Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00528/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 February 2019	**On 04 March 2019**

Before

THE HONOURABLE MR JUSTICE JULIAN KNOWLES
UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Z A
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer
For the Respondent: Ms E Foubister, Counsel instructed by Sutovic & Hartigan, Solicitors

DECISION AND REASONS

1. Although the appellant in these proceedings is the Secretary of State, it is convenient to refer to the parties as they were before the First-tier Tribunal.

2. The appellant claims to be a citizen of Iraq, born in 1984, whereas the respondent contends that he is in fact a Lebanese citizen born in 1985.

3. On 4 January 2017 the respondent made a decision to refuse the appellant's human rights claim within the context of a decision to make a deportation order against him in the light of his criminal offending. The respondent also certified under section 72 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") that the appellant had been convicted of a particularly serious crime and constituted a danger to the community of the United Kingdom.

4. The appellant's offending goes back to 2004 when he was convicted in the Magistrates' Court of obtaining property by deception. Further offences of obtaining property by deception in 2005 resulted in detention in a young offenders' institution for nine months. In March 2006 he was convicted of assault occasioning actual bodily harm which resulted in a further term of six months' detention in a young offenders' institute. In February 2007 he was convicted of driving whilst disqualified and related motoring offences as well as failing to surrender to custody, for which he received four months' imprisonment. Again in February 2007, he was convicted of obtaining services by deception which resulted in a term of imprisonment of 28 days.

5. The particular offence which led to the decision to make a deportation order was one of possession with intent to supply Class C drugs for which he received a sentence of 32 months' imprisonment on 26 November 2007 in the Crown Court at Blackfriars. There was a consecutive sentence of four months' imprisonment for driving whilst disqualified.

6. After the conviction for possession with intent to supply he was convicted in November 2011 of driving whilst disqualified and driving whilst uninsured, receiving a community order for the driving whilst disqualified offence. On 23 May 2013 he was convicted of possession or control of articles for use in fraud and making false representations for gain or loss, resulting in nine months' imprisonment suspended for 24 months. Lastly, on 16 November 2015 he was convicted of breach of a non-molestation order for which he received a fine and a restraining order.

7. The appellant's appeal against the decision of the respondent of 4 January 2017 came before First-tier Tribunal Judge A M Black ("the FtJ") at a hearing on 27 November 2018 following which she allowed the appeal on asylum and article 3 grounds. She concluded that the appellant was not a Lebanese citizen but is an Iraqi citizen as he claimed.

The grounds and submissions

8. The respondent's grounds of appeal in relation to the FtJ's decision can be summarised as follows. It is argued that the FtJ erred in law in concluding that the appellant was an Iraqi national rather than a Lebanese national. Evidence before the FtJ included a travel document that had been agreed by the Lebanese authorities. Part of the application for the travel document required the applicant's thumbprints. A 'Sprakab' (language) report suggested that the dialect spoken by the appellant is common in

some Arabic varieties, for example in Lebanon, Northern Syria and Southern Turkey. There was also a visa application "in the details accepted by the respondent confirming the appellant's nationality as Lebanese" to quote the grounds. Furthermore, there was evidence that when the appellant was removed to Iraq in 2010 he was returned to the UK having been deemed by the Iraqi authorities not to be an Iraqi national. Whilst in Iraq he had claimed to be Palestinian.

9. The grounds take issue with the FtJ's assessment of two letters from the respondent to the Lebanese Embassy in London in terms of certain differences in those letters. Whilst the FtJ had noted that the name and date of birth on the letters were different from those on the travel document application, the grounds state that "these details are auto populated by the computer system and are those that were believed to be the appellant's true identity". On the other hand, the application form reflected the details provided by the appellant that are recorded as one of his several aliases on the Home Office computer system. In addition, it was a matter of fact that the Lebanese authorities in 2014/2015 were prepared to issue a travel document in the details provided by the appellant, including his thumbprints.

10. The grounds rely on the appellant's convictions for various offences of dishonesty and that his apparent use of 17 aliases and five different dates of birth, as indicated on the police national computer ("PNC") printout. Even if some of those names were as a result of misinterpretation and variations of the same name, they demonstrate that the appellant is prepared to use deception. Similarly, on the PNC printout it is recorded that the appellant was born in Beirut.

