decision of the FtT to be reversed.

14. The hearing was not easy for the appellant. He had no representative, but that was also the case at a previously adjourned hearing, and there was no suggestion of adjourning for representation to be obtained. The interpreter attended remotely. Although they understood each other well, that always makes for rather disjointed communication. The appellant chose to address me partly in English and partly through the interpreter. He was rather unwilling to wait for his turn to speak. Understandably, he had nothing to say on whether the FtT erred on the correct legal approach to a deprivation of citizenship case. He emotionally and emphatically denied that he ever used deception. He was illiterate. It was not his fault that immigration officers wrote his name down incorrectly. He told them he was born in 1978, but they did not believe him. They thought he was younger, and put down 1984. He was born in Kifri, but they asked where he was from, and he honestly said Doz, where he had been living, and which is only 15 minutes from Kifri.

15. I reserved my decision.

16. The FtT directed itself correctly to apply *Ciceri*, but immediately disregarded that.

17. The question was whether the SSHD's analysis was unsupported by evidence, or based on an irrational view of the evidence. It was not whether the SSHD proved to the satisfaction of the tribunal (i) that the

appellant used deceit and (ii) that the deceit was material to his successive grants of status.

18. The finding that it is very likely that the appellant would still have been granted exceptional leave to remain if his genuine identity had been known is, in any event, dubious. The question should have been whether the grant would have been likely if the *use of deceit* had been known. That is incidental to the overall error of approach.

19. There was a fundamental error of legal approach, such that the decision of the FtT cannot stand.

20. In the FtT, where the appellant was represented by solicitors and counsel, his case, recorded at [24 – 25], was that he made no material misrepresentation, and alternatively, that it would have been irrelevant, because being from Kifri, leave would still have been granted. Those lines of challenge do not show illegality in the respondent's analysis.

21. I find the SSHD's decision letter clear, well-structured and logical. Applying the public law approach established by the authorities cited for the respondent, it is based on a rational view of the evidence.

22. The relevant condition precedent is established.

23. The article 8 rights of the appellant and, potentially, his wife and children, are engaged. Contrary to the appellant's perception, the question is *not* whether he is now likely to be removed, or whether any removal would be lawful and proportionate. Those matters, if they ever arise, are for future proceedings.

24. The appellant has not stated a case based on any immediate adverse consequences of deprivation of citizenship (such as, possibly, not being permitted to work pending a further decision by the respondent). He has obvious options of making an application or submissions, on which he might (although it is a matter for him) be wise to seek professional advice.

25. There is no disproportionate interference with private and family life.

26. The SSHD's appeal to the UT is allowed. The decision of the FtT is set aside. The appeal, as originally brought to the FtT, is dismissed.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
3 June 2024