



IAC-FH-LW-V1

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

Appeal Number: PA/12966/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
On 10 August 2018**

**Decision & Reasons Promulgated
On 03 September 2018**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**K S Y
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms X Vengoechea instructed by Loughran & Co
For the Respondent: Mr Mathews, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge McGrade who dismissed the appeal against the refusal on 8 November 2016 of the appellant's protection claim which was based on a fear of harm owing to his Kurdish origins if returned to his claimed country of citizenship, Syria which he explains that he left on 1 May 2016.
2. The appellant entered the United Kingdom on 11 May 2016 concealed in a lorry and claimed asylum the same day. He was interviewed about the substance of his claim

on 12 October by when he had been subject to a language analysis indicating that his language was not consistent with his claimed place of origin (Hasakaha province). It was also put to him that he had been fingerprinted in Dunkirk when he had said he was from Iraq.

3. The Secretary of State did not accept that he was Syrian. The FtT rejected the appellant's account of events in Syria as well as his claim to be a Syrian citizen.
4. There are eight grounds of challenge to the FtT decision. These may be summarised as follows:
 - (i) A failure to undertake a fact-finding assessment by the Tribunal by placing too much weight on the assessment by the Secretary of State in the reasons for refusal.
 - (ii) Failing to consider the appellant's witness statement which explained his earlier statement that he did not have a passport. The Tribunal failed to consider the appellant correctly identified aspects of life in Syrian for a Kurd.
 - (iii) Failure to explain why the Tribunal found not credible the explanation by the appellant over his fingerprinting in Dunkirk.
 - (iv) A failure by the Tribunal to consider the appellant's answers at the substantive interview in relation to Syria and with specific reference to his hometown of Dayrik.
 - (v) A failure by the Tribunal to consider the case law relating to the weight to be attached to linguistic analysis reports.
 - (vi) Failure to apply the country guidance case of *AA (Article 15c) CG* [2015] UKUT 544 and *AA (Iraq)* [2017] EWCA Civ 944 in respect of return to Iraq.
5. Ms Vengoechea had lodged a detailed skeleton argument that to an extent departed from the ambit of the above grounds. I reminded her of the need to keep to those grounds and both parties agreed that the above summary represented a fair summary of the grounds of challenge. In addition, it was agreed that the challenge related to the correctness of the judge's findings on the claim based on the appellant being a national of Syria as opposed to risk in Iraq. This resulted in ground (vi) falling away. In the light of the detail in the skeleton, it was also agreed that Mr Mathews would make his submissions first. I announced at the end of the submissions of both that I would dismiss the appeal for the reasons that I now give.
6. I take each ground in turn. Mr Mathews characterised the first ground as a general one; the weight given to the evidence was a matter for the judge. He further observed there was no rationality challenge as acknowledged by Ms Vengoechea and he did not consider there had been error. In the course of her submissions, I encouraged Ms Vengoechea to identify the areas where the appellant had been credible. This involved analysis of the country information which had been produced by previous agents cross-referenced to the record of interview. Implicit in her submissions is the point that the judge had simply taken the negative points and

had failed to attribute appropriate weight to the positive matters in support of the appellant's claim.

7. The judge's decision is not a lengthy one and it is correct that there is no mention of, for example, the unchallenged account by the appellant of seven provinces in Syria, the religions practised and the geography surrounding his village, except the existence of certain towns and villages that would be passed on the way to Derik from his home village. A reading of the interview show that he did not know why Bashar Assad was President rather than his older brother and he described the President's religion simply as Muslim. The appellant did not know which party Bashar Assad belonged to. The Secretary of State gave reasons in the refusal letter for questioning aspects of the appellant's knowledge of Syria included an acknowledgment that the answer as to the provinces was correct but noted the failure to know why Assad had come to power and not knowing that he is an Alawite. The positive matters appear to be balanced by a noteworthy lack of knowledge. The judge refers as discussed below to some of the "knowledge" matters raised in the refusal letter and there is no reason to believe that he was not aware of and took into account all the correct answers given as well as those that were open to question. There is no requirement for a judge to refer to all the evidence in giving his reasons and it was open to this judge to focus on the matters that he clearly considered material. This does not, as asserted by Ms Vengoechea amount to an unfair approach but one properly open to the judge when assessing whether the appellant was from Syria at all.
8. I have already dealt with the second limb to the second ground and my focus is therefore on the first limb in relation to the asserted failure by the judge to consider the appellant's witness statement explaining the various references he had made to his passport. Mr Mathews accepted the judge had erred on this ground. At paragraph 18 the judge stated:

