



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005372
UI-2023-005373

and

UI-2023-005152

UI-2023-005153

First-tier Tribunal No: PA/51117/2023

PA/51267/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14th of June 2024

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

SMKR
RAMM
(ANONYMITY ORDER MADE)

Appellants

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

v

SMKR
RAMM

Respondents

Representation:

For the SMKR and RAMM: Miss Sepulveda of Fountain Solicitors.

For the Secretary of State: Mr Lawson, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 23 May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, SMKR and RAMM are granted anonymity.

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

DECISION AND REASONS

1. SMKR and RAMM ('the original appellants') have been granted permission to appeal the decision of First-tier Tribunal Judge Feeney ('the Judge'), promulgated following a hearing at Birmingham on 5 October 2023, in which their appeals against the refusal of their applications for leave to remain on protection and human rights grounds were refused, with the exception of a claim pursuant to Article 8 ECHR being allowed. The appeal is against those elements in relation to which they did not succeed.
2. The Secretary of State has been granted permission to appeal findings made by the Judge in the determination which are said to be material to the decision to allow the appeal.
3. As the grant of permission to appeal to SMKR and RAMM is dated 23 November 2023, and that the Secretary of State 3 January 2024, we considered the submissions in that order.
4. The original appellants are Palestinian nationals born on 27 July 1969 and 4 December 2000. Their habitual residence is in Jordan and the basis of their claim is that they cannot return to Jordan.
5. The Judge notes an earlier decision by First-tier Tribunal Judge Young-Harry, promulgated following a hearing at Birmingham on 30 May 2022, who found the original appellants had failed to establish their claim to the lower standard to have a well-founded fear of persecution for a Convention reason on return to Jordan or that they would be entitled to international protection [27], that they had not shown there will be a breach of their Article 3 rights on return either in relation to alleged risk of ill-treatment or on health grounds [28], that they could not meet the requirements of Appendix FM [29], that there are no very significant obstacles to their integration on return to Jordan, and that any interference with a protected right is proportionate [36].
6. Having considered the written and oral evidence with the required degree of anxious scrutiny the Judge sets out the findings from [13] of the decision under challenge.
7. The original appellants rely upon three grounds of challenge.
8. Ground 1 relates to Article 3 ECHR. At [15] the Judge accepted the original appellants will not be able to renew their temporary Jordanian passports either in the UK or in Jordan, which is the finding subject to the appeal by the Secretary of State which we discuss below.
9. This ground refers to [22] and [27] of the determination and asserts that in light of accepted factual findings the Judge failed to adequately assess the persecutory risk/breach of Article 3 ECHR that will be faced on return to Jordan, and that given that it is accepted that the appellants will not be able to work, have nowhere to live, no food to eat, and will significantly suffer, it is difficult to understand why the Judge does not accept that this treatment will not breach the Article 3 ECHR threshold.
10. It is important to read the determination in full. At [22-24] the Judge writes:

22. In his witness statement the First Appellant's husband says that without a new Jordanian passport, as Palestinians, they will be discriminated against and persecuted. It goes on to say that they will not be permitted to work in Jordan and will not be entitled to healthcare fee exemptions. He says that they will not be entitled to a personal civil card or family book. He says that, without work, they will have nowhere to live, no foods to eat and will significantly suffer. This evidence was not challenged by Miss Bibi and I see no reason not to accept it.
23. Mr Salem, the First Appellants son-in-law, is a British citizen with a Jordanian background. He lived in Jordan for 20 years. He was asked what the treatment is like for individuals who hold no ID. He said they could be stopped by many authorities at any time. He said that people with roots in Gaza could be taken to the police station. He said the treatment depends on your nationality and roots.
24. I am not satisfied that, even without a temporary passport, Appellants will be subjected to treatment that amounts to persecution or a breach of Article 3. The evidence before me is, in my judgement, very limited. Whilst Mr Salem suggests the Appellants might be stopped or even taken to a police station does not suggest that they will be detained for lengthy periods or mistreated.
11. At [27], which is part of the Judges analysis of the Article 8 ECHR claim, the Judge writes:
27. It is accepted that Palestinians in Jordan are discriminated against. Taking account of the evidence before me I am satisfied that the Appellants will find themselves in a worse position without temporary passports. The country expert says those passports are critically important. Appellants will find themselves in a country where they have no legal right of residence. In my judgement, it is entirely plausible that, without temporary passports, they will find themselves in a worse position than those Palestinians who hold temporary passports or Jordanian citizenship. Previously, the judge found although that employment opportunities would be restricted, there will be some jobs in the private sector open to the Appellants. On the basis of the evidence before me, I am satisfied that the Appellants will have no right to work at all.
12. The Judge has therefore made a clear finding that Article 3 ECHR is not engaged on the facts. There is nothing to suggest the Judge did not consider the evidence relating to this issue with the required degree of anxious scrutiny. A question that might have arisen is whether there has been an artificial separation within the Judge's findings in that the Judge seems to find Article 3 is not engaged at [24] but goes on to address an issue which the Grounds claim would warrant a finding the appellants could succeed under Article 3 later on in the determination at [27]. We do not find such made out, however, as at [22] the claim the appellants would not be able to live and have no food to eat and would significantly suffer was part of the evidence considered by the Judge. It is also important to note at [27] the Judge was satisfied the appellants would have no right to work, indicating they would not be able to work in the formal economy, not whether they would be unable to work in the informal economy. Information in the public domain from the Jordan Strategy Forum published in May 2023 shows the International Labour Organisation have stated about 1.207 million individuals earn their living in the informal economy in Jordan. This was not a matter before the Judge but is a matter of which we have judicial knowledge.

13. In relation to the issue of persecution, it is not sufficient for an individual just to claim that if returned they will be persecuted. To allow an appeal on this basis the Judge would have to have been satisfied that what was being alleged is sufficient to meet the test under the Refugee Convention or Immigration Rules. The evidence before the Judge was clearly not considered to be sufficient to warrant such a finding being made. The Judge specifically finds that the evidence did not support a finding that the appellants will be subject to treatment that amounts to persecution or a breach of Article 3.
14. Having considered the guidance provided by the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 462 and Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 we do not find the original appellants have made out their claim that the Judge has erred in law in a manner material to the decision to dismiss the appeals under both the Refugee Convention or Article 3 ECHR. There was insufficient evidence to warrant such a finding being made in the original appellants favour.

The cross-appeal

15. The Secretary of State sought permission to appeal the Judge's findings at [13 – 15] in relation to the issue of whether the original appellants will be able to renew their expired temporary Jordanian passports, and the decision to allow the appeal under Article 8 which was said to be based solely upon the fact the original appellants would have to return without relevant documentation which would, in turn, prevent access to the employment market and various other state provided facilities.
16. At [13 – 15] the Judge wrote:

13. I acknowledge that the Appellants' country expert says that he can discern no reason why the Appellants could not renew their temporary Jordanian passports. However, in my judgement, it is clear that he has not engaged with the issues. He goes on to say that they could do renew their passports via the embassy in London and provides the relevant link. The link information is in the bundle. It states that the Appellants will need to provide a bridge card, occupation permit or Palestinian ID. Miss Bibbi accepts that the Appellants do not have those documents. A copy of residency in Britain is also required. The Appellants have no leave to reside in the UK. Miss Bibbi submits that this evidence alone is not sufficient to establish that the passports cannot be renewed. She says that, at most it Appellants have contacted the embassy by telephone, they have not actually made an application to renew their passports. I am satisfied that the Appellants will not be able to renew their passports from the UK. I see no reason not to accept information before me as to the documents required. In short, they do not have the documents. I do not think that it is necessary for them to show that, having made an application, they have been refused. In my judgement, there is little point in making an application that they are sure will be refused.
14. I now turn to consider whether the Appellants will be able to renew their passports in Jordan. According to the article headed, 'European Union Agency for Asylum, EUAA COI Query – Re-admission to Jordan of Palestinians with Temporary Passports' dated 21 February 2023, whilst the official Government website says renewals can be completed at the Ministry of Interior, most temporary passports issued to Palestinians are not renewed, including the 5 year duration passports. It is noted that the practice of denying the renewal of these passports has intensified since the implementation of the 'Jordan First Policy'. The same source, Susan Akram, is quoted in the 'Danish Immigration Service, Palestinian Refugees' article dated 23

