Neutral Citation Number: [2007] EWCA Crim 2332

Case No: 2006/05414/C1(1)
2007/03229/D4(2)

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT CROYDON
Mr Recorder King (1)
ON APPEAL FROM THE CROWN COURT AT CROYDON
His Honour Judge Tanzar (2)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/10/2007

Before :

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
MR JUSTICE ELIAS
and
MR JUSTICE GRIFFITH WILLIAMS

- -

Between :
R
- v -
Farida Said Mohammed (1)

R
-v-
Abdullah Mohamed Osman (2)

- -

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Miss Fiona Rutherford (instructed by **Tosswills**) for the Appellant (**Mohammed)**(1)
Daniel Bunting (instructed by **Wilson & Co**) for the Appellant (**Osman)**(2)
Alex Chalk (Instructed by **CPS**) for the Crown in both appeals

Hearing date: 11th July 2007

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JUDGMENT

President of the Queen's Bench Division:

1. These appeals against conviction, heard consecutively, raise interesting questions about the offence created by section 2(1) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (the 2004 Act), that is, failing to produce at an asylum interview an immigration document that is in force and that satisfactorily establishes the identity, nationality or citizenship of the applicant.

2. On 21 July 2005 in the Crown Court at Croydon, before Mr Recorder King and a jury, Farida Said Mohammed was convicted of this offence. She was sentenced to four months imprisonment, reduced on appeal to one month imprisonment.

3. Leave to appeal against conviction was referred to the full court and granted on 15th March 2007. The Registrar of Criminal Appeals invited the Secretary of State for the Home Department to attend the appeal and, if he wished, to make representations. The invitation was not accepted.

4. On 18 August 2005 in the Crown Court at Croydon, before His Honour Judge Tanzer and a jury, Abdullah Osman was convicted of an identical offence. He was sentenced to nine months imprisonment and recommended for deportation. An application for leave to appeal against conviction was abandoned. An appeal against he recommendation for deportation was dismissed on 15 January 2007. Following a deportation order made on 25 August 2006, by a decision promulgated on 27 May 2007, the Asylum and Immigration Tribunal allowed an appeal against this determination on asylum, humanitarian and human rights grounds. The Criminal Cases Review Commission referred the conviction to this court on 18 June 2007.

Farida Said Mohammed – The Facts

5. On 5 April 2005 the appellant, then heavily pregnant, arrived in the United Kingdom. She presented herself to the Asylum Screening Unit at Lunar House in Croydon. At her screening interview she informed a member of the immigration staff that she was a Somali national, born on 8 September 1979. She was asked if she could produce her passport or the travel document she had used to enter the United Kingdom. She replied, “no, agent took passport”. She was also asked if she could produce any such document within three days. She replied, “no”.

6. In interview, conducted with the assistance of a solicitor, and with an interpreter, she stated that she had arrived in the United Kingdom early that morning but was unable to remember her port of entry. She had travelled with an agent. She had never owned a national passport because “nobody had to help me to, you know, get a passport”; so she herself had never made an application for a passport or appropriate documents. The “passport” she had used to enter was given to her by the agent after she had disembarked from the aeroplane that morning. She handed the “passport” to the

immigration officer, and once through immigration control, handed it back to the agent. She was afraid not to follow his instructions.

7. At trial the appellant gave evidence that she left Somalia with her lover on 21 March 2005. She came from a small village which had no electricity. She had never been to school. She had been the victim of rape on two occasions. She decided to leave. She and her lover took a boat to Kenya. She stayed with him until 4 April 2005. Her lover paid for everything, including the passport. Through him she met an agent, who she named. He arranged her journey to the United Kingdom where she arrived on 5 April. She did not organise any of her travel documents herself. She had not applied in her own right for a passport in her name as a national of Somalia, and she had not applied for a visa. Everything was arranged by her agent. He was in possession of the passport, and the first time she saw it was "when we were in the UK after we had left the aircraft. It was near to where the plane had landed…he gave it to me to show the investigation officer". He opened the passport and gave it to her so that she could show it to immigration officials. It was open at the page with her photograph and her name, Said Mohammed, but not Farida, on it. After they went through immigration, the agent took back the passport. She asked him to return it to her but he asserted that the passport was his. He had earlier told her that it belonged to her, but she gave it back to the agent because she did not know the regulations in this country. The agent took her straight to Lunar House. She came to know about the possibility of seeking asylum after she had arrived in the United Kingdom. She did not know what help she could get. She claimed asylum. She did not know where the agent went.

