



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000310

First-tier Tribunal No: PA/50090/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 20th of February 2024

Before

Mr C M G OCKELTON, VICE PRESIDENT & UT JUDGE MACLEMAN

Between

R R K
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr S Winter, instructed by Katani & Co, Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Edinburgh on 30 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. It is not in dispute that the appellant is a citizen of Rwanda. He sought asylum in 2014, contending that he would be at risk in Rwanda, and that although he held a passport from Eswatini, he is not a national of that country, and could not be returned there. The respondent refused his claim. He appealed unsuccessfully in 2015 – 2016 (case reference AA/07304/2015). He made further submissions along similar lines, which the respondent refused on 16 December 2021. FtT Judge Connal dismissed his appeal by a decision promulgated on 14 November 2022. On 17 January 2023, FtT Judge Rhys-Davies refused permission to appeal to the UT.
2. The appellant sought permission to appeal to the UT on grounds, in summary, as follows:
 1. Eswatini nationality
 - (i) finding that Dr Karekwaivanane is not an expert on nationality law, unreasonable or irrational;
 - (ii) other findings vitiated by that error; failure to recognise that expert evidence shifted burden to respondent;
 - (iii) doubt left by saying at 32(ii)(a) no external examples given by the expert, when the FtT had noted such examples cited in the report;
 - (iv) at 32(ii)(b)(1) adverse credibility findings used as a *a priori* reason to reduce weight given to expert reports;
 - (v) doubt left why appellant found not to face charges for irregularly obtaining Eswatini passport;
 - (vi) doubt left by FtT’s comments at 32(ii)(b)(3) on claim not to have Eswatini citizenship;
 - (vii) doubt left on why experts not found to corroborate each other.
 2. Risk on return to Eswatini
 - (i) at 48(v)-(vi), doubt left on why document from Rwandan National Police not found reliable; non- authentication did not signify unreliability; nothing identified arising from the document which renders it unreliable;
 - (ii) at 48(vi), failure to recognise duty on respondent to verify the police document, as a result of which respondent could not challenge its authenticity;
 - (iii) doubt left why little weight given to reports of Professor Aguilar and Dr Karekwaivanane;
 - (iv) doubt left why Rwandan authorities would not be aware of him as signatory to an open letter critical of their handling of covid crisis, and other opposition activities.
3. UT Judge Kebede granted permission on 3 March 2023.
4. The SSHD responded to the grant of permission: ...

3. ... the first ground of appeal is resisted ... no error of law has been identified ...

(a) the Judge clearly set out reasons why Dr George Karekwaivanane was not regarded as an expert on nationality laws of Eswatini (see determination, paragraphs 31-33), but rather an expert on African studies generally.

(b) Furthermore, IJ Connal applied the principles of *Hussein and Another (Status of passports; foreign law)* [2020] UKUT 00350 (IAC), on the issue of the status of passports. This further strengthened the Judge's findings of Dr Karekwaivanane not being an expert on nationalities, specifically Eswatini (see paragraphs 35-37).

4. ... the second ground of appeal is resisted, and no error of law has been shown.

(a) IJ Connal, correctly identified that the previous 2015 appeal determination was the starting point (see paragraph 40).

(b) The Judge's findings with respect to risk on return to Rwanda are clear, cogent and well-reasoned. They are plainly legally adequate.

(c) The respondent notes in any event that, if no legal error has been identified by Ground 1, then the appellant's second ground of appeal falls away.

5. IJ Connal considered both expert reports by authored Dr Karekwaivanane and Professor Aguilar, that the appellant would... face risk upon return, to Rwanda and/or Eswatini (see paragraph 44-46).

6. Regarding the assertion made at [2](ii) of the grounds, that it was incumbent upon the Secretary of State to verify the document allegedly issued by the Rwanda national police, this submission is resisted. The guidance given by the Upper Tribunal in *QC (verification of documents; Mibanga duty) China* [2021] UKUT 33 (IAC) provides as follows ...

An obligation on the respondent to take steps to verify the authenticity of the document relied on by an appellant will arise only exceptionally (in the sense of rarely). This will be where the document is central to the claim; can easily be authenticated; and where (as in Singh v Belgium (Application No. 33210/11)), authentication is unlikely to leave any "live" issue as to the reliability of its contents ...

