



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

Appeal Number: PA/06799/2019 (P)

THE IMMIGRATION ACTS

**Decided Without a Hearing Under
Rule 34
On 15 September 2020**

**Decision & Reasons Promulgated
On 22 September 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**RMR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Freedom Solicitors (Written Submissions)

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer (Written Submissions)

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant claims to be a citizen of Iran and to have been born on 15 August 1993.
3. The appellant arrived in the United Kingdom clandestinely sometime in March 2017.
4. On 11 March 2017, he claimed asylum. The basis of the appellant's claim was that he is a Kurd who was brought up in the village of Qala-Rash in Iran close to the Iraqi border. He claims that his father was a supporter of the KDPI. The appellant claims that he became involved with the KDPI informing supporters of their meetings. He claims that he received a phone call from a friend stating that his house had been raided by the Iranian authorities who were looking for him. As a result, the appellant fled Iran and travelling through a number of countries arrived in the UK. He fears the Iranian authorities if he were returned to Iran.
5. On 14 June 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds. In particular, the Secretary of State did not accept that the appellant is an Iranian citizen but, rather, concluded he is an Iraqi citizen.
6. The appellant appealed to the First-tier Tribunal. In a determination sent on 11 November 2019, Judge M A K Lawrence dismissed the appellant's appeal on all grounds. First, the judge did not accept that the appellant was an Iranian national but, as had the Secretary of State previously, he concluded that the appellant was an Iraqi national. Secondly, the judge found that, even if the appellant were an Iranian citizen, he would not be at risk on the basis of his claimed *sur place* activities in the UK which included attending demonstrations outside the Iranian Embassy and a number of postings on Facebook. Thirdly, the judge concluded that if the appellant is Iraqi, he would not be at risk on return to Iraq.

The Appeal

7. The appellant appealed to the Upper Tribunal on three grounds.
8. First, the grounds contend that the judge improperly relied upon a Sprakab language report and failed properly to take into account the appellant's Iranian birth certificate which an expert report had concluded to be authentic. In addition, the judge erred by taking into account that the appellant had failed to attend the Iraqi Embassy to demonstrate that he was not an Iraqi national.
9. Secondly, the grounds contend that the judge failed to make any findings in relation to the appellant's claimed activities and support for the KDPI whilst in Iraq which would be relevant to his risk on return.

10. Thirdly, the grounds contend that the judge failed properly to apply the relevant country guidance decision in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC).
11. On 19 December 2019, the First-tier Tribunal refused the appellant permission to appeal. However, on 29 January 2020 the Upper Tribunal (UTJ Finch) granted the appellant permission to appeal. In granting permission, UTJ Finch said this:

“The judge failed to take into account that within the Sprakab Report it was noted that the Appellant’s language displayed phonological features which were mutual for speakers from Sardasht in Iran and Kurdish areas in Iraq.

The judge also failed to remind himself that the Appellant was illiterate and had not attended school in Iran and that, therefore, he may have had little contact with the Farsi language.

It is arguable that the language a person speaks at one point in time is not an immutable characteristic of that person.

The reasons given for not placing weight on the expert report were insufficient. In addition, the judge failed to take into account the explanations given by the Appellant in his witness statement in relation to errors he was said to have made in his asylum interview.

Given, the arguable errors made in relation to his assessment of the Appellant’s nationality, the judge also failed to consider *SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC)*.

Therefore, there were errors of law in the First-tier Tribunal Judge Lawrence’s decision and I find it is appropriate to grant the Appellant permission to appeal”.
12. The appeal was initially listed for hearing in the Birmingham Justice Centre on 6 April 2020. However, that hearing was adjourned due to the COVID-19 crisis.
13. On 7 April 2020, the Upper Tribunal (UTJ O’Callaghan) issued directions, in the light of the COVID-19 crisis, indicating the provisional view that it would be appropriate to determine the error of law issue without a hearing and inviting the parties to make submissions on the error of law issue and whether the appeal could be determined without a hearing.
14. In response, both the appellant and respondent made written submissions dated respectively 4 May 2020 and 11 May 2020. Neither set of submissions raised any objection to the appeal being determined without a hearing and focused, instead, upon the substantive error of law issue.
15. In the light of these submissions, and in the absence of any objection from either party, I consider that it is just and fair to determine the error of law issue in this appeal without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

Discussion

16. The principal issue which the judge had to resolve was whether the appellant had established that he is an Iranian citizen as he claimed. In relation to that issue, the Secretary of State relied upon a Sprakab report. That assessed the appellant's linguistic background as being from Iraq to a "high" degree of certainty (para 1.1) and that he was from Iran, where he claimed to have lived, as "unlikely" (para 1.2). The report summarises its conclusions reached, at para 1.3, as follows:

