



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: RP/00015/2020 (V)

THE IMMIGRATION ACTS

Heard at Bradford IAC by a remote hearing
On the 25 August 2021

Decision & Reasons Promulgated
On the 07 October 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

AND

A Z

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr S. Kotas, Senior Presenting Officer

For the Respondent: Mr Adebayo, solicitor advocate instructed on behalf of the appellant

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal Judge Saffer (hereinafter referred to as the "FtTJ") who allowed the appeal of AZ against the decision of the respondent made on 7 February 2020 in a decision promulgated on 4 March 2021.
2. Whilst this is the appeal brought on behalf of the Secretary of State, for sake of convenience I intend to refer to the parties as they were before the FtT.

3. The FtT did make an anonymity order and no grounds have been raised by the Secretary of State for the order to be discharged during these proceedings. I therefore continue the anonymity direction set out at the end of this decision.
4. The background is set out in the decision of the FtTJ and the evidence in the bundle. The appellant claimed to be an undocumented male Kuwaiti Bidoon and on 1 May 2013 the respondent granted him refugee status.
5. As a result of information that became available to the respondent, on 7 July 2020 the respondent issued to the appellant a notice of cancellation of refugee status based on evidence the respondent had obtained that the appellant applied for a Visa to the USA authorities on 4 March 2013 using a passport validly issued on 16 March 2011 and in his interview confirmed the details of the holder as an Iraqi born in 1961 and providing a family history of life in Iraq. The Visa was later revoked after it transpired that he had applied for asylum in the UK. The respondent thus asserted that his refugee status was obtained by deception and that he was an Iraqi national. The full details leading to that decision are set out in the respondent's decision of 7 July 2020.
6. The FtTJ recorded the appellant's account that he accepted that he had used passport fraudulently it not being his but that it was obtained to him by an agent who had instructed him to lie about the details that he had given in his interview with the American authorities.
7. The appellant came before the FtT and in a decision promulgated on 4 March 2021 FtTJ Saffer allowed his appeal. Having heard oral evidence from the appellant, his brother and another family relative and having considered the documentary evidence provided, the FtTJ reached the conclusion that the appellant was a Kuwaiti Bidoon and was not an Iraqi citizen for the reasons that he set out in paragraphs [18-[24].
8. Permission to appeal was issued and on 6 May 2021 permission was granted by FtTJ Scott Baker.
9. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing.
10. Subsequently, the appeal was listed for a remote hearing via Microsoft teams. The Tribunal listed the hearing to enable oral submissions to be given by each of the parties.
11. The hearing took place on 25 August 2021, by means of *Microsoft teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I was present at Court. The advocates attended remotely via video as did the appellant. There were no issues regarding sound, and no substantial technical problems were

encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

12. Mr Kotas relied upon the grounds which he amplified in his oral submissions. He submitted that the FtTJ erred in law by failing to engage with the respondent's case and highlighted certain paragraphs of the decision letter. In particular paragraph 25 where the evidence from the Kuwaiti Community Association was considered and where it was stated that no investigation notes had been enclosed. Whilst Mr Kotas referred to the review decision (as stated in the grounds) he did not provide a copy of the full review decision and stated that he did not seek to do so. He referred to paragraph 28 of the decision letter which confirmed that the US visa was cancelled because he the appellant made a claim for asylum and that was not consistent with the appellant's account that it was rejected due to the passport being fraudulent.
13. Mr Kotas referred to the written grounds and that the FtTJ erred by not considering paragraph 5.3 of the Land Info report and that it was difficult to bribe officials. He did however accept that the report did not discount that fraud might not be possible but nonetheless he submitted it was a point which weighed against the appellant.
14. Other points made by Mr Kotas were that the passport was issued in 2011 but the Visa was applied for 2 years later. Whilst he stated he could not speculate as to the reasons, there was a delay set out at paragraph 38 of the decision letter. Furthermore the appellant did not tell the Secretary of State that he had used those documents.
15. Mr Kotas therefore submitted that the judge failed to engage with the evidence and as a result the decision reached was unsound.
16. Mr Adebayo on behalf of the appellant had not provided a Rule 24 response but made the following oral submissions. He submitted that the respondent had failed to provide the evidence referred to in the decision letter which had given rise to the decision. There is no copy of the Iraqi passport, there was no correspondence from the American authorities nor from the Iraqi authorities. Whilst the grounds assert that the judge did not engage with the decision letter, he submitted that the decision letter set out a number of assertions which had not been supported by any documentary evidence. Furthermore, the UNHCR had set out a number of investigations that should have been undertaken in their correspondence to the respondent but the respondent had failed to carry out those investigations and thus there had been a lack of proper scrutiny of the evidence and were "bare assertions". In particular there was no correspondence from the US authorities as to why the visa was cancelled when or in what circumstances. He made the point that they wrote to the appellant in 2018 but the decision was not reached until 2020 but no evidence had been sought within that intervening period save for a witness statement from Mr Johnson at G1.