"The Appellant was asked at the screening interview whether he had a passport. He indicated that his passport was in Syria. (A2 Q1.8). He was asked at interview whether he had a passport which was still in Syria. He indicated that this was the case (C8, Q17). He was unable to advise the interviewer when he obtained his passport and suggested that it was a long time ago (C8, Q18). He then went on to deny that he was a Syrian citizen (C8, Q27). This is clearly inconsistent with his claim to have been issued with a Syrian passport."
9. In his initial interview, the appellant responded that his passport was in Syria when asked as to its whereabouts. He had in the previous question answered in the negative that he did not have any evidence to confirm his identity. In the substantive interview the appellant confirmed the correctness of his answer that his passport was in Syria. He was unable to explain when he had acquired this as it was a long time ago, nor was he aware of the information given to the authorities for its issue, explaining that he was young. Questioning returned in that interview to his identity documents. When the appellant was asked whether there were other identity documents that he had he gave this description:

“It was a piece of paper and it was white and it was given to the Kurds, that was all I had.”

The appellant answered “no” when asked whether he had an ID card or a military book. Questioning continued as to whether the appellant was a citizen of Syria and the appellant responded:

“No I did not have citizenship; the Kurds cannot give citizenship.”

Whether or not a Kurd could be a citizen of Syria, the appellant explained that it depended upon the Government. Sometimes they were give citizenship. They take from others. The final question on this aspect related to how it was the appellant had a passport if he was not a citizen, to which he responded:

“For me it is a piece of paper is that passport that is why I have said I have it.”

10. The refusal letter considered this aspect between [24] and [33]. This included a reference to proposed amendments to answers given at interview in which the appellant explained that he had not understood the question when asked whether he had a passport. The passport he had referred to was the piece of paper (he had described) being the document issued by the Syrian Government. The Secretary of State observed that there had been no proposed amendments to the answers given at the initial interview some months earlier when he is recorded to have confirmed that he had understood the questions put to him. I note that on 20 July 2016 the appellant’s solicitors wrote to the Glasgow Asylum Team enclosing a witness statement which provides further detail in relation to the claim and the issue as to the appellant’s age, but it does not refer to any error over the matter of the passport.
11. A further correction by the appellant in his witness statement that was before the judge clarifies that the appellant intended to refer to his Muktum paper which gave rise to no rights.
12. Mr Mathews explained that he had to accept, having regard to the judge’s reasons, that on the face of matters a conclusion had been reached without regard to all the evidence. I address the materiality of this conceded error below, but with these initial observations. The first is that it is significant the appellant did not seek to correct his unambiguous initial statement that he had a passport which was left behind in Syria. In assessing the materiality of the judge’s error, it is necessary to ask whether had the judge accepted the explanation by the appellant the outcome would have been any different? The answer to this question lies in the analysis of the other grounds of challenge and a consideration of the decision as a whole.
13. The complaint in ground three relates to the fingerprinting in Dunkirk. The ground is short and lacks particularity. At [19] and [20] the judge explained his reasoning. The skeleton argument relied on by Ms Vengoechea questioned the independence of Mr Pearson and this affected the weight that could be given to what he had said. She also went on to point to a difference in the spelling of the appellant’s name in Mr Pearson’s report and that given now. She confirmed however that no rebuttal fingerprint evidence had been adduced and accepted that it was not the case that the appellant had not been given the opportunity to call his own expert. She was correct

