IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003070

First-tier Tribunal No: RP/00008/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17th May 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M A S A A E
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms S McKenzie, Senior Home Office Presenting Officer
For the Respondent: Ms N Katambala, Solicitor from Ben Darlington Solicitors

Heard at Field House on 26 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent (also identified as "the claimant") is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal to allow the appeal of the respondent, hereinafter "the claimant", against a decision of the Secretary of State on 4 March 2021 to revoke his status as a refugee.

2. I affirm the anonymity order made by the First-tier Tribunal because the claimant says that he needs international protection.

3. Before me Ms McKenzie relied on the Secretary of State's grounds. They are quite considerable and I consider them in more detail below. The gist of the complaint, as recognised in the grant of permission to appeal, is that the judge generally did not explain his decision adequately and particularly did not deal adequately with evidence that the claimant had been granted refugee status because of representations that were now found to be false. Given the nature of the criticisms against the First-tier Tribunal Judge I begin by looking at the Secretary of State's reasons for revoking refugee status.

4. This shows that the claimant sought asylum in September 2012. The application was successful and he was granted asylum and in April 2018 he was given indefinite leave to remain and in April 2019 he applied for naturalisation. He said that he was an undocumented Bidoon from Kuwait and that he would risk persecution in the event of his return to Kuwait. The difficulty for the claimant is that he had been fingerprinted by officers of the immigration service of the United States of America in Cairo in November 2007. He had then applied for a visa to enter the United States of America and represented himself as an Egyptian national and supported the claim with an Egyptian passport.

5. The Secretary of State noted that this was drawn to the claimant's attention and he responded on 25 May 2020 insisting that he had not deceived or misled the Secretary of State. He appeared to accept that he had made an application in Egypt using an Egyptian passport but denied that he was an Egyptian national and said that the documents relied on to support that application were not genuine. He attributed his conduct to "sheer desperation".

6. The Secretary of State's letter then gave more details of the evidence that the claimant had used an Egyptian passport to support an application for leave to enter the U S A.

7. The letter then outlined correspondence from UNHCR which was mainly concerned with the plight of undocumented Bidoons in Kuwait.

8. The letter then asserted that:

> "Paragraph 339AB of the Immigration Rules applies where the Secretary of State is satisfied that the person's misrepresentation or omission of facts, including the use of false documents, were decisive for the grant of Refugee Status".

9. The refusal letter then noted that the claimant had not produced the Egyptian passport. The Secretary of State then, at paragraph 34 particularly, set out some of the requirements imposed by the United States of America on people seeking permission to enter that country. At paragraph 37 the Secretary of State said:

> "Given the stringent measures employed by the US Embassies, it is not considered that you would be able to use a false passport to obtain a visa."

10. That conclusion is perfectly clear but it must be remembered that the claimant did not obtain a visa. I set out in outline the evidence relied upon to reach the conclusion. At paragraph 34 of the letter the Secretary of State said:

> "In the Enhanced Border Security and Visa Entry Reform Act of 2002, the US Congress mandated the use of biometrics in US visas. This law requires that US Embassies and Consulates abroad must issue to international visitors, 'only machine-readable, tamper resistant visas and other travel and entry documents that use biometric identifiers. Additionally, the Homeland Security Council decided that the US standard for biometric screening is ten fingerprint scans collected at all US Embassies and Consulates for visa applicants seeking to come to the United States. The use of biometrics is important for US national security. Fingerprints of a visa holder are compared with similarly collected fingerprints at all US ports of entry. The use of fingerprints has many benefits. We reduce the use of stolen and counterfeit visas. We protect against entry by terrorists and others who pose a security risk. Collecting fingerprints for a visa and verifying fingerprints at a port of entry make travel to the United States safer for legitimate travellers. These procedures also improve safety for all Americans".

11. The Secretary of State's letter also referred to instructions or policy statements by the government of the United States saying that there were no "walk in" facilities at US Embassies.

12. I say immediately that whilst I understand that these are clear indications of the importance the United States of America attaches to issuing visas after biometric verification it does not seem to me why this information does much, if anything, to show that the document that the claimant now says was false was in fact a valid passport.

