



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09867/2015

THE IMMIGRATION ACTS

Heard at Field House
On 13th May 2016

Decision & Reasons Promulgated
On 27th May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MR FIRAS ALDUSOQI MAHMOUD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A. Muzira, Solicitor, Soloman Solicitors
For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Moan sitting at Birmingham on 25 February 2016) whereby the Tribunal dismissed his appeal against the decision of the Secretary of State to refuse to recognise him as a refugee from Syria on the ground that he had not shown there

was a reasonable likelihood that he was a Syrian national. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

The Reasons for Grant of Permission to Appeal

2. On 30 March 2016 First-tier Tribunal Judge Simpson granted permission to appeal for the following reasons:
 1. The appellant (“A”) seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Moan) who, in a decision promulgated on 3 March 2016, dismissed A’s appeal against the Secretary of State’s decision to refuse her asylum and/or humanitarian protection.
 2. The grounds of appeal are as follows:
 - (a) the Judge was not justified in finding that A was not a Syrian national;
 - (b) the Judge was not justified in preferring report from 2007 which is clearly outdated given the provenance of the report of 13 August 2014 which was consistent with A’s account;
 - (c) the Judge’s comments at [77] are mere speculation and in any event, it is clear that the document was issued by the Ministry of Interior;
 - (d) the Judge failed to analyse the language report critically, as recommended in the case of MN & KY v SSHD [2014] UKSC 30.
 3. Whilst I find (d) lacks merit given that the Judge has analysed the language report very carefully and finds it inconclusive as to A’s origin, it is arguable that the Judge has failed to give sufficient weight to the report of August 2014, as indicated in (b), and that his comments in relation to the birth certificate were also speculative. Moreover, it does appear that the Judge’s comments as to the authenticity and reliability of the birth certificate were based in part on a material error of fact.
 4. The grounds identify an arguable material error of law.

The Rule 24 Response

3. On 14 April 2016 a member of the Specialist Appeals Team settled a Rule 24 response opposing the appeal. In summary, the Judge of the First-tier Tribunal directed himself appropriately. The judge gave adequate reasons at paragraphs [120] and [121] for finding that the documents that the appellant sought to rely on were not genuine. The judge also considered the language report at paragraphs [82] to [114] of his decision.

The Error of Law Hearing

4. At the hearing before me to determine whether an error of law was made out, Ms Muzira developed the arguments raised in the application for permission to appeal. On behalf of the Secretary of State, Mr Kandola submitted that the judge’s decision

was thorough and comprehensive. He had adequately analysed the documents relied on by the appellant as showing that he was of Syrian nationality, and the language report relied on by the respondent as showing that it was more likely that he was a Tunisian national. The judge had not accepted the language report uncritically. In reply, Ms Muzira insisted that the judge had materially erred. His reasoning was not properly structured, and he had made a mistake in finding that the birth certificate had been issued by the Ministry of Foreign Affairs, when in fact it had been issued by the Ministry of Interior.

Discussion

5. In this appeal, everything hinged on the question of whether the appellant was or was not a Syrian national.

The linguistic analysis report

6. In support of a positive case that the appellant was a Tunisian national, the respondent relied on a report by Verified AB dated 11 June 2015, referred to by the judge as “the LOID report”, which considered two alternative hypotheses. The first was that the appellant belonged to the Damascus linguistic community (as he claimed) and the second was that he belonged to the Tunisian linguistic community. The conclusion of the report was the appellant’s dialect deviated significantly from phonological, morphological and syntactical features to be expected in a Damascus dialect, with the consequence that the results obtained were most likely inconsistent with the linguistic community in Damascus. Conversely, when the second hypothesis was tested, the results obtained were such it was more likely than not that the appellant’s dialect was consistent with the linguistic community in Tunisia.
7. The judge addressed the report at considerable length from paragraphs [82] to [114] of his decision. This exercise took up nearly three closely typed pages. The number of paragraphs which the judge devoted to the report does not in itself demonstrate that the judge gave adequate reasons for attaching significant probative value to it. However, on a fair reading of what the judge actually said in these paragraphs, there is no merit whatsoever in Ms Muzira’s submission that the judge simply regurgitated the contents of the report, with the result that he accepted the contents uncritically. On the contrary, the judge’s assessment of the probative value of the report is fully reasoned and it is an exemplary piece of work.
8. The appellant was represented by Counsel, and the judge engaged directly with Counsel’s submissions as to the respects in which the reliability of the report was called into question. The judge also rightly took into account the expertise of the analysts. Analyst 1586 was born and raised in Damascus and maintained contact with Syria. Analyst 1601 was born and raised in Tunis and returned home every year (paragraph 103). The judge noted at paragraph [104] that the report did not specifically confirm that it was analyst 1586 who explored the hypothesis that the appellant was from the linguistic community of Damascus and that it was analyst 1601 who explored the hypothesis the appellant was from the Tunisian linguistic

community. But he was satisfied that this would be the case (paragraph 104), and that was a finding that was reasonably open to him.

9. At paragraphs [107] to [113], the judge addressed the respondent's policy document on the use of language reports, and the significance of the cases of **RM (Sierra Leone and SSHD [2015] EWCA 51**, **RB (Linguistic evidence - Sprakab) Somalia [2010] UKUT IAC 329** and **SSHD v MN and KY [2014] UKSC 30**. The judge correctly directed himself in accordance with the respondent's policy guidance and also the guidance given in the authorities. It is not part of the error of law challenge that the judge misdirected himself.
10. It was open to him to find, as he did at paragraph [114], that while the report was not conclusive, the conclusions of the report suggested that there was stronger evidence to suggest that the appellant was not Syrian as against the evidence that suggested that he was Tunisian.

