



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04764/2014

THE IMMIGRATION ACTS

Heard at Stoke on Trent
On 30 March 2016

Decision Promulgated
On 12 April 2016

Before

Deputy Upper Tribunal Judge Pickup

Between

DY
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms P Solanki, instructed by Morden Solicitors LLP
For the respondent: Ms CJ Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Williams promulgated 30.7.15, who dismissed his appeal against the decision of the Secretary of State, dated 26.6.14, to refuse his asylum, humanitarian, and human rights claims and to remove him from the UK. The Judge heard the appeal on 23.7.15.

2. First-tier Tribunal Judge Baker granted permission to appeal on 9.10.15.
3. Thus the matter came before me on 30.3.16 as an appeal in the Upper Tribunal.

Error of Law

4. At the conclusion of the hearing before me, I reserved my decision on error of law, which I now give. For the reasons set out below, I find no error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Williams to be set aside.
5. The relevant background can be summarised briefly as follows. The appellant claims to be a Syrian national from Do Gerka in the Hasakah province. To avoid military service in March or April 2004 he fled to Turkey, with the assistance of an agent arranged and paid for by his father. A few months later police officers came to his family home because he was wanted for military service. After 5-6 months living illegally in Turkey he returned to Syria and lived in hiding, avoiding the police. In June or July 2009 officers looking for him searched the family home in his absence. His father again arranged for him to flee Syria to Turkey, two days after the police visit.
6. It appears that from Turkey the appellant travelled to Greece, where he remained for about 6 weeks. He then travelled to Italy and onto Switzerland, where he claimed asylum, which was refused. After 6 months he returned to Italy and claimed asylum there, which was refused. He remained in Italy for one year before immigration officers took him back to Switzerland in April 2011. He made a further claim for asylum, also refused. He remained in Switzerland for another year before returning to Italy in August 2012, where he made a further application for asylum. In September 2012 he travelled by train to France, using an agent, and from France was put on a lorry travelling to the UK, where he arrived on 15.9.12. He did not claim asylum until June 2013.
7. Judge Williams concluded, relying in part on an assessment of the appellant's credibility, consideration of his claim to have fled Syria to avoid military service, a Syrian identification card, and on Sprakab linguistic evidence, that the appellant is not Syrian but Iraqi, as contended by the Secretary of State in the refusal decision.
8. In granting permission to appeal Judge Baker considered it arguable that the judge erred in law in not addressing the witness statement of the Syrian friend of the appellant, who had been granted refugee status and who claimed to know the appellant in Syria, and in not taking account of the respondent's concession that the appellant was of Kurdish ethnicity, given his claim to have been raised in the northern part of Syria, close to the Iraqi border.
9. Judge Baker also found it arguable that in not addressing the positive points on credibility and the background evidence in support of his claims to Syrian nationality, the judge may have materially erred in his assessment of credibility and of risk on return to the country of his claimed nationality. "It is arguable that in

concluding the appellant was from Iraq, an Iraqi national, in not providing reasons for that conclusion, the judge may have erred on a material matter, amounting to a material error of law.”

10. The grounds relied on by Ms Solanki were somewhat different to those set out in the application for permission to appeal. Relying on her skeleton argument dated 28.3.16, she outlined four grounds:
 - (a) The judge’s failure to take into account evidence of a witness;
 - (b) Procedural unfairness in regard to the Sprakab linguistic evidence;
 - (c) The judge’s assessment of credibility;
 - (d) The judge’s assessment of risk on return.
11. The first ground asserts that the judge failed to consider the evidence of Rebar Ali, alleged to be a Syrian national with refugee status in the UK. It is stated that the decision of Judge Williams does not make any analysis or attach any weight to this evidence.
12. It is clear from §13 of the decision that before reaching any of his findings, Judge Williams considered all the evidence before him, including the oral evidence and those materials contained within the appellant’s bundle. It is not necessary for a judge to set out each and every piece of evidence, as the contents of the bundles are a matter of record, provided it is clear that the judge has properly and fairly considered all the evidence in the round. However, at §32 it is clear that in considering the appellant’s claim to be of Syrian nationality, and assessing the linguistic evidence, the judge specifically stated that he took into account the witness statement of Mr Ali, as well as the appellant’s own critique of the Sprakab report. It follows that this ground is misconceived.
13. In any event, this witness did not attend the appeal hearing. The appellant’s bundle contains only an unsigned witness statement. Ms Solanki asserted that a signed copy had been supplied at the date of the hearing, but there does not appear to be any such signed copy in the case file. Ms Solanki did not attend the First-tier Tribunal appeal hearing, but relied on the amended statement of the appellant’s solicitor Ms Naz, who represented him at the hearing. However, this statement does not confirm that a signed copy was supplied to the Tribunal, only that the evidence was “referred to.”
14. That the witness had attended earlier adjourned or management hearings has little relevance and adds no weight to the evidence. Little, if any, weight can be attached to the evidence of a witness who does not attend the appeal hearing so that his evidence can be tested. Further, that the witness claimed to be of Syrian nationality and a refugee carries little weight unless such a claim is accompanied by documentation detailing the basis of his claim and the basis of his being recognised as a refugee; the mere assertion is insufficient. I further note that there was no request for an

adjournment for this witness to attend. The only adjournment request related to the alleged failure of the Secretary of State to comply with directions as to the linguistic evidence.