to do so. A letter from the appellant's previous agents dated 27 October 2016 explained that they had taken instructions from their client to obtain a copy of the fingerprint records to enable an analysis. The material before me does not indicate whether this request was responded to by the Secretary of State or whether it was pursued by the appellant's agents. Ms Vengoechea confirmed that the current agents were instructed in February 2018 and she further confirmed that they had not requested a copy of the fingerprint data. The point does not appear to have been canvassed before the tribunal and there is no indication that an adjournment was sought for an expert's report to be prepared. The witness statement by Derek Pearson given under the Criminal Justice Act 1967 contains a statement of truth. It is dated 28 October 2016. Mr Pearson explains his expertise having been engaged in comparison and identification for more than 32 years and his registration on the National Register of Fingerprint Experts in friction ridge identification. He refers to the material provided by the Secretary of State and explains that he compared sets of fingerprints taken on 24 October 2016 and 12 May 2016 (in Glasgow) with a set taken on 11 November 2015 and he concluded:

"I have found such number of ridge characteristics in agreement leave me in no doubt they were made by the same person".

14. The appellant spells his name in these proceedings as [YKS] {a}. His name is recorded on a search result from Dunkirk is [YKS] {u}. Given the phonetic similarity in the names and the lack of any doubt by Mr Pearson, I am satisfied that the judge gave adequate and legally correct reasons for rejecting as not credible the explanation by the appellant at the hearing that he had understood questions regarding that fingerprinting as relating to his arrival in the United Kingdom. There is no merit in this ground.
15. Ground four returns to a matter already covered above which is an asserted failure by the tribunal to consider the appellant's answers at the substantive interview as to Syria with specific reference to his home town. In the course of discussion in this ground Ms Vengoechea referred me to a Wikipedia entry containing a map that indicated one of the three places passed on a journey between his home village and Dayrik. In his submissions Mr Mathews acknowledged that this positive evidence had not been referred to by the judge, but he argued that it was not always necessary to refer to every aspect of the evidence. Discussion turned to the judge's analysis of the appellant's knowledge of Syrian currency. At [22] and [23] the judge noted:
 - "22. The Appellant was asked questions at interview regarding aspects of life in Syria. He was asked which denomination of notes were in use in Syria. He stated that were 5, 10, 20, 25, 50 100 and 1,000 Lira notes (C10, Q49). He also suggested Hafez Assad's face appeared on the 1,000 Lira note. Research undertaken by the Respondent indicated the notes recently issued were 50, 100, 200, 500 and 1,000 Lira notes and that Hafez Assad's face did not appear on the 1,000 Lira note.
 23. The Appellant was asked what coins were in use in Syria. He indicated there were 5 and 10 Lira coins. (C10, Q51). Research undertaken by the Respondent indicated there was a 1996 issue of 1 and 2 Lira coins and a 2003 issue of 5, 10 and 25 Lira coins."

The refusal letter recorded at [39] and [40]:

- “39. The website Banknote.com, only records the 50, 100, 2000, 500 and 1000 lira being recently issued, though it is noted that the 1997 issue of the 1000 lira note does have the face of Hafez Assad on it.
40. You also claimed that the coins in use (sic) in Syria were the 5 & 10 lira, however the website numista.com show that there were 1996 issues of the 1 & 2 lira coins, a 2003 issues of the 5, 10 & 25 lira coins.”

This led to the respondent observing the appellant had demonstrated “a superficial familiarity” with the currency and it was not considered consistent with what could be reasonably expected from a person who had spent their entire life in Syria.

