



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000505

First-tier Tribunal No: PA/54295/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 4th of July 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

SP (Iraq)
(ANONYMITY DIRECTION IN FORCE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr F. Ahmed, Hanson Law Limited

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

Heard at Birmingham Civil Justice Centre on 11 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity.

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.

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Groom (“Judge Groom”) promulgated on 17 November 2023 dismissing an appeal brought by the appellant against a decision of the Secretary of State dated 3 October 2022 to refuse his fresh claim for asylum. The judge heard the appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
2. The appellant now appeals against the decision of Judge Groom with the limited permission of Upper Tribunal Judge Keith.

Anonymity

3. An anonymity order is in force in these proceedings. It was made by the First-tier Tribunal because the appellant has made a protection claim. I consider that it is necessary to maintain the order so as to ensure that the publication of this decision does not inadvertently expose the appellant to a risk he does not currently face.

Procedural background and disputed issues

4. The proceedings before Judge Groom were the third time the First-tier Tribunal had heard an appeal brought by this appellant addressing essentially the same principal issue – whether he a citizen of Iran or Iraq – albeit by reference to different evidence. The appellant claims to be a Kurdish citizen of Iran. The Secretary of State accepts the appellant’s claim to be an ethnic Kurd, but says that he is from Iraq. That is the foundational disputed issue from which all other disputes – and the grounds of appeal for consideration in these proceedings – flow. The decision of Judge Groom was thus the third time the appellant had unsuccessfully litigated this point.
5. The appellant’s essential complaint is that the first two decisions of the First-tier Tribunal (Judge Balloch, 21 August 2023; Judge Gribble, 18 February 2020) reached findings concerning his nationality which were undermined by the evidence he relied upon before Judge Groom. His case is that the findings reached by Judge Balloch were based on an unreliable Sprakab language report dated 27 August 2012 (“the Sprakab Report”), and that Judge Gribble took Judge Balloch’s unreliable findings as her starting point and compounded them. Thus, on the appellant’s case, Judge Groom took as her starting point the unreliable foundations of the findings reached by Judge Balloch and Judge Groom, and perpetuated the erroneous approach that the first two judges adopted.
6. The appellant seeks to make good this submission by contending that Judge Groom failed properly to assess the evidence he relied upon at the hearing before her. He submits that her analysis of a linguistics report provided by Dr Kaveh Ghobadi dated 13 November 2023 (“the Ghobadi Report”) was insufficient. The Ghobadi Report was very critical of the Sprakab Report. The appellant says that Judge Groom unquestionably and irrationally adopted the earlier findings reached by Judges Balloch and Gribble, without conducting his own adequate analysis. That meant she failed to give sufficient reasons for her conclusions, the appellant submits. The Balloch and Gribble decisions are built on the unreliable foundations of the Sprakab Report.
7. The grounds of appeal are therefore as follows:
 - a. Ground 1: the judge failed to consider the expert evidence as a whole, failed to address the positive findings of the Ghobadi Report, and failed to engage with its criticisms of the Sprakab Report;

- b. Ground 2: the judge's analysis of the witness evidence before the First-tier Tribunal was unfair. The judge failed to put her concerns to the witnesses, in particular the concerns at paras 59 and 63 of her decision. In the absence of a presenting officer at the hearing below, this was procedurally unfair.
- c. Ground 3: the judge erred in considering the appellant's *sur place* activities by expecting the appellant to provide evidence of the Iranian authorities' covert surveillance of his demonstrations outside the Iranian embassy, contrary to *WAS (Pakistan) v Secretary of State for the Home Department* [2023] EWCA Civ 894.
- d. Ground 4: the judge failed to consider the (unspecified) applicable country guidance and other case law.

