



IAC-PE-AW-V1

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

Appeal Number: AA/03748/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 17th August 2015**

**Decision & Reasons Promulgated
On 11th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR MOSTAFA OMAR IBRAHIM ALBOURINI
(ANONYMITY NOT RETAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown of Counsel

For the Respondent: Miss Johnstone

DECISION AND REASONS

Introduction

1. The Appellant born on 1st January 1995 claimed to be a Palestinian from Gaza. The Appellant was represented by Mr Brown of Counsel. The Respondent was represented by Miss Johnstone a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had arrived in the United Kingdom in June 2011 and claimed asylum the next month. His asylum claim had been refused by the Respondent on 1st March 2012 but the Appellant was granted discretionary leave to remain until 1st June 2012 given his age. The Appellant then made a fresh asylum claim in May 2012 which was refused by the Respondent on 21st May 2014. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Ransley sitting at Manchester on 29th January 2015. The judge had refused the Appellant's appeal on all grounds.
3. Application for permission to appeal was lodged in February 2015 and permission to appeal was granted by First-tier Tribunal Judge Osborne on 4th March 2015. Essentially permission to appeal was granted on one basis that being it was arguable that the judge had made no reference to the Appellant's birth certificate and that failure may have constituted an arguable error of law. Directions were issued directing the Upper Tribunal to first consider whether an error of law had been made by the First-tier Tribunal and the matter comes before me in accordance with those Directions.

Submissions on Behalf of the Appellant

4. Mr Brown submitted that the birth certificate was central to the place of birth of the Appellant and that findings needed to be made by the judge in respect of that document.

Submissions on Behalf of the Respondent

5. Miss Johnstone relied upon the Respondent's letter opposing the application to appeal and pointed to the findings made by the judge in respect of other matters and also her reference to **Tanveer Ahmed**. It was also noted that what was said to be the original was only produced at the hearing.
6. At the conclusion of the hearing I reserved my decision to consider the documents and submissions raised. I now provide that decision with my reasons.

Decision and Reasons

7. There were a number of issues raised that needed to be considered by the judge. Firstly there was the disputed nationality of the Appellant largely focused on competing language analysis reports produced by the Appellant and the Respondent. Secondly there was the credibility or otherwise of the Appellant's account of events allegedly having taken place in Gaza. Thirdly there was an issue raised under Article 1D of the Refugee Convention relating to whether or not the Appellant had received protection or assistance from the UNRWA. Finally a significant part of the Appellant's case was based on his claimed Article 8 rights because of a relationship formed whilst in the UK.

8. A photocopy of the Appellant's alleged birth certificate together with a translation appeared at pages 12 to 13 of the Appellant's bundle. On the day of hearing only, the Appellant's representative presented what was said to be an original birth certificate. On the face of the translation of the birth certificate within the Appellant's bundle that birth certificate had been produced in 2004 and accordingly would have been in theory available to the Appellant from that date. The Appellant entered the United Kingdom in 2011. The only reference given by the Appellant to a birth certificate at that point was that it was allegedly with his brother but he did not know the whereabouts of his brother. In his witness statement produced within the Appellant's bundle he simply said at paragraph 6 that he had his birth certificate. However at paragraphs 7 and 9 of that same witness statement he had referred to both his brothers as being killed in Gaza and provided no other clue or evidence in respect of that birth certificate.
9. The judge made clear and detailed findings upon the central issue, whether or not the Appellant was from Gaza as claimed and whether or not events that he claimed had taken place within Gaza were true or not. The judge maintained a typed Record of Proceedings consistent with the summary and matters raised within the decision. That demonstrates that both representatives dealt exclusively with the competing views within the expert language reports and issues of credibility in respect to the Appellant's account of events in Gaza and the issue of Article 1D of the Geneva Convention.
10. The judge gave clear reasons why she found the language analysis produced by Sprakaab to be preferable to that produced by the Appellant's expert on language analysis, at paragraphs 27 to 42 of her decision. Indeed the judge had noted that the Appellant's expert had produced "a heavily qualified conclusion" (paragraph 41) and had found, as she was entitled to so do, that was material and that for reasons given the language analysis produced by the Sprakaab Reports were far more reliable in terms of conclusions reached.
11. Separate to the issue of language analysis she had considered the credibility of the Appellant's account at paragraphs 43 to 49. She noted that even the Appellant's Counsel conceded that he had been vague and inconsistent in his evidence (paragraph 46). She took the trouble of considering the reasons put forward by Counsel as to why the Appellant may have been vague and inconsistent and rejected those suggestions for reasons given at paragraphs 46 and 47.
12. In respect of both central strands of evidence relating to the question of the Appellant's nationality and credibility, namely language and the internal credibility of his own account the judge had found for clear and proper reasons given very persuasive evidence to find against the Appellant.

13. In respect of the birth certificate and translation, the judge had noted that that was within the Appellant's bundle and the original was handed in at the hearing (paragraph 15). She was clearly aware of the existence of the birth certificate. That document played no part within the hearing other than being referenced in Counsel's closing submissions.
14. The judge had specifically stated at paragraph 13:

“The position regarding documents is that it is for the Appellant to show that any document on which he seeks to rely is reliable. I have to look at the documents as a whole and assess it in the light of the rest of the evidence before me (**Tanveer Ahmed**)”.
15. That was a correct assertion of the law. She did not thereafter refer to the birth certificate within the decision. It is difficult to know what she could say of any value. She had acknowledged she had the documents. She had made a clear assessment of credibility based on all the evidence before her, documentary and oral, including competing expert reports. She had made adverse findings based on the main strands of evidence produced and argued within the hearing. In terms of the birth certificate the Appellant had produced no evidence to support the veracity of that birth certificate. His witness statement gave no clue as to the circumstances in which he produced that certificate, not unimportant given that in his interview record he had asserted that that certificate had been held by his brother whose whereabouts were unknown but within his witness statement had referred to his brother having been presumed killed in Gaza. The alleged original was produced as late as the day of hearing and was not supported by any expert report to confirm its veracity or otherwise and there was no adjournment request in that respect. That is all set against the background of the Appellant having been in the UK since 2011 and there having been previous adjournments for the obtaining of other expert reports. It is highly unlikely the judge had any specific expertise on Palestinian birth certificates even if it had been deemed appropriate for her to use such expertise. In summary the Appellant had failed to show that that document was reliable when assessed in the round against the highly unreliable evidence as a whole and had even failed to produce any evidence as to how he had obtained such certificate set against the earlier background referred to above.
16. Whilst the judge may have made a comment in respect of that birth certificate within her decision against all that background all that the judge could have realistically said was that either in assessing the evidence in the round she found that document to be reliable or unreliable. The judge was clearly aware of the birth certificate and her decision is sufficiently careful and detailed that it is entirely clear that had she found that birth certificate to be of sufficient reliability to overcome the wholly unreliable evidence emanating from all other sources then that would have been said. The absence of such comment merely demonstrates that the judge had considered the birth certificate within the terms set out by her in paragraph 3 of the decision. That is not only a

proper inference but it is in light of the evidence and the circumstances generally, extremely difficult to reach any other inference or conclusion.

17. Whilst as a Counsel of perfection it may have been preferable for the judge to have made some passing comment the absence of such does not disclose a material error of law in that it could not be said when reading the decision as a whole, and in particular paragraph 13, the judge could possibly have arrived at any other conclusion.
18. For the sake of completeness the judge dealt with the issue under Article 1D of the Geneva Convention and assertions raised under Article 8 of the ECHR in a proper manner and reached conclusions that were entirely open to her on the evidence available.

Decision

19. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.
20. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Lever