



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10464/2016**

Appeal Numbers:

THE IMMIGRATION ACTS

**Heard at Manchester
On December 22, 2017**

**Decision & Reasons
Promulgated
On January 03, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR JABER MUHAMMED
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr McVeetie, Senior Home Office Presenting Officer
For the Respondent: Mr Hussain, Counsel, instructed by Broudie Jackson and
Canter

DECISION AND REASONS

1. I do not make an anonymity direction in this matter.
2. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so that, for example, reference to the respondent is a reference to the Secretary of State for the Home Department.
3. The appellant claimed to be a citizen of Iran and on March 22, 2016 he entered the United Kingdom and claimed asylum the following day. The

respondent considered the application but refused it on September 15, 2016 under paragraphs 336 and 339F/339M HC 395.

4. The appellant appealed that decision on September 28, 2016 and the appeal came before Judge of the First-tier Tribunal Ruth on March 14, 2017. In a decision promulgated on March 27, 2017 he allowed the appeal on asylum and human rights grounds.
5. The respondent appealed that decision on April 8, 2017 arguing that the Judge had erred in his approach. The respondent argued firstly, the Judge made no findings on his actual account in circumstances where credibility was an issue and secondly, he had made findings on the Sprakab report despite not having the expertise to make such findings.
6. Judge of the First-tier Tribunal Grimmatt considered the grounds of appeal on August 4, 2017 and found there was an arguable error of law for the reasons argued.
7. Mr Hussain filed a Rule 24 response in which he argued that the grounds amounted to a disagreement with the decision and nothing more.
8. At the hearing before me Mr McVeety adopted the grounds of appeal. Whilst the Judge set out the appellant's account it was incumbent on him to make findings on which aspects of the case he accepted or rejected. Whilst the Judge made findings on credibility he gave no reasons for his conclusions despite accepting there were serious credibility issues at [30]. With regard to the Sprakab report he submitted the Judge was not an expert and had speculated on whether differences in "accent" supported the appellant's claim. Whilst the Judge was entitled to reject the report he had to explain why and demonstrate he had the expertise to make such findings.
9. Mr Hussain adopted the Rule 24 response and submitted the Judge dealt adequately with all evidential matters and the respondent was simply challenging what weight the Judge attached to the evidence. With regard to the Sprakab report it was wrong to say the Judge had not considered its contents carefully as he had spent a large part of his decision considering the actual report. With regard to the remainder of the Judge's decision the Judge had made a number of positive findings on the appellant's evidence and ultimately it was a matter for the Judge what weight he attached to which piece of evidence. He submitted there was no error in law.

FINDINGS ON ERROR IN LAW

10. This was an appeal in which the respondent disputed his claim to be an Iranian national and argued that he was in fact from Iraq. Between [6] and [11] and [12] and [17] the Judge set out the respective claims.
11. The respondent's basis for concluding the appellant was not Iranian was:
 - (a) When interviewed he claimed he stated he was from Iraq.

- (b) When fingerprinted by the Greek authorities he claimed he was Iraqi although he claimed he only did this because he was told to do so by some Iraqis with whom he was with.
 - (c) Discrepancies between his screening and substantive interviews.
 - (d) The results of an independent language analysis conducted by Sprakab.
12. The appellant denied ever claiming in interview he was from Iraq and he disputed inconsistencies between his two interviews.
13. At [30] in the Judge's findings the Judge wrote-
- "In this case I agree with the respondent that there are credibility concerns which cast serious doubt on the appellant's claims. Taking the guidance above into account I have concluded those concerns are not such as to lead to the conclusion no credence at all can be attached to the appellant's statements."
14. The Judge considered the interviews and concluded the answers recorded were inconsistent regarding where he came from and he concluded that there was a real uncertainty about both what the appellant said and what his nationality was. The Judge further commented that the appellant's knowledge of Iran was consistent with him coming from Iran and that it was unlikely he would have been able to prepare answers for those questions unless he had local knowledge by virtue of where he was said to be living.
15. The Judge was unsure at this juncture whether the appellant was from Iran or Iraq and identified the Sprakab report as the "key" document. However, he concluded this report was also not definitive. He took issue with the fact there was no description of the analyst's qualifications and this was important, in his view, because of his finding that the Kurdish Sorani spoken by the appellant was spoken in the area around Mariwan and Erbil but not Sulaymaniyah.
16. Mr McVeety challenges the Judge's approach to the report on the basis he is not a language expert and in the absence of other expert evidence or country evidence the conclusions of the expert should have been accepted.
17. In giving permission to appeal Judge of the First-tier Tribunal Grimmett highlighted the Judge's approach to the report. Mr Hussain says the findings were open to the Judge but I find Mr McVeety's argument more persuasive on this topic. The Judge made findings on the report that it are outside his area of expertise. Where the expert states a particular language is spoken in place "A" then in the absence of other evidence the Judge cannot simply discount that based on his own assessment of the expert evidence. He was entitled to reject the report's contents if he had evidence to do so. I am satisfied there was no such evidence and this is the first error the Judge made.

18. The second issue raised by Mr McVeety was that the Judge failed to make any findings about his actual protection claim. At no stage in his decision did the Judge consider the core claim. He may have set the claim out but he should have made findings especially in circumstances where the respondent raised credibility. The Judge's findings from [44] onwards amount to general findings without any reference to the claim itself. No findings on any of the issues, for instance, in [7] to [11] were made.
19. The respondent was entitled to know which aspects of the appellant's claim was accepted or rejected. By failing to make such findings I am satisfied that this also amounted to an error in law.

NOTICE OF DECISION

20. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the Judge's decision and I remit the appeal back to the First-tier Tribunal for a de novo hearing.

Signed

Date 22/12/2017




Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as I have set aside the earlier decision.

Signed

Date 22/12/2017



Deputy Upper Tribunal Judge Alis