ASYLUM AND IMMIGRATION TRIBUNAL

THE IMMIGRATION ACTS

Heard at: Stoke on Trent　　　　Date of Hearing: 19 December 2008

Before:

Mr C M G Ockelton, Deputy President of the Asylum and Immigration Tribunal
Senior Immigration Judge Martin

Between

Appellant

and

THE ENTRY CLEARANCE OFFICER, KAMPALA

Respondent

Representation
For the Appellant: Mr A Mahmood, instructed by Immigration Advisory Service
For the Respondent: Mr M Corden, Home Office Presenting Officer

The failure (in the decision-maker’s view) to produce a document proving identity leads to mandatory refusal under para 320(3). There is, however, a right of appeal against that refusal unless the document sought by the decision-maker falls within the definition of “immigration document” in Section 88(3).

DETERMINATION AND REASONS

1. The Appellant is a citizen of Somalia. At all relevant times he has claimed to be the husband of the sponsor who is a refugee recognised in the United Kingdom. He applied for entry clearance to the United Kingdom as her husband. The Entry Clearance Officer refused that application on 19 September 2007. The Appellant lodged a notice of appeal to the Asylum and Immigration Tribunal and in due course his appeal was heard by an Immigration Judge, who allowed it. The

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Respondent Entry Clearance Officer sought and obtained an order for reconsideration. Thus the matter comes before us.

2. It is right that we should say at the outset that the Respondent's conduct of the issues relating to this appeal causes us some concern. There was no appearance by or on behalf of the Respondent before the Immigration Judge. Instead the Immigration Judge was given a document which appears to be in standard form, setting out some of what are apparently the Respondent's favourite determinations and judgements with no comment or indication of which of them are said to be of relevance to the appeal in question. That is particularly a matter of concern in this appeal because it is now said on behalf of the Respondent that the two most important arguments on which alone reconsideration was sought should have been dealt with by the Immigration Judge; that is the content of a submission that she erred in law. Neither of the arguments was put to her in the lengthy written submissions to which we have referred.

3. The Entry Clearance Officer's decision is on two separate bases. The Entry Clearance Officer was not satisfied that the Appellant met the requirements of paragraph 352A of the Statement of Changes in Immigration Rules, HC 395. He reached that conclusion because, having conducted a short interview with the Appellant, he concluded that the Appellant's apparent lack of knowledge of his wife's circumstances and in particular the process by which, and why, she had come to the United Kingdom were unknown to the Appellant. He regarded that as the reason to suppose that the Appellant and the Sponsor were not related as claimed.

4. But there was another reason for the refusal. The Appellant had produced, apparently as evidence of his nationality and identity, a document issued by the Republic of Uganda and containing a photograph of him with an official stamp, setting out his name and recording that he is a Somali asylum seeker in Uganda. The Entry Clearance Officer decided that that document was not such as satisfactorily to establish the Appellant's identity and nationality. He therefore also refused under paragraph 320(3) of the Immigration Rules which requires an application to be refused on the grounds of "failure by the person seeking entry to the United Kingdom to produce to the Immigration Officer a valid national passport or other document satisfactorily establishing his identity and nationality." Although those words refer specifically to an Immigration Officer, there are two headings above them which indicate that they are to be read as applying to Entry Clearance Officers as well.

5. The Immigration Judge heard evidence from the Sponsor whom she regarded as entirely credible. The Sponsor gave direct evidence relating to the identity of the Appellant and in addition indicated why it might well be that the Appellant either did not know or was unwilling to say very much about the reasons why the Sponsor had come to this country.

6. In the result the Immigration Judge concluded that she was satisfied as to the Appellant's identity and nationality and his relationship to the Sponsor and she accordingly allowed the appeal.

7. The grounds upon which the Entry Clearance Officer sought reconsideration are as follows:

> "The Entry Clearance Officer asserts that the Immigration Judge has materially erred in law in allowing the appeal in that he [presumably meaning she] had no jurisdiction to allow the appeal on the Rule 320 aspect of the refusal and in any event did not address the primary issue in Rule 320(3) that the Appellant's documentation was inadequate.
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> Section 88 of the Nationality Asylum and Immigration Act, 2002 sets out exemptions from Section 82 Rights of Appeal; Section 88 2(b) establishes that a person may not appeal where they do not have an immigration document of particular kind. The Entry Clearance Officer therefore maintains that the Immigration Judge had no jurisdiction on this issue.
>
> Rule 320(3) states in essence that entry clearance is to be refused if the person seeking entry fails to produce to the Entry Clearance Officer a valid national passport or document satisfactorily establishing his identity and nationality. Although the Immigration Judge states that he is satisfied as to the identity of the Appellant, he remains silent on the issue of the Appellant's documentation."

