



Upper Tribunal a  
(Immigration and Asylum Chamber)

Appeal Number: PA/03014/2018

**THE IMMIGRATION ACTS**

Heard at Royal Courts of Justice  
On Monday 16 July 2018

Determination Promulgated  
On Tuesday 07 August 2018

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M K A  
[Anonymity direction made]

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms M Butler, Counsel instructed by JCWI  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

## **DECISION AND REASONS**

### **Background**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Blundell promulgated on 2 May 2018 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 20 April 2018 refusing his protection claim.
2. The Appellant claims to be a national of Syria. That is indeed the central issue in this appeal because the Respondent does not accept that he is Syrian and says that he is Egyptian. That is based on two matters. First, the Respondent says that the Appellant was unable to answer or answered incorrectly a number of questions about Syria. Second, the Respondent relies on a language analysis report prepared by Verified AB ("the Language Report") which concludes that the Appellant's speech and language use is most likely inconsistent with him being Syrian and most likely consistent with him being from Egypt.
3. The Appellant is accepted to have been born on 18 November 1997. Accordingly, when he claimed to have arrived (clandestinely) in the UK on 21 November 2014 he was aged just over seventeen years. When he was interviewed in relation to his protection claim on 10 December 2014, he was similarly under eighteen. By the time of the appeal hearing before Judge Blundell, on 5 April 2018, however, he was aged twenty years. It is also relevant to note that the Appellant says that he left Syria in either May or June 2011 and stayed for a number of months in Egypt before coming to the UK.
4. Judge Blundell did not accept that the Appellant was Syrian. He found that the Appellant is from Egypt. Since the Appellant did not claim to fear return to Egypt, Judge Blundell dismissed the appeal.
5. There is only one ground of appeal raised by the Appellant's current representatives and that is that an adjournment was wrongly denied. That is on the basis that the Appellant had not had the opportunity to challenge the Language Report and had been denied access to public funding by his former solicitors who failed properly to assist him in seeking public funding. It is said that it was for those reasons unfair for the Tribunal to refuse to adjourn the hearing and that such unfairness is obvious.
6. Permission to appeal was granted by First-tier Tribunal Judge Saffer as follows (so far as relevant):

"... [3] It is arguable that the Judge may have materially erred in not adjourning the hearing for a language analysis report where this had been previously requested by his representative, he was unrepresented, and it was a significant factor in rejecting his account."
7. The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing.

## **Discussion and conclusions**

8. It is not asserted by the Appellant that he sought an adjournment at the hearing before Judge Blundell. Indeed, as noted at [6] of the Decision, the Appellant positively indicated that he wished to proceed with the hearing without a representative.
9. That though is not the end of the matter. As Ms Butler submitted, and I accept, it is for a Judge hearing an appeal, particularly one where the Appellant is unrepresented, to consider whether there is any unfairness with proceeding, whether or not the Appellant wishes to adjourn.
10. In this case, moreover, there had been a previous request made by JCWI by letter dated 20 March 2018 which set out reasons why an adjournment might be appropriate. Those were, in summary:
  - (a) To enable the Appellant to obtain full disclosure from the Respondent;
  - (b) Allied to that, to enable the Appellant to obtain an audio copy of the Language Report so that he could instruct his own expert
  - (c) To enable the Appellant to obtain an expert report regarding his nationality;
  - (d) To enable the Appellant to secure legal representation. It is there said that his previous solicitors did not follow the correct procedures in withdrawing public funding which would entail the Appellant challenging this to obtain further public funding in order to instruct another representative.

JCWI noted that they had been approached by a charity to represent the Appellant in helping him to challenge the solicitor's decision to refuse him public funding, with a view, I assume, to obtaining representation for him thereafter to challenge the evidence put forward by the Respondent.

11. A Tribunal caseworker refused the request for an adjournment. The reasons given according to the Tribunal file are in the following terms:

“Request to adjourn refused. There is no indication to show that a disclosure request has been made or timescales for the expert reports. There is also no guarantee that the Appellant will obtain legal representation. The appeal cannot be adjourned indefinitely. “
12. Judge Blundell noted at [6] of the Decision that the Appellant tried to produce before him a letter from the Appellant's previous solicitors stating why they could not authorise public funding. As Judge Blundell noted, this was most likely privileged and he (rightly) did not have regard to it. However, that would have put him on notice as to the previous reasons for seeking an adjournment and the reasons why that was refused. There is no reference to either in the Decision.
13. The Judge did however consider at [8] of the Decision whether to adjourn of his own volition:

“I considered at this stage whether to adjourn the hearing of my own volition, so as to give the appellant an opportunity to secure alternative legal representation. I decided that it was not necessary to do so in order to secure a fair hearing. The nature of the dispute was entirely factual and related to the appellant’s place of origin. He was aware of the reasons given by the respondent for doubting his nationality and he had been given a fair opportunity to adduce evidence in response. I was able to elicit from him his responses to the specific concerns raised by the Secretary of State. I resolved to proceed with the hearing accordingly.”

14. Whilst the Judge is right to note that the dispute is factual, the evidence relied upon is not. If this had been a case where the Respondent relied only on the Appellant’s answers at interview, then, subject to one point which I raise below, the Judge may have been right not to adjourn. However, here there was expert evidence in the form of the Language Report which the Appellant had been unable to challenge because he had not been able to secure representation or assistance to find an expert to consider that evidence and provide a separate report and/or to instruct an expert to report more generally on his nationality.
15. Encompassed in the unfairness asserted by the Appellant in relation to the Language Report is the assertion that the Respondent was bound to disclose the audio tape for the Language Report. That is reflected in the Respondent’s policy entitled Language analysis; Version 20.0; Published 13 February 2017 to which reference is made in the Appellant’s grounds of appeal ([11]). As the extract there shows, where a language analysis is relied upon, the “LA audio CD” must be copied to the appellant’s representatives or, if there is no representative, to the “claimant”. That is not dependent on there being a request for the audio tape. It should have been served with the Language Report. There is nothing to show that this was done in this case nor, more importantly for my purposes, there is nothing to show that the Judge considered whether this was necessary in order for the Appellant to have a fair hearing of his appeal (particularly where this was one of the reasons raised by JCWI in the previous adjournment request). Reliance is placed by the Appellant in particular on what is said by the Supreme Court in Secretary of State for the Home Department v MN and KY [2014] UKSC 30 by reference to RB (Somalia) v Secretary of State for the Home Department.
16. Mr Tufan made two points in reply. First, as he pointed out, the Appellant does not dispute the content of the Language Report. His answer to it is that he used to take long holidays in Egypt with his family when younger and therefore might speak Arabic with some linguistic influences from that country. The Judge rejected that as a plausible explanation at [21] of the Decision. Second, Mr Tufan submitted that the Language Report was not the only reason for finding the Appellant to be Egyptian not Syrian. The Judge relied also (as had the Respondent) on the Appellant’s lack of knowledge about Syria.
17. Dealing first with what is said by the Judge at [21] of the Decision, that is a finding which is clearly open to the Judge on the evidence he had before him. However, whether a person’s language might be influenced by stays in another country, particularly when a child, is not something on which the Judge had any expert

evidence. As the Language Report itself indicates at [3.3.6], there are factors which might explain inconsistencies such as “linguistic accommodation and socialisation in more than one linguistic community”. The Appellant also said that he stayed in Egypt for a number of months before coming to the UK after he left Syria. An expert may be able to comment on the likelihood of his holidays as a child and stay in that country having an impact on his speech and the inconsistencies identified in the Language Report.

