



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

Appeal Numbers: RP/00113/2019
& HU/20059/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House *via Teams*
On 28 July 2021**

**Decision & Reasons Promulgated
On 01 September 2021**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT_

Appellant

and

AFA

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr. T Lindsay, Senior Presenting Officer

For the Respondent: Mr. D Adebayo, Solicitor, A2 Solicitors

DECISION AND REASONS

Introduction

1. The appellant in this matter is referred to as the 'Secretary of State' in the body of this decision, the respondent as the 'claimant'.
2. This is an appeal by the Secretary of State against the decision of Judge of the First-tier Tribunal Hanbury ('the Judge') sent to the parties on 20 November 2020. The Judge allowed the claimant's appeal against a decision of the respondent to cancel his refugee status.
3. The respondent appeals with permission of Upper Tribunal Judge Martin by means of a decision dated 15 December 2020.

Remote hearing

4. The hearing before me was a Teams hearing held during the Covid-19 pandemic. I was present in a hearing room at Field House. The hearing room and the building were open to the public. The hearing and its start time were listed in the cause list. I was addressed by the representatives in the same way as if we were together in the hearing room. I am satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate.

Anonymity

5. No anonymity order was issued by the Judge.
6. I observe that this appeal is concerned with the cancellation of refugee status. In the circumstances, I am satisfied that it is presently in the interests of justice that the claimant is not publicly recognised as someone who has secured international protection and is challenging a subsequent decision to cancel refugee status. In reaching such conclusion and being mindful of the right to information protected by article 10 ECHR I observe paragraph 13 of Upper Tribunal Immigration and Asylum Chamber Guidance Note 2013 No 1: Anonymity Orders.
7. I therefore grant the claimant anonymity and my order is detailed at the conclusion of this decision.

Background

8. The claimant asserts that he is an undocumented Bidoon who previously resided in Kuwait. He sought international protection in the United Kingdom on 24 July 2012 asserting that he possessed a well-founded fear of persecution if he were to return to Kuwait because there was a

real risk that he would be arrested, detained and mistreated consequent to his involvement in a demonstration.

9. The Secretary of State accepted the claim advanced and recognised the claimant as a refugee on 22 August 2012.

Incident at Baghdad airport

10. The claimant was encountered at Baghdad airport on 19 July 2017 in possession of an Iraqi passport in the identity of AFKA. AFKA's date of birth as detailed in the passport was the same as the date previously provided by the claimant to the Secretary of State during the course of his application for international protection. The claimant was also in possession of a biometric residence permit ('BRP') issued by the Secretary of State in the name he had previously provided, namely AFA.

Cancellation of refugee status

11. The Secretary of State wrote to the claimant on 12 September 2019 to inform him as to her intention to cancel his refugee status. The claimant responded by letter dated 23 September 2019 in which he confirmed that he is an undocumented Bidoon and that the Iraqi passport found in his possession was a forgery provided by an agent. He had found himself stranded in Iraq having visited Karbala for religious observance and subsequently lost the travel document provided to him by the Secretary of State. Efforts to secure a travel document through the consular office of the British Embassy in Iraq were unsuccessful because he was not a British citizen. He therefore believed that he had no choice but to resort to using an agent to secure his return to the United Kingdom. He secured an Iraqi passport through an agent and sought to exit Baghdad airport on 19 July 2017. However, immigration control observed that the personal details incorporated onto his BRP did not match those in the passport he presented.
12. The claimant further explained that a second agent provided him with another Iraqi passport, and he was able to travel to the United Kingdom via Lebanon, arriving in this country on 3 August 2017. He provided the passport to an immigration officer who took a photocopy of it and in turn he was issued with a IS.81 form.
13. The Secretary of State cancelled the claimant's refugee status by letter dated 12 November 2019. The claimant appealed against this decision (RP/00113/2019).

