

IN THE UPPER TRIBUNAL

R (on the application of B) v Secretary of State for the Home Department (recording of leave – date stamps) IJR [2016] UKUT 00135 (IAC)

**Field House
London**

19 February 2016

**THE QUEEN
(ON THE APPLICATION OF)**

B

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

BEFORE

UPPER TRIBUNAL JUDGE PETER LANE

(Hearing date: 10 December 2015)

Mr B. Ali, instructed by Aman Solicitors Advocates, appeared on behalf of the applicant.

Ms S. Reeves, instructed by the Government Legal Department, appeared on behalf of the respondent.

ON AN APPLICATION FOR JUDICIAL REVIEW

JUDGMENT

(1) The judgments of the Court of Appeal in R v Secretary of State for the Home Department ex parte Bagga [1991] 1 QB 485 are authority for the proposition that, if there is no practice on the

part of the Secretary of State of using a date stamp to record the grant of leave under the Immigration Act 1971, even a 'blameless' individual will be unable to derive any material benefit from that stamp.

(2) The corollary, however, is not that a blameworthy individual must automatically be able to benefit from such a stamp, which is used in practice to record the grant of leave. Someone who, by misrepresentation, induces an immigration officer to proceed on a mistaken basis is not automatically entitled to succeed, merely because a mistaken decision has been formally recorded.

(3) In such a scenario, consideration must be given to:

(a) the person's actions and understanding; and

(b) what the immigration officer thought he or she was doing by affixing the stamp.

JUDGE PETER LANE:

Harwich: New Year's Eve 2013

1. On New Year's Eve 2013, around 8pm, a car and passenger ferry arrived at Harwich from The Hook of Holland. Ms Tracy Rogers was an immigration officer on duty that night at the car control PCP (primary line), dealing with vehicles disembarking from the ferry. A white *Nissan Qashqai* vehicle approached Ms Rogers' booth. In the vehicle were the applicant and its driver, Mr Abdesslam. There is some dispute as to what conversation passed between Ms Rogers and the occupants of the car. What is, however, undisputed is that Ms Rogers "asked for passports" and was given Mr Abdesslam's British passport and a Home Office travel document (HOTD) bearing the name of the applicant, in which there was a stamp dated 28 January 2004, issued by the Home Office Immigration and Nationality Department, stating "THIS DOCUMENT IS VALID FOR TRAVEL TO ALL COUNTRIES EXCEPT: LIBYA. HOME OFFICE REFERENCE NUMBER ... THERE IS AT PRESENT NO TIME LIMIT ON THE HOLDER'S STAY IN THE UNITED KINGDOM". Ms Rogers stamped "an open date stamp" in the applicant's HOTD.
2. The vehicle then made its way to the Car Hall Examination Area, some 40 metres from Ms Rogers' booth. Here, it was examined by Mr Christopher Glen-Barber, also an immigration officer, for what appear to have been (at least in part) customs-

related reasons. Mr Abdesslam told Mr Glen-Barber he had been to visit relatives for a wedding in Amsterdam. He had contacted his friend, the applicant, to offer him “a lift home as he knew he was returning in the New Year”.

3. The applicant’s Libyan passport, issued on 13 March 2009, was found under the driver’s seat of the vehicle. Mr Glen-Barber’s notebook records that this passport “belongs to [the applicant], who presented a UK 1951 Convention document at controls”. The applicant told Mr Glen-Barber that due to changes in circumstances in Libya, it was “now safe for him to return to” that country. The last exit stamp out of Libya was noted as being 27 December 2013. According to an HMRC printout, apparently made contemporaneously, checks “came back satisfactory along with further checks by border force in relation to our databases”. The printout states that the applicant “had hidden Libyan passport under driver’s seat”. The applicant disputes this. At all events, the car and its occupants were allowed to leave the examination area and proceed on their way.

The applicant

4. The applicant was born in Libya in 1975. In 1997, he entered the United Kingdom and claimed asylum. In 2001, the respondent recognised the applicant as a refugee. On 8 June 2002, the applicant was granted indefinite leave to remain. On 28 January 2004, the applicant was issued with a further HOTD, with a date of expiry of 28 January 2014. This was the document that Ms Rogers saw. The HOTD was issued with a “Notice to Holders of Home Office Travel Documents”, which the applicant accepts he received. This said:

“Before you use your document you should read the notes in your travel document.”

