



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002105
First-tier Tribunal Nos:
RP/50043/2023
LR/00014/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

A B A
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Naz, Allison Wells Solicitors Ltd

For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House by CVP to Birmingham on 11 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant claims to be an undocumented Bidoon born on 14 March 1950. The respondent considers that the appellant is a citizen of Iraq, born on 1 January 1962. The appellant was granted refugee status valid from 1 April 2015, following the appellant's successful appeal before the First-tier Tribunal, Judge Frankish, on 23 March 2015.
2. The respondent cancelled the appellant's refugee status on 2 March 2023, noting including that the appellant had submitted an Iraqi passport issued on 31 March 2011, valid until 28 March 2019 with his asylum application. This passport was confirmed as properly issued to the appellant by the Iraqi Embassy. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge S J Clarke ("the judge"), on 6 April 2024, following a hearing on 26 March 2024.
3. Permission to appeal was granted by Judge of the First-tier Tribunal F E Robinson on 10 May 2024, on the basis that ground 1 was arguable. Ground 1 argued that the judge had erred in law in making findings on the LOID Report (Linguistic Origin Identification Report) without having sight of it, apparently going beyond the findings in the previous determination. Judge Robinson refused permission on the remaining grounds and there was no renewed application to appeal on the remaining grounds to the Upper Tribunal (in relation to the judge allegedly failing to take into account the submissions made at the hearing). Ms Naz confirmed at the outset that permission to appeal was limited to ground 1.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law and if so whether any such error was material and thus whether the decision should be set aside. Ms Naz confirmed that although at pages 43 to 48 of the consolidated bundle further evidence was purported to be filed, no Rule 15(2A) application had been made and Ms Naz conceded that such evidence was not relevant to the error of law hearing and agreed that the Tribunal would not therefore take into account this new evidence.

Submissions - Error of Law

5. In the grounds of appeal and in oral submissions by Ms Naz it was argued in short summary for the appellant as follows.
6. It was argued that the judge had made an error at [20], in reaching findings in reference to the LOID Report, despite not having a copy of that report before her. It was argued that it was difficult for someone not to have had sight of a report to be able to make such a bold finding such as:

"I find that the Appellant manipulated the results trying to sound Kuwaiti".
7. It was submitted, with Ms Naz primarily relying on the written grounds for permission to appeal, that the judge neither had sight of the report or the audio recording of the same, and therefore it was hard to make a finding in absence of this evidence. It was submitted that the LOID Report is a complex report with many parts and that the credentials and qualifications of the authors and analysts form part of the report. Therefore to reach a finding without this evidence is a material error.

8. Although there was no Rule 24 response, in oral submissions by Ms Nolan for the respondent it was argued in short summary as follows. Ms Nolan submitted that the judge had not fallen into error in reaching findings on the linguistic report. Ms Nolan submitted that the judge had set out their findings at [14] with the judge setting out the findings of Judge Frankish on the LOID Report at [18] to [20] of that previous decision.
9. Ms Nolan submitted therefore that it was clearly stated at [14] that those findings were findings of the previous judge including as follows:

“The decision considered the LOID report in paragraphs 18 to 20 noting that the family members who had been found to be Kuwaiti Bidoons had not undergone language analysis. The Judge found as a notable feature of the report to be that it was far from conclusive. “Phonological features are mainly consistent with Kuwaiti Arabic” and “one trait is mixed” with some other elements that deviate in other regards from Kuwaiti Arabic”. Morphological features are partly consistent with Kuwaiti Arabic. Syntactical features are consistent with Kuwaiti Arabic with only two deviations noted. **The Appellant might have been faking his accent/speech manipulation** (my emphasis). But apart from the suspicion that the Appellant may have been faking his accent there was a substantial amount of the analysis which pointed to a Kuwaiti accent. The Judge noted that there were inconsistencies found both phonologically and morphologically. The conclusion of the report was that the Appellant speaks in more than one dialect which could be genuine and resulting from his social background, or it could be from faking his accent. Overall, the author of the LOID was noted to conclude that the Appellant’s accent was that of an Iraqi. But the Judge accepted that it was a very nuanced report and that substantial Kuwaiti elements to the Appellant’s speech were acknowledged. The panel did not find the report to be strong enough to override the status the Respondent accorded to the witnesses in that appeal, and it was not “of such overwhelming force”.”
10. Ms Nolan submitted that the grounds for permission to appeal had not argued that paragraph [14] was not an accurate reflection of what the previous Tribunal had found in relation to the LOID Report including that the LOID Report considered that the appellant spoke in more than one dialect which could be genuine and resulting from social background or could be from him faking his accent.
11. Bearing in mind those findings, Ms Nolan submitted that the judge’s subsequent findings at [20] were not in error. The judge found at [20] that the LOID could be relied on by the respondent because whilst it showed traits of both the Kuwaiti or Iraqi language nuances, overall the conclusion drawn by the report was Iraq.
12. Ms Nolan submitted in the alternative that even if the Upper Tribunal were to find that those findings at [20] that the appellant had manipulated the results trying to sound Kuwaiti were not open to the judge, she submitted that this was not material and it was only one finding which did not infect the other negative credibility findings made against the appellant. She further submitted that it was not correct to submit as Ms Naz had, that the judge’s further findings stemmed from the finding on language.

