



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2022-004851

First-tier Tribunal Nos: RP/50061/2021  
IA/16277/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Promulgated**  
**On 12 March 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

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

Appellant

**and**

**MR BADER ADWAN RAHIM HUSSEINY**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer  
For the Respondent: Mr A Adebayo, Solicitor, A2 Solicitors

**Heard at Field House on 21 February 2023**

**DECISION AND REASONS**

1. Although the appellant in this case is the Secretary of State I refer to the parties as they were before the First-tier Tribunal where the Secretary of State was the respondent and Mr Hussein was the appellant.

**Background**

2. The appellant in this case stated he is an undocumented Bidoon born on 19 April 1978. The appellant entered the UK on 11 July 2014 and claimed asylum on 14 July 2014. The appellant was granted asylum on 19 November 2014 on the basis of his claimed status as an undocumented Bidoon. The appellant's brother

and cousin were granted asylum on the same basis in 2016 and 2019 respectively. The respondent revoked the appellant's refugee status for the reasons set out in a letter dated 11 August 2021, the respondent having discovered that on 8 July 2013 the appellant had made a previously undisclosed application for a US visa, at which he presented an Iraqi passport in the name of Badir Adman Raheem born on 19 February 1984. No mention of this had been made in the appellant's asylum application or in his application on 20 July 2015 for a travel document.

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

3. The appellant appealed to the First-tier Tribunal against the Secretary of State's decision to revoke his refugee status. The First-tier Tribunal Judge noted at paragraph [12] of the decision and reasons that it was agreed between the parties that the burden of proving that the appellant was an Iraqi national was on the respondent, on the balance of probabilities. The judge considered the evidence before him and reached findings that the respondent had failed to discharge the burden that the appellant was other than an undocumented Bidoon, on which basis the appellant had been granted asylum and allowed the appellant's appeal. The First-tier Tribunal Judge formally dismissed the appellant's human rights appeal as no evidence or submissions had been adduced in relation to a human rights appeal on human rights grounds.

### **Permission to appeal**

4. The Secretary of State appealed to the Upper Tribunal on the following grounds:

#### **Ground 1: Material Misdirection of Law/ Inadequate Reasons**

The Secretary of State submitted that the First-tier Tribunal Judge had failed to give adequate reasons for finding that the Iraqi passport was indeed false. Whilst the respondent recognised that false passports were available in Iraq the Secretary of State submitted that this evidence does not go as far as to undermine the integrity of all Iraqi passports, particularly in the circumstances where checks have been made by the US and the UK into the validity of the appellant's passport. It was submitted that the First-tier Tribunal Judge had failed to have any regard to the guidance in: **Hussein and Another (Status of passports: foreign law) [2020] UKUT 00250 (IAC)**. The case provided including as follows:

- "11. Passports have international recognition as assertions and evidence of nationality. On their face they constitute an address by the authorities of one State to the authorities of another at diplomatic level. The authority in whose name the passport is issued makes demands on the basis that the individual named in the passport is a national of and is entitled to be regarded as a national of the issuing state. Other States recognise that by treating the holder as a national of that State, and, in most circumstances, endorsing the passport to indicate that they have done so, particularly when a national border is crossed. Passports are the lubrication that allows international travel: without a reliable passport system each individual would have to prove identity, nationality and good standing by individualised evidence at every international border.

12. It is simply not open to an individual to opt out of that system by denouncing his own passport; and it is not open to any State to ignore the contents of a passport simply on the basis of a claim by its holder that the passport does not mean what it says. It is considerations such as these that lie behind the passage in the UNHCR Handbook, paragraph 93:

‘93. Nationality may be proved by the possession of a national passport. Possession of such a passport creates a prima facie presumption that the holder is a national of the country of issue, unless the passport itself states otherwise. A person holding a passport showing him to be a national of the issuing country, but who claims that he does not possess that country’s nationality, must substantiate his claim, for example, by showing that the passport is a so-called ‘passport of convenience’ (an apparently regular national passport that is sometimes issued by a national authority to non-nationals). However, a mere assertion by the holder that the passport was issued to him as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality. In certain cases, it might be possible to obtain information from the authority that issued the passport. If such information cannot be obtained, or cannot be obtained within reasonable time, the examiner will have to decide on the credibility of the applicant’s assertion in weighing all other elements of his story’”.

5. The Secretary of State submitted that the appellant had provided no direct evidence as to the validity of his Iraqi passport.

Ground 2: Failure to take into Account Material Matters/Failure to Give Reasons

6. The Secretary of State submitted that the First-tier Tribunal failed to have any regard to the US Baghdad Embassy letter in the respondent’s bundle at Annex C when finding the appellant’s passport was false with no reasons given as to how the appellant’s Iraqi passport would have escaped the checks carried out by the US authorities.

Ground 3: Failure to take into Account Material Matters/ Inadequate Reasons/Procedural Unfairness

7. The Secretary of State noted that at paragraphs [26] and [27] the First-tier Tribunal Judge declined to attach weight to the redacted verification email from the Secretary of State, the Presenting Officer having stated that the redaction was for unparticularised data protection reasons, and the First-tier Tribunal Judge declining to admit the unredacted document which the Presenting Officer offered on the basis that it would not be shown to the appellant or his representative. The Secretary of State submitted that the First-tier Tribunal Judge failed to give any reasons as to why no weight should be attached to the redacted document, and secondly gave no reason as to why he declined the respondent’s application for the unredacted version to be shown to the Tribunal. The Secretary of State relied on Section 108 of the 2002 Act which empowers the Tribunal to consider such evidence in private as follows:

**“108 Forged document: proceedings in private**

- (1) This section applies where it is alleged –
  - (a) that a document relied on by a party to an appeal under section 82 ... is a forgery, and
  - (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.
- (2) The Tribunal –
  - (a) must investigate the allegation in private, and
  - (b) may proceed in private so far as necessary to prevent disclosure of the matter referred to in subsection (1)(b)”.

8. Thirdly, it was submitted that the First-tier Tribunal Judge further erred in not granting an adjournment to the Secretary of State to provide further evidence as to the genuineness of the passport, in circumstances where an application to consider the unredacted email in private was refused and where the First-tier Tribunal Judge intended to give no weight to the redacted version before the Tribunal.

9. The Secretary of State was granted permission on all grounds by the Upper Tribunal and the appeal came before me.

**Rule 24 Response**

10. In the respondent’s Rule 24 response, which although not lodged in compliance with Directions. I admitted with consent, set out that the evidence provided by the Secretary of State to justify refugee revocation was:

- (i) Witness statement of Ms Alison Harris dated 4 February 2021;
- (ii) US Embassy Iraqi letter dated 2 April 2021 written in general terms and not specifically on this case;
- (iii) A heavily redacted email which does not show who sent it, who responded to it and the position held by the person who responded. There is no indication in that email that it was from the Iraqi Embassy.

11. It was the position on behalf of the appellant (before the First-tier Tribunal) that the Secretary of State had accepted that false Iraqi passports are prevalent in Iraq and easy to obtain and it was further submitted that the letter from the US Embassy was written in general terms and did not confirm that any checks had been conducted on the Iraqi passport used by Mr Hussein with the Secretary of State only speculating that the US Embassy checked the passport. It was submitted that the checks undertaken by the Secretary of State were inadequate with the document heavily redacted and it was submitted that the Judge of the First-tier Tribunal was correct to find at [35] of the determination that the

Secretary of State failed to provide credible evidence that the passport was genuine.

12. It was submitted on behalf of the appellant that the principle in **Hussein and Another (Status of passports: foreign law) [2020] UKUT 00250 (IAC)** does not apply in this instance as the appellant in **Hussein** had used the passport multiple times to travel and it was on this basis that the Upper Tribunal found that an individual cannot simply choose to opt out by denouncing his own passport. The representative for the appellant submitted that this case could be distinguished as the appellant before the First-tier Tribunal only used the Iraqi passport to apply for his US visa which was refused. The case could be further distinguished as the Iraqi passport provided to the appellant was provided by an agent and the appellant stated it was not genuinely issued to him as stated in the case of **Hussein**.
13. In relation to ground 2, the Rule 24 response submitted that the judge at [29] stated he had considered all the evidence and it was not necessary for him to comment on each and every item of evidence placed before the Tribunal and that the judge was correct to conclude that the Secretary of State had not provided credible evidence that the passport was genuine. It was submitted that the judge was referencing all three pieces of evidence presented by the Secretary of State, including the US Embassy letter written in general terms and therefore there was no error of law by a failure to specifically mention that letter.
14. In relation to ground 3, the Rule 24 response referred to the judge's reasoning at [25] and [27] of his decision, where the judge provided reasons for not admitting the unredacted document. It was noted that the Secretary of State did not make a Section 108 application before the First-tier Tribunal and it was not for the Tribunal to take upon itself consideration of an application that had not been made to it. In any event it was submitted that Section 108 was not applicable to this matter as it was designed for situations where a party had presented a document held out to be genuine and where the Secretary of State sought to rely on evidence to demonstrate that it was a forgery, whereas in this case it was the Secretary of State that was contending the passport was genuine and the Section 108 procedure was not designed in those circumstances. It was further contended that the judge was entitled to make the findings he did at [35], [36] and [38] of the decision and reasons.
15. Both representatives made detailed oral submissions

