



IAC-FH-CK-V1

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

Appeal Number: RP/00046/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12<sup>th</sup> April 2016**

**Decision & Reasons Promulgated  
On 18<sup>th</sup> April 2016**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR JASSER OUDA AL- JASSER  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kandola, Home Office Presenting Officer

For the Respondent: Mr A Adebayo, Solicitor, A2 Solicitors

**DECISION AND REASONS**

**Anonymity**

*The First-tier Tribunal did not make any anonymity order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No anonymity order was sought on the claimant's behalf and I do not consider it necessary to make an anonymity order in the Upper Tribunal.*

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal which allowed the claimant's appeal against the Secretary of State's decision to revoke his protection status pursuant to Section 82(1)(c) of the Nationality, Immigration and Asylum Act 2002.
2. The facts so far as material appear to be as follows. The claimant received refugee protection on the basis that he is a stateless Kuwaiti Bidoon. He arrived in the United Kingdom on 14<sup>th</sup> March 2013 and asylum was granted to him after an appeal on 24<sup>th</sup> June 2013.
3. However, after the grant of asylum, by use of the biodata information provided by the claimant, it came to light that before he came to the United Kingdom, the claimant had made two United States visa applications in Iraq using an Iraqi passport in the name of Gaser Alhadidi, on 28<sup>th</sup> May 2012 and 16<sup>th</sup> January 2013.

### **First-tier Tribunal decision**

4. The First-tier Tribunal heard oral evidence and expert evidence as to the existence of false Iraqi passports in general, although not this one in particular. The claimant's oral evidence was that he put himself in the hands of an agent, and that he did as the agent told him, including, on 2 occasions, his giving fingerprints at the United States Embassy in Baghdad on the basis of the Alhadidi identity, which was false, and a false Iraqi passport, obtained by the agent, in the same name.
5. Other evidence for the claimant, taken into account by the First-tier Tribunal, included the presence in the United Kingdom of a son of the claimant, and of his uncle (who is the claimant's father-in-law) both of whom have been accepted as refugees on the basis that they are Kuwaiti Bidoons, and a letter from the Kuwaiti Community Association supporting the claimant's contention that he is a Kuwaiti Bidoon.
6. The Secretary of State relied on two copy visa applications produced to the First-tier Tribunal under cover of a witness statement by Matthew Johnson. Mr Johnson is the Designated Team Manager for the exchange of data as part of the High Value Data Sharing Protocol between the Five Country Conference countries (Australia, Canada, New Zealand, the United Kingdom and the United States) whereby anonymised sets of fingerprints are submitted to a receiving country if there is evidence or reasonable belief that the individual concerned may be known to the authorities of that country. Mr Johnson's evidence was that the fingerprints of Mr Alhadidi in the United States Embassy records from Baghdad are the same as those of Mr Al-Jasser provided by the Secretary of State. It goes no further than that.
7. The First-tier Tribunal found the claimant to be a credible witness and that he had indeed followed the agent's instructions when making applications at the United States Embassy in Baghdad on both occasions. The Tribunal found the Iraqi passport to have been a forgery. The First-tier Tribunal concluded that the Secretary of State had not discharged the burden upon

her of showing that the claimant was an Iraqi citizen who had deceived the United Kingdom authorities in applying for and receiving refugee status as a Kuwaiti Bidoon. The claimant's appeal against revocation of protection was allowed.

### **Permission to appeal**

8. The Secretary of State appealed. The basis on which permission was granted was that it was arguable that the First-tier Tribunal erred in law in that:
  - (a) In determining that the claimant had not employed deception in obtaining his refugee status, the First-tier Tribunal applied an incorrect standard of proof, because it gave insufficient weight, or failed to take into account, that the claimant's fingerprints matched two visa applications using an Iraqi passport that at no time was deemed to be a forgery by the US Homeland Security Department. As this was the only identity document provided by the claimant the Secretary of State argued that she was entitled to assume, on the balance of probabilities, that his true identity and nationality was Iraqi. The claimant had not provided evidence (apart from his own oral evidence and the country evidence of the existence of forged Iraqi passports) to indicate that the passport used in the US applications was a forgery; and/or
  - (b) In failing to give adequate reasons for finding that the claimant was under the agent's control when he went to Iraq on two separate occasions eight months apart (before coming to the United Kingdom) to make two separate visa applications with the same Iraqi passport, and in accepting that the claimant's Iraqi passport must be a forgery if obtained by an agent.
9. A *Devaseelan* challenge to the judge's reasoning was rejected in the grant of permission and has not been relied upon before me.