17. Dealing with the points raised, Mr Adebayo submitted that the evidence of the Kuwaiti Association report confirmed that they had spoken to the appellant and set out why they reached the conclusion he was an undocumented Bidoon from Kuwait. He submitted that that was not the central point relied upon by the judge and he based his decision on other evidence as well as this which he took into account. He submitted that the weight attached to it was a matter for the judge and it was open to him to confirm that he accepted that report and thus there was no error of law in that respect.
18. As to the background evidence, relating to the prevalence of forged documentation in Iraq, the judge did refer to the issue of genuine passports being manipulated and that was consistent with paragraph 5.1 of the background material. He pointed to the UNHCR report and letter in the appellant's bundle which also confirmed the prevalence of false Iraqi passport in Iraq.
19. Mr Adebayo referred to the evidence given by the appellant's brother who also had given oral evidence before the tribunal and had previously been accepted as an undocumented Kuwaiti Bidoon. His evidence was not challenged by the respondent and therefore it was open to the judge to accept his evidence as stated within his decision. Mr Adebayo submitted that the surname given on the Iraqi authorities documents of A... B... were inconsistent with the appellant's surname and that of his brother and therefore the judge properly considered the evidence. Whilst he may not have set out all the points, it had not been demonstrated that the overall decision was one not open to him and that he had made an error of law. He submitted that the submissions made by the respondent were a disagreement with the decision that did not demonstrate the making of an error of law.
20. Mr Kotas by way of reply submitted that the witness evidence was not dispositive of the appellant's nationality and had to be weighed with the other evidence. Whilst submissions had been made about the nonproduction of evidence, it did not appear that it was disputed that the evidence was in existence and in any event they were not findings made by the judge or reflected in his decision and therefore could not be taken into account now.
21. At the conclusion of the submissions I reserve my decision which I now give.

Decision on error of law:

22. I bear in mind the following well-established principles as to the approach of the Court of Appeal when considering a decision of a specialist tribunal such as the UT or in this case, the FtT;
 - (1) First, the UT is an expert tribunal and an appellate court should not rush to find a misdirection an error of law merely because it might have reached a different conclusion on the facts or expressed themselves differently

(per Lady Hale in *AH (Sudan) v Secretary of State for the Home Department* [\[2007\] UKHL 49](#) at [30]).

(2) Second, the court should not be astute to characterise as an error of law what, in truth, is no more than a disagreement with the UT's assessment of the facts (per Lord Dyson in *MA (Somalia) v SSHD* [\[2010\] UKSC 49](#) at [45]).

(3) Third, where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account (per Lord Dyson in *MA (Somalia)* at [45]).

(4) Fourth, experienced judges in this specialised tribunal are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically, unless it is clear from their language that they have failed to do so (per Popplewell J in *AA (Nigeria) v SSHD* [\[2020\] EWCA Civ 1296](#) at [34]).

(5) Fifth, judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined and the appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it (per Lord Hope in *R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority* [\[2013\] UKSC 19](#) [\[2013\] 2 All ER 625](#)).

23. The grounds advanced on behalf of the respondent assert that the FtTJ failed to engage with the points argued by the respondent and that by undertaking a brief consideration of the evidence the FtTJ failed to give adequate reasons for his decision.
24. I have given careful consideration to the grounds of challenge and the submissions made on behalf of the respondent and have done so in the light of the decision of the FtTJ and the evidence. Whilst the respondent seeks to mount a criticism of the FtTJ for what is described as an “extremely brief consideration of the evidence” the FtTJ was plainly aware of the reasons for issuing the notice of cancellation of his refugee status as set out in the decision letter of 7 July 2020. In his decision the FtTJ set out a summary of the relevant issues that he had to decide at paragraphs [3 – 10] and at paragraph [9] identified the key issue relating to the appellant’s “claimed nationality” and that his focus was on this issue (also see paragraph[8]).
25. The evidence relevant to this issue related to the appellant having applied for a Visa at the US embassy in Baghdad on 4 March 2013 under a different name, date of birth and nationality using a passport validly issued on 16 March 2011 with an expiry date of 13 March 2019 (an Iraqi passport). The case advanced on behalf of the respondent was that the appellant used deception to gain asylum in the UK based on his claimed status as an undocumented Kuwaiti Bidoon and that to the contrary the evidence described above demonstrated that he was a national of Iraq.

