Upper Tribunal
(Immigration and Asylum Chamber)

Hussein and Another (Status of passports: foreign law) [2020] UKUT 00250 (IAC)

THE IMMIGRATION ACTS

Heard by Skype at Field House	**Decisions & Reasons sent out on**
On 24 June 2020	.....

Before

MR C. M. G. OCKELTON, VICE PRESIDENT

Between

ALI ABDULRASUL HUSSEIN

QUMAYL ALI JAWAD ABDULRASOOL

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellants: Mr H Semega-Janneh, instructed by Duncan Lewis Solicitors.

For the Respondent: Mr Clarke, Senior Home Office Presenting Officer.

1. A person who holds a genuine passport, apparently issued to him, and not falsified or altered, has to be regarded as a national of the State that issued the passport.

2. The burden of proving the contrary lies on the claimant in an asylum case.

3. Foreign law (including nationality law) is a matter of evidence, to be proved by expert evidence directed specifically to the point in issue.

DETERMINATION AND REASONS

1.
These proceedings constitute the appeal of Mr Hussein ('the appellant') with permission, against the decision of the First-tier Tribunal, and the application of Mr Abdulrasool ('the applicant') for permission to appeal, together with his appeal if permission be granted.

2.

The appellant and the applicant are father and son: the latter was born in 2000. They made asylum claims, which were refused; the applicant in addition claims that he is so dependent on his parents that it would be disproportionate to remove him from the United Kingdom. The appellant's wife and two minor children were included in the appellant's claim as his dependents.

3.
At a hearing before Judge McAll on 3 January 2020 the appellant and the applicant gave oral evidence, as did the appellant's elder brother; and submissions were made on their behalf by Mr Janneh. There was no appearance by or on behalf of the Secretary of State. Judge McAll considered the appellant's claimed history in detail and decided that he did not accept that he was being told the whole truth. He concluded that the appellant had fabricated important parts of his account supporting his asylum claim. He decided that the appellant was a national of Tanzania and could be returned to Tanzania. He did not believe the applicant's asylum claim either, and concluded in addition that there was no good article 8 reason why he should not leave the United Kingdom and return to his country of nationality. He dismissed both appeals.

4.
The appellant and the applicant applied to the First-tier Tribunal for permission to appeal. Judge Simpson granted permission to the appellant and refused it to the applicant. Her reasons are not intelligible. The grounds of appeal she was considering do not challenge the judge's primary conclusions as to credibility and fact. In relation to the appellant, they challenge the judge's reasoning leading to his conclusion that the appellant is a national of Tanzania. In relation to the applicant they challenge the judge's conclusion on the basis that he did not appreciate that although over 18 he should have been treated as a dependant of his parents for article 8 purposes.

5.
The principal question relates to the appellant's nationality. Two points are clear. He was born in Somalia; and he entered the United Kingdom using a Tanzanian passport. He now claims that he is not entitled to the Tanzanian passport. If he is of Tanzanian nationality, his asylum claim is wholly unmeritorious: there is no basis for thinking that he will be persecuted in Tanzania. If he is not of Tanzanian nationality, he claims first that his asylum claim should be considered on the basis that he is a national of Somalia, and secondly that he should not in any event be returned to Tanzania, because he might have to suffer the consequences of what he claims is his fraudulent acquisition and use of a Tanzanian passport.

6.
The Tanzanian passport that the appellant used to enter the United Kingdom is his second: it was issued in 2017. His claim before the judge was that he obtained it, and its predecessor, issued in 2005 and valid for ten years, simply by paying money to members of the Khoja Shiah Community whilst he was in Kenya. He says that both passports are fakes. The 2005 passport was used to obtain work permits in Kenya. After its expiry he did not immediately need a new one. But in 2017 he wanted to get work and obtained a new passport.

7.
That passport has been used first to travel from Kenya to Dubai and back to Kenya, then from Kenya to the United Kingdom in 2018 for a visit to the appellant's brother, and back to Kenya, then for the appellant's most recent travel to the United Kingdom in December 2018. On the last two occasions the appellant has travelled on visit visas issued by the United Kingdom government. It has thus been seen and (presumably) inspected on at least ten occasions on the appellant's entry and exit through

international airports, and twice by entry clearance officers. There is clearly no good reason to believe the appellant's claim, made for the purpose of his asylum application, that it is not a genuine document.