June 2023. That article says that more of the temporary passport holders are not getting them renewed. It notes that the practice started some time ago and has accelerated in the last couple of years and that it is expected to be a growing problem. I acknowledge that the Appellants have previously renewed their passports. However, the last time they did so was in 2017, long before the articles referred to above were published. In my judgement, in light of the objective evidence, it does not follow that because they will be able to renew their passports in 2017 they will be able to do so in 2023.

15. Taking into account the evidence as a whole I am satisfied that the Appellants will not be able to renew their temporary Jordanian passports either in the UK or in Jordan.
17. Reference was made by Mr Lawson to the decision of the Court of Appeal in MA (Ethiopia) v Secretary of State the Home Department [2009] EWCA Civ 289. That is the case in which the Court of Appeal examined the issue of when the refusal of the applicant's State of nationality to provide documents, to allow her to be readmitted to that State, represents a denial of the applicants nationality and, consequently, provides a basis for a claim for asylum. The Court held that the deprivation of nationality can constitute persecution and that the concepts of de jure and de facto nationality applied by the Tribunal in the appeal were likely to obscure the question of whether the applicant had a well-founded fear of persecution. The Court held that the correct standard of proof in respect of the issue of re-documentation will usually be on the balance of probabilities rather than a reasonable degree of likelihood. It further held that, to prove her case, the applicant was under a duty to take all reasonable steps in good faith to obtain documents from the authorities of her State of nationality.
18. The Court of Appeal held that "where the essential issue before the Tribunal is whether someone will or will not be returned, the Tribunal should in the normal case require the applicant to act bone fide and take all reasonably practical steps to seek to obtain the requisite documents to enable her to return. There may be cases where it would be unreasonable to require this, such as if disclosure of identity might put the applicant at risk, or perhaps third parties, such as relatives of the applicant who may be at risk in the home state if it is known that the applicant's claim to asylum. That is not the case, however. There is no reason why the appellant should not herself visit the embassy to seek to obtain the relevant papers".
19. In the specific paragraphs referred to by Mr Lawson, [79 - 83], the Court found:
 79. There are, as Miss Giovannetti submitted, good reasons other than the wording of the Convention for this conclusion. Most importantly is the nature of the risk. If a person is returned when there is a real risk of persecutory ill-treatment on his return, that risk may eventuate with commensurately serious consequences. To require a person here to take reasonable steps to apply for a passport or travel document, or to establish her nationality, involves no risk of harm at all. I take into account that there may be cases in which the application to the foreign embassy may put relatives or friends who are in the country of origin at risk of harm. If there is a real risk that they will suffer harm as a result of an application, it would not be reasonable for the person claiming asylum to have made it. The present is not such a case.
 80. Secondly, the application of a "real risk" test leads to absurdity. It would mean that a person could establish that he could not return to his country of origin by showing that a significant number of persons in a similar position had been refused a travel

document, even if the majority had obtained one and been able to return without fear of ill-treatment

