Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00018/2019

THE IMMIGRATION ACTS

Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 12th October 2021	**On 10th February 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

KA
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L Mensah, instructed by Lei Dat & Baig Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant's appeal against the respondent's decision dated 12 February 2019 to deprive him of his acquired British citizenship, pursuant to s40(3) of the British Nationality Act 1981 was allowed by First-tier Tribunal Joshi for reasons set out in her decision promulgated on 18th June 2019. The respondent was granted permission to appeal by Upper

© CROWN COPYRIGHT 2022

Tribunal Judge Kekic on 5th August 2019. Following a hearing on 24th January 2020 the decision of First-tier Tribunal Judge Joshi was set aside for reasons set out in a decision of Upper Tribunal Judge Keith promulgated on 6th February 2020. He directed that the decision shall be remade in the Upper Tribunal. The matter was listed for a resumed hearing before me on 12th October 2021. The appellant attended that hearing and gave evidence with the assistance of a Kurdish Sorani interpreter. After hearing evidence, I heard oral submissions from Mr Bates on behalf of the respondent. There was insufficient time to hear oral submissions from Ms Mensah and at her request, I agreed that the appellant has permission to file and serve his closing submissions in writing by 4pm on 20th October 2021. The Tribunal received the written submissions relied upon by the appellant on 20th October 2021.

The Background

2. The appellant is a national of Iraqi and of Kurdish ethnicity. He arrived in the UK unlawfully on 7th January 2001 and claimed asylum. He completed a Statement of Evidence Form (SEF Self Completion) that was signed by him on 17th January 2001 and in which he stated his name to be [KA]. He provided details of his parents and two sisters. He claimed his parents were both born in Kirkuk and their present address is an address in Kirkuk. When asked why he was applying for asylum in the UK, he claimed that he feared persecution from the Iraqi regime as an Iraqi citizen of Kurdish ethnicity, who was born and lived in Kirkuk City. He claimed that in April 1999 he was summoned to the Arab Baath Socialist Party Headquarters with other Kurdish people and forced to change his ethnicity in the official records from Kurdish to Arabic. He claimed that in November 2000 the regional Baath party officer visited the appellant at home and asked the appellant to move to Erbil with the assistance of the Baath party to monitor and register cars visiting the offices of the Turkmen Party. The appellant agreed and was told that a date would be arranged for the appellant to be provided with some initial training. The

appellant discussed matters with his father and was advised that he should leave Iraq to avoid the danger which would await him if he got involved. He claimed that he fled Kirkuk on 3rd December 2000 and travelled to the North of Iraq. He left Iraq on 5th December 2000 to travel to Turkey before making his way to the UK with the assistance of an agent.

3. The appellant attended an interview on 21st May 2001 and was assisted by a Kurdish Sorani interpreter. The interview record states his name to be that which he provided to the respondent previously, and his date of birth is said to be 5th May 1982. He again confirmed that his last address in Iraq was in Kirkuk, and that he left Kirkuk on 3rd December 2000 *(Q.31)*. The appellant's claim for international protection was refused by the respondent for reasons set out in a decision dated 21st May 2001. The respondent considered the appellant's claim to be vague and lacking in credibility. The respondent also noted and addressed the appellant's claim to fear persecution from the Iraqi authorities because he did not wish to complete military service. The respondent concluded that she could not be satisfied on the evidence available, that the appellant has established a well-founded fear of persecution for the reasons claimed. Nevertheless, the appellant was granted exceptional leave to remain in the UK until 21st May 2005.

4. On 5th April 2005, applied for indefinite leave to remain. His name on that application is said to be [KA] and he again stated his date of birth is 5th May 1982. He stated that his name at birth was [KM]. At the hearing before me, Mr Bates confirmed the appellant was granted indefinite leave to remain on 26th October 2005.

5. On 9th February 2006, the appellant applied for a 'Home Office Travel Document'. He again confirmed his name to be [KA] and that he was born on 5th May 1982. On 17th February 2006, the appellant was issued with a Home Office Travel Document. The respondent noted that

although the application for a travel document did not meet the normal criteria, the respondent was aware that some Iraqi nationals were experiencing difficulties when applying for national passports. The respondent decided, exceptionally, that due to the circumstances of the appellant's case, a limited validity travel document should be issued to him.

6. On 29th January 2007, the respondent received an application from the appellant for naturalisation as a British citizen. He again confirmed his name to be [KA] and that he was born on 5th May 1982. In that application he confirmed that he is married to [CRSM], born on 4th March 1984 in Sulaymaniyah, Iraq. He claimed they married on 20th May 2006 in Iran. He said that he had travelled to Iran on holiday from 16th April 2006 until 27th May 2006. The appellant was issued with a certificate of naturalisation as a British citizen on 26th March 2008.

7. On 30th October 2018, the respondent wrote to the appellant stating that she has reason to believe that the appellant obtained his British citizen status as a result of fraud. The respondent said:

> "The Secretary of State is in possession of information confirming that your true identity is [KAM], born on 05/07/1980 in Sulaymaniyah, Iraq, however you naturalised in the identity of [KA], born on 05/05/1982 in Kirkuk, Iraq. Furthermore, you claimed to have married in Iran in 2006, however we are in receipt of evidence which confirms you actually married in Sulaymaniyah, Iraq, despite being in receipt of a Home Office travel document which listed Iraqi as an exempt country of travel."

8. The respondent invited the appellant to confirm his genuine identity (including name, date of birth and place of birth) and to provide original evidence of the same in the form of his birth certificate, Iraqi ID card and 1957 family register document. The appellant was invited to explain why he had provided a false identity upon arrival in the UK, and why he had maintained that identity throughout, when securing indefinite leave to remain and British citizenship. He was invited to explain why he claimed

that he was born in Kirkuk, whereas the evidence now available confirms his place of birth to be Sulaymaniyah.