8. Reconsideration was ordered in somewhat discursive terms. We have not found it necessary in order to determine this reconsideration to deal with all the issues raised in the order for reconsideration.

9. We deal first as we must with jurisdiction. The Respondent claims at this late stage – having been content, as we have said, to deal on the merits with the appeal to the Immigration Judge - that there was no right of appeal on the grounds upon which the Immigration Judge allowed the appeal. Reference is made as we have indicated to s 88 of the 2002 Act. Section 88 reads as follows:-

> "88. Ineligibility
>
> (1) This section applies to an immigration decision of a kind referred to in section 82(2) (a), (b), (d) or (e). [In the present case the immigration decision is under section 88 (2) b.]
>
> (2) A person may not appeal under section 82(1) against an immigration decision which is taken on the grounds that he or a person of whom he is a dependant—
>
> (a) does not satisfy a requirement as to age, nationality or citizenship specified in immigration rules,
>
> (b) does not have an immigration document of a particular kind (or any immigration document),
>
> (3) In subsection 2(b) "immigration document" means:
>
> (a) entry clearance

(b) a passport

(c) a work permit or other immigration employment document, within the meaning of section 122, and

(d) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.

(4) Subsection (2) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1) (b), (c) and (g)."

10. The ineligibility to which the title of the section refers applies where the ground of refusal is that person does not have the document of a particular kind set out in subsection (3). The ground of refusal in the present case was that the Appellant had failed to produce a valid national passport or other document satisfactorily establishing his identity and nationality. That is a refusal by reference to the wording of paragraph 320(3), as we have indicated. There is no indication in the notice of decision that a ground for refusal was that the Appellant did not have any of the documents set out in s 88(3). Obviously he did not have entry clearance as he was applying for it. He is not said to have needed a passport; indeed paragraph 320(3) clearly indicates that documentation other than a passport will be adequate in appropriate circumstances to establish identity and nationality. Work permits do not come into it, and the document which was produced was not a document designed to serve the same purpose as a passport, the purpose of which is enable passage from one country to another rather than to record status in an individual country. In the circumstances we find that the claim that this appeal is one which is restricted by s 88 of the 2002 Act is not made out. The refusal was not on any of the grounds set out in subsection (2) of that section.

11. We turn then to the second ground for reconsideration, that is to say that Immigration Judge erred in her treatment of the issue relating to documentation. It is right to say that paragraph 320(3) makes refusal of an application mandatory if the circumstances set out in that paragraph apply. But the fact that refusal is mandatory does not of course mean that it is not subject to appeal. On appeal it is for an Immigration Judge to decide whether the circumstances said to cause paragraph 320(3) to apply did in fact apply to the case. Mr Mahmood has addressed us in some detail on the burden of proof in such a case, but we do not think that in this case the decision turns on the incidence of the burden of proof or indeed on the standard of proof to be applied.

12. The Immigration Judge had before her a document issued by the Ugandan government, as we have indicated. She had oral evidence from the Sponsor, which she believed. She was entitled to take the view that there was nothing in the document or in the evidence that she heard which threw any doubt upon the statement made (no doubt on the Appellant's instance, but) by a governmental authority. In those circumstances it seems to us right that she should regard the document as having satisfactorily established identity. We do not say that a document of this sort is always to be taken in that way. Documents are produced in various countries in various ways and other circumstances may from time to

time give cause to doubt their accuracy or even genuineness. The evidence before the Immigration Judge taken as a whole in this case simply showed that there was no doubt. There was therefore no reason to read the document in any other way than the way in which it reads on its face. The consequence of that is that, as a governmental document apparently attesting identity and nationality, it satisfactorily established identity and nationality, that is to say to the satisfaction of the Immigration Judge.

13. Nothing else is in issue in this reconsideration. It appears to us that the Immigration Judge did not err in law in her reasoning or her conclusions and we accordingly order that her determinations allowing this appeal shall stand.

C M G OCKELTON
DEPUTY PRESIDENT
Date: