Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/09593/2014**

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly	**Decision and Reasons Promulgated**
On 1 February 2016	**On 8 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

SAM AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Ouattara of Christian Gottfried & Co Solicitors
For the Respondent: Ms C Johnstone Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.

3. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge J D L Edwards promulgated on 2 March 2015 which dismissed the Appellant's appeal on all grounds.

Background

4. The Appellant was born on 17 June 1992 and claims he is a national of Syria, a stateless Kurd, although the Respondent disputes this and says he is a citizen of Iraq.

5. On 1 November 2013 the Appellant applied for asylum. He claimed to be a Kurdish farmer. He spoke Kurdish Sorani and Arabic. He claimed that he had been arrested in August 2013 tortured and then released. He fled from Syria in September 2013.

6. On 18 October 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:

   (a) The Appellant was the subject of a language analysis by Sprakab who concluded that there was a high degree of likelihood that he came from Iraq and it was very unlikely he came from Syria.

   (b) The Appellants explanation as to why he spoke Sorani which is very rare in Syria was not credible.

   (c) The Appellant displayed little knowledge of stateless Kurds.

   (d) The Appellant displayed little knowledge of Qamishli city which was ¾ KM from where he lived.

   (e) The Appellant displayed little knowledge of Syria's history, geography, politics or currency.

The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Edwards ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :

   (a) The Appellant advanced no evidence that he was Syrian other than his oral evidence.

   (b) The Respondent produced a Sprakab report to support their assertion that the Appellant was an Iraqi. The Judge found the report compellingly researched and argued.

   (c) The Judge therefore concluded that the Appellant was Iraqi.

   (d) The Judge found that a number of other matters undermined the credibility of his claim as the explanations given were not accepted the Appellants claim to be Syrian which the Judge rejected; he stated that the Syrian currency was the Lira rather than the Syrian pound; the Appellant was fingerprinted in Dunkirk and gave a false name, date of birth and nationality and lied about it in interview; the events described in Syria were vague and insubstantial.

   (e) The Judge found that there was nothing to show that the Appellant would be at risk on return to Iraq.

8. Grounds of appeal were lodged arguing that there were factual errors that suggested that the Judge had not exercised anxious scrutiny; he had given undue weight to the Sprakab report; the Judge was not entitled to conclude that the Appellant was wrong about the Syrian currency; the Judge failed to properly assess risk on return to Iraq.

9. On 17 March 2015 First-tier Tribunal Judge Astle gave permission to appeal .

10. At the hearing I heard submissions from Mr Ouattarra on behalf of the Appellant that :

    (a) He relied on the grounds of appeal and although not identified in the grounds he summarised four headings for the grounds.

    (b) Ground 1 he suggested was covered by paragraphs 6-8 of the grounds which he suggested amounted to lack of anxious scrutiny: the Judge had failed to consider that while one of the reasons the Respondent gave for not believing he was Syrian was that he did not speak Arabic at his interview when he spoke Arabic at the asylum hearing and before the Judge; there were factual errors at paragraph 2 where the Judge stated the Appellant's asylum interview was conducted in Arabic when it was in Kurdish Sorani and at paragraph 3 he referred to removal to Egypt.

    (c) Ground 2 he suggested was covered by paragraphs 9 and 10 of the grounds and argued that the Judge gave undue weight to the Sprakab report and incorrectly treated the report as infallible. He failed to take into account that Sprakab is no longer used by the Respondent for language analysis.

    (d) Ground 3 he stated was covered by paragraph 11 of the grounds and argued that the Judge should not have given any weight to the assertion that the Appellant incorrectly identified the Syrian currency when Mr Ouattara had an internet article correctly identifying the currency. He also suggested that the Judge should not have concluded from the Appellant giving false details in France that he was Syrian.

    (e) Ground 4 was the argument that the Judge had failed to adequately address the risk on return to Iraq as a Kurd to the contested areas of Iraq.

11. On behalf of the Respondent Ms Johnstone submitted that :

    (a) In relation to Ground 1 she argued that the reference to Egypt was a typographical error as he referred to Syria and where relevant Iraq throughout the determination.

    (b) The Judge gave adequate reasons for finding the Sprakab report to be weighty.

    (c) In relation to the Syrian currency the refusal letter set out why the Appellant was wrong and the App adduced no evidence before the first tier to address this issue.

