



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/13698/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 2<sup>nd</sup> July 2014  
Prepared 8<sup>th</sup> July 2014

Determination Promulgated  
On 4<sup>th</sup> August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR RAFIK MAGHRAOUI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr C. Jacobs of Counsel  
For the Respondent: Mr S. Kandola, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Algeria born on 21<sup>st</sup> July 1978. He appeals against a decision of the Respondent dated 12<sup>th</sup> April 2013 to refuse to grant him indefinite leave to remain on the basis of fourteen years' long residence. The Appellant's

appeal against that decision was dismissed at first instance by Judge of the First-tier Tribunal Oliver sitting at Hatton Cross on 24<sup>th</sup> September and 6<sup>th</sup> December 2013. For the reasons given below that decision was set aside and I have reheard the appeal.

2. The Appellant claimed to have arrived in the United Kingdom in January 1998 in the back of a lorry and thereafter to have worked and paid taxes under the name of Farook Ouane from 1998 to 2004. He states that he worked for the remainder of his time in the United Kingdom under the name of Nadge Sinani using a French passport in that name said to be issued on 15<sup>th</sup> June 2004. With his application his solicitors produced documentary evidence with a schedule relating to each of the years of his claimed residence in the United Kingdom. For 1998 these were a tenancy agreement, pay slips, medical centre letter and accommodation agency letter. For the remaining years there was a tenancy agreement, pay slips, P60, P45, bank letter, gas bill, rent receipt.

### **The Decision**

3. The Respondent refused the Appellant's application on 12<sup>th</sup> April 2013 stating there was no evidence of the Appellant's arrival in the United Kingdom and he had produced no evidence to show that he had ever been granted lawful leave to enter or remain. He was an illegal entrant and was accordingly liable for administrative removal. He had failed to submit acceptable photographic evidence to show that he and the two aliases, Ouane and Sinani, were one and the same person. The Appellant had produced a photocopy of a French identity card in the name of Ouane which was not acceptable. The personal references from friends and acquaintances could not be accepted as independent evidence. He did not qualify under Article 8 as he had not severed all ties with Algeria and had spent the majority of his life there.
4. The Appellant appealed against that decision and the matter came before Judge Oliver who recorded the evidence received by him. The Appellant said that the agent who had brought him to the United Kingdom in 1998 had obtained the French identity card in the name of Farook Ouane. He had never left the United Kingdom after arriving in 1998. He had changed his identification after the manager of the Levant Restaurant told him there was something wrong with the Appellant's national insurance identity. The Appellant bought his new identity document in the name of Nadge Sinani in Finsbury Park. He produced some further documents including a medical certificate from a doctor who said he had treated the Appellant at the Mumtaz Medical Centre in London W11 from April 1998 to May 2001. The Appellant had been prescribed antidepressants as a result of his experiences during the Algerian Civil War. The Appellant denied when it was put to him in cross-examination that the pay slips from 1998 to 2002 had been similarly crumpled and contained what looked like tea stains in order to give the appearance of age. The Appellant did not know why certain information on the medical centre documentation was inconsistent, the road number of his GP practice was different on the letter to that on the GP's stamp.

### **The Determination at First Instance**

5. The Judge was satisfied that a man named Ouane was in the United Kingdom and working from 1998 to 2004. He was also satisfied that from 2004 a man named Sinani was in the United Kingdom and working. The question was whether these two men were the claimed aliases of the Appellant. The Judge was unimpressed by the medical centre document which led him to believe that it was created by a person illiterate in English. The name used by the patient claimed to have been treated from 1998 to 2001 must have been Rafik Maghraoui but that contradicted the Appellant's claim that at that time he was using the alias of Farook Ouane. The Judge placed no weight on the medical centre document as indicating that it was the Appellant who had been in the United Kingdom from 1998.
6. The Appellant claimed to have kept his pay slips safely in a box. The Judge found that that contradicted the appearance of the pay slips which were crumpled and had the appearance of being tea stained. The Appellant's landlord, who claimed that the Appellant was his tenant in 1998, was not called to give evidence even though he was contactable at the time of that application as was the GP. The witness called on behalf of the Appellant stated that he played football with the Appellant in 1999 but knew him as Mr Sinani, a name which on the Appellant's case was only adopted from 2004. The second witness called by the Appellant gave one place in his witness statement where he and the Appellant used to meet up (Leicester Square) but in oral evidence said they had not met there for the last year but now met at a café in Shepherds Bush which had not been mentioned in the witness's statement. The Judge found he could place no weight on the evidence of either witness. He found no reliable evidence that Farook Ouane was the same person as the Appellant and therefore no reliable evidence that the Appellant had been in the United Kingdom since 1998. There was no claim for family life and although the Judge was unable to say how long the Appellant had been in the United Kingdom there was no evidence that it was anywhere near twenty years. The Judge dismissed the appeal.