13. The letter went on to explain that the claimant did not explain why he was desperate to leave Kuwait in 2007. His problems in Kuwait's seem to be based on an event that took place four years later.

14. At paragraph 40 the Secretary of State said:

> "It is considered that the Egyptian passport, 578750, is genuine: the checks at the US Embassy are extremely stringent and it is not accepted that you presented a false document to the US Embassy".

15. The letter noted that on the claimant's own case his mother is Egyptian. He said that she had moved to Kuwait.

16. The Secretary of State concluded that the claimant had made an application in his true identity when he had applied for a US visa and in a false identity when he claimed asylum in the United Kingdom. At paragraph 43 the Secretary of State says somewhat unremarkably:

> "It is considered that if the Home Office knew that you are an Egyptian national, you would not have been granted refugee status as an undocumented Kuwaiti Bidoon".

17. The Secretary of State was satisfied that the appropriate provisos under the Rules applied and revoked the claimant's refugee status. The Secretary of State then considered whether the claimant should be given humanitarian protection but given that the claimant was thought to be Egyptian this was not appropriate.

18. According to the First-tier Tribunal Judge the claimant had been granted status because he was an undocumented Bidoon from Kuwait but the "basis for the

decision to revoke was reliant on two principal matters". The first was identified as the claimant, when interviewed on 18 September 2012, signing a declaration that he had understood what process was being carried out and answering questions to indicate that he had not applied for a visa to enter any other country. Additionally he said that he had not had his fingerprints taken in any other country. According to the judge the Secretary of Sate said that these answers were untruthful and were deliberate omissions or misstatements. I have not yet been able to find that anywhere in the Secretary of State's papers. The second basis identified by the judge is the one that I indicated above from the refusal letter, namely that the respondent was satisfied that he must have produced a genuine Egyptian passport else it would have been noticed by the United States authorities.

19. At paragraph 4 of his Decision and Reasons the judge noted the lack of any statement from the any responsible officer from the United States authorities. It is quite plain that the judge, like I am, was concerned that there was no direct evidence that the authorities would have picked up the fact that the claimant was supporting his application for a US visa with a passport to which he was not entitled or which was false or, even, that the US authorities were satisfied with the identity evidence when they refused the application, presumable for other reasons.

20. I do note however that the claimant's presence in Egypt in 2007 does not fit easily with his claim that he had attended a demonstration in Kuwait in 2011, which is what I understand the Secretary of State to have meant at paragraph 39 of the refusal letter where the Secretary of State said:

> "The US Embassy has a record that you applied for the visa in 2007, yet you claim the first demonstration was not until February 2011. You have not explained why you were so desperate to leave Kuwait in 2007, when the demonstration did not happen until 4 years later."

21. I assume that something was said in the asylum claim that is undermined by the Applicant's presence in Egypt in 2007 but the point is not explained and that makes it difficult to criticise the judge for not dealing with it. The claimant said that having failed to obtain a visa to enter the United State of America he was returned to Kuwait by his agent. That is consistent with all that the Secretary of State has revealed about the claimant's case.

22. The judge noted it was the claimant's case that he did apply for an "American visa" from Egypt in 2007 and that he travelled there with a false passport which he had obtained for a price between US$5,000 and US$7,000. It was also his case that he had returned it to the agent when it was not successful in leading to a visa to enter the United States.

23. The judge noted that it was the claimant's case that he worked as a market stall holder selling vegetables and it was hard to see how he could raise sufficient income from that job to pay perhaps as much as US$7,000 for a false passport. At paragraph 7 of his Decision and Reasons the judge says:

> "The position therefore remains that partly from the [claimant's] own evidence it is accepted that contrary to what was said in the interview he had sought a visa from another country, he had used documentation to do so, and a visa had been refused. Of itself the incorrect answers given when they were did not appear to have any material impact on the claim to be in need of international protection as an undocumented Bidoon from Kuwait in respect of his status in Egypt as an Egyptian national or his true identity or Nationality. It is reasonable to conclude the claim in the UK was properly

> considered before asylum was granted in 2012. It is also reasonable to infer that the [Secretary of State] also should have taken into account whether the omissions went to the core of the claim for protection. Likewise it is not explained why there was any causality between the misinformation and the grant of asylum other than to assert that had they known he would not have been granted protection".

