



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

Appeal Number: AA/10942/2014

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 30 July 2015**

**Decision Promulgated
On 14 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**SABER RAHEL AL ENEZI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Saddique of Adam Solicitors

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Heynes promulgated on 12 May 2015 which allowed the Appellant's appeal against a decision dated 25 September 2014 notifying him that he no longer met the requirements of the Rules under which he was granted refugee status and the reasons for cancelling the refugee status had been granted to him on 16 May 2013 were set out in a letter dated 24 September 2014.

Background

3. The Appellant claimed that he was born on 9 June 1959 and he entered the United Kingdom on 20 April 2013 claiming asylum in the name Saber Rahel Al Enezi born in Al Jahra Kuwait. The Appellant claimed to be a Kuwaiti Bidoon and as was granted asylum and leave to remain in the United Kingdom until 15 May 2018 on the basis of his claim to be an un documented Bidoon from Kuwait.
4. On 25 September 2014 the Secretary of State cancelled the Appellant's status on the basis of evidence from the US Homeland Security that the Appellant was an Iraqi citizen.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Heynes ("the Judge") allowed the appeal against the Respondent's decision to revoke his asylum status.
6. The Judge found that the burden of proving that there was a basis to revoke the status rested with the Respondent.
7. The evidential basis for that decision had been a statement from Christine Cafferkey the designated Protocol manager for the exchange of data as part of the High Value Data Sharing Protocol. The witness stated that the fingerprints provided by the Appellant to the Respondent matched a set of fingerprints captured on 5 March 2013 in Baghdad by an applicant for a US visa and that the applicant was an Iraqi citizen.
8. The Judge examined that evidence in detail and also heard evidence from the Appellant.

9. He did not find that the Appellant to be a credible witness however whatever suspicions arose from this he found were not relevant given that the Respondent bore the burden of proving the grounds advanced for revoking the Appellant's status.
10. He did not accept that the Respondent had discharged the burden because there was no evidence before him of the fingerprints in issue, nothing from an expert to confirm the match or who it was who carried out the examination and indeed no paper record of any kind.
11. The Judge concluded by stating that he allowed the 'asylum appeal'
12. Grounds of appeal were lodged arguing that the Judge failed to make a finding as to whether the Appellant was a refugee and that the Judge was wrong in fact to state that the Appellant could not challenge the fingerprint evidence as there was a procedure in place in published on line guidance.
13. On 28 May 2015 Judge of the First-tier Tribunal Ford gave permission to appeal stating that it *'is arguable that the failure to consider whether the Appellant was or was not an undocumented Kuwaiti Bidoon renders the decision that he is entitled to asylum a material error of law.'*
14. At the hearing I heard submissions from Mr Harrison on behalf of the Respondent that he relied on the grounds of appeal. There was no clear finding of fact on the central issue in this case which was whether the Appellant was an undocumented Bidoon from Kuwait.
15. On behalf of the Appellant Mr Saddique submitted that while conceding that the decision was brief it was an unusual appeal which was not against a refusal of asylum but rather against the revocation of refugee status under paragraph 339A of the Rules. Therefore the Judge was not obliged to make a finding as to whether the Appellant was an undocumented Bidoon.

Finding on Material Error

16. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
17. I am satisfied that the Respondent appealed this decision and was indeed granted permission to appeal on the erroneous basis that this was an appeal against a refusal of asylum.

18. I am satisfied that the Judge made a 'typing error' in concluding his decision by stating that he 'allowed the asylum appeal' as he made very clear in paragraph 1 and 13 of his decision that he understood that the appeal was against the revocation of the Appellant's refugee status on the basis that he had falsely represented himself to be an undocumented Bidoon.

19. I am satisfied therefore that the Judge was not required to make a finding as to whether the Appellant was an undocumented Bidoon as he asserts in paragraph 13 but rather the decision was whether the Respondent had met the evidential burden of establishing that he had made false representations about his identity.

20. I am satisfied that the findings made by the Judge that the Respondent had not met this burden based on the witness statement of Christine Cafferty and the complete absence of any direct evidence as to the fingerprints, who analysed them and the results of the fingerprint analysis were open to him.

CONCLUSION

21. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

22. The appeal is dismissed.

Signed

Date 8.8.2015

Deputy Upper Tribunal Judge Birrell