9. The appellant's representative responded by letter dated 21st November 2018. They claimed that [KAM] (born 05.05.1982) and [KAM] (born in Sulaymaniyah on 5th July 1980) are one and the same person "holding two identities". They said:

> "… It was in October 2017 he applied to renew his British passport, he attached his change of name deed. It was later that he got a letter from the Home Office in January 2018. Consequently it is understandable in the circumstances that he may have resorted to giving incorrect details. However fingerprints and other evidence on the Home Office database will disclose that he is the same person holding both identities. Therefore, we do not believe his name or date of birth makes a material difference to his overall case. We must say that like many Iraqis he was brought to the UK by an agent and people he met on the way may well have influenced him to give false details which was very common in early 2000 because of the oppression in Iraq. Ultimately he is from Iraq, whether he was born in Kirkuk or Sulaymania, it is, in our view important. A lot of Iraqi's were given Exceptional Leave to Remain as they could not be returned to Iraq in 2001 when he was granted his leave under AH Rashid or AZ and others, Iraq policies including Article 15C, Internal Armed Conflict. There were many policies that followed including the legacy policy. Therefore we conclude in this instant *(sic)* that you must not deprive him of his British nationality under Section 40(3) BA/A 1981. We accept that passports are issued when HMPO are satisfied of the applicant's nationality in accordance with the relevant nationality legislation or there would be no other reasons for refusing the passport.
>
> …
>
> It is clear that our client has changed by Change of Name Deed, it is also clear that those who also seek to amend their details require their passports or Iraqi ID or both certificates which our client could not provide when he entered in 2001. Therefore was *(sic)* unable to change his details, it was only now since he has obtained his British passport he has been able to send his wife to Iraq as the Home Office required his Iraqi ID but *(sic)* and 1957 book. Therefore, we do not believe in this instance that it could be reasonably stated that our client has not correctly obtained his British nationality. The fact of the matter remains is that he is from Iraq, he was granted Exceptional Leave to Remain because Iraqi's could not be returned to Iraq at the time and therefore whether he was called [KE] or [KA] or whatever his date and place of birth were is irrelevant as he came under the AH Rashid policy…
>
> ….
>
> We feel the best way forward is:-

a) Amend his naturalisation certificate to add his correct details that appear on his Iraqi ID card that you have in your possession, which shows his name as [KAM].

b) Allow him to apply for a new passport by adding these details by undertaking so once his Naturalisation certificate is amended to allow to apply for a British passport on those details.

Of course whilst we accept that he may have given incorrect details and that was down to his fear of repatriation to a violent Iraq back in 2001…. ”

10. The appellant's representatives have also provided copies of two 'Change of Name Deeds'. The first is dated 8th October 2017 and states that the appellant renounces his former name of [KA] and adopts the name of [DB]. The second is dated 10th January 2018 and states the appellant renounces his former name of [DB] and adopts the name [KA]. They also provided a copy of the appellant's marriage certificate, and provided the following explanation:

> *"… They were married on 18 May 2006. We must stress that whilst the certificate was issued in Sulaymania they met each other in Iran and subsequently the marriage was done by proxy and the paperwork was undertaken in Iraq. You will note on the marriage certificate that his name does appear as [KAM], he says everything that was dealt with by his wife and his wife's family…..*
>
> *….*
>
> *Our client confirms that his met his wife in Iran because he could not travel to Iraq, but the agreement took place in Iran, but the actual paperwork took place in Sulyimania by proxy and at no point in 2006 did he travel to Iraq, he went to Iran which he was allowed to do so."*

11. Having considered the representations made on behalf of the appellant and the documents relied upon, the respondent concluded that the appellant's asylum claim was a complete fabrication designed to elicit a grant of status to which he would not otherwise have been entitled if his true place of birth had been known. The respondent concluded that there was a calculated fraud and deliberate attempt to circumvent the immigration rules. The respondent said that if it had been known that the appellant's genuine place of birth was Sulaymaniyah, Iraq, he would have been refused the right to remain in the UK.

The Evidence

12. The evidence relied upon by the appellant is set out in three bundles. In his decision promulgated on 6th February 2020, Upper Tribunal Judge Keith directed that the appellant's representatives shall file and serve a consolidated, indexed and paginated bundle containing all the documentary evidence upon which he intends to rely. Under cover of a letter dated 21st February 2020, the appellant's representatives provided a 'consolidated bundle' in three parts; Part A comprising 61 pages, Part B comprising 44 pages and Part C comprising 62 pages. It was agreed at the outset of the hearing before me that the consolidated bundle will be referred to as 'Bundle 1'. I also have before me a copy of what is said to be a "Supplementary Bundle" that was sent to the Tribunal under cover of a letter dated 2nd May 2019 and appears to have been before the First-tier Tribunal previously and comprises of 62 pages. That bundle appears to have been incorporated at part C of the consolidated bundle. In any event it was agreed at the outset of the hearing before me that that the 'Supplementary Bundle" will be referred to as 'Bundle 2'. The appellant's representatives have also provided what is said to be an "updated bundle", comprising of 35 pages. it was agreed at the outset of the hearing before me that that 'Updated Bundle" will be referred to as 'Bundle 3'. In reaching my decision I have fully considered all the evidence that was before the Tribunal, whether it is expressly referred to in this decision or not.

13. At the end of the hearing before me on 12th October 2021 I informed the appellant that I will reach a decision after I have received the written closing submissions from his counsel. I reserved my decision, and I informed the parties that my decision will follow in writing, and this I now do.

<u>The legal framework</u>

14. Section 40(3) of the British Nationality Act 1981 provides that the respondent 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. On appeal, the Tribunal must establish whether one or more of the means described in subsection 3(a), (b) and (c) were used by the appellant in order to obtain British citizenship. The provision has a rational objective, which is to instil public confidence in the nationality system by ensuring any abuse is tackled and dealt with accordingly. The objective is sufficiently important to justify limitation of fundamental rights in appropriate cases.

15. In Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238 (IAC) the Upper Tribunal set out the overarching law regarding deprivation of citizenship and the task of the Tribunal. The President referred to the principles set out by Leggatt LJ in KV (Sri Lanka) v SSHD [2018] EWCA Civ 2483 and the way in which the principles must be read in light of the judgments of the Court of Appeal in Aziz v SSHD [2018] EWCA Civ 1884, and Laci v SSHD [2021] EWCA Civ 769, and more fundamentally, in light of the judgment of Lord Reed in R (Begum) v Special Immigration Appeals Commission [2021] UKSC 7. The Upper Tribunal reformulated the relevant principles in paragraph [30] of its decision as follows:

> "30. Our reformulation is as follows.
>
> (1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the 1981 Act 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 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). 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 EB (Kosovo) (see paragraph 20 above).

(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."

The evidence of the appellant

16. Before setting out my findings and conclusions, I summarise the evidence of the appellant as set out in his witness statements and his oral evidence before me.