    (d) In relation to the risk on return the difficulty is that as the Appellant denies being from Iraq the Judge is unable to accurately address that risk. Nevertheless that would be a matter for the Respondent to address in the removal directions.

12. In reply Mr Ouattara on behalf of the Appellant submitted that the Sprakab report also went beyond its remit in addressing credibility and he relied on those matters 1.3 of the report. The 'knowledge assessment' did not justify the conclusion that the Appellant showed 'limited knowledge.'

The Law

13. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

> "Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator."

15. In relation to Sprakab reports the grounds referred to M.AB.N. & Anor v The Advocate General for Scotland & Anor [2013] ScotCS CSIH 68, where the Secretary of State refused asylum to as a result of linguistic from 'Sprakab'. The Sprakab reports concluded that each Claimant did not speak a dialect of Somali found in the area they claimed to be from and that they had deficient knowledge of that area. The key issue in each appeal was the evidential standing of the 'Sprakab' reports. The Court found that the author of each report was stepping outside their proper field of expertise and that there was no evidence that either analyst had any expertise in the identification of Somali dialects or their geographical and social distribution. On appeal in SSHD v MN and KY [2014] UKSC 30, the decision in the Court of Sessions was upheld albeit that the Supreme Court held that regard could be had, by the Secretary of State determining asylum applications and tribunals in asylum appeals, to linguistic analysis reports provided by the organisation known as Sprakab. Sprakab could report on language as evidence of place of origin and on familiarity with claimed place of origin provided that the expert's expertise was properly demonstrated and their reasoning adequately explained. By way of pointers the Supreme Court said "*i) On the basis of the material we have seen, I see no reason in principle why Sprakab should not be able to report on both (a) language as evidence of place of origin and (b) familiarity with claimed place of origin provided, in both cases, their expertise is properly demonstrated and their reasoning adequately*

explained. (As will be seen below, the problem in relation to (b) was not the nature of the evidence, but the lack of demonstrated expertise.) ii) As to (a), language: a) The findings (on evidence) in RB are to my mind sufficient to demonstrate acceptable expertise and method, which can properly be accepted unless the evidence in a particular case shows otherwise; b) The Upper Tribunal ought to give further consideration to how the basis for the geographical attribution of particular dialects or usages can be better explained and not (as it often currently seems to be) left implicit. The tribunal needs to be able to satisfy itself as to the data by reference to which analysts make judgements on the geographical range of a particular dialect or usage. c) The RB safeguard requiring the Secretary of State to make the recording available to any expert instructed for the claimant is not only sensible, but essential. iii) As to (b), familiarity: a) The report needs to explain the source and nature of the knowledge of the analyst on which the comments are based, and identify the error or lack of expected knowledge found in the interview material; b) Sprakab reporters should limit themselves to identifying such lack of knowledge, rather than offering opinions on the general question of whether the claimant speaks convincingly. (It is not the function of an expert in language use to offer an opinion on general credibility.) iv) On the issue of "anonymity", since the approach in RB was a departure from the norm, it would be appropriate for the tribunal to satisfy itself both that the departure remains justified in the interests of security of Sprakab personnel or otherwise, and, if it does, as to the safeguards necessary to ensure that the evidence is reliable and that no prejudice arises in individual cases. Consideration for example could be given to requiring assurances that the identifying numbers remain with an individual throughout his work with Sprakab, and requiring disclosure of other work done in any related field by the individual (e.g. advice to Governments, interpretation, translation), and of any occasion on which his conclusions have been rejected by courts or tribunals."

Finding on Material Error

16. Having heard those submissions, I reached the conclusion that the Tribunal made no material errors of law.

17. The first ground suggests that the Judge failed to give anxious scrutiny of the Appellants appeal. I am satisfied that the Judge in what was a detailed and well-reasoned decision made two factual errors : he suggested that the Appellants asylum interview was conducted in Arabic when in fact he was interviewed in Kurdish Sorani and in paragraph 3 he refers to the Appellant being removed to Egypt.