"The speaker spoke Sorani on a native level during the interview. The speaker stated to have been born and raised in the village of Qala-Rash close to Sardasht in the Azarbaijan-e-Gharbi (West Azerbaijan Province) region in Iran. In the area the Sorani dialect Mukri is typically spoken. The Sorani dialect Mukri is similar to the dialect Hawleri or Sorani as spoken in Arbil and Makhmour in Iraq. In most areas of Iran, Farsi is used in schools and amongst speakers of different languages. Speakers of Sorani in Iran usually display an influence from Farsi.

The speaker's language use displayed features mutual for the Mukri dialect of Sorani and the Hawleri dialect of Sorani. The speaker's language use displayed features not consistent with expected language use amongst speakers of Sorani with a background in Iran and features consistent with expected language use among speakers of Sorani with a background in Iraq. The speaker's language use did not display a clear inference from Farsi. The speaker's language use is assessed to be more consistent with expected language use among speakers of Sorani with a background in Iraq".

17. The report then goes on to consider a linguistic analysis under the headings "Phonology and Prosody" (para 2.2.); "Morphology and Syntax" (para 2.3) and "Lexica" (para 2.4.).
18. In relation to "Phonology and Prosody", the report states:

"The speaker's language use displayed phonological features mutual for the Mukri dialect of Sorani or Sorani as spoken in the districts of Piranshahr, Naghadeh, Mahabad, Sardasht and Bukan in Iran and the Hawleri dialect of Sorani or Sorani as spoken in the region of Arbil and in the district of Makhmour in Iraq.

The speaker's language use displays phonological features not consistent with expected language use among speakers of Sorani with a background in Iran. Comparisons are made with expected language use among speakers of Sorani with a background in Iran.....

The speaker's language use displayed phonological features consistent with expected language use among speakers of Sorani with a background in Iraq. Comparisons are made with expected language use among speakers of Sorani and with a background in Iran.....

The speaker's language use displayed phonological features not consistent with any dialect of Sorani known to the analyst".

19. In relation to "Morphology and Syntax" the report states:

"The speaker's language use displayed grammatical features not consistent with expected language use amongst speakers of Sorani with a background in Iran. Comparisons are made with expected language use among speakers of Sorani with a background in Iran".

20. In relation to “Lexica”, the report states:

“The speaker’s language use displays lexical features consistent with expected language use among speakers of Sorani with a background in Iraq. Comparisons are made with expected language use among speakers of Sorani with a background in Iran”.

21. As will be clear from the Sprakab report, it was, in many respects, supportive of the Secretary of State’s case that the appellant was from Iraq rather than Iran. However, there were passages which identified that there were similarities between the appellant’s spoken language and that spoken in areas in Iran. The report was, therefore, not ‘all one way’ despite the summary conclusion that the likelihood was “high” that the appellant was from Iraq and that it was “unlikely” that he was from Iran.

22. In relation to the report’s conclusion in respect of “Morphology and Syntax”, the judge (at para 16) said this:

“In my view, these characteristics are imbued into speakers over a long period of speaking his or her language. It is not learnt in isolation but in relation to other speakers of the same language in a particular area. In this regard the authors found that the appellant displayed ‘*grammatical features not consistent with speakers of Sorani with a background in Iran*’ (my emphasis).”

23. Then, in relation to the “Lexica” features of the appellant’s language, having set out the report’s conclusion, the judge went on to say this about the report’s analysis (at para 18):

“As I have indicated the Spraka[b] report analysed an immutable characteristic as it could be. Phonology and Prosody and Morphology and Syntax and Lexica could change over a period of time. Changes could be brought about by the speaker being influenced by a different ‘*group of speakers*’ he or she mixes with or lives with. This happens by process of osmosis, as it were and it takes time. Or it could be learned, over a period of time, such as by elocution lessons taken by the speaker(s). In the instant appeal, the appellant did not have sufficient time to acquire changes either by process of osmosis or by taking elocution lessons. The appellant’s speech was recorded in the interview and it was that recording which was analysed. Therefore, I find the linguistic features the appellant displayed in the recording in the interview it is as close an immutable characteristic, inextricably linked to the appellant, as it gets”.

24. On behalf of the appellant, it is argued that the judge erred in this reasoning. It is pointed out that the appellant came to the UK in March 2017 and the language report interview took place in March 2018 over a year ago. That was sufficient period of time for language changes to have occurred as a result, it is said, of external influences in the UK by, for example, mixing with Kurds from Iraq.