Note 4 in the HOTD said:

- “4. If the holder obtains a national passport from their own Government, this travel document will no longer be valid and should be returned to the Travel Document Section immediately.”

5. In October 2003, the applicant married. He and his wife had three children born in this country in, respectively, 2004, 2005 and 2007. The applicant says he divorced his wife in October 2010.
6. On 13 March 2009, the applicant obtained a Libyan national passport. The respondent contends that the effect of this was to invalidate the HOTD, which was not returned to the Travel Document Section, as required.
7. Thereafter, the applicant appears at some point to have left the United Kingdom, because on 9 June 2009 he presented his HOTD to an Immigration Officer in Manchester, in order to gain entry to the United Kingdom. In the same month, the applicant entered Libya, using his Libyan passport. The applicant was absent from the United Kingdom for approximately four and a half years, until his return on 31 December 2013. It seems the applicant lived in Libya during that time, except for a visit to Greece to receive medical treatment in respect of an injury, said to have been received in the Libyan civil war in 2011.
8. In June 2013, the applicant says he got married in Libya. He agreed with his wife that he would be returning to the United Kingdom at some point after their marriage and that she would join him when she had learnt English.

The judicial review

9. After passing through Harwich, the applicant made his way to North West England and on 9 February 2014, he applied to the respondent to transfer the “no time limit” stamp in the HOTD into his Libyan passport. The respondent refused the application, which led to this judicial review application. The applicant’s amended grounds, on which he was in August 2015 granted permission to bring judicial review proceedings, contend (as ground 1) that the respondent, through Ms Rogers, granted the applicant leave to enter the United Kingdom under paragraph 19 of the immigration rules, without limitation on the length of time he could stay in the United Kingdom. Ms Rogers was said to have chosen “not to ask the [applicant] any

questions when she stamped his passport with an ILR stamp". Alternatively, Ms Rogers "made a mistake and the [applicant] is entitled to take the benefit of that mistake". A declaration is sought that the applicant has indefinite leave to remain.

10. Ground 2 submits that the respondent's decision not to place an NTL stamp in the applicant's Libyan passport "is unlawful and completely unreasonable" on the basis that he "has had and does have ILR".
11. Ground 3 "challenges the allegation made against him that he entered illegally or is an illegal entrant"; whilst the fourth ground submits that, in the alternative, the respondent's agents "were aware of the full facts of the case during and arising from the questioning and the search of the vehicle the [applicant] was travelling in". Thus, the respondent allowed the applicant "to leave Harwich with his ILR intact. This was a continuing exercise of discretion".

Legislation

12. So far as relevant, sections 3 and 4 of the Immigration Act 1971 provide as follows:

"3.- General provisions for regulation and control.

- (1) Except as otherwise provided by or under this Act, where a person is not a British citizen
 - (a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under, this Act;
 - (b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;
 - c) if he is given limited leave to enter or remain in the United Kingdom, it may be given subject to all or any of the following conditions, namely –

...

- (2) The Secretary of State shall from time to time (and as soon as may be) lay before Parliament statements of the rules, or of any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter, including any rules as to the period for which leave is to be given and the conditions to be attached in different circumstances;

...

- 4) A person's leave to enter or remain in the United Kingdom shall lapse on his going to a country or territory outside the common travel area (whether or not he lands there), unless within the period for which he had leave he returns to the United Kingdom in circumstances in which he is not required to obtain leave to enter; but, if he does so return, his previous leave (and any limitation on it or conditions attached to it) shall continue to apply.

4(1) The power under this Act to give or refuse leave to enter the United Kingdom shall be exercised by immigration officers ... and, unless otherwise allowed by or under this Act, those powers shall be exercised by notice in writing given to the person affected ..."

13. Section 33(1) of the Immigration Act 1971 defines an illegal entrant as follows:

"Illegal entrant" means a person -

- (a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or
- (b) entering or seeking to enter by means which include deception by another person,

and includes also a person who has entered as mentioned in paragraph (a) or (b) above."

