Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00733/2021
(UI-2021-001164)

THE IMMIGRATION ACTS

Heard at Bradford IAC	**Decision & Reasons Promulgated**
On 20 May 2022	**On 14 July 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

Y I
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Greer, Counsel instructed on behalf of the appellant
For the Respondent: Ms Z. Young, Senior Home Office Presenting Officer

Anonymity :
Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:
Anonymity is granted because the facts of the appeal involve a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal (Judge Hatton) (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection and human rights appeal in a decision promulgated on the 21 October 2021.

2. Permission to appeal that decision was sought and on 2 December 2021 permission was granted by FtTJ

The background:

3. The appellant's claim was that he was a stateless Maktumeen from Syria born in Gire Sor in the Derik region of Syria. He claimed that he had left Syria on 20 August 2018 travelling through several safe 3rd countries, including Romania, where the appellant claimed asylum on 31 August 2018. After the appellant left Romania before his asylum claim was processed, he travelled across Europe before entering the UK clandestinely in the back of a lorry on 13 November 2018, claiming asylum on entry. His screening interview took place on 15 November 2018 . He was not interviewed substantively until 9 March 2020.

4. The responded disputed his nationality for the reasons that were set out in the decision letter dated 12 November 2020 by reference to the Sprakab language analysis report dated 10 March 2020 and the appellant's previous claim for asylum in Romania made on the basis that he was an Iraqi national from Zakho in the KRI.

5. The appeal came before the FtTJ on 4 October 2021. In his decision promulgated on 21 October 2021, at paragraph 12 he set out that there was "one key issue determined in this appeal, which is to determine whether the appellant's claim to be Syrian is credible." He recorded that it was conceded that if the appellant was found to be Syrian, then in the light of the background evidence, his protection claim would succeed. The judge observed that that this was made explicit in the respondent's decision (page 60 – 61). He further set out that if he found the appellant's claim to be Syrian incredible than the substance of his protection claim would fall way and that had been made explicit by counsel at the outset.

6. The FtTJ set out his analysis of the evidence between paragraphs 23 – 109. At paragraph 23 he recorded that the appellant's asylum claim was "based on his core assertion that he is a Kurdish man from Syria".

7. At paragraphs 25 –50 the FtTJ set out a number of findings made on the appellant's evidence relating to the previous asylum claim made in Romania. The FtTJ took into account that he had claimed asylum on the basis that he was an Iraqi national from Zakho but that in his screening interview in 2018, and later in his substantive interview in March 2020 the appellant denied having claimed asylum in Romania. The judge recorded

that he had confirmed for the first time that he claimed asylum in Romania at the hearing (see paragraphs 25 – 29). The judge considered his explanation for the change in his account, which was that the Romanian authorities had forced him to claim asylum against his will. For the reasons given at paragraphs 31 – 34 the judge rejected that explanation to be seriously lacking in credibility. The judge also assessed the explanation given in his witness statement that the reason he told the Romanian authorities that he was Iraqi was because the agent who took him there was with 2 other Iraqi men and that he was instructed by the agent to claim that he was from Iraq otherwise they would be separated (paragraph 35). In this respect the judge took into account that the appellant's assertion was that his mother was from northern Iraq and that on the appellant's own account it was "by sheer coincidence his agent advised him to claim to be from the same region of Iraq the appellant's mother purportedly hails from" (paragraph 36).

8. The judge took into account other aspects of the evidence including the account of the journey he had given and that it was consistent with having travelled from northern Iraq which is where the appellant had told the Romanian authorities he was from which was a few miles from the Turkish border which was consistent with his account of having crossed illegally to Turkey and was consistent with his account of crossing the river Tigris (see paragraph 38-41). The FtTJ stated that he was unable to establish how we would have crossed the river Tigris to enter Turkey if he entered from the village he claimed in north-eastern Syria and that the Google map provided by the appellant and that in the expert report did not show a discernible river, nor did it mention a river between the village and the Turkish border.

9. At paragraphs 45 – 48 the judge rejected the appellant's factual account as to why he had stated that he was from Iraq making the following findings;

(1) when asked why the agent did not want him to be separated from the 2 Iraqi men in Romania, the appellant confirmed he did not know (44),

(2) having travelled through several 3rd countries on route, which took 3 months judge it was reasonable to expect the appellant to have some appreciation of why the agent was so insistent upon the appellant not becoming separated from the other 2 men who were Iraqi nationals(paragraph 45),

(3) then he would have known that he would have been fingerprinted and would have been aware that if the appellant claimed to be an Iraqi national any subsequent claim to be from Syria will be regarded with suspicion which was why the respondent commissioned a linguistic analysis report (46),

(4) in view of the claim that he was from Syria the judge found that it was "exceedingly counterintuitive the appellant previous that he was Iraqi given the available objective evidence on how stateless Kurds

are treated in Syria. Thus if he were a Syrian national he would have claimed asylum on that basis rather than naming to be from northern Iraq (paragraph 47-48),

(5) if the appellant were from Syria he would not have minded being separated from the 2 Iraqi men upon arriving in a safe 3rd country given that they could not have assisted the appellant's protection claim if they came from a different country.

(6) the judge noted that the previous hearing was adjourned because he could not understand the interpreter who would use some Turkish loanwords (50) given the proximity of the appellant's village the Turkish border (a point made explicit in the country report) it was remarkable that the appellant had no apparent understanding of Turkish loanwords (51).

10. Between paragraphs 52 – 77 the FtTJ undertook an analysis of a document relied upon by the appellant which he stated was a Syrian identification certificate. The judge gave a number of evidence-based reasons for reaching the conclusion that there were "very compelling reasons for seriously doubting the authenticity of the appellant Syrian identity document." At paragraph 77, the judge stated that he was satisfied that there were significant cumulative reasons for regarding the appellant's claim to be Syrian with a "considerable degree of circumspection, even before having regard to linguistic analysis report".

11. Between paragraphs 78-90 the judge undertook an analysis of the sprakab report in the context of the relevant jurisprudence. At paragraph 91 he found that it was remarkable that the report had accurately identified "the precise region which the appellant previous to notify the Romanian immigration authorities that he came from". At paragraphs 92-94, the FtTJ considered the evidence in rebuttal from the appellant including the reason given that he spoke with a northern Iraqi dialect was as a result of his mother being a Kurd from northern Iraq. The judge found at paragraph 94 that his account that he spoke Kurmanji with a northern Iraqi dialect as opposed to a Syrian dialect was not consistent with the country expert report. At paragraphs 95 – 96 judge gave reasons why he did not place weight on the appellant's country expert report and between paragraphs 97 – 101 the judge considered the cultural/contextual knowledge of Syria as demonstrated during the interview but found that given the length of time that had elapsed between the screening and substantive interviews that it was demonstrated that he had used the period to uncover further information about Syria which he was demonstrably unaware of at the time of the initial screening interview (101). The judge therefore accorded significant weight to the sprakab report for the reasons given and as identified at paragraph 102. The judge also considered that his assertion that his mother was from northern Iraq was inconsistent with his interview question 74 – 75.

12. In conclusion, the judge found at paragraph 108 that "on the totality of the evidence before me, on the applicable lower standard of proof, I find that

the appellant is not from Syria is claimed. The above reasons, I find his evidence in this regard as unreliable, especially given the paucity and/or unreliability of the supporting documentary evidence thereon. In applying MA, the appellant's claim to be from Syria is both internally and externally inconsistent, and inherently implausible." The judge therefore found that he was "an Iraqi national from the KR I" and that there was "insufficient evidential basis for departing from the findings of the linguistic analysis report in this regard."

13. The FtTJ dismissed his claim.

The hearing before the Upper Tribunal:

14. The appellant appealed that decision on four grounds and in a further document entitled "amended grounds" raised a further ground. Mr Greer appeared on the appellant's behalf before the Upper Tribunal. He relied upon those written grounds and supplemented them with his oral submissions. By way of a preliminary application Mr Greer referred to the documents that had been appended to the grounds and also the amended grounds. He stated that there had been no Rule 15(2A) application made in that respect therefore he made an oral application. Having heard the basis of the application and taking into account that there was no objection raised by Ms Young, those documents were admitted as part of the appeal.

15. At the hearing before the Upper Tribunal Ms Young appeared on behalf of the respondent. She confirmed that there was a Rule 24 response filed on behalf of the respondent dated 14 February 2022. She also provided oral submissions.

16. I intend to consider the submissions of the parties by reference to each of the grounds and I am grateful for the assistance they have given during the hearing. Mr Greer helpfully provided documents that had not been uploaded to the CE File.

17. I intend to consider the grounds of challenge in a different order from the grounds as they are pleaded.

Ground 4:

18. Dealing with ground 4 it is headed "failure to address material submissions". It is submitted that the FtTJ erred in law by failing to address the appellant's attack upon the reliability of the language analysis report ("SPRAKAB) and used by the respondent.

19. Mr Greer in his oral submissions submitted that there was no attempt to determine whatever submissions were made in respect of the sprakab

report and that the report was of such poor quality that the judge could not attach any weight at all to it.

20. He acknowledged in his submissions that he was not Counsel who appeared before the FtT and that it was unfortunate that there was no note or statement from Counsel to support the written grounds. Nonetheless he submitted that reading the decision of the FtTJ it was as if nothing had been said contrary to the Sprakab report.

21. Ms Young on behalf of the respondent submitted that in the absence of any note or statement in support of the arguments advanced on behalf of the appellant which ought have been attach the grounds, the ground could not be made out. In any event she submitted the judge considered the report and that of the appellant's expert at paragraph 94 – 96 and also the appellant's evidence as to cultural and contextual knowledge at (paragraph 98 – 99). That she submitted the judge set out a substantial number of detailed reasons as to why the report should have weight attached to it (see paragraph 102 of the decision) and there was no error of law in the approach adopted.

22. Having considered the submissions in light of the decision of the FtTJ I am satisfied that there is no error of law in the way the grounds advance. The grounds as they are consist of nothing more than a generalised criticism made of the FtTJ's consideration of the sprakab report by "failing to address the appellant's attack upon the reliability of the report." At paragraph 20 of the grounds, reference is made to "the appellant advancing a number of criticisms including its methodology, its origins and hypotheses and the age and nature of its sources". As Mr Greer acknowledged, there was no statement, or any reference made to notes from counsel as to the nature and detail of the submissions made. In the event of there being no specific reference being provided beyond a generalised critique (methodology origin and nature of sources) it is not said what particular criticisms were made. The skeleton argument provided did not refer to the sprakab report in any detail. Whilst there is a record of proceedings, this would not assist in furthering this ground in the absence of any notes or submissions from counsel as to what was advanced before the FtTJ as the judge's note may not reflect all of what was said. In the absence of any note as to the specific submissions made it is not possible to make any assumptions as to how those submissions were put.

23. What Mr Greer relies upon in the absence of a note or statement from counsel is to submit that firstly the judge did not take account of the expert report relied upon filed on behalf of the appellant and secondly, the judge appeared to accept the sprakab report without question.

24. Ms Young submitted that the FtTJ undertook an assessment of the sprakab report and also undertook an assessment of the expert report (paragraph 96) but gave reasons as to why he would not attach weight to that report.

Thus she submitted there were a substantial number of detailed reasons given by the judge in the decision should be read in its totality.

25. I have therefore considered those submissions. Dealing with the 1st criticism that the judge appeared to accept the sprakab report without question, a careful reading of the decision demonstrates the judge did not accept the sprakab report without a critical eye or analysis is made plain from paragraph 78 – 91 of his decision. At paragraphs 78 – 82 the judge began his assessment by directing himself to the relevant jurisprudence contained in the case law relating to sprakab and on 2 occasions expressly reminded himself that such report should not be treated as infallible and in the following paragraphs set out the decision made by the Supreme Court in SSHD v MN and KY [2014] UKSC 30 and at paragraph 82 the judge directed himself in the following way; "in particular the Supreme Court held at (51) that Sprakab could report on language evidence of place of origin and unfamiliarity with claimed place of origin, provided that the expert's expertise was properly demonstrated, and their reasoning adequately explained". Having reminded himself of the relevant points that he was necessary to be aware of and whether the expertise of the expert was properly demonstrated and whether the reasoning was adequately explained, he then went on to undertake a critical analysis on that basis between paragraphs 83 – 90.

26. The conclusion that the report had reached was that there was a high degree of certainty that the appellant's linguist background was northern Iraq. Correspondingly, the analyst had assessed it unlikely that the appellant's linguistic background was Syrian (see page 55).

27. The FtTJ then went on to assess the reasoning provided in support of the conclusions reached. Firstly, the appellant's morphology and syntax displayed grammatical traits consistent with the south-east and dialect of Kurmanji is spoken in northern Iraq. The judge noted that the "sublease and dialect is spoken in northern Iraq, whereas the southern dialect is spoken in north-eastern Syria. Pointedly the analyst has provided 3 specific examples of where the appellant used south-eastern morphology and syntax and contrasted those examples with a noticeably different syntax and morphology used in Syria. The judge stated "significantly there are no recorded examples of the appellant using the morphology and syntax of the southern dialect spoken in north-eastern Syria. Accordingly this is a significant factor when assessing the appellant's country of origin especially in view of his conflicting admission at question 132 that he never left his home village."

28. Secondly, when assessing the appellant's phonology and prosody, which included features such as pronunciation and intonation, he displayed phonological traits consistent with Kurmanji is spoken among speakers with a background in northern Iraq. The judge noted that "the analyst has given 5 specific examples of where the appellant displayed instances of Iraqi as opposed to Syrian, phonology and prosody. Accordingly he found

that to be a significant factor when assessing the appellant's country of origin (see paragraph 86).

29. The third issue related to the appellant's lexica, which includes features such as common words and expressions that characterise the speaker's language usage, demonstrating lexical traits consistent with the expected language use among Kurmanji speakers with a background in Iraq. Again the judge took into account that the analyst had provided 6 specific examples as against no recorded instances of the appellant displaying characteristically Syrian lexical traits. The judge concluded "accordingly I am satisfied the analyst has provided sufficient justification for considering more likely that the appellant hails from Iraq as opposed to Syria, given his repeated usage of Iraqi as opposed to Syrian lexica" (at paragraph 87).

30. Two further points were made at paragraphs 88-89; firstly that he noted that the analyst was a member of the European linguistic group that studies Kurdish dialects and can identify Kurmanji varieties from Armenia, Syria, Turkey, Iran, Iraq and Azerbaijan and secondly he noted the analyst's findings had been endorsed by 2 different linguists.

31. The judge concluded that in line with the stated jurisprudence, that he found that unlike the criticisms made in the case law that in relation to this report, the analyst's expertise had been properly demonstrated and that their reasoning was "adequately explained."

32. Furthermore at paragraph 91 the judge considered that the sprakab report was worthy of weight because it accurately identified the precise region which the appellant previously notified the Romanian immigration authority came from and the judge found this to be of significance given that the information was clearly not volunteered by the respondent in the sprakab order form (see page 63).

33. The judge did not consider the sprakab report in isolation and at paragraph 92 looked at evidence advanced by the appellant. He observed that there was "remarkably little from the appellant in rebuttal." He set out the supporting statement (paragraph 8) that the appellant disagreed with the language analysis results and asserted that the reason that he spoke with a northern Iraqi dialect was because his mother was a Kurd from northern Iraq and that he had picked up the dialect from his mother. The FtTJ recorded at paragraph 93 that the appellant expressly accepted that he spoke with a northern Iraqi dialect which the judge found was a further reason for accepting the sprakab report.

34. Therefore reading those paragraphs together, it is plain that the FtTJ did not simply adopt the report but considered it in light of the relevant jurisprudence and assessed the contents of the report alongside the evidence of the appellant with 2 significant findings at paragraphs 91 and 93.

35. The 2nd point made by Mr Greer is that the judge did not take account of the expert report relied upon by the appellant.

36. Dealing with the appellant's expert report, the FtTJ undertook an assessment of this report from the country expert at paragraphs 94 – 96. At paragraph 96 the judge considered the report was "incapable of comprehensively displacing the preceding findings of the Sprakab report the simple reason, by his own admission, he does not have access to the data or results of the language analysis". That is correct. When the expert wrote his report he did so in the absence of the language analysis report before him and therefore it was open to the judge to find at paragraph 96 that the expert was "not in a sufficient position of authority to provide a meaningful critique thereof." Such an omission was bound to affect the assessment of weight which could be attached to the report.

37. However the judge did not only rely on that as at paragraphs 97 – 101 the FtTJ addressed the points set out in the appellant's expert report that in the interview, which the expert had seen, the appellant was able to provide some appropriate answers to cultural/contextual knowledge of Syria. At paragraph 98 the judge considered that there had been a period of 16 months which had elapsed between the screening and substantive interviews which given the appellant "abundant opportunity to acquaint himself with information about the history, geography, currency of Syria via online means". The judge found that this was supported by what he set out at paragraph 99 and that in the screening interview the appellant "pointedly did not know the identity of the armed group who purportedly abducted his brother see page 7 of the) yet by stark contrast during the substantive interview at 45 – 46 he stated that the armed group responsible was Yekeniyen Paratina Gi ("YPG"). At paragraph 100, the judge considered that this supported his view that he had used the intervening period to uncover information about Syria about which he was "demonstrably unaware at the time of the initial screening interview". At paragraph 101 he concluded "if the appellant had genuinely resided in Syria his entire life is claimed, then he would already have known this information at the time of the screening interview and been able to divulge it."

38. A further point is that the judge was entitled to take account that it appeared to be the appellant's case that he spoke with a northern Iraqi dialect or accent (see paragraph 93). At paragraph 94 the judge considered this in the light of the expert report which asserted that after having spoken to the appellant on 5 February 21 "he spoke consistently with the Koceri (Kocheri sub variant of the Kurmanci (also spelt Kurmanji) dialect of Kurdish, which is spoken in Gire Sor and the surrounding villages south of Derik/Malkiya" but the judge found this to be "fundamentally at odds with the appellant's own admission that he speaks Kurmanji with a northern Iraqi as opposed to a Syrian dialect.

39. In summary it has not been demonstrated that the judge failed to properly assess the sprakab report or failed to take account of the evidence set out

in the appellant's expert report. Plainly the judge considered the contents of the sprakab report having undertaken an analysis of the report in the context of the evidence as a whole including consideration of the expert report filed on behalf of the appellant and the appellant's own evidence. Thus the conclusion he reached at paragraph 102 that the report was "sufficiently detailed and well-reasoned" (to support the overarching conclusion the appellant was more likely to come from Iraq rather than Syria) was a conclusion reasonably open to the judge to make. Ground 4 is not made out.

Grounds 2 and 3:

40. There is some overlap between the two grounds. Dealing with ground 2, it is submitted on behalf of the appellant the judge made a mistake of fact at paragraph 72 of the decision where the judge stated:

> "72. Conspicuously, there is no document evidence before me in support of the appellant's new assertion. In particular the Google map he relies upon has Arabic writing directly below the place name " Gire Sor" which strongly indicates that Gir Sor is the Arabic name for the appellant's home village."

41. The written grounds also refer to paragraph 75, where the judge stated that "correspondingly, if Tall Al Thabab were generally the Arabic equivalent of Gire Sor then I would have expected the appellant to have notified the respondent of this during his substantive interview, especially given that Arabic is the official language of Syria."

42. It is submitted on behalf of the appellant that rather than adjudicating on the issues raised between the parties that the judge was "independently fact checking the veracity of the appellant's claim". It was submitted by Mr Greer that the decision was a vivid illustration of why it is wrong for a judge to undertake Internet research because judges' can get it wrong. In this respect Mr Greer submitted the judge did get it wrong. He submitted that the judge had asked the appellant about his home village and the appellant had stated that the village had 2 names however at paragraph 72 the judge was wrong in his analysis because the Google map information produced by the appellant was that there was a Kurdish name Gir Sor, and an Arabic name recorded in Arabic script. Thus it was submitted that the translation now provided along with the grounds of appeal of the Arabic script demonstrated that the appellant's evidence was true. It is therefore submitted that the judge erred in law because it was unreasonable for the judge to expect the appellant to give both the Arabic and Kurdish names for the village but in any event the ground state "the evidence puts it beyond dispute that the appellant's response to the challenge was true and thus the judge proceeded under a mistake of fact."

43. Ms Young submitted that the document relied upon in the grounds was not properly translated and that the certificate of translation did not correspond with what had been stated in the grounds and therefore it was

not a reliable translation. It is therefore insufficient to support any claim that judge proceeded on a mistake of fact.

44. Having considered the submissions, I find no error in relation to ground 2. As Ms Young submitted it is important to put the grounds in their proper evidential context. At paragraphs 52 – 69 the FtTJ undertook an assessment of a document produced by the appellant which he stated was a Syrian identification certificate "for unregistered persons" (page 20 – 21). The judge then undertook an analysis of the document applying the well-known principles from the decision in Tanveer Ahmed assessing the contents of the document, how it was produced and assess the reliability of the document when assessing the weight to be attached to it.

45. Having done so he identified a number of points:

(1) there was no indication in the papers as to how the appellant came into possession of the document and the supporting witness statement was "conspicuously silent on the matter."

(2) When looking at when looking at the accompanying airway bill, the original document was sent from Aleppo on 22 March 2021 by man called AH stop the judge recorded that Aleppo was 700 miles away from the place the appellant now claims to originate from.

(3) The judge then considered the appellant's evidence during cross examination that AH was a taxi driver based in Aleppo to whom the appellant's father sent the above document. The appellant's evidence was that he had a friend in Syria who lived in a place called S whom the appellant establish contact with through Facebook then got in touch with the appellant's father in Gire Sor. Thereafter the appellant was able to establish contact with his father by WhatsApp who then liaise with his friends in Aleppo.

(4) The judge considered that there was no documentation before him either from the appellant's friend in S, or from the appellant's father in Gire Sor or from AH in Aleppo as to how the documents were obtained "notwithstanding that the appellant had had ample opportunity to obtain such supporting evidence from all 3 of them"" (see paragraph 56).

(5) The judge reminded himself at paragraph 57 that it was not necessary to provide corroborative documentation but found that it was "striking that the appellant has not availed himself of the opportunity to obtain any corroborative evidence in this regard, especially given that he claims have been in communication with at least 2 of the individuals concerned by WhatsApp and Facebook."

(6) At paragraph 58 judge found that it was "relatively straightforward to obtain such supporting evidence of such communications if taken place as claimed". He also took into account that none of the appellant's Syrian Facebook friends had come forward to support his claim to be Syrian.

(7) At paragraph 59 concerning the appellant's claim to have a friend in S the judge found that this was "fundamentally at odds with his previous assertion of his substantive asylum interview that he never left his home village of Gire Sor and that was his explanation for being unable to name any famous places in Syria "(page 38).

(8) The judge also found that the appellant's previous claim that he was no longer in contact with his family in Syria because he did not have their phone numbers for them was also "wholly at odds with the appellant's assertion during cross examination that he communicates with his father by WhatsApp." The judge recorded the appellant's evidence when asked to account for the discrepancy where he replied, "at the time I did not have contact with him, now I do have." At paragraph 62 the judge considered that response to be "thoroughly unsatisfactory" finding that if the appellant could simply re-establish contact with his father by contacting a friend of his Facebook then the appellant could easily have done this before March 2021 which is when the appellant claimed during cross examination that he first established contact with his father. The judge did not accept his evidence.

(9) At paragraph 63, the judge found that if the appellant had received the document in early April 2021 as stated on the delivery receipt, that it was "remarkable that he failed to make any attempt either to submit the original document to the respondent to enable them to verify its authenticity or an alternative to submit it to his instructed country expert to enable him to conduct his own independent assessment." The judge recorded at paragraph 64 that when asked during cross examination why they have failed to do this the appellant could not give an extra nation and there was no explanation in any closing submissions.

46. When considering the content of the document, at paragraph 65, the judge noted that the appellant produced the original of the document and that it was consistent in some respects with the description the appellant had given in the substantive interview in that it was half A4 size, white in colour and stamped by a Mukhtar but that in several other aspects the document was not consistent with the description previously given by the appellant. For example, the appellant had stated a question 91 the document was issued to him "long ago" when he was a child, but the issue date was 6 May 2013 when the appellant would be 19 (see paragraph 66). When asked to account for the discrepancy claimed the document was renewed every 4 to 5 years. The judge set out why he did not accept this at paragraph 67 if a decision noting that the document had no expiration date, and this would not require periodic renewal as asserted. In any event if it were renewed every 4 to 5 years it did not explain why the appellant claimed he could not remember when it was issued to him because he was a child. Furthermore paragraph 68 the judge considered that it had been renewed every 4 or 5 years is claimed that he would have been issued with a fresh document by 6 May 2018 given that on his own evidence he did not leave his home village until 20 August 2018.

47. It is against this evidential background that grounds 2 and ground 3 should be viewed.

48. At paragraph 69 the judge set out the evidence given by the appellant in interview concerning the contents of the document where he had stated that it expressly stated, “village name Girasor, located in Derik region”. The judge observed that “by stark contrast said document expressly states the appellant’s place of birth is”Tall Al-Thahab” and there is no reference to the Derik region or Girasor.”

49. It is plain from reading the decision thus far that the document’s stated place of birth was not consistent with the appellant’s earlier evidence given in interview where he had described the contents of the document. On the face of the document itself there was a clear discrepancy as identified by the judge.

50. In this context the grounds challenge paragraph 72 where the judge found there was no documentary evidence to support the appellant’s assertion given for the first time at the hearing that Tall -Al Thabab was the Arabic name for the village. The judge stated that there was no documentary evidence in support of that new assertion and that the Google map he relied upon had Arabic writing directly below the place name which strongly indicated that Gire Sor was the Arabic name for the appellant’s home village.”

51. As can be seen in the decision from paragraphs 52 – 69, the judge gave a number of evidence-based reasons concerning the unreliability of the document. The issue of the reliability of the document was not a new point or issue but one that was properly before the judge to assess. Having identified an inconsistency on the face of the document, it was reasonable for the judge to ask for an explanation. The appellant gave the explanation set out at paragraph 71 that Tall Al-Thahab was the Arabic name for the village of Gire Sor. The FtTJ also recorded at paragraph 72 that there was no documentary evidence in support of the assertion, and at paragraph 73 that nowhere in the appellant supporting country expert report was there any reference to Gire Sor being alternatively known by the name of Tall Al-Thahab. That was a correct view of the evidence at the hearing.

52. The grounds assert that the evidence “puts it beyond dispute” that the response or explanation given to the judge by the appellant was correct and that the judge had made a mistake of fact. The submission relies upon a document provided with the grounds.

53. However having viewed the document it does not support the point being made. The translation certificate states, “confirms that the attached document pertaining to YI has been translated from Kurdish into English” and is followed by the attestation. The difficulty with this as pointed out by Ms Young is that the Google map the appellant had relied upon has Arabic writing directly below the name Gire Sor and the grounds assert that on the map the Kurdish name is shown as Gire Sor and there is an Arabic

name, recorded in Arabic script and the translation of the Arabic script shows the account is true. However the translation certificate does not say that the Arabic script is translated from Arabic but that the document has been translated from Kurdish into English.

54. Mr Greer acknowledged that difficulty but submitted that the next page had a heading on it "translation from Arabic into English." However this was not the certified translation and therefore the document as it stands is not a reliable or persuasive document and is not sufficient to demonstrate an error of fact.

55. Even if it were, it fails to provide any explanation for the FtTJ's findings set out at paragraph 74 where the judge considered the appellant's evidence in the alternative and that if Gire Sor were known as Thall Al-Thab when the appellant was asked in his substantive interview what information appeared on his Syrian identity document then he would have mentioned this given his assertion (question 18) that Arabic was spoken in the school that he attended and a question 20 that he understands Arabic "sometimes". It is in that context that the judge went on to state at paragraph 75 that if that were genuinely the Arabic equivalent of Gire Sor he would have expected the appellant have notified the respondent of this during the interview given that Arabic is the official language of Syria.

56. In that respect whilst the grounds seek to challenge paragraph 75, the grounds fail to take into account the preceding paragraph 74 which puts the findings into its proper evidential context.

57. Consequently, it has not been demonstrated that the judge made any error of fact as asserted.

Ground 3:

58. Ground 3 asserts that the judge erred in law by reaching findings on matters not in evidence or in the alternative that there was a procedural irregularity.

59. In this respect the grounds challenge paragraph 70, which is only one paragraph of the decision in which the analysis of the identity document is carried out (between paragraphs 52 – 75). It is therefore a challenge advanced without considering the paragraphs in their entirety.

60. Nonetheless the first point raised is that at paragraph 70 the judge reached a finding of fact on evidence that was not before the tribunal and the Google search conducted by the judge was not in evidence before the tribunal. It is submitted that there was no indication of what source the judge had regard to and in the alternative Google was not a proper source

of country evidence. Thus it is submitted that paragraph 70 referred to evidence that was not in the case.

61. In essence Mr Greer asserted that there was a procedural irregularity in that the judge considered evidence that was not in the case, and this was unfair by advancing a point not raised by the respondent. I have considered those submissions based on procedural unfairness in the context of the evidence before the tribunal and the decision of the FtTJ.

62. In general terms there is no general obligation on the Tribunal to give notice to the parties during the hearing of all the matters on which it may rely in reaching its decision (see decision in HA and TD [2010] CSIH 28). The court also endorsed the view that the Tribunal was not bound, as a matter of natural justice, to point out all the inconsistencies since an applicant can generally be expected to be aware that the Tribunal will have to assess his credibility, and the consistency of the account he has given in evidence with any previous accounts contained in the documents before the Tribunal will plainly be relevant to that assessment.

63. In the decision of EG (post-hearing internet research) Nigeria [2008] UKAIT 00015 the Tribunal said that it is most unwise for a judge to conduct post-hearing research, on the internet or otherwise, into the factual issues which have to be decided in a case. To derive evidence from post-hearing research on the internet and to base conclusions on that evidence without giving the parties the opportunity to comment on it is wrong.

64. However as Ms Young submitted, this was not internet research undertaken post hearing but concerned a matter raised in the evidence for the 1st time by the appellant in evidence which required some resolution. Here, the judge had identified an inconsistency in the evidence given by the appellant concerning the content of the identity document. As set out above when considering ground 2, the appellant had stated in interview that the document stated, “village name Girasor, located in Derik region”. However when the document was later produced the document stated the place of birth as”TallAl-Thahab and there was no reference to the Derik region or Girasor (see paragraph 69 of the decision).

65. I do not consider that it was improper or procedurally unfair for the judge to ask for an explanation. Given that there was an inconsistency it was reasonable for the judge to ask the appellant to provide an explanation which the judge set out at paragraph 71 that for the first time he claimed that the name given on the document was the Arabic name for the village.

66. Nor did the judge undertake post Internet research but had brought to the party’s attention information of a search undertaken which appeared to state that Tall-Al Thahab is in Al-Taamin province (northern Iraq). The judge made it clear at paragraph 71 that he had brought this information to the notice of the advocates at the hearing and the judge then recorded “neither advocates sought to dispute it thereafter”. It is therefore not the case that this was a document considered in the absence of the appellant

or the advocates. Furthermore as Ms Young submits given that it was raised with both advocates, it was open to them to require time to consider it further or also in the alternative to apply for an adjournment to consider the issue. The judge's decision records that neither advocate sought to dispute the point further and no steps were taken to take or any opportunity to do so. In those circumstances it was not procedurally unfair for the judge to bring this to the attention of the parties as it was an obvious inconsistency in the document.

67. On a separate point, the submission made that Google was not a reliable source failed to take account of the appellant's country expert who had relied upon Google maps in his report. The judge was entitled to find at paragraph 73 that nowhere in the supporting country expert report is there any reference to Gire Sor being known by any alternative name.

68. The second point that arises from ground 3 is that the submission is made that the judge makes an adverse finding against the appellant at paragraphs 42 and 43 of decision suggesting that it will be impossible for the appellant to cross the body of water if he had left Syria from his home village of Gire Sor (although the judge did not use the term " body of water" but the "River Tigres by reference to the appellant's interview). In this context it is submitted that the point had not been taken at the hearing and not been raised by any party prior to it being taken by the judge. However the grounds now attach to it a Google map, showing that directly north of the appellant's home village there is a body of water that feeds into the river Tigris, thus it is submitted that finding his improper or in the alternative simply wrong.

69. Again it is necessary to consider the submission by reading the decision of the judge in its proper context. Between paragraphs 25 – 37 the judge made a number of findings of fact which were evidence-based where he consider the circumstances of the appellant's previous claim made in Romania in 2018 that the appellant was an Iraqi national from Zakho (in the KRI). This included a consideration of the written evidence (paragraphs 25 – 29) and the appellant's explanation that the Romanian authorities had forced him to claim asylum against his will (paragraph 30). For the reasons set out at paragraphs 31 – 34 the judge rejected that evidence. At paragraph 35 the judge assessed the witness statement where the appellant set out his explanation as to why he told the Romanian authorities that he was from Iraq and that was because "the agent took him to Romania was with 2 other Iraqi men and the agent instructed the appellant that he should claim to be from Iraq otherwise they will be separated". In this regard the judge found that for the 1st time the appellant claimed that his mother was in northern Iraq and that "it was therefore remarkable that on the appellant's account by sheer coincidence his agent advised him to claim to be from the same region of Iraq that the appellant's mother reportedly hails from". He found at paragraph 37 that if it were a case that he travelled with men from Iraq and he was in northern Iraq it would make sense for him to be travelling in the company of other men from Iraq (paragraph 37).

70. In this context the judge stated that he was “mindful” that the region of northern Iraq which the appellant told the remaining authorities he came from (that is Zakho) is a few miles away from the Turkish border which is consistent with his account crossing illegally into Turkey. At paragraph 39 the judge recorded the appellant’s account that he crossed a river to get into Turkey from his family home and that he thought this was the river Tigris. The judge noted that the river Tigris rises in eastern Turkey and flows in a generally south-easterly direction until it joins the river Euphrates in southern Iraq (see paragraph 40, thus the judge accepted that if he had travelled to Turkey from northern Iraq then it was probable that he would have crossed the river Tigris has claimed however at paragraph 42, he stated that he would be unable to establish how he would have crossed the river Tigris to enter Turkey if he entered Turkey from Gire Sor in north-eastern Syria.

71. The appellant submissions do not appear to take issue with the factual assessment made by the judge that if the appellant had travelled to Turkey from northern Iraq (as he told the Romanian authorities) it was probable that he would have crossed the river Tigris as claimed.

72. At paragraph 43 the judge referred to the Google map provided by the appellant in the supporting bundle of evidence that the maps did not show any discernible river nor those in the country expert’s report and the report did not mention a river lying between the appellant’s village in the Turkish border. As the map referred to was one in the appellant’s bundle, there is no unfairness in the judge considering that document. Indeed the judge was correct to say that it did not show any discernible river lying between the appellant’s village in the Turkish border. Therefore there was no mistake of fact made by the judge on the evidence that was before him in the appellant’s bundle.

73. Whilst the grounds referred to the point not being raised in the hearing, again it is necessary to see this in the context of the evidence. The judge was undertaking an analysis of the appellant’s previous claim based on being an Iraqi national from Zakho northern Iraq and therefore this was a relevant issue between the parties and information factually relevant to his previous claimed nationality. The judge therefore considered the evidence given in the context of the claim of having crossed into Turkey across the river Tigris (paragraph 39.

74. The FtTJ did not make a mistake of fact by looking at the evidence of the map provided on behalf of the appellant as it did not show any discernible river nor was there any reference in the country expert report. Thus the finding at paragraph 42 that he was unable to establish how the appellant was able to cross the river Tigres into Turkey was not an error or mistake of fact on the evidence before him.

75. It is now said that having undertaken research after the hearing the appellant’s representatives are provided a document showing a body of water that feeds into the river Tigris has produced a map in support. The

grounds assert that “whatever research the judge conducted is flawed and procedurally improper and wrong.” In answer to that and as set out above, the judge did not consider research into the crossing of the river. The judge plainly set out at paragraph 43 that he was considering the Google map provided in the experts report.

76. Secondly his conclusion on the evidence was not flawed. The Google map provided with the grounds of challenge was not clear, but Mr Greer helpfully provided a link to show the map via a computer which made it clearer. The river travels up towards the north and there is a tributary which appears to go across. Whilst the map shows that it is possible that a body of water could be crossed it is one that feeds into the river Tigris and is not the river Tigris itself which was what the appellant had said.

77. However more importantly, the map does not confirm the appellant’s account as it is equally consistent that if he were from Zakho as he had previously stated and travelled to Turkey he would have crossed the river Tigris. Thus even if the evidence now shows that he could have crossed a tributary of water which flowed into the river Tigris that by itself does not undermine the FtTJ’s finding that the journey he described was equally consistent with the earlier given account of coming from Zakho and travelling to Turkey from northern Iraq.

78. Therefore even if there was an error it was of no materiality for that reason. Furthermore as demonstrated by a reading of paragraphs 25 – 49, the FtTJ gave a number of evidence-based reasons relating to the appellant’s earlier claim and his rejection of the appellant’s account. None of those reasons have been challenged by the grounds or the submissions made.

Ground 1:

79. Ground 1 submits that the judge made a finding at paragraph 51 without any evidential foundation and that without any evidential basis the judge considered the appellant’s failure to speak the same dialect of Kurdish spoken by a Turkish interpreter undermined his case. Mr Greer referred the Tribunal to paragraph 51 where the judge had stated “ Given Gire Sor’s proximity to the Turkish border, a point made explicit in the country expert report relied upon by the appellant and made further apparent by the accompanying map (AB page 13) it is remarkable that the appellant has no apparent understanding of Turkish loanwords.” Mr Greer also referred to the sprakab report (p50) where it was stated that the Hasakah dialect and Qamishili dialect are less affected by Turkish since it is not spoken to the same extent in the adjacent areas in Turkey and Iraq. He submits that the appellant was left when reading the decision to think that if he were from Hasakah district he would speak some Turkish words. However it is not known why the judge reach that conclusion.

80. When looking at the judge's decision in this regard, it is far from clear that paragraph 51 when read with paragraph 50 is a finding of fact but more of an observation. At paragraph 50, the judge referred to the hearing which had been adjourned because the appellant was unable to understand the interpreter who had used some Turkish "loanwords". That had been set out in the history at paragraph 9 of his decision. The judge at paragraph 51 considered the claimed place of residence and its proximity to the Turkish border which was evidenced in the appellant's country expert report and also clear from the accompanying map. It was on that basis that the judge made the observation "it is remarkable that the appellant has no apparent understanding of Turkish loanwords."

81. However, it is accepted on behalf the respondent that the judge was in error at paragraph 51, and it is accepted by Ms Young that this was an assumption. In the light of that concession, and the grounds I would accept the judge has given no evidential basis for that observation or finding if it were such a finding and is not identified where it is stated that given the proximity to the Turkish border it would be likely that he would have such an understanding.

82. It is important to note that it is the respondent's submission that any error (or any other errors of made out) are not material given the other significant adverse factual findings made on the totality of the evidence. By way of response Mr Greer submits that the errors, whether individually or collectively were material and therefore the decision should be set aside in its entirety. Therefore the materiality of this error, along with any other errors will be required to be considered in the context of their materiality.

Ground 5 (the amended grounds):

83. It is submitted on behalf of the appellant that unknown to the judge the evidence submitted in the asylum record was inaccurate. The question in issue is question 75 which relates to paragraphs 103 and 105 of the decision that the judge did not accept the appellant's evidence that his mother had previously lived in northern Iraq.

84. The judge did so on the basis of the record of interview (question 75) and that the appellant's answer failed to disclose that his mother had lived for a period in northern Iraq.

85. The appellant has now obtained a transcript of the audio recording and asserts that the record of interview is inaccurate and misleading. As a result it is submitted that the appellant was wrongly found to be untruthful at paragraph 105 of the decision.

86. It is submitted that there was a mistake of fact or a procedural irregularity with no-fault attributable to the judge.

87. In his submissions Mr Greer submitted that the appellant's case was that he had some knowledge of Iraqi words because his mother had resided in Iraq previously he may have used some of those words. He submitted that the judge rejected this explanation and found that it undermined his credibility because his evidence was inconsistent with the answers given in the substantive interview. However in reality the appellant was consistent, but the transcript was in error. He submitted that it was important because it was not an issue taken prior to the hearing. He further submitted that when looking at the translation of the question the appellant was stating at question 75 that all his family were in Syria referring to where they were all now. It was not the fault of the judge that the Home Office interpreter had not interpreted this properly.

88. Ms Young in her submissions referred the tribunal to page 66 of the respondent's bundle (E3) which provided confirmation from the appellant that the interview had been read back to him in Kurdish Kurmanji, a language that he understood on 27 March 2020. The contents of the letter stated that there were four areas and questions which the appellant said was not correct and required amendment and identified question 55, 71, 84 and 92. However question 75, the subject of this ground was not identified. She therefore submitted that the appellant had the opportunity to have the interview read back to him which he had confirmed and therefore the judge was entitled to make findings based on the evidence that was before him. There was no procedural unfairness.

89. In the alternative she submitted that even if there was an error it was not material to the outcome based on the earlier submissions that she had made generally as to materiality.

90. Ground 5 of the amended grounds assert that the judge made a mistake of fact or there was a procedural irregularity in the assessment of the interview's question 75 set out at paragraphs 103 and 105 of the decision. As set out above it relates the appellant's claim that his mother was Kurdish and had lived in Iraq and this accounted for aspects of his language.

91. Whilst it is submitted that the matter was raised for the first time by the judge and not the respondent that fails to set out the context in which the issue was in fact raised. The judge noted that the appellant had set out in his witness statement for the first time that his mother was from northern Iraq. It was therefore not a matter the respondent could have anticipated at the time of the interview. Nonetheless it was an issue before the judge as indicated at other paragraphs in his decision and particularly paragraphs 36, 92, 93 and 94.

92. At paragraph 105 the judge did not accept the appellant's evidence by reference to question 74 and 75 in the interview. They read as follows:

> Q 74: have you lived in Syria all of your life?
>
> Answer: yes

Q 74: what about your parents

answer: all of them.

93. The judge therefore considered that questions 74 and 75 taken together with confirmation that the appellant was saying that his parents had lived in Syria “all of their lives”. The appellant stated that he thought when he was interviewed the interviewer was asking him to confirm whether he had lived in Syria all of his life.

