



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03535/2015

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal
On 24 July 2018

Decision and Reasons promulgated
On 31 July 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

KOVAN JARJES MAHMOOD
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sharif of Fountain Solicitors.

For the Respondent: Mr Mills - Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Parker, promulgated on the 6 September 2017, in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant claimed to be national of Syria born on 1 June 1994 who entered the United Kingdom on 23 June 2015 and claimed asylum. The appellant claimed a fear on return to Syria.
3. The Judge considered the evidence with the required degree of anxious scrutiny including the language analysis report stating the appellant belongs to a Kurdish linguistic community that occurs in Iraq.
4. The Judge refers to the case law referred to by the appellant's representative indicating that such reports are entitled to considerable weight but should not be treated as infallible. The Judge finds the appellant's knowledge of Syria is inconclusive and that his responses to his questions about his nationality lack credibility, amongst other matters. The Judge finds the appellant has not told the truth regarding his claim and that he is a Kurd from Iraq and in particular the IKR. Accordingly, the appellants claim based upon a completely different factual matrix, namely a national of Syria who could not return to Syria, failed and was found to lack of credibility.
5. The appellant was refused permission to appeal by another judge of the First-tier Tribunal but granted permission on a renewed application by a Deputy Judge of the Upper Tribunal for the following reasons:
 1. The above grounds of appeal assert that the decision of the judge of the first-tier Tribunal showed an insufficiency of reasoning and that he erred in light of decided case law in his assessment of the language report. It was stated that the Judge was wrong to find that the appellant could be returned to the IKR.
 2. I consider that it may be arguable that the Judge erred in his consideration of the language report and also with regard to the ability of the appellant to return to the IKR.
6. The respondent, in her Rule 24 reply of 27 November 2017, maintains the Judge properly considered the language report set out at paragraphs 20 to 47. The Judge was entitled to find the appellant was not from Syria and at paragraph 67 the Judge finds the appellant has family connections that can help him and sponsor him to obtain the appropriate documentation.

Error of law

7. The appellant attacks the Judge's treatment of the language analysis. The Judge sets out the results of the analysis between [22 - 44] of the decision under challenge. The Judge sets out the linguist's professional qualifications and experience which are described as "impressive" at [42 - 44].
8. The Judge recognises that there are limitations of any language analysis and the one being considered in particular, but concludes the report is detailed and provides cogent evidence of the appellants linguistic ability [47]. The Judge sets

out the cases relied upon by the appellant's representative before the First-tier Tribunal and now in support of this application for appeal at [49] accepting at [50] that a report is not infallible but, having followed the guidance provided in the case law referred to the Judge, finds the expertise of the linguists to be very good and considers alternative submissions and evidence provided as not being convincing. The issue of the Judge referring to two linguists when there may have been three indicates confusion but not anything sufficiently material to lessen the degree of weight given by the Judge to the evidence.

9. The Judge does not make the finding solely based upon the linguistic evidence and refers to the fact that the appellant was asked a number of questions to establish his identity and nationality in his asylum interview the responses to which are noted at [19 - 20] of the reasons for refusal letter to be inaccurate or incorrect when compared to the background information relating to Syria. The Judge refers to inconsistent and inaccurate evidence [52] and the finding the appellant's knowledge of Syria 'is at best inconclusive'; a reference to it not being conclusive in establishing the appellant is from Syria.
10. The Judge finds at [56] that the linguistic origin identification report of 14 September 2015 has not been successfully challenged and that the Judge did not have any detailed analysis that either the authors experience or the contents do not stand up to scrutiny and that the Judge had no expert report to provide clear independent evidence that an appellant who speaks Kurdish Kumanji can originate from Dereke in Syria, as the appellant claimed.
11. The Judge refers to discrepancies highlighted in the reasons for refusal letter in the appellants responses which have not been successfully challenged. The Judge also notes that in the screening interview the appellant failed to mention his fear of the Syrian authorities which the Judge, reasonably, concluded will be central to the appellants claim [58].
12. The cases relied upon by the appellant before the Judge and in support of his grounds of appeal include *RB (Linguistic evidence – Sprakab) Somalia* [2010] UKUT 329 (IAC) in which the Tribunal said that (i) Linguistic analysis reports from Sprakab are entitled to considerable weight. That conclusion derives from the data available to Sprakab and the process it uses. They should not be treated as infallible but evidence opposing them will need to deal with the particular factors identified in the report; (ii) Recordings of all material derived from the appellant and used as material for linguistic analysis should be made available to all parties if the analysis is to be relied on in the Tribunal; and (iii) Sprakab linguists and analysts are not to be required to give their names (as distinct from their identifiers, experience and qualifications) unless there is a good reason particular to the individual case. The Tribunal also gave general guidance on the reports. First, it stated that SPRAKAB's process of language analysis, which required interaction between several employees, minimised the opportunities for incompetence or a false result. Secondly, while origin should not be based solely on linguistic analysis, where there was a clear opinion expressed in terms