14. So far as relevant, the Immigration (Leave to Enter and Remain) Order 2000 provides:

“7.- (1) An Immigration Officer, whether or not in the United Kingdom, may give or refuse a person leave to enter the United Kingdom at any time before his departure for, or in the course of his journey to, the United Kingdom.

(2) In order to determine whether or not to give leave to enter under this article (and, if so, for what period and subject to what conditions), an immigration officer may seek such information, and the production of such documents or copy documents, as an immigration officer would be entitled to obtain in an examination under paragraph 2 or 2A of Schedule 2 to the [Immigration Act 1971].

13.- (1) In this article and article 13A ‘leave’ means -

(a) leave to enter the United Kingdom (including leave to enter conferred by means of an entry clearance under article 2); and

(b) leave to remain in the United Kingdom.

(2) Subject to paragraph (3), where a person has leave which is in force and which was:

(a) conferred by means of an entry clearance (other than a visit visa) under article 2; or

(b) given by an immigration officer or the Secretary of State for a period exceeding six months,

such leave shall not lapse on his going to a country or territory outside the common travel area.”

...

- (4) Leave which does not lapse under paragraph (2) shall remain in force either indefinitely (if it is unlimited) or until the date on which it would otherwise have expired (if limited), but -
 - (a) where the holder has stayed outside the United Kingdom for a continuous period of more than two years, the leave (where the leave is unlimited) or any leave then remaining (where the leave is limited) shall thereupon lapse; and ...”

Immigration rules

15. As in force at the relevant time, the relevant Immigration Rules provided as follows:

“18. A person seeking leave to enter the United Kingdom as a returning resident may be admitted for settlement provided the Immigration Officer is satisfied that the person concerned:

- (i) had indefinite leave to enter or remain in the United Kingdom when he last left; and
- (ii) has not been away from the United Kingdom for more than 2 years; and
- (iii) did not receive assistance from public funds towards the cost of leaving the United Kingdom; and
- (iv) now seeks admission for the purpose of settlement.

19. A person who does not benefit from the preceding paragraph by reason only of having been away from the United Kingdom too long may nevertheless be admitted as a returning resident if, for example, he has lived here for most of his life.

...

20. The leave of a person whose stay in the United Kingdom is subject to a time limit lapses on his going to a country or territory outside the common

travel area if the leave was given for a period of six months or less or conferred by a visit visa. In other cases, leave lapses on the holder remaining outside the United Kingdom for a continuous period of more than two years. A person whose leave has lapsed and who returns after a temporary absence abroad within the period of this earlier leave has no claim to admission as a returning resident. His application to re-enter the United Kingdom should be considered in the light of all the relevant circumstances. The same time limit and any conditions attached will normally be reimposed if he meets the requirements of these Rules, unless he is seeking admission in a different capacity from the one in which he was last given leave to enter or remain.”

Case law

16. Counsel referred me to a number of cases. Mr Ali relied first upon R v Secretary of State for the Home Department, Ex parte Badaike, Queen’s Bench Divisional Court, *Times*, 3 May 1977. In this case a former member of the Nigerian Air force obtained an order quashing the Secretary of State’s decision to deport him as an illegal entrant to the United Kingdom. The applicant had first come to the United Kingdom when exempt from the operation of the 1971 Act by reason of section 8(4)(b). An entry certificate had been stamped in his passport, dated 21 September 1973 and valid for six months. When he later returned to the United Kingdom, he was no longer exempt. He presented his passport to the Immigration Officer. The Court said:

“it was common ground, throughout that the applicant did not put a foot wrong. He did not produce any other documents, nor did the immigration officer ask for any others. The applicant said that the Immigration Officer did not ask any questions but simply stamped the passport ‘Immigration Officer Gatwick’ and the date” (Peter Pain J).”

17. The Divisional Court rejected the Secretary of State’s contention that the immigration officer who stamped the applicant’s passport had done so by reason of a mistake, of such a character as to invalidate a “notice in writing” conferring leave for the

purpose of section 4 of the 1971 Act. “There being no provisions for what form a notice in writing had to take, the stamp was a sufficient notice in writing to satisfy section 4”.