26. Thus the central part of the respondent's case related to that evidence. The respondent had requested an explanation from the appellant relating to that evidence which he had provided via his legal representatives and which is recorded in the decision letter between paragraphs [21] and [24] and summarised by the FtTJ in his decision. In essence, the appellant's account was that an agent facilitated his escape from Kuwait and the agent was the one who had obtained the Iraqi passport for the appellant by bribing corrupt Iraqi officials. He therefore applied for a visa and was taken to the embassy where he was fingerprinted. The Visa was refused and he was told by the agent that it was refused because it was discovered that the passport was a forgery.
27. The decision letter also set out that the appellant denied that the passport was genuinely issued to him and that he was not entitled to it and that "using an Iraqi passport that he was not entitled to and obtained fraudulently does not make him an Iraqi national at all". The appellant's solicitors requested a copy of the Iraqi passport to be provided by the Secretary of State. I pause to observe at this stage that the Iraqi passport or copy of the same had not been provided to the appellant or to the tribunal by the respondent nor has there been any evidence from the Iraqi Embassy beyond that recited in the decision letter at paragraphs 30 and 38. The failure to provide the core evidence relied upon in the respondent's decision was a point raised by Mr Adebayo in his submissions both before the FtT and this tribunal. Consequently neither the appellant's legal representatives or the tribunal have been given the opportunity to consider the primary source documents.
28. In addressing the key issue of nationality the FtTJ considered the evidence "in the round" not only based on the respondent's evidence but the evidence submitted on the appellant's behalf which consisted of the appellant's explanation of events, the evidence that was provided at the time of his arrival in 2013 to support his application for refugee status as an undocumented Kuwaiti Bidoon, the evidence of family members who had been accepted as undocumented Kuwaiti Bidoon's by the respondent, evidence from the Kuwaiti Community Association and also what was known about undocumented Kuwaiti Bidoons from the country guidance decisions and the background evidence concerning the prevalence of forged documents including passports.
29. As to the appellant's explanation concerning the application of the Visa and the passport the FtTJ considered his account in the light of the evidence that I have summarised above and taken together and viewed "in the round". Firstly at [20] the FtTJ set his explanation against what was known in the background evidence of the apparent ease to obtain or manipulate "A" series passports in Iraq (the relevant passport being identified as an "A" series passport).
30. The Secretary of State's submissions make 2 points. Firstly whilst it was open to the judge to consider the background evidence as the prevalence of fraudulent documentation, it is wholly unclear as to what basis the judge has "no reason to doubt" the appellant and secondly, the respondent cites paragraph 5.3 of the

Land Info report (dated 2014) on the basis that the report highlights that it will be difficult to bribe employees in the issuance of passports, and thus the FtTJ did not properly consider the background evidence.

31. I accept the submission made by Mr Adebayo that the FtTJ did not err in his consideration of the background evidence. At paragraph [18] the FtTJ referred to the land Info report which he stated “notes the ease with which the A series of Iraq passports can be manipulated, a high percentage of Iraqi documents are found to be false or counterfeit and the Iraqi government is notorious for widespread corruption.” In my view that summary was consistent with the material in the Land Info report 2014 when the report is read as a whole. The report sets out at paragraph 5.1 that the manipulation and falsification of passports occur stating “Iraqi passports are relatively easy to manipulate. The Norwegian police have discovered many false Iraqi passports in the G series and the A series”. The report refers to being able to change the ID information on an already existing passport and also that genuine passports have contained false ID information. At paragraph 5.2 reference is made to the high prevalence of Iraqi documents found to be false or counterfeit which was a point relied upon by the FtTJ, and further refers to the passport issuing body in Baghdad only checking for authenticity of passports and not by reference to the registration details on which the breeder documents are based and that errors are not corrected and that there is a possibility that there may be incorrect ID information in the A series of passports. This is also referred to in the Refworld evidence in the appellant’s bundle at B 78 which concludes that this process “allows a percentage of genuine passports to contain false ID information”.
32. Whilst the respondent highlights paragraph 5.3 of the Land Info report which refers to “corruption” to support the view that it will be difficult to bribe employees and the issue of passports, that submission fails to take account of the earlier paragraphs of the report at paragraphs 5.1 and 5.2 which I have set out above and which the FtTJ plainly took account of. Furthermore, paragraph 5.3 does state that the existence of bribery of the employees at the passport office cannot be ruled out based on the occurrence of false ID information in genuine passports and the lack of checks against population registries and therefore undermines the submission made in the grounds. Consequently I accept the submission made on behalf of the appellant that there is no error of law in the FtTJ’s assessment of the background evidence as to the prevalence of fraudulent documentation and that he was entitled to place weight and reliance upon that evidence in his overall assessment.
33. Whilst Mr Kotas makes the point that this is a genuine passport, that does not preclude the passport having false details contained in it as set out in the background evidence.
34. As to the point raised that it was wholly unclear on what basis the FtTJ stated he had “no reason to doubt the appellant” that also fails to take into account the decision of the FtTJ when read as a whole. At [18] the FtTJ set out his précis of