of certainty, little more would be required to justify a conclusion on whether an applicant had the history claimed. Thirdly, parties must have an opportunity to challenge any linguistic assessment opposing them. Finally, SPRAKAB's request for anonymity for its employees was reasonable.

13. In *RB (Somalia) v Secretary of State for the Home Department* [2012] EWCA Civ 277 the Court of Appeal endorsed the Tribunal's guidance and upheld *RB*.
14. However, in *M.AB.N. & Anor v The Advocate General for Scotland & Anor* [2013] ScotCS CSIH 68, the Secretary of State refused asylum to as a result of linguistic from 'Sprakab'. The Sprakab reports concluded that each Claimant did not speak a dialect of Somali found in the area they claimed to be from and that they had deficient knowledge of that area. The key issue in each appeal was the evidential standing of the 'Sprakab' reports. The Court found that the author of each report was stepping outside their proper field of expertise and that there was no evidence that either analyst had any expertise in the identification of Somali dialects or their geographical and social distribution. On appeal in *SSHD v MN and KY* [2014] UKSC 30, the decision in the Court of Sessions was upheld albeit that the Supreme Court held that regard could be had, by the Secretary of State determining asylum applications and tribunals in asylum appeals, to linguistic analysis reports provided by the organisation known as Sprakab. Sprakab could report on language as evidence of place of origin and on familiarity with claimed place of origin provided that the expert's expertise was properly demonstrated and their reasoning adequately explained. By way of pointers the Supreme Court said "i) On the basis of the material we have seen, I see no reason in principle why Sprakab should not be able to report on both (a) language as evidence of place of origin and (b) familiarity with claimed place of origin provided, in both cases, their expertise is properly demonstrated and their reasoning adequately explained. (As will be seen below, the problem in relation to (b) was not the nature of the evidence, but the lack of demonstrated expertise.) ii) As to (a), language: a) The findings (on evidence) in *RB* are to my mind sufficient to demonstrate acceptable expertise and method, which can properly be accepted unless the evidence in a particular case shows otherwise; b) The Upper Tribunal ought to give further consideration to how the basis for the geographical attribution of particular dialects or usages can be better explained and not (as it often currently seems to be) left implicit. The tribunal needs to be able to satisfy itself as to the data by reference to which analysts make judgements on the geographical range of a particular dialect or usage. c) The *RB* safeguard requiring the Secretary of State to make the recording available to any expert instructed for the claimant is not only sensible, but essential. iii) As to (b), familiarity: a) The report needs to explain the source and nature of the knowledge of the analyst on which the comments are based, and identify the error or lack of expected knowledge found in the interview material; b) Sprakab reporters should limit themselves to identifying such lack of knowledge, rather than offering opinions on the general question of whether the claimant speaks convincingly. (It is not the function of an expert in language use to offer an opinion on general credibility.) iv) On the issue of "anonymity", since

the approach in *RB* was a departure from the norm, it would be appropriate for the tribunal to satisfy itself both that the departure remains justified in the interests of security of Sprakab personnel or otherwise, and, if it does, as to the safeguards necessary to ensure that the evidence is reliable and that no prejudice arises in individual cases. Consideration for example could be given to requiring assurances that the identifying numbers remain with an individual throughout his work with Sprakab, and requiring disclosure of other work done in any related field by the individual (eg advice to Governments, interpretation, translation), and of any occasion on which his conclusions have been rejected by courts or tribunals.

