

IN THE UPPER TRIBUNAL
EXTEMPORE JUDGMENT GIVEN FOLLOWING HEARING

JR/3674/2019

Field House,
Breams Buildings
London
EC4A 1WR

12 November 2019

THE QUEEN
(ON THE APPLICATION OF AHMED FAHD AL-SHAMMARI)

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

BEFORE

HER HONOUR JUDGE STACEY

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Mr Claire of Counsel, instructed by A2 Solicitors appeared on behalf of the Applicant.

Mr Anderson of Counsel, instructed by the Government Legal Department appeared on behalf of the Respondent.

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ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT
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HH JUDGE STACEY: This is the substantive hearing of the applicant's application for judicial review of the Secretary of State for the Home Department's delay in determining the applicant's application for indefinite leave to remain which was submitted on 7 August 2017. Permission on the papers was granted by Upper Tribunal Judge Gleeson on 8 August 2019. At the same time she also made various case management orders including for the applicant to reply to the respondent's detailed grounds by 3 October 2019 and for the applicant to lodge skeleton arguments and a bundle for this hearing by 22 October 2019, none of which was done by the due date.

Preliminary issue

2. On 4 November 2019 an application for an extension of time was served together with the reply to the respondent's detailed grounds of defence and the bundle which included, unusually, a witness statement from the applicant himself for which no special permission had been sought. The skeleton argument was not served until yesterday, 11 November 2019. It caused additional work and inconvenience for the Government Legal Department in chasing the applicant's solicitors
3. I find that the delay was not significant or substantial and there was still sufficient time for all preparation to be undertaken in readiness for today's hearing. In spite of a lack of detailed explanation and a failure by the applicant's solicitors to apply prior to the expiry of the time limit, in light of the lack of prejudice to the respondent, I do, exceptionally, extend time for compliance and allow the documents and bundle to be before the tribunal.
4. The Secretary of State's concerns about the limited relevance of the applicant's witness statement and lack of

permission to rely on it were well-made but is an argument which cuts both ways and I do not exclude it from the bundle and will give it appropriate weight. No request was made to cross-examine the applicant. I bear in mind the issues that this court has to determine, which of course are not to assess the merits or otherwise of the applicant's Indefinite Leave to Remain (ILR) application.

5. However Mr Claire and those who instruct him are reminded of the importance of timely compliance with Orders of the Tribunal for the future and should know that the issue was finely balanced and the decision could easily have gone the other way.

Background facts

6. The background facts and history of the litigation are as follows. On 22 August 2012 the applicant was recognised as a stateless person as a Kuwaiti Bidoon and was granted asylum for a period of five years. He applied for ILR under the settlement protection route on 7 August 2017. His application has not yet been decided. The aim is for applications to be decided within six to twelve months. The applicant was written to on 31 January, 14 May and 18 October 2018 and on 25 January 2019 and in May 2019, explaining that because the application raised exceptionally complex issues which required further time to consider and reach a decision, the intended target would not be met. In May of this year he was told it was very much hoped that a decision would be made within four to six months, which would take us until the end of November.
7. The evidence of the respondent was given in a statement from by Chris Jones, Higher Executive Officer, Senior Caseworker of the Status Review Unit (SRU), Refugee Revocation Team. The exceptionally complex issues referred to in the various

letters are that on 19 July 2017 the applicant was encountered at Baghdad Airport attempting to travel to the UK using an Iraqi passport with the same first name as the one he is known by to the respondent, Ahmed Fahad, but a different surname, Khalaf Al-Zubaidi.

8. As a result of that, his case was referred to the SRU for investigation. The issue for investigation is whether he is a Kuwaiti Bidoon or an Iraqi citizen, the respondent's concern being that if he is not the former it calls into question the original grant of asylum and refugee status. If he is in fact an Iraqi citizen and national, then different considerations would apply and there could be issues of dishonesty perhaps. It is not my role to decide, but merely to note the cause of the concern that made the case exceptionally complex in the Secretary of State's view.
9. The respondent accepts that no investigation by the SRU commenced until May 2019 due to pressure of work and caseload levels. As Chris Jones explains, the volume and complexity of referrals into the SRU along with the limited resources available in 2017 resulted in a delay to the unit being able to commence investigations in Mr Al-Shammari's case but since then, the SRU has expanded and has increased its capacity for pursuing investigations and the delays are now being reduced and cases are being progressed. and I note in passing that the defendant has produced some evidence in the form of Chris Jones's statement about the manner in which the Secretary of State has decided to deal with the claim and the steps being taken and the strain on resources together with the need to investigate. Chris Jones's statement about the manner in which the Secretary of State has decided to deal with the claim and the steps being taken and the strain on resources together with the need to investigate it was not challenged by the applicant.

10. The applicant was written to regularly, as already mentioned, explaining the further delays even though no precise details were being given of any steps being taken, presumably because none were being taken. He was well aware of the respondent's concern over the passport he was found with in Baghdad, which he has maintained was a false passport, so he may therefore have required less information than might otherwise be the case.
11. No special features causing prejudice by the delay have been identified by the applicant and I note his witness statement merely states that he urges the Upper Tribunal to give the respondent a timeframe to decide his case "as I cannot wait indefinitely for the respondent to decide my case". No special features or factors were identified by the Secretary of State either. His Leave To Remain has been extended under Section 3C Immigration Act 1971 and his benefits and entitlements have therefore continued as before whilst his application is pending.
12. In April of 2019 his solicitors wrote to the Secretary of State and a pre-action Protocol letter was served on 20 May. The application for judicial review was lodged on 9 July and there is no suggestion that it was delayed or lodged outside the applicable time limit.
13. On 12 September the applicant was served with a notice of intention to cancel or revoke his refugee status. In accordance with the procedure observations were received from the UNHCR on 11 November and a final decision is now anticipated by mid-December within the next four weeks, Mr Anderson explained today.