the background evidence concerning the prevalence of the use of false documentation including passports in Iraq which he found to be consistent with background evidence in the Land Info report. At [20] he reached the finding that based on the evidence between 2011 – 2013 (the relevant period of time) that it was easy to obtain and manipulate “A” series passports to which a person was not entitled to. By using the words “no reason to doubt” the FtTJ at [20] was in reality setting out why he accepted the appellant’s explanation as provided in his evidence. Firstly, the judge placed weight on his consistent account and explanation both to the respondent but also during the hearing before the tribunal and secondly, that his account of how documents were obtained and the one he was not entitled to was supported by the background evidence summarised and cited at [18].

35. Whilst Mr Kotas relies upon the grounds and submits that the judge did not take into account the point raised by the respondent that the passport was issued in 2011 and the Visa was not applied for in 2013 and that the Visa was cancelled due to him having applied for asylum rather than the passport being a forgery, the explanation given by the appellant was that the documents were ones that had been procured and obtained by the agent. That being the case, those 2 points were answered by the judge at [20] when the judge accepted the appellant’s account given his consistency both in the earlier evidence and during cross examination at the hearing that he was unaware of the agent’s actions.
36. The FtTJ went on to consider the other evidence available and relevant to the issues that he had to decide which related to the evidence which supported the appellant’s claim of being an undocumented Kuwaiti Bidoon rather than an Iraqi citizen. At paragraph [21] the FtTJ took into account the evidence from the appellant’s brother. The FtTJ recorded that the DNA evidence he had seen demonstrated that the appellant was the full brother of AMA. It is common ground that he had been recognised as a refugee based on his status as an undocumented Kuwaiti Bidoon having entered the UK in 2018 and having been granted status on 5 March 2020. At paragraph 40 of the bundle there is a document giving his nationality as Kuwaiti.
37. In the interview undertaken with the appellant following his arrival in 2013 he referred to his brother at question 28 as having been arrested in Kuwait having been demonstrating on behalf of the Bidoons and that had not seen him since that date (see questions 20 and 28). The appellant’s evidence given in 2013 was that he had a brother who was protesting about his status as an undocumented Bidoon and that was consistent with the later grant of status for his brother.
38. Mr Kotas on behalf of the respondent submits the fact that his brother was recognised as an undocumented Kuwaiti Bidoon was not dispositive on the issue of nationality. I would agree. However, the FtTJ was reasonably entitled to take into account that at the hearing the respondent chose not to question either the appellant or his brother about life in Kuwait or in the alternative life

in Iraq. The FtTJ expressly stated that in his assessment of the evidence. The FtTJ was therefore entitled to place weight upon the fact that the appellant when interviewed by the respondent in 2013 was found by the respondent to know sufficient information about life in Kuwait and as an undocumented Bidoon to satisfy the authorities that he was an undocumented Kuwaiti Bidoon himself. This was set out in the interview at questions 3 to 14 and in the appellant's statement at paragraph 18 that he would not have known answers to these questions if he was an Iraqi national. The skeleton argument submitted before the FtTJ expressly relied upon this point at paragraph 4 and that the knowledge displayed in his interview was consistent with his claim to have been born and raised in Kuwait and the questions were identified at paragraph 4 (a) were consistent with objective evidence on Kuwait. The answers given to some questions were not in the public domain and could not have been learned by an Iraqi national and that only an individual who had lived in Kuwait would know those facts.