Scope of the grant of permission to appeal

8. Upper Tribunal Judge Keith granted permission in relation to grounds 1 and 3 only. Consistent with *EH (PTA: limited grounds; Cart JR) Bangladesh* [2021] UKUT 0117 (IAC), he directed that the appellant's grounds of appeal to the Upper Tribunal should only stand as the notice of appeal in relation to grounds 1 and 3, permission having been refused on grounds 2 and 4, by directing that the scope of the "error of law" hearing should be limited to grounds 1 and 3 only.
9. Before me, Mr Ahmed seeks to vary Judge Keith's directions as set out above, and sought permission to rely on all four grounds of appeal at the hearing.
10. I respectfully observe that I have some queries as to whether the approach enunciated in *EH* is correct. I am not persuaded that the ability of the Upper Tribunal to give a direction that the grounds of appeal should not stand as the notice of appeal (see rule 22(2)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008) is intended to regulate the scope of an error of law hearing in circumstances when, consistent with rule 22(2)(a), permission to appeal has been refused in relation to certain grounds. I note that *EH* was decided before Parliament enacted the amendments to section 11A of the Tribunals, Courts and Enforcement Act 2007, concerning the finality of decisions of the Upper Tribunal refusing permission to appeal to itself. For present purposes, I will assume that *EH* was correctly decided and that the legislative changes post-dating that decision do not call for a different approach.
11. Unfortunately, the appellant's representatives had not provided advance written notice of this application to either the Upper Tribunal or the Secretary of State. Mr Lawson had understandably prepared for the hearing by reference only to grounds 1 and 3. Very fairly, he said that he did not anticipate any significant difficulties in responding to the application to rely on the additional grounds of appeal, provided he had sufficient time to prepare a response. I therefore permitted Mr Ahmed to apply to vary Judge Keith's directions, directing that he made the application in the form of making substantive submissions, with Mr Lawson having the opportunity to respond in the usual way.
12. For the reasons set out below, I consider that the grounds in relation to which Judge Keith refused permission to appeal lack merit, and I refuse to vary Judge Keith's case management directions to permit the appellant to rely substantively on those grounds.

Factual background

13. The appellant's date of birth was assessed to be in February 1994 following his arrival in the United Kingdom in the summer of 2012. He would have been 18 at the time. His age was assessed by Oxfordshire County Council by a report dated 20 July 2012. The appellant told the assessing social workers that he was from Iraq, and provided other details consistent with that claim. He was later assessed by a Dr Diana Birch, on 30 August 2012. The account he gave to Dr Birch was different. He told Dr Birch that he was from a village in Iran which was on the border with Iraq, but that he was, in fact a citizen of Iran. He maintained his case that he was Kurdish in ethnicity, but contended that he was an Iranian Kurd, rather than an Iraqi Kurd.
14. The appellant claimed asylum shortly after he arrived. The basis of his claim was that he was Iranian, and that his father was a smuggler and had been involved in the Free Life Party of Kurdistan. That led to his home being raided by the Iranian Revolutionary guard and his father being arrested. The appellant was at risk by association. The appellant's uncle arranged for the appellant's departure from Iran when an arrest warrant had been issued against him. The appellant also claims to be at risk of being persecuted upon his return on account of his *sur place* activities campaigning against the Iranian authorities in the United Kingdom.
15. Returning to the appellant's initial claim for asylum, the Secretary of State appears to have been seized of the account the appellant first gave to Oxfordshire County Council about being from Iraq, and took steps to determine the appellant's correct country of nationality. As part of that process, the Secretary of State commissioned a Sprakab report ("the Sprakab Report"), which involved the appellant being interviewed by linguistic experts and analysts. The Sprakab Report was one of the bases that the Secretary of State concluded that the appellant was a citizen of Iraq.
16. The Sprakab Report was dated 27 August 2012. It concluded that there was a "high" degree of certainty that the appellant's linguistic background was Iraq. As to whether his linguistic background was Iran, the report concluded that that was "unlikely". The overall conclusions in relation to the appellant's linguistic background were presented on a gradating scale of five options; very low, low, medium, high, and very high. Accordingly, the conclusion that there was a "high" degree of certainty that the appellant's linguistic background was Iraq is the second highest level of certainty. Similarly, the finding that it was "unlikely" that the appellant's linguistic background was Iran was the second lowest option available to the report's authors. It follows that the positive and negative conclusions reached by the report were neither the highest nor the lowest levels of certainty available to the report's authors.
17. The Sprakab Report said that the appellant spoke in Kurdish Sorani during the assessment. The variety of Sorani spoken by the appellant was not typical of the way in which Sorani was spoken in Iran, the report said. The authors recorded that it sounded as though the appellant had manipulated his speech during the assessment. The appellant's speech resembled the speech of an ethnic Iranian raised in Iraq, the report concluded. It noted that the appellant knew very little Persian (which I understand to mean Farsi), and those words he did know he used in an incorrect manner. His Sorani was assessed as being of a native level. The report assessed the phonology and prosody, morphology and syntax and lexica of the appellant's speech. Those assessments concluded that the appellant's speech and related characteristics were not indicative of him being Iranian Sorani.

The previous decisions of the First-tier Tribunal

18. The first two decisions of the First-tier Tribunal are 25 and 14 pages respectively. In light of the way the appellant now contends that the previous findings of Judge Groom were reached erroneously, it is necessary to summarise the relevant findings reached by those decisions in some depth.