### **Rule 24 Reply**

10. The claimant replied to the grant of permission on 11 April 2016. He argued that the onus was on the Secretary of State to prove that he was an Iraqi national, and that the burden was not discharged. He relied on *BA and others* (Bidoon - statelessness - risk of persecution) Kuwait CG [2004] UKIAT 000256 and *NM* (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 356 (IAC), to the effect that undocumented Bidoon remain at risk of persecution and serious harm in Kuwait.
11. The claimant observed that his grant of refugee status was the result of an appeal to the First-tier Tribunal and his evidence had been tested now, not once but twice, by the First-tier Tribunal and found credible. The Secretary of State should not be permitted to revoke his protection status on the basis of inconclusive and weak evidence from the United States.

12. At paragraph 8 of the Reply, the claimant identified inconsistencies in the family details provided in the two Iraqi applications, which he contended were supportive of his account that the applications were completed by an agent, not by him, and that he gave his fingerprints in Baghdad on the agent's instructions. The United States DHS had not taken any point on the significant differences between the 2 applications in his father's date of birth, his mother's name and date of birth, and his spouse's name and date of birth, suggesting that the United States DHS had not given anxious scrutiny to those applications.
13. The claimant's son had reached the United Kingdom in 2009, several years before any of the Iraqi or United Kingdom applications said to have been made by this claimant. On entry, the claimant's son gave as his father's name the name in which the claimant now applies for asylum in the United Kingdom. The claimant's uncle (his father-in-law) had always used the same surname as that which the claimant now used, and again had been in the United Kingdom for a number of years. The use by the claimant's son and uncle of the same family name was indicative of it being genuinely his name.
14. The claimant made submissions about the method by which his fingerprints and biodata came to be given at the American Embassy in Iraq and about the ease with which Iraqi passports of the 'A' series were said to be forged. The use of a forged Iraqi passport did not make the claimant a genuine Iraqi citizen. The claimant's failure to mention that he had been to Iraq did not change the fact of his being a Kuwaiti Bidoon and it was more likely than not that such was the case, as the First-tier Tribunal had found.

### **Submissions**

15. For the Secretary of State, Mr Kandola recognised that the Secretary of State's first two grounds of appeal were in effect the same ground, that the First-tier Tribunal applied an incorrect standard of proof to the evidence when determining that the claimant had not employed deception in obtaining his refugee status on the basis that "no basis has been offered for the Secretary of State's preferring one scenario over the other", that is to say that the deception which took place was in the United Kingdom and not in Iraq. The Secretary of State argued that generic evidence demonstrating passport fraud in Iraq did not in any way demonstrate that this particular passport was a forgery.
16. The other ground of appeal advanced is a challenge to the First-tier Tribunal's reasons for believing that the claimant did as the agent told him in relation to the various applications that he made, and was under the agent's control, and for accepting that the Iraqi passport was a forgery arranged by an agent.
17. Mr Kandola acknowledged that there were difficulties about the verification which the United States authorities undertook, in particular the checking of family members, and that neither the United States

Department of Homeland Security (United States DHS) nor the British authorities had asked the Iraqi authorities whether such a passport exists and whether it was issued in Iraq in circumstances which would indicate that it was a *genuine* Iraqi passport for this claimant.

18. Mr Kandola relied on the grounds of appeal.
19. I did not consider it necessary to call upon Mr Adebayo, who appears for the claimant. Mr Adebayo relied on his Rule 24 Reply.

