



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

Appeal Number: UI-2021-001051
PA/00714/2020

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 23 May 2022**

**Decision & Reasons Promulgated
On 14 July 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MS

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer instructed by Kalsi Solicitors.

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Malik ('the Judge') promulgated on the 23 August 2021 in which the Judge dismissed the appellants protection appeal. The Judge recorded that the appellant has been granted Article 8 leave for 30 months and that the appeal was on protection grounds only. Removal was also not in issue [3].

2. The appellant claimed to be an undocumented Bidoon from Kuwait, born in 1990. Her application for protection, on the basis of having a well-founded fear of persecution due to political opinion, race and membership of a particular social group was refused on 28 November 2019. The Secretary of States case is that the appellant is from Iraq.
3. Having considered the documentary and oral evidence the Judge sets out the findings from [32].
4. In relation to the language analysis report the Judge writes:

36. Having considered the linguistic evidence, I am not satisfied, the report does, on balance, in isolation, satisfy that the appellant is an Iraqi national. I accept the appellant, from the report is an Arabic speaker and that some of her speech is consistent with being from Kuwait and that equally some of her speech is consistent with being Iraqi. There is an Iraqi community in Kuwait and it may very well be that it is from this source that the appellant has derived those features in her speech. Given that the report gives a number of features of her speech as being in favour of Kuwait and also Iraq, I have considered the linguistic report, together with the further reasons the respondent contends the appellant is an Iraqi national; having done so, I find the appellant is Iraqi and not an undocumented Bidoon for the reasons set out below.

5. Those 'other reasons' can be summarised as follows:
 - a. The appellant claims to be an undocumented Bidoon, but she provided either inaccurate or incorrect responses when compared with external background information about Kuwait [37].
 - b. The appellant's lack of knowledge of the area she claimed to have effectively lived all her life before coming to the UK, taken with the findings of the of the linguistic report led the Judge to conclude she is not from Kuwait but is Iraqi [37].
 - c. The appellants claim she had no such knowledge of her locality as she wore a veil was found to lack credibility as she would have been able to see around her and been aware of the location of the market behind her home [38].
 - d. The claim to have only left her house to visit neighbours was found to contradict her claim to have attended two demonstrations. The Judge records the appellants evidence as being that *'she was not allowed out much, her life was like a prisoner, she is from a strict Muslim household, went nowhere and saw nothing'* [38].
 - e. A further contradiction in the evidence was noted by the Judge at [38] where it is recorded *'If this is so, I further find it lacking in credibility that she would have attended two demonstrations - or that she would do so without the knowledge of her family, as she claims she went to one of them with her (then claimed) husband. It also contradicts her claim, in interview, to have asked her parents' permission to go to a demonstration'*.
 - f. The Judge found the *'claim now to have just attended demonstration(s) as a "bit of fun", to lack knowledge of Bidoon rights and the risk of attending such demonstrations, I find to be incredible. I further do not find it reasonably likely that she would have had no knowledge of the difference of documented*

and undocumented Bidoons given her claimed status as an undocumented Bidoon in Kuwait’.

- g. The Judge rejected the appellant’s claim to have attended two demonstrations at which she was subsequently arrested and detained, physically and sexually assaulted as lacking credibility [40].
- h. The Judge took notice of the medical report provided in support of the appellant doubting a number of issues that arose from the content of that document [40].
- i. The Judge notes discrepancies in the appellant’s account from various sources [41-43].
- j. The Judge finds the appellant together with MRA1 and MRA2 lack credibility [45 - 46].
- k. At [47] the Judge writes:

47. Consequently, for all the reasons given in this decision, I find the respondent has discharged the burden upon them that the appellant is an Iraqi national. Even if I am wrong in this finding, I find, in the alternative that she is not an undocumented Bidoon and has not come to the attention of the authorities in Kuwait for any of her claimed reasons.

- 6. The appellant sought permission to appeal asserting at Ground 1, unlawful reasoning in relation to the probative value of a psychiatric medicolegal report claiming the Judge’s treatment of that report is flawed for two reasons firstly that the Judge rejects the potential probative value of the medical evidence having already rejected the truthfulness of the appellant’s claim rather than taking the evidence in the round, and, secondly, that it is wholly unclear to what extent the tribunal took into account the appellant psychiatric condition when her assessing her evidence offending both the Presidential Guidance Note No 2 of 2010 and the principles in AM (Afghanistan) [2017] EWCA Civ 112.
- 7. The appellant also asserts, Ground 2, perverse reasoning in relation to the linguistic report arguing that in light of what the Judge says at [35] to attach any weight to the report, as the Judge appears to do at [36], is arguably perverse. The appellant claims that it was unclear why the Judge determined the report was entitled at any weight at all and to what extent it has been relied upon when assessing the appellant’s nationality.
- 8. Ground 3 asserts the Judge failed to take into account material evidence in failing to make reference to or attempting to determine the truthfulness of the appellant’s explanation for her difficulties in a screening interview.
- 9. Ground 4 asserts faulty/inadequate reasons being provided, claiming the Judge assessed the probability of the account against tribunal’s independent view of the likelihood of the account which the grounds assert “appears to be derived from conjecture or speculation rather than reasonably drawn inference from the background material”.
- 10. Permission to appeal was granted by another judge of the First-tier Tribunal in the following terms:

3. It is arguable Judge, at paragraph 40 of the decision further to approach the medical evidence in accordance with the principle in *Mibanga v Secretary State of the Home Department* [2005] EWCA Civ 367. Whilst the other grounds are less arguable, I do not refuse permission.

11. In her Rule 24 response dated the 31 January 2022 the Secretary of State's representative writes:

2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
3. The Respondent respectfully submits that the allegation in the grounds that the FTT concluded that the Appellant was not credible before she considered the medical report is clearly incorrect, as the Judge does not conclude her credibility findings until the conclusion of paragraph 40 after she has considered the medical report.
4. Weight is a matter for the judge and at paragraph 40 the FTT has noted several clear material inconsistencies between the medical report and other medical reports in the evidence, as well as clear inconsistencies in her oral and written evidence. The Respondent respectfully submits that the decision of the FTT is consistent with the judgement of the Upper Tier Tribunal in *JL China* [2013] UKUT 145;

" They should also bear in mind that when an advocate wishes to rely on their medical report to support the credibility of an appellant's account, they will be expected to identify what about it affords support to what the appellant has said and which is not dependent on what the appellant has said to the doctor (HE (DRC, credibility and psychiatric reports) Democratic Republic of Congo [2004] UKAIT 000321). The more a ICD.4248 SECURING OUR BORDER CONTROLLING MIGRATION diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it (HH (Ethiopia) [2007] EWCA Civ 306 [23])."

5. The Respondent respectfully submits that the FTTJ has evidently placed only limited weight on the Respondent's language report, however the Judge was entitled to place what weight she wished on that report, and any attack on her findings is nothing more than disagreement.
6. The Respondent respectfully submits that the remainder of the grounds amount to mere disagreement. There is nothing in the Judge's findings regarding the inherent implausibility of someone who claimed to be from such a strict background that her wearing of a veil was an excuse for why she did not know the names of streets near her home or that there was a market near her home, yet she was able to attend demonstrations just for "fun", that is inconsistent with any identified background evidence.

Discussion

- 12.** In *Mibanga v Secretary of State the Home Department* [2005] EWCA Civ 367 it was found that a judge considering the appellant's appeal at tribunal level only addressed the medical evidence relied upon by Mr Mibanga after articulating that the central allegations made by the appellant were not credible. The Judge below also considered that the medical evidence did not assist because of her belief that the scars

referred to in the medical evidence could reflect only illness or disease.

- 13.** Mr Greer's argument asserts that Mibanga sets out the procedural framework in relation to how medical evidence is to be considered.
- 14.** It is important however to take account of the judgement in *S v Secretary State for the Home Department* [2006] EWCA Civ 1153 in which the Court of Appeal said that an error of law only arose in this type of situation where there was artificial separation amounting to a structural failing, and not where there was a mere error of appreciation of the medical evidence. Mibanga was distinguished. In that case the medical evidence had been so powerful and extraordinary that it took the case into an exceptional area. The Court of Appeal said that HE (2004) UKIAT 00321 was relevant to the case in so far as, where medical evidence merely confirmed that a person's physical condition was consistent with his claim, the effect of the evidence was only not to negate the claim. It did not offer significant separate support for the claim. The Court said that Mibanga was not to be regarded as laying down a rule of law as to the order in which judicial fact finders were to approach evidential material before them. In this case an explanation as to why the medical evidence did not carry weight had been given by the Immigration Judge.
- 15.** I do not find the necessary degree of separation made out in this appeal. The Judge makes specific reference to the medical evidence at [40] where the Judge writes:
 40. I do not find it reasonably likely, even to the lower standard, that the appellant attended two demonstrations in support of Bidoon rights and that she was subsequently arrested and detained, physically and sexually assaulted, as I note she made no mention in her SI and both her AI's of having attempted to take her life after her claims detention(s) through an overdose. Yet this is recorded in the medical report. This is a significant life event; I do not find it reasonably likely, when provided with the opportunity raise it, that she failed to do so. The medical report says the appellant, (then) suffered from post-natal depression. It also states there were "*some inconsistencies*" in the description of her detention(s). It also records her as being a single mother - which contradicts her claim to have married MRA 1 06/06/2014 - and the various letters provided from family/friends, that she and MRA 1 are married and lived together afterwards. The medical report found no evidence of physical injuries, but that the appellant had a relapse of PTSD. I also note, at page 158 of the respondent's bundle, in the pre-natal documentation, in the section on mental health, current and past, it is ticked no. It is unclear why the appellant would deny any previous or current mental health issues as part of her maternity checks, but tell the doctor who prepared the medical report otherwise. Further to her second AI at Q7 it is recorded that she had no mental health conditions. In any event, I find the medical report is entirely predicated on what the appellant has told the doctor and for the reasons set out in this decision, I find her account not be credible.
- 16.** The Upper Tribunal have recently considered the method in which medical reports are to be assessed in HA (expert evidence, mental health) [2022] UKUT 00111. That case reinforces the need for a decision-maker to give careful consideration to any expert report

concerning the mental health of an individual, but it has not been shown that the Judge in this appeal did not do so. It is not outside the range of findings open to the Judge, who had the benefit of considering all relevant evidence in assessing the credibility of the same, to put little weight upon the report of the expert when the foundation of that report appears to be statements made by the appellant herself which have not been shown, from other sources, to be credible, and in which the conclusions of the report are seen to be contradicted by other evidence provided by the appellant in which she has denied having any mental health problems.

- 17.** I do not find the appellant has established legal error in relation to Ground 1.
- 18.** In relation to Ground 2, this is not a Sprakab report, but a report obtained from another approved language analysis organisation. There is no sustainable challenge by the appellant to the expertise of those who prepared the report, the challenge being to the weight the Judge chose to give to the report.
- 19.** The appellant claimed to be an undocumented Bidoon from Kuwait. The linguistic report analysed her language using a system referred to as LOID - Linguistic Origin Identification, which is said to 'focus on profiling a dialectal background. It identifies a number of grammatical, morphological and phonetic features of a person's speech and groups them in patterns. These patterns are supported with references in academic research which makes LOID reports transparent and easily cross-checked. The patterns create the basis for conclusion about the probability that the person's speech can be attributed to the claimed area of origin' on the website of the expert Verified AB who are based in Sweden.
- 20.** The Judge noted the objection raised by Mr Greer at the hearing to the report and the submission that little weight can be attached to it at [35] but was satisfied that the report could be taken into account. That is a finding open to the Judge.
- 21.** The appellant asserts the Judge erred as a reader cannot understand why the report was entitled to any weight due to the provision of inadequate reasons, or what weight was given to the report and to what extent it has been relied upon. I disagree. The Judge made a number of comments regarding the conclusions in the report although when reading that document in full noted it dismissed the appellant's claim, on linguistic grounds, to be a Bidoon from Kuwait, finds that it is more likely than not that she is from Iraq, but also refers to the presence of Iraqi nationals within Kuwait. The Judge does not treat that evidence as determinative. What the Judge does having noted the comments of the linguistic experts is to go on and consider how that evidence fits in with the other evidence relied upon by the appellant. It is only after that exercise has been concluded that the Judge concludes that the appellant had not made out her claim to be an undocumented Bidoon, but rather a citizen of Iraq, (although in the alternative concludes if that if that is not the case the appellant had

not established that she faced any real risk of returning Kuwait in any event).

- 22.** The Judge's nuanced assessment of all the evidence, including the language evidence, has not been shown to be affected by legal error and nor is it made out that the Judge's conclusions supporting the finding of the linguistic experts is in anyway perverse, irrational, or outside the range of findings available to the Judge.
- 23.** I find the Judge considered the evidence with the required degree of anxious scrutiny which would have included the appellant's explanation for the claimed difficulties in the screening interview. Ground 3 does not establish the Judge failed to consider any evidence or to factor that into the decision-making process. There was no requirement upon the Judge to set out findings in relation to each and every aspect of the evidence.
- 24.** Ground 4 does not establish legal error. The Judge clearly took into account both the subjective and country material and the expert evidence. The likelihood of the appellant's account being true was undermined by the deficiencies and problems in the appellant's own evidence identified by the Judge. It was not irrational, for example, to reject the appellant's claim that she could not answer correctly the questions about her immediate neighbourhood to where she allegedly lived in Kuwait as a result of having to wear the veil when it is known that the purpose of Islamic dress for women is to prevent outsiders being able to see them rather than the wearer being unable to see where they are going and what is happening around them. I accept that with full traditional dress an individual's view may be partly obstructed, when compared at non-wearer, but not to the extent the appellant claimed such that she would have no awareness of what was happening or going on in her immediate neighbourhood.
- 25.** The final point raised by Mr Greer is the alleged failure of the Judge to take into account the appellant's psychiatric condition when assessing what weight could be placed upon her evidence.
- 26.** Reference is made in the grounds to Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance.
- 27.** It was accepted by Mr Greer that no submissions were made at the hearing of the need for any reasonable adjustments to be made to enable the appellant to attend, participating, or give her evidence, as none were required.
- 28.** At [15] of the guidance it is written:
 15. The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind.
- 29.** There is no mention at [3], in which the Judge sets out preliminary matters, that the Judge was asked to treat the appellant as a vulnerable witness. The appellant's claim to be entitled to be treated

as such when the evidence was assessed is based upon the content of the psychiatric report, although the Judge found very little weight could be placed that evidence for the reasons set out in the determination.

- 30. It is not made out that the discrepancies commented upon by the Judge can be properly explained by any medical difficulties rather than the provision of inadequate evidence.
- 31. I do not find it made out there was sufficient credible evidence to establish the appellant was a vulnerable witness such that the Judge erred in law. Further, even if there is a reference to past post-natal depression in the report considered by the Judge I do not find it was made out that there is any identified vulnerability at the date of the hearing that necessitated the Judge doing other than he did when assessing the weight to be attached to the evidence that was considered in the assessment of whether the relevant standard of proof had been met.
- 32. Having considered the issues very carefully I come to the conclusion that the appellant has failed to identify legal error material to the decision under challenge sufficient to warrant a grant of permission to appeal to the Upper Tribunal.

Decision

- 33. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 34. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed.....
Upper Tribunal Judge Hanson

Dated 25 May 2022