94. The judge rejected that stating that the subsequent question “what about your parents” meant that the appellant was being asked to confirm whether his parents also lived in Syria.”

95. The grounds attach to it a transcript of question 75 obtained following the hearing. It does not translate any other parts of the interview, nor does it offer any translation of question 74. What it records is as follows:

Home Office interviewer: what about your parents?

Translation of the question: where are your mother and father?

Appellant’s reply; all of them are in Syria

recorded response: all of them.

96. On the face of the transcript it appears to demonstrate a difference in what is noted. However the evidence in the respondent’s bundle at page 66 (E3) demonstrates the interview was read back to the appellant and whilst he corrected for particular questions dealing with his factual claim he did not identify question 75 to be in any error and did not offer the explanation given to the judge at the hearing. If he had found it to be in error it is reasonable to presume that he would have amended that answer along with the other questions.

97. However even if the appellant had been saying that his parents are in Syria it would have been reasonable to expect the appellant to have referred to previous residence of his mother in Iraq if that had been an important factual feature to take account of. This is the point also being made by the judge when he referred to the appellant’s evidence concerning his mother’s previous history as being “belatedly made” (see paragraph 103).

98. The issue is one of materiality of the error in the translated question. In this regard I accept the submission made by Ms Young that the grounds need to be viewed in the context of the decision as a whole. Thus even if the judge had been wrong to find an inconsistency with question 75, a careful reading of the decision demonstrates that the judge did take into account that the appellant’s claim was that he spoke with a northern Iraqi dialect because his mother was from northern Iraq and that was plainly set out at paragraph 92 of his decision. However the judge made findings of fact which have not been challenged that undermined that account as follows. At paragraph 94, the judge set out that this was contrary to the

appellant's country expert, at paragraph 91 the judge considered that the sprakab report identified the precise region which the appellant previously notified the Romanian authorities he came from and at paragraph 36 the judge considered the appellant's assertion that his mother was in northern Iraq but found that "it is remarkable that the appellant's account, by sheer coincidence, his agent advised him to claim to be from the same region of Iraq that the appellant's mother purportedly hails from."

99. In the light of those findings which have not been subject to challenge, even if the judge was wrong to make the finding at paragraph 105 based on the asserted error in the interview, the judge gave other evidence-based reasons for reaching his conclusion that the appellant's account that he spoke with the northern Iraqi dialect "did not stand up to close scrutiny" and that the "real reason the appellant spoke with a northern Iraqi dialect is because that is where is from" (see paragraphs 107 and 108).

100. In summary and having set out the assessment of the grounds of challenge, the issue is one of materiality as identified by both advocates in their respective submissions.

101. In this respect it is submitted on behalf of the appellant that the errors are material and Mr Greer referred to the decision in SSHD v AJ (Angola) [2014] EWCA Civ 1636 and paragraph 49 of that decision. He submits that there are 2 categories outlined and that the test or question that should be asked was whether any rational tribunal would have found in the appellant's favour. Thus he submits this is not a case that was bound to fail, and it was rational that another judge could have allowed the appeal. He submitted that to show that another judge would have found differently would not be enough to establish an error of law but if this judge may have found differently it would be sufficient to show that the errors were material. Mr Greer submitted that it was not inevitable that a properly directed judge could have found that the sprakab report was not worthy of weight and found that the appellant's report was preferable and that a properly directed judge would not have undertaken independent fact checking thus a properly directed judge would have found in the appellant's favour but for those errors. Therefore he submitted the whole of the decision was contaminated by legal error.

102. Ms Young submitted that none of the errors were material to the overall outcome and took the tribunal through the number of adverse points made against the appellant. They included the evidence relating to the earlier claim made in Romania and the rejection of the appellant's evidence for the reasons given, the significant criticisms made of the identity document and the lack of reliability of that document. The judge had also given evidence-based reasons as to why he placed weight on the Sprakab report, and properly took into account the appellant's country expert. Thus the errors identified were insufficient to demonstrate materiality.

103. I have carefully considered those submissions in the context of the decision of the FtTJ as a whole .For the reasons given, I have not found the ground 4 has been made out. Even if it were accepted that the FtTJ erred in respect of ground 3 (that the appellant could have crossed a body of water to enter Turkey) or that there were 2 names for his home village which included Tall Al Thahab, or that there had been a misinterpretation of question 75 (the amended ground 5), it would have to be shown that those errors were material to the outcome.

104. Mr Greer relied upon the decision in SSHD v AJ(Angola) [2014] EWCA Civ where Sales LJ at paragraph 49 referred to two categories of case in which as identified error of law might be said to be immaterial:

> "49.There are two categories of case in which an identified error of law by the FTT or the Upper Tribunal might be said to be immaterial: if it is clear that on the materials before the tribunal any rational tribunal must have come to the same conclusion or if it is clear that, despite its failure to refer to the relevant legal instruments, the tribunal has in fact applied the test which it was supposed to apply according to those instruments."

105. Having set out at some length factual analysis undertaken by the judge it is of relevance that other than those points identified, the grounds do not seek to challenge the significant adverse findings of fact made by the FtTJ. The FtTJ had the advantage of hearing and seeing the appellant give evidence and for the account to be the subject of cross examination alongside the documentary evidence provided. On any reading of the decision the judge gave a substantial number of detailed reasons that when taken together were sufficient for the conclusion reached overall by the FtTJ that the appellant was "more likely to hail from Iraq than Syria" and that when undertaking an analysis of his factual claim, on the assessment of the FtTJ "there were a number of significant internal and externally inconsistent and implausible parts of the evidence" which were identified. In the light of those significant findings, it has not been made out as Mr Greer submits that a properly directed judge would have found in his favour. In other words, it has not been established that even if those points raised were found in his favour that the FtTJ would have reached a different decision overall.

106. Accordingly, having considered those submissions in the light of the grounds of challenge, the decision of the FtTJ and the material before the FtT I am satisfied that the decision does not involve the making of an error on a point of law which would require the setting aside of the decision.

Decision

The decision of the First-tier Tribunal did not materially err in law when making its decision. Accordingly the decision of the FtT to dismiss the appeal shall stand.

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

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 his family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Upper Tribunal Judge Reeds
Dated : 22 May 2022