Judge Balloch's decision

19. Judge Balloch explained in her decision (para. 71) that the appellant had originally requested an interpreter in the Kurdish Sorani language, but later requested to give evidence in Farsi. An interpreter qualified to interpret in both languages was booked for the hearing, and in the event the appellant gave evidence primarily in Farsi, but switched to Sorani during part of the cross-examination.
20. Judge Balloch had significant credibility concerns about the appellant. He had given conflicting accounts of his nationality, age and the basis of his claim for asylum to different people at different times. The judge outlined what the appellant had said in his oral evidence at the hearing in considerable detail, and adopted a similar approach in relation to the differing accounts that he had given to Oxfordshire County Council and to Dr Birch.
21. It was against that background that she addressed the Sprakab report (para. 106). At para. 109, having summarised the contents of the report, the judge said:

"I attach some weight to this report but it is not conclusive. The appellant has been able to answer some questions about Iran correctly as he has been able to do in the asylum interview. With regard to the question of language and dialect, it has been considered that the appellant is more likely to be Iraqi than Iranian. Examples have been given to demonstrate the reasons for the conclusions reached. The persons who prepared the report are identifiable and therefore may be held accountable so it is not an anonymous report in that sense. The name and background of the linguistic expert is provided. Analyst 322 was born and lived in Iran, visits there and has revisited as recently as 2011. Analyst 322 analyses Sorani and Farsi. Analyst me21 was born in Iraq, lived there in Kurdish Sorani and Arabic speaking areas, analyses Arabic varieties from Iraq and Syria, Sorani, Kurmanji and Badini and also speaks fluent Persian."

22. At para. 110, the judge said that the appellant's:

"...nationality remains questionable given the conflicting information he has provided regarding living in Iraq or Iran and the content of the Sprakab Report. The matter has not been assisted by the appellant's own inconsistency regarding what language/s he can understand and speak."

23. At para. 112 the judge said:

"The fact that the appellant was able to give his evidence at the hearing in Farsi goes some way to establishing that he may be Iranian. However, I do not find this factor to be any more conclusive than the Sprakab report. He may be able to speak some Farsi without being from Iran. The appellant appears to understand English well, he automatically gave his date of birth in English but was unable to subsequently give it in Farsi. I find that I cannot exclude the possibility that the appellant simply has a facility with languages and has been able to learn some Farsi and English whilst in the UK. The appellant has

not provided a reasonable explanation as to why he has previously denied being able to speak Farsi if he was in fact fairly fluent in it.”

24. At para. 115, the judge referred to the appellant’s case before her that the account in the Oxfordshire age assessment that he was said to have given concerning being from Iraq had, in fact, been fabricated by the age-assessing social workers. In relation to that, the judge said that the:

“...difficulty with assessing the appellant’s evidence is that he has not presented as a reliable witness when giving information about his age or nationality. It is not reasonable to suppose that the appellant’s account which was information provided when he first came to the UK has been simply fabricated by the assessors. The appellant admitted in oral evidence that he had lied during the linguistic assessment about his knowledge of Farsi. He has admitted lying about dates of birth.”

25. Judge Balloch reached her overall conclusion concerning the appellant’s claimed nationality at para. 116:

“...having regard to the conflicting information, I do not find that the appellant has satisfactorily established that he is Iranian. I do not find that a conclusive finding can be made in respect of nationality. The appellant has not provided any reasonable explanation for giving information about being from Iraq or why he has tried to conceal knowledge of Farsi throughout the process, including during the linguistic interview which was being undertaken to try and assist in determining his nationality.”

26. At para. 117, the judge said “I do not therefore make any finding that the appellant is an Iranian national.”

27. The judge continued (para. 119) to underline her credibility concerns about the appellant; she did not find him to be a reliable witness. She highlighted a number of other inconsistencies in the appellant’s evidence, and dismissed the appeal.

Judge Gribble’s decision

28. In August 2019, the appellant made further submissions which were refused as a fresh claim.

29. Judge Gribble heard the appeal. The appellant relied on the evidence of Mr W and Mr B, citizens of Iran whose evidence was that, so far as they were able to tell, the appellant was a citizen of Iran. Mr W claimed to have known the appellant in Iran and to have reconnected with him by chance in this country. The appellant also relied on a report from a Dr F. Ghaderi, described as a British/Kurdish academic, in support of his claim to be Iranian.

30. Judge Gribble took as her starting point the decision of Judge Balloch (paras 6, 41). She summarised the decision then under challenge (para. 10), noting that the decision had referred to Judge Balloch’s findings that the appellant was not credible, and that Judge Balloch had made no findings about the appellant’s nationality.

31. In relation to the Sprakab Report, Judge Gribble said, at paras 43 and 44;

“43. I will firstly comment on the Sprakab report from 2012. I bear in mind that on any reading of his age the appellant was around 18 when it was undertaken. It notes the Sorani spoken is not typical of the Sorani spoken in Iran although some words are typical of Iranian

Sorani. It notes 'it sounds as if he manipulated his speech since the use of the words did not sound natural'. His speech sounded 'like the speech of an ethnic Iranian raised in Iraq'. The appellant knew very little Persian and used the few words he said he knew incorrectly. The conclusion was it was unlikely he was from Iran, and there was a high degree of certainty he was from Iraq.