### **Discussion**

20. It is common ground that the Secretary of State bears the burden of proving, to the ordinary civil standard of balance of probabilities, that the claimant has used deception in obtaining refugee status in the United Kingdom, entitling her to revoke his protection status. The First-tier Tribunal Judge found that on the facts, that burden was not discharged.
21. The Secretary of State asks the Upper Tribunal to interfere with the First-tier Tribunal's findings of fact and credibility, specifically that the Iraqi passport was a forgery, that the claimant is a Kuwaiti Bidoon, and that the Iraqi application was made by him on the advice of an agent, whose instructions he followed.
22. If the Upper Tribunal is to interfere with findings of material fact, the Secretary of State must show that those findings meet the perversity or irrationality standard set out in the judgment of Lord Justice Brooke in *R (Iran) & Ors v Secretary of State for the Home Department* [2005] EWCA Civ 982 at paragraph 90.2 and 90.3:

“90. ...2. A finding [of fact] might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence.

3. A decision should not be set aside for inadequacy of reasons unless the adjudicator failed to identify and record the matters that were critical to his decision on material issues, in such a way that the IAT was unable to understand why he reached that decision.”

I am not satisfied that the First-tier Tribunal's findings are perverse, *Wednesbury* unreasonable, or that they are wholly unsupported by the evidence before the First-tier Tribunal. I am satisfied that the contrary is the case and that the evidence before the First-tier Tribunal was evidence upon which those findings could properly be made.

23. Nor do I find that I cannot understand how the decision was reached: on the contrary, it is fully and carefully reasoned. The First-tier Tribunal made its decision having heard the oral evidence of the claimant, his son and father-in-law, and also had regard to the Norwegian LandInfo and other country evidence, the United States DHS documents, and a letter from the Kuwaiti Community Association.

24. The Secretary of State was entitled, on the evidence of the visa applications, to conclude that the claimant had used deception somewhere, either in Iraq by saying to the United States consular authorities that he was an Iraqi citizen and producing an Iraqi passport, or in the United Kingdom by saying to the Secretary of State that he was a Kuwaiti Bidoon and satisfying an Immigration Judge that he was stateless. However, her challenge to the finding that the deception was in Iraq, not the United Kingdom, relies on inferences drawn from the two United States DHS printouts which provide some limited details concerning two United States visa applications made in Iraq by Gaser Alhadidi, who produced an Iraqi passport.
25. The First-tier Tribunal decision contains findings of fact and credibility made after hearing oral evidence from the claimant, his uncle (and father-in-law), and his son, and considered the United States DHS evidence and country evidence. The First-tier Tribunal Judge found the claimant and his witnesses to be witnesses of truth.
26. The United States DHS evidence on which the Secretary of State concluded does not assist, beyond identifying that the two sets of United States DHS applications were made by the same person as the present application. In particular, there is no indication on the face of the copy visa applications, or in the accompanying witness statement of Mr Johnson, that the United States DHS performed any check of its own on the genuineness of the Iraqi passport, or took any view on the point, and the family details point suggests that the United States DHS did not even check its own records of the first application on the second occasion, although the same name and passport was used on both occasions.
27. On the balance of probabilities, the First-tier Tribunal Judge did not err in concluding that the United States DHS evidence is not evidence that the claimant used a *genuine* Iraqi passport to apply to go to the United States from Iraq and therefore that he was an Iraqi citizen. The First-tier Tribunal Judge was entitled, on the basis of all the evidence before her, to conclude that it was the Iraqi identity and the United States visa applications which were deceptive, and that the claimant had not sought to deceive the United Kingdom immigration authorities.
28. It remains open to the Secretary of State to make further enquiries. I record that at the hearing, Mr Adebayo said he had with him a letter from the Iraqi Embassy which may be relevant to such enquiries.
29. As far as this decision is concerned, it is a carefully and fully reasoned decision by an experienced First-tier Tribunal Judge, and the conclusions which she reached were unarguably open to her on the evidence adduced and relied upon by the Secretary of State, who bears the burden of proving deception. There is in the First-tier Tribunal decision no want of reasoning at the *R (Iran)* level which would entitle the Upper Tribunal to interfere with the finding of fact by the First-tier Tribunal that the claimant is a stateless Kuwaiti Bidoon who has not deceived the British authorities.

30. I dismiss the Secretary of State's appeal and the First-tier Tribunal decision stands.

**Conclusions**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The decision of the First-tier Tribunal stands.

Signed **Judith A J C Gleeson**  
2016

Date: 14 April

Upper Tribunal Judge Gleeson