



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06448/2017

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 24 April 2018

Decision given orally at hearing,  
sent out on: 26 June 2018

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

[R Y]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Wood, I A S (Manchester)  
For the Respondent: Mrs Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Syria. At the beginning of the story she was also a national of Russia. She claimed asylum on the basis of a well-founded fear of persecution. Her claim was owing to a well-founded fear of persecution in Syria and

because of her assertion that Russia acts with Syria and in its interest, so a well-founded fear of persecution in Russia too.

2. That claim was unsuccessful and it became clear as a result of a determination by Judge Harris in the First-tier Tribunal and also as a result of indications by the Secretary of State that first, in relation to Syria she was recognised as having a well-founded fear of persecution if returned there but secondly, in relation to Russia she had no well-founded fear of persecution if returned there.
3. She thereupon decided to abandon her Russian nationality and presented herself to the First-tier Tribunal in a further appeal as a national of Syria only. The matter came before Judge O R Williams in the First-tier Tribunal. Judge Williams considered by looking it up on Refworld what he regarded as the current Russian law of nationality and cited at length provisions relating to the acquisition of nationality. There is, I should say, no doubt that the Russian Federation has accepted the claimant's abandonment of her Russian nationality. There was documentary material before Judge Williams establishing that.
4. The material set out by Judge Williams shows that in order to re-acquire Russian nationality a person must meet the usual requirements for acquisition of Russian nationality the first time, except that the period of residence in Russia immediately before the application is reduced from five years to three.
5. I have considerable doubt whether the process adopted by the judge to determine and act on Russian nationality law was appropriate. The judge was not, so far as I am aware, an expert in Russian law. Russian law needs to be proved by evidence and simply looking at a statute is about as useful as it would be for a foreign judge to consider the Immigration Act 1971 and conclude that that sets out English or United Kingdom immigration law. Nevertheless, there appears to have been no dispute before him that he was entitled to act on the evidence which I have set out.
6. The judge, having quoted the Russian statute, stated at length, then went on to note the decision of Judge Harris, which he also quoted at some length. He then under the heading Findings of Fact set out a decision of the Tribunal, MW [2016] UKUT 00453 (IAC), also at some length.
7. He then wrote this:

**“Refugee Convention**

The appellant does not have a well-founded fear of persecution for a Refugee Convention reason in the appellant's home country of Russia and would not face a real risk of persecution if returned.”

He went on to deal with other aspects of the appellant's claim dismissing all of them and concluded that it would be proportionate for the appellant's family to be removed as a unit.

8. It appears to me that there are two difficulties about those conclusions in the way in which I have set them out. The first is that in relation to the Refugee Convention the judge needed to look not at the appellant's home country but at her country of nationality or if, and only if, she had no country of nationality then her country of former habitual residence; and secondly, in relation to paragraph 39 of the determination where the judge says that it would be proportionate to remove the family as a unit, then it would not be possible, let alone proportionate, to remove the family, including the appellant, if the removal would be to a country of persecution.
9. On the material before the judge, which there has been no attempt to supplement before me, it appears that the appellant, having abandoned her Russian nationality, fell to be treated as a person who was not entitled to Russian nationality but nevertheless could seek to re-acquire it. Following the decision of this Tribunal in KK and others [2011] UKUT 92 she fell within what Mr Wood has described as the third category, that is to say not a person who has a nationality nor a person who is entitled to a nationality but a person who is entitled to ask for it. She did not fall to be treated before the First-tier Tribunal as of Russian nationality. It follows that her only nationality was Syrian, and on that basis she should have been recognised as a refugee from Syria with that sole nationality.
10. To that extent the First-tier Tribunal erred in law. I set aside its determination and I shall substitute the determination allowing the appellant's appeal on asylum grounds.
11. I make two comments based in part on the appellant's immigration history. In the refusal letter dated 11 May 2016, which is before the Tribunal, the appellant's immigration history is set out as follows:

"Your known immigration history is as follows:

  - (a) You applied for a visit visa to the United Kingdom as a Syrian national on 24 April 2006 from the British Embassy in Moscow. The visa was issued the same day and valid until 24 October 2006. Your husband, a Russian national, Takhsin Khamed Yunes, was issued a visa at the same time until the same date.
  - (b) On 27 August 2014 you were granted residence, along with your three children, in the United Arab Emirates, and the residence was valid until 26 August 2016. On 8 September 2014 you attempted to board a flight to Brazil, via Heathrow Airport, with your three children, and you were all using Russian Federation passports in your own names. You were not allowed to board the flight.
  - (c) On 25 August 2015 you arrived in the UK at Stansted Airport, with two of your children, on a flight from Germany, using false UK passports in false names. You applied for asylum at the airport, having attempted to dispose of the UK passports."
12. There is no doubt that the appellant is a wholly dishonest person who has manipulated nationality law to her own advantage. There can be no other reasonable explanation for her abandonment of Russian nationality at the stage which I have described. This is a case which shows, as others sometimes do, the defects of the United Nations Convention on the Status of Refugees of 1951. At the time that that Convention was signed it was inconceivable that anyone should seek to become a refugee by

manipulating their status in that way; but that is the unfortunate consequence of the provisions which bind virtually all the world. They lay themselves open to abuse of this sort.

13. Secondly, the history which I have set out shows that it will be in the highest degree difficult for the appellant to demonstrate at any stage that she is a person who left the country of her former habitual residence in order to seek asylum. That means of course that the granting of refugee status to her is not likely to have any consequence in allowing her family members to join her as set out in paragraphs 352A and following of the Statement of Changes in Immigration Rules HC 395 (as amended).
14. For the reasons I have given, however, she succeeds in her appeal.

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 11 June 2018