8. In cross examination she denied getting rid of the passport to delay her asylum application. If she had the power she would have taken the passport back from the agent. In answer to a question from the judge, she said that the agent had not done anything to make her frightened, rather she was afraid of the situation in Somalia.

Abdullah Mohamed Osman – The Facts

9. This appellant presented himself to the Asylum Screening Unit at Lunar House, Croydon on 4 November 2004. He made an application for asylum. He claimed to be a Somali national, born on 2 October 1972. During the screening process it was established that he did not have any immigration documents. He was unable to produce a passport, or any document used to travel to the United Kingdom, and said that he would not be able to do so within three days. He explained that the agent who he met in Kenya was a foreign black man, who may have been Eritrean or Ethiopian, to whom he was introduced by a broker. He used a "forged British passport" to enter the United Kingdom via Heathrow, and had travelled here via Kenya and The Netherlands. When he was asked how the document was taken from him, he said "I gave him back the passport, because he had told me that when you arrive, I will take the passport". He handed the document back "outside Heathrow Airport". Later that day he was arrested.

10. In interview under caution, assisted by a solicitor, in the presence of an interpreter, he said that he was unable to produce any immigration documents. He had never owned his own passport because he had never travelled before. He travelled to the United Kingdom with the help of an agent, arriving on 2 November. He used a false British passport with a different name and date of birth but similar photograph. He returned it to the agent after passing though immigration control.

11. It was not possible to confirm whether or not the appellant used the flight he claims to have used, or to establish his name, date of birth, nationality, date or means of entry, travel route or indeed whether he had applied for a visa. It was admitted on behalf of the appellant that he was indeed unable to produce any genuine or false immigration documents at his immigration interview.

12. The appellant's evidence at trial was that he was a native of Somalia, born in October 1972. In the troubles his family were vulnerable, and targeted. His father was kidnapped by armed militia men. A ransom was demanded, which was not paid. The family home was broken into. His sister was sexually assaulted. When their mother tried to intervene, she was killed. His sister was then sexually assaulted and killed. His father was murdered. He was the next intended victim.

13. He left the city, travelling overland to Kenya. He stayed there for three months before making his way to the United Kingdom. He could not get any documents in Somalia, because there were no authorities to issue them. He paid an agent, while in Kenya, who provided him with a passport. The agent promised to take him to a country where he would be safe. He was unaware which country, and the agent also said that the passport would be "removed" once he had arrived at his destination. He did not say why, and the appellant did not ask. He left Kenya on 1 November 2004. The agent went on the flight with him. He was later told that they had arrived at Heathrow. He did not even know that he was being brought to the United Kingdom. Once through immigration control he returned the passport to the agent on the basis that the passport did not belong to him, "so I returned it to its owner and he took it off me". At the airport he did not seek asylum, because he did not know what was to happen to him, and in particular whether he would be left by the agent, or continue on elsewhere. The agent told him to look for other Somalis. He found some of them at the airport. They assisted him.

14. He explained in cross-examination how he sat next to the agent on the flight, but accepted the instruction that he should "stick" to him, but not ask anything. He left Heathrow airport with the agent. They passed through a desk where he had to show his passport. At that stage nothing was said. Afterwards the agent told him that he was now in a safe country and that he should return the passport, which he did, because it did not belong to him. That was the last he saw of the agent. He agreed that he could simply have kept the passport and that he was not threatened. The agent simply took it off him and walked away. He accepted that at Lunar House he attended without any immigration documents, passport or other form of identification. It was an admitted fact that "there was no claim by Mr Osman that he travelled to the United Kingdom without an immigration document at any stage of the journey".

Section 2 of the 2004 Act

15. The feature common to both appeals is that when they sought asylum the appellants were not in possession of any genuine, or indeed any document, which established their identity, nationality or citizenship. They entered the United Kingdom using false passports. Thereafter neither retained the false passport, or any other immigration document, and they produced none at their asylum interview The offence of which the appellants were convicted is created by section 2(1) of the 2004 Act. This provides:

> "(1) A person commits an offence if at a leave or asylum interview he does not have with him an immigration document which –
>
> (a) is in force, and
>
> (b) satisfactorily establishes his identity and nationality or citizenship."

