Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08856/2014

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 27 May 2015	**On 10 June 2015**
Prepared on 1 June 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

Z. M.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Soltani, Solicitor, Iris Law Firm
For the Respondent: Ms Rackstraw, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant says that he is a citizen of Syria, born on 19 February 1996. He claimed to have entered the United Kingdom illegally in August 2011, and applied for a grant of leave to remain on the basis of his Article 8 rights on 15 February 2012. That application was refused without an in country right of appeal on 3 July 2013.
2. On 1 July 2014 the Appellant claimed asylum. The Respondent refused the asylum claim on 13 October 2014 and in consequence she made a decision of the same date to remove him from the UK as one who had entered illegally. Since the Respondent believed the

Appellant to be in truth a citizen of Iraq she proposed to remove him either to Syria or Iraq.

3. An appeal against that removal decision was heard and dismissed by First Tier Tribunal Judge Duff in a Decision promulgated on 11 February 2015. The Judge was not satisfied that the Appellant was in truth a citizen of Syria as he claimed to be. Since the Appellant did not assert that he faced a real risk of harm in the KAZ of Iraq his appeal was dismissed.

4. The Appellant applied to the First Tier Tribunal for permission to appeal. Permission was granted by Judge Simpson on 6 March 2015 on all of the grounds advanced.

5. The Respondent filed a Rule 24 Notice on 19 March 2015. She argued that the grounds were misconceived, and that the Judge was entitled to find on the evidence before him that the Appellant was not Syrian as he claimed to be, and that those findings were adequately reasoned.

6. Thus the matter comes before me.

The Appellant's father

7. By the date of the hearing, in the light of the DNA test evidence that the Appellant had by then obtained, it was no longer disputed that the Appellant was the son of M.I.

8. M.I. had applied for asylum in the UK on 26 November 2004, claiming to have entered the UK illegally the previous day, and to be a citizen of Syria.

9. In his witness statement made in support of his asylum claim M.I. named his wife and five children, and gave the years of their birth [J1-]. Those details were repeated in his SEF, which he completed on 8 December 2004 [K1-]. Thus M.I. declared that the Appellant was born in 1992.

10. On 14 January 2005 M.I.'s asylum claim was refused, when his account of events in his country of origin was rejected as untrue by the Respondent, and thus a decision was made to remove him to Syria. The Respondent did not however specifically challenge M.I.'s claim to be a Syrian citizen.

11. M.I.'s appeal was heard and dismissed by the Tribunal in a Determination promulgated on 7 April 2005. In the course of his appeal he adopted, and confirmed as true his witness statement and SEF. Again his account of events in his country of origin was rejected as untrue [I4-]. There was no specific challenge raised before the Tribunal as to either M.I.'s identity, or, whether M.I. was a Syrian national, and the Determination is clearly written on that basis.

12. Despite the exhaustion of his appeal rights, the Respondent appears to have taken no step to remove M.I. from the UK. Instead the Respondent granted M.I. indefinite leave to remain in the UK under the "legacy programme" on 19 April 2010 [H3].

13. M.I. subsequently applied to the Respondent for a travel document which was issued to him in February 2013 on an exceptional basis in order that he might travel to a country with a functioning Syrian Embassy, and thus obtain a Syrian passport [H1]. The document was valid for 12 months. It is clear that M.I. used that travel document to travel from the UK, to Iraq on at least one occasion with immigration stamps recording that use. He does not admit to using it for the purpose for which it had been issued, because he does not admit to having sought, or obtained a Syrian passport.

14. M.I. applied to the Respondent again in early 2014 for a further travel document. In support of that he produced documentation showing that he had received an implantable cardiverter/defibrillator at the Freeman Hospital [L4/5]. The basis of his application was that he urgently needed to travel to Iraq to care for and visit his wife who was ill in hospital. He also claimed to have two children who were said to be staying with their mother at the Domiz refugee camp near Dohuk in the KAZ [L4]. Thus whatever cardiac difficulties M.I. had previously suffered he considered himself fit to travel to the KAZ in early 2014.

15. The Respondent initially refused to issue a further travel document on 19 March 2014 [L1]. The application must however have been renewed, and one was issued to him on 23 May 2014 on an exceptional basis in order that he might travel to a country with a functioning Syrian Embassy, and thus obtain a Syrian passport [H1]. The document was valid for 12 months. Again he used that travel document to travel from the UK, to Iraq, but once again he does not claim to have used it to obtain a Syrian passport.

<u>The Directions issued by the Tribunal</u>

16. The Tribunal identified the need for clarity over the issues that needed to be determined in the course of the appeal, and thus issued Directions on 15 January 2015 requiring the Respondent to set out in writing her position on the Appellant’s paternity, and the nationality of M.I.

17. The Respondent responded on 16 January 2015 formally accepting that M.I. was the father of the Appellant. Whilst she accepted that M.I. had claimed to be a Syrian national, and that this had not previously been specifically challenged, she noted the evidence that was now available that showed that both he and the Appellant were in truth Iraqi, and not Syrian. That evidence included the linguistic analysis that showed he spoke a dialect from the KAZ rather than from Syria, and the answers he had given at interview that showed he knew very little about life in Syria. She formally disputed the date of birth that the Appellant had provided, and did not accept that the document he relied upon as his Syrian birth certificate was reliable. Thus she formally disputed his claim to be a Syrian.

