



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

Appeal Number: AA/05412/2014

THE IMMIGRATION ACTS

Heard at Field House

On 25 November 2014

**Determination
Promulgated**

On 12 December 2014

Before

**UPPER TRIBUNAL JUDGE JUSTICE LAING
DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HANAN SAHIL AL-FADLI

Respondent

Representation:

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

For the Respondent: Mr M Shalliday, Annan Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State from a decision of the First-tier Tribunal. Permission to appeal was granted by First-tier Tribunal Judge Osborne on 14 October 2014. Granting permission to appeal Judge Osborne recounted that the respondent was seeking permission to appeal a determination of the First-tier Tribunal promulgated on 4 September 2014 in which the appellant's appeal had been allowed against a decision of the Secretary of State to refuse the appellant's asylum claim as an undocumented Bidoon.

2. As First-tier Tribunal Judge Osborne recounted, the respondent's submission was that the judge had made an arguable error of law by failing to consider the appellant's case by reference to the Secretary of State's view that she was removable to Iraq even if it was found that she was not removable to Kuwait. Judge Osborne recounted that at paragraph 60 of the determination the judge had stated "I find the appellant has established she is an undocumented stateless Bidoon from Kuwait. Given this finding in the context of the country guidance cases I do not consider it necessary to assess the rest of the appellant's claims."
3. First-tier Tribunal Judge Osborne went on to say that it was arguable that the judge should have given full consideration to the evidence that the appellant was in fact a citizen of Iraq and that his failure to do so was an arguable error of law.
4. The Secretary of State's grounds of appeal were essential that the judge had rejected the evidence of a document examiner who had stated that the Iraqi passport bore the appellant's photograph and was genuine, and had preferred the evidence of witnesses he had heard to the effect that the appellant was an undocumented Bidoon from Kuwait. The judge should have considered, the Secretary of State contended, whether the Iraqi passport was genuine and whether the appellant would suffer persecution on return to Iraq.
5. The Secretary of State also submitted that as the judge had considered that he would have been assisted in determining the appeal by seeking the passport he should have asked the Home Office Presenting Officer if it was available, and it was submitted that on the whole the judge had erred in law.
6. Dealing if I may with the latter point, the appellant's grounds of appeal to the First-tier Tribunal had asked for copies of both passports on which the Secretary of State had relied to be disclosed for the purposes of the appeal and Mr Shalliday the Home Office Presenting Officer this morning accepted that neither the original passport nor copies had been provided to the First-tier Tribunal for the hearing.
7. We can set out the facts very shortly by reference to the first few paragraphs of the determination of the First-tier Tribunal. The background was that the appellant claimed to be a stateless Bidoon from Kuwait born on 2 July 1989 and she was appealing against the decision of the Secretary of State to refuse her asylum and to remove her from the United Kingdom. She had arrived in the United Kingdom at Stansted Airport on 8 May 2013 and claimed asylum immediately. She had a screening interview with the respondent on the same day and completed a full and detailed asylum interview with the Home Office case owner on 30 June 2014. The respondent had refused that application on 16 July 2014 and the appellant exercised her right of appeal under Section 82(2) of the Nationality, Immigration and Asylum Act 2002.

8. The First-tier Tribunal summarised the appellant's claim as follows. She claimed to be a stateless Bidoon born and living in the Sulabiya district of Kuwait. She asserted that she lived with her parents, three sisters and two brothers but had never been to school. She said she could not read or write in any language and had never received any identity documents or official papers in Kuwait. She claimed that she and her family had been accommodated and supported by a Kuwaiti named Falah Al-Mutairy all their lives but that her father and other family members sold vegetables and fruit in the market whenever they could do so in order to earn money. The assertion was that the family was a poor one and depended to a large extent on the generosity of Mr Al Mutairy.
9. As a result of this generosity Mr Al-Mutairy's request to the family that he marry the appellant was looked on favourably by the appellant's parents. The appellant herself was informed of this request in early 2013 but did not want to marry him. She was told she had no choice. She then spoke to her uncle, Mr Ayad Al-Fadly who tried to persuade her father to avoid the marriage but was unsuccessful.
10. He then advised her to present she was willing to undertake the marriage while he made arrangements through friends for her to leave Kuwait. With the assistance of the uncle the appellant then left Kuwait to travel to an unknown country and then arrived in the United Kingdom using a false passport.
11. Her case was that she could not return to Kuwait because of her situation both as an undocumented Bidoon and also because she was at risk of honour killing or so-called honour killing at the hands of her family having fled the marriage.
12. The Secretary of State Reasons for Refusal Letter was then summarised by an Immigration Judge and what he said at paragraphs 13 to 19 and following was as follows:
13. Although the appellant had shown knowledge of Kuwait and was able to provide a coherent account of her life in Kuwait as a Bidoon which was generally consistent with the background information about the situation there, she nevertheless rejected the appellant's claim to be a Bidoon from Kuwait.
14. The Secretary of State noted that when the appellant arrived in the United Kingdom at Stansted Airport an Iraqi passport bearing her name, date of birth and photograph was found in the smuggler's luggage. After examining the passport it was found to be genuine and issued by the Iraqi authorities on 9 April 2013. The Secretary of State rejected the appellant's claim that she knew nothing about the passport and took the view she was an Iraqi national.
15. The Secretary of State also regarded some aspects of the appellant's account of her life in Kuwait as inconsistent since, given such persons

have no right to work in the country, it was not clear how the appellant was able to pay the agent to take her out of the country.