15. In the circumstances, even if the judge should have said more about the witness's statement, given the matters set out above the overall weight that could have been attached to this evidence was necessarily very limited and thus could have made no difference to the outcome of the appeal.
16. The second ground of appeal raised by Ms Solanki asserts procedural unfairness in refusing the requested adjournment and proceeding with the appeal despite the failure of the Secretary of State to comply with directions in respect of the Sprakab linguistic evidence. In this regard Ms Solanki relies on the guidance in respect of such evidence in SSHD v MN & KY (Respondents) (Scotland) [2014] UKSC 30.
17. At §16 and §17 the judge detailed the relevant history and the information requested at CMR hearings for disclosure of information about the Sprakab report and its authors. It was asserted that the Secretary of State had failed to comply with directions. The judge considered the request for adjournment because of absence of transcript and for information as to the qualifications of the analysts. No transcript had been provided, but the audio recording had been supplied. The judge was informed that pursuant to the directions Sprakab had been spoken to and the only information about qualifications was that set out in the report and no further information was available. The judge considered that a further adjournment would serve no purpose as no further information would be made available.
18. At §32 the judge took into account the appellant's critique of the Sprakab report, as well as other evidence relevant to the issue of the appellant's national identity. There was no error in the judge's pointing out that although the appellant's representatives had been supplied with the audio recording the appellant did not rely on any expert or even his own analysis of the content. The judge assessed all of this before reaching the conclusion that he preferred the language analysis of the appellant's origins to that asserted by the appellant. It is clear that the judge did not rely solely on linguistic analysis. The judge set out the relevant case law from §27 onwards and applied the guidance in MN & KY to the report. The judge specifically considered the qualifications of the analysts and at §30 placed no reliance on part of the report which did not satisfactorily explain the source and nature of the analyst's knowledge as to the issue of the appellant's familiarity with Syria. The judge also considered whether there had been any unfairness in the length of the interview, which was 22 minutes, but concluded that he was clearly able to have a detailed conversation, as reflected in the questions and answers put.
19. Ms Solanki submitted that if the appellant's representatives had known that the Secretary of State was not going to provide a transcript they could have applied for legal aid to fund their own. However, it would have been known long before the appeal hearing, when the audio transcript had been provided, that no such transcript was forthcoming. The appellant's representatives should not have waited until the

effective hearing date to make an application to adjourn, even though concerns were raised at earlier hearings and directions issued.

20. In her submissions on this issue, Ms Solanki did not identify in what way the appellant had been, or was potentially, prejudiced by the failure to comply with directions in relation to the language analysis. The judge noted at § 31 that the appellant accepted that he was asked most of the questions. On enquiry about qualifications the Home Office had been informed that the qualifications were stated on the report (see B6), and the judge concluded nothing would be gained by a further adjournment. Even now it is not clear what in particular is said to be unfair about reliance on the report. For example, the relevance of the nationality of the analysts is not explained, nor the question of whether they are employed by Sprakab, nor the demand to reveal their identities. The impression given in reliance on this ground is one of form rather than substance, that rather than identify what in particular was in error or unfair, the appellant is seeking to take a tactical point that directions were not complied with and thus the report should not have been relied on at all. Weight is a matter for the judge and it is clear from the decision that the judge did weigh the evidence on this issue fairly in the light of the case authorities, accepting some parts of the linguist evidence and rejecting others. In the circumstances, I find no error of law on this ground of appeal.
21. In relation to the third ground relied on by Ms Solanki, that of the credibility assessment, it is complained that the judge failed to acknowledge the concession as to the appellant's Kurdish ethnicity. However, given the concession there was no need for the judge to make any finding in this regard. That the appellant was of Kurdish ethnicity was understood is clear from §30 where the judge rejects the linguist evidence claiming to be familiar with the Kurdish part of Syria.
22. Complaint is also made that the credibility findings start with the section 8 requirement to take into account as damaging credibility his behaviour, denying that he had been fingerprinted or claimed asylum in any other country. These were clear untruths given in the screening interview. Whilst an appellant is not expected to give a detailed account of his claim at the screening interview, he can be expected to tell the truth.
23. That the judge commenced with this issue does not mean that it was the primary focus or basis on which the rest of the credibility findings were made. Commencing at §19 the judge listed a number of factors which he considered to seriously undermine credibility. It is clear that the judge has assessed the evidence as a whole and the order in which it is laid out in the decision does not indicate the order of priority or consideration. Taken as a whole, rather than dissected piecemeal as the grounds attempt to do, I find that the judge has made a fair and careful assessment of credibility, highlighting both evidence which supports and which undermines credibility.
24. Complaint is also made that the judge failed to properly assess risk on return at §38 and §39 and made no reference to country guidance. However, on the findings of the

judge that the appellant is not Syrian but Iraqi, he would not be returned to Syria but to Iraq, where he stated at Q323 of his interview that he did not fear anything in Iraq. The appellant's representatives did not make any assertions or adduce any evidence that there was any risk on return to Iraq, the burden being on the appellant to do so. In the circumstances, there is no merit in this ground of appeal.

Conclusions:

25. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order.

However, given the circumstances, I make an anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award

A handwritten signature in black ink, appearing to read "James", written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup

Dated