11. Further, the grounds contend that the FtJ was wrong to say that there was an anomaly in relation to a purported visa application of 12 February 2002 because the visa itself was said to have been delivered "in person" (according to the respondent's screenprint) but there was no evidence that the appellant was in Lebanon in 2002. The point made in the grounds is that the fact that the visa was delivered in person only confirmed that the visa was collected from the visa processing centre.

12. Lastly, it is argued that weight could and should have been attached to screenprints from the Home Office computer system which suggests that the Lebanese Embassy agreed to provide an emergency travel document ("ETD") for the appellant.

13. In his submissions Mr Whitwell relied on the grounds. He submitted that the strongest point for the respondent was that the Iraqi authorities did not accept the appellant as an Iraqi when he was removed there in September 2010. The FtJ's analysis of this issue betrayed inadequate reasons. Although Mr Whitwell accepted that the Sprakab report was not determinative, he alighted on one aspect of it which refers to the appellant's pronunciation in a particular respect as being common in some Arabic varieties spoken in Lebanon, Northern Syria and Southern Turkey.

14. Ms Foubister in her submissions relied on the 'rule 24' response. She submitted that the FtJ had considered all the evidence and her conclusions were open to her.

15. As regards the decision by the Iraqi judiciary not to accept the appellant as an Iraqi national, that was because there was no family member to vouch for or identify him. The FtJ had properly dealt with this in her decision. She made a finding in relation to his having stated to the Iraqi authorities that he was Palestinian.

16. Further, the Sprakab report was inconclusive and in any event consistent with the appellant's history of arrival in the UK.

17. In relation to the ETD, there was no actual evidence of the thumbprints. Furthermore, as regards the Lebanese passport that the respondent relies on to show that he is Lebanese, that passport was the very one that was the basis of the appellant's conviction for having a false document. The respondent's reliance on his having that passport is inconsistent with the conviction.

18. As to the Lebanese visa application, the appellant claimed asylum in March 2002 so there was evidence that in fact the appellant was in the UK at the time (not in Lebanon).

19. In his reply Mr Whitwell submitted that to suggest that there was no evidence of the ETD (as had been on behalf of the appellant) puts the matter too highly, although it was accepted that there was no documentary confirmation of the ETD as such. In relation to the entry clearance application made in February 2002, as can be seen from the FtJ's summary of the appellant's immigration history, the appellant's claim for asylum in the UK on 15 March 2002 is not inconsistent with the entry clearance application having been made and granted February 2002. This point does not appear to have been appreciated by the FtJ.

20. At the end of submissions we reserved our decision, which we now give.

Assessment and Conclusions

21. As regards the s. 72 certificate (presumption of conviction of particularly serious crime and danger to the community) the FtJ found that the appellant had not rebutted the presumption that he had been convicted of a particularly serious crime in relation to the offence of possession of Class drugs with intent to supply, but that he had rebutted the presumption that he constituted a danger to the community of the United Kingdom. There is no challenge on behalf of the respondent to the FtJ's conclusion that the appellant does not represent a danger to the community of the United Kingdom.

22. In the following paragraphs we summarise the FtJ's conclusions in relation to the appellant's nationality. That summary illustrates why we have concluded that there is no error of law in the FtJ's decision as contended

for on behalf of the respondent. We should also add, that the conclusion by the FtJ that the appellant is an Iraqi national was, on the facts of this appeal, determinative of the outcome on asylum and article 3 grounds. The contrary was not argued on behalf of the respondent.

23. The FtJ identified with precision the evidence that she had before her from both parties. She summarised the appellant's claim in detail. That claim was to the effect that he was born in Basra in Iraq and that when he was aged about five, Iraqi intelligence officials came to the family home in Basra accusing the appellant's father of attempting to overthrow Saddam Hussain, as well as membership of an illegal political party. The appellant's father and older brother, Haider, were both arrested and his father was killed. The appellant's mother therefore sent the appellant and his middle brother, Hussain, to Syria to live with a family friend. The appellant has not had contact with his mother or Haider since then. Whilst in Syria the appellant and his brother lived in a Palestinian refugee camp. When the appellant's brother was identified as working illegally the appellant was put into an orphanage but escaped.

24. The appellant claimed to have arrived in the UK at the age of about 16, his passage to the UK having been arranged by a family friend in Syria following the appellant's arrest there for being an illegal immigrant.