15. In *RM (Sierra Leone)* 2015 EWCA Civ 541 it was held that *RB (Linguistic evidence – Sprakab) Somalia* [2010] UKUT 329 (IAC) set out the approach to be taken to linguistic analysis reports. Those reports were entitled to considerable weight but should not be treated as infallible. The Upper Tribunal was therefore entitled to take the report into account provided it adopted a properly critical approach. This decision is a practical application of the guidance given at paragraph 51 in the judgment of Lord Carnwath in *Secretary of State for the Home Department v MN and KY* [2014] UKSC 30. A Sprakab-based analysis now requires a proper nuanced assessment of the knowledge demonstrated by the analyst (see Lord Carnwath’s opinion at 51(i)), considering what the relevant expertise is of that expert.
16. It is not made out the Judge failed to approach the matter in the way identified by the Supreme Court, confirmed in *RM (Sierra Leone)*, or that the conclusions arrived at or weight attached to the report are outside the range of reasonable responses open to the Judge on the evidence. There is no report from the appellant before the Judge countering the language analysis or casting sufficient doubt upon the expertise of the linguistic assessors to warrant less weight being attached than that the Judge was willing to attach.
17. The Judge considered the evidence with the required degree of anxious scrutiny and has given adequate reasons in support of the findings made. The weight to be given to the evidence was a matter for the Judge and it has not been shown the weight given is in anyway arguably irrational, perverse, or contrary to the law.
18. The assertion in the grounds the Judge failed to properly consider the country guidance case of *AA (Iraq)* [2017] EWCA Civ 944 and the updated guidance on whether the appellant has a CSID and concluded the appellant had family in the IKR when there was no evidential foundation to support this, has no arguable merit. The appellant claimed he was from Syria not from Iraq and there is no indication in the file that he led any evidence suggesting he could not return to Iraq or meet the requirements of return to that area. The Judge noted that it was likely the appellant had family in the Kurdish region as it was found the appellant is an Iraq Kurd from the IKR. The recent country guidance case does not enable the appellant to suggest he faces a real risk on return and the Judge

was arguably entitled to conclude that given the appellant's lack of credibility it is likely he has family connections that can help him and a sponsor who can assist in obtaining all the appropriate documentation. As the appellant maintained he was from a country that it was established he was not, it is difficult to see what material was before the Judge other than that leading to the conclusions reached. The Judge may equally have been able to have found that the appellant had not discharged the burden of proof upon him to show he could not return to Iraq as that is the consequence of the appellant adducing no evidence in support of that aspect of the case.

19. In relation to the assertion the Judge failed to explain why 276ADE(vi) did not apply in the appellant's favour, the Judge did. The Judge considered the rule at [69] and the appellant adduced no evidence to show that he could satisfy this requirement of the rule such as to entitle him to a grant of leave to remain.
20. Mr Sharif focused his submissions upon an assertion the Judge failed to properly consider all the evidence. There was specific reference to a number of documents appearing between pages 70 - 86 of Section B of the appellant's appeal bundle. These include a Certificate of Nationality and Family Registration of Syrian children, a Certificate of Identity and a Syrian Family Book. They are accompanied by translations.
21. Although the Judge does not specifically mention these documents in the decision under challenge it is clear these were considered when Judge refers to 'alternative evidence which was found not to be as convincing' at [50] and at [57] that the appellant's knowledge of Syria is at best inconclusive.
22. What the Judge had before him was three core pieces of evidence being the language analysis report confirming that the appellant is a citizen of Iraq, the appellants evidence contained in his appeal bundle, and the replies given to interviewing officers as part of the asylum process together with the reasons for refusal letter. The Judge clearly factored all this evidence into the decision-making process before concluding that the weight of the evidence supported the finding set out in the decision under challenge; namely that the appellants claim to be a national of Syria is not credible and had not been made out. By inference the documentation provided by the appellant in support of his claim to be a national of Syria is clearly documentation upon which the Judge felt unable to place the weight he was invited to do by the appellant.
23. It has not been made out the manner in which the Judge undertook the assessment of all the evidence in the round is infected by arguable material error.
24. There may have been possible merit in the claim that certain aspects of the decision have not been adequately argued if it had been a case of evidence being called establishing a position adopted by the appellant in relation to a claim to be able to succeed on a particular point. The difficulty for the Judge is that the

whole of the appellant's case was focused upon the scenario that was found not to be true. There was no evidence dealing with an alternative position of either the appellant being a Kurd from Iraq or exploring whether he was entitled to succeed on this basis. In the absence of evidence, the Judge was entitled to do the best he could and it has not been made out the findings made beyond the core finding the appellant is not from Syria but is from Iraq, are not within the range of reasonable findings the Judge was entitled to make on the basis of the limited evidence.

25. The appellant fails to make out any arguable legal error material to the decision to dismiss the appeal.

Decision

26. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

27. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Signed.....
Upper Tribunal Judge Hanson

Dated the 24 July 2018