### **The Onward Appeal**

7. The Appellant appealed against that decision in grounds settled by Counsel who had represented him at first instance (and who also appeared before me). The grounds made the point that the Appellant had produced the original identity card used by the Appellant in the name of Farook Ouane and the original passport used by the Appellant in the name of Nadge Sinani. In the circumstances the Judge had acted unreasonably in failing to reach any finding on these two documents which were the most compelling evidence produced by the Appellant. It was an error to find that the Appellant's pay slips were tea stained as the burden of proof of establishing that was upon the Respondent.
8. Permission to appeal the decision was granted by Upper Tribunal Judge Coker on 25<sup>th</sup> February 2014. She wrote:

"It is arguable that the failure of the First-tier Tribunal Judge to make any finding on the reliability or otherwise of the original documents produced at

the hearing or their provenance may have tainted the findings reached. It may be, given the other evidence before the Judge, that the outcome will be the same but the lack of consideration of original documentation, particularly when considered to be relevant by the Respondent in the refusal letter, may be relevant.”

9. The matter next came before Deputy Upper Tribunal Judge Wilson on 4<sup>th</sup> April 2014 to determine whether there was an error of law in the Judge’s determination such that it fell to be set aside and the decision remade. He found that there was such an error and set aside the decision. Annexed to this determination is a copy of his determination dated 9<sup>th</sup> April 2014. At paragraph 3 of his determination the Judge referred to:

“The two documents issued apparently regularly by the French authorities show first of all a gentleman named Ouane, first name Farook, issued in the Paris Prefecture on 14<sup>th</sup> June 1998 valid for ten years and secondly a French passport issued in the name of Sinani, first name Nadge in 2004”.

10. The photographs of the three persons concerned, Ouane, Sinani and the Appellant, were, Judge Wilson was satisfied, all one and the same person save that there was a slight ageing of the Appellant over the years. For the Judge not to have had regard to the identity card and the passport was a material error of law. Judge Wilson put the matter on the basis that if the documents were not issued by the French authorities when stated, particularly 1998, and were simply sophisticated forgeries produced recently, the Appellant’s case would fail. If however the identity card in particular was issued by the French authorities in 1998 the Appellant would be entitled to work on the basis of that document and the case would succeed on a balance of probabilities. The question was whether the identity card and the passport were issued by the French authorities. The Judge felt that it was reasonable to allow the Respondent time to make an application to the French authorities for their views as to these respective identity documents. He directed that the decision on the appeal be remade and adjourned the appeal for two months to allow sufficient time for enquiries to be made.

11. On 13<sup>th</sup> June 2014 the Respondent wrote to the Tribunal attaching a copy of the report from the Home Office National Document Fraud Unit which had examined the identity card in the name of Farook Ouane said to have been issued in June 1998 in Paris. The National Document Fraud Unit examined the card on 20<sup>th</sup> May 2014 and found it to be a counterfeit and should not be relied upon as evidence of nationality or identity. The reasons given were:

“The above purported French identity card is ink jet printed and lacks any security features – it is therefore completely counterfeit”.

12. The Appellant’s representatives wrote to the Tribunal on 25<sup>th</sup> June 2014 asking for an adjournment of the hearing listed for 2<sup>nd</sup> July. It was their understanding that the Respondent was to make enquiries directly with the French authorities as to the

authenticity of the ID card but instead had looked at the card themselves. They requested an adjournment to obtain verification from the French authorities in respect of the ID card. This request was refused by Upper Tribunal Judge Eshun on 27<sup>th</sup> June 2014. Counsel for the Appellant had written to the Tribunal noting that as at 20<sup>th</sup> May 2014 the Respondent had not received a reply from the Document Verification Unit in relation to the Appellant's French identity card, the original of which was sent to the unit on 13<sup>th</sup> May 2014 (it was for that reason that the case was adjourned to 2<sup>nd</sup> July). Judge Eshun wrote:

“According to a letter from Christopher Jacobs, Counsel, the Respondent was expecting a reply from the Documentation Verification Unit in relation to the Appellant's French ID. The reply dated 20<sup>th</sup> May 2014 from the DVR has been received by the Upper Tribunal and on that basis the request to adjourn the hearing on 2<sup>nd</sup> July 2014 is refused.”

### **The Application for an Adjournment**

13. At the hearing before me on 2<sup>nd</sup> July 2014 Counsel renewed the application for an adjournment. Counsel acknowledged that the passport said to have been issued in 2004 which was held by the Appellant's solicitors, had not been submitted by them to the French authorities for verification as the Appellant now accepted that it was a forgery. However the Respondent had not put the identity card to the French authorities in accordance with the directions of Judge Wilson. Although the Respondent's Document Verification Unit had found the identity card to be false, the French authorities might have their own methods of determining whether a document was false or not. It was not for the UK authorities to authenticate the document. The Respondent had seized the identity card and was now refusing to return it to the Appellant's representatives. The Respondent was not entitled to do this as it was evidence in live proceedings. It had been handed to the Home Office by the Appellant's representatives but should now be returned.
14. In response it was argued that what the Learned Deputy had actually said was that it was reasonable to allow the Respondent time to make an application to the relevant authorities for their views as to the respective identity documents. It was not a direction as such. The Respondent had examined the identity document. The Document Verification Unit were experts in examining documents. The Respondent was entitled to retain the document pursuant to Section 17 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Where a document comes into the possession of the Respondent in the course of the exercise of an immigration function the Respondent or an Immigration Officer may retain the document while he suspects that the person to whom the document relates may be liable to removal and retention of the document may facilitate the removal.
15. There were practical difficulties about approaching the French authorities, it was likely to be a long and protracted matter. The document would have to be sent to the Foreign Office and then from there to the Embassy in France who would then have to approach the French authorities to verify it. As opposed to that an expert opinion on

the report was already available. Given the claimed provenance of the document, that it was supplied by an agent who had trafficked the Appellant into the United Kingdom, not in the Appellant's name, the circumstances pointed to the document being counterfeit.

16. In response Counsel argued that the question of whether the Respondent was entitled to seize the identity document had been litigated twice before both at first instance and before Judge Wilson. In seizing the document the Respondent was not exercising an immigration function. To allow the Respondent to confiscate evidence in a court proceedings would frustrate the functioning of the Tribunal. In any event the Respondent was directed to forward the document to the French authorities. There was little detail in the document verification report. The reasons given for finding the document counterfeit were "meaningless". A direction should be made that the card be returned to the Appellant's representatives.
17. I considered the application for an adjournment bearing in mind the Court of Appeal decision in **SH Afghanistan** that the test is one of fairness. The indication by Judge Wilson that the Respondent could forward "the identity documents" to the French authorities was somewhat impractical. In the first place the Respondent did not have the passport said to have been issued in 2004 and the Appellant's representatives evidently had no intention of forwarding the passport to the French authorities knowing it to be fake. Judge Wilson had proceeded on a false assumption that the passport might be genuine when it was not.
18. The argument in the case turned on the identity card. The Respondent's experts had looked at the document. I do not accept the characterisation that it was a cursory glance, rather I find that it was with some care and the unit had found the identity document to be a crude forgery. I respectfully agree with Upper Tribunal Judge Eshun who refused the earlier application for an adjournment on the papers. In the light of the receipt of the document verification report there was now no longer any point in further adjourning the matter and the case could proceed on the basis of the report. The Document Verification Unit are very well accustomed to examining documents from a wide range of countries and have a particular expertise in this field. What is noticeable is that the Appellant and his representatives do not intend themselves to instruct an expert to examine the identity card. That facility was made available to them by the Respondent but it has not been taken up. Given the prima facie evidence that the identity card is a false document, there would be no purpose served in a lengthy prolonged adjournment whilst efforts were made to contact the French authorities. The matter was perfectly capable of resolution by the Upper Tribunal on the basis of the evidence before me.
19. Nor do I agree that the Respondent's retention of the identity document is in any way unlawful. The examination of a document which is said to have been used to obtain employment unlawfully is clearly an immigration function and the Respondent was therefore quite entitled to retain the document. It is correct that the document had been produced as evidence in the Tribunal but it also had importance as the means according to the Appellant by which he obtained unlawful

