



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03975/2015**

THE IMMIGRATION ACTS

**Heard at Field House
On 13 January 2016**

**Decision & Reasons Promulgated
On 19 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

H R O

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Everett a Home Office Presenting Officer

For the Respondent: Mr Saeed of counsel instructed by Aman Solicitors

DECISION AND REASONS

Introduction

1. An anonymity order was in place previously. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of HO ('the claimant') who appealed against a decision taken on 23 February 2015 to refuse to grant him asylum.

Background Facts

3. The Nationality of the claimant is in dispute. The Secretary of State has not challenged the findings of the First-tier Tribunal that the claimant is an undocumented Kuwaiti Bidoon. The issue of the claimant's Nationality remains in dispute however as the Secretary of State maintains that even if the claimant is a National of Kuwait that is not inconsistent with his obtaining Iraqi Nationality subsequently. The claimant had applied for a visa to come to the UK using an Iraqi passport in support of the application.
4. The claimant claimed asylum under paragraph 334 of the Immigration Rules HC395 (as amended). That application was refused on the basis that the Secretary of State did not accept that the claimant was an undocumented Kuwaiti Bidoon. The Secretary of State considered that the claimant was an Iraqi National and that he did not face a risk of persecution on return to Iraq. The Secretary of State considered that there was no reasonable degree of likelihood that the claimant would be at risk of serious harm so did not qualify for Humanitarian Protection or that there would be a breach of Articles 2 or 3 if he were to be returned to Iraq. The Secretary of State also considered private and family life under the Immigration Rules and considered that the claimant failed to meet the requirements of the Immigration Rules. The Secretary of State did not consider that there were any exceptional circumstances that warranted consideration outside the Immigration Rules.

The Appeal to the First-tier Tribunal

5. The claimant appealed to the First-tier Tribunal. In a determination promulgated on 30 September 2015, Judge C M Phillips allowed the claimant's appeal. The First-tier Tribunal found that the claimant is an undocumented Kuwaiti Bidoon and found that he is not an Iraqi National. The judge's findings were based on an overall evaluation of the evidence. This evaluation included taking into consideration the claimant's mental health condition when assessing evidence contained in the record of his interview with the Home Office, the documentary evidence of the claimant's residence and employment in Kuwait and the evidence that other family members, including the claimant's son and grandson, had been granted refugee status in the UK on the basis that they are stateless Kuwaiti Bidoon. With regard to the Iraqi passports, which were not produced, the judge found that there was sufficient evidence to countervail against the passports which he found were part of deceptive applications for entry clearance.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal. On 23 October 2015 First-tier Tribunal Judge Ransley granted the Secretary of State permission to appeal. Thus, the appeal came before me.

Summary of the Submissions

7. The grounds of appeal assert that the judge erred in finding that the Iraqi passports used by the claimant and his wife used to obtain entry clearance and subsequently travel to the UK are false passports. The judge did not have the original passports before him to make such a finding as they were not produced by the claimant. Neither was there any expert evidence that the Iraqi passports were false especially in light of the fact that the British Embassy abroad accepted that they were genuine when granting entry clearance, that the UK Border Force accepted that they were genuine when allowing the claimant entry to the UK and the Home Office maintain they were genuine when accepting the asylum claim.
8. It is asserted that it was for the claimant to prove by reference to cogent evidence that the Iraqi passports were false. The Secretary of State relies on the case of RP (Proof of forgery) Nigeria [2006] UKAIT 00086.
9. Although the claimant provided evidence placing him in Kuwait in 1969 none of that evidence is inconsistent with the claimant moving to Iraq in 1991 and obtaining Iraqi citizenship.
10. The claimant served a Rule 24 (of the Tribunal Procedure (Upper Tribunal) Rules 2008) response in which it was asserted that the passport could not be produced because it was kept by the agent (q28 of the wife's screening interview), there is no evidence of what checks were undertaken at the British Embassy. There is no evidence of any checks undertaken by the UK Border Force when the claimant arrived in the UK.
11. In her oral submissions Ms Everett relied on the grounds of appeal. She submitted that the judge failed to give adequate reasons for her findings on Nationality and in not giving adequate reasons for rejecting the Secretary of State's evidence. The passports were accepted as genuine by the Entry Clearance Officer and the UK Border force and the Home Office. Evidence that the claimant had been in Kuwait does not undermine the proposition that the claimant had gone on to gain Iraqi nationality. The judge makes findings in relation to the claimant's son's appeal; setting out that the evidence of the claimant's son was accepted by an experienced adjudicator (paragraph 74 of the judge's

