



IAC-AH-KEW-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/02293/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 7 December 2015**

**Decision & Reasons Promulgated
On 9 February 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**ALI AZARA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain, instructed by A2 Solicitors

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Ali Azara, claims to be an undocumented and stateless Bidoon who previously lived in Kuwait and who claims to have been born on 13 May 1987. He claims also to have arrived in the United Kingdom on 20 February 2014 and to have been involved in demonstrations against the Kuwaiti authorities whilst he lived in Kuwait. He applied for asylum but that application was refused and a decision was made to remove the appellant from the United Kingdom. The appellant appealed against that decision to the First-tier Tribunal (Judge Hillis) which, in a decision

promulgated on 12 May 2015, dismissed the appeal on all grounds. The appellant now appeals, with permission, to the Upper Tribunal.

2. Amongst other evidence, the judge had before him a Sprakab Report indicating that the appellant was Kuwaiti Arabic and that he also speaks with a Kuwaiti accent. The judge [24] accepted, “the language assessment supports the appellant’s claim that he has lived in Kuwait and that he may even have been for the vast majority of his life [there].” However, the judge did not find the appellant to be a credible witness and recorded the fact at [22] that he had “made a biometric ‘hit’ on data” held at the United States of America Embassy in Baghdad where he had made a visa application using an Iraqi passport. The appellant claims that the Iraqi passport was a false document but the respondent (and Judge Hillis) concluded that it was a genuine Iraqi passport the existence of which indicated that the appellant was more likely to be an Iraqi, rather than a Kuwaiti, national.
3. Judge Hillis properly dealt with the core issue in this appeal, namely the nationality (or statelessness) of the appellant. It may well be the case that the appellant is not a Kuwaiti Bidoon as he claims and, indeed, that he is also an Iraqi citizen but I am not satisfied that the judge has adopted a valid route or process to deliver him to that conclusion. At [22], the judge noted that the appellant’s visa application in Iraq had only been accepted after he had made the “biometric hit.” That point is well made but the judge went on to say that,

“If the US Embassy had found the passport to be false they would have retained it and would very probably have detained the appellant for making an application based on deception for leave to enter the USA from Iraq as a terrorist suspect. The appellant, on his own account, states that he was told at the Embassy that there was some paperwork missing and that is why his application was refused.”
4. It was unclear to me by upon what evidential basis the judge has concluded that it is “very probable” that the appellant would have been detained by the US forces for making a visa application using a false passport. The fact that the appellant was not arrested or detained by the US forces in Iraq cannot, without any evidence in support, properly lead to a conclusion that the appellant did not, as he claimed, use a false passport. The judge goes on [23] to refer to the “extremely thorough checks” which he believed the US authorities in Baghdad would carry out but, again, he makes reference to no evidence of background material which would support his description.
5. Further, at [24] the judge states that,

“... the dialect of a person ... cannot alone or even when covered with the knowledge of a country and its customs be determinative of his nationality. A person may have lived for the majority or all of his life in a country where his nationality is that of his father or mother of birth which may be entirely different to the country in which the appellant lives with his parents and siblings.”

6. As a general observation that statement may not be objectionable but, coupled only with the judge's speculation as to how the US authorities at the Iraqi Embassy might have behaved when confronted with the appellant, it does not constitute a sound basis for rejecting the appellant's claim. In the circumstances, I set aside the decision and will remit this appeal to the First-tier Tribunal (not Judge Hillis) for that Tribunal to re-make the decision. It will be for the new Tribunal to carry out a proper examination of the evidence; I am not suggesting that the appellant's account must be accepted. The appellant may continue to struggle to explain why the US authorities in Iraq accepted his passport as genuine. However, those are matters for the next Tribunal to consider.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 12 May 2015 is set aside. The appeal will be remitted to the First-tier Tribunal (not Judge Hillis) for that Tribunal to re-make the decision following a hearing

No anonymity direction is made.

Signed

Date 20 January 2016

Upper Tribunal Judge Clive Lane