employment. This breach of the Immigration Rules was not something which the Respondent could ignore. The Respondent could certainly not return the document to the Appellant in such circumstances given the risk that it might be used again for unlawful purposes. In the light of the Appellant's claim that he had used the document for a number of years unlawfully, it was not something which it was reasonable to expect the Respondent to risk again. Clearly retention of the document would facilitate the Appellant's removal and it might be used in criminal proceedings thus rendering the Appellant liable to further sanction. I indicated therefore I was not prepared to adjourn the matter and that the case should proceed which it did.

### **The Substantive Hearing Before Me**

20. The Appellant attended and gave oral testimony through the court appointed interpreter. He was examined, cross-examined and re-examined. There were no other live witnesses. The Appellant adopted his witness statement in support of his appeal in which he said that he had arrived in the United Kingdom in January 1998 and had been here ever since. The pay slips and P60s he had produced related to his employment in the United Kingdom. Counsel pointed out to his client, the Appellant that the card was said to have been issued in June 1998 whereas the Appellant said he had arrived in January 1998. The Appellant replied that he had the card in France before he came to the United Kingdom. The difficulty with that answer was that that would be impossible if the Appellant had arrived in January 1998 and the card was only issued six months later. Counsel put that contradiction to the Appellant in examination-in-chief. The Appellant replied that he arrived in the United Kingdom in June and that there was a mistake in his statement when he said he arrived in January. He had been given the card by the agent who brought him here who had had it made up for him. The Appellant had given the agent a photograph and in six weeks the man had produced the identity card. The agent told the Appellant he went to the prefecture in France and used someone else's name for the card. The Appellant thought this was all legal stating that if the card was false he would have had it made in his own name.
21. The reason why he then obtained a second identity (the false passport in 2004) was because at the last job he did he did not have a bank account and was getting paid in the name of Bebchick. He therefore changed into another identity, Sinani, in order to be able to open a bank account. A man in Finsbury Park made the French passport for him. He had paid the man some money.
22. In cross-examination he said he obtained the French identity card in March or April 1998. Later on in cross-examination he said he obtained the French identity card around 21<sup>st</sup> or 22<sup>nd</sup> June 1998 when he arrived. He had never seen the card in France. The agent gave him the card when he arrived here. He had obtained a genuine French identity card even though he intended to leave France because he thought he would be working and would have to show it. This raised the question why it was important for the Appellant to have a genuine identity card in 1998 when he arrived but not important that he should have a genuine identity document in 2004 when he

obtained the false passport. He said that the passport was to enable him to get some work. When he arrived in the United Kingdom in a lorry they got as far as London Victoria where the agent gave him the card. The name on the identity card did exist, it was registered with the prefecture.

23. In re-examination the Appellant was asked to explain the conflict between stating that he had obtained the identity card in March or April 1998 and that he had first seen the card about 20<sup>th</sup> or 21<sup>st</sup> June 1998. The Appellant replied that he had given the agent the photograph and the money in March/April and then after that the agent had produced the document. He was adamant he had not seen the identity document until after he had arrived in the United Kingdom.