18. In R v Secretary of State for the Home Department, Ex parte Choudhary [1978] 3 All ER 790 the applicant, who in fact had no entitlement to enter the United Kingdom, received a stamp in his Pakistan passport marked “indefinite leave to enter”. He was subsequently taken into custody as an illegal entrant. The Court of Appeal held that, in the circumstances of the case, the immigration officer had not had lawful authority to grant indefinite leave to enter to the applicant, who was not “settled” for the purposes of the 1971 Act.
19. In R v Secretary of State for the Home Department, Ex parte Ram [1979] 1 WLR 148, the Divisional Court considered the position of an applicant who, upon return to the United Kingdom in November 1974, told the Immigration Officer he had come to attend a wedding. He made no misrepresentation to the officer but his passport was stamped with leave to enter the United Kingdom and to remain for an indefinite period. Using that leave to return to the United Kingdom on a number of subsequent occasions, the applicant in February 1977 was, again without making any representation, given leave to remain in the United Kingdom for an indefinite period. Considering himself lawfully in the country, he set up business.
20. The Divisional Court held that since the immigration officer had not been misled by the applicant into stamping the passport with leave to enter indefinitely, the burden was on the Secretary of State to show that the applicant was an illegal entrant. The fact that the immigration officer had mistakenly stamped the passport did not vitiate the officer’s authority under section 4(1) of the 1971 Act to grant leave to enter the United Kingdom, with the result that the applicant was lawfully in this country.
21. The Divisional Court was referred to Choudhary. Although not dissenting, Lord Widgery CJ noted that Choudhary and another case (Nasir Ali):

“clearly contemplate the possibility that there is a new and further principle here, namely that if the immigration officer had no authority to grant the particular permission which was granted that vitiates the permission and renders the leave void.”

Lord Widgery CJ said that he “would like to wait for another day to consider in greater detail how that doctrine should be included in this fast developing branch of the law.”

22. In R v Secretary of State for the Home Department, ex parte Bagga [1991] 1 QB 485, the Court of Appeal was faced with applicants who either had been employed as members of diplomatic missions or were the family members of such persons. Mr Bagga subsequently ceased to be a member of a diplomatic mission but, on his return to the United Kingdom from India, his passport was date-stamped and endorsed “visa exempt” by an immigration officer, in the mistaken belief that he was still a member of a mission.

23. Parker LJ held:-

“It is common ground that on 13 April 1986 the immigration officer who date-stamped [Mr Bagga’s] passport did so in the mistaken belief that he was exempt from control.

The first remaining issue is therefore:

What is the effect of a date stamp placed on a passport in such mistaken belief?

Section 4(1) of the Act provides that the power to give leave must be exercised by notice in writing. ...

On the face of it a mere date stamp does nothing more than record date of entry, and it is accepted that, in the case of someone who is exempt from control or who requires no leave under the Act or rules, that is all it does. It is therefore difficult to understand how it can possibly amount to a written grant of indefinite leave, at least when it is placed on a passport in the belief, albeit mistaken, that the holder is exempt from control. The stamp itself does not purport to grant leave and as a matter of construction, unaided or influenced by any factual matrix, could not in my view be regarded as doing so. If one goes outside the document itself to the factual matrix and

finds that the officer who placed the stamp in fact believed the passport holder to be exempt, it cannot in my view possibly lead to the result that the date stamp is to be construed as a written grant of indefinite leave.

It is however possible that the factual matrix might be such that the date stamp would amount to a written grant of indefinite leave; if, for example, the date stamp was, as a matter of practice, always used to indicate the grant of indefinite leave. But this is not the case. [500]

...

The court [in Ex parte Badaike - see above] clearly treated the date stamp as being a notice in writing giving indefinite leave to enter, but it appears also to have taken the view that if the stamp had been impressed by mistake, or indeed if the immigration officer asserted that he had been misled, the position would have been different. The court also clearly held that the section 4(1) requirement for notice in writing was merely directory. As I read the report, it proceeded on the basis that as a fact the applicant had been given leave to enter and that it did not matter that the notice had not been given in writing.