16. Also the appellant had been unable to give very much detail about the individual she was supposed to marry and this led the respondent to doubt her credibility.
17. The respondent also did not consider the willingness of the appellant to resist forced marriage to be consistent with her claim to be an uneducated woman who rarely left her parents' home.
18. Since the Secretary of State considered that the appellant had concealed her genuine nationality, she also regarded the appellant's credibility as damaged by reference to Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. The respondent then went on to assess the risk of harm to the appellant were she to return to Iraq rather than to Kuwait and she concluded that the appellant could return safely to Kuwait.
19. The First-tier Tribunal Judge then summarised the evidence which he had heard. He heard evidence from the appellant and also from two live witnesses who were called in her support. He set out his findings and reasons at paragraphs 41 and following of the determination. He noted that the appellant's evidence about Kuwait was detailed and coherent. She was cross-examined and that cross-examination gave him no reasons to be suspicious of her account. Two further witnesses had been called and given evidence and had been cross-examined and they too had supported her account. Nothing that they had said had been undermined by their cross-examination.
20. At paragraph 50 of the determination he concluded that "I consider it is more likely than not that all of these witness have told me the truth"
21. As against that the First-tier Tribunal Judge took into account the fact that an appellant had been found in possession of an Iraqi passport. He went on to say at paragraph 52: "There are some difficulties with this evidence I must say".
22. First, he referred to the fact that no copy of the passport had been made available to the Tribunal and thus he had been unable to examine it. Furthermore, the document examiner whose witness statement was in the bundle and who had examined the passport did not attend the hearing, did not give evidence and his assertions could not be tested in cross-examination.
23. Most significantly, however the judge said it was not entirely clear to him what the respondent was asserting since there was some confusion between the statement and the refusal letter. In the refusal letter the respondent said that an Iraqi passport bearing the name, date of birth and picture of the appellant had been found. At the top of the refusal letter the

respondent had stated that the appellant was believed to be Hana Sohail Edan Al Balaawi, born in Iraq on 1 January 1989 although we interpose to say that the name at the top of the letter is Al Balaawi. But she claims to be Hana Sahil Al-Fadli born in Kuwait on 2 July 1989 and she also has an alias as a result of using a British passport to enter of Muna Hama Dahal Eidan, born on 1 February 1997.

24. According to the witness statement the Immigration Officer examined a passport in the name of Sohail Edan Al Balaawi and found that it to be genuine. Of courses, this is not the name the appellant stated is hers and given I had no passport to examine I cannot see what photograph is contained. Furthermore, the date of birth set out in the refusal letter next to the respondent's preferred Iraqi identity is not the date of birth which the appellant stated was hers.
25. The judge went on to say "It is therefore not correct to say that the date of birth in the Iraqi passport was the same as the date of birth the appellant presented, unless an assumption is merely made that the Iraqi identity is the true identity."
26. The judge went on to say that it was unfortunate he had not been able to examine the passport himself or hear from the document examiner "But looking at the matter in the round", he said, "I do not consider it is safe to conclude that this appellant has completely invented her identity."

"The detail and coherence of her evidence, not only with the other witnesses but, as accepted by the respondent, with most of the background information, as well as the very detailed and coherent account as between the three witnesses, leads me to prefer the evidence of the appellant on this point."
27. He went on to say that there could be no certainty in such matters and that he was alive to the possibility that the appellant was inventing her identity. "Nevertheless", he said, "It seems to me the preponderance of the evidence set out above establishes on balance she is more likely to be who she said she is."
28. He concluded for all those reasons that he found that the appellant had established she was an undocumented stateless Bidoon from Kuwait. "Given this finding in the context of the country guidance cases, I do not consider it necessary to assess the rest of the appellant's claims".
29. We have no hesitation in concluding that that view of the evidence was one which was open to the First-tier Tribunal Judge who gave adequate reasons for his conclusions that he preferred the evidence of the live witnesses to the Secretary of State's reliance on the passport and he gave reasons why he was not satisfied that the passport was an answer to the appellant's claims.
30. For all those reasons we conclude that he was entitled to decide that the asylum claim succeeded. We also conclude that it is an irresistible

inference from his conclusion that he accepted the evidence of the appellant and her witnesses that she could not be an Iraqi as the Secretary of State argued.

31. For those reasons it seems to us there is no error of law in the determination of the First-tier Tribunal. It was for the First-tier Tribunal to weigh up the evidence and it reached a conclusion which it was entitled to reach on the evidence which it heard and saw. There are no possible grounds for us to interfere with that and we dismiss the appeal.

Signed

Date **11 December 2014**

Upper Tribunal Judge Mrs Justice Laing