### **Closing Submissions**

24. In closing for the Respondent reliance was placed on the refusal letter, the identity document was a counterfeit, it lacked security features. Pay slips and other documents were not reliable either and did not relate to the Appellant. It did not make any sense why the Appellant should obtain a validly issued identity card in 1998 but a false passport in 2004. That had been put to the Appellant in cross-examination but he had not been able to answer the point. That the Appellant had submitted a counterfeit document, the passport, undermined his credibility as a whole. The Respondent relied on the same submissions made to the Judge at first instance. The pay slips were unreliable, they were tea stained. No witnesses had been called to support the Appellant's claim to have been in the United Kingdom since 1998 and that too should weigh against the Appellant. The doctor for example had not come forward. The appeal should be dismissed.
25. For the Appellant Counsel argued that the identity card was issued in 1998 by the French authorities rather than being recently produced. The Appellant could show he had been here since 1998. He only had to show that he had been here for fourteen years prior to enforcement. It was accepted that there were inconsistencies in the Appellant's evidence but it did not detract from the Appellant's case. No weight should be attached to the document verification report given that it was in breach of a direction of the Tribunal. The events in questions in 1998 were a long time ago, it was not surprising that the Appellant was not exact in his answers. He had not seen the identity card until 20<sup>th</sup> or 21<sup>st</sup> June of that year when the document was produced to facilitate his entry.
26. In 2004 he was required to have better identification and he then obtained the passport. It may or may not be genuine but he did not understand it to be genuine. The distinction had to be drawn between a document used to obtain entry and a document used to support oneself. The passport was not used to commit fraud but to enable the Appellant to live and work as an illegal entrant. The use of false documents was not a reason not to grant indefinite leave to remain. Unlawful work was part and parcel of a fourteen year Rule application. It was a difficult case because the Respondent had prevented the French authorities from confirming the authenticity of the identity document. The Appellant had done all he could. The



identity document was produced in 1998. As regards Article 8 he had developed a private life. He had worked and there was evidence from witnesses of friendships.

### Findings

27. In order to meet paragraph 276B of the Immigration Rules the Appellant has to show on the balance of probabilities that he had had at least fourteen years' continuous residence in the United Kingdom excluding any period spent in the United Kingdom following service of the notice of liability to removal. This provision was deleted on 9<sup>th</sup> July 2012 but by virtue of the transitional provisions because the application was made before that date the Appellant can still rely on the paragraph. In this case the Appellant applied for indefinite leave to remain on the basis of long residence on 4<sup>th</sup> July 2012 thus the paragraph applies. Following the decision in Edgehill, where the Appellant raises an argument under Article 8 (right to respect for private and family life) before that date the provisions of paragraph 276ADE and Appendix FM do not apply.
28. I accept the record of the evidence given to the Judge at first instance (there was no argument that I should not) but of course his determination having been set aside any conclusions he reached on that evidence do not apply. The issue in the case was whether the Appellant could show that he and the two aliases he claimed to have used were one and the same person. I have to say, having heard the Appellant give his evidence to me, I did not find him to be any more of a credible witness than the Judge at first instance had. The Judge at first instance had identified a number of difficulties with the evidence produced by the Appellant to show the Appellant's residence in this country. These difficulties I have referred to above (see paragraphs 5 and 6 ) include such matters as the evidence said to be from the GP practice and the contradictory evidence of the Appellant's witnesses. No steps have been taken by the Appellant or his representatives to address those difficulties. Indeed the evidence in this case remains in the same unsatisfactory state that it was in at first instance. Having carefully looked at it myself I find I can place no weight upon the evidence said to show the length of time the Appellant has been in the United Kingdom.
29. The determination at first instance was set aside because the Judge had not analysed two documents which the Appellant said would show that he had lived and worked in the United Kingdom since 1998. Those two documents were a French identity card and a French passport. Judge Wilson was not made aware that the French passport was fake and that no useful purpose would be served by sending it to the French authorities. It seems to have been produced in London from a man the Appellant met in Finsbury Park. I do not see how this passport could possibly take the case any further. To accept that it was produced in 2004 (and then used by the Appellant to obtain work) is to accept the credibility of the Appellant's account. There is however a serious difficulty with the Appellant's account. It makes no sense why the Appellant should have obtained a false document in 2004 when, on his case, he had a genuine identity card already. This point was put to the Appellant in cross-examination, but the Appellant had no answer to the point and Counsel's submissions in closing could not answer the point either.