The offence is clearly defined in unambiguous language. However it is not absolute. To begin with, a statutory period of grace, permitting late production of appropriate documentation in defined circumstances is provided by s. 2(3). Thereafter when the facts which give rise to the offence under s. 2(1) are established, specific defences are expressly provided. It is this aspect of the legislative language and structure which gives rise to both appeals.

16. Section 2(4) provides:

> "It is a defence for a person charged with an offence under subsection (1)—
>
> ……
>
> (c) To prove that he has a reasonable excuse for not being in possession of a document of the kind specified in subsection (1),
>
> (d) To produce a false immigration document and to prove that he used that document as an immigration document for all purposes in connection with his journey to the United Kingdom, or
>
> (e) To prove that he travelled to the United Kingdom without, at any stage since he set out on the journey, having possession of an immigration document.
>
> (6) Where the charge for an offence under subsection (1) or (2) relates to an interview which takes place after the defendant has entered the United Kingdom –
>
> (a) subsection (4)(c) and (5)(c) shall not apply, but

(b) it is a defence for the defendant to prove that he has a reasonable excuse for not providing a document in accordance with subsection (3).

(7) For the purposes of subsections (4) to (6) –

(a) the fact that a document was deliberately destroyed or disposed of is not a reasonable excuse for not being in possession of it or for not providing it in accordance with subsection (3), unless it is shown that the destruction or disposal was –

(i) for a reasonable cause, or
(ii) beyond the control of the person charged with the offence, and

(b) in paragraph (a)(i) "reasonable cause" does not include the purpose of –

(i) delaying the handling or resolution of a claim or application or the taking of a decision,

(ii) increasing the chances of success of a claim or application, or

(iii) complying with instructions or advice given by a person who offers advice about, or facilitates, immigration into the United Kingdom, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice."

17. Sub-s. 12 explains the meaning of "immigration document" for the purposes of the section and sub-s. 13 does not define, but is descriptive of, the circumstances in which an immigration document will be treated as a false immigration document.

"(12) In this section –

…..

'immigration document' means -

(a) a passport, and

(b) a document which relates to a national of a State other than the United Kingdom and which is designed to serve the same purpose as a passport, and

'leave or asylum interview' means an interview with an immigration officer or an official of the Secretary of State at which a person –

…

(a) seeks leave to enter or remain in the United Kingdom, or

(b) claims that to remove him from or require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights
Act 1998 (c42) as being incompatible with his Convention rights.

(13) For the purposes of this section –

(a) a document which purports to be, or is designed to look like, an immigration document, is a false immigration document, and

(b) an immigration document is a false immigration document if and in so far as it is used –

(i) outside the period for which it is expressed to be valid,
(ii) contrary to provision for its use made by the person issuing it, or
(iii) by or in respect of a person other than the person to or for whom it was issued."

Discussion

18. This statutory framework represents the current stage in the process by which the United Kingdom gives effect to the obligations created by Article 31(1) of the 1951 Convention and Protocols relating to the Status of Refugees. This reads:

> "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence ".

19. In R v Uxbridge Magistrates' Court, ex parte Adimi [2001] QB667, the broad purpose of Article 31 was addressed by Simon Brown LJ. He said

> "…self-evidently it was to provide immunity for genuine refugees whose quest for asylum reasonably involved them in breaching the law…that Article 31 extends not merely to those ultimately accorded refugee status but also to those claiming asylum in good faith (presumptive refugees) is not in doubt".

In the light of the observations of the Divisional Court in Adimi, section 31 of the Immigration and Asylum Act 1999 created a statutory defence to some of the offences which then applied to the possession or use of false documents. Thereafter, in R

(Pepushi) The Crown Prosecution Service [2004] EWHC 798 (Admin) the Divisional Court reached the clear conclusion:

> "….that the scope of the defence available to the claimant is that set out in section 31 and not in Article 31; Parliament has decided to give effect to the international obligations of the UK in the narrower way, but that is, on the authorities that are binding on us, the law which must be applied in the UK."

20. Section 31 of the 1999 Act was followed by section 2 of the 2004 Act. In R v Navabi and Embaye [2005] EWCA Crim 2865 Kennedy LJ observed that in section 2:

> "Parliament sought to address directly the problem of those seeking asylum or leave to enter without documentation to establish their identity nationality or citizenship. It was recognised that some of those seeking assistance may never have had documentation, or may have only had false documentation, but even false documentation might assist immigration authorities, and the aim was at least in part to prevent wilful disposal or destruction of documents which ought to be produced, and which would assist the immigration authorities if they were produced, so the section created a new offence ".