## **Discussion**

### **Ground 1**

16. Ground 1 is not made out. Although it was argued that the judge failed to give adequate reasons for finding that the Iraqi passport was false, the judge was entitled to take into consideration the Secretary of State's acceptance that false Iraqi passports were prevalent in Iraq and easy to obtain.
17. The judge clearly indicated that he had taken into account all of the evidence which included the evidence from the US Embassy and was aware therefore of the checks that had been carried out by the US and the UK but in the circumstances reached the evidence-based decision he did.

18. The judge was entitled to take into account and give weight to the appellant's replies to the interview questions in his asylum interview, which the judge accepted disclosed a thorough and detailed knowledge of the appellant's life in Kuwait and the judge reached a clear finding at [32] that he was not satisfied that this could be as a result simply of rehearsal for an interview given that the questions were sufficiently wide ranging and detailed.
19. The judge also took into account that it was not challenged that the appellant was related as claimed to his brother and cousin, both of whom had been recognised as undocumented Bidoons, and the judge found that the appellant had the same ethnicity as his father and uncle as claimed. The judge was satisfied in all the circumstances that the appellant's account that he had made a false and unsuccessful attempt to deceive the US authorities in Baghdad was the case.
20. Although the judge may not have explicitly referenced each of the pieces of evidence before him neither was he required to do so. The judge, including in [29] noted that he had considered all the evidence and submissions in the round. It is trite law that judges do not have to rehearse each and every item of evidence before them and decisions need not be a counsel in perfection. Judges are required to identify and resolve key conflicts in the evidence and explain clearly the reasons to enable the losing party to know why they have lost. The judge took into consideration the respondent's evidence and submissions but preferred the evidence of the appellant, accepting that the appellant had made a false and ultimately unsuccessful attempt to deceive the US authorities.
21. The judge also took into account evidence from "Landinfo" and "Refworld" organisations produced on behalf of the appellant which provided evidence on forged Iraqi passports, including the particular 'G-series' passport which the appellant used and which the evidence indicate is amongst the type, many of which have been found to be false and took into account that the respondent had not challenged the evidence of the appellant's witnesses at the hearing.
22. Whilst as relied on by the Presenting Officer before me, this issue had been touched on in the respondent's review and it was submitted that such witnesses could not speak to citizenship, the First-tier Tribunal Judge was entitled to place weight on that evidence, which considered holistically supported the appellant's narrative.
23. In relation to **Hussein and Another (Status of passports: foreign law) [2020] UKUT 00250 (IAC)** this can be distinguished from the appellant's circumstances including that there was no evidence that this appellant had ever used the Iraqi passport to travel and has always maintained that it was not genuinely issued to him.
24. In any event, even if that is not the case it was the appellant's evidence before the First-tier Tribunal, that he had tried to contact the Iraqi Embassy in relation to the passport but had been unable to obtain any information precisely because he is not an Iraqi citizen. **Hussein and Another** confirms that it is not simply open to an individual to opt out of the system by denouncing their own passport, with reliance placed on paragraph 93 of the UNHCR Handbook. The UNHCR Handbook goes on to state that if such information cannot be obtained from the authority that issued the passport "the examiner will have to decide on the credibility of the applicant's assertion in weighing all other elements of his story". That is

what the First-tier Tribunal Judge did in this case, taking into account the evidence from the respondent and not being satisfied that the respondent had demonstrated that the appellant was an Iraqi citizen.

## Ground 2

25. Equally, ground 2, in relation to the First-tier Tribunal Judge's alleged failure to have any regard to the US Baghdad Embassy letter at Annex 3 of the respondent's bundle and giving no reasons as to why the appellant's Iraqi passport would have escaped the checks set out, as identified by the appellant's representative the information provided in the US Embassy letter is written in general terms and is not specific to this appellant.
26. The judge at [29] indicated that he had considered all of the evidence. There was nothing in the evidence before the First-tier Tribunal to suggest that the US Embassy was in a position to confirm that no one with a false passport was able to bypass their checks. In such circumstances, again in consideration of all the evidence including the evidence of the prevalence of false Iraqi passports, the evidence of the appellant's family and the appellant's evidence at interview that he was a Bidoon, the judge's findings were open to him.
27. Ground 2 is not made out.