Human rights

14. The claimant lodged an application for indefinite leave to remain under the Immigration Rules in August 2017. Following the decision to cancel refugee status the Secretary of State issued a decision dated 21 November 2019 refusing the claimant's application for leave to remain. The Secretary of State decided that there were no exceptional circumstances justifying leave to remain on article 8 grounds outside of the Rules. The claimant appealed against this decision (HU/20059/2019).

Decision of the First-tier Tribunal

15. At the hearing held at Taylor House on 26 October 2020 the Judge heard oral evidence from the claimant and his three witnesses. The claimant did not pursue his article 8 appeal: [43] of the decision.
16. The Judge concluded that the Secretary of State had failed to establish to the required standard that the claimant has obtained refugee status as a result of a misrepresentation as to his nationality and personal history.

Grounds of appeal

17. The Secretary of State's grounds of appeal can properly be identified as follows:
- i. The First-tier Tribunal erred by failing to have regard to a relevant decision of this Tribunal: *Hussein and Another (Status of passports: foreign law)* [2020] UKUT 00250 (IAC), [2020] Imm. A.R. 1442.
 - ii. The First-tier Tribunal failed to adequately engage with the respondent's case, namely that the Iraqi passport was genuinely issued to the claimant.
 - iii. The First-tier Tribunal failed to give any, or any adequate, reasons as to how the Iraqi passport was altered and perversely found that the passport was simultaneously genuine whilst belonging to someone else.
18. The claimant filed a rule 24 response, dated 26 April 2021. The Secretary of State relied upon a skeleton argument authored by Mr. Lindsay, dated 18 May 2021.

Decision

19. Mr. Adebayo conceded, on instructions, that the Judge's decision was unsustainable for material error of law. For the reasons detailed below, he was correct to do so.
20. I have sympathy for the Judge who was required to consider an appeal with unusual facts giving rise to complex considerations. However, it is trite that both parties can expect a fair consideration of their case. In this matter, as is now accepted by the claimant, the Judge failed to adequately engage with the Secretary of State's case.
21. At its core, the Secretary of State's case is that: (i) the Iraqi passport in the name of AFKA was lawfully issued; (ii) it was lawfully issued to AFKA on 15 March 2017, four months before the claimant states he lost his travel document in Iraq circa July 2017; (iii) on balance it is unlikely that the claimant, asserting that there was no-one to help him in Iraq, could secure the services of an agent(s) to provide him with a false passport(s); (v) AFA and AFKA are the same person; and (v) the claimant is a national of Iraq and not an undocumented Bidoon.
22. At page E1 of the respondent's bundle is a photograph of AFKA's passport exhibiting his personal details page alongside the claimant's BRP card. A secondary image of AFKA is inlaid into the personal details page as a security feature. The Secretary of State asserts that the photograph clearly establishes that both documents were issued to the claimant. It is not asserted that damage has been caused to the laminated personal details page which would be suggestive of tampering.
23. As previously observed, the claimant asserts that: (i) he secured the passport through an agent; (ii) he has been consistent as to his assertion; (iii) he has evidence of efforts to contact the British authorities in Iraq to secure a means of his returning to this country; and (iv) his relatives have been accepted to be undocumented Bidoon from Kuwait, and several are now British citizens.
24. In considering the matter the Judge detailed at [51] of his decision:

'51. I note that here it is the [claimant] who is saying that [AFKA's] passport is not genuine rather than the [Secretary of State] who says it is. The Secretary of State has asserted that it is a genuine document that I have no reason to reject that assertion. Nobody has argued or presented evidence that it is a false document. It is the case, given the burden and standard of proof identified above, therefore, that the [Secretary of State] has shown that the appellant for whatever reason chose to use another person's passport at Baghdad airport in 2017.'

