



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: PA/05878/2018

THE IMMIGRATION ACT

**Heard at Civil Justice Centre
Manchester**

On 12th June 2019

**Decision & Reasons
Promulgated**

On 14th June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mr Mahmoud Khanfour

(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Faryl, instructed by Lei Dat Baig Solicitors

For the Respondent: Mr McVitie, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge McAll promulgated on the 2nd January 2019 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on asylum, humanitarian protection and Articles 2 and 3 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.
3. Leave to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Chalkley on 20th March 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

Outline factual background

4. The appellant was born on 27 September 1993 and claims to be a citizen of Syria. The appellant has produced a birth certificate issued in Jordan, which allegedly shows that the appellant was born in Jordan but is noted on the birth certificate as being a Syrian national. The respondent does not accept the appellant's nationality.
5. The appellant has given evidence that his family fled Syria prior to his birth and that the family lived in Jordan. The appellant has lived all his life in Jordan, had worked for periods of time in Jordan and ultimately suggests that because he was not a Jordanian national he began to suffer mistreatment in Jordan such that he fled the country.
6. The majority of the appellant's family, apart from one sister who appears now to be living in the UK, all continue to live in Jordan.
7. The respondent did not accept that the appellant was a national of Syria. Equally the respondent did not accept that the appellant had been subjected to the mistreatment alleged in Jordan.
8. The appellant had produced initially a series of documents, a Jordanian driving licence, a Syrian passport and a Jordanian ID card. As stated subsequently the appellant as part of the bundle for the hearing produced a birth certificate allegedly from Jordan, which identified him as a national of Syria. The hearing bundle was produced on the 3rd December 2018.
9. The first three documents submitted by the appellant had been subjected to forensic examination. The 3 documents referred to were found to be unreliable and specific reasons were given for their unreliability. There were verification reports on each of the documents.
10. The respondent had made a decision refusing the appellant's protection claim on 24 April 2018. As part of that refusal the

appellant's nationality was challenged. The appellant's account otherwise of mistreatment was not accepted. The respondent having considered the evidence produced states in the reasons for refusal letter that the appellant's nationality is unknown.

11. The refusal letter contains the following:-

"32 Although any appeal would be considered on the basis of the risk of return to Syria, as this is the country of which you claim to be a national, the Home Office will argue that you are not a national of that country so the appeal must fail.

33 Notwithstanding that conclusion, if the tribunal considers that you are in fact a national of Syria/Jordan the risk on the return to this country will then be considered."

12. The appellant appealed against the decision. As part of the grounds of appeal to the First-tier Tribunal the representatives, who have been representing the appellant throughout, set out the following as part of the grounds of appeal:-

"Protection decision

1 ...

Our client is a Syrian national who was raised in Jordan. Our client has fled Jordan, and cannot return to either Syria or Jordan. He fears returning to Syria due to violence there. Our client qualifies as a refugee and his removal from the United Kingdom will break U.K.'s obligations due under the refugee Convention."

13. Central to a consideration of the appellant's appeal was the credibility of the appellant's account. It was clear that the respondent did not accept the appellant's claimed nationality or the appellant's claim to have been subjected to mistreatment. It had clearly been asserted that the appellant was of unknown nationality.
14. In that respect I would draw attention to the Immigration Act 1971 Scheduled 2 paragraph 8 which provides inter-alia that an individual can be returned to one of a number of places including the place from which he commenced his journey to the United Kingdom. Clearly the appellant's case was that he had started his journey in Jordan and there was evidence to support that and support that his family had lived in Jordan for a substantial period of years.
15. The appellant's appeal had been listed to be heard on a number of occasions. The appellant's representative at various stages requested adjournments on a number of occasions as is evident from paragraph 5 of Judge McAll's decision. The appeal had first been listed for full hearing on 5 June 2018 but was adjourned whilst an expert was instructed on behalf of the appellant to verify the documentation

produced by the appellant. There was a further adjournment from 27 July 2018 when again it was submitted that an expert report was to be prepared on the documentation. The appeal was again adjourned to 3 September but again no report was available and no reason was given for the report not being available. There were other adjournments and correspondence between the Tribunal, the respondent and the representatives, seeking to establish whether the case was ready to proceed.

16. Ultimately the appeal was listed to be heard on 7 December 2018 before Judge McAll.
17. At the hearing on 7 December 2018 whilst checking whether or not the appellant's nationality was still in dispute, the representative for the respondent indicated that nationality was in dispute and that as the appellant was of unknown nationality it would be possible in accordance with the 1971 Act to return the appellant to Jordan. It was not accepted that the appellant had been subjected to mistreatment in Jordan and he would not be at risk in Jordan, the place where he commenced his journey.