18. In the light of this statement of position on 16 January 2015, I am satisfied that neither the Appellant nor his representatives could

have been under any remaining illusion as to the nature of the dispute that was central to the appeal.

19. Notwithstanding this it is clear that no evidence was produced to the Tribunal by M.I. to address either the inconsistency between the date of birth that he had given for the Appellant, and that which the Appellant had claimed, or, the evidence that pointed to the Appellant having grown up in the KAZ. Although the position at the CMR hearing was that the Appellant's father and friends would give evidence at the appeal to address these issues they did not do so. There was no further written evidence from M.I., and he did not attend the hearing of the appeal. Nor was evidence produced to explain how if M.I. was fit enough to travel from the UK to the KAZ, he was unable to offer evidence in support of the Appellant's appeal.

20. The Appellant sought to explain M.I.'s absence, and lack of evidence on these issues, on the basis that M.I. was too ill to assist him. No medical evidence to that effect was produced to the Tribunal, and none has been produced to me. The Judge was perfectly entitled to deal with the lack of evidence from M.I. as he did [29]. He did not treat that absence of evidence as evidence – he simply noted as he was entitled to do that M.I. could have offered an explanation and had not done so.

The "concession" argument

21. Ms Soltani (who did not appear below, and did not draft the grounds) argued that since the Respondent had conceded that M.I. was a Syrian national, and had conceded that the Appellant was the son of M.I. it followed that on the applicable standard of proof the Appellant was also a Syrian national. That argument is a superficially attractive one, because the ordinary assumption would be that the Appellant would take his nationality from his father M.I., but it must fails because its central premise is flawed. In the light of the letter of 16 January 2015 the Respondent had not only clearly placed in dispute the Appellant's nationality, but had withdrawn any past concession as to M.I.'s nationality.

22. There was therefore no error of law in the Judge approaching the appeal as he did at paragraph 23. The Respondent accepted that if the Appellant established that he were a Syrian national his appeal should be allowed, and equally the Appellant accepted that if he could not do so that his appeal should be dismissed.

Conclusions

23. The Judge was obliged to consider the weight that he could give to the document that the Appellant relied upon as being his own genuine and legitimately issued Syrian birth certificate. Although he did not refer to the authority, the decision shows in my judgement that the Judge sought to apply the principles set out by Ouseley J in CJ, R (on the application of) v Cardiff County Council [2011] EWHC 23 (Admin), when he restated the importance of the approach in

Tanveer Ahmed v SSHD [2002] Imm AR 318. Documentary evidence along with its provenance needs to be weighed in the light of all the evidence in the case. Documentary evidence does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background evidence and in the light of all the other evidence in the case, especially that given by the claimant. The same can properly be said for a claimant's oral evidence.

24. There is in my judgement no error in the Judge's approach to this document that requires the decision to be set aside and remade [18 & 27]. The content of this document is clearly inconsistent with the evidence given by M.I. in two documents made by him in the course of his own asylum claim, and then confirmed as true in the course of his appeal hearing before the Tribunal, and M.I. had offered no explanation for that. That alone would give rise to serious concern as to the reliability of the document produced by the Appellant. The reference to the Appellant's maturity does not undermine that.

25. If the Appellant was born when his father had said then he was four years older than he admitted to when he left his country of origin. A different level of general knowledge of his surroundings would ordinarily be expected of a young man of 15, to that expected of a young man of 19. It is plain in my judgement when the decision is read as a whole, that this was the Judge's approach [28].

26. The Judge was taken to the interview record which showed the Appellant's responses to a variety of questions about Syria. Contrary to the complaint raised in the second ground he did not focus exclusively on only one question and answer. The point that the Judge was making, and which was well open to him, was that the Appellant had not displayed at interview the sort of general knowledge that he expected.

27. The Appellant had not produced in evidence an expert report analysing his dialect, and knowledge of Syria. He had however submitted to a linguistic analysis undertaken by those retained for that purpose by the Respondent. The conclusion of that analysis was that the Appellant's speech showed that he had grown up amongst those speaking with the Kurdish Iraqi dialect. The Judge noted the limitations of the report, and considered its methodology [30]. He was in my judgement perfectly entitled to place weight upon it.

28. The Appellant's explanation for the conclusions of the linguistic analysis was to claim that since arrival in the UK he had predominantly socialised with Iraqi Kurds. To put that into its proper context, he was saying that he had acquired the dialect that was the subject of analysis on 25 September 2014 since his arrival in the UK in August 2011. Thus he was claiming to have done so between the ages of 15 and 18 if the date of birth he relied upon was accurate, or, was claiming to have done so between the ages of 19 and 22 if

the date of birth given by his father was accurate. Put simply the Judge was perfectly entitled to consider the weight that he could place upon that explanation. He was not obliged to accept it, and plainly did not do so.

29. In my judgement it is plain, when the decision is read as a whole, that the Judge considered all of the evidence, and gave adequate reasons for his decision. He took as his starting point the history concerning M.I. and the Respondent's initial tacit acceptance of his Syrian nationality. He was satisfied ultimately that the totality of the evidence before the Tribunal showed that the Appellant was in truth an Iraqi citizen. In my judgement, and notwithstanding the terms in which permission to appeal was granted, there is no merit in the grounds advanced before me. The grounds are in my judgement no more than a disagreement with that conclusion. Accordingly there is no error disclosed in the Judge's approach to the evidence, and his decision reveals no material error of law that requires it to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 11 February 2015 contained no error of law in the dismissal of the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 1 June 2015

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 1 June 2015