25. Unfortunately, having concluded that the Iraqi document is a genuine document, the Judge immediately proceeded to a finding that ‘for whatever reason’ the appellant chose to use ‘another person’s passport’. No reasons were given for this finding of fact, and there was no engagement with the respondent’s case that the passport was lawfully issued to AFA in the identity of AFKA. Such failure alone is a material error of law. Further, the material error of law flowed into other elements of the Judge’s decision:

‘54. The acceptance that the [claimant] as indeed a member of the ... family was decisive in the granted (sic) refugee status. Even if documents produced were false, false or misleading, actually the fact is that the appellant is reasonably likely to be an undocumented Bidoon. It is hard to see, therefore, how the use of another person’s passport should affect the outcome of the appeal.’

26. I note that no consideration was given by the Judge to the existence of the security features addressed above, nor as to whether the lawfully issued passport was or was not tampered with. Rather, the Judge proceeded to consider the fact that several of the claimant’s family have been accepted by the Secretary of State to have been undocumented Bidoon from Kuwait as determinative:

‘53. ... Unless it can be shown that the other family members were wrongly identified as part of the [claimant’s] family, or that they had lied about his true identity and there was other evidence to show he was in fact [AFKA], I am bound to conclude that they were all, the [claimant] included, undocumented Bidoons.’

27. The Judge materially erred in concluding that he was bound to make such finding of fact on the basis identified as it excluded consideration of the Secretary of State’s case in respect of the passport. It may be that the claimant and his family are truthful as to their history and origins. It may also be that are not, with the Secretary of State only recently being made aware as to the true state of affairs consequent to the claimant’s actions in Iraq. In simple terms, as observed in discussion with the representatives at the hearing, the Judge placed the cart before the horse when failing to consider the evidence in the round.

28. Having concluded that the decision must be set aside for material error of law, I make one further observation. Section 82(1) of the Nationality, Immigration and Asylum Act 2002 (‘the 2002 Act’) provides for a right of appeal to the First-tier Tribunal in three identified circumstances, including revocation of refugee status, but not in respect of cancellation of refugee status. An appeal against the decision to cancel refugee status is brought on protection claim and/or human rights grounds. The Judge erred in allowing the appeal solely on the ground that “the

respondent has failed to satisfy the Tribunal that the [the claimant] had obtained refugee status as a result of a misrepresentation of facts." No such ground of appeal exists under the statutory regime: section 84 of the 2002 Act.

Remittal

29. Mr. Adebayo requested that the matter be remitted to the First-tier Tribunal. Mr. Lindsay submitted that the matter should remain in this Tribunal and be dismissed because the appeal could not succeed in light of *Hussein and Another (Status of passports: foreign law)* [2020] UKUT 00250 (IAC), [2020] Imm. A.R. 1442, and in particular [12]-[13].
30. I confirmed at the hearing that the matter should properly be remitted to the First-tier Tribunal. Having found that the claimant succeeded on his appeal on what I believe the Judge intended to be protection grounds, no consideration was given by the Judge to the claimant's human rights appeal. Consequently, the effect of the error has been to deprive the claimant of the opportunity for the entirety of his case to be considered by the First-tier Tribunal.
31. As for the Secretary of State's reliance upon *Hussein*, there is at yet no finding of fact as to whether the Iraqi passport was issued to AFA in the identity of AFKA, or to someone else, and such finding of fact is properly to be made before consideration can be given to the application, or otherwise, of the decision in *Hussein*.
32. I take this opportunity to observe that this matter may well be suitable for a panel hearing, but such observation is not binding upon the First-tier Tribunal which can properly undertake its own case management consideration.

Notice of Decision

33. The decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the Judge's decision promulgated on 20 November 2020 pursuant to section 12(2)(a) of the Tribunal Courts and Enforcement Act 2007, save for confirmation that the claimant does not pursue his human rights appeal on article 8 grounds.
34. This matter is remitted to the First-tier Tribunal for a fresh hearing before any judge other than Judge of the First-tier Tribunal Hanbury.
35. No findings of fact are preserved.
36. An anonymity order is made.

**Order Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

37. I order:

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the claimant (AFA). This direction applies to, amongst others, the claimant and the Secretary of State. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan
Dated: 4 August 2021