



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06368/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 12 February 2018

Determination Promulgated  
On 15 May 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

MR M S  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Osborne on 13 November 2017 against the

determination of First-tier Tribunal Judge Lingam who had dismissed the appeal of the Appellant against the refusal of his international protection claim. The decision and reasons was promulgated on 17 August 2017.

2. The Appellant had claimed to be a national of Iran, of Kurdish ethnicity, born on [ ] 1999, and thus now 19 years of age and an adult in law. He had entered the United Kingdom illegally in 2013. His age and his identity were not in dispute and so he was granted discretionary leave to remain until 6 November 2016, although his asylum claim was refused. He did not appeal that refusal, but revived his protection claim at the expiry of his discretionary leave to remain. In the meantime, in late 2015, the Home Office had commissioned an expert's report as to the Appellant's language, which had questioned his claimed Iranian origin. At the hearing before Judge Lingam on 1 August 2017, an application for an adjournment had been made by counsel, requesting time to obtain an expert's report as to the Appellant's origins, based on language analysis. Judge Lingam refused the application, ruling that it was made too late and that no reasonable time frame for its provision had been put forward. The judge went on to dismiss the appeal, finding that the Appellant was not at risk on return to Iran.
3. Permission to appeal was granted because it was held arguable that the judge had erred when refusing to grant the adjournment application and that procedural fairness had not been afforded to the Appellant.
4. Standard directions were made by the tribunal. A rule 24 notice opposing the appeal had been served and filed on behalf of the Respondent.
5. The Appellant appeared in person at the hearing, as noted above. He speaks fluent English and declined the offer of an interpreter. He explained that his solicitors were no longer acting for him. He had decided not to seek alternative representation. He wished for his appeal to proceed. After checking the facts with the Appellant, the tribunal agreed to proceed, providing such assistance as was proper. It seemed to the tribunal unlikely that the Appellant would have been able to obtain another representative even if he had wished to do.

*Submissions*

6. Mr Tarlow for the Secretary of State for the Home Department opposed the appeal. He relied on the rule 24 notice, a copy of which was given to the Appellant. (The Appellant was given time to read the notice and appeared to have no difficulty in doing so.) In summary, Mr Tarlow submitted that the judge had considered the principles set out by the Upper Tribunal in Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC) with appropriate care, and had applied them. The Appellant had been represented throughout and had had ample opportunity through those representatives to obtain any expert's report which was considered to assist his case. There had been no prejudice. Moreover, the judge had treated the Respondent's expert's report with great care. The decision and reasons was safe and should stand.
7. The Appellant had listened to Mr Tarlow's submissions and was content to leave the matter to the tribunal.

*No material error of law finding*

8. Procedural fairness is always a most important if not pre-eminent matter. It seems to the tribunal in the present appeal, however, that the grant of permission to appeal was generous, if not misconceived.
9. In the first place, it is beyond doubt that the Appellant was represented by experienced solicitors until the present Upper Tribunal hearing. As a minor he was legally aided and so there was the opportunity for his representatives to seek an alternative linguistic analysis report from late 2015 onwards. The issue of whether Kurdish dialect speaking asylum claimants are Iranian or Iraqi is a frequent issue and is one of longstanding. The Home Office refusal placed all or almost all of the Appellant's claims in issue. The Home Office expert report was fully reasoned and so an assessment must have been made as to whether or not that report could be successfully challenged, either by way of submissions generally, or by a counter report.
10. At the time of counsel's adjournment application, no rival expert had been identified to provide a counter report, let alone a recognised expert who had agreed to act. The reply filed by the Appellant's solicitors for the PHR several weeks earlier had made no

adjournment request, and stated that the appeal was ready to proceed. There was no timetable, nor any evidence whatsoever to suggest that a different view of the Appellant's language might be advanced on any intellectually respectable basis, e.g., an email from the proposed expert indicating potential flaws in the 2015 report. At best the adjournment application was a fishing expedition or an attempt to play for time, raised by counsel at the last possible minute. Even the permission to appeal application identifies no suitable expert nor indeed any flaw in the 2015 report which could easily have been countered. The overriding objective of the 2014 First-tier Tribunal Rules had been ignored. As an application it had no substance and the experienced judge was right to refuse it. There was no procedural unfairness and the application (unsupported as it was) verged on an abuse.

11. If for any reason the tribunal were mistaken to form that view, the question remains as to whether a rival report could have made any difference to the outcome of the appeal. Judge Lingam found, contrary to the Home Office submission, that the Appellant was Iranian as he claimed. Thus his case was considered on the basis on which he had advanced it, and included consideration of the consequences of illegal exit from Iran. The judge gave multi-faceted reasons for finding that the Appellant's claim was not credible to the lower standard, which were not dependent on the linguistic analysis report: see [47] onwards of the decision and reasons. Those reasons are too numerous to summarise here, but contrary to the submissions made in the permission to appeal application, they were reached against a careful study of the current country background evidence and are proper and sustainable. In the light of [67] of the decision and reasons, even a rival linguistic analysis report from the Appellant's side is most unlikely to have improved the prospects of a successful appeal and there is no such report against which any such claim can be measured. It is all speculation.
12. The submissions advanced for the Appellant in the onwards grounds of appeal amounted to no more than disagreement with the proper exercise of the experienced judge's discretion and ultimate decision. The tribunal finds that the onwards appeal has no substance and that there was no material error of law in the decision challenged.

**DECISION**

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

**Signed**

**Dated 12 February 2018**

**Deputy Upper Tribunal Judge Manuell**