25. The case before the FtJ was that the appellant had no family or friends in Iraq and had never been to Lebanon. He was persuaded by an older man that the way to get immigration status in the UK was to work. To that end he provided the appellant with a false Lebanese passport. Thus, he used a false passport to obtain leave to remain in the UK. He did not use the travel document which was issued to him by the Home Office when he was granted exceptional leave to remain ("ELR") as a minor because he thought he would be sent to an orphanage, as he had been in Syria. He used the false Lebanese passport to obtain work. When his leave to remain associated with the Lebanese passport expired he was unable to find work. He then became involved in criminality. When he was arrested police found the Lebanese passport and documents relating to it. He pleaded guilty to having false documents. He then became involved in further criminality.

26. In relation to the various names that have been attributed to him, he had only ever used two names, his own and that in the Lebanese passport. Other names had been attributed to him but his case was that that resulted from his name being misspelt or misheard, or the police recorded the names on the false documents seized at the time.

27. On 6 September 2010 the appellant was part of a group who were deported to Baghdad. He did not have a travel document. Being an undocumented returnee, he was held in detention for his nationality and identity to be determined by a judge in Iraq. He was beaten, sexually assaulted, threatened, abused, kicked and urinated upon whilst in detention. He was asked a number of questions about his brother, Haider,

and his father. He was unable to answer the questions and was punched and kicked repeatedly, such that his teeth were broken and his jaw fractured. The Iraqi judge did not accept that the appellant was Iraqi because he was unable to produce a family member or otherwise demonstrate his nationality. He was returned to the UK on 22 September 2010 and detained on arrival. He was sent to hospital from Gatwick Airport for medical treatment.

28. After referring to the appellant's further criminal offending and the circumstances in which a non-molestation order was made, the FtJ summarised the appellant's claim to be in fear of persecution on return, that is in terms of his imputed political opinion, his father and brother having opposed the regime of Saddam Hussain and his brother being wanted by the authorities in Iraq. He was told by the Chief of Police, Colonel Hatem, that he and his brother, Haider, were enemies and that the appellant was being ill-treated on senior orders. Further, the appellant does not have a Civil Status Identity Card ("CSID") or any reasonable prospect of obtaining one within a reasonable period of time.

29. The FtJ summarised the respondent's case and the appellant's grounds of appeal. She set out the legal framework, including with reference to authority, and referred in detail to the offence of possession with intent to supply, quoting from the sentencing remarks.

30. At [62] she described in detail the documentary evidence relied on by the respondent in support of the contention that the appellant was Lebanese rather than Iraqi, making certain findings along the way. She referred first to a poor copy of part of the Lebanese passport used by the appellant, and "a good copy" of the vignette granting leave to enter as a student.

31. She then described two letters from the respondent dated 11 November 2014 to the Lebanese Embassy in London. She said that, oddly the two letters have the same date yet are in different typeface and signed by different members of staff in different departments at the Home Office. One letter was from a named member of staff at the Country Returns, Operations and Strategy, Immigration Enforcement at the Home Office in Croydon. The second is from a member of staff in Immigration Enforcement in Liverpool. Both letters referred to enclosing an ETD application and both have a similar Home Office reference. In each case the details for the appellant were those cited in the Lebanese passport. The FtJ then said that "The existence of two such letters is unexplained". What we consider the FtJ meant by that was that it was unexplained as to why there were two letters in relation to the ETD application, rather than just one. In any event, she then went on to state that she had been provided with a copy of the ETD application which cited the appellant's name (not that in the Lebanese passport) with his stated date of birth (not that in the covering letter from the Home Office) and his place of birth recorded as Basra. She concluded therefore, that the content of the application form did not correspond with the content of the Lebanese passport or the two Home Office letters.

32. She next referred to a screenprint relating to a visa application said to have been made by the appellant on 12 February 2002. She noted that that corresponded with the vignette in the Lebanese passport. She further noted that the visa was delivered "in person" according to the screenprint although stating that "there is no evidence to suggest that the appellant was in Lebanon in 2002". She referred to that as an unexplained anomaly.

33. The FtJ referred to a Bio-Data Information form giving the details that the appellant claimed as to his date of birth and Iraqi nationality, but with a Home Office reference which was different from that on the correspondence to the Lebanese Embassy. The form was signed by the appellant and dated.