These observations are plainly consistent with and derived from the Home Office guidance that:

> "The offence is intended to discourage persons from destroying or disposing of their immigration documents en route to the United Kingdom. In particular to discourage them from doing so in order to conceal their identity, age or nationality in an attempt to increase the chances of success of a claim or application or to make consideration of their claim or application more difficult and/or to thwart removal… "

Finally we note that, in effect for the reasons identified by Simon Brown LJ in Adimi, the court accepted that the offence created by section 2 of the 2004 Act fell within the ambit of Article 31, and indeed that Article 31 was to be "generously interpreted".

21. The legislation is therefore directed to the exercise of proper control over those who seek to enter the United Kingdom. While we, in the United Kingdom, can obtain our passports without significant difficulty or delay, this is not the universal experience. In other countries, living conditions can be intolerable, the fear and danger of persecution rife, and passports or similar documents not available in our accustomed way. Indeed the very act of seeking to apply for a passport may bring with it the wrath of the authorities. It is therefore unsurprising that refugees sometimes arrive in this country using false documents or without any documents at all. A reasonable compromise has to be maintained between necessary control over entry, with

arrangements which reflect the stark realities faced by refugees whose claims are genuine, encompassed in a structure which addresses the equal certainty that some of those claiming to be refugees are bogus. For these purposes, each and every document used to gain entry, whether genuine or false, may provide valuable information to the authorities responsible for border controls, not least in the context of bogus claims, because combined with other information in the possession of the authorities, they may at least reveal the applicant's true country of origin. The legislation therefore provides not only that those who enter the United Kingdom should normally do so using genuine and current immigration documents, but that each and every document used to gain entry, whether genuine or false, should be retained and produced.

22. With these considerations in mind we must return to the statutory defences themselves. Reading sub-ss 4(c)-(e) together with sub-s. 6, the individual who brings himself or herself within one or more of the defined circumstances is provided with a defence. These are:

i) that he has a reasonable excuse for not producing a genuine document; (s2(4)(c))

ii) that he travelled to the United Kingdom without at any stage being in possession of any immigration document; (s2(4)(e))

iii) that he used a false document as an immigration document for all purposes in connection with his journey to the United Kingdom, and produces it. (s2(4)(d))

23. Sub-s. 7 qualifies or explains the ambit of the statutory defences provided by sections 4 and 6, with which it is inextricably linked. It identifies specific circumstances in which they will not apply, when the purported excuse for not being in possession of or providing the requisite document is in effect deemed to be unreasonable. Thus, it cannot be "reasonable cause" for the applicant's inability to provide the document, or failure to be in possession of it, that his purpose was to delay the resolution of the claim to asylum, or to increase the chances of a successful application, or that he complied with the instructions or advice given by an individual offering advice about or facilitating immigration into the United Kingdom, although this in turn is subject to reasonable "non-compliance". These limitations underline the importance in the overall statutory structure which is attached to the preservation and production of every available document.

24. Before examining the defence provided by sub-s. 4(c) we note that the position of the immigrant without any documents, and the individual who has entered using a false document is expressly distinguished in sub-ss 4(e) and (d) respectively. The former cannot realistically be expected to produce any immigration document; he has never had one. However to come within the defence which appears to apply to his case, the latter, not unreasonably, and in accordance with the legislative purpose, is required to do so. This approach to sub-ss 4(d) and (e) and the distinction between them seems

clear enough. However sub-s. 4(c) provides a defence for the applicant who has a "reasonable excuse for not being in possession of a document" of the kind required by s. 2(1) – that is, a genuine document – and is mirrored in relation to a post-entry asylum interview by sub-s. 6(b). The wide ambit of this subsection was not fully appreciated until the decision of the Divisional Court presided over by Lord Phillips, CJ, in *Thet v Director of Public Prosecutions* [2006] EWHC 2701 (Admin).