I respectfully disagree with the view that the requirement for notice in writing is merely directory. The words of section 4(1) are, in my view, clearly mandatory. The use of the word 'shall' coupled with the preceding words 'unless otherwise allowed by this Act,' in my view admit of no other conclusion. For the rest, the report in The Times newspaper is of assistance only in so far as it shows that the court recognised that mistake would have been sufficient to prevent the date stamp operating as a grant of indefinite leave. In so far as it does so I agree with it. Even, therefore, if a date stamp can be regarded as a notice in writing that the holder of the passport has been granted indefinite leave to enter the United Kingdom in some circumstances, it cannot in my judgment be so regarded in the present case." [502]

24. In Glidewell LJ's judgment, we find the following:

"Section 4(1) of the Immigration Act 1971 provides, so far as is material:

‘The power under this Act to give or refuse leave to enter the United Kingdom shall be exercised by Immigration Officers ... and ... those powers shall be exercised by notice in writing given to the person affected ...’

It is clear that such a notice must inform the person affected whether he has been given or refused leave to enter, and if he has been given leave, whether it is leave for an indefinite period or for a limited period, which must then be specified. An open date stamp gives the person affected none of this information. It is simply a record that the person concerned has been interviewed by an Immigration Officer, and passed through immigration control, on the stated date. It follows, therefore, that an open date stamp is not a notice that indefinite leave to enter has been granted.” [506]

The competing arguments

25. Mr Ali said that Ms Rogers’ evidence was deeply flawed. It was difficult to accept that, some six months after the incident on New Year’s Eve, she could recall (as asserted in her witness statement) the registration number of the *Qashqai* vehicle. Her assertion that she had asked questions of the applicant was denied by him and the driver.
26. Although Mr Ali accepted that the applicant’s absence from the United Kingdom meant that his indefinite leave to remain had lapsed, pursuant to the 2000 Order, and that, in consequence, paragraph 18 of the immigration rules could not apply, the action of Ms Rogers in putting a date stamp in the HOTD meant that the applicant had been granted indefinite leave to enter pursuant to paragraph 19 of those Rules. Ms Rogers had exercised a discretion under paragraph 19 and had granted the applicant indefinite leave to enter.
27. If that was not the position, Mr Ali submitted that account needed to be taken of what happened in the Car Hall Examination Area. By that point, the applicant’s Libyan passport had been discovered and he had been asked, and answered, questions about his return to Libya. The fact that the applicant had been permitted by the respondent to leave the ferry port meant that, considering as a whole the

actions of the respondent's officers, the applicant had been granted indefinite leave to remain.

28. Although Mr Ali accepted that it was more likely than not that the applicant had seen the Notes accompanying the HOTD, Mr Ali submitted that that document was still valid. The applicant still had the status of a refugee. The respondent needed to invoke the relevant legislative process, if she wished to deprive the applicant of that status.
29. The applicant was not an "illegal entrant" within the meaning of the 1971 Act. He had not employed deception. He had not been asked any questions by Ms Rogers and, when his passport was discovered in the Car Hall Examination Area, he had answered truthfully.
30. Mr Ali made reference to paragraph 3.84 of *Macdonald's Immigration Law & Practice* (Ninth Edition). This states that:

"A duty is cast on all persons who are examined by immigration officers (either on arrival or departure) to answer any questions put to them, say what documents they may be carrying and to produce their passport or other identity document ... There is no duty to volunteer unsolicited information, and a person will not be an illegal entrant if they accidentally and without intention to mislead offer incorrect information, and silence accompanied by conduct can in some circumstances amount to a false representation ... See *Khawaja v Secretary of State for the Home Department* [1984] 1 AC 74 ..."

31. Mr Ali's position on the case law was essentially as follows. Since the present applicant had done nothing wrong in any interaction with Ms Rogers, his position was analogous to those of the applicants in Ram and Badaike. Choudhary could be distinguished on the basis that, in the present case, Ms Rogers did have authority to "stamp" the applicant's HOTD with a stamp indicating indefinite leave to enter. Her authority derived from paragraph 19 of the immigration rules. Bagga also fell to be distinguished. Mr Ali submitted that there was a practice of using open date stamps to indicate the grant of indefinite leave.

32. Ms Reeves' submissions were essentially as follows. When the applicant arrived at Harwich, he had no indefinite leave to remain in the United Kingdom. His HOTD was no longer valid. The applicant's refugee status had come to an end, by reason of Article 1C of the 1951 Refugee Convention: the applicant had voluntarily re-availed himself of the protection of Libya, having subsequently obtained a Libyan passport and returned to live there. The applicant, being subject to immigration control, required leave to enter. In order to seek entry as a returning resident, pursuant to paragraph 19 of the immigration rules, the applicant needed to make a paid-for application, supported by evidence.
33. Ms Rogers had mistakenly assumed that she was admitting the applicant as a returning resident, pursuant to paragraph 18 of the rules. Ms Rogers' mistake arose because the applicant failed to disclose to her that he had remained outside the United Kingdom for a continuous period of more than two years. Since no application under paragraphs 19 and/or 20 of the immigration rules was made, Ms Rogers wrongly concluded that the applicant still had ILR. By using the HOTD, which he must have known was no longer valid, and by failing to present to Ms Rogers his Libyan passport, the "irresistible inference" was that the applicant was deliberately trying to conceal the fact that he had remained away from the United Kingdom for a period of some four and a half years; and that he had returned in that time to Libya. Ms Rogers was, accordingly, deliberately misled.
34. So far as the case law was concerned, Ms Reeves submitted that Bagga was binding on the Tribunal on the relevant issue; namely that an open date stamp, of the kind affixed by Ms Rogers to the applicant's HOTD, cannot have the effect of granting leave under the 1971 Act. Ms Reeves relied particularly upon the passage from the judgment of Glidewell LJ, set out above.
35. According to Ms Reeves, in order for the applicant's lapsed ILR to have been re-activated or for ILE granted by mistake, Ms Rogers must actually have considered herself to have done one or the other. But, as Ms Rogers' evidence in her witness statement explains:-

“Based on the document [HOTD] and the information provided, that [the applicant] had indefinite leave to remain in the United Kingdom when he last left, and that he had not been away from the United Kingdom for more than two years, I admitted [the applicant] into the United Kingdom under rule 18 of the Immigration Rules on 31st December 2013.”

36. This statement made it plain that Ms Rogers did not consider that she was re-activating lapsed ILR or granting ILE. The applicant could not properly “gainsay her state of mind in this regard”.
37. Ms Reeves submitted, finally, that Mr Ali had not adduced any evidence to show that there was a practice on the part of the respondent of granting ILR or ILE pursuant to paragraphs 18 or 19 of the immigration rules, by using merely an open date stamp as the notice required by section 4 of the 1971 Act.

Discussion

(a) The applicant's indefinite leave to remain

38. It is common ground that, long before he arrived in Harwich, the applicant's indefinite leave to remain had lapsed. Article 13(4)(a) of the 2000 Order is plain. The applicant's ILR lapsed at the point when he had been absent from the United Kingdom for more than two years.

(b) Home Office Travel Document

39. The Notes to the HOTD state that “the holder is authorised to return to the United Kingdom without a visa within the validity of this document” (my emphasis). As already stated, Note No. 4 provides in terms that if the holder of the HOTD “obtains a national passport from their own Government, this travel document will no longer be valid and should be returned to the Travel Document Section immediately”. As a matter of law, the applicant, therefore, proffered to Ms Rogers a travel document

which was invalid and which, it is plain, Ms Rogers would have realised was invalid, if the applicant had not withheld from her his Libyan passport. The applicant has not begun to put forward any credible evidence to the effect that he thought the HOTD might be valid.

(c) Refugee status

40. I do not consider that the question whether the applicant was or was not a recognised refugee within the meaning of the 1951 Convention as at New Year's Eve 2013 has any material bearing on his case. Refugees are not, as such, exempt from immigration control: ST (Eritrea) v Secretary of State for the Home Department [2010] EWCA Civ 643. Indeed, Mr Ali rightly did not submit that the applicant's refugee status had any bearing on the operation of article 13(4)(a) of the 2000 Order. So far as the applicant's attitude is concerned, I cannot see that it has been anywhere contended he had no inkling that, having been granted refugee status as a result of his asserted well-founded fear of persecution in Libya, his subsequent decision to obtain a Libyan passport and go to live in that country might be capable of having some bearing on his entitlement to return to the United Kingdom. It has also not been any part of the applicant's case that, unless and until a person's refugee status has been formally revoked, the respondent has no power to terminate the validity of the HOTD, in the circumstances described in Note 4.

(d) Did the applicant mislead Tracy Rogers?

41. On any rational view, the answer to this must be, yes. Even if one accepts the evidence of Mr Abdesslam, the position is plain:-

"The way the booth is set up she [Tracy Rogers] was closest to me, as the driver of the car, and spoke to me. She asked for passports and I gave her my British passport and [applicant] gave me his UN Refugee Travel Document to pass on to her; which I did."

42. So, asked to provide his passport, the applicant chose to leave that passport lying under the driver's seat of the car, and instead put forward the HOTD, which was invalid and which he either knew was invalid or about which, at the very least, he must have had profound concerns, given his history over the previous four and a half years. By proffering the HOTD, the applicant represented that he did not have a relevant passport in his possession.
43. I accept Ms Reeves' submission that, whatever other reservations one might have about details given by Ms Rogers - such as the registration number of the *Qashqai* vehicle - Ms Rogers' state of mind, as described in her statement, cannot be impugned. On the basis of what the applicant chose to show her, Ms Rogers thought she was dealing with a returning resident under paragraph 18 of the immigration rules. Her actions cannot be explained on any other basis.
44. I reject the applicant's attempt to pray in aid what happened at the Car Hall Examination Area, after the applicant and Mr Abdesslam had been allowed by Ms Rogers to continue. The evidence shows clearly that Ms Rogers was carrying out the respondent's immigration control functions by reference to Part 1 of the 1971 Act. By contrast, Mr Glen-Barber and his colleagues were examining vehicles and their contents. Notwithstanding what is recorded in Mr Glen-Barber's notes and in the HM Revenue & Customs printout, the applicant has not persuaded me that the discoveries made about him at the examination area had any retrospective effect on Ms Rogers' state of mind when she put the date stamp in the applicant's HOTD; or that the events in the Car Hall Examination Area in some other way enabled the applicant to leave Harwich in possession of valid indefinite leave to remain or indefinite leave to enter the United Kingdom.

(e) *Paragraph 19 of the immigration rules*

45. In my view, the artificiality of the applicant's claim to have been admitted under paragraph 19 of the immigration rules is quite manifest. Any notional observer, sitting in Ms Rogers' booth and possessing a reasonable working knowledge of the respondent's system of immigration controls (including her rules), could not possibly have come to the conclusion that what Ms Rogers had done was to have granted the applicant leave to enter pursuant to paragraph 19 on the basis that, even though the applicant had been away "from the United Kingdom too long", Ms Rogers had nevertheless exercised her discretion in his favour. It is, I consider, immaterial whether Ms Reeves is right or wrong about whether an application under paragraph 19 can only be made in writing or on-line, with payment of a fee. The fact of the matter is that Ms Rogers, and any other immigration officer, would have acted entirely differently, had the applicant indicated that his position might be such as (expressly or impliedly) to fall within the ambits of paragraph 19.
46. By the same token there is no scintilla of evidence concerning events in the Car Hall Examination Area to the effect that Mr Glen-Barber (or anyone else) appreciated that he was being called upon to exercise discretion under that paragraph.

(f) *Relevance of the case law*

47. Choudhary and Bagga are judgments of the Court of Appeal, whilst Badaike and Ram are judgments of the Divisional Court. There is no question, therefore, but that I am bound to follow the judgments of the Court of Appeal (in particular, Bagga), if and insofar as there is any material conflict in *ratio decidendi*.
48. Ms Reeves submitted that Bagga was binding authority for the proposition that a date stamp does not constitute written notice of a grant of leave, as required by section 4(1) of the 1971 Act. I am not persuaded that is correct. I accept that the passage relied on by Ms Reeves from the judgment of Glidewell LJ can be read as having that effect. The judgment of Parker LJ, however, appears to proceed on the basis that there might be circumstances where "the factual matrix" would be such as

to enable a date stamp to amount to a written grant of indefinite leave. Parker LJ gave as an example where “as a matter of practice” a date stamp is so used.

49. The third member of the panel, Leggatt LJ, was able to reach the same result as his colleagues, without having to address directly the significance of the date stamp. He considered he was able to “agree with Parker LJ and Glidewell LJ about the effect of a date stamp” [510]. But those Lords Justice did not, in fact, agree on the issue.
50. Accordingly, I do not consider that this Tribunal is bound to find that a date stamp cannot, in law, operate as a formal record of the grant of leave. I do, however, agree with Ms Reeves to the extent that, if there is no practice of using a date stamp to record the grant of leave, then, despite what the Divisional Court said in Badaike and Ram, the case of Bagga is authority for the proposition that even a “blameless” individual will be unable to derive any material benefit from that stamp.
51. But the corollary is not that a blameworthy individual must automatically be able to benefit from such a stamp. Someone who, by misrepresentation, induces an immigration officer to proceed on a mistaken basis is not automatically entitled to succeed, merely because a mistaken decision has been formally recorded. In such a scenario, consideration must be given to:
 - (a) the person’s actions and understanding; and
 - (b) what the immigration officer thought he or she was doing by affixing the stamp.
52. Having reached these conclusions on the law, I must apply them to the facts of this case. The applicant has not put forward any specific evidence to make good Mr Ali’s contention that date stamps are used to record the grant of leave in paragraph 18 or paragraph 19 cases. It has to be acknowledged, however, that what Ms Rogers did, by putting the date stamp in the applicant’s HOTD, is indicative of a practice of using such a stamp to record the grant of “leave to enter the United Kingdom as a returning resident” under paragraph 18 of the rules. That, after all, seems to have

been what Ms Rogers thought she was doing; and it is difficult to see how else a person can be admitted under that paragraph.

53. On the facts of this case, however, I find that the applicant can derive no benefit from the date stamp that Ms Rogers placed in his invalid HOTD. Unlike the applicants in Badaike and Ram, the present applicant cannot be said to have acted in a blameless manner. On the contrary, as I have found, the evidence he has himself seen fit to adduce reveals him, by his actions, to have fundamentally misrepresented his immigration position to Ms Rogers. That misrepresentation operated so as to cause her, mistakenly, to treat the applicant as a resident returning to the United Kingdom, who was entitled to enter by virtue of paragraph 18 of the immigration rules. She did not consider she was doing anything else. She certainly did not think she was exercising any discretion in the applicant's favour under paragraph 19, which is the proposition for which the applicant contends.
54. In conclusion, on the facts of this case the existence of the date stamp in the HOTD is immaterial. The evidence of the applicant's actions and understanding, and the evidence of what Ms Rogers thought she was doing, disclose a misrepresentation by the applicant that induced a fundamental mistake on the part of Ms Rogers. In short, the applicant can derive no benefit from what happened in Harwich on New Year's Eve 2013.

Disposing of the grounds

55. Accordingly, on ground 1, I find that the applicant does not have indefinite leave to remain or indefinite leave to enter the United Kingdom. I therefore decline to make the declaration sought.
56. On ground 2, as a consequence of my finding, the applicant was not entitled to have an NTL stamp placed in his Libyan passport.

57. Ground 3 challenges what is said to be an “allegation” that the applicant is an illegal entrant. Ms Reeves stated that the respondent has not, in fact, made any specific decision to this effect. On that basis, Mr Ali indicated the applicant was content not to proceed on this ground.
58. Ground 4 involves the contention that, whatever happened at Ms Rogers’ booth, by the time the applicant left Harwich, the respondent was in full possession of the relevant facts. I have explained above my reasons for finding that what was said and done at the Car Hall Examination Area has no material bearing on the respondent’s decisions that are the subject of this judicial review.

Decision

59. The application is dismissed.

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