34. She next referred to "various fingerprints" on a Home Office record which refers to the appellant by a name that is not on the Lebanese passport, citing his claimed date of birth (different from that on the Lebanese passport) and referring to his being Lebanese. She noted that the Home Office reference was not that on the two letters from the Home Office to the Lebanese Embassy.

35. She then referred to a screenprint of the respondent's records on 19 January 2015, the screenprint itself referring to an e-mail which, to summarise, stated that there was no query from the Lebanese Embassy, meaning that it was understood that the fingerprints were acceptable (to the Lebanese Embassy). The screenprint has a posed question as to whether the Lebanese authorities were willing to accept the appellant as Lebanese. The response according to the screenprint was "On [sic] principle, yes, but they have still conduct verification in Lebanon, and if verification fails he may be rejected as Lebanese national".

36. The next screenprint referred to by the FtJ is dated 27 April 2015. It states that an ETD agreement had been received from the Lebanese Embassy on 24 April 2015 and that the appellant had been granted an approval to enter Lebanon with details as to his name and date of birth (not details that the appellant claims for himself).

37. At [63] she said that the screenprints were the only reference in the documentary evidence adduced by the respondent to an ETD purportedly being issued by the Lebanese authorities. She noted that there was no correspondence from the Lebanese Embassy to confirm that they accepted the appellant as being Lebanese. She said that given the presumption in the Home Office records, for example that that there was no query from the Lebanese Embassy so far, and the disparity in the identifying data about the appellant in the various documents, she was "concerned that these screenprint notes are not wholly reliable".

38. At [66] the FtJ referred to the Sprakab report, noting that it stated that Arabic is not the appellant's mother tongue and that his language cannot be attributed to any particular country, and that there are features of his Arabic which are found in various Arabic-speaking countries. She

concluded that that analysis was not inconsistent with the appellant's claim that he left Iraq at the age of 5 and lived in a refugee camp with many other refugees of different nationalities, particularly Palestinians, until he came to the UK at the age of 16.

39. She referred to authority on the question of an individual's duty to substantiate their nationality.

40. She then considered the medical evidence of the injuries that the appellant had when he returned from Iraq in 2010 with a suspected dislocated jaw. When examined at Harmondsworth he is reported to have had bruises and severe burn lesions. The medical records refer to damage to his teeth. To summarise, the medical evidence was that the overall pattern of scarring "entirely" supported the appellant's claimed history. He was also found to be suffering from PTSD. The FtJ accepted the medical evidence and concluded that it was consistent with the claimed treatment in Iraq in September 2010.

41. In all those circumstances she concluded at [72] that the appellant could not be criticised for failing to approach the Iraqi authorities in the UK to confirm his nationality. She also found that he could not be expected to approach the Lebanese Embassy given that it was his case that he had used a false Lebanese passport whilst living in the UK. She found that the appellant had provided a wholly plausible explanation for his use of the Lebanese passport which she said was consistent with his having a record of using false credit cards in the past.

42. She thus concluded that the appellant had demonstrated on a balance of probabilities that he is Iraqi and that he was born on 19 December 1985.

43. There then follows in the FtJ's decision an analysis of the appellant's offending and the extent to which he had rebutted the presumptions in s. 72 of the 2002 Act. As explained above, there is no challenge to those conclusions.

44. In assessing the potential risk of persecution on return to Iraq the FtJ again summarised the basis of the appellant's claim. She referred to his appeal in December 2006 against a decision to deport him and the dismissal of that appeal. The conclusion in that earlier decision was that he was not at greater risk than other Iraqi nationals at that time. The FtJ correctly took that 2006 appeal decision as her starting point. She gave sustainable reasons for concluding that he would now be at risk on return having regard, amongst other things, to the ill-treatment that was meted out to him in 2010. Again, as already indicated, there is no challenge by the respondent to the FtJ's analysis of the risk on return (on the basis that he is an Iraqi citizen).

45. Part of the FtJ's decision involved consideration of the appellant having said at Baghdad International Airport (in 2010) that he was Palestinian. The circumstances referred to by the FtJ can be found at [84] of her

decision. She referred to an e-mail from a member of staff at the Home Office who stated that he spoke to the appellant in the arrivals hall at Baghdad International Airport, and that he complained that he was in fact Palestinian and should not be in Baghdad. He is reported to have said that he was in good health and had no complaints about his treatment.