25. In my judgment, it was pure speculation whether the appellant’s language, within a year, could (or could not) have adapted to take account of the language used by those with whom he mixed. That reasoning was not founded in any evidence, in particular expert evidence. But, more

significantly, the judge's view that language (or the relevant features of it in play in the analysis) is a "immutable characteristic" such that it would not change was reasoning not based upon any expert evidence or other evidence which could sustain such a view. It may, or may not, be correct but the judge could only rely on it if it was based upon evidence before him. The respondent's written submissions point to no such evidence and, so far as I am able to see, there is nothing in the Sprakab report itself which would sustain this reasoning.

26. The appellant's grounds and submissions recognise that the Sprakab report read overall was undoubtedly supportive of the Secretary of State's case. However, to seek to support his case, the appellant relied upon a birth certificate which, he said, disclosed that he was an Iranian national born on the date he claimed, namely, 15 August 1993 (in the UK calendar). In support of that, the appellant relied upon an expert report. That expert report, having analysed and translated the text of the birth certificate, concluded as follows:

"To my knowledge, and experience for the reasons given, there is no error in the production, content, layout, or other feature of the document. I therefore confirm that to the best of my knowledge and experience that the Birth certificate is entirely genuine".

27. The judge dealt with the report principally at para 19 as follows:

"The appellant challenges the contents of the Spraka[b] by producing the Rashti Report (see: 'App 1' pages P15-22). It is prepared by a lawyer who is said to be intimate with examining documents said to emanate from Iran. In the instant appeal the expert was provided with what purports to be the Appellant's '**Birth certificate**'. Copy of the report is exhibited with the appellant's latest witness statement (see: 'App 1' pages P13-P14; the purported original is retained in the IAC file). Mr Bedford accepts that but for one error the '*birth certificate*' is authentic and it relates to the appellant. The one error, pointed out by Mr Bedford, is said to relate[] to the serial number on the top[] right (67A) is incorrect in that the number relates to adults born after '1369 = 1990' (see: 'App 1 P16 para 5) B). I find this intriguing since the appellant claims he was born in 1993".

28. The judge then went on to state at para 20:

"The essential difference between the Spraka[b] and Rashti Reports is the material upon which they are prepared. The former is based on, as I have already indicated, on the appellant's speech. I characterise this as [an] immutable characteristic as it gets. It is intrinsically linked to the person of the appellant. The latter report is based on an external source, namely what purports to be the appellant's '*birth certificate*'. The document needs to be considered in the round and not in isolation".

29. The judge then went on to refer to the well-known decision in Tanveer Ahmed [2002] Imm AR 318. The judge, then, turned to consider "the Appellant's evidence surrounding his date of birth and birth certificate". In relation to that at paras 22-24, the judge said this:

"22. In his AIR the appellant was asked for his date of birth in Iranian calendar (see: Q41). The appellant gives his date of birth as '*15th August*

1372'. The respondent found, using objective evidence on this point, that the date given by the appellant translates as '6 November 1993' and not '15 August 1993'. In my view, for someone who claims to have been born and brought up in Iran, to get (*sic*) so wrong undermines the appellant's credibility.

23. In para 13 of his latest witness statement the appellant addresses the error in the date of birth (see: 'App 1' page P3). This states his date of birth, in Iranian calendar is '24.05.1372'; this is the date he gave when he first arrived in the UK; he did not know the difference between the UK and Iranian calendars; an interpreter in the s/c converted his date of birth to read '15.08.1993' and asked the appellant to use that because no one in the UK will understand Iranian calendar; he got confused in his AIR; he remembered the words of the interpreter; he got confused and gave the date recorded in the AIR. The appellant appears to attribute error on the part of the interpreter.
24. I note in the Rashti Report the appellant's date of birth is given as '1372/05/24'. This translates, according to the report, '15/08/1993' (see: 'App 1' P16-7) A). It therefore appears that the interpreter's translation is confirmed by the appellant's own expert. Further, in answer Q41, the appellant not only gave a different month (in the Iranian calendar) but also the date (in the Iranian calendar). I do not find attributing the error to the interpreter explains the appellant giving a different date of birth to the one he had previously given".
30. There are two points that should be made about the judge's reasoning.
31. First, it is difficult to see what error the judge identifies (at para 19 of his determination) in the appellant's birth certificate. The appellant's case is that he was born in the Iranian year of "1372" which translates into the UK calendar as the year "1993". Despite what is said in para 19 and was the submission of the appellant's counsel before the judge, there is no apparent error in the birth certificate when it contains a serial number in the top right which is reserved for "adults which were born after '1369' (Iranian calendar) or '1990' (UK calendar). The appellant claims to have been born after that in "1372" (Iranian calendar) or "1993" (UK calendar).
32. Secondly, there is an obvious confusion in the dates of birth given by appellant. However, the date and month that he gives in his asylum interview the translated date (15th) and month (8th) equates to the date (24th) and month (5th) of his claimed date of birth in the Iranian calendar. The former dates were then added to the year of his birth in the Iranian calendar, namely "1372" rather than the UK calendar equivalent of his year of birth, namely "1993". The striking coincidence supports his explanation that he confused parts of his birth date in the two calendars. Far from being implausible, in my judgment, the explanation of the appellant is entirely plausible. It does not, in my judgment, provide a sound reason for doubting the reliability of the birth certificate.
33. Then, at paras 25-29, the judge took into account that the appellant had, in his view, stated in his asylum interview that he had never had a birth certificate and which, in the judge's view, led him to doubt the reliability of the document.