30. On the Appellant's case and according to the evidence he gave me, he had in fact stopped using the name on the identity card by that time and was using another name altogether (Bebchick). Since he presumably had no documentation in that name he says he was told he had to obtain documentation in order to open a bank account and he therefore obtained the false passport. The Appellant was quite unable to answer the obvious inconsistency in this. If he had a genuine French identity card from 1998 there was no reason for him to use another identity for which he had no documentation and no reason to obtain a false document in a third identity. It is not for me to speculate on when the false passport was created or for whom but it was not I find used by the Appellant.
31. The Appellant's case depends entirely on his claim that he had been given a genuine French identity card in 1998. The card itself is clearly not genuine. I accept the evidence of the document verification report for the reasons I have given above. The identity card is a crude forgery. That of itself undermines the Appellant's claim that it was produced in 1998 but the difficulties which the Appellant got into in his evidence further confirm my conclusion that no weight can be placed on the identity card. The Appellant got himself into a complete muddle in his oral evidence as to when he had actually obtained this identity card. He seemed unclear as to whether he had been given the identity card before he left France or after he arrived in the United Kingdom. He was unclear whether the card was used to facilitate entry into the United Kingdom or whether it was handed to him at London Victoria.
32. On the one hand in his statement (and what he had told the Judge at first instance) he arrived in the United Kingdom in January 1998. However when it was pointed out to him by his own Counsel that that appeared to contradict the date on the card as being issued in June 1998, the Appellant hastily amended his evidence to say that that was when he had arrived in the United Kingdom. I appreciate that the events of 1998 are some sixteen years ago now but as against that the Appellant was not giving evidence for the first time when he gave evidence to me. He had given a detailed statement to his solicitors. He had been cross-examined once before about his claim. The fact that after all this time the Appellant was still incapable of giving a consistent and coherent account merely served to underscore the unreliability of his evidence. At some date the Appellant acquired a false French identity card, a crude forgery as I have found, I do not accept that that card was produced in 1998. Whilst it may well be that an individual by the name of Ouane was working from 1998 to 2004, I do not accept that that was the Appellant and I do not accept that the French identity document which he produces establishes that. Far from it, I find that the identity document undermines the Appellant's evidence.
33. The Appellant is not able to show that he has lived in the United Kingdom for more than fourteen years. He cannot satisfy the provisions of paragraph 276B. The arguments put forward in this case, for example that the Respondent has unlawfully seized the identity card, in my view are something of an attempt by the Appellant and his legal team to obscure the issues rather than clarify them. The Appellant has a very weak case. He is an unreliable witness lacking in credibility and consistency. I therefore dismiss the appeal under the Immigration Rules.

34. In relation to the Appellant's claim under Article 8, it is not for me to speculate on how many years the Appellant has in fact been in the United Kingdom. It is certainly nowhere near the fourteen years that he claims. The Appellant has established a private life of sorts for the period that he has been here but even setting aside the fact that no one has come to court for him to give evidence on his behalf, there is still scant evidence of the Appellant's private life in this country. I do not accept his claim of employment but I do find that he has put forward false documents to the Tribunal in a bid to deceive the authorities. Given the limited nature of the evidence of the Appellant's private life and the fact that he cannot show that the people who have been working in this country are indeed him, I do not find that the Appellant can show that he has established a private life in this country which would be interfered with by his removal to Algeria.
35. He has no family life in this country and the evidence he put forward at first instance as to his private life I find to be unimpressive. His witnesses contradicted themselves in their evidence at first instance and they were not even called to give evidence to me. I do not find therefore that the Appellant's removal to Algeria should that eventually come to pass would interfere with protected rights. The Appellant's removal would be in accordance with the legitimate aim of immigration control particularly as the Appellant has sought to deceive the authorities by putting forward false documents. To the extent that the Appellant has established any form of private life in this country any interference with it would be quite proportionate to the legitimate aim being pursued given its limited nature and that it has been acquired whilst the Appellant has had no leave to remain. I therefore dismiss the appeal under the Human Rights Convention.