18. The second point brings me on to the other reason given by the Respondent and Judge for rejecting the Appellant’s claim to be Syrian. As Mr Tufan noted, the Judge has relied first on the Appellant’s limited knowledge of Syria and second on inconsistencies in the Appellant’s account of life in Syria.
19. Dealing first with the Appellant’s knowledge of Syria, as Ms Butler pointed out, the Appellant was a minor when he lived in Syria. I recognise that he was not a very young child – he would have been aged about fourteen when he left. However, as she rightly pointed out, the Judge has not taken the Appellant’s age into account at [18] of the Decision.
20. There is a further unsatisfactory feature of the Judge’s reliance on this as reason to reject the Appellant’s claim which stems from the Respondent’s decision. There are three reasons for finding the Appellant not to be Syrian given at [30] to [32] of that letter.
21. First, it is said that the Appellant did not know when Syrian Independence Day was celebrated. It is there noted that the Appellant said at [47] of the interview answers that he could not remember. That though takes no account of his answer at [48] that he thought it was in April (which is accurate).
22. Second, it is said that the Appellant did not know the name of rivers running through Damascus which he said he could not remember. That is correct. Third, it is said that his answer to when the war began that it was in 2011 is incorrect. In terms of when Syria was said to be in a state of war, it is right that the answer which he gave is wrong. That the Appellant said he left in 2011 when his area started to be bombed would also be inconsistent with the background evidence. However, as the background evidence on which the Respondent relies shows, protests and attacks against protesters had started by 2011. It is also right to note that there is an inconsistency in the dates which the Appellant has given for when he left Syria.
23. For the above reasons, it is not right to say that all three of those reasons give rise to a finding of limited knowledge of Syria. As Ms Butler also pointed out, there is no mention whether by the Respondent or the Judge of the other answers to questions which do indicate knowledge, for example, in relation to police uniforms, food stuffs etc.
24. I accept that the Judge was entitled to rely on inconsistencies in what the Appellant said, for example, about his education. However, as Ms Butler again noted, what is said at [19] of the Decision takes no account of the Appellant’s age at the time and

whether that might have affected his ability to remember details of places and names in Syria.

25. As is said in the headnote in the case of Nwaigwe (adjournment:fairness) [2014] UKUT 00418 (IAC):

*“If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party’s right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284.*

26. In this case, I am satisfied that there is unfairness in spite of the Appellant’s wish to proceed. The Judge failed to take into account the earlier request for an adjournment and the reasons behind that request when considering for himself whether to adjourn. He failed to take into account the Respondent’s failure (or apparent failure) to disclose the audio tape on which the Language Report was based. Although it is fair to note that the Language Report is not the only reason why the Judge did not accept that the Appellant is Syrian, it is one of three reasons. In any event, as I have indicated, the lack of any report (or ability to obtain one) may impact on the Appellant’s ability to explain why he might speak Arabic with linguistic features of an Egyptian speaker.
27. The reasons for disbelieving the Appellant’s nationality are not limited to his speech but also to his knowledge of Syria and the fact that he was unable to obtain a report about this also potentially impacts on his ability to defend the appeal.
28. Although the Tribunal caseworker may have been entitled to rely on the period which the Appellant had to obtain evidence before March (although I note that this was only about one month after the Respondent’s decision in any event), no account is there taken or taken by the Judge of the problems which JCWI identified in relation to the Appellant’s previous representatives.
29. For those reasons, there is unfairness in the failure by the Judge to adjourn the hearing. That amounts to an error of law.
30. I am also satisfied that the error of law is material. As I have noted at [19] to [23] above, there are certain elements of the first reason given for disbelieving the Appellant which are unsatisfactory. Account should have been taken of the knowledge which the Appellant did have (if those answers are indeed correct). The Respondent, and therefore also the Judge, have failed to note that in relation to one of the reasons given by the Respondent, the Appellant did in fact go on to answer correctly. In any event, the Language Report is one of the three central reasons given for finding against the Appellant and the unfairness in that regard which I have identified is therefore material to the Judge’s finding.

31. The Appellant's grounds therefore disclose errors of law. I therefore set aside the Decision. Ms Butler asked that, if I found an error, I should remit the appeal to the First-tier Tribunal.
32. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. That reads as follows:
- “[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.”
33. My decision is based on the fact that the Appellant did not have a fair hearing, given the Judge's failure to adjourn in particular to allow the Appellant to obtain relevant expert evidence. The lack of such evidence (or at least the opportunity to obtain it) which has led to the procedural unfairness potentially impacts on the adverse credibility findings made. Accordingly, in the interests of a fair and just disposal of the Appellant's protection claim, I am satisfied that it is appropriate to remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than Judge Blundell.

### **DECISION**

**I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Blundell promulgated on 2 May 2018 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge Blundell.**



Signed  
Upper Tribunal Judge Smith

Dated: 31 July 2018