44. The Judge found, and the appellant accepted, that he had lied about his knowledge of Farsi to the language assessors; giving evidence in Farsi in 2013. The Judge was clear that this knowledge of Farsi could have gone some way towards showing the appellant was from Iran. However, it was no more conclusive that the Sprakab report which pointed the other way. No conclusive finding was made on nationality."

32. Judge Gribble had a number of concerns about Dr Ghaderi's report, who, while an expert in the region, was not an expert linguist, and had no linguistic qualifications (para. 46). He had not seen the Sprakab report. His methodology was unclear, and basic details – such as the length of his interview with the appellant, how it was conducted, what questions were asked – were not given. The judge also noted that the appellant had lied during the Sprakab assessment. Her global conclusions concerning Dr Ghaderi's report were at para. 51:

"Overall therefore Dr Ghaderi provides an equivocal opinion based on an indeterminate conversation with an appellant who has been found not to be credible at all. The weight I can give his report on that basis is limited and I attach little weight to it."

33. At para. 52, Judge Gribble set out a number of concerns arising from the evidence of Mr W, and placed very little weight on it. The evidence of Mr B (whom the appellant did not know in Iran) added little. That was because as part of his claim to be Iranian, the appellant had immersed himself in the Iranian diaspora in the United Kingdom. It was hardly surprising that he had made friends with an Iranian who now think that he is also Iranian. The appellant had made no efforts to source evidence from those he claimed were his family and friends in Iran, despite the ability to do so. He claimed to be enmeshed within the protest movement against the Iranian authorities based in the United Kingdom; it was "simply inconceivable" that he could not have sought the assistance of someone he met in that context to assist with the location of his documents in Iran.
34. As to the appellant's claim never to have told Oxfordshire County Council that he was in fact from Iraq, the judge noted that Judge Balloch had previously found that that was what he had said, and added that, "like Judge Balloch I consider it more likely he did say he was from Iraq" (para. 55).
35. The judge concluded at para. 59 that there was no "satisfactory evidence" to allow her to conclude that the appellant was from Iran. She found (para. 60) that the appellant could obtain his identity documents from his family in Iraq, noting that Judge Balloch had rejected the appellant's account not to be in contact with his family. Judge Gribble concluded that the reason the appellant had not provided any documents from his family was (para. 61) because they would demonstrate that he was from Iraq, rather than Iran. He had a CSID card in Iraq, she found, and also an Iraqi nationality certificate. Those documents could be sent to him from Iraq by the family he has there, and could then be used by him upon his return. As a Kurd, the appellant would not need sponsorship to enter the IKR, and he could return to his former family home to join his parents and siblings in order to continue his life there.

36. It follows that Judge Gribble’s ultimate conclusion was that the appellant was a citizen of Iraq; his nationality and identity documents remained with his family in the country. The reason he had not sought to rely on them in the proceedings before her was because to do so would have entailed revealing his true nationality, which was wholly inconsistent with his fabricated case to be a citizen of Iran.
37. The judge dismissed the appeal on asylum grounds and also on human rights grounds.

The law

38. The First-tier Tribunal is a specialist tribunal. In *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22, [2022] 1 WLR 3784, [2023] 1 All ER 365 Lord Hamblen said, at para. 72:

“It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular:

(i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently - see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] AC 678 per Baroness Hale of Richmond at para 30.

(ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49; [2011] 2 All ER 65 at para 45 per Sir John Dyson.

(iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out - see *R (Jones) v First-tier Tribunal (Social Entitlement Chamber)* [2013] UKSC 19; [2013] 2 AC 48 at para 25 per Lord Hope.”

39. In *Perry v Raleys Solicitors* [2019] UKSC 5 at para. 52, Lady Hale PSC held that the constraints to which appellate judges are subject in relation to reviewing first instance judges’ findings of fact may be summarised as:

“...requiring a conclusion either that there was no evidence to support a challenged finding of fact, or that the trial judge's finding was one that no reasonable judge could have reached.”

40. *Devaseelan v Secretary of State for the Home Department* [2002] UKAIT 702 held that an earlier judicial decision is the “starting point” for the subsequent judicial fact-finder. The “starting point” principle is not a legal straitjacket. It permits subsequent judicial fact-finders to depart from the earlier judicial decision on a principled and properly-reasoned basis. See *R (on the application of MW) v Secretary of State for the Home Department (Fast track appeal: Devaseelan guidelines)* [2019] UKUT 411 (IAC).