16. This aspect was explored in the context of Ms Vengoechea’s insistence that the judge had not considered all the positive factors that favoured the appellant in the credibility analysis. She accepted that the grounds of challenge did not challenge this specific position arguing that the ground was intended to cover a more general point. In essence, I consider ground four to be a reiteration of the earlier grounds and I do not consider when taking them together there is any merit for the reasons I have already given in my analysis of the first ground.
17. The final surviving ground relates to the linguistic analysis. The challenge asserts error by a failure to consider the case law with reference to *SSHD v MN and KY* [2014] UKSC 30 with reference to [46] of the judgment:

“The first is as to the weight to be given to such evidence in future cases. Tribunals are advised that, where there is a ‘clear, detailed and reasoned linguistic analysis’ leading to ‘an opinion expressed in terms of certainty or near certainty’, then ‘little more’ is required to support a conclusion. This seems to me to underplay the importance in any case of the tribunal itself examining such a report critically in the light of all the evidence, and of the reasoning supporting its conclusion (not necessarily limited by the scope of any criticisms or evidence that may be presented by the appellant). The language of the guidance gives rise to a real risk of being interpreted as prejudging issues which are for the individual tribunal to determine. As will be seen, the present appeals are illustrative of that risk.”
18. The complaint is developed with reference to extracts from the report on the basis that it does not express an opinion of certainty or near certainty, and furthermore, having regard to the appellant’s claimed origins close to the border with Turkey and Iraq, the Tribunal had erred by failing to consider the proximity of the home town to the Iraqi Kurdish region may account for the linguistic analysis results.
19. Mr Mathews argued that the report was clear and detailed and formed only part of the judge’s findings. This ground was developed in more detail with Ms Vengoechea analysing the approach taken by the linguistic expert.
20. The author of the report notes the hypothesis (by the appellant) “that the linguistic behavior displayed is consistent with the Kurdish (Kurmanji) linguistic community eastern Al-Hasakah variety”. After a detailed analysis of the phonology and morphology as well as the simtics and lexicology of Kurdish which the author notes

the appellant speaks at native speaker level, he turns to the alternative hypothesis "that the linguistic behaviour displayed is consistent with a Kurdish (Kurmanji) linguistic community which is represented in Iraqi Kurdistan". This is followed by an analysis of the linguistic community and as with the initial hypothesis notes in relation to phonology, simtics and lexicology as well as morphology.

21. As to result on the initial hypothesis, the author scores in a scale ranging between +3 and -3 as to the various possibilities:

"-1 - The language analysis somewhat suggests that the results obtained will likely than not inconsistent with the linguistic community as stated in the hypothesis".

As to the alternative hypothesis (being Iraqi Kurdistan), the author scores:

"+1 - The language analysis somewhat suggests that the results obtained more likely than not are consistent with the linguistic community as stated in the hypothesis".

22. I note that if the scoring had been +3, that would have shown certainty that the results were clearly consistent with the linguistic community claimed. If -3, it is that with like certainty the results are clearly inconsistent. The appellant was found therefore to be just one degree above the bar and it is correct therefore that the opinion is not expressed in terms of certainty or near certainty.
23. The approach taken by the judge was not to base his conclusion on this one aspect of the evidence however. Had he done so I consider he might well have erred. Instead, he took a number of factors into account in finding that the appellant was not a national of Syria. In my judgment, the evidence over the fingerprinting of the appellant in Dunkirk before he claims to have left Syria when he stated that he was an Iraqi national has particular force. The linguistic report adds to the picture as well as the other negative aspects referred to by the judge in his decision. I am in no doubt that had the judge accepted the account over the reference to the passport his conclusion would have been the same.
24. From my consideration of the determination as a whole, I am satisfied that the judge reached an adequately reasoned decision why he did not believe the appellant and I am not persuaded that the conceded error was material. The judge reached a conclusion legally open to him on the evidence.
25. This appeal is dismissed.

Signed

Date 20 August 2018

UTJ Dawson

Upper Tribunal Judge Dawson