The law

14. Turning to the law, there are a number of uncontroversial principles. Firstly, there is an implicit obligation to decide applications within a reasonable time. What amounts to a reasonable time is a flexible concept allowing the scope to consider what is reasonable in all the relevant circumstances of any particular case. The approach is that to be taken in Article 6(1) cases on the right to a fair trial to a determination of civil and other rights within a reasonable period. That is a different exercise entirely to a Convention 5(4) case where an applicant may be in detention. That is not the case here.

Discussion and conclusions

15. The relevant factors in this case that I take note of in assessing what is a reasonable period and whether there has been any irrationality and unlawfulness in the Secretary of State's decision are as follows.

16. I accept that Chris Jones did not provide a very detailed statement and other cases might require more detail but it is sufficient from that for me to find that this was a complex case requiring investigation of the facts and liaison with officials in Baghdad, an important and difficult investigation of the facts which we know are disputed. This was not a run of the mill ILR application after an uneventful previous 5 years of LTR. In fact, the applicant's witness statement talks of his having two, not one, Iraqi passports, and of his travelling to Lebanon and then on to the UK, so the position may be even more complex than that suggested by the respondent. Where issues of potential fraud and credibility are involved rigour is required in an investigation and these things do unfortunately take time, not helped by the fact that much of

the information would be in Iraq, and the current difficulties in that country.

17. Secondly, the applicant has had the continued benefit of LTR and refugee status during the investigation and continued to receive the same support as before. There has therefore been no deterioration or downgrading of his rights and entitlements pending the decision. Whilst I accept that there are some additional benefits conferred by ILR, those are not significant in the scheme of things in general terms and it is important to note that the applicant has not identified any particular aspect of disadvantage. I infer that if he had considered there to have been a particular disadvantage he would have said so in his witness statement.
18. Thirdly, there are no other particulars of detriment identified by the applicant that the Home Office has failed to alleviate.
19. Fourthly, the applicant has been updated and to some extent informed and those letters are important because they have managed his expectations to some extent to be prepared for a delay and explained that his case is still being considered and he has not been entirely forgotten. It was better than receiving no letters at all although I accept that they could perhaps have been more detailed, but he knew that the difficulty was his attempt to travel to the UK from Baghdad on an Iraqi passport.
20. Fifthly, the period of delay in question is some two and a half years. That is considerably less than the ten years, in, for example, the case of **SSHD v Said** [2018] EWCA Civ 627 or the five year period in the case of **R(FH) and Ors v SSHD** [2007] EWHC 1571, and in any event, the facts can be distinguished from those two cases where the applicants were in more vulnerable and challenging positions.

21. Two and a half years is, I accept, a long time to be kept waiting and I accept that the uncertainty will have gnawed away at this young man and engendered a sense of drift and perhaps even paralysis by his not knowing the outcome of his application. But the respondent has provided a reasonable explanation and in all the circumstances, the delay has not been unreasonable. It is not irrational and it follows that nor is it unlawful.
22. Considering the guidance in **FH** and the conclusion at paragraph 30 of that case that claims based on delay are unlikely, save in very exceptional circumstances, to succeed and it is only if the delay is so excessive as to be regarded as manifestly unreasonable and to fall outside any proper application of the policy or if the claimant is suffering some particular detriment which the Home Office has failed to alleviate that a claim might be entertained by the court, it is apparent and it follows that the case before me of Mr Al-Shammari does not fall into their category.
23. Accordingly, the claim is dismissed.
24. On a summary assessment I order the applicant pay the respondent's costs of £4,500 (inclusive of Counsel's fees and all other disbursements) payable by 11 December 2019 or within 14 days the date of promulgation of this judgment, whichever is the later.



UTIJR6

JR/3674/2019

**Upper Tribunal
Immigration and Asylum Chamber**

Judicial Review Decision Notice

The Queen on the application of Ahmed Fadh Al-Shammari

Applicant

v

Secretary of State for the Home Department

Respondent

Before HHJ Stacey sitting as an Upper Tribunal Judge

Application for judicial review: substantive decision

Having considered all documents lodged and having heard the parties' respective representatives, Mr R Claire of Counsel, instructed by A2 Solicitors, on behalf of the Applicant and Mr J Anderson of Counsel, instructed by the Government Legal Department, on behalf of the Respondent, at a hearing at Field House, London on 12 November 2019.

- (1) **Decision:** the application for judicial review is refused for the reasons set out in the transcript of judgment.
- (2) **Order:** I order, therefore, that the judicial review application be dismissed.
- (3) **Permission to Appeal:** There having been no application, permission to appeal to the Court of Appeal is refused.
- (4) **Costs:** The Applicant is ordered to pay the sum the Respondents costs which are summarily assessed at £4,500 inclusive of all disbursements and other costs, to be paid by 11 December 2019 or within 14 days the date this order is sent to the parties, whichever is the later.

Signed: _____

HHJ Stacey sitting as an Upper Tribunal Judge

Dated: **13 November 2019**

Applicant's solicitors:
Respondent's solicitors:
Home Office Ref:
Decision(s) sent to above parties on:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).