Consideration of the issues

18. One of the grounds of challenge with regard to the decision is that that submission by the respondent that the appellant could be returned to Jordan was not an issue that had been raised before by the respondent and as such the appellant's representative wanted an adjournment to enable them to prepare the appellant's case in respect of return to Jordan.
19. Judge McAll refused the adjournment being satisfied that the appellant's appeal could be justly and fairly dealt with.
20. The issue raised is that the respondent had raised a new issue and the appellant and his representative had not had an opportunity of dealing with that new issue.
21. In refusing the adjournment the judge set out why the issue of return to Jordan had always been a live issue. Judge McAll referred to the fact that during the course of the substantive asylum interview the appellant had been asked why he could not be returned to Jordan. The appellant's representative had also produced evidence with regard to Jordan. Whilst the focus had been on the circumstances of Syrians in Jordan, the representative had clearly been aware that the conditions in Jordan were relevant to the appellant, especially as his family was living there.
22. The prospect for individuals within Jordan as part of the background evidence as part of the appellant's case was set out in paragraphs 9

and 10 and issues had been raised as to the prospects of the appellant in Jordan.

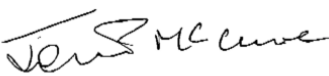
23. Judge McAll held that the issue of return to Jordan had clearly been live throughout and was present in the documentation. The central core of the appellant's case was that he was a Syrian national was at risk in Syria. The judge did consider whether or not the appellant had proved that he was a Syrian national and has given valid reasons for finding that he is not a Syrian national. The judge found otherwise that the appellant's claims to have been mistreated in Jordan were not credible. Those findings would be sufficient to dispose of the case.
24. Given the findings where the appellant was to be returned to was not central to the appeal. However the judge has considered whether or not the issue of return to Jordan had been raised as set out in paragraph 10 of the decision.
25. It is clear given the legal provisions set out above; the fact that the nationality of the appellant was not accepted; that the evidence that the appellant had lived a major part of his life in Jordan; and had commenced his journey to the United Kingdom from Jordan, that return to Jordan was an issue in the case.
26. The appellant's representative has relied on the case of Nwaigwe [2014] UKUT 00418. I take account of the principles set in the case. The judge has taken account of all the materials circumstances and was satisfied that the appellant would have a fair hearing. In the circumstances the judge was entitled to refuse the adjournment. This was not a new issue but was on the basis of the refusal letter an issue that was to be considered in the appeal, especially as the appellant's nationality was not accepted.
27. The appellant's representatives have raised issues as to the documentation produced. The birth certificate produced in respect of the appellant, it was claimed that no issue had been taken with regard to the birth certificate. The birth certificate referred to above whilst issued in Jordan has written on it that the appellant is a Syrian national.
28. The judge had considered that document along with the other documents produced by the appellant. As stated the appellant had had the opportunity of having the documents examined by his own expert. The appeal had been adjourned on a number of occasions waiting for the report from the appellant's expert. Any report emanating from that expert had never been served upon the tribunal.
29. In paragraph 43 of the decision the judge had specifically considered the documentation and found that the appellant had certainly produced 3 documents which for valid reasons could not be relied

upon. Indeed the findings by the expert indicated for example that the passport had been altered and was therefore unreliable. There were other features with regard to the other 2 documents referred to which rendered them also unreliable.

30. In considering the documents overall the judge having found that unreliable documents had been produced found he could place no reliance upon any of the documentation. That was a finding of fact that he was entitled to make on the evidence that was before him.
31. Much though the appellant's representative seeks to argue that no issue was taken with the birth certificate, the judge was entitled to consider the birth certificate in line with the other documentation. The judge has given valid reasons for finding that no reliance could be placed upon the documentation. That was a finding of fact that the judge was entitled to make on the evidence that was before him.
32. In the circumstances the judge has given valid reasons for the findings of fact made. The judge was entitled to conclude that the appellant was not a Syrian national and thereafter to conclude that the appellant could be returned to Jordan. The judge has fully justified the conclusions reached.
33. For the reasons set out there is no material error of law in the decision.

Notice of Decision

34. I dismiss the appeal on all grounds.

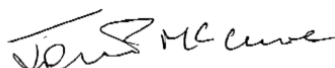
Signed 

Deputy Upper Tribunal Judge McClure
June 2019

Date 13th

Direction regarding anonymity- rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed
2019

Date 13th June

Deputy Upper Tribunal Judge McClure