**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/10313/2013

**THE IMMIGRATION ACTS**

| **Heard at Stoke** | **Determination Promulgated** |
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| **on 5th June 2014** | **On 6th June 2014** |

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

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

Appellant

**and**

**WALID MOHAMED RABI ADBULKARIM HALTASH**
**(Anonymity direction not made)**

Respondent

**Representation:**

For the Appellant: Mr Lister – Senior Home Office Presenting Officer.
For the Respondent: Mr J Howard agent for Morden Solicitors.

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State against a determination of First-tier Tribunal Judge Rose, promulgated following a hearing at Sheldon Court Birmingham in March 2014, in which the appeal on asylum and human rights grounds was allowed.

2. Mr Haltash contended he is a citizen of Syria which was not accepted by the Secretary of State relying on a Sprakab report assessing him to be a national of Egypt.

3. The Judge analysed the evidence and in relation to the weight to be placed upon the language analysis referred specifically to the case of RB (Somalia) [2012] EWCA Civ 227 and the Scottish case of M.AB.N v The Advocate General for Scotland Representing the Secretary of State for the Home Department [2013] ScotCS CSIH 68 which are of direct relevance to the weight that should be attached to a Sprakab report.

4. The Judge accepted that Mr Haltash had provided an explanation for why he spoke a variety of Arabic that is spoken in Egypt [25], found it plausible that his speech and vocabulary were influenced by his close association with a person who he was working with who was himself an Egyptian [26], noted the lack of any reference in the report to the extent with which the dialect or dialects referred to as "Egyptian Arabic" are spoken within Syria [27], that there was no indication in the report that the linguist was made aware of the explanation for the dialect used especially in light of the fact that the telephone discussion with the language analysis occurred before the interview when questions were put regarding the dialect. There is no evidence from Sprakab of the likelihood that the explanation adequately accounted for the dialect used [28].

5. The Judge also considered it of some relevance that while the report gave examples of phonological, grammatical and lexical features of Mr Haltash's language congruent with "Egyptian Arabic" there was no indication that the interview established whether or not he was aware of the corresponding Syrian Arabic usage which does not appear to have been addressed during the conversation [32]. The linguist's conclusions based in part upon the knowledge assessment in section 3 of the report is challenged by reference to the Scottish case in which it was found that "in what purports to be expert evidence of a linguistic analysis the author was stepping outside his proper field of expertise in expressing such views and comments". There was no indication in the report to what extent the author was aware of the particular facts relating to Homs which it was claimed Mr Haltash was unaware of [33]. Accordingly in paragraph 36 of the determination the Judge found:

> 36. In the light of the matters to which I have referred, while I take full account of the findings in RB (Somalia) , I do not regard the Sprakab report as providing strong evidence that the appellants account of the way in which he has come to use "Egyptian Arabic" is implausible.

6. The Judge proceeded to analyse further aspects of the evidence resulting in a final conclusion that:

> 44. In light of the matters to which I have referred, in my judgement neither the conclusions set out in the Sprakab report nor the consideration of the questions about Syria that were asked at his asylum interview provides any strong basis on which to reject the Appellants claim to be a Syrian national. The account that he has given of his residence in Syria, and the way in which he came to speak as he does