The photocopied Syrian passport

11. Earlier in his decision the judge addressed at paragraphs [52] to [72] the topic of military service/illegal exit/passport. The appellant said in his asylum interview that he was called for military service when he was 20 years of age. The appellant then arranged his exit from Syria with two people and they left by sea. He said that anyone who wanted to leave Syria could do so. The judge found this statement was inconsistent with the objective evidence of checkpoints and men being turned away at the Jordanian and Lebanese borders, or being arrested and jailed for not performing military service.
12. The appellant said in his asylum interview that he had lost his passport. He said he had lost it in Syria in 2014. He said he had got the passport in 2013. He said he had photocopied his passport after it was issued, and he had provided a photocopy of his passport to the Home Office. The judge reviewed the photocopy, and ascertained that it purported to be a copy of a passport issued in August 2013 for a two year period. At the time the appellant said he was living in a camp and he accepted (as the judge noted) that in August 2013 he had not performed military service.
13. The judge referred to a report relied on by the respondent dated 2007 which confirmed that those who evaded military service could not obtain a passport or travel outside the country.
14. The judge then referred to a 2014 report from the same source relied on by the appellant. His Counsel submitted that the 2014 report undermined the assertion in the 2007 report about an inability to obtain a passport on the part of those who had not done military service.
15. Ms Muzira showed me a copy of the 2014 report, and it is convenient to quote the extract from the report upon which she relies. Under the heading of "Penalties for evading military service", AP reported that in June 2012 the Assad Government issued an amnesty giving draft dodgers who were still in the country 90 days to

report for duty “without punishment” while those living abroad were given 120 days. In the next paragraph the following is stated:

According to 7 Days, ‘the Syrian Government will not renew the passport of any man who does not either pay the [exemption] fee or serve in the army’ (8 Feb. 2014). The activist stated that a passport will only be issued for two years for a man who has not completed his military service (activist 23 July 2014). Corroboration could not be found among the sources consulted by the research directorate within the time constraints of this response.

16. At paragraphs [66] to [72] the judge gave his reasons for treating the assertion attributed to the activist with great caution, and hence unreliable. In particular, he noted from the 2014 report that there continued to be a travel ban for those that had not completed military service:

The assertion that a person who has neither paid the exemption fee nor completed military service can obtain a two year passport is one that I approach with caution. Not only because it is not clear in the report that I have been asked to consider, the context of that assertion, it also appears to lack corroboration and appears to be contrary to the generally restrictive travel arrangements that existed in Syria.

The judge went on to say that he was unable to place weight on the poor photocopy of the passport provided by the appellant. The risk of interference with this document was great and when balanced against the credibility concerns of the appellant, “when he suggested he was issued with a two year passport when evading military service”, it could not be regarded as reliable.

17. I consider that the judge has given adequate reasons for finding that the photocopied passport, and the appellant’s evidence about the circumstances in which he claimed to have been issued with a passport, did not support his assertion of Syrian nationality, even to the lower standard of proof.

The Syrian Birth Certificate

18. For the purposes of the appeal hearing, the appellant produced an original birth certificate, together with a translation, which, as the judge said at paragraph [74], confirmed that a baby with the appellant’s first name and date of birth was born in Yarmouk Camp in Syria. The judge went on to say the interpreter at the appeal hearing was able to confirm that a stamp on the certificate issued from the Ministry of Foreign Affairs confirmed the authenticity of the signatures, but not the contents of the document, and that the date of the stamp was 3 December 2015. At paragraph [80], the judge observed the respondent had not asserted the birth certificate was a forgery. But he still had to consider whether it was a document he could rely upon. He answered the question in the negative. He held at paragraph [81] that the explanation as to how the certificate was obtained in Syria and was then transmitted to the appellant was not credible, and this cast doubt on the reliability of the certificate.

19. Part of the judge's reasoning was that the birth certificate had been issued by the Ministry of Foreign Affairs. This suggested to him that the person who requested the certificate was either foreign or an expatriate. In fact, as Mr Kandola accepts, the birth certificate was purportedly issued by the Ministry of Interior, whereas the authentication stamp was from the Ministry of Foreign Affairs.
20. I do not consider that the judge has materially erred in characterising the document as being issued by the Ministry of Foreign Affairs as opposed to being issued by the Ministry of Interior. On any view, the document has been purportedly *authenticated* by the Ministry of Foreign Affairs, not by the Ministry of the Interior. It was thus open to the judge to find that the contents of the document were inconsistent with the appellant's evidence as to how the document was obtained, which was by a personal visit to the Civilian Registry in Damascus. If so, prima facie there would have been no occasion for there to be an involvement on the part of the Ministry of Foreign Affairs in the authentication of the birth certificate.
21. Moreover, the judge's main reason for not treating the certificate as reliable has nothing to do with stamps on the birth certificate. The appellant's evidence was that an unnamed person obtained the certificate from the Civilian Registry in Damascus, and had sent it to Mohammed Bitar who lived in Jordan. Mr Bitar then sent the birth certificate to the appellant in the UK. The appellant said he did not know Mohammed Bitar but his birth certificate had been sent via Jordan because communications were monitored in Syria and his unknown friend in Syria might be arrested. As Jordan was an Arab country, his unknown friend would be allowed to send items to Jordan. It was put to the appellant that there was no reason for communications to the UK to be intercepted, as the UK was not at war with the Syrian Government. The judge considered there was some merit in this line of argument, as he said in paragraph [79].
22. In conclusion, I find that the judge has given adequate reasons for finding that the birth certificate was not reliable, in accordance with the guidance given in **Tanveer Ahmed**.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date 27 May 2016

Deputy Upper Tribunal Judge