



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

Appeal Number: AA093752014

THE IMMIGRATION ACTS

**Heard at Manchester
On 17th May 2016**

**Determination Promulgated
On 24th May 2016**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**AYED K EL INAZI
(Anonymity order not made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Aghayere, counsel, instructed by A2 Solicitors
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant sought permission to appeal on the grounds the First-tier Tribunal judge failed to have regard to material evidence and matters. In particular
 - (i) failed to consider the SPRAKAB report which accepted the appellant was Kuwaiti;

- (ii) rejected Dr George's expert evidence regarding the genuineness of the Kuwaiti documents because it was not clear whether he had been provided with the screening and substantive interview notes: Dr George had not been instructed to consider the plausibility of the applicant's account but the genuineness of the documents only;
 - (iii) rejecting the appellant's evidence as to whether he was educated given that English was not the appellant's first language and there had been no 'read-back';
 - (iv) failed to consider relevant background country material;
 - (v) concluded that because the applicant had been granted a visa on his allegedly false passport, then the passport was genuine;
 - (vi) failed to consider that a fingerprint match at the US Embassy does not necessarily mean the appellant is Iraqi;
 - (vii) the CID notes should not be regarded as evidence;
 - (viii) in not accepting the appellant's explanation for his wife's name in screening fails to consider that English is not his first language and the screening interview was not read back;
 - (ix) failed to have adequate regard to the witnesses' evidence and origins and failed to have adequate regard to background material that supported the applicant's claim.
2. Permission was granted principally on (v) above but permission was not refused on other grounds.
3. The applicant successfully claimed asylum as an undocumented Bidoon in the identity of Ayed Khazai El Inazi born in Saihat Al Awazim Kuwait on 15th November 1971. He arrived in the UK on 12th February 2013 and claimed asylum on 13th February 2013; he was recognised as a refugee in the identity of Ayed Khazai El Inazi on 17 April 2013 and granted leave to enter until 17 April 2018. On 24th October 2014 the respondent cancelled the appellant's refugee status and on 15th December served a decision to remove him under s10 Immigration and Asylum Act 1999. The respondent notified the appellant that she considered his true identity to be Ayyed Khazzl Hayef, an Iraqi Citizen born 1 January 1971 and that he had obtained a visa for the USA from Baghdad on his own passport. The appellant's appeal against that decision was heard by First-tier Tribunal Malik and dismissed in a decision promulgated on 27th March 2015.
4. Before me Mr Aghayere sought permission to adduce evidence that had not been before the First-tier Tribunal namely a LandInfo report which he asserted went directly to the reference in [47] of the First-tier Tribunal decision:

"...he is an Iraqi national and the Iraqi passport, rather than being obtained by a bribe or being false, is in fact the appellant's own passport. In making this finding, it appears to me incredible the US authorities in Iraq would have granted a visa on an Iraqi passport without first making further checks to establish the identify of the passport holder and the bona fides of the applicant for the visa: that the US authorities did grant the visa causes me to find it was validly issued to the appellant as an Iraq national."

Mr Aghayere (who had only received his brief the previous evening) had not made an application prior to the hearing for admission of the evidence at this

stage. Nor did he establish whether the admission of the document satisfied the *Ladd and Marshal* test. He stated that it was not until the decision of the First-tier Tribunal was received was the appellant aware that the judge was going to make findings as to his nationality other than that he was or was not a Bidoon. Had he known this the document would have been submitted for the First-tier Tribunal. This is not strictly correct – the appellant was aware from the reasons for cancellation of his status that the respondent had concluded that the appellant was an Iraqi national who had applied for a visa to travel to the USA using an Iraqi passport. There is no plausible reason for the appellant having failed to adduce such evidence as he wished relating to the Iraqi passport before the First-tier Tribunal. I refused to admit the evidence during the course of my determining whether there was a material error of law.