24. The judge noted that no copy of the Egyptian passport was available for consideration and certainly no evidence directly confirming that it was a genuine document or not. Neither was there any evidence from the authorities in the United States to indicate the likelihood of a false or wrongly issued passport had been detected during the application for a visa. These are matters that presumably could have been addressed simply and are not.

25. It is very easy to assume that the Secretary of State would have been very interested if during the course of his application for asylum the claimant had said that he had used a false document to support an application for a visa to enter the United States but just how much this mattered or would have mattered we do not know because the Secretary of State has not chosen to tell us.

26. At paragraph 9 the judge said:

> "For these reasons I do not find that the [Secretary of State] has shown that the representations about the earlier visa application was material to the credibility to the basis of the [claimant's] claimed refugee status or made a material difference to the grant of refugee status which I infer must have been taken by a responsible officer after appropriate consideration of the merits of his claim. The misrepresentations or false representations made in the asylum interview could affect the assessment of the credibility of the [claimant] and be material to the substance of the decision. There was no evidence to show that proper assessment by the [claimant] of his Bidoon ethnicity was not made or his evidence of being undocumented."

27. The judge concluded by saying that the Secretary of State "has not discharged the burden of proof on cogent evidence, that the omissions or representations were material to the obtaining of Refugee Status".

28. Before I consider the Secretary of State's grounds I think it important to emphasise that it is clear to me from this Decision and Reasons that the judge did not accept that the claimant had been shown to have Egyptian nationality. The judge does not appear to say that in terms but he does say at paragraph 8 that:

> "The position remains therefore that there was as yet no evidence to suggest that the [claimant] has dual nationality aside from the bare assertion by the [Secretary of State] of the US Embassy information."

29. I emphasise this because it may be that the Secretary of State does not read the Decision and Reason as I do but apart from what I have said above the whole tone of the First-tier Tribunal's Decision and Reasons is that it was not established that the claimant is Egyptian.

30. I consider too the evidence before the First-tier Tribunal.

31. The claimant's wife made a statement which is of very limited assistance on any issue concerning the claimant's nationality but she does assert that the claimant's sister(?) still lives in Kuwait. I accept, as is clearly the case, that this does little to prove the claimant's nationality but it supports rather than undermines the case.

32. The claimant's evidence was clear. He said that he was a stateless Bidoon who was born in Kuwait. He said that when he was interviewed by the Secretary of State he was asked several questions about Kuwait and Bidoons which he answered correctly:

> "Because I am from Kuwait. I certainly would not know the answers to these questions if I was an Egyptian national. I am therefore surprised that the Secretary of State is now alleging that I am an Egyptian citizen".

33. He then explained how he felt he needed to leave Kuwait for his own safety and security and confirmed that the application he made to enter the United States of America was supported by a counterfeit passport. He made the comment that:

> "It should be noted that counterfeit passports are easy to obtain many Arab countries due to the corruption in the country."

34. The claimant said that the Secretary of State had not produced any evidence that the passport on which he had relied was a genuine passport issued to him.

35. It is against this background that I consider the Secretary of State's grounds of appeal. Ground 1 complains that:

> "It is unclear why the SSHD's actions in correctly considering the [claimant's] asylum claim in 2012 had any bearing on the assessment to be made by the judge of whether fraud had been employed by the [claimant's] non-disclosure of key information. The issue before the judge was not whether the asylum claim was properly considered but rather, whether the misrepresentations made by the [claimant] caused played a material role in the grant of refugee status. This mistake of fact and attribution of weight to an immaterial and erroneous statement of the SSHD's case, undermines the entirety of the judge's assessment and has failed to address material matters submitted".

36. The ground continues to say that the judge had not given adequate reasons for his conclusions. This is wrong. The judge identified two possible reasons for depriving the claimant of refugee status. One was that he was in fact an Egyptian national. The judge clearly did not believe that and gave adequate reasons for it. The only pointer in favour of that was the passport but the confidence expressed by the Secretary of State in the ability of the US authorities to detect false documents was wholly unsubstantiated and it was clearly within the judge's range of permissible findings to discount.

