



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

Appeal Number: AA/09518/2014

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 13 April 2015**

**Determination issued  
on 17 April 2015**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**IBRAHIM SHIRE ABDI**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mr C McGinley, of Gray & Co, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals against a determination by First-tier Tribunal Judge Agnew, promulgated on 15 December 2014, dismissing his appeal against refusal of recognition as a refugee from Somalia.
2. The appellant entered the UK on 14 February 2014 in the identity of a citizen of Kenya on a student visa. He did not enrol on the course. His visa was curtailed on 4 April 2014. He sought asylum on 16 May 2014.

3. The appellant's first ground of appeal alleges material error in the judge's use of notes by a social worker. The grounds state that these notes should have been given no evidential weight because they did not constitute a valid age assessment and were not supported by the social worker providing a witness statement or attending for cross-examination. Mr McGinley submitted that the document (page J2 of the Home Office bundle) could not be considered to be an age assessment. The judge at paragraphs 17 and 18 made strong findings on the basis of this evidence, which should have been given no weight at all.
4. Ground 2 criticises the judge's finding at paragraph 47 that there had been deliberate deception by the appellant with respect to his knowledge of English. This assessment is reached with reference to the screening interview, the university application, the substantive interview, the oral evidence at the hearing, and so on, running from paragraph 30 to 46. Mr McGinley submitted that the judge had not stated what standard of proof she applied in this branch of the case. The finding she reached was essentially one of criminality, a fraud. The judge had not said what standard she applied but it should have been higher than real risk. If the appellant had been formally charged with fraud, the case against him would have had to be proved beyond a reasonable doubt. Although these were not criminal proceedings, such a finding should not have been made on any lesser standard than the balance of probability.
5. Ground 3 criticises the judge's assessment of a language analysis report provided by an organisation entitled "Verified". Mr McGinley said that as far as he was aware there was no court or tribunal authority dealing with evidence from this source. There is however well known authority on difficulties with such evidence and in particular with the organisation previously used by the Home Office, "Sprakab". The ground submits that the report reaches no conclusion sufficient to undermine the appellant's credibility and that it should not have been taken into account at all.
6. In submissions, Mr McGinley developed under Ground 3 a point about paragraph 54 of the determination where the judge says that the appellant "seemed somewhat reticent when asked by the interviewing officer if he would be willing to undergo a language analysis." The ground says this is speculative, and points out that the appellant did take part in the analysis. Mr McGinley referred to Q/A 164 where the appellant responds, "But I want to tell you that I was living for one year in Kenya. But some of my words you can find the Kenyan but I am ready to take the telephone and tell that while I was there maybe there is some change." Mr McGinley said this did not disclose any reticence and to the extent that the appellant offered an explanation in advance, that did not count against him.
7. Mr McGinley submitted finally that while none of these errors might have been sufficient alone to undermine the determination, cumulatively they were such that there should be a fresh hearing in the First-tier Tribunal.

8. Mrs O'Brien submitted on Ground 1 that the appellant had been put on notice at an early stage that his identity and his claimed age were not accepted by the respondent. The social worker did not accept that his age was as claimed. The note indicated that a formal age assessment might be carried out but none had been. The judge did not think that there had been one, or that the notes constituted such an assessment, and was entitled to give that evidence such weight as she did. The appellant did not put forward any further evidence regarding his age. He might have sought his own assessment. It was open to the judge to find that his age was not as he claimed. The discussion at paragraph 16-20 and the conclusions reached at paragraph 20, for 3 reasons, were cogent and unassailable.
9. Regarding Ground 2 Mrs O'Brien said that the judge set out the correct standard of proof at paragraph 13 and applied it throughout the determination. The finding of deliberate deception was not a legal term of art but a factual finding about what the appellant did. The judge analysed the evidence thoroughly and in detail from paragraphs 15-63. Under several headings and for numerous good reasons the appellant was found not to have established his case. There was no standard of proof error.
10. The result of the language analysis is expressed in somewhat convoluted terms at page 8 of the report (page 18 of the respondent's bundle):

The hypothesis [tested] is that the person belongs to a Somali linguistic community that occurs in Afmadow

...

To the extent given below, the subject's speech in the sample is consistent with the hypothesis about linguistic community

...

[chosen from a list of options ranging from plus three to minus three ] ...

Minus one: the language analysis somewhat suggests that the results obtained more likely than not are inconsistent with the linguistic community as stated in the hypothesis.
11. Mrs O'Brien accepted that this is only a faint conclusion. However, she said that all the points made in the grounds are reflected in the qualifications expressed in the report itself. It did not appear to have been submitted in the First-tier Tribunal that the report was to be disregarded entirely. There was no reason why it should be.
12. Mrs O'Brien submitted that the judge's observation on the appellant's response to the prospect of the language analysis was a justifiable one.
13. In the round, Mrs O'Brien submitted that the grounds disclosed no error of any significance and that the determination, read as a whole, strongly supported its adverse overall conclusion.

14. Mr McGinley in response said that the judge's finding of reticence at paragraph 54 was a misunderstanding of what the appellant said and was not a fair point to be taken against him.
15. I reserved my determination.
16. The case for the appellant has been pressed as strongly as it properly might have been, both in the First-tier Tribunal and in the Upper Tribunal. However, I do not think that any of the grounds disclose material error in the determination.
17. The judge did not mistake the social worker's notes for a formal age assessment. Her finding at paragraph 20 that the appellant deliberately lied about his age is not based only on those notes. It is based on his changing evidence about his age, his inaccuracy about his age at the time of events, and the documentation he produced to the Entry Clearance Officer in Nairobi which showed a different date of birth. Those reasons are not flawed.
18. The burden was on the appellant throughout to establish his case to the lower standard. Judges are entitled to make some findings more conclusively than others, according to the state of the evidence, provided that they apply the appropriate standard overall. There is no error in the finding that the appellant used deliberate deception in various respects. The particular context where this phrase is used is after substantial analysis at paragraphs 30-47, leading to the overall conclusion that the appellant throughout has tried to play down his ability to speak English in order to support the assertion that he is a national not of Kenya but of Somalia. No error is shown therein.
19. The judge at paragraph 55 accepted the submissions by Mr McGinley about the limitations of the language report. She went on, "On its own I would agree. However, with all the other evidence the conclusion is something I consider should be taken into account." She does not quantify exactly its degree of significance, but the question is not mathematical and to do so would be impossible. It is plain that the report was given little significance, no more than was justified.
20. The points picked on by the grounds are only a small part of the determination. Read fairly and as a whole, it is a comprehensive analysis which rejects the appellant's account for numerous good reasons.
21. The determination shall stand.
22. No anonymity order has been requested or made.

Handwritten signature of Hugh Maclema.

Upper Tribunal Judge Macleman  
15 April 2015