5. The First-tier Tribunal considers the evidence of Dr George who has stated in very strong terms that the Kuwaiti documents are, in his opinion, genuine. Dr George is a freelance writer, journalist, academic and expert witness who has given evidence to the tribunal on a number of occasions. His CV is impressive. He states that he is very familiar with the style and format of Kuwaiti documents and keeps numerous copies of such documents, both genuine and counterfeit that he has acquired in the course of his work as an expert witness. It is not clear from his CV that he has specific forensic expertise but he states that over the course of his work he has prepared some 500 authentication reports on documents dealing with several separate documents. Dr George considered the authenticity of a residence permit issued to Khazal Nayef Saleh dated 6th June 1978 and a certificate dated 10th March 1993 issued by the Ministry of Education affirming the educational record of Ayed Khazal Nayef Saleh. It does not appear that he was provided with the appellant's witness statements or the respondent's reasons for refusal of asylum letter or his screening or asylum interviews. He confirms that, although he does not have in his possession documents of that specific type, he does hold a variety of official documents issued in the same period and he concludes that there was nothing about the two documents that would cause him to doubt their authenticity.
6. The First-tier Tribunal judge places no weight upon these two documents because Dr George was not provided with the appellant's screening and asylum interview which indicated that he had not been educated and because the documents fail to mention the appellant's claimed family name of El Inazi. Dr George was not asked to comment on this or whether that information would have affected his assessment of the genuineness of the two documents. It is of course possible that the documents are genuine – they just do not belong to this appellant.
7. The judge considers the evidence in the context of the inconsistencies in the appellant's evidence notably his statement initially that his father worked as a shepherd and then that he worked for a Government department; that "they" were not given death or birth certificates and yet he produced documents for his appeal that contradicted this; that he had never been educated and then that he had been lucky and been able to be educated hence the school certificate; that he had never applied for a visa to another country and then that he had a US visa; that the appellant gave his family name as El Inazi and yet no other

documents produced had that family name on them. The letter from the Ministry of Education, the school certificates and the residence permit do not have the appellant's family name on them. There was no evidence from Dr George as to the possible significance/insignificance of this. It was plainly reasonable for the judge to take the lack of family name into account in his consideration of the appellant's account.

8. The judge also considers the evidence that someone entering the UK on 12 February 2013 used an Iraqi passport in the name of Ayyed Khazaal Hayif born 1 January 1971 and that fingerprints produced in Baghdad to obtain a US visa on that passport matched fingerprints given by the appellant on claiming asylum. The appellant does not deny travelling on the passport but states that it is false and obtained through an agent and he travelled from UAE. The appellant states the person named on the passport was not him. The judge considers the evidence that the appellant's wife subsequently travelled to the UK from the USA on a passport bearing the same name - "Hayif"; he considers the appellant's explanation that it was a coincidence because they may have used the same agent and that he had told her of the name he was using when he first contacted the agent; his evidence was that he had not realised that he was using a passport that had been previously arranged for him but not used at the time it was originally obtained. The judge notes the appellant gave his wife's name as Hayef at screening and this was the name of his wife as recorded in the passport he used to enter the UK. In evidence before the judge the appellant says that was an error and he had actually said "Nayef".
9. The judge considers the witness evidence and refers to the inconsistencies and the lack of reference by the witnesses to events described by the appellant despite them allegedly having discussed the appellant's status and that they had been friends in Kuwait. The judge notes that the witnesses obtained their status without court proceedings and refers to the lack of an independent judicial test of their claim.
10. The judge acknowledges that the appellant provided a number of answers consistent with knowledge of Kuwait. The judge considers the Sprakab report in the context of the evidence as a whole. He refers to the influx of Iraqi workers into Kuwait and acknowledges that the appellant speaks Arabic as spoken in Kuwait. The inconsistencies in the appellant's evidence were put to him and the judge has noted his explanation.
11. The judge draws all of these matters together, along with the US fingerprint and visa evidence. He self directed himself to the correct burden and standard of proof ([6], [55]) and there was no challenge in the grounds to his application of that burden or standard.
12. The First-tier Tribunal judge considered the evidence before him and reached reasoned and sustainable conclusions supported by the evidence that were plainly open to him. The grounds seeking permission are no more than a dispute as to the weight placed upon elements of the evidence, weight which the judge was entitled to determine.

13. There is no material error of law in the decision by the judge and I do not set aside the decision.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

The decision of the First-tier Tribunal stands.



Date 22nd May 2016

Upper Tribunal Judge Coker