34. At para 30 the judge reached his conclusion on the two reports as follows:
- “The appellant’s answers to q5-11 have to be considered in relation to the Spraka[b] and Rashti Reports. The contents of the Spraka[b] Report are based on the appellant’s voice. It is intrinsically connected with the person of the appellant. The report states that there is a ‘high’ of ‘degree certainty’ that the appellant is an Iraqi and not an Iranian. The appellant relies on the Rashti Report. It is prepared on a document. That document is not intrinsically connected with the appellant as his voice is. It states that the document emanates from Iran. It may do so. However, considered in relation to the appellant’s answers to q5-11 and the Spraka[b] Report, leads me to find that the Rashti Report does not demonstrate he is an Iranian national”.
35. The judge was faced with the difficult task of seeking to make findings based upon a Sprakab report which pointed in one direction (the appellant is Iraqi not Iranian) and an expert report in relation to a document which, if authentic, pointed in the opposite direction (the appellant is Iranian). In my judgment, the judge has wrongly elevated the importance of the Sprakab report based upon an unsustainable view that it was more significant as it assessed an “immutable” aspect of the appellant, namely his voice and linguistic characteristics (see also para 25 above).
36. As the Supreme Court acknowledged in SSHD v MN and KY [2014] UKSC 30, a Sprakab report is highly relevant but that it requires evaluation in the light of all the evidence and is only one part of that evidence, even where a report states a conclusion in terms of “certainty or near certainty” (see [46]-[48]). Of course, the report in this appeal is not so emphatically expressed.
37. In relation to the Sprakab report, the judge failed to grapple with the appellant’s contention that, despite its summary conclusions, the report identified aspects of the appellant’s linguistic ability which was consistent with his claim even if large parts of the report’s conclusions were inconsistent with his claim. Further, the judge elevated the importance of the Sprakab report improperly (see paras 35 above). Faced with that, the judge also had an expert report which concluded that the birth certificate submitted by the appellant was authentic and, if genuine, was entirely supportive of his claim to be an Iranian national. The judge’s reasoning for discounting that evidence was, as I have already indicated, in part, flawed (see paras 31 and 32 above).
38. Whilst there was evidence before the judge that could have led him to conclude that the appellant was not Iranian as he claimed, the judge’s assessment of the evidence for and against the appellant’s case required a more nuanced approach and more accurately reasoned findings in order to be sustainable.
39. For these reasons, therefore, I accept that the judge’s finding that the appellant had not established that he is an Iranian citizen, but rather it is established that he is an Iraqi citizen, is not legally sustainable.

40. In the light of that conclusion, the appellant's claim to be at risk in Iran, in my judgment, was not properly considered by the judge. The judge, of course, approached the appellant's claim on the basis that he did not believe a central aspect of his claim, namely his Iranian nationality. As ground 2 states, the judge made no findings in relation to the appellant's claimed activities in Iran on behalf of the KDPI. Had his Iranian nationality been established, that was, undoubtedly, a relevant issue in determining what, if any, risk he would be exposed to on return to Iran given his claimed *sur place* activities in the UK applying HB. For those reasons, the judge's finding that the appellant would not be at risk on return to Iran (if his Iranian nationality had been established) is also legally flawed and cannot stand. None of the judge's findings are sustainable and the appeal must be determined *de novo*.

Decision

41. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of a material error of law. That decision cannot stand and I set it aside.
42. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Lawrence.

Signed

Andrew Grubb

Judge of the Upper Tribunal
17 September 2020