



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

Appeal Number: AA/05479/2013

THE IMMIGRATION ACTS

**Heard at Birmingham
On 29th July 2014**

Determination Sent

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

**B K
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Nwaiwu of Jamek Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant claims to be a citizen of Syria, on the basis of which he sought asylum in this country. His appeal was dismissed by Judge of the First-tier Tribunal Ford in a determination promulgated on 2nd May 2014, on asylum, humanitarian protection and human rights (Articles 3 and 8)

grounds. The judge did not accept that the Appellant was in fact from Syria.

2. The grounds of application are quite lengthy and allege that the judge had misdirected herself in various ways, had been procedurally unfair, had failed to give weight to relevant evidence as to the Appellant's nationality, had erred by giving weight to irrelevant matters, had speculated as to matters and erred in her approach to the best interests of the child who now formed part of a household of which the Appellant was part.
3. Permission to appeal was granted by Designated Judge R C Campbell on 27th May 2014. He detected little merit in the grounds save in one respect, namely the judge's self-direction (at paragraph 14 of her determination) that "In relation to nationality it is the Appellant who bears the burden of proving on the balance of probabilities that he is a national of Syria". He commented that although the burden rested on the Appellant to prove his nationality the standard of proof was the same as applied in relation to other aspects of a claim to international protection on the basis of risk on return, i.e. the lower standard: **MA [2009] EWCA Civ 289; Lucas [2002] EWCA Civ 1809**. The Respondent served a response under Upper Tribunal Procedure Rule 24 contending that the judge had directed herself appropriately.
4. At the hearing before me Mr Mills accepted that the response document was itself wrong in respect of the standard of proof upon an Appellant in an asylum appeal seeking to establish nationality. He accepted that the lower standard was that applicable but submitted that any error made by the judge in that respect would not have been material as it was very hard to believe that Judge Ford would have come to a different conclusion given her findings that a forged identity card and passport had been submitted. Mr Nwaiwu for the Appellant relied on the grounds, noting that the judge had not accepted that a Sprakab report indicating that the Appellant was Egyptian could be relied upon. He questioned the expertise of the Home Office employee who had found the identity card and passport not to be genuine documents. He contended that Article 8 issues had not been properly considered and that the judge should have gone on to consider Article 8 outside the Immigration Rules. His main point was however the standard of proof which the judge had employed. He contended that the error made was material and if the judge had thought that the lower standard was applicable she would have treated the evidence differently. The Appellant had given many accurate replies concerning his home town in Syria and had she applied the correct standard the judge would, he said, have given those replies greater weight.
5. Finally in response Mr Mills submitted that the complaints about the forgery reports were in error. The Appellant initially submitted an identity card which had not been accepted as genuine and subsequently submitted a passport which was not genuine. He accepted that if I found it arguable that the error made infected the core findings then the appeal would need to be reheard.

6. I have given careful consideration to the determination in the light of the submissions made. It is a careful and detailed document. However at several points the judge refers to the burden of proving his nationality being upon the Appellant and the standard being the balance of probabilities. That is set out at paragraph 14 of the determination. At paragraph 35 the judge stated that much turned on the Appellant being able to establish that he was a national of Syria and at paragraph 40 that she could not be satisfied on the balance of probabilities that the Appellant was a Syrian national. At paragraph 43 she stated

“I am not satisfied that this Appellant faces a real risk of persecution for a Refugee Convention reason because I am not satisfied that he is a Syrian national and I am not satisfied that he will be removed to Syria or that he will face a real risk of persecution for a Refugee Convention reason in Syria.”

7. The question of the Appellant’s nationality was crucial to the outcome of this appeal. The Respondent had accepted in the refusal letter (at paragraph 40) that if it was accepted that the Appellant was a national of Syria as claimed he would have established a real risk of persecution or a breach of the ECHR there. That the correct standard of proof in asylum matters when the burden is upon the Appellant in respect of nationality remains the lower standard was accepted by Mr Mills at the hearing before me and that view is supported by the case law referred to in the grant of permission.
8. The Respondent’s case was that the error, which it was accepted had been made by the judge in misdirecting herself as to the standard of proof, was not material. I have of course considered this point. I note that the judge found against the Respondent in respect of a Sprakab report, presciently anticipating the views expressed by Lord Carnwath in the Supreme Court in **SSHD v MN and KY [2014] UKSC 30** and had found in the Appellant’s favour with regard to that report. She found against him, with reasons, in respect of the authenticity of the identity card and the passport. However the production of some documents which may be false potentially to bolster a claim does not in itself render an asylum claim without merit.
9. In **MA** Lord Justice Elias commented (at paragraph 48) “I would accept that normally if a Tribunal adopts the wrong legal approach with respect to parts of its decision that error will infect all related aspects of the decision”. The question of the Appellant’s nationality appears to have been the issue upon which the asylum claim turned. As the judge misdirected herself as to the standard of proof I find that I cannot be satisfied that had she applied the correct standard of proof she would not have come to a different conclusion. With some regret, bearing in mind the history of this appeal, I am therefore of the view that the appeal must be reheard. I have considered whether some of Judge Ford’s conclusions should be preserved, in particular that with regard to Article 8. However her conclusion in that regard was that the Appellant could return to his home country to seek entry clearance; if his home country was in fact

Syria that would not have been a practical proposition. I therefore conclude that the fairer course is for all issues to be reconsidered at a fresh hearing. In the light of potential onward Grounds of Appeal and in accordance with Practice Statement 7.2 the case is remitted to the First-tier Tribunal in accordance with the directions which follow. There is no reason why the appeal should not come before me, sitting in the First-tier Tribunal.

10. An anonymity direction was made in the First-tier Tribunal. With regard to this determination I have decided to make an anonymity order as set out below.

Decisions

The decision of the First-tier Tribunal is set aside.

The case is remitted to the First-tier Tribunal for rehearing in accordance with the following directions.

Under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 I order that disclosure or publication of any matter likely to lead members of the public to identify the Appellant is prohibited because of the potential risk to the Appellant that might arise from such disclosure of publication.

Signed

Date 31 July 2014

Deputy Upper Tribunal Judge French