37. The second was that by claiming untruthfully that he had never been fingerprinted and had not applied to enter another country he had misrepresented his case in a material way. But the Secretary of State had not explained what he would have done differently if he had been told those facts. As the claimant made plain in his statement he was quizzed about his links with Kuwait and gave satisfactory answers. The issue before the Secretary of State then was whether the claimant was in fact at risk of persecution in Kuwait, the country of which he claimed to be a national, not whether he in fact had told the truth in his application. The point is the Secretary of State has not engaged with explaining why the apparent dishonesty measured with all the other evidence would have led to or might have led to a different conclusion. The test is expressed to be a high one in the refusal letter (see paragraph 8 above) and the words identifying the need to the falsehoods to be "decisive for the grant of refugee status" are taken directly from the rules. The judge was entitled to find that the hurdle had not been crossed.

38. Ground 2 contends that the judge was wrong to say that no explanation had been given to say why the misrepresentations were material. Maybe but the rest was whether the misrepresentations were decisive and set against a background of a person claiming to be an undocumented Bidoon from Kuwait and substantiating the claim in interview the finding that the Secretary of State had not proved his case was open to the judge.

39. The grounds draw attention to the decision of this Tribunal in **Hussein and Another (Status of passports: foreign law) [2020] UKUT 00250**. This is a decision of Mr C M G Ockelton, Vice President. The grounds include a correct quotation from the decision showing that passports are important documents that are to be respected. As Mr Ockelton said:

> "It is simply not open to an individual to opt out of that system by denouncing his own passport; and it is not open to any State to ignore the contents of a passport simply on the basis of a claim by its holder that the passport does not mean what it says."

40. As far as I am aware this decision was not drawn to the attention of the First-tier Tribunal Judge. However, it is important to read the decision. The first line of the headnote is:

> "A person who holds a genuine passport, apparently issued to him, and not falsified or altered, has to be regarded as a national of the State that issued the passport".

41. This is why the claimant's representative in the First-tier Tribunal and the judge in the First-tier Tribunal were looking carefully for evidence about the checks carried out by the US authorities. It is the claimant's case, quite unequivocally expressed, that he did not use a genuine passport to support his application in Egypt but a false one. The judge was given nothing to help him evaluate the claim or implied claim that the document produced to the US authorities *must* have been a genuine document issued to the claimant else it would have been noticed. That might be the case but it was not explained and the judge was entitled to reject the assertion when measured against evidence from the claimant that it was indeed a false passport.

42. As is apparent from the above, this is not a case where the Secretary of State's case has impressed me.

43. I have reminded myself of Ms McKenzie's submissions. She insisted that the judge had not provided adequate reasons for concluding that the false representations were not material but I do not agree. What was required was for the Secretary of State to open up the earlier file, look at what was said and the reasons given, and explain the importance of the false information. The judge was perfectly aware of the false information but also aware that the claimant had had to show he was an undocumented Bidoon from Kuwait and had done that. It was open to the judge.

44. Similarly the Secretary of State should have produced evidence to support the contention that the document used by the claimant to support his application for permission to enter the United State was likely to have been genuine. There is much evidence about the care taken to issues visa in a correct form but, as I have noted above, in this case the application was not successful and we do not know the reason.

45. Cases of this kind are concerning because the system of international protection should not be undermined by people being dishonest. This claimant has been dishonest but he has not been shown to have been materially dishonest.

46. I have considered the points made but the judge was entitled to reach the decision he did for the reasons he did which contrary to the contention of the grounds are entirely clear, on the limited evidence before him. The Secretary of State has raised a cloud of suspicion but has not followed it through and when the judge considered the case as a whole he was not persuaded that the deception committed by the claimant was operative and still less that the claimant was a national of Egypt.

47. In all circumstances I dismiss the appeal. The First-tier Tribunal's decision shall stand.

Notice of Decision

48. The Secretary of State's appeal is dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 May 2024