7. The duty to verify does not arise in the present case. Authentication, had it been undertaken, would plainly have left a "live" issue as to the reliability of the contents of the letter. As the Presidential panel noted at [15] of *QC*:

... What appears to be an official document, emanating from some authority abroad, may not, in truth, emanate from that authority. But, even if it does, what the document says (for example, about the person seeking international protection) may not be reliable. Unlike the position in the United Kingdom where, happily, instances of corrupt officialdom are relatively rare, it is possible that the foreign official who produced the document may have been suborned ...

8. In any event, the appellant's reliance upon *AR (AP) v SSHD* [2017] CSOH 10 is, with respect, misplaced. *AR* concerned a petition for Judicial Review (see para [1] of that case). As such, the Scottish Court's conclusion at [41] was only that the petitioner had shown it was arguable that the respondent ought to have verified the document in issue. There is anyway no proper basis on which to treat *AR* as a factual or legal precedent in the present matter.

9. For all of the above reasons it is submitted that no (material) error of law has been shown.

5. The appellant counters with a skeleton argument, not accepting that ground 2 would fall away if ground 1 is not made out, and observing that in *AR*, the SSHD did attempt to verify the document.

6. Mr Winter's oral submissions mainly concerned the police document.

7. That document appears at page 133 of the bundle before us, in English. It is not certified, or even identified, as a translation. It is headed by the word “Global”, which happens to be known to the UT as the name of a translation agency. It does not comply with procedural requirements for reliance (either in the FtT or in the UT) on a translation.
8. The next line of the document is, “4/25/22, 3:58 photo from [*a named person*] - Outlook”. Why the document takes the form of a photograph, sent in that way, is not explained anywhere in the evidence for the appellant.
9. There follows, “Rwanda National Police”, an apparent official crest, “The office of the country spokesman”, the police website address, and the heading “Security Announcement”. The text urges the public to pay no attention to information on social media and the internet from 4 named persons, one of whom bears the same name as the appellant, and offers a \$10,000.00 reward for information about them. The document bears to be signed and sealed at Kigali on 04/01/2019 by the spokesperson of Rwanda National Police.
10. At page 171 of our bundle there is what appears to be the original of the same document, in an unidentified language, but similarly headed in English with “Global” and with “4/25/22, 3:58 photo from ... Outlook”.
11. The suggestion of a duty on the respondent to verify the document came late in the day. That argument should have been put when the document was produced to the respondent, with an explanation why it might be difficult for the appellant, and why the duty might, exceptionally, shift. Failing that, the point should have been advanced in the grounds of appeal and submissions in the FtT. It should not have been raised for the first time when seeking permission to appeal further.
12. Quite apart from the appellant’s failure to present the document and translation in the required form, this is not the type of document, embedded in a government office, which the SSHD may sometimes be in a better position than an appellant to authenticate. It bears to be an open publication on an official and easily accessed website. Whether it is available in that way, and the result of a search for the document and for the appellant’s name on the site, are matters the appellant’s representatives could discover in a moment. Neither party, up to the time of hearing before us, had tried to do so.
13. The reward is offered in a dollar currency, purportedly on an official website, although the Rwandan currency is the franc. That appears odd, but it is well known that the US dollar is widely used in Rwanda. We give this little significance.

14. The FtT Judge said at 48 (vi) that as the document had not been authenticated, and considering all the evidence in the round, she was not satisfied that the appellant had shown it could be relied upon. On reference before us to the document and the procedural history, the appellant's position becomes weaker, not stronger. No error has been shown in the finding made.
15. Mr Winter did not expand upon the alleged error in finding Dr Karekwaivanane is not an expert on nationality law, which was the FtT's principal reason for not departing from previous findings on Eswatini nationality.
16. The Judge was obviously correct. The author of the report is an expert on Southern African history, policy and cultures, not on law. Proof of foreign law generally requires evidence from a qualified legal expert.
17. The Judge's analysis of "*issue 1: is the appellant a national of Eswatini?*" at pp 8 - 18, [22 - 37], is lucid, detailed, and not shown to be affected by any error.
18. Mr Winter's final position was that the Judge erred in her assessment of risk on return to Eswatini from the Rwandan authorities, who might pursue him even there. However, the Judge's analysis of "*issue 2: risk on return to Eswatini*" at pp 18 - 24, [38 - 48], is equally clear and comprehensive.
19. The two grounds disclose no more than selective disagreement with a thoroughly reasoned resolution of the case.
20. The FtT made an anonymity order. The matter was not addressed before us. Accordingly, although we doubt whether there is any justification for departure from the principle of open justice, once these proceedings are exhausted, we have made a similar order, to stand until a tribunal or Court directs otherwise.
21. The appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
5 December 2023