**Decision**

The decision of the First-tier Tribunal involved the making of an error of law and has been set aside. I remake the decision by dismissing the Appellant's appeal against the Respondent's decision to refuse to vary leave or to grant leave.

Appellant's appeal dismissed.

I make no anonymity order as there is no public reason for so doing. I make no fee order in this case.

Signed this 30th day of July 2014

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Deputy Upper Tribunal Judge Woodcraft



IAC-FH-AR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/13698/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 April 2014**

**Determination Promulgated**  
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WILSON**

**Between**

**RAFIK MAGHRAOUI**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant:

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Oliver who refused the appellant's appeal against the respondent's decision to refuse his application for leave to remain on the basis of what is commonly called the fourteen year rule. It is a

very complex history but really what it boils down to is whether or not the appellant, a gentleman called Ouane, and a gentlemen called Sinani, are one and the same person. In the course of the application copy passport and copy identification documents, both from the French authorities, were produced to the respondent. The originals were made available to the judge. The judge at paragraph 18 decided to place no reliance on those documents at all.

2. The grounds of appeal in respect of which leave was granted in the Upper Tribunal by Judge Coker argue that essentially that the First-tier Tribunal Judge failed to make a proper finding on the reliability or otherwise of the original documents. It may well be given the other evidence the outcome may be the same, but the lack of consideration of the original documentation, particularly when considered to be relevant by the respondent may well be relevant.
3. The two documents issued apparently regularly by the French authorities show first of all a gentleman called Ouane, first name Farook, issued in the Paris prefecture on 14<sup>th</sup> June 1998, valid for ten years, and secondly a French passport issued in the name of Sinani, first name Nadge, in 2004.
4. The photographs for Ouane, Sinani and the appellant Mr Maghraoui, who is in front of me, I am satisfied are all one and the same person. The only difference appears to be the slight ageing of the appellant over the years. That is obvious from the face of the documents and is therefore a matter in which I take judicial notice of. That is not a matter that Mr Tarlow for the Secretary of State wished to argue to the contrary on. The photocopies that were available to the respondent were only photocopies and the quality therefore is not wonderful but I have now seen those original documents.
5. It may well be that they were essentially not issued by the French authorities when stated, particularly 1998, and were simply very sophisticated forgeries produced very recently. If it is the latter, the case obviously fails and Mr Maghraoui will probably face criminal charges. If it is the former, however they were issued, if they were issued by the French authorities in 1998 that is crucially the date on which the appellant states he entered the United Kingdom. He would have been entitled to work all identity documents flow naturally hereunder and the case would therefore succeed on a balance of probabilities.
6. The question therefore of whether or not these documents were regularly issued by the French authorities or not, assuming of course they were on a basis of false identities, has got to be at least clarified for the French authorities, they may not be able to assist given the age, there again they might.
7. In those circumstances I am satisfied firstly, that there is an error of law. Secondly, that it would be reasonable to allow the respondent time to make application to the time to authorities for their views as to these respective identity documents. The identity documents have been returned to the appellant. I have seen them. I have seen the photocopies lodged as part of the application. I am satisfied that they are open and the same and that therefore the respondent can forward photocopies of

those documents to the French authorities in confidence that both they and the French authorities are not being misled.

8. Clearly the French authorities might say "We need to access an original document because of a watermark or some other security device that we would not necessarily be aware of". That is common and in those circumstances clearly the obligation then immediately switches to the appellant's solicitors to make those documents available for inspection.
9. I therefore direct firstly, that there was a material error of law. Secondly, the decision should be remade in the Upper Tribunal. It should normally be reserved to me unless there is reason otherwise but it is primarily now a question of fact that I would assume the French authorities would be able to assist on one way or the other.
10. I think it would be appropriate to adjourn it for two months.

Deputy Upper Tribunal Judge Wilson