



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01598/2020**

THE IMMIGRATION ACTS

**Heard at Edinburgh
On the 1 July 2022**

**Decision & Reasons Promulgated
On the 12 October 2022**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN**

Between

**KSY
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Forrest, instructed by Maguire Solicitors.

For the Respondent: Mr Mullen, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant has made an asylum claim and challenges its refusal. The principal issue with which we are concerned is his nationality.
2. He entered the United Kingdom on 11 May 2016 and claimed asylum. On 8 November 2016 the respondent rejected his claim. He appealed: his appeal was dismissed. On a further appeal to this Tribunal, his appeal was dismissed, by UTJ Dawson. Judge Dawson's decision was sent out on 3 September 2018. He endorsed the First-tier Tribunal's decision that the claimant had not established that his nationality was Syrian as he claimed.

3. The appellant then made a new claim for asylum, supported by a document, the *Maktoum*, which he said he had obtained from a relative at home. The respondent again rejected his claim. He appealed, and after certain procedural decisions that do not concern us, his appeal was heard by a panel of the First-tier Tribunal consisting of Judges Buchanan and Stevenson. They dismissed his appeal. Their decision was sent out on 19 March 2021. The appellant sought permission to appeal to this Tribunal. Permission was refused by the First-tier Tribunal but granted by Upper Tribunal Judge Bruce.

4. The grounds of appeal are lengthy, and consist largely of submissions rather than grounds. They were not drafted by Mr Forrest. We had the advantage of a shorter statement, provided for the purposes of the appeal before us, setting out as follows:

“Issue: is whether the second FTT erred in law in (i) attaching little weight to the evidence of Dr Giustozzi and (ii) concluding that the *Maktoum* document founded on by the appellant was not reliable, and so not capable of amounting to evidence that the appellant is a national of Syria.”

5. Written submissions adopt the previous grounds, with some small supplement. We summarise as follows. (1) The First-tier Tribunal erred in finding that little weight could be given to the evidence of Dr Giustozzi about the document; it is asserted that in not giving reasons or adequate reasons for its decision about Dr Giustozzi’s evidence, the decision was “not rational”. (2) The appellant should be given the benefit of the doubt on his nationality, because the First-tier Tribunal “can” give the benefit of the doubt to the appellant. There were certain matters, on which the Tribunal accepted the appellant’s evidence. (3) The Tribunal has given no reasons for finding that the *Maktoum* is not reliable. This ground appears to assert that the Tribunal was obliged to accept the *Maktoum* as reliable in the absence of evidence that it was not reliable. This ground is supplemented by an argument that because Dr Giustozzi expressed the opinion that it was reliable, without knowing what it was, the Tribunal erred in declining to find that the *Maktoum* was reliable. (4)-(6) assert that it was for the respondent, not the appellant, to provide any evidence as to verification of the *Maktoum*. Although it was not suggested to the First-tier Tribunal that in this case there was such a burden on the respondent, the grounds argue that this was a Robinson-obvious point and that the Tribunal should therefore have concluded that the Secretary of State had provided no effective challenge to the reliability of the *Maktoum*. The ground raises, apparently for the first time, the assertion that the *Maktoum* would have been easy for the Secretary of State to verify. Finally, (7), the *Maktoum* was not considered in the context of the evidence as a whole.

6. Mr Forrest’s submissions were brief and to the point. After hearing his submissions, we heard from Mr Mullen, who, in the circumstances, found himself able to do little other than take us through the First-tier Tribunal’s decision. In response, Mr Forrest made two further submissions, principally relating to the way in which the word *Maktoum* is to be translated.