18. However, I am satisfied that these two factual errors do not demonstrate a lack of anxious scrutiny. It is clear to me that the reference to Egypt was a simple typographical error because the Judge otherwise in the decision, at paragraphs 2,6,17,1819,20,25, 26, 27, 29,30(a) (b) (c) ,31,32 and 33 repeatedly makes it plain that he understands that the Appellant claims to be a Syrian but the Respondent believes he is an Iraqi. In relation to the reference in paragraph 2 to the interview being conducted in Arabic I am satisfied that this is another minor typographical error as the passages referred to in this paragraph make plain that the Judge understood the issues in the case and specifically paragraphs 19, and 25-29 make plain that he understood that the language analysis had been based on the Appellant speaking what he claimed was Syrian Kurmanji. I am satisfied that the Judge was not entitled to place any weight on the fact that the Appellant spoke Arabic before him as Arabic

is spoken in a number of Muddle Eastern countries and is not determinative of the Appellant being Syrian and, moreover, the Judge recognised (paragraph 17) that the Appellant spoke Arabic.

19. The other matters cited in the grounds to suggest that the Judge has failed to give anxious scrutiny, that he referred in paragraph 19 to only one Sprakab analyst when there were two and failed to give evidence of the detailed examples of the failure to pronounce words as a Syrian Kurmanji speaker have no merit. The Judge refers to the language assessment being conducted by Peter Lovgren. The report is indeed signed by Mr Lovgren (C5 of the Respondents bundle) under the summary 'Language analysis report compiled and reviewed by'. The Judge does not suggest that no one else assisted in the preparation of the report and indeed as is the practice no one else is identified. The Judge has merely referred to the report being conducted by the person who signed it. In relation to the Judge not identifying the 'detailed examples' of failure to pronounce words according to Syrian Kurmanji these were detailed in the report itself at 2.3 and given that 3 examples were given and explained I am satisfied that he was not required to repeat them and was entitled to refer to them as detailed.

20. It is argued that the Judge accepted the Sprakab report without giving adequate reasons but I am satisfied that this argument has no merit and that the Judge was entitled to give considerable weight to the report and gave adequate reasons for doing so. While the Respondent no longer uses Sprakab as Mr Ouattara argued this does not mean that the reports cannot be relied on and indeed there is nothing in MN to suggest that they cannot be relied on provided the guidance is followed. The Judge refers to the fact that he had regard to the appropriate guidance given in MN & KY. He was of course entitled to take into account Mr Lovgrens qualifications to give expert evidence (paragraph 19) and his experience as detailed at C6 of the report and that his conclusions were to a 'high degree of certainty'. In fact the Judge inaccurately summarised the finding of the report which was at C3 to a 'very high' degree of certainly that the Appellant was an Iraqi rather than simply a 'high' degree. While not specifically referring to it the Judge would also have been entitled to note that the report concluded that it was 'very unlikely' that the Appellant was a Syrian. The Judge could also have detailed the expertise of the analysts as set out in C6 and noted that one had lived in the Kurdish parts of Syria when determining the weight to be given to the report. While the Judge recognised in paragraph 28 that MN states that Sprakab reports are not infallible in that it was possible to challenge them the Judge was entitled to note at paragraph 26 and 27 that the Appellants had not advanced any evidence to challenge the conclusions of the expert language report and therefore accept it.

21. I do not accept that the Sprakab report has gone beyond its remit in the summary of findings (C3). Mr Ouattara sought to argue that it was addressing credibility but I am satisfied that in referring to the Appellants 'non-genuine way of speaking' the author is referring to his 'extensive manipulation' of the language rather than any reflection on the credibility of his account.

22. I am satisfied that there is no merit in the argument that the Judge was entitled to conclude that the Appellant had failed to adequately address the challenge in 15(f) of the refusal letter than he had failed to properly identify the Syrian currency. While Mr Outtara had come armed with an internet article before me that he claimed showed

that the Syrian currency was the Lira as the Appellant asserted no such evidence was produced before the Judge. The Judge was told in evidence by the Appellant that he did not handle money so was unfamiliar with the currency. It was open to the Judge to find this argument incredible.

23. I am satisfied that the Judge's assessment of risk on return was adequate given the Appellants denial that he was an Iraqi and continued assertion that he was Syrian. Given the Judge does not reject the Appellants claim to a Kurd albeit one from Iraq he was not required to accept the assertion made before him that the Appellant would be at risk because he would be returned to a contested area as the likelihood would be that he would be returned to Kurdistan. No evidence was placed before the Judge to suggest that the Appellant would be at risk if returned to Kurdistan.

24. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1): "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*

25. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

26. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

27. **The appeal is dismissed.**

Signed Date 3.2.2016

Deputy Upper Tribunal Judge Birrell