17. The appellant has made three witness statements. The first is a witness statement signed by the appellant on 18th March 2019 and is to be found at pages B to F of Bundle 2. In that statement he accepts he was issued with a certificate of naturalisation in March 2008 as [KA], born on 5th May 1982 in Kirkuk, Iraq. He responds to the matters set out in the respondent's decision of 15th February 2019. He confirms that his true identity is [KAM] and that he was born on 5th July 1980 in Sulaymaniyah, Iraq. He claims that the difference in the spelling of his forename has been caused by misinterpretation as the name can be spelt in many different ways, and when he arrived in the United Kingdom in 2001, he was not aware of how to spell his name in English. Similarly, the name 'Muhmood' appears to have been spelt differently in documents used in the UK. The appellant accepts that his correct date of birth is 5th July 1980. He explains that when he came from Iraq, his parents told him his date of birth was 5th May 1982, and that is the date of birth he gave to the respondent. He claims that he only realised that his date of birth had been incorrectly stated previously, when he was forced to get evidence of his identity after he had applied to renew his passport with a change of name. In so far as his place of birth is concerned, the appellant claims that he left Iraq because of the hostilities against Kurds by the Saddam Hussein regime. He claims he was brought up and lived in Kirkuk, and as far as he was concerned, he was born in Kirkuk. He claims his family never told him that he was born in Sulaymaniyah, and that only came to light when he received paperwork from Iraq. He claims that in any event, many Iraqis of Kurdish ethnicity were given leave to remain in the UK under policies operated by the respondent as long as they were able to show they were from Iraq. The appellant states that he has two children in the UK who are British citizens and that if he is removed from the UK, it will have a real impact on the life of his children.

18. The second statement made by the appellant is headed as an "Addendum Statement" that was signed by the appellant on 21st February 2020 and is to be found at pages 13 to 15 of Part A of Bundle 1. That is a

statement made in support of the appeal to the Upper Tribunal. The appellant confirms that he has been living in the UK since January 2001 and has two children. He states that his wife is pregnant and expecting their third child. He claims that he has tried to the best of his ability to be a law-abiding citizen and work to support himself and his family. He claims that the difficulties he has had with obtaining a passport are such that he cannot travel anywhere with his family and that has brought much discomfort to him and his family. He confirms that he was born in Sulaymaniyah on 5th July 1980, and that is his correct date and place of birth. He claims, at paragraph [10], that in or around 1983, his family moved from Sulaymaniyah to Kirkuk. He claims that his father was a soldier for the Iraqi army and the country was at war with Iran. He claims his father was moved to Kirkuk by the military and that he lived in Kirkuk until he left Iraqi. At paragraph [11] of that statement, he states that it was not until 2008, that his father told him that he was actually born in Sulaymaniyah. He claims he has not deliberately misled the respondent with regard to where he was born as he did not know that he was born in Sulaymaniyah, and as far as he is concerned, he is from Kirkuk. He claims, at paragraph [13], that in 2003, his family moved back from Kirkuk to Sulaymaniyah because at the time there had been an invasion of Iraq, by US led forces, and Kurdistan was safer. He claims that the first time he returned to Iraq was in 2008/09, and he did not travel to Iraq for his wedding in 2006. He claims it was a proxy marriage. He claims he went to a Kurdish run office in London, and they supplied a letter for him which allowed his father to stand-in for him. He had consented to the marriage with his wife, and he had previously met her in Tehran. He states at paragraph [16], that his representatives had erroneously claimed that he was influenced by his family to give false details. He claims when he was younger, his father provided him with a false ID document which made him two years younger just in case he was stopped by the police or the army, and the risk that he would be recruited when he turned 18.

19. The appellant has made a third witness statement that is to be found at pages 13 to 15 of Bundle 3. The statement has not been signed by the appellant but is certified by a Kurdish salami interpreter, as having been translated to the appellant. At the hearing before me, the appellant recalled having been called by an interpreter, and confirmed that he had seen that statement, which had been sent to him by his representatives by email. He confirmed the statement had been read back to him and is accurate. He maintains that his father was a soldier for the Iraqi army and was posted in Kirkuk along with other Kurdish people. He maintains that he was born in Sulaymaniyah and lived there only for the first three years of his life. He maintains he was raised in Kirkuk. He claims that when the war with Iran ended, his family remained in Kirkuk, because his father said the situation in Kurdistan was very bad and it was not safe for the family to leave Kirkuk and go to Kurdistan. He claims his family left Kirkuk and went to Sulaymaniyah shortly before the war in 2003, when Iraq was invaded by the US, and his family have remained there since. He maintains that his father had told him previously that his date of birth was 5th May 1982 and that was the only date of birth he knew of, when he arrived in the UK. He claims it was only in July 2018 that his father told the appellant's wife that the appellant's date of birth had been changed to show that he was two years younger, because he did not want the appellant to be drafted into the Iraqi military.

20. In his oral evidence before me the appellant adopted the content of the three witness statements that I have referred to above and confirmed that the content of those statements is true and correct. That is subject to corrections the appellant made regarding his name as it appears in those witness statements. He confirmed that he did not travel from Iran to Iraq in 2006. He claimed he met his wife in Iran, and he did not previously know her, prior to his visit to Iran. The purpose of that visit was in order to see his wife and get married. He was unable to say how the marriage certificate that has been disclosed was supplied but maintained that the arrangements for the marriage were dealt with by

his family and his father in particular. He claimed that he had never seen the marriage certificate previously, and it was only after he was asked to provide documents, that his wife returned back to Iraq, and obtained the documents including the marriage certificate. He claimed that his wife had travelled to Iraq on 18th July 2018 using her British passport.

21. In cross-examination, the appellant confirmed his father is still alive and lives in Iraq. When asked whether he had asked his father to provide evidence of their residence in Kirkuk, the appellant claimed that his father has had a stroke, cannot remember anything and is suffering from memory loss. He accepted that there is no evidence before the Tribunal regarding his father's health. The appellant claimed that he had been told that his date of birth was 5th May 1982, in 1992/93 when the appellant was 13/14 years old. He did not know that he was born in 1980. He had attended primary school until year four. He claimed that his father had said that he had not registered the appellant's birth because he had been born during the Iran/Iraq war. He was unable to explain how the Iraqi authorities have now come to have his correct date of birth recorded. When asked why his father would have created a false date of birth that only made the appellant two years younger, if he was worried about the appellant being conscripted to the military, the appellant claimed that his father had never wanted him to turn 18 because of the bad experience he himself had suffered in the military. The appellant was asked why the family had not moved to the safety of the IKR after the Gulf War, if his father was concerned that the appellant would be recruited to the Iraqi army. The appellant said that there was ongoing genocide and never a convenient time to move to Kurdistan. The appellant claimed that his father was born in a village near Sulaymaniyah City, and he does not have any evidence to show that the family only returned to Sulaymaniyah in 2003.

22. For clarification I referred the appellant to the Statement of Evidence Form (Self Completion), that was completed and signed by the appellant

on 17th January 2001. I pointed out that in section 2.39 and 2.40, the appellant had claimed that his father was born in 1945 in Kirkuk. The appellant could not remember how that form had come to be completed, but said that he had been told in 2017, by his father, that he was born in Sulaymaniyah. He said that the information he had set out in the Form was the information he knew and thought to be correct at that time. The appellant confirmed that he was born in Sulaymaniyah and said that he had never lived there. I asked him when he had moved from Sulaymaniyah after his birth. He said that he could not recall and was very young when they moved to Kirkuk. In re-examination, the appellant said that his family had moved from Sulaymaniyah to Kirkuk because his father had joined the military in that area having been forced to do so during the Iraq/Iran war.

Submissions

23. The submissions made one behalf of the parties are a matter of record. On behalf of the respondent, Mr Bates submits that although there are inconsistencies regarding the appellant's name that might be explained by misinterpretation and mistranslation, the same cannot be said of the appellant's date and place of birth. He submits the appellant now accepts that his correct date of birth is 5th July 1980, and he was therefore 20 years old when he arrived in the UK. He submits I should reject the appellant's claim that his father had informed him, when he was 13/14 years old, that he was born on 5th May 1982, to avoid conscription, as being incredible. If the intention had been for the appellant to avoid conscription, Mr Bates submits, it makes no sense for the appellant's father to simply ascribe a date of birth to the appellant when he was still only 13/14 years old, and a number of years away from conscription, which would only make the appellant two years younger. Mr Bates submits I should reject the appellant's account that he was brought up in Kirkuk. He submits that if the appellant's father was concerned the appellant would be conscripted, it is not credible that the family would

have remained in Kirkuk after the first Gulf War and the imposition of a no-fly zone. He submits the appellant has failed to adduce any evidence that is reliably capable of establishing the appellant's presence in Kirkuk. The appellant relies upon statements from individuals who make broad claims, but whose evidence cannot be tested. More importantly, there is no evidence from the appellant's immediate family, including his father, and no evidence before the Tribunal regarding his father's health to explain the absence of such evidence. In short, Mr Bates submits there is no reliable evidence before the Tribunal that the family moved from Sulaymaniyah to Kirkuk when the appellant was very young. Mr Bates submits the appellant is not a credible witness and he invites me to find that the appellant has always known that he was born in Sulaymaniyah on 5th July 1980, and that he lived in Sulaymaniyah prior to his arrival in the UK. The appellant had arrived in the UK from the IKR after a change to the respondent's policy regarding the grant of ELR to Iraqi nationals, and he adopted a false narrative because he could only have secured leave to remain if he had come to the UK from a government-controlled area. Mr Bates submits that if the appellant had correctly stated his date and place of birth he would not have been entitled to exceptional leave to remain, indefinite leave to remain or to naturalisation as a British Citizen. Mr Bates submits the appellant's account regarding his marriage is undermined by the content of the marriage certificate, and although the appellant claims he only travelled to Iran, that would not have prevented the appellant crossing the Iran/Iraq border and travelling to Sulaymaniyah. Mr Bates submits there is no decision to remove the appellant to Iraq, and the deprivation of citizenship will have no impact upon the appellant's children who were all born in the UK and will maintain their British Citizenship. The interference with family life is that the appellant will no longer be a British Citizen, but that is a status that he secured by making a false claim as to his date and place of birth. He submits the appellant appears to have a genuine and subsisting relationship with his children, and that is a factor that the respondent will consider in due course when a decision is made as to the immigration

status of the appellant. If the respondent decides to remove the appellant, there will be an Article 8 decision that will give rise to a right of appeal. Mr Bates submits that for present purposes, the clear public interest in the maintenance of immigration control outweighs the appellant's rights.

24. Ms Mensah has filed and served written submissions as directed by me. She submits it is common ground that the appellant is an Iraqi national of Kurdish ethnicity and that he arrived in the UK on 7th January 2001 and claimed asylum. His claim for international protection was refused by the respondent but he was granted exceptional leave to remain. Ms Mensah submits the respondent had an ELR policy in force in relation to Iraqi's from 1991 through to 20th March 2003. She submits that if as the appellant maintains, his home area was Kirkuk, the policy would have applied to the appellant in May 2001, as his home area would have been a government-controlled area, and the policy accepted there would be no relocation of Kurds to the IKR at that time.

25. As to the reliance placed by Mr Bates upon the appellant's marriage certificate as evidence that the appellant was aware of his name and date of birth in May 2006, and thus of his correct identity prior to his application for naturalisation, Ms Mensah submits the reliance is misplaced. The respondent holds the travel document that was used by the appellant to travel to Iran to meet his wife. The appellant maintains the marriage was an arranged marriage and that after meeting his wife in Iran, it was agreed for the marriage to go ahead by proxy with family standing in for the couple in Iraq. She refers to the oral evidence of the appellant that his father stood in as his proxy in Iraq, and that is why the marriage certificate treated the appellant as if he was present.

26. Ms Mensah submits that throughout, the way in which the appellant's name has been spelt is a phonetic spelling of his Kurdish name and he was wholly dependent upon those around him, to correctly spell out in

English, what he was saying in Kurdish. Any translation of his name historically would have been read back to him in Kurdish, and so the spelling differences would not have been identified by him. In the translations from his Iraqi documents the spelling differs in terms of his first name and grandfather's name. For example, the appellant's case is that he told the respondent his name was 'Muhamood' on arrival, but it was translated phonetically and interchangeably to 'Mohammed' and 'Mohammad'. The use of the name Muhamood was missed off entirely in his asylum claim. It is submitted that when the appellant was granted exceptional leave to remain, the respondent knew the appellant had previously had a different name. Ms Mensah submits the differences in spelling and the variations in the appellant's name are reasonably explained by mistranslation and mishandling of foreign names by officials and lawyers alike. It is submitted that any concerns about the appellant's name would not have materially altered the grant of ELR, ILR or naturalisation.

27. As to the appellant's date of birth, Ms Mensah acknowledges that the appellant has disclosed two different dates of birth; 5th May 1982 and 5th July 1980. She submits the appellant faced conscription at the age of 18 and his father altered his date of birth to delay conscription rather than avoid it completely. She submits the fact his family sent the appellant out of Iraq at a time he was about to turn 18 years on the basis that the appellant was born in 1982, is entirely consistent with the appellant's account. She submits that contrary to the submission made by Mr Bates, the family could not realistically get away with a significant age difference as it would not have been believed or accepted. He submits that on any view, the appellant gained no immigration advantage by claiming to have been born on 5th May 1982 previously, and there is no evidence that the appellant's date of birth had any bearing on the grant of ELR.

28. Ms Mensah refers to the evidence of the appellant that his family moved from Sulaymaniyah to Kirkuk because his father had been conscripted at the age of 18 and had joined the military in the Kirkuk area. She submits that was when the appellant was aged 3, in or about 1983, at a time when the IKR was not formally established and at a time when the Baath regime was committing mass genocide through the use of chemical weapons and unlawful killings of Kurds who did not accept Arab domination. The appellant's claim that his family moved to Kirkuk when he was very young is therefore consistent with the background material. The appellant's living memory only relates to Kirkuk. He has no memory of his family living in Sulaymaniyah and the family did not relocate from Kirkuk until after the invasion of Iraq, and the fall of the Saddam regime.

29. Ms Mensah submits the appellant sought to renew his British passport after changing his name by way of deed. There is no evidence this change was an attempt by the appellant to adopt his real name and the name he sought to adopt, is a completely new one. The appellant was asked to supply evidence of his identity and it was only after he had asked his family to obtain the documents, that that he came to realise that his place of birth was in fact Sulaymaniyah. He did not seek to hide that and sent this evidence to the respondent. If he had been dishonest it would have been counterintuitive to disclose the evidence.

30. Ms Mensah submits it is unsurprising that the appellant has been unable to adduce much more evidence to confirm the family lived in Kirkuk. The history of violent conflict and the disputed territory that is Kirkuk, is such that it is hardly surprising the documents are limited. There is no evidence that any form of residence document would ever have been issued at that time or is required. Any evidence such as tenancy agreements (if they were ever documented) are unlikely to be available in a formerly contested area. The appellant has however filed evidence in support of his claim that he lived in Kirkuk from seven residents in Kirkuk, some of whom have military standing, who have not only signed

to attest to the family residence in Kirkuk but have supplied their identity documents to support the reliability of the evidence being from them and not simply invented. The appellant cannot call these men to give oral evidence in support of his case. It is not feasible to do so given they are abroad in Iraq.

31. Ms Mensah accepts the translation of the marriage certificate states the bride and groom were present for the registration of the marriage. The Tribunal is asked to accept this is simply the way the registrar has chosen to reflect the proxy marriage in the document, and a western view of the document should not be applied. It is not incredible that what is said on the document is no more than the expression adopted, rather than an assertion of actual presence.

32. Ms Mensah submits it is common ground that the appellant has three UK born British children and a wife in the UK. The respondent confirms their status in the UK is unaffected by the decision. Ms Mensah submits that although Mr Bates has submitted the deprivation of citizenship will have no impact upon the appellant's children who were all born in the UK and will maintain their British Citizenship, there is a real danger the respondent will later seek to argue the family can reasonably relocate to Iraq as a family. The appellant's wife is a dual national who came from Iraq in 2006 to settle in the United Kingdom. The children were born in the United Kingdom and are British, but the history shows the respondent may argue in due course that they can adjust to life in Iraq, given both parents are Iraqi. That is a reasonably foreseeable consequence of the appellant being deprived of his British citizenship. He will be left with no leave in the UK, and it is reasonably likely he will face removal and will have to show he should not be removed because of his Article 8 rights. As for Appendix FM and 276 ADE of the immigration rules, Ms Mensah submits the appellant will fall foul of eligibility on the grounds of suitability under 322 of the General Grounds for refusal under the Rules.

Findings and Conclusions

33. I have had the opportunity of hearing the appellant and seeing his evidence tested in cross-examination. Matters of credibility are never easy to determine, particularly, as here, where the appellant's evidence is received through an interpreter. I acknowledge that there may be a danger of misinterpretation, but I was careful to explain to the appellant, that questions and answers must be broken down into short sentences so as to ensure that he understood the question, and the interpreter had a proper opportunity to translate the answer provided.

34. In reaching my decision I have considered whether the appellant's account of events is internally consistent and consistent with any other relevant information. I have had regard to the ingredients of his account of events, and his story as a whole, by reference to the evidence available to the Tribunal. In considering his evidence, I have borne in mind the fact that events that occurred some time ago, can impact on an individual's ability to recall exact circumstances. I also recognise that there may be a tendency by a witness to embellish evidence because although the core of the claim may be true, he/she believes that by embellishing their evidence, the claim becomes stronger. I also remind myself that if a Court or Tribunal concludes that a witness has lied about one matter, it does not follow that he has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion, and emotional pressure. I have also been careful not to find any part of the account relied upon, to be inherently incredible, because of my own views on what is or is not plausible.

The appellant's name

35. It is uncontroversial that the appellant's name has been spelt differently in various documents, but I accept that there was no deliberate attempt by the appellant to provide a false name. It is in my judgment likely that

when his name was recorded following his arrival in the UK by those that represented him, and by the respondent, it was recorded without any careful check that it had been spelt correctly. I accept the submission made by Ms Mensah that the way in which the appellant's name has been spelt is a phonetic spelling of his Kurdish name and he was wholly dependent upon those around him, to correctly spell out in English, what he was saying in Kurdish.

36. That is clear even from the witness statements made by the appellant. The three witness statements that the appellant adopted before me, each have the appellant's forename spelt differently. In his first witness statement signed by the appellant on 18th March 2019, *(pages B to F of Bundle 2)* the appellant's full name is correctly set out. In his second witness statement dated 21st February 2020, (pages 13 to 15 of Bundle 1), the appellant reverts to the spelling of his name as recorded by the respondent in 2001, and in his third witness statement (pages 2 to 4 of Bundle 3), the appellant introduces yet a further spelling of his forename and an incorrect spelling of the name 'Mohammad'. Given the issues that arise in this appeal, it is unfortunate that the appellant and his representatives failed to ensure that his name is correctly set out in his statements. However, I am prepared to accept that the correct spelling of the appellant's name has been lost in translation, and the appellant did not engage in fraud, make a false representation, or conceal a material fact when providing his name.

The date of birth

37. The focus here, as Mr Bates properly acknowledged was the information provided by the appellant regarding his date and place of birth. Having heard the evidence of the appellant I have no hesitation is finding that the appellant is not a credible witness in those respects. He was vague in the evidence that he gave before me, and his evidence lacks any detail and clarity. The appellant now accepts that he was born in Sulaymaniyah

on 5th July 1980. He had previously claimed that he was born in Kirkuk on 5th May 1982.

38. In the first of his witness statements, the appellant claims that his parents told him his date of birth was 5th May 1982 and that he only realised that his date of birth had been incorrectly stated previously, when he was forced to get evidence of his identity after he had applied to renew his passport with a change of name. In his third statement , the appellant claims it was only in July 2018 that his father told the appellant's wife that the appellant's date of birth had been changed to show that he was two years younger, because he did not want the appellant to be drafted into the Iraqi military. I do not accept that to be a truthful account.

a. In his oral evidence before me, when his evidence was tested in cross examination, the appellant claimed that he had been told that his date of birth was 5th May 1982, in 1992/93 when the appellant was 13/14 years old. He would clearly not have been 13/14 years old in 1992/93, if he had been born in May 1982. He would have been 10/11 years old at that time.

b. In his statement dated 18th March 2019, the appellant claims that when he came from Iraq his parents told him his date of birth was 5th May 1982, and it was not until he obtained his birth certificate and the 1957 book, that he came to know that his date of birth is in fact 5th July 1980 and realised that his date of birth was incorrectly stated. In his third statement (pages 2 – 4 of Bundle 3), the appellant claims that it was only in July 2018 that his father had told his wife that his date of birth had been changed to show that he was two years younger. The appellant claims his father explained that he did not want the appellant to be drafted into the Iraqi military and he therefore changed his date of birth. There is no direct evidence before me from the appellant's father explaining

his reasons for telling the applicant that he was born in May 1982, if he had in fact been born in July 1980. For example, there is no explanation for the appellant's father telling the appellant he was born in May rather than July. Equally, there is no evidence before me from the appellant's wife who was a party to that conversation, setting out the details of the conversation and the information she was provided. In any event, it is in my judgement contrary to common sense that if the appellant's father was going to tell the appellant that he was younger than he is, because he did not want the appellant to be drafted into the Iraqi military because of his own experiences, the appellant's father would have told the applicant a date of birth that only made him two years younger.

c. If the only purpose of the appellant's father providing him with a false date of birth was to delay or avoid conscription to Saddam Hussain's army, there is no reason why the appellant's father should not have told the appellant his correct date of birth, before the appellant left Iraq, to claim international protection, or even shortly after the appellant's arrival in the UK.

d. In cross-examination, the appellant said he had attended primary school until year four. He claimed that his father had said that he had not registered the appellant's birth because he had been born during the Iran/Iraq war. He was unable to explain how the Iraqi authorities have now come to have his correct date of birth recorded. The appellant has obtained a 'Copy of the General Registry for 1957'. There is no suggestion that the information on that document is inaccurate. It is the document relied upon by the appellant to establish that his correct date of birth is 5th July 1980. The document is at odds with the appellant's evidence and states; "*[The appellant] was registered pursuant to the birth certificate [No. ...] Dated 6 July 1980 issued by Sulaymaniyah Health Office ...".* In the absence of any direct evidence from the

appellant's father regarding the registration of the appellant's birth, I prefer the information set out in the document before me, and find that the appellant's birth was registered, and that he was issued with a birth certificate dated 6th July 1980 by the Sulaymaniyah Health Office.

e. The marriage certificate states the appellant was born in 1980. I reject the appellant's claim that the marriage was completed by proxy after the appellant went to a Kurdish run office in London, and they supplied a letter for him which allowed his father to stand-in for him. The appellant's claim is not supported by any evidence from the appellant's father nor his wife. The appellant has not provided a copy of the letter he claims to have been provided with by a 'Kurdish run office in London' which he claims permitted his father to stand-in for him. The appellant confirmed in his application for naturalisation as a British citizen that he had travelled to Iran between 16th April 2006 and 27th May 2006. The marriage certificate is dated 18th May 2006 *(at a time when the appellant on his own account was not in the UK)* and signed by the 'Judge of Personal Status Court in Sulaymania'. I note the appellant claimed in his application for naturalisation that he was married on 20th May 2006. In any event, it is expressly stated on the marriage certificate that the appellant and his partner *"... were present in front of me. After confirming their identity cards and the occurrence of offer and acceptance the marriage has been made between them* ...". If the marriage was completed by proxy as the appellant claims, there is no reason for the certificate completed by a judge, to record that the appellant and his partner had attended in front of the judge and the judge had been able to confirm their identity cards. The appellant may well have travelled to Iran between 16th April and 27th May 2006, but I find that he was able to make his way to Sulaymaniyah and on 18th May 2006 he was in Sulaymaniyah when he married.

The appellant's place of birth and home

39. In so far as his place of birth and home area is concerned, the appellant now accepts he was born in Sulaymaniyah. He claims the family moved to Kirkuk because his father had been conscripted at the age of 18 and had joined the military in the Kirkuk area, when the appellant was aged 3, in or about 1983. The appellant claims he was brought up and lived in Kirkuk, and as far as he was concerned, he was born in Kirkuk. He claims his family never told him that he was born in Sulaymaniyah, and that only came to light when he received paperwork from Iraq. There is an inconsistency in the appellant's evidence as to when he found out he was born in Sulaymaniyah. In paragraph [11] of his statement dated 21st February 2020, he claims that it was not until 2008 that his father told him that he was born in Sulaymaniyah. However, in paragraph [10] of his statement dated 18th March 2019, the appellant had claimed that it only came to light that he was born in Sulaymaniyah when he received the relevant paperwork from Iraq concerning his identity.

40. I reject the appellant's account that he lived in Kirkuk with his family until he fled in 2001. I do not find the appellant to be a credible witness. The appellant was asked in cross-examination whether he has asked his father to provide evidence of the appellant's residence in Kirkuk. He said that his father is suffering from memory loss, has had a stroke and he cannot provide a witness statement because he is "in bed". He accepted there is no evidence before the Tribunal relating to the health of his father and explaining why he cannot provide evidence to support the appellant's claim. The appellant was asked where his father was born, and he replied; *"in a village around Sulaymaniyah city"*. That is at odds with the information that had been provided by the appellant in the Statement of Evidence Form (Self Completion) dated 17 January 2001 that is to be found at Annex A of the respondent's bundle. He claimed *(at 2.40)* that his father had been born in Kirkuk. In his oral evidence before me, the appellant said that when he completed the SEF form in 2001, he

provided the information that he thought was correct at the time. He was unable to explain why he thought his father was born in Kirkuk. Beyond the appellant's bare assertion that he lived in Kirkuk, there is no independent evidence from an official source confirming the appellant had lived in Kirkuk. He claimed that he had attended primary school in Kirkuk, but he has not provided any evidence to support that claim

41. I have carefully considered the letters from a number of individuals who state that they live in the Kirkuk Province and knew the appellant in Kirkuk. The weight I attach to that evidence is limited. Each of the letters is brief in content, lacks clarity and makes broad claims without any reference to particular events by reference to which the author can attest to the appellant's presence in Kirkuk. Even acknowledging that the authors live in Iraq, there has been no opportunity to test anything said in the letters given the very broad claims made, without any elaboration. The appellant relies upon a letter from [HMS] *(page 9 of Part C of Bundle 1)*, in which [HMS] claims he "dwelled the Kirkuk province". His letter does not even refer to the appellant by name but claims "*I was his friend from the childhood and continued in the primary education till he travelled to Europe".* It is not at all clear who the author of that letter is referring to. The appellant does not claim that he lived in Kirkuk and continued in primary education until he left Iraq and travelled to Europe. A copy of the 'Personal Identification Card' for [HMS] appears at page 6 of Part C of Bundle 1. His date of birth is 1st January 1984, and he is therefore almost 4 years younger than the appellant. His place of birth is said to be 'Chamchamal – Al Sulaymaniyah' and his birth was registered in Qadairkaram. The author of the letter fails to provide any meaningful information about any period(s) during which he has lived in Kirkuk. Similarly, the appellant relies upon a letter from [AJM] *(page 11 of Part C of Bundle 1)*, in which [AJM] claims he "dwelled the Kirkuk province". His letter does refer to the appellant but simply makes the bare assertion, without any elaboration, that the appellant "*is a known citizen in the area, also his family known too ...".* [AJM] has also provided a copy of his

Personal Identification, which confirms he was born in Kirkuk in December 1968. The letter fails to set out any information as to how the appellant and his family are known to [AJM] or the periods during which it is claimed that the family lived in Kirkuk. The appellant relies upon a letter from [KTR] *(page 17 of Part C of Bundle 1)*, in which [KTR] claims he "dwelled the Kirkuk province". His letter refers to the appellant's father and it is said that he is from the Rahimawa area, and they were neighbours in 1985. No further elaboration is provided about the dates between which the appellant's family was known to [KTR] or the addresses at which they each lived. [KTR] has also provided a copy of his Personal Identification, which confirms he was born in Kirkuk in January 1960. Similarly, the appellant relies upon letters from [STR] *(page 20 of Part C of Bundle 1)*, [HAM] *(page 23 of Part C of Bundle 1),* [SAM] *(page 25 of Part C of Bundle 1),* and [SRS] *(page 29 of Part C of Bundle 1)* in which they each claim that they are a resident of Kirkuk and that the appellant, or his father, resided in the Rahimawa area, and they were neighbours in 1985. None of the authors of those letters provide any information about their interaction with the appellant or his family, the dates between which the appellant's family lived in Kirkuk or the addresses at which they each lived. Without more, I do not accept the evidence set out in those letters as evidence that the appellant and his family lived in Kirkuk before the appellant fled Iraq and arrived in the UK.

42. Furthermore, on 30th October 2018 the respondent notified the appellant that she has reason to believe that the appellant had obtained British citizenship as a result of fraud. The appellant's representatives responded under cover of a letter dated 21st November 2018. They acknowledged that the appellant has used details on entry to the UK, that are different to those held in Iraq. It is said in the course of that letter that "*... It is understandable in the circumstances that he may have resorted to giving incorrect details ...".* It is said that the appellant was brought to the UK by an agent and "*... people he met on the way may have influenced him to give false details which was very common in*

early 2000 because of the oppression in Iraq ….". They claimed that ultimately, the appellant is from Iraq and whether he was born in Kirkuk or Sulaymaniyah, is immaterial. Their understanding was that a lot of Iraqi's were granted Exceptional Leave to Remain, as they could not be returned to Iraq in 2001. I reject the claim that any concession made by the appellant's representatives was made in error based upon some misunderstanding. They no doubt set out the appellant's position, knowing of the gravity of the potential consequences, based upon instructions.

43. In broad terms, the appellant now claims that the information now known to him, is that he was born in Sulaymaniyah in July 1980, but that is immaterial because the family had moved from Sulaymaniyah to Kirkuk in 2003. The appellant claims he was therefore 'from' a government-controlled area of Iraq, and he would therefore, in any event, have benefited from the grant of 4 years exceptional leave to remain. I reject that claim.

44. Having carefully considered all the evidence before me I find that the appellant did deliberately and fraudulently claim that he was born on 5th May 1982 in Kirkuk and that he lived in Kirkuk, in the knowledge that he was in fact born on 5th July 1980 in Sulaymaniyah and had lived in Sulaymaniyah throughout. I find that he did so fraudulently, to support a claim that he originated from a government-controlled area of Iraq immediately prior to his arrival in the UK.

45. It is clear that since 1991, the respondent has adopted various policies to address claims made for international protection by those from Iraq. Since 20th October 2000, only those who were accepted to have come from the government-controlled area of Iraq were granted 4 years' ELR. The grant of four years ELR made to the appellant in May 2001 was therefore made upon an application of that policy and in the belief that the appellant had been born in and lived in Kirkuk. The policy was

amended, in relation to failed asylum seekers from government-controlled areas of Iraq, in that with effect from 20th February 2003 they were to be granted only six months' ELR in light of the uncertainty about conditions in Iraq caused by the prospect of imminent military action against Iraq.

Deprivation of Citizenship

46. I find the appellant was only granted exceptional leave to remain because of his deception and because he had misled the respondent into accepting he was from a government-controlled area of Iraq in 2001. I find the appellant knowingly maintained that deception when the time came to apply for ILR, and then naturalisation. But for this repeated deception, the appellant would not be a British citizen. Had the respondent been aware of such a serious deception, it is highly unlikely that he would have been granted leave to remain and the respondent would have been entitled to consider whether such conduct justified refusal of ILR or naturalisation on 'character' grounds.

47. Having secured leave to remain in the UK, the appellant applied for, and was granted an emergency travel document. He travelled to Iran and, I find, subsequently returned to Sulaymaniyah where he married his partner on 18th May 2006. The appellant's partner has been able to join him in the UK. There is no evidence before me regarding the application for entry clearance made by her, and the information she provided regarding the appellant and their marriage.

48. The appellant's deception only came to light when in December 2017, the appellant applied to renew his passport, and relied upon a Change of Name Deed by which he renounced, relinquished and abandoned the use of the name of [KA] and adopted the use of the name [DB]. It was only when HM Passport Office required the appellant to provide further information regarding his identity that his true identity, confirming that he was born on 5th July 1980 in Sulaymaniyah, became apparent.

49. Having considered the representations made on behalf of the appellant by his representatives, the respondent noted the appellant was only granted exceptional leave to remain for a four-year period in recognition of the fact that he was from a government-controlled area of Iraq. The respondent noted that if the appellant was genuinely in fear for his safety he should have told the truth and allowed the respondent to consider his true circumstances instead of providing false information and adopting a false identity. The respondent noted the asylum claim was a complete fabrication designed to elicit a grant of status to which the appellant would not have been otherwise entitled if his true place of birth had been known. The respondent said it was a calculated fraud and deliberate attempt to circumvent the immigration rules. If the respondent had known that the appellant's genuine place of birth was Sulaymaniyah, the appellant would have been refused the right to remain in the United Kingdom. In the circumstances, the respondent considered that deprivation is both appropriate and proportionate because the appellant had perpetrated a deliberate fraud against the UK immigration system. The respondent did not accept there was a plausible, innocent explanation for the misleading information which ultimately led to the grant of British citizenship. In reaching her decision, the respondent acknowledged that the decision to deprive on grounds of fraud is discretionary but concluded that deprivation would be both 'reasonable and proportionate' in this case.

50. Under a separate heading of 'Article 8 ECHR' the decision went on to explain that any settled status the appellant had prior to naturalisation would be lost. However, a deprivation decision 'does not itself preclude an individual from remaining in the UK'. The decision went on to make clear that although deprivation may culminate in a decision to remove, it was not necessary to take into account the impact that removal would have on the appellant and his family. Whilst acknowledging that deprivation would involve the loss of benefits and entitlements, it was noted that the appellant was not entitled to them in the first place. The

respondent referred to the appellant’s children who were born in the UK and to her duty under s55. The respondent noted that deprivation of the appellant’s citizenship will not, in itself, have a significant effect on the best interests of the appellant’s children and neither will it impact on their education, housing, financial support or contact with the appellant. The respondent acknowledged that deprivation may have an emotional impact on the children, but taking into account the seriousness of the fraud, considered it a reasonable and balanced step to take.

51. To provide clarity to the appellant, the decision letter states that the respondent will make a deprivation order within four weeks of the appellant’s appeal rights becoming exhausted. Within eight weeks from the deprivation order being made, and subject to any representations, a decision will be made on whether to remove or grant leave to remain.

52. I am quite satisfied that but for the fact that the appellant used deception, it is highly unlikely that he would have been granted ELR. But for the fact that he repeated the deception in the application for ILR and then the application for naturalisation, it is highly unlikely that he would be a British citizen. There is in my judgment a direct connection between the serious and repeated deception, and the decision to naturalise the appellant as a British citizen.

53. In most cases where a person has obtained British citizenship by fraud or false representations, the starting point is that deprivation will be a reasonable and proportionate response. Save in unusual circumstances, deprivation will place the person in the same position that they were before the deception. They were never entitled to the benefits arising from citizenship in the first place.

54. Here, the respondent considered the appellant's immigration history. There was a direct link between the serious and repeated deception and the eventual grant of naturalisation. It was in my judgement within a range of reasonable responses, for the respondent to be satisfied that the

condition precedent for the exercise of her power under section 40(3) BNA 1981 was made out. The serious and repeated nature of the appellant's lies in the initial application for asylum, and in the subsequent applications he made, demonstrate that it was open to the respondent to place weight on the public interest in preventing fraud in the nationality system.

55. It has not been submitted on behalf of the appellant that the appellant would be made stateless by the decision. There is no evidence to suggest that he lost his Iraqi citizenship by the act of naturalising him as a British citizen.

56. The representations put forward by the appellant's legal representatives highlight the family and private life that has been established by the appellant that are relevant to the effect of removal from the UK and do not touch on the effect of deprivation of citizenship, as a first step. The respondent considered the appellant's length of residence and family connection and has made clear that a decision would be made relating to leave to remain or removal within a reasonable timescale.

57. The respondent made clear that full consideration would be given to the appellant's right to private and family life following deprivation. The appellant is likely to have a reasonable case to be granted leave to remain on grounds of long residence. He now meets the 20-year residence requirement of paragraph 276ADE(1)(iii) of the immigration rules. Aside from the deception in previous applications that has resulted in the decision to deprive him of citizenship, there is no evidence of any other serious behaviour that might preclude him from being granted leave to remain. There is no evidence to indicate that the appellant has been convicted of any criminal offences. The appellant’s children are British citizens, and it is reasonable to infer that his partner has made any applications to extend the leave granted to her, and that she will

remain in the UK lawfully. In reaching any decision, the respondent is bound to take into account the best interests of the children.

58. The submission that there is a real danger that the respondent will seek to argue the family can reasonably relocate to Iraq as a family, is pure speculation. It is now well established that the issues of whether the appellant should be deprived of his citizenship and whether he should be removed, are distinct, and that it is neither necessary nor appropriate for a Tribunal considering the deprivation question to conduct a "proleptic assessment" of the likelihood of a lawful removal.

59. In the final analysis I am satisfied that the respondent’s decision was within a range of reasonable responses to the evidence, and it was properly open to the respondent to conclude that the condition precedent for section 40(3) BNA 1981 applied. The respondent made clear that the decision was an exercise of discretion, considered relevant matters, and did not consider irrelevant matters, before concluding that the public interest in preventing fraud in the nationality system justified deprivation. She was fully aware of the appellant's length of residence and family circumstances but was entitled to conclude that those were matters that were relevant to a subsequent assessment of whether it will be appropriate to grant him leave to remain on human rights grounds.

60. Until now, the appellant has faced no meaningful consequences for the lies that he told. But for the lies, he would not have been granted ELR, ILR or have been naturalised as a British citizen. The limited evidence before me indicates that, aside from this serious deception, which is addressed by the decision to deprive him of citizenship, he is likely to be a hard-working and otherwise law-abiding person who has strong connections to the UK because of his long residence, and the presence of his wife and children.

61. Whether the power to deprive him of citizenship is exercised in a rational and proportionate way will depend on the context and the facts in each

case. A decision maker should consider whether, having regard to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. Having weighed the circumstances in this case I conclude that it was reasonable for the respondent to place significant weight on the public interest in deprivation, which will be the usual consequence in a case of this kind. No meaningful factors have been identified that might weigh in the appellant's favour. The human rights arguments put forward on behalf of the appellant throughout the process are more relevant to the proportionality of removal rather than deprivation.

62. For these reasons I am quite satisfied that it was reasonable and proportionate for the respondent to conclude that the appellant obtained citizenship by fraud or false representations, and that it is in the public interest to deprive him of a status to which he was never entitled. It is proportionate to deprive the appellant of citizenship because of the public interest in tackling abuse of the nationality system.

63. It follows that I dismiss the appeal.

Notice of Decision

64. The appeal is dismissed.

Signed **V. Mandalia** Date: 31st January 2022

Upper Tribunal Judge Mandalia