8.
The grounds, however, in line with the case as put to the judge, argue that the appellant cannot be a national of Tanzania and so cannot be entitled to the passport. That argument is based on assertions about the law of Tanzania, in particular relating to the acquisition of nationality and the holding of dual nationality. There appears also to be some sort of assertion that as the appellant was born in Somalia there is a presumption of the continuation of Somali nationality despite the production and use of a Tanzanian passport.

9.
Those grounds cannot be accepted. First, foreign law is a matter of fact and must be proved by evidence. It is not sufficient to produce Tanzanian statutes and assert that the statute represents the whole of the law on the subject. A moment's consideration shows why that is so: it is absurd to suggest that a person who had access to the Queen's Printer's copy of the British Nationality Act 1981 would be able to deduce reliably from it the status of any postulant for nationality: it has been subject to numerous amendments, and it says nothing about the operation of policy or prerogative. Foreign law needs to be proved by expert evidence directed precisely to the questions under consideration, so that the Tribunal can reach an informed view in the same way as anybody taking advice on an unfamiliar area of law. It is surprising that this well-known principle has apparently escaped the notice of the appellant's professional advisers: if authority is needed it can be found in CS [2017] UKUT 00199 (IAC).; see also R(MK) v SSHD [2017] EWHC 1365 (Admin) at [5]-[8]. There is no evidential basis in the present case for any of the arguments about Somali, Kenyan or Tanzanian law that were made before the First-tier Tribunal or in the grounds.

10.
Secondly, there is no presumption of the continuance of nationality. There is a presumption about the continuance of domicile, but that is a totally different matter. On the evidence, a person who shows that he had a particular nationality at birth may not be subject to any serious challenge about still having that nationality, if there is no evidence to the contrary: but where there is evidence of a different nationality the matter has to be determined on the evidence, and in a refugee claim the burden of proof is on the claimant. In this case, it was and is for the appellant to establish to the requisite standard that he is at risk of persecution in any country whose nationality he has, and the starting-point is for him to establish his nationality.

11.
Passports have international recognition as assertions and evidence of nationality. On their face they constitute an address by the authorities of one State to the authorities of another at diplomatic level. The authority in whose name the passport is issued makes demands on the basis that the individual named in the passport is a national of and is entitled to be regarded as a national of the issuing state. Other States recognise that by treating the holder as a national of that State, and, in most circumstances, endorsing the passport to indicate that they have done so, particularly when a national border is crossed. Passports are the lubrication that allows international travel: without a reliable passport system each individual would have to prove identity, nationality and good standing by individualised evidence at every international border.

12.

It is simply not open to an individual to opt out of that system by denouncing his own passport; and it is not open to any State to ignore the contents of a passport simply on the basis of a claim by its holder that the passport does not mean what it says. It is considerations such as these that lie behind the passage in the UNHCR Handbook, paragraph 93:

“93. Nationality may be proved by the possession of a national passport. Possession of such a passport creates a prima facie presumption that the holder is a national of the country of issue, unless the passport itself states otherwise. A person holding a passport showing him to be a national of the issuing country, but who claims that he does not possess that country’s nationality, must substantiate his claim, for example, by showing that the passport is a so-called “passport of convenience” (an apparently regular national passport that is sometimes issued by a national authority to non-nationals). However, a mere assertion by the holder that the passport was issued to him as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality. In certain cases, it might be possible to obtain information from the authority that issued the passport. If such information cannot be obtained, or cannot be obtained within reasonable time, the examiner will have to decide on the credibility of the applicant’s assertion in weighing all other elements of his story.”

13.
Of course the target of these observations is a passport that genuinely has been issued by the named State to the person named in it, and that is why, all over the world and particularly at international borders, such attention has to be given to the detection of forgeries and alterations in passports. A document detected as deceptive will not have the effect of a genuine passport. But the converse is also true: a document not detected as a forgery does have that effect, both at the diplomatic level and in the way its holder is perceived in a country that is not his country of nationality.

