



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

Appeal Number: AA/07924/2014

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 10 June 2015**

**Decision & Reasons Promulgated  
On 25 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE DEANS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AG**

(Anonymity order made)

Respondent

**Representation:**

For the Appellant: Mrs M O'Brien, Home Office Presenting Officer

For the Respondent: Mr E MacKay, McGlashan MacKay, Solicitors

**DETERMINATION AND REASONS**

- 1) This is an appeal by the Secretary of State against a decision by Judge of the First-tier Tribunal D'Ambrosio allowing an appeal by the respondent (hereinafter referred to as "the claimant") on asylum and human rights grounds.
- 2) According to the claimant he was born in August 1974 in Syria. He claims that he and his family, whom he says are in a refugee camp in Turkey, are citizens of Syria or Bedouin ethnicity.

- 3) The respondent did not accept that the claimant is a Syrian national. He has provided no documentary evidence to show this. According to the respondent he could not answer many questions about Syria at his screening and asylum interviews. He answered only some basic questions correctly. He sought to explain his lack of knowledge because he was uneducated and a Bedouin and as such was not part of Syrian society.
- 4) The Secretary of State in addition relied upon a language analysis report by Verified AB. This report concluded that the claimant was not from Syria but was probably from Tunisia. The claimant attributed this result in part to his Bedouin dialect and claimed also that he has a stutter. Before the First-tier Tribunal it was held on behalf of the Secretary of State that the claimant would not be returned to Syria for as long as the civil war continued but it was the intention of the Secretary of State to remove the claimant to Tunisia.
- 5) The judge considered the language analysis report and found that its results were not conclusive. In support of his appeal the claimant relied upon witness statements seemingly confirming his identity and nationality from individuals who claimed to have known him in Syria. The judge accepted these witness statement as genuine. The judge heard the claimant's evidence and found it credible. On this basis the appeal was allowed.
- 6) The Secretary of State sought permission to appeal on the basis that the judge had not properly assessed the language analysis report and had not properly considered the claimant's lack of knowledge of Syria at interview, and his explanations for how his knowledge developed between his screening interview and his substantive interview. The judge did not consider the evidence, including the Syrian letters, in the round in accordance with Tanveer Ahmed [2002] UKIAT 00439.
- 7) Permission was granted on the grounds that it was arguable that he judge had failed to have regard to the language analysis report and there appeared to be no explanation as to why the report's conclusions were rejected.

## **Submissions**

- 8) At the hearing before me Mrs O'Brien submitted that the judge had not properly considered the language analysis report. This concluded that the claimant was most likely Tunisian. There was conflicting evidence as to the claimant's nationality. The report indicated that the claimant was masking his true linguistic background, which was not consistent with his claim to be of Syrian origin. The comments made by the judge at paragraph 61 of the determination about the report did not give adequate consideration to the tensions set out within it. The judge did not deal with the suggestion that the claimant had been seeking to manipulate his speech patterns. Nowhere did the judge address the crux of the report. It was not submitted on behalf of the Secretary of State that the report could lead to only one outcome but it was necessary for the decision maker to

grapple with the issues in the report and balance them with the other evidence. The judge placed no weight on the report without giving it full consideration. The judge did not look at all the evidence in the round. The judge was wrong to conclude that because of tensions in the report it should be left to one side. In so doing the judge misdirected himself and failed to consider all the evidence. In addition to the decision of the Supreme Court in MN and KY [2014] UKSC 30 there was a recent decision of the Court of Appeal in RM (Sierra Leone) [2015] EWCA Civ 541. Mrs O'Brien ended by submitting that there had been no proper analysis by the judge of the evidence and there should be full reconsideration.

- 9) For the claimant, Mr MacKay pointed out that Mrs O'Brien had acknowledged on behalf of the Secretary of State that the linguistic analysis report did not lead to any one outcome. The Judge of the First-tier Tribunal clearly acknowledged the need to look at all the evidence in the round. He set out all the evidence and grappled with all the issues. The judge found at paragraph 61 that the conclusions of the report were not supported by the results of the tests carried out. At paragraphs 62-66 the judge said he preferred the other evidence. He looked at the evidence in the round and found in favour of the claimant. He considered the conflicting evidence and gave reasons why he preferred the claimant's evidence.
- 10) Mr MacKay continued that at paragraph 48 of MN and KY the Supreme Court said that it was necessary to look at the reasoning in a language analysis report. This is what the judge had done. The report said no more than that there was a possible attempt by the claimant to manipulate the outcome. Mr MacKay continued that the judge had made it clear in his decision that he was balancing both sides of the argument and he found in favour of the claimant, in terms of paragraph 65-66 of the decision.
- 11) In response Mrs O'Brien said the judge had to grapple with the signs of inconsistent speech variation by the claimant. The judge had not done this. The language analysis report did not have to be conclusive to be taken into account. The judge had to engage nevertheless with what the report said and the judge did not take into account the suggestion that the claimant had linguistic characteristics with a number of dialects and clear indications of another speech pattern.
- 12) Mr MacKay submitted that if there was to be a remittal to the First-tier Tribunal this should be to the same judge.

## **Discussion**

- 13) Having read the judge's decision I am satisfied that it cannot stand. The reasoning given by the judge for rejecting the conclusions of the language analysis report are far from adequate. I accept the submission by Mrs O'Brien that the judge has not adequately engaged with the issues in the report and has not had proper regard to it in making his findings. The judge was not obliged to follow the conclusions of the report but if he

chose not to do so he should have given clear and viable reasons for not doing so.

- 14) The judge referred to the content of the report at paragraphs 57-60 of the decision. The judge notes at paragraph 60 that the suggestion in the report is that it is probable that the claimant does not normally live in Syria and probable that he normally lives in Tunisia. The judge then says, at paragraph 61, that the report's explanations are by no means conclusive. This in itself is unobjectionable. The judge gives what he considers to be a couple of examples of where the results seem not to be conclusive. The judge then considers the witness statements lodged in support of the claimant and the claimant's own evidence and concludes that the claimant's evidence is credible. In so doing the judge fails to explain the basis on which he, in effect, brushes aside the conclusions of what is a carefully argued language analysis report and accepts instead the claimant's testimony together with translations of letters from writers none of whom were present at the hearing. Furthermore, in accepting the claimant's testimony the judge does not address adequately the criticisms made of the claimant's evidence in the reasons for refusal letter. The judge does little more than say that he is satisfied that the Arabic letters are genuine and having heard the claimant he finds him an honest witness.
- 15) In an appeal where there is conflicting evidence between, on the one side, the claimant's own testimony and letters adduced in support of the claimant and, on the other side, a detailed language analysis report as well as detailed criticisms of the claimant's answers at interview, it is not adequate for the judge to say little more than that he prefers the claimant's evidence and in doing so brushes aside the language analysis report. The lack of adequate reasoning in the judge's decision amounts to an error of law such that his decision should be set aside.
- 16) In view of the extent of judicial fact finding required for this decision to be re-made, I consider it appropriate to remit it to the First-tier Tribunal for this purpose. Although Mr MacKay suggested the appeal be remitted to the same judge, I do not consider this appropriate. What is required is for a different judge to look at matters afresh. None of the findings made by Judge D'Ambrosio are to be preserved.

## **Conclusions**

- 17) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 18) I set aside the decision.
- 19) The appeal is remitted to the First-tier Tribunal to be heard before a different judge with no findings preserved.

## **Anonymity**

- 20) The First-tier Tribunal did not make an order for anonymity. As the appeal against the refusal of asylum is continuing, however, I consider that such an order should be made at least until the proceedings are concluded.
- 21) Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless either a tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the claimant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed

Date

Judge of the Upper Tribunal