



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

Appeal Number: UI-2021-001627
(PA/02677/2020)

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 26 July 2022**

**Decision & Reasons Promulgated
On 9 September 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HMA

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howard of Fountain Solicitors.

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Sharma ('the Judge'), promulgated on the 26 July 2021, in which the Judge dismissed the appellant's appeal on all grounds.
- 2.** The appellant was born on 16 February 1999 and claimed to be a citizen of Syria. The Secretary of State rejected this contention asserting in the refusal letter and before the Judge that the appellant is a national of Iraq.

3. The Judge records that it was accepted that if the appellant is from Syria he could not be returned and must succeed.
4. The Judge's core findings are set out from [34] of the decision under challenge in the following terms:
 34. The language report is central to the respondent's case. However, the conclusions of the experts in that report are not determinative of the issue of nationality. Firstly that is because that issue is for me to decide and, second, it is acknowledged by the report writers that they are engaged in language and not domicile or citizenship analysis (see paragraphs 1.2 at page 3 of the report).
 35. In considering the report, MN and KY makes it clear that, in relation to the degree of certainty about the experts, I find that they are qualified to comment on the areas that they have done so.
 36. The expertise is not challenged. For my part, considering the information that is provided about the experts I find that they are qualified to comment on the areas that they have done so.
 37. The contentious issue are the two conclusions reached at page 11 of the report namely that there is a high degree of certainty that the appellant's linguistic background is northern Iraq and that it is unlikely that he is from Hasakah in Syria.
 38. Pages 12 and 13 of the report set out to the analysis. That is not challenged and, in the absence of expert evidence challenging that analysis (and indeed the conclusions reached above) I have no difficulty is (sic) accepting what is said. The analysis includes specific examples to support the conclusions reached.
 39. The challenge made is effectively that the appellant's language use is influenced by his contact with the population across the border with northern Iraq. Indeed, there is acknowledgement in the report (at paragraph 1.2 of page 3 of the report) that "language used, citizenship and national borders do not necessarily have to coincide" due to for example "in border areas where the same language an (sic) ethnic groups are found on both sides of the border". However, the conclusions reached in the report do not suggest that this is what has occurred in this case.
 40. In any event, the submission made by Mr Islam is unsupported by the evidence given by the appellant. He has given no such explanation.
 41. In considering the matter of the lower standard of proof, whilst I could arguably decide that my acceptance of the conclusion that it is "unlikely" that the appellant is from Syria does not necessarily mean that the appellant does not make his case, the reference to the "high" degree of certainty that the appellant is from Iraq takes matters further. I take the view that the appellant is from Iraq and therefore not from Syria.
 42. I take the view that much of the other matters do not support either party's case. The appellant has sought to explain in his statement a number of matters raised by the respondent such as the identity of famous Syrians and local landmarks. The respondent has not made further checks. As far as the appellant is concerned, given the proximity of northern Iraq to Syria and the shared culture and language

to the Hasakah area, it is not significant that he is aware of such matters. The matter of not being able to identify in detail the appearance of a 2,000 note is not significant. As I stated to Miss O' Mahoney, I could not recall the identity of the person featuring on a £5 note.

43. As regards the claimant's recruitment to the YPG, whilst Mr Islam states the background evidence suggests that the recruitment is on a voluntary basis, that does not in my view support the appellant's case as it then undermines his reasons for leaving Syria.
 44. However, the matter of conscription does go against the appellant. Mr Islam's submission does not assist me. As he conceded, there is no evidence before me that suggests that persons may be "missed off the list" as he suggests. That is a significant discrepancy between the appellant's account and the reality of the situation in Syria.
 45. The appellant's claim for asylum therefore fails. He can be returned to Iraq as he has not established that he does not have the relevant identity document.
- 5.** The appellant sought permission to appeal asserting the Judge made a material misdirection of law in [41] alleging the Judge made the findings on nationality on the sole basis of the language report and failed to carry out the global assessment of the appellant's credibility as a Syrian national as required. It is asserted the Judge failed to assess the appellant's evidence with anxious scrutiny and failed to mention what submissions or evidence he was unable to adopt in [40], failed to consider whether the appellant should have received the "benefit of the doubt" in [42] as the burden of proof is of a lower standard, failed to understand the appellant's case at [43] that even though recruitment to the YPG is voluntary that did not mean the appellant was not under pressure to join, that the Judge failed to refer to background material in [44], and failed to consider the evidence adequately with the required degree of anxious scrutiny.
- 6.** Permission to appeal was granted by another judge of the First-tier Tribunal on 5 October 2021, the operative part of the grant being in the following terms:
3. I find that the Judge has provided entirely adequate reasons for his finding that the appellant is not a Syrian national and that it was not based solely on the findings of the expert report. This ground discloses no arguable error of law.
 4. In respect of Ground 2, the Judge considers the appellant's return to Iraq as follows 'He can be returned to Iraq as he has not established that he does not have the relevant identity document'. I find that this does not demonstrate anxious scrutiny of the material issue as to whether the appellant has or can get access to his identity card or to his CSID number if he is returned, as per SS, and this is relevant to whether there would be a breach of Article 3. I find that the Ground 2 discloses an arguable error of law.
 5. Permission to appeal is granted on Ground 2.