14.
In the present case, nobody except the appellant and those speaking on his behalf say that there is anything wrong with his Tanzanian passport. It has survived scrutiny on many occasions. The appellant, who says it is not genuine, has no expert evidence in support of that claim, and is not entitled to be regarded as generally credible. His argument that he cannot, by Tanzanian law, be of Tanzanian nationality is unsupported by any evidence; and in any event would also depend on believing him about his actions and activities over the whole of a very long period, which there is no good reason to do: as the judge said, his account is fabricated.

15.
There is no reason to think the appellant’s passport is not exactly what it appears to be. It is clear evidence that the appellant is a national of Tanzania, and it is evidence at such a level that the Secretary of State is not entitled to treat the appellant as not being a national of Tanzania. It follows that he falls to be treated as a national of Tanzania for the purposes of his asylum claim.

16.
He has no well-founded fear of persecution in Tanzania. He claims that he will be subject to prosecution there for passport offences, but that would not in any event be a fear of persecution as his claim in relation to his passports is that he obtained them simply in order to benefit from the possibility of illegally obtaining work in Kenya. Any punishment would be for that, and would not be persecution for a “Convention reason”. But, in any event, for the reasons given above, there is no proper basis for saying that he would be subject to any process in relation to his passport, because there is no reason to suppose that there is anything wrong with his use of Tanzanian passports.

17.
The judge reached unchallenged views on the appellant's credibility; his view that the appellant was a Tanzanian national is one that he was bound to reach on the evidence before him. Any error he may have made in reaching that view was accordingly wholly immaterial. I dismiss the appellant's appeal against his decision.

18.
The applicant is, as I have said, the appellant's son. He is a national of Kenya: he may also have other nationalities. His claim to be at risk of persecution in his country of nationality is no longer maintained. He has claimed to have a mental disorder, but as Judge McAll noted, there is no medical evidence of that, except that he is prescribed Citalopram and is receiving counselling. His representatives had adduced evidence that he would experience "lack of care" in Somalia, but as he is a national of Kenya, and as the respondent proposes his removal to Kenya, that is wholly irrelevant, even if true. The judge dismissed his appeal on article 8 grounds, writing as follows:

"77. The Respondent submits that Appendix FM does not apply to QA as he is an adult child and there is no clear evidence of dependency above and beyond the normal feelings and bonds that an adult child has with their parents. Whilst I accept that QA has never lived a life independent of his parents and siblings I do not accept his claim that he is dependent upon them. He is of an age that he is able to find and hold down employment and there are no medical reasons or other reasons to prevent him from doing that. QA is a citizen of Kenya and he is not at risk upon return back there and he can safely return back there where he has spent his entire life and where he has family, social and cultural ties. QA claims his grandmother is seriously ill and lives in Mombasa and she is unable to support him. There is no medical evidence to support that claim and there is no explanation as to how his seriously ill grandmother was abandoned by the family in 2018 leaving her alone and with no form of support. I find QA's account does not ring true. There is also nothing to prevent his mother and siblings from returning with him if the family wish to retain the links that they enjoyed before they came to the UK.

78. In terms of QA's claim to have established a private life it is argued by the Respondent that there are no very significant obstacles to QA returning back to Kenya and integrating back into the community there and so he cannot meet the requirements of paragraph 276ADE (1)(vi) and given his age and the limited time he has been in the UK none of the remaining requirements under the Immigration Rules can be met. Given my findings of fact above I accept that submission and find QA does not meet the requirements of 276ADE.

79. Paragraph 334 of the Immigration Rules states that the applicant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on the Appellant to show that he or she falls within the definition of refugee in Regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 ("the Regulations 2006") as read with 1(A) of the Geneva Convention. In essence this defines a refugee as someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it. Ill-treatment does not cross the threshold of severity into persecution, even taken cumulatively, unless there are particularly strong and credible elements. What constitutes the act of persecution itself is defined at Regulation 5 of the Regulations 2006.

