**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/09176/2014

**THE IMMIGRATION ACTS**

| **Heard at Manchester** | **Decision Promulgated** |
|---|---|
| **On 14 March 2016** | **On 1 April 2016** |

**Before**

**Upper Tribunal Judge Southern**

**Between**

**MISHAAL MUSKIM SHATAB AL ANIZI**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr H. Sadiq, of Adam, solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant has been granted permission to appeal against the decision of First-tier Tribunal Judge Heynes who dismissed his appeal against the refusal of his asylum and human rights claim. As Mr McVeety recognised, correctly and realistically, that the determination of the First-tier Tribunal discloses an error of law material to the outcome, it is

necessary for me to identify the nature of that error only briefly and to indicate the scope of the hearing that must follow in the First-tier Tribunal.

2. The issue to be resolved in this appeal was a narrow one. The appellant's claim to be an undocumented Bidoon from Kuwait, having been born in Magwaa and subsequently lived in Salabiya, also in Kuwait, was rejected by the respondent who, relying upon a language analysis report, concluded that the appellant was a citizen of Iraq. The respondent rejected also the appellant's account of his experiences of persecutory ill-treatment in Kuwait.

3. In the reasons for refusal letter the respondent set out the reasons why the claim had been rejected. The respondent accepted that, when questioned in interview the appellant's answers provided no basis to disbelieve him:

> "You were asked the major religion in Kuwait, the appearance of the Kuwaiti flag, the countries that border Kuwait, the name of the leader and the year he came to power and the year Kuwait was invaded by Iraq, which you answered correctly. In addition you were able to correctly identify the 6 provinces of Kuwait, the international dialling code for Kuwait, the currency and public holidays celebrated in Kuwait"

Despite that, the respondent observed:

> "Whilst it is noted that you were able to demonstrate a good knowledge of Kuwait, it is also considered that this is generic information on Kuwait widely available in the public domain and could be the result of living in Kuwait rather than being a national thereof. It is also considered this evidence does not specifically identify you as being a Kuwaiti Bidoon:

4. Pausing there, it might be observed that, as the respondent saw fit to put all of these detailed questions to the appellant, it cannot be thought that the accuracy of his responses was immaterial, because otherwise the exercise would have been futile.

5. In respect of her approach to the language analysis report the respondent said this:

> "Consideration has been given to the content of the language analysis report, but has not been considered as determinative without also considering all of the available evidence. Therefore this report has been considered in line with the nationality questions that you were asked during your substantive asylum interview."

That suggests that the respondent took as a starting point that the appellant had demonstrated a good knowledge of Kuwait and then considered whether his claim to be a Kuwaiti Bidoon rather than a citizen of Iraq was displaced by the language analysis report.

6. In granting permission to appeal, Upper Tribunal Judge Jordan said:

> "The grounds of appeal claim that the report and other material establish that Iraqi dialects can be found in Kuwaiti Arabic speech, arguably undermining the Judge's ultimate conclusion.
>
> However, arguably, it also undermines paragraph 31 of the determination and the finding that: … on the basis of the unexplained elements of Iraqi Arabic… the appellant has not proved that he is a citizen of Kuwait…"

7. The grounds challenge also the weight given to the report, both by the respondent and the judge, given that the conclusion reached by the report was equivocal.

8. The language analysis report addressed and considered separately the hypothesis that the appellant "belongs to an Arabic linguistic community that occurs in Kuwait" as the appellant claimed to be the case and the hypothesis that the appellant "belongs to an Arabic linguistic community that occurs in Iraq", which, if established, would be irreconcilable with the appellant's claim to be an undocumented Bidoon from Kuwait. The conclusions reached, emphasised by repetition in bold type, were, in respect of the first hypothesis that the appellant belonged to the Kuwaiti linguistic community:

> **"The language analysis can neither confirm nor refute the hypothesis, as results obtained do not constitute a basis on which to assess the linguistic community as stated in the hypothesis."**

and in respect of the second hypothesis, that the appellant belonged to an Iraqi linguistic community:

> **"The language analysis somewhat suggests that the results obtained more likely than not are inconsistent with the linguistic community as stated in the hypothesis."**

9. That was far from a ringing endorsement of the respondent's suspicion that the appellant was from Iraq rather than from Kuwait. The observation made by Judge Jordan in granting permission to appeal concerning the existence of Iraqi dialects in Kuwaiti speech is found at para 3.2 of the linguistic analysis report:

> "However, some distinctive local features related to the dialects of adjacent areas of Southern Iraq are also part of the Kuwaiti dialect…"

10. In his submissions, Mr Sadiq referred also to page C24 of the respondent's bundle prepared for the First-tier Tribunal hearing where there is further evidence of a Mesopotamian dialects found in certain areas of Kuwait.

11. Indeed, at page 12 of the language analysis report, the conclusion in respect of the second hypothesis was expressed at the lowest level of certainty that ranged between 0, +1, +2 and +3. Given the satisfactory answers given to the nationality questions, plainly a careful examination was required of the detailed reasons given in the report for reaching that somewhat guarded conclusion. It can be seen from the report, considered as a whole, that deviations were detected from expected linguistic responses in the assessment of both hypotheses and it can be seen that, in respect of the first, that the appellant was from an Arab linguistic community that occurs in Al-Magwa, the appellant's claimed place of birth in Kuwait, under a heading "General Comments" the report recorded that:

> "According to the analyst, the interviewee's use of Arabic is consistent with that of a native speaker."