25. *Thet* entered the United Kingdom using a false passport. At the hearing he satisfied the District Judge that it was impossible for him to obtain a passport in his country of origin. The District Judge concluded that section 2(3) and 6(b) covered only a genuine immigration document. The defences did not apply where no genuine document had ever existed. He specified two questions for the opinion of the Divisional Court:

> "(i) is the defence under s2(6)(b) available to a defendant in relation to a genuine document, as defined by s2(1) where no such document exists?
>
> (ii) if so, can s2(6)(b) provide a defence in relation to a genuine document where the accused has travelled to and entered the United Kingdom using a false document which is not provided in accordance with s2(3) and has no reasonable excuse for not having done so? "

26. The appeal was allowed. The Divisional Court concluded that although *Thet* had failed to produce the false passport used on entry, he nevertheless had established a reasonable excuse for not providing a genuine document. It was "impossible for him to obtain a passport in his country of origin", and "he clearly had a reasonable excuse for not providing an immigration document, that is a genuine document, within three days of his asylum interview. In these circumstances he had a valid defence to the charge". This language is as relevant to sub-s. 4(c) as to sub-s. 6(b), and the Crown before us accepted that the defence under sub-s. 4(c) can extend to the individual who enters on the basis of a false document and who, with a reasonable excuse, does not produce it. That concession however did not apply to any purported defence under sub-s. 4(d). The distinction is not without some practical importance, and required us to address a further observation at paragraph 26 in *Thet* to which we were told by Mr Chalk, who appeared for the respondent in the Divisional Court, specific argument was not directed.

27. Lord Phillips CJ added that sub-s. 4(e) also provided a defence if it were proved "that from beginning to end of the journey he has not possessed a valid immigration document and on its face would appear to provide that defence even if he had entered on false documents which he has subsequently disposed or destroyed". As the judgment makes clear, Lord Phillips was not seeking to express any final or concluded view about the ambit of sub-s. 4(e).

The Appeals

28. These appeals against conviction largely echo the successful appeal to the Divisional Court by Thet. Farida Mohamed's grounds of appeal assert that the directions to the jury involved a misinterpretation of both section 2(6) (b), and by implication section 2(4)(e). The same misdirections are relied in by Osman. The distinction between the two grounds is readily demonstrated. If the appeals are successful on the basis of the defence in sub-s. 4(e) then they are bound to succeed. There would be no issue to be left to the jury. By contrast, if the appellants cannot bring themselves within sub-s. 4(e) and have to rely on sub-s. 4(c) alone, then the separate question whether they had a reasonable excuse for not being in possession of genuine documents would arise.

The appeal under s 2(4)(c)

29. We need not repeat the text of the summings up. It is accepted in Osman's appeal by Mr Chalk, after careful analysis of the relevant provisions, that in the light of the decision in *Thet*, the jury was not correctly directed about the impact of section 2(6)(b) in the context of a possible statutory defence. The same concession was not made in relation to the appeal by Mohamed, on the basis of the evidence actually given at trial. The argument on the facts was that this particular appellant's reasons for not having obtained a genuine passport in Somalia did not constitute explanations capable of amounting to a "reasonable excuse". Our views can be briefly expressed. We disagree with Mr Chalk. As a matter of fact it would have been open to the jury, properly directed, to have found that this appellant's excuse was reasonable. For both appellants, this ground of appeal succeeds.

30. These conclusions do not imply any criticism of either trial judge. Until the legal principles have been clarified in *Thet*, where section 2 was described by the Lord Chief Justice as both "ill-drafted" and "difficult", their approach to the directions of law would have appeared logical and consistent.

The appeal under s 2(4) (e)

31. As we have already indicated, the significance of this ground is that if the observation in paragraph 26 of the judgment in *Thet* is correct, irrespective whether the appellants could bring themselves within section 2(4)(c), both would have a complete defence.

32. Mr Chalk submitted, with appropriate courtesy, that the obiter observations about sub-s. 4(e) in *Thet* should not be followed. We had the advantage of detailed submissions on the point.

33. Without depriving them of their cogency, the conflicting arguments can be simply summarised. For the appellant it is pointed out that sub-s. 12 defines an immigration document as a passport or, for non UK nationals, a document, however described, designed to serve the same purpose. This, it is submitted, plainly means a genuine and valid passport. Insofar as there may be any ambiguity, as this is a criminal statute, it should be resolved in favour of the appellant. If the definition in sub-s. 12 is

applied to sub-s. 4(e), whenever the defendant begins his journey to the United Kingdom without a genuine document, he is provided with a defence in all circumstances. The failure of the appellants to keep and produce the false documents used to effect entry did not deprive them of this defence. They fell within the ambit of sub-s. 4(e) simply because they were never in possession of genuine documents. Although it was proved that they entered on the basis of false documents which were not presented at interview, or within the period of grace, the defence was available, and should have been left to the jury.

34. The contention for the Crown is that this construction would wholly defeat the purpose of the legislation. Although, taken in isolation, the definition of "immigration" document in sub-s. 12 would apply more naturally to a genuine rather than a false document, it is contended that an alternative construction of the definition is to treat a false immigration document as one "designed to serve the same purpose as a passport". More significantly, however, the Crown suggests that the construction adopted in *Thet*, and now advanced on behalf of the appellants, would in practice render sub-s. 4(d) a dead letter. Anyone who travels on a false document is not travelling with a genuine one. If the appellants are right, it would be open to them to rely on sub-s. 4(e) even if they travelled on a false document which they destroyed or refused to produce. This would frustrate the purpose of the legislation.

35. It would lead to a further curiosity. When two individuals travel together, one may have a genuine passport, the other a false one. If after entry into the United Kingdom, and for no good reason, they both give their passports to an agent in accordance with his instructions, the holder of the genuine passport would be unable to advance a reasonable excuse falling within sub-s. 4(c), but equally, he could not rely on sub-s. 4(e) since he started out with a genuine passport. By contrast, the holder of the false passport or immigration document, although lacking any reasonable excuse for having disposed of his false passport, could still rely on sub-s. 4(e) precisely because he started out without any genuine document at all.

36. We are persuaded that the Crown's fundamental premise is correct. The contention advanced by the appellants would mean that the only defendants who would be criminally liable under s. 2(1) would be those who started off in possession of genuine documents and thereafter, without reasonable excuse, parted with them, whereas those who entered on the basis of false documents, and without good reason destroyed or disposed of them, would be provided with a defence. It seems improbable that the legislative structure providing for defences in the limited circumstances specified within a statutory framework should achieve such an odd result. If it did, although the defence provided by sub-s. 4(d) is categoric and self-contained, the distinct defences created by the structure of sub-s. 4(c)-(e) would be elided, Accordingly, consistent with the legislative purpose, a defendant seeking to avoid criminal liability under s. 2(1) by reliance on the defence in sub-s. 4(d) is required to produce the false documents relied on by him. The same defendant, seeking to rely on sub-s. 4(c), must show that he has a reasonable excuse (as defined and limited by sub-s. 7) for not being in possession of a genuine document, and although, in accordance with *Thet*, this defence extends to the defendant who enters using a false document, it nevertheless remains subject to the same sub-s. 7 limitations. In these circumstances

we are unable to agree with a construction of sub-s. 4(e) which would effectively strike out the express provision in sub-s. 4(d) and deprive it of any meaning, and simultaneously remove the limits on the defence in sub-s. 4(c) imposed by sub-s. 7. On this analysis, the combination of statutory defences acknowledges the plight of those who cannot reasonably obtain genuine immigration documents and who enter without any documents at all or relying on false ones, while at the same time providing some measure of control over those who enter using false documents by requiring them either to produce them (in accordance with s. 2(4)(d)) or to demonstrate a reasonable excuse for their non-production which is not otherwise excluded by sub-s. 7 (sub-s. (4)(c)).

37. This conclusion is reinforced by a number of further considerations. The provisions in sub-s. 1(a) and (b) are superfluous. That view was expressed in *Thet*. However, unsurprisingly, s. 2 addresses both genuine and false documents. Sub-s. 13(b) supports our preferred construction, by providing that "an immigration document is a false immigration document" if certain conditions are satisfied. It is not identifying a false immigration document in contrast to a genuine one, but rather treating it as a sub-species of the species "immigration document". Moreover, we agree with Mr Chalk that notwithstanding that the express purpose of sub-s. 4(d) is to require the immigrant to produce the false documents relied on by him to effect entry, he would still be provided with a defence under sub-s. 4(e) if he blatantly refused to hand over or deliberately destroyed or disposed of the documents. It is also difficult to see any logical basis for depriving someone of a defence who without reasonable excuse parts with possession of a genuine passport, while making one available to an individual who, in identical circumstances, chooses to part with possession of a false one.

Conclusion

38. The appeal with respect to s 2(4)(e) fails. It provides no defence to these appellants. However the appeals will be allowed on the basis that the jury was not directed to consider whether each appellant's excuse for failing to produce the false document used to gain entry to the United Kingdom may have been reasonable. At this late stage however, no useful purpose would be served in either case by an order for retrial.