46. The FtJ pointed out however, that the e-mail was written on 8 September 2010 and related to his health on arrival, i.e. before he was detained and mistreated. She found that that evidence was of little weight (in terms of the assessment of risk). She then referred to a further e-mail of 23 September 2010 from another member of Home Office staff who reported a call from an immigration officer at Gatwick to the effect that the appellant had claimed he was tortured in Baghdad and sent for medical examination on arrival, describing that he had a dislocated jaw. She noted that the appellant had not denied stating in Baghdad that he was Palestinian and there was a statement from another returnee, a Kurd, who also said the appellant described himself as Palestinian while in Baghdad in September 2010.

47. The FtJ returned at [88] to the issue of how the appellant had been viewed in Iraq in terms of his nationality (in 2010). She said that she acknowledged that there was a potential discrepancy in that the officers (who mistreated him in Iraq) knew who he was yet the Iraqi judge failed to accept he was Iraqi because no member of his family came forward to identify him. She found that that was not necessarily incompatible with his claim, in that the Iraqi judge would have been following due process and required formal identification of the appellant. She said that the appellant had in fact described himself as Palestinian whilst in detention to deflect adverse attention. She found that the security officers took action on the basis of the appellant's name and his family associations as provided to them by the respondent and the appellant himself (at their request). She said that she was satisfied that the manner in which the officers and the judge dealt with the appellant "is not materially discordant or inconsistent".

48. We observe at this point that aside from what the FtJ said about the appellant having identified himself as Palestinian when he was in Iraq, it is not in fact the respondent's case that the appellant is Palestinian but is Lebanese. Accordingly, his having identified himself as Palestinian does not in fact advance the respondent's case much, if at all.

49. The appellant's 'rule 24' response to the respondent's grounds of appeal makes a number of points. Thus, in relation to the Lebanese travel document, it is pointed out that the respondent had not in fact produced a travel document from the Lebanese authorities. Further, there was no evidence to show that the appellant's fingerprints actually match the fingerprints relating to the Lebanese passport that the respondent alleges belonged to him. Reference is also made to the discrepancies in the identifying information provided in the travel document application and correspondence between the Home Office and the Lebanese Embassy,

which indicated that even if a travel document had been issued, it could not reliably be evidence of the appellant's nationality. Confirmation that the appellant's fingerprints match those of the Lebanese passport would be necessary it is said.

50. In relation to what the FtJ said about the two Home Office letters dated 11 November 2014, to which we have already referred, the point made on behalf of the appellant is that the FtJ was saying that there was no information or evidence about the provenance of those letters, what they mean or what documents were submitted with them. Thus, even taking that evidence at its highest, the documents could only show that the respondent applied to the Lebanese Embassy for a travel document for the appellant.

51. In relation to the Sprakab report, it is correctly pointed out on behalf of the appellant that it states that the appellant's "speech pattern cannot be geographically placed in any specific Arabic-speaking country". We would add that having considered that report for ourselves, it is clear that the appellant's language cannot be attributed to any particular country.

52. Quite apart from our own analysis of the FtJ's decision, we consider that the arguments advanced on behalf of the appellant in response to the grounds of appeal before us have merit.

53. In one particular respect however, we consider that the FtJ's analysis may have been incomplete in that the application for a visa made in Lebanon and the issuing of the visa were in February 2002, whereas the first evidence of the appellant's presence in the UK is his asylum claim in March of that year. Thus, his presence in Lebanon in February 2002 could not be ruled out. However, we consider that within the context of the FtJ's otherwise sustainable analysis of the evidence, that is not an issue which reveals any error of law in her decision, still less one that would require it to be set aside.

54. We have set out in detail the FtJ's assessment of the evidence in order to illustrate what we consider to have been a very thorough, indeed meticulous, examination of the evidence relied on by the respondent. It is of course possible for argument to be advanced as to why, on the facts, the FtJ ought to have come to different conclusions. However, it could not be said that the FtJ's reasoning was perverse or irrational or that she *materially* failed to have regard to relevant evidence, or wrongly took into account any evidence or information. In our judgment she was entitled to make the findings that she did.

55. Accordingly, the decision to allow the appeal on asylum and article 3 grounds stands.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to allow the appeal on asylum and article 3 grounds therefore stands.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek 1/03/19