7. The *Maktoum* is the principal object of interest in this appeal. We are not particularly concerned with the way that that word is translated. It is sufficient to note that it is said to be an identity document which is available to Kurdish Syrians, most of whom cannot obtain a Syrian passport. If the document produced to the Secretary of State is to be relied upon as a *Maktoum*, and as correctly recording the facts stated in it, it is strong evidence, perhaps the strongest that might be available, that the appellant is Syrian as he claims.
8. The First-tier Tribunal had very considerable doubts about the truth of the appellant's account of how he obtained the document that he sent to the respondent after his first appeal failed. It took account of expert evidence analysing the photograph on the document, and accepted that on the balance of probabilities the photograph was a photograph of the appellant at a younger age than he is now. It noted also that if the document is reliable, the appellant would have established his nationality regardless of other concerns about the way in which the document came to him. The Tribunal declined, however, to find that the document was reliable.
9. It was the appellant's task to establish the facts upon which he relied, including his nationality, and including also the reliability of the document he adduced. Grounds 4, 5 and 6, which assert in various ways that it was the respondent's duty to conduct an exercise to verify the document, is disposed of by the decision of this Tribunal in QC v SSHD [2021] UKUT 00033. Paragraph 1 of the headnote of that decision reads as follows:

“The decision of the Immigration Appeal Tribunal in Tanveer Ahmed [2002] UKIAT 00439 remains good law as regards the correct approach to documents adduced in immigration appeals. The overarching question for the judicial fact-finder will be whether the document in question can be regarded as reliable. An obligation on the respondent to take steps to verify the authenticity of the document relied on by an appellant will arise only exceptionally (in the sense of rarely). This will be where the document is central to the claim; can easily be authenticated; and where (as in Singh v Belgium (Application No. 33210/11)), authentication is unlikely to leave any “live” issue as to the reliability of its contents. It is for the tribunal to decide, in all the circumstances of the case, whether the obligation arises. If the respondent does not fulfil the obligation, the respondent cannot challenge the authenticity of the document in the proceedings; but that does not necessarily mean the respondent cannot question the reliability of what the document says. In all cases, it remains the task of the judicial fact-finder to assess the document's relevance to the claim in the light of, and by reference to, the rest of the evidence.”
10. In the present case there is no basis for saying that this is a document which “can easily be authenticated”. It is also far from clear that authentication would be unlikely to leave any live issue as to the reliability of its contents. Further, given that it is for the Tribunal to decide whether the obligation arises, it is very difficult indeed to envisage a case in which the First-tier Tribunal would err in not imposing a verification duty upon the respondent in a case in which the appellant did not ask it to do so.
11. We turn then to the document itself, and to the evidence about it. The appellant said that it was his *Maktoum* and that that is what he meant

when on previous occasions he answered questions about his passport. He says, in the English version of his witness statement, "I would also like to highlight that the *Maktoum* is also usually referred to as a "power of attorney letter" or "certificate of identity"".

12. The document is in Arabic. There is a certified translation of it. It is headed "Certificate of Identity". It gives the personal details of the appellant and his father. It contains a certificate of a local leader and two other witnesses, each of whom say that the person in the photograph is the person who the appellant says he is. There is a printed date, 17 March 2010. There is a rubber stamp in two places with a text translated as follows: "Ministry of Local Administration & Environment, Al-Hasakah Governate, Al-Malikiyah City, Iyas Said Hassan, Mukthar of Al-Wahda Neighbourhood".
13. The principal evidence in support of the reliability of this document was that of Dr Giustozzi. He has given evidence on a number of matters before Tribunals, and indeed permission to appeal to this Tribunal was granted solely on the rather surprising ground that this was the only case known to the judge in which Dr Giustozzi's evidence had not been accepted. He had made an oral report, he had made an addendum to it, and he gave oral evidence. After the hearing, he made a further written statement, in an attempt to repair the damage done by the inquiries about his evidence at the hearing. That statement was accepted into evidence by the First-tier Tribunal.
14. Dr Giustozzi does not read Arabic. For the contents of the document he is reliant on the translation. For its reliability he is reliant on his contacts in Syria. His contact in Syria is a person to whom the First-tier Tribunal referred as NA. Her CV indicates that she was at the relevant time a 19-year old second-year media student at university in Syria. She spoke and wrote Arabic fluently and English well, but described her "Courrent work" by reference to a creative digital marketing concern and as a "Social Media moderator". Her account of her inquiries was before the First-tier Tribunal in the form of a statement. It is summarised, accurately, by the First-tier Tribunal as follows:

"60. Ms NA's statement dated 23 January 2021 is in short compass. In the first paragraph of this statement she states: "I went to Al-Hasakah Province and visited the Syrian Arab Republic Local Internal Administrative Unit. There I got a local official to look at the document, check it against the records and confirm whether it is genuine". Ms NA in her statement refers to submitting her "report"; but we have not been provided with a copy, and do not know what was said within it. Ms NA said that translation difficulties caused confusion."
15. Dr Giustozzi's initial report reads, so far as relevant, as follows:

"Maguire Solicitors provided me with a scanned colour copy of the document. Because of the way verification takes place, with the issuing authorities comparing pictures (if any), record numbers, signatures, stamps or any other information contained in the document against the information they hold, the original of the document is not required and a copy suffices.

I passed on the details to my researcher, [NA], based in Damascus. Ms [NA] is a journalist and student of the media faculty at Damascus University.

Ms [NA] sought to verify the power of attorney letter with Mr [H] who is working in the Local internal administrative unit of Al-Hasaka province. He (sic) met him on 29 February 2020.

Mr [H] viewed the power of attorney letter in which Ayass Sayid appointed Mr [K] as his attorney and advocate and asked him to confirm if the letter is genuine. [Our emphasis] Mr [H] took a copy of the letter and started reviewing it. He then went to check it against the records. He turned up after a while, saying he had found a match in the records and the power of attorney letter is therefore genuine.”

16. As the First-tier Tribunal noted, it is remarkable that Dr Giustozzi wholly failed to understand the nature of the document of which he was purporting to provide expert evidence of reliability. Although, as the appellant’s own evidence had indicated, *Maktoum* may mean “power of attorney”, this document does not purport to be a power of attorney. As the First-tier Tribunal also noted, despite the subsequent explanations by Dr Giustozzi, it is impossible to see that he, relying solely on the translation, could have thought it was a power of attorney, whether in the specific terms he describes or not. Nothing in Dr Giustozzi’s reports contains any expert verification of this document as a certificate of identity, which is the only function which it is said to have.
17. Dr Giuztozzi’s own sources were Ms NA, whom he apparently knew, but who appears to have no relevant expertise at all, and Mr H, who appears to have reported to Ms NA. We, and the First-tier Tribunal, have Mr H’s opinion (not even from Ms NA but only) as recorded by Dr Giustozzi that “the power of attorney letter” is genuine because it is said that Mr H found “a match in the records”.
18. We think that summarising the difficulties with Dr Giustozzi’s evidence in the brief way that we have done is sufficient to show why that evidence does not help in establishing the reliability of the certificate of identity that the appellant had produced. In fact, however, the First-tier Tribunal devoted paragraph 65 to its reasoning on this matter. That paragraph has nine sub-paragraphs and extends over two pages. To assert, as the grounds do, that the First-tier Tribunal acted irrationally and failed to give proper reasons for its conclusion, is absurd. The position is that Dr Giustozzi had, on the strength of his wide experience as an expert witness, set out in his report, purported to provide support for a document about which he had no expertise, which he had no means of understanding, and which he apparently had not read, even in translation.
19. Neither the First-tier Tribunal nor we have any means of assessing that document save with the assistance of expert evidence. The original is in Arabic, and we have no means even of ascertaining whether it is in the form it would be expected for a certificate of identity used, in place of a passport, by a Syrian Kurd.
20. The position is, then, that this document could not add to the appellant’s claim to be a Syrian national.

21. The remaining ground asserts that the Tribunal failed to consider the evidence before it as a whole, and the evidence of the document in its proper context. There is nothing in that ground. The decision clearly takes into account the evidence as a whole, including in particular the documentary evidence, the linguistic evidence, the photographic evidence, and the country evidence. It was for the Tribunal to consider what weight it was appropriate to give to the various evidence. The argument that the First-tier Tribunal should have given “the benefit of the doubt” to the appellant is not coherent. It did not regard his evidence as generally credible, and was not obliged to make a finding of fact in his favour on evidence that it did not consider sufficient to support such a finding. We cannot detect any error of law in the manner in which it carried out its function.
22. In our judgment, the decision of the decision of the First-tier Tribunal has no error of law. This appeal is accordingly dismissed.

C.M.G. Ockelton

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 26 September 2022