## Ground 3

28. It was open to the judge to attach no weight to the email relied on by the Secretary of State. The email in question was dated 8 February 2021 and the subject in the email was "Re passport enquiry relating Mr Badr Adwan Raheem". The email then goes on to state that:

"Dear redacted

I can confirm that passport number G2834666 was correctly issued to Mr Raheem.

Kind Regards".

The judge at [25] noted that the names of both the sender and the addressee were redacted, although it was stated by the respondent before the First-tier Tribunal that this was stated to come from an Iraqi official. The judge went on at [27] to decline to admit an unredacted version of the email and the submissions before the Upper Tribunal indicated that instructions had been taken by the Presenting Officer before the First-tier Tribunal in relation to the respondent's approach.

29. It is clear from Section 108 of the 2002 Act that this applies in a case where the respondent is seeking to rely on information in relation to alleged false documents, whereas in this case the respondent was seeking to produce material in relation to an allegation adopting it was genuine. Although it was submitted by Ms Ahmed that the situation was analogous, she relied on no authority for this proposition.
30. In any event, even if Ms Ahmed were correct and the respondent was entitled to rely on the Section 108 procedure before the First-tier Tribunal, it was incumbent

on the respondent to make such an application relying specifically on Section 108 or something analogous to it, and allowing the Tribunal an opportunity to either accede to that application or not. Although Ms Ahmed submitted that such an application was implied, the judge cannot be criticised for not considering a procedure where no application had been made under that procedure and where the respondent is now, belatedly, relying on a situation being analogous to a Section 108 application (where in fact the opposite scenario applies). There was no material error in the judge's approach.

31. Ms Ahmed went on to rely on **Nwaigwe** [2014 UKUT 00418 in relation to the First-tier Tribunal Judge's refusal of an adjournment and alleged unfairness. The judge's decision must be considered in the context of the case in the round which included that the respondent started the case in 2021 to revoke the appellant's status, the appellant having had status since 2014. Mr Adebayo submitted that the Secretary of State had not attended the Case Management hearing and submitted that it was unreasonable in these circumstances for the Secretary of State to be seeking an adjournment essentially to improve its case.
32. Although the Secretary of State was not aware before the First-tier Tribunal hearing that the judge intended to place no weight on the redacted email, the Secretary of State was aware of the limited contents of the email at the date of decision, and therefore well before the First-tier Tribunal hearing, which essentially amounted to one line stating that the passport had been correctly issued to a Mr Raheem with no indication, for example, as to what steps were taken in relation to verification or otherwise. The UNHCR when consulted on the decision to revoke the appellant's status, and whose correspondence was before the First-tier Tribunal, urged caution in the respondent's approach. The judge made it very clear at [24] and [25] that the Secretary of State had not discharged the burden. It is difficult to see how the email, redacted or otherwise, could have made a material difference (to the First-tier Tribunal Judge's decision).
33. The Secretary of State did not challenge key evidence before the Tribunal from the appellant's wife and brother which supported the appellant's claim that he was an undocumented Bidoon. Whilst the respondent states that they may not be in a position to speak to the appellant's nationality, the witnesses were in a position to give evidence that he was an undocumented Bidoon and that evidence was not challenged and contradicts the Secretary of State's conclusion that the appellant is in fact an Iraqi national.
34. That is evidence which the judge was entitled to find that the respondent had in effect, not adequately engaged with in the evidence produced before the First-tier Tribunal. **Nwaigwe** is not authority for the proposition that every refused adjournment amounts to an error of law. It was open to the Judge to take into account, when considering the interests of fairness to both parties, as he did at paragraph [27] to conclude that the respondent had had sufficient time to prepare the case and that such preparation would have included a consideration of what weight might, or might not, be attached to a (in effect) one line redacted document. The respondent may not agree with that conclusion, but there was nothing unfair in that approach.
35. Ground 3 is not made out.



**DECISION**

36. The making of the previous decision did not involve the making of an error on a point of law. The appeal is dismissed. The decision of judge Dineen shall stand.

**M M Hutchinson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**2 March 2023**