81. The third reason why the “real risk” test is inappropriate is that it is easy for the facts in issue to be proved. The person claiming asylum can give evidence of her application to her embassy or consulate, including any application made in person and offer refusal or other response (or lack of it) of her embassy. Her solicitors can write to the embassy on her behalf and produce the correspondence. By contrast, it may be difficult for a person here to prove what is happening in her country of origin, let alone what may happen to her in the future if she returns.
 82. The fourth reason is that if leave to remain is refused on the grounds that the applicant can and should obtain her foreign passport and recognition of her nationality, and it turns out that she cannot, she can make a fresh claim based on the refusal.
 83. Lastly, refugee status is not a matter of choice. A person cannot be entitled to refugee status solely because he or she refuses to make an application to her embassy, or refuses or fails to take reasonable steps to obtain recognition and evidence of her nationality.
20. It is clear from the evidence that the original appellants had not taken sufficient reasonable steps to show that they had done all they could to establish whether the Embassy would renew their temporary passports.
21. The question therefore is whether, despite the original appellants not doing what the Court of Appeal found they were required to do, the decision is sustainable in light of specific findings made by the Judge. The first of these relates to the linked information in the bundle which is a translation of the material referred to by Dr George, the original appellants expert witness.
22. We accept a judge is not bound by the opinion of a country expert provided adequate reasons are given for why an alternative view may be taken. The relevant paragraph of the report is in the following terms:
- (i) Given that our clients are Palestinian nationals, and given that their temporary Jordanian passports have expired ... How likely or un-likely is it that they will be able to obtain new temporary Jordanian passports?
43. I can discern no reason why [SMKR and RAMM] would be unable to renew their temporary Jordanian passports, and they could do this via the Jordanian embassy in London. In this regard I refer to the following page of the Embassy’s website setting out the relevant procedure:
http://jordanembassy.org.uk/wordpress/wp-content/uploads/2020/01/renew_temporary_passport.pdf.
23. It is the document produced by clicking on this link that the Judge refers to having considered.
24. In relation to the Bridge Card, Occupation Permit or Palestinian ID, the Secretary of State notes that the original appellants did not have those documents as they were not relevant to them, being individuals who have never lived in or visited the Palestinian Authority (PA) controlled by Israel. As such, whilst those Palestinians who do require access to the PA and therefore possess those documents will be required to produce them with any application for temporary passport renewal, it is asserted that those in the appellants’ situation would not.

25. Although the original appellants representative submitted there was a difference between a temporary passport and a 'real' passport we do not find any distinction made out material to the issues before us today.
26. We also find that notwithstanding this point being raised in the grounds seeking permission to appeal there was nothing before us to show the point being made is not correct. The failure of the original appellants to go to the Embassy to make the application prevents the view of the Jordanian Embassy being known.
27. In relation to the statement that a copy of residence in Britain is also required, the Grounds assert this requirement is only necessary if they are specifically relevant to the individuals making an application to renew and not a prerequisite to any successful application. The status of the original appellants was known to Dr George who expresses the view that he could not see any problems with the temporary passports being renewed.
28. The key issues, however, is whether the Judge's finding it was not reasonable/necessary to expect an application to be made to the Jordanian Embassy was reasonable.
29. In relation to renewal from within the UK, the Judge deals with this at [13] but also refers to additional country information at [14]. We have considered this material which states that most temporary passports issued to Palestinians are not being renewed. We are satisfied, therefore, that there was before the Judge evidence not referred to by Dr George which supported the Judge's findings. We do not find those findings are speculative as asserted by Mr Lawson.
30. The grant of permission to appeal to the Secretary of State by the Upper Tribunal referred to the situation of Palestinians in light of the current prevailing conflict in the Gaza Strip between Hamas and Israel. We have not taken that into account as it was not an issue raised before the Judge, but the general geopolitical climate in relation to the situation in Jordan, including the 'Jordan first' policy, and views of some Arab states neighbouring Israel towards Palestinian refugees is likely to be behind the approach being taken to the refusal to grant and/or renew documents for Palestinians in Jordan and elsewhere.
31. Again, considering the guidance of the Court of Appeal in Volpi v Volpi and Ullah v Secretary States for the Home Department, we do not find it has been established that the Judge's finding in relation to the prospect of renewal of the temporary passports is a finding outside the range of those reasonably open to the Judge on the evidence.

Notice of Decision

32. Find no material error of law made out in either the appeal or cross-appeal challenging the decision of the Judge. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 May 2024