39. Against that background it was reasonably open to the FtTJ to place weight on the answers given in his interview and for the reason given by the judge that the appellant had no idea about what questions he would be asked and that the appellant had given the correct information. Thus the judge was entitled to place weight upon this evidence and particularly in the light of the respondent's failure to challenge the appellant and his brother's knowledge of life in Kuwait or as undocumented Bidoons.
40. The FtTJ also accepted the evidence of a 2nd witness who had given oral evidence before the tribunal, NE. His evidence was that he came from the same village in Kuwait as the appellant and had visited him at his home. The respondent does not seek to identify any credibility issues arising from his evidence or challenge that evidence and in the circumstances the judge was entitled to place reliance and weight upon it.
41. The last piece of evidence related to that provided by the Kuwaiti Community Association. They provided evidence dated 27 November 2018 set out in the appellant's bundle at B24-32. They describe themselves as a "non-profit humanitarian organisation that has existed since December 2001 to represent to meet the particular needs of the Kuwaiti Bidoon community in the United Kingdom" and that the "cultural and geographical knowledge of KCA helps to confirm the identity of asylum applicants and confirm valid claims to Kuwaiti Bidoon Status and to exclude cases, which are not genuine, and that they operate with an "extensive and detailed knowledge of the history of Kuwaiti Bidoons.." They make a distinction between those who have documents and those who do not and in the latter category 2 witnesses from the Kuwaiti Bidoon community are asked to provide witness statements and also a short interview is conducted with the person and it is on the basis of those responses and declaration of the witnesses that they would confirm someone's origins if they are satisfied that they are Bidoons from Kuwait. They state "we do not

issue a letter of support to clients that we do not believe a genuine Kuwaiti Bidoons”.

42. When undertaking their verification process, Mr Kotas properly highlights that the claimed process that was undertaken in Kuwait itself and which verified the appellant’s status that he was known as a Bidoon in Kuwait and had been living there, was not evidenced by the investigators report. However that does not mean that the FtTJ was not entitled to place some weight on the evidence provided by the Association. As Mr Adebayo submitted there were other parts of the report that the FtTJ was entitled to accept and place reliance and weight upon. In particular the Association undertook an interview with the appellant and asked him questions concerning his home area in Kuwait. They are set out in the interview they conducted at B27. The respondent does not dispute that the answers given were correct and as the FtTJ found the appellant provided correct answers to those questions without knowing what questions he was going to be asked. The conclusion reached by the Association is that the answers given were consistent with someone who had lived in Kuwait and identified a particular area of Kuwait. The question of weight to be attached to the report was a matter for the FtTJ and it has not been demonstrated by the respondent that the judge was not entitled to place some weight on that evidence when reaching his overall assessment.
43. A further point that was placed on the appellant’s side of the balance was that the appellant’s evidence that his Kuwaiti nationality derived through his father (which was set out at paragraph [12] of the FtTJ’s decision) was consistent with the country guidance decision at paragraph [18] of the FtTJ’s decision.
44. The FtTJ did not accept all the evidence provided by the appellant and at [23] he stated that he placed no weight upon the 8 witnesses who provide witness statements but had not signed them or attended at the hearing. The judge also accepted the respondent’s case that the appellant had submitted a passport to the US authorities that he was not entitled to and that the appellant’s credibility was damaged in that respect. However the judge went on to state “... But not to the extent that it outweighs the rest of the evidence that he is indeed a Kuwaiti Bidoon with the details of ZA, as I accept his evidence that he was guided by the agent .. “. This was a conclusion that was reasonably open to the FtTJ to reach having considered the salient parts of the evidence and giving appropriate weight to the evidence submitted by the parties.
45. Whilst the reasons were briefly stated and were succinct and to the point, the judge had the advantage of hearing the evidence of the appellant and his brother and for that evidence to be the subject (or not) of cross examination and having done so, was entitled to reach the conclusion that notwithstanding the appellant’s conduct, the other evidence when considered cumulatively and “in the round” was of sufficient weight to outweigh the respondent’s case that the appellant was an Iraqi national.

46. For those reasons, the decision reached by the FtTJ does not disclose the making of an error on a point of law and therefore the decision shall stand.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtTJ shall stand.

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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 his family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Upper Tribunal Judge Reeds*

Dated: 26 August 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.