12. My observations do not constitute, and are not intended to be, a full judicial assessment of this evidence but are intended simply to explain the obvious need, apparent of the face of the report, for a rigorous examination of this key evidence, assessment of which was pivotal to the outcome of the appeal.

13. The findings of the judge begin at paragraph 13 of his decision. He commenced by saying:

> "In the broadest terms, the account given by the appellant is capable of occurring in Kuwait. That is not to say that I find the Appellant's account credible; simply that the background evidence raises the possibility that it is so.
>
> The Respondent drew the conclusion that the Appellant was a citizen of Iraq substantially on the basis of a language analysis report produced by a firm called Verified."

The judge noted that:

> "The report is equivocal, one of the two analysts concluding that he could "neither confirm nor refute the hypothesis" that the Appellant "belongs to an Arabic linguistic community that occurs in Iraq."

It is notable that the judge did not reproduce the whole of the sentence in which that phrase occurred, ending with a full stop what should have been a comma, and omitted the final, qualifying, phrase:

> "… as the results obtained do not constitute a basis on which to assess the linguistic community as stated in the hypothesis."

14. Similarly, when considering the second hypothesis, that the appellant was from an Arab linguistic community in Iraq, the judge recorded the conclusion that the results obtained:

> "… are more likely than not consistent with the linguistic community as stated in the hypothesis."

But there is no indication at all that he had regard to the extent to which the second hypothesis was considered to be undermined by linguistic deviations from what was expected of a person from the Iraqi linguistic community. A superficial examination of that part of the report suggests that there were at least 8 such deviations and, at one point of this part of the report it is recorded that:

> "Syntactic dialectic features noted in the person's speech are partly consistent with and partly inconsistent with Iraqi Arabic."

15. None of this has been discussed in the decision of the judge. Nor is there any indication that the judge took account of the level of certainty with which the conclusions in respect of the second hypothesis were expressed. The judge noted that:

> "What is unquestionably the case is that both analysts found significant elements of Iraqi Arabic in the Appellant's speech."

And the judge said of the appellant's correct answers to the nationality questions put to him in interview:

> "I find that his performance points towards a personal knowledge of that country rather than research for the purposes of an interview."

But as the judge did not accept to be credible the appellant's evidence of his journey to the United Kingdom, in particular that he did not know until shortly before his departure that he was to be brought to the United Kingdom, the judge reached these conclusions, set out at paragraph 31 of his decision:

> "The Appellant's speech has been found to include elements of both Kuwaiti and Iraqi Arabic. The presence of Iraqi Arabic has not been explained by authoritative objective evidence. I find that the Appellant has a level of knowledge of Kuwait consistent with his living or having lived there. For the reasons given above, I find that the Appellant has not been truthful about the manner in which he left Kuwait. He did not do so using an agent. His lack of candour in respect of these matters leads me to the conclusion that he has not proved to the lower standard that he is an undocumented Bidoun. On the basis of unexplained elements of Iraqi Arabic in his speech, I find that the Appellant has not proved that he is a citizen of Kuwait.
>
> I find, on the balance of probabilities… that the Appellant is a citizen of Iraq who has lived and worked in Kuwait. Having reached this conclusion, I reject the Appellant's evidence of events hat he has attributed to his claimed ethnicity …"

16. However, as we have seen, there was some evidence before the judge that *did* explain the presence of Iraqi linguistic tracts in the speech of a person living in Kuwait:

> "However, some distinctive local features related to the dialects of adjacent areas of Sothern Iraq are also part of the Kuwaiti dialect…"

17. Drawing all of this together, I arrive at a clear conclusion that the assessment of the evidence is legally flawed for a number of reasons. First, the decision of the judge does not disclose that an adequate assessment of the language report has been carried out. It is not apparent that the judge has appreciated the guarded level of certainty expressed in the report, nor that he has had adequate regard to the extent to which overall conclusions were qualified by deviations from that which was expected in linguistic terms. There is no indication that he has recognised that the results of the assessment of the first hypothesis were qualified by a statement he omitted from the sentence reproduced in his decision, that being that the results "do not constitute a basis on which to assess the linguistic community as stated in the hypothesis". Further, a key aspect of the judge's reasoning, that the presence of Iraqi dialectic tracts in the appellant's speech went unexplained, was a finding uninformed by the evidence mentioned above.

18. It is clear that the conclusions of the language analysis report cannot be regarded to be determinative. Therefore, what was required, and what is absent from the decision under challenge, was a detailed examination of the evidence as a whole, not limited to the language report and the appellant's responses to the nationality questions. There is a need to engage with the evidence of fact offered by the appellant concerning his account of his experiences in Kuwait and reach clear credibility findings, in the light of, or informed by, the language report and the correctly answered nationality questions.

19. For all of these reasons I am satisfied that the judge made an error of law in his assessment of the evidence that was material to the outcome so that his decision cannot stand.

20. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh. No findings of fact made by Judge Heynes are to be preserved.

Signed

Date: 14 March 2016

Upper Tribunal Judge Southern