…

90. … From the evidence before me I find no evidence of dependency above and beyond the normal levels of dependency an adult son aged 19 years old who has never lived independently outside of the family home. I am satisfied that QA is capable of living independently should he wish to do so and that is a matter for him. If QA does not wish to take that step at this time he does have support from his family and there is nothing to prevent his mother and siblings joining him in Kenya and as his father has shown since 1999 he can apply for work permits that would also allow him to live in Kenya. The Appellant also has an option of applying for Kenyan nationality if he wishes and joining him by that route. QA also has his grandmother with whom he could live. I find that the Respondent is not interfering with QA's family life he is just not allowing him to enjoy it in the UK when there are other alternatives available to him which are proportionate and that the family can and should take up.

91. Given QA's age and the time he has been in the UK and the fact I have found he faces no very significant obstacles returning to Kenya and integrating back into society there I am satisfied he does not meet the requirements of the Immigration Rules and that weighs in the balance against him when considering the proportionality test under Article 8.

92. I have also considered whether QA's removal is in the public interest (Section 117B NIAA 2002). QA does speak English, he is well educated and if allowed to remain in the UK I am satisfied that he would seek to extend that education and eventually find gainful employment. His initial and short-term presence in the UK would therefore be a burden on the UK tax-payers. QA entered the UK with no intentions of leaving and he has lied on his visa application, QA has also fabricated an asylum claim. I must remind myself that effective immigration controls are in the public interest. Taking all the evidence in the round I find it is in the public interest for QA to be removed."

19.
The grounds supporting the application for permission to appeal run to 12 pages. They are under the following heads: "1. Error in finding that the Appellant is not dependent on his parents. 2. Error in giving inadequate reasons why the Appellant is not dependent on his parents. 3. Error in failing to take into account relevant considerations [in assessing whether the Applicant is dependent on his parents]. 4. Error in taking into account irrelevant considerations [in finding that the Applicant is not dependent on his parents]. 5. Error in failing to properly and adequately carry out a proportionality exercise under Article 8(1) ECHR [sic]." Before me, Mr Clarke was prepared to accept that the evidence before the judge was sufficient to establish dependence, and that to that extent the judge was in error.

20.
The error, however, was purely technical. The question is not whether the applicant falls into one or another category, but whether his removal would be proportionate – an exercise that has to be conducted with regard to paragraph 2 of Article 8, not paragraph 1. The applicant's father's claim has failed. The other members of the applicant's family make claims that are entirely dependent on those of the appellant. None of them have any right to remain in the United Kingdom. If they are removed to different countries (Tanzania and Kenya) there is no reason to suppose that they will not readily be able to live together if they choose to do so: the appellant's story is that his Tanzanian passport enables him to live and work in Kenya. If the applicant is to maintain his dependence on his parents, he can no doubt live with them.

21.
There is nothing in the evidence supporting the applicant's case to suggest that, it would be disproportionate to remove him from the United Kingdom. If he leaves with his parents, family life

would be subject to only slight interference, entirely consonant with the need to maintain immigration control. In those circumstances the only substance to his claim against removal would be something tying him to the United Kingdom, and on the evidence there is nothing of any substance at all. Even if for some reason his parents are not removed, there is still nothing making it disproportionate to remove the applicant. He is in good health and there is no reason to suppose he cannot look after himself. He is over 18, and although he is at present dependent on his parents there is no basis for saying that he needs to be. He is educated; he is accustomed to life in Kenya, where he lived for many years. On the evidence, there is not the remotest prospect of his establishing that despite not meeting the requirements of the Immigration Rules he is nevertheless a person who should not be expected to return to the country of his nationality.

22.
I grant permission to appeal solely because of the stance taken by Mr Clarke. I dismiss the appeal because I am not persuaded that there was any real error by the judge in looking at matters of substance. If there was an error by the judge, it was wholly immaterial.

23.
The judge made an order anonymising the Appellant and the Applicant. There does not appear to have been any reason for that other than that these were protection appeals. Both are adults and there is no reason why the ordinary principles of open justice should not apply to them; and no facts now capable of contest could merit continuing the order. I direct that their names may be published in conjunction with any report of these proceedings.

24.
For the reasons I have given, both appeals are dismissed.

C. M. G. OCKELTON

VICE PRESIDENT OF THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Date: 17 July 2020