13. Ms Nolan pointed for example, to paragraphs [21] to [23] where the judge reached findings in relation to the appellant's Iraqi passport and found that the appellant had not been credible based on his differing account. The judge noted that the appellant now, at the hearing before the judge, said that he had gone to Iraq and paid US 600 dollars for an Iraqi passport which bore his photograph with his fingerprints on file and the Iraqi Embassy confirming that it was genuinely issued. The judge also reached negative credibility findings at [22] including that it was contrary to what the appellant had said about open borders in relation to undocumented Bidoons resorting to counterfeit documents and did not explain why the appellant voluntarily returned to Kuwait.
14. The judge also reached negative findings at [23] that the appellant had not been candid about what he now claimed had happened to him, with the appellant waiting until the hearing itself before admitting to being in Iraq and applying for a passport and going to the United Nations building to claim asylum. The judge noted that the respondent had pointed out in the decision letter that the practice of Kuwaiti Bidoons obtaining Iraqi passports to facilitate their departure from Kuwait was common practice. However the judge noted that the appellant had said the border was not patrolled and he did not need a new passport to leave Kuwait. This begged the question for the judge as set out in [23], how the appellant needed to pay 600 dollars to buy a passport using an agent. In addition the appellant did not actually wait to collect the passport because he said that after 28 days he went back to Kuwait because of the chaotic and dangerous state of Iraq.
15. Ms Nolan's ultimate submission was therefore even if the finding was not open to the judge in relation to the LOID Report this did not infect the remaining findings.
16. In reply Ms Naz submitted that the previous judge had found that the report did not have "overwhelming force", and she submitted that the judge could not take this in isolation and that the previous grant of asylum had been based on the language report and DNA evidence and other evidence which was not subject to this appeal. She noted that the previous judge also accepted that there were features of Kuwaiti Arabic and it was her final submission that the judge had erred in reaching findings without sight of the report.

Conclusions - Error of Law

17. As indicated at the hearing, the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and shall stand.
18. The judge carefully set out all the evidence before her, noting at [15] that Judge Frankish in 2015 placed much weight upon the respondent granting refugee status to the family members and witnesses as undocumented Bidoons from Kuwait, as cogent reasons to displace the other evidence against the appellant being a national of Iraq.
19. As highlighted by Ms Nolan the judge at [14] set out in detail Judge Frankish's findings on the LOID Report including that the report considered that the appellant may have been faking his accent, which Judge Frankish also indicated was known as 'speech manipulation'.

20. At [16], the judge that noted that she heard evidence which was “not before that panel” (Judge Frankish’s decision) as there was no discussion in the 2015 decision of the appellant being in Iraq in 2011 and applying for an Iraqi passport and then applying for asylum to the US.
21. The judge took into account that she did not have the application forms of either the asylum application before Judge Frankish, or the indefinite leave to remain application before her. However the judge noted that she had had sight of the appellant’s immigration history, as set out by the respondent and not disputed by the appellant.
22. The judge at [17] took into account that the appellant in his witness statement for the appeal before the judge did not mention being in Iraq, applying for a passport there, or applying for asylum from Iraq to the USA Consulate/Embassy. It was open to the judge to find as she did that the response statement and reference to “all of this” was somewhat vague. The judge noted that at the hearing the appellant now stated that he and his family went to Iraq and paid US Dollars 600 for a false Iraqi passport using an agent, the agent taking him to the UN building in Baghdad, but because it was so chaotic including the bombings, he only stayed in Iraq for 28 days and returned to Kuwait and the border was not patrolled and they could move in and out without hindrance. The judge noted that this was all new evidence.
23. It was open to the judge to place little weight as they did at paragraph [18] on the evidence of Mr Abbas Delfiye, including as he could only base his account upon what the appellant told him. There was no challenge to that finding before me, nor to the judge’s findings in relation to the evidence before them in relation to the appellant’s son, with the judge accepting that his status was originally as a result of the findings of fact in the appellant’s asylum appeal. The judge reminded herself at [20] that the respondent bears the burden of proof that the appellant is a national of Iraq, on the balance of probabilities. The judge went on to find that the respondent could rely on the LOID “because whilst it shows traits of both Kuwaiti or Iraqi language nuances, overall the conclusion drawn was Iraq”.
24. The judge had in mind the respondent’s refusal letter which noted at paragraph 10 that following questioning and language analysis the asylum caseworker had not accepted that the appellant came from Iraq with the language analysis indicating that the appellant was most likely to be an Iraq national which was the respondent’s original conclusion. The respondent’s refusal also considered that the appellant had been able to answer questions about the Bidoon lifestyle but given the language analysis the appellant’s credibility was damaged.
25. Whilst the judge went on to find that the appellant “manipulated the results trying to sound Kuwaiti” any error is not material given the strength of the judge’s adverse findings against the appellant in particular the judge’s negative credibility findings including in relation to the appellant’s presence in Iraq and the appellant’s Iraqi passport.
26. I have reminded myself of the authorities which set out the distinction between errors of fact and errors of law and which emphasise the importance of an appellate tribunal exercising judicial restraint when reviewing findings of fact

reached by first instance judges. This was summarised by Lewison LJ in Volpi & Anor v Volpi [2022] EWCA Civ 464 at [2] as follows:

- “i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
- ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
- iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
- iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
- v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
- vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

27. The weight the judge attached to the evidence was a matter for them. Whilst the judge might have phrased the reference to the LOID report differently, what the judge was saying was that the judge had fresh evidence before them that Judge Frankish did not, which led to the judge preferring the conclusion of the speech analysis, i.e., that the appellant was most likely Iraqi. In so preferring that conclusion the judge adopted the language recorded by Judge Frankish that an explanation for the deviations in language was speech manipulation/faking his accent. However, this was in the context of the judge having evidence that the appellant was in Iraq in 2011 and applied for an Iraqi passport and for asylum in the USA, none of this evidence being before Judge Frankish. The judge also gave clear reasons for not finding the appellant's proffered explanations to be credible. It is clear that the judge would have reached the conclusions they did even without the findings on the speech analysis

28. The findings were entirely open to the judge. The decision does not contain an error of law. I do not set aside the decision.

M M Hutchinson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 September 2024