Ground 1: judge’s assessment of the expert evidence open to her

41. This ground challenges the judge's assessment of the Ghobadi Report, contending that he failed to take the full report into consideration. I have summarised the appellant's submissions on this issue at para. 6, above.
42. Judge Groom's analysis of this issue begins at para. 47 of her decision. She directed herself that, pursuant to *ASA (Bajuni: correct approach; Sprakab reports) Somalia CG* [2022] UKUT 222 (IAC) nationality cannot be derived from linguistic analysis alone. She noted that neither Judge Balloch nor Judge Gribble made a positive finding that the appellant is a citizen of Iran (para. 48), and that neither judge found the appellant to be credible. She accepted that Dr Ghobadi was a suitably qualified expert (para. 49) and proceeded to summarise the key conclusions of his report.
43. Dr Ghobadi had opined that it was not possible objectively to discern the appellant's nationality based on his Kurdish dialect due to the similarities between the appellant's dialect of Sorani that is spoken in both Iran and Iraq. Dr Ghobadi concluded that it was "impossible to reach a decision about his nationality". On that basis, the judge said, at paras 55 and 56:
- "55. Given the conclusions made by Dr Ghobadi, I find that on the basis of this assessment, the findings are not sufficient to allow me to depart from the earlier findings of Judges Balloch and Gribble with regards to the Appellant's nationality.
56. I have therefore gone on to consider carefully the written and oral evidence from the two witnesses, MI and AA."
44. When granting permission to appeal, Judge Keith made the following observation, to which I have added emphasis:
- "Ground (1) argues that in dismissing his protection claim based on not accepting the appellant's claimed nationality as Iranian, rather than Iraqi, because the expert report relied on by the appellant was not conclusive, the Judge ignored the significant criticism by the expert of the previous Sprakab reports which had formed one of the evidential bases for the previous Tribunal decisions against the appellant. It is at least arguable that the Judge erred, in the context that the respondent has not only put the appellant to proof but has positively asserted him to be an Iraqi national - see the respondent's guidance, 'Nationality: disputed, unknown and other cases', version 6, page 14."**
45. The appellant had not relied on the point raised by Judge Keith in the grounds of appeal. It was adopted by Mr Ahmed at the hearing without objection from Mr Lawson.
46. Determination of this ground, as so reformulated, thus boils down to the following issues:
- a. Did the judge's findings take into account all relevant factors raised by Dr Ghobadi's report?
 - b. Should the judge have departed from the earlier decisions of the First-tier Tribunal on account of Dr Ghobadi's report should?
 - c. Did the judge err by reference to the principles contained in the Secretary of State's guidance, '*Nationality: disputed, unknown and other cases*', version 6, at page 14? ("*Disputed Nationality Guidance*").

47. In relation to issue (a), I consider that the judge took all relevant factors in Dr Ghobadi's report into consideration. There are two facets to this complaint. The first is that the judge failed to address the morphological, lexicological and phonological analysis contained in Dr Ghobadi's report. The second is that the judge overlooked the report's criticisms of the Sprakab Report, upon which the earlier findings of the First-tier Tribunal were based, thereby calling those findings into question.
48. There is no merit to the first limb of this issue. The judge accurately summarised Dr Ghobadi's report and did not overlook its morphological, lexicological and phonological linguistic analysis. Morphology relates to word formation, lexicology relates to the choice of words and phonology relates to how words are spoken or pronounced. See para. 19 of *ASA (Bajuni: correct approach; Sprakab reports) Somalia CG*.
49. Dr Ghobadi analysed the appellant's phonology at para. 16. He concluded that the appellant's sub- dialect was consistent with the use of Mukir in both Iran and Iraq. Accordingly, the phonological analysis in Dr Ghobadi's report was neutral, as recorded by the judge.
50. As to the appellant's morphology and lexicon, Dr Ghobari said that his speech displayed grammatical features shared in by the Mukri sub-dialect in use in Iran and Iraq (paras 17 to 22). Again, this aspect of the report was neutral because it concluded that the appellant's linguistic presentation was consistent with either Iran or Iraq.
51. Dr Ghobari also opined that the appellant displayed lexical features of his dialect, Mukri, as spoken in both Iran and Iraq, albeit with more lexical consistency with Iranian Kurdistan. He wrote that the appellant:
- "...predominantly displayed lexical features used in Iranian Kurdistan. However, he also used words which exclusively exists [sic] in the speech of Iraqi Kurds" (para. 31).
52. Dr Ghobadi explained that he sought the assistance of Dr Ergin Öpengin, a Turkish academic working at the University of Cambridge. Dr Öpengin holds a PhD in general linguistics. He teaches a course on Kurdish linguistics and conducts research on Kurdish dialects at the University of Cambridge. His opinion was, in summary, that since the Mukri dialect of Sorani spoken by this appellant was in use in both Iran and Iraq, with identical grammatical and phonological features, it was "impossible" to determine the appellant's nationality based on his dialect. He added that the "lexicon cannot be relied upon to reach a conclusive decision" because the lexicon used by both Iranian and Iraqi Kurds may be found in the appellant's speech. It was difficult to know, opined Dr Öpengin, whether the appellant's use of a mixed lexical feature in his speech was an account of socialising with Iraqi Kurds and borrowing words learned in that context. The report concluded at para. 33 in the following terms:
- "In the light of the above, it is not possible to objectively discern the Appellant's nationality based on his Kurdish dialect due to the very high similarity between the Mukri sub-dialect spoken in Iran and Iraq in terms of phonology and grammar. The existence of lexicon exclusive to Iranian and Iraqi Kurdistan in the Appellant's speech, though he predominantly used words specific to Iranian Kurds, and given that he has allegedly been socializing with Iraqi Kurds, makes it impossible to reach a decision about his nationality."

53. In light of the above analysis, I conclude that Judge Groom did not fall into error on the basis of Dr Ghobadi's analysis of the appellant's morphology, lexicology or phonology. Dr Ghobadi's analysis of those factors did not tell one way or another. Judge Groom summarised those findings. She set some of the findings out in her decision. She correctly directed herself concerning the approach to be taken concerning Sprakab reports (see para. 47). This aspect of the judge's findings does not get remotely close to the *Perry v Raleys* threshold for impugning a finding of fact reached by a trial judge.
54. The second limb to this facet of the appellant's appeal is that the judge failed to take into account Dr Ghobadi's highly critical analysis of the Sprakab report, as summarised at point (b), above. At para. 23, Dr Ghobadi stated that "the Sprakab's use of Kurdish is problematic, resulting in a poor analysis." The basis for this criticism may be found at paras 24 and 25 of Dr Ghobadi's report. In summary, the Sprakab Report's examples of phonology and prosody (patterns of stress and intonation) were said to be related to lexical variation, as opposed to being systematic dialect phonology distinctions (para. 24). The Sprakab Report's analysis of the appellant's morphology and syntax were said to be related to lexical variation rather than grammatical traits, and the report failed to elaborate on the grammatical features of the dialect in question, and the examples that it did give were said to be incorrect. See page 11 of Dr Ghobadi's report.
55. As I understand the appellant's submissions in reliance on this part of Dr Ghobadi's report, his case is that, because the Sprakab report was flawed for the reasons given by Dr Ghobadi, the conclusions reached by Judges Balloch and Gribble in reliance upon the report were unsafe. It was therefore an error of law for the judge to take those earlier judicial findings about the appellant's nationality as her starting point, or by otherwise failing to depart from them, for by doing so she compounded the earlier judges' erroneous reliance on the now impugned Sprakab report. There is no criticism of the findings reached by Judges Balloch and Gribble on the basis of the material before them, but rather the thrust of this complaint is that the evidence subsequent to those findings means that there are good reasons to depart from them.
56. This submission is without merit. Properly understood, neither Judge Balloch nor Judge Gribble placed any degree of significant reliance on the Sprakab Report. Judge Groom did not either.
57. The appellant had accepted in evidence before Judge Balloch that he had lied during the Sprakab assessment. He had also purported not to be able to speak Farsi, despite it being his preferred language. At para. 109, Judge Balloch placed "some" weight on the Sprakab Report, but did not treat it as conclusive. She reached findings in the round based on the appellant's witnesses and his own evidence, taken in the context of the evolving narrative the appellant had given about his age and nationality. At its highest, the Sprakab Report was given neutral weight in Judge Balloch's decision, as part of findings reached concerning the appellant's overall credibility. If any further clarity be needed, that is confirmed by the fact that Judge Balloch did not make a positive finding that the appellant was from Iraq, despite the "high" degree of certainty with which the Sprakab Report concluded that his linguistic presentation was Iraqi.
58. Turning to Judge Gribble's decision, she noted at para. 44 precisely the neutral role that the Sprakab Report had performed in Judge Balloch's earlier assessment. At para. 45 she described the fact that no conclusive finding had been made concerning the appellant's claimed nationality as the "primary finding" from which to consider departing. She did *not* treat Judge Balloch as

having found that the appellant was Iranian. The only prior finding on that issue to take a starting point was a finding that there was no finding. Against that background, Judge Gribble considered the new evidence; the report of Dr Ghaderi, evidence from a Mr W, a friend of the appellant, and the appellant's own evidence. Judge Gribble found that the evidence from Mr W and the appellant lacked weight. I have already summarised the essential reasons given by Judge Gribble.

59. Drawing this analysis together, properly understood, the decision of Judge Gribble was based not on the Sprakab report in isolation, but on the entirety of the evidence in the case, in the round. The only finding reached by Judge Groom which may be traced back to the Sprakab report was a finding of neutrality, or a non-finding, relating to the appellant's nationality. Judge Groom's summary and analysis of the previous decisions was in rational terms that were open to her.
60. It follows that Judge Groom's analysis did not involve an erroneous reliance on the Sprakab Report as traced back through the earlier decisions of the First-tier Tribunal, or the failure to understand Dr Ghobadi's criticism of the report properly. Rather the judge faithfully set out Dr Ghobadi's conclusions that the appellant's linguistic presentation was not such that it was possible accurately to conclude whether he was from Iran or Iraq (see para. 54), and reached her own findings of fact on the basis of the remaining evidence before her. That is the paradigm function of a first instance trial judge. None of the criteria for this tribunal to interfere with those findings, such as those summarised in *HA (Iraq)* and *Perry v Raleys Solicitors*, are met.
61. That analysis is dispositive of issue (b) summarised above. Dr Ghobadi's report did not provide a basis to depart from the earlier decisions of the First-tier Tribunal.
62. In relation to the final limb of this ground, summarised at point (c), above, I do not consider that the judge reversed the burden of proof. The extract from the disputed nationality guidance referred to by Judge Keith reads as follows:

“Disputed nationality and other cases

If the Home Office considers the claimant to be a specific nationality other than that claimed, the burden of proof rests with the Home Office to prove the assertion according to the balance of probabilities standard (this is a higher threshold than the lower standard of proof – reasonable likelihood – mentioned above). The test is met if it is more likely than not that the claimant holds the asserted nationality.”

63. In my judgment, there is no merit to this submission. The judge did not reverse the burden of proof. The first judicial finding that the appellant was a citizen of Iraq was reached by Judge Gribble, having heard evidence from the appellant and two witnesses. There was ample evidence before Judge Gribble to justify her conclusion that the appellant was from Iraq without placing erroneous reliance on the Sprakab report. The first suggestion that the appellant was a citizen of Iraq came from the appellant himself. He sought to deny that he had ever given an account on that basis to the assessing social workers with Oxfordshire County Council, but Judge Gribble reached a finding of fact (para. 55) that he had given such an account to them. She reached that finding to the balance of probabilities standard. As I have set out above, Judge Gribble did not take as her starting point the assumption that Judge Balloch had reached positive findings that the appellant was from Iraq. The starting point from Judge Balloch's decision which Judge Gribble adopted was that Judge Balloch had not reached a positive finding

of fact that the appellant was from Iraq or Iran. The Sprakab Report's conclusions played a minimal role in Judge Gribble's analysis. It was nevertheless a document of some significance in the sense that it confirmed that the appellant had lied to the assessors about his linguistic heritage and background, just as he had to Dr Birch who conducted the second age assessment.

64. Returning, therefore, to the observation made by Judge Keith when granting permission to appeal, I do not consider that the judge reversed the burden of proof, or otherwise acted inconsistently with the principle summarised in the Secretary of State's guidance. I have had the benefit of Mr Lawson's submissions on this issue which, of course, Judge Keith did not have when he took a decision on the papers to grant permission to appeal.
65. There is therefore no merit to ground 1.

Ground 2

66. The appellant does not enjoy permission to appeal in relation to this ground. I am asked to vary the direction that was given by Judge Keith in the following terms, so as to enable the appellant to argue this ground, and ground 4. When granting permission to appeal, Judge Keith directed:
- "The scope of the 'error of law' hearing is limited to grounds (1) and (3), as numbered in this grant of permission, only."
67. I decline to amend this direction. In relation to ground 2, I consider that it is not arguable that the judge engaged in a procedurally unfair analysis of the witness evidence in these proceedings on the basis of the material before me.
68. By way of a preliminary observation, any proposed ground of appeal challenging the conduct of the judge at the hearing needs to establish the conduct of the judge at the hearing in a form which demonstrates what actually took place. As Judge Keith observed when refusing permission to appeal, this ground is essentially an allegation of bias against the judge. That is a serious allegation to make. It is not an allegation that should be made without evidential foundation.
69. In these proceedings, there is no evidence as to what took place at the hearing before Judge Groom. There is no witness statement from anybody present at the hearing outlining the questions that the judge put to the appellant and the witnesses, and what the responses were. There has been no application for a direction that the recording of the hearing be made available. I am not aware that there has been an application for a transcript. Moreover, Mr Ahmed, who appeared before both Judge Groom and this tribunal, told me that he did not have his notes of the hearing before the First-tier Tribunal, and was unable to provide any assistance as to what, in fact, took place, nor what the questions were that the judge actually put to the appellant (see para. 35; Judge Groom accepted that she did ask some questions of the witnesses). Mr Ahmed was unable to assist me with the details of the questions asked by the judge. It is entirely possible that the clarificatory questions that she asked were directly on point, and addressed the very matters which Mr Ahmed now submits that she failed to ventilate.
70. It is difficult to see how it was appropriate for those representing the appellant even to apply for permission to appeal on this basis, still less for Mr Ahmed to seek to renew this ground in this manner, in these circumstances. Mr Ahmed recognised that he could not advance a ground of appeal based on the judge's conduct of the hearing in the absence of *any* evidence pertaining to the judge's

alleged conduct. He sought to reformulate the ground as an inconsistency-based criticism

71. Returning to this ground as pleaded, I agree entirely with the reasons given by Judge Keith for refusing permission to appeal, which I adopt in their entirety:

“...the Judge set out fully and fairly at §§56 to 63 his criticisms of the witnesses who claimed to have known the appellant in Iran. The Judge did not arguably adopt a closed mind (effectively a bias allegation) and it was not for the Judge to ask more detailed questions in the absence of a presenting officer, see the guidelines in *MNM (Surendran guidelines for Adjudicators) Kenya* * [2000] UKIAT 00005, in particular guidelines (6) and (7). It was always clear that the respondent disputed the appellant's claimed credibility and nationality and the Judge was entitled to consider contradictory and vague answers, without the need to probe further.”

72. It follows that if the judge had *not* put questions to the witnesses, or otherwise aired her concerns, there would have been no unfairness. A judge is not required to give a running commentary of the approach he or she is likely to take when receiving live evidence from a witness. As Judge Keith noted, it was always clear that the respondent rejected the core of the appellant's claim to be from Iran, and the judge was unarguably entitled to reject the witnesses' evidence with further elucidation in the course of the hearing. On the materials before me, there was no unfairness (and, even taking Mr Ahmed's submissions at their highest, there would not have been).

73. Mr Ahmed's attempt to reformulate this ground into a consistency of reasons, and therefore sufficiency of reasons-based challenge, is misplaced. Such a challenge has not been pleaded. There is no arguable inconsistency in Judge Groom's decision in any event. I decline to permit this submission to be entertained.

Ground 3

74. There is no merit to this ground. While *WAS (Pakistan)* supports the general proposition that an appellant should not be expected to provide evidence of a potentially persecutory state's covert intelligence gathering capabilities, this appellant will not, on any view, be at risk from the Iranian authorities. That is because he was demonstrating outside the Iranian Embassy, not the Embassy of Iraq. He will not be returned to Iran. I have been taken to no materials demonstrating that a returnee to the IKR in Iraq is at a real risk of serious harm or persecution under the Refugee Convention on account of demonstrating outside the *Iranian* embassy in the UK.

Ground 4

75. Judge Keith refused permission to appeal in relation to this ground also, on the following basis:

“It refers to the Judge's failure to recite unspecified country evidence, without more. That is not the proper basis of an error of law challenge. I have not been cross-referred to any other specific evidence in the grounds.”

76. At the hearing before me, Mr Ahmed explained that this ground was a reference to the Iraq country guidance insofar as it relates to the documentation of returnees, namely *SMO & KSP (Civil status documentation; article 15) Iraq CG*

[2022] UKUT 110 (IAC). There were no findings on the appellant's ability to secure a CSID or INID card, he submitted. Assuming that the judge's analysis of the appellant's status as a citizen of Iraq was correct, it was nevertheless incumbent upon the judge to apply the country guidance pertaining to return to Iraq he submitted.

77. There is no merit to this ground. I agree with Judge Keith that, as pleaded, this ground is insufficient. In any event, as Mr Lawson submitted, Judge Gribble dealt with the appellant's documentation in Iraq at paras 60 and 61 of her decision. Those findings have not been challenged. This ground simply does not engage with those findings, which are wholly inconsistent with this ground as pleaded, and as renewed. Those findings were the starting point for Judge Groom's analysis. To the extent that this ground pertains to the appellant's claimed inability to secure documentation upon his theoretical return to Iraq, Judge Gribble's findings unarguably dispose of this ground of appeal. I therefore decline to vary Judge Keith's direction concerning the extent to which the grounds of appeal stand as the notice of appeal.

Conclusion

78. I refuse to amend Judge Keith's directions limiting the scope of the hearing before me to grounds 1 and 3. The appeal is dismissed on those grounds. I do not permit the appellant to vary those directions to permit grounds 2 and 4 to be argued. Had I done so, I would have dismissed the appeal on those grounds also.
79. The appeal is dismissed.

Notice of Decision

I decline to vary Judge Keith's directions that the scope of the error of law hearing must be limited to grounds 1 and 3.

The decision of Judge Groom did not involve the making of an error of law.

This appeal is dismissed.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 July 2024