7. The appellant renewed the application for permission to appeal to the Upper Tribunal in relation to Ground 1 only, resulting a decision from Upper Tribunal Judge Grubb dated 12 April 2022, who found:
 3. The FtT judge did not, in granting permission, expressly do so only on “limited grounds” even though he considered Ground 1 was not arguable. The appellant could, as a result, rely upon both grounds before the UT (Safi and others (permission to appeal decisions) [2018] UKUT 288 (IAC). For the avoidance of doubt, I also grant permission on ground 1 which is arguable.

Error of law

8. In relation to Ground 1, I find the Judge considered the evidence with the required degree of anxious scrutiny. Whilst the Judge did consider the language report, which could not be ignored, the Judge did not treat that as the determinative or only factor as the appellant alleges. At [25] the Judge wrote:
 25. As for the language report, the information about Kurmanji is complex. It is credible that there has been the influence from neighbouring regions in the appellant’s use of that language. The report concluded that it is unlikely he is Syrian and that there is high certainty that he is from Iraq. Applying the lower standard of proof there is reasonable likelihood that he is from Syria. Applying *Secretary of State for the Home Department v MN and KY* [2014] UKSC 30, the language report’s conclusions are not the determining factor.
9. The report itself, in the paragraph headed ‘Conclusion’ states “for all of the reasons outlined in these guidelines will advise that language analysis should be used with considerable caution in addressing questions of national origin, nationality or citizenship”. I find there is no evidence that the Judge adopted such an ill-advised approach.
10. Mr McVeety referred to [48] of the Supreme Court decision in MN and KY in which it was found:
 48. In any event, as one would expect, the Upper Tribunal’s subsequent discussion and conclusion did not turn on the degree of “certainty or near-certainty” Page 20 expressed by Sprakab, but on an evaluation of all the evidence of which theirs was one part. That would be the duty of any future tribunal, regardless of the “certainty” of Sprakab’s own views. What matters is not the confidence with which they are expressed, but the strength of the reasoning and expertise used to support them.
11. The Judge clearly undertook an evaluation of the evidence and examined the strength of the reasoning and the expertise of the authors of the report none of which is challenged by the appellant.
12. The appellant’s skeleton argument before the Judge expressly states that the appellant is not relying upon his own language analysis commissioned for the purpose of proving his claim, meaning the only expert evidence before the Judge was that produced by the respondent upon which the Judge placed appropriate weight.

- 13.** Whilst the appellant disagrees with the Judge's conclusions in relation to his nationality the grounds fail to establish arguable legal error material to the decision that the appellant is a citizen of Iraq and not of Syria. Arguing that the Judge should have done more does not establish arguable legal error. The Judge had the benefit of seeing and hearing oral evidence being given in addition to the written material. It is not made out the Judge applied an incorrect burden and standard of proof. The findings are adequately reasoned. The appellant fails to establish on the basis of the evidence made available that the Judge's conclusion is outside the range of those reasonably available to the First-tier Tribunal on the evidence.
- 14.** Ground 2 raises an interesting question which is that as the appellant had throughout the appeal before the Judge maintained he was from Syria and not from Iraq, and had therefore failed to produce any evidence to address the issue of whether he could obtain a CSID, what should the Judge have done?
- 15.** It was argued that as the Judge had found the appellant was from Iraq the Judge could have stopped there and said nothing further, but he did not.
- 16.** It is important to consider the specific finding of the Judge in relation to documentation at [45] where the Judge writes "He can be returned to Iraq as he has not established that he does not have the relevant identity document".
- 17.** The issue of the CSID was raised in the refusal letter of 6 March 2020 but the appellant failed to properly address this issue before the Judge or to provide any evidence in relation to the home area, local CSA office, or other relevant evidence that one would expect if such an issue arose, as per the guidance in the country guidance case of SMO. The reason for lack of such material is clear from the appellants witness statement in which he disagreed with the Secretary of State's conclusion regarding the CSID in Iraq, repeating his claim that he is Syrian and not Iraqi.
- 18.** I find on the basis of the evidence that was provided to the Judge that it has not been shown that the Judge erred in law in the specific finding made. If one looks at the type of evidence one would have expected to see which would, as per the analogy raised in court, constitute the pieces of the jigsaw, all the necessary pieces were not provided, and the Judge is effectively being criticised for not putting the pieces together when that tribunal did not have the evidence to enable it to do so.
- 19.** Mr Howard accepted there was no evidence regarding the CSID but submitted that the Judge should have undertaken the necessary fact finding investigation due to the significance of the same.
- 20.** Proceedings within this jurisdiction are adversarial by nature. The appellant knew the case against him as it is set out in the refusal letter. It was a matter of choice for him to focus upon his claim to be a national of Syria. The consequence of this tactical decision is, however, that there was no evidence before the Judge to establish a

real risk to the appellant in Iraq as a result of lack of documentation or otherwise.

21. I do not find the appellant has established that the Judge erred in law in a manner material to the decision to dismiss the appeal on the evidence the Judge was asked to consider.
22. I find no material error in the Judge's finding that the appellant is a citizen of Iraq. It is open to the appellant in light of that finding to make a fresh claim in which he can set out properly his case in relation to risk on return to Iraq and the question of redocumentation which can be considered by the respondent in line with the latest CPIN and the guidance provided by the Upper Tribunal in the current country guidance case, handing down after the decision under challenge, of SMO and KSP (Civil status documentation, article 15)(CG) [2022] UKUT 00110.

Decision

23. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

24. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed.....
Upper Tribunal Judge Hanson

Dated 26 July 2022