decision). On the basis that the claimant's son is an undocumented Kuwaiti Bidoon the judge finds that the claimant is also. She asserted that this is insufficient to support the view that the Iraqi passport was false. The claimant has been in Iraq since 1991 and is married to an Iraqi National. However, the judge found that the claimant's son lied about his lack of knowledge about the Entry Clearance application and the false passports used to make the application to come to the UK. The judge made findings that the son had lied about the claimant's visa application. She submitted that it is essential to the core of the claim that the claimant can be returned to Iraq. The application made to the Entry Clearance Officer was unsuccessful because the son could not maintain the claimant. Ms Everett submitted that it would be accepted in law that the Entry Clearance Officer applies the civil standard of proof on the balance of probabilities and will be required to decide whether all aspects of the application are truthful. Ms Everett, in response to my question, indicated that she did not know what the protocol was for undertaking checks and did not have any specific evidence as to what checks had been undertaken in relation to this claimant. She submitted that there is only usually a reference to the validity of the documents when the checks indicate that there is a concern.

12. Ms Everett submitted that in the absence of seeing the originals and having expert evidence to suggest they passports were false the judge erred in making the finding that she did. In answer to a question from me Ms Everett indicated that she did not think that the passport had been checked by the home office.
13. Ms Everett submitted that even on the evidence taken at its highest and accepted by the judge the evidence is not inconsistent with the claimant moving to Iraq and gaining Iraqi nationality.
14. Ms Everett submitted that part of the remit of the Entry Clearance Officer is to check the validity of documents and undertake a verification that the person is who they say they are and what their nationality is. She submitted that the Entry Clearance Officer applies a higher standard - the civil balance of probabilities which is a higher standard than applied in asylum claims.
15. Mr Saeed relied on the Rule 24 response. He submitted that the passports used to travel to the UK may not have been the passports in support of the visa application as the claimant did not know what passports were used to travel to the UK - they were presented by the agent who subsequently retained the passports. In answer to my question Mr Saeed indicated that, despite the claimant's wife, being an Iraqi National and therefore not seemingly to require a fake passport when applying for a visa, the position of the claimant's wife was that a fake passport was used by her in support of the visa application.
16. He submitted that the passports were not available so the photocopy is the best that we have. All the judge can do in such a situation is weigh

up all the evidence and decide if it is sufficient to discharge the burden of proof. The only challenge to the judge's findings can be if they are perverse. The Secretary of State has not shown that the decision is perverse. He asserted that the Secretary of State's grounds were essentially an attempt to re-argue the case. The Secretary of State does not know what checks were undertaken by the Entry Clearance Officer. That evidence would have been useful. There is no mention in the reasons for refusal letter that the passports were checked by the Entry Clearance Officer. The First-tier Tribunal had to decide the case on the information before it. The judge was entitled to take into consideration the determination of the claimant's son and of the grandson whose case was decided in 2010. There were no inconsistencies in the evidence given by the son before the First-tier Tribunal in 2004. He said that his father was living in Iraq. In the event that a claimant cannot provide the originals of a document the situation, if the Secretary of State's argument is accepted, is that the claimant can never be believed that the documents are false. The claimant is suffering from dementia and the judge was entitled to take that into account when assessing his evidence when answering questions in his asylum interview.

Discussion

17. The central plank of the appeal is that the judge rejected the Secretary of State's arguments that the Iraqi passports were genuine in the absence of any proof by the claimant to the contrary. The Secretary of State argues that the burden is on the claimant to prove that the passports were false. The burden, in the appeal before the First-tier Tribunal, on the claimant was to demonstrate that he had a well-founded fear of persecution such that he was in need of International Protection. The validity or otherwise of the Iraqi passports were but one element to be considered by the judge. The Secretary of State's case is that whether or not the claimant is an undocumented Kuwaiti Bidoon it is very likely that the claimant has obtained Iraqi citizenship given that he has lived in Iraq since 1991. The use of an Iraqi passport to support a visa application is cogent evidence of that assertion.
18. The First-tier Tribunal judge deals with this issue at paragraph 75. The First-tier Tribunal judge sets out:

'Against the weight of the documentary evidence showing that the appellant's residence and employment in Kuwait and the other evidence including that of the witness that the appellant is a stateless Kuwaiti Bidoon as well as the evidence that other family members including the witness and grandson have been granted status on the basis that they are stateless Kuwaiti Bidoons, I find that there is sufficient satisfactory evidence to countervail against the Iraqi passports, which I find were part of deceptive applications for Entry Clearance, which applications were organised by others on behalf of the appellant and his wife..'
19. The judge correctly set out, at paragraph 49, that the core issues were if the appellant has Iraqi nationality and if **not** if he is a Kuwaiti Bidoon.

However, the judge then proceeded to determine whether or not he was a Kuwaiti Bidoon first. Having found that he was a Kuwaiti Bidoon the judge appears to take all the evidence that supported that finding as satisfactory evidence to countervail against the weight of the Iraqi passports. It is arguable that the judge erred in that she does not appear, in this paragraph, to engage with the arguments that notwithstanding a finding that the claimant is Kuwaiti Bidoon he could have obtained Iraqi nationality subsequently. The paragraph could be read as indicating that the judge considered that having proved he was a Kuwaiti Bidoon the claimant has satisfied the judge that therefore the passports must have been false. This analysis is supported by the judge's commenting paragraph 56 wherein she states

'The fact that the appellant has claimed to be an Iraqi national in an applications for entry clearance and he provided an Iraqi passport in support of his nationality means that in these circumstances the burden of proof to prove that he is Kuwaiti and not Iraqi must fall upon the appellant who asserts that the passports and details that the provided to the Entry Clearance Officer were false.'

20. The judge also does not engage with the Secretary of State's argument that the passports were accepted to be genuine by the Entry Clearance Officer. I find that there was an error of law in the approach the judge took to determine the issue. The judge failed to consider whether or not despite a finding that the claimant was a Kuwaiti Bidoon he may nevertheless have obtained Iraqi nationality subsequently.
21. However this is not necessarily a material error of law. Reading the decision as a whole it is clear that the judge also took into consideration that the claimant's evidence given in interview was not reliable as a result of him suffering from Dementia (paragraph 68 and 69). The judge gave detailed reasons for this finding. He considered the visa application evidence at paragraphs 50 - 56 and made adverse findings against the witness regarding his purported lack of knowledge of the use of the documents in support of the visa application.
22. I drew attention to both parties the comment of the First-tier Tribunal judge regarding the claimant's visa application (paragraph 51 of the decision). The judge notes that the details on the visa application show that the claimant stated that he was born in Al Basrah, Iraq. I indicated that it appeared that this would support the judge's finding that the visa application was based on false information. If the claimant had obtained Iraqi nationality after moving there in 1991 there would be no need to lie about his place of birth. The Secretary of State has not appealed against the judge's finding that the claimant is a Kuwaiti Bidoon. Ms Everett indicated that there was not much that she could say about that. Mr Saeed submitted that this was not picked up by the Entry Clearance Officer which indicated that there may be things that were not checked.

23. Although in the grounds of appeal it was asserted that the Iraqi passports were checked on 3 occasions and found to be genuine it is not clear that the same passports used to support the visa application were used to enter the UK. Ms Everett accepted that the passports were not checked by the Home office. There therefore is only the assertion that the Entry Clearance Officer checked the validity of the passports. The Secretary of State had not provided any specific evidence as to what checks had been undertaken. The visa was refused for financial reasons. I accept that the Secretary of State will not and ought not to be required to reveal methods used to undertake checks. Whilst it might be the case that the Entry Clearance Officer will apply a rigorous approach to ensuring the validity of documents and this will no doubt be, as Ms Everett submitted, a core component of their role in assessing visa applications, they are not infallible. I accept that due weight should be afforded to the Entry Clearance Officer's expertise. However as a matter of logic if the claimant had acquired Iraqi nationality subsequent to his move to Iraq in 1991 there would have been no need to indicate that he was not originally from Kuwait on either his passport application or his visa application.
24. Although the approach of the judge was in error I consider that it was not material to the outcome of the appeal. There is some doubt as to what checks were undertaken on the passport with regard to the visa application and it would appear that false information was given in relation to the place of birth in the visa application. The decision reached by the judge was one that was open to her to come to on the evidence.

Decision

25. There was no material error of law such that the decision of the First-tier Tribunal should be set aside.

Signed P M Ramshaw

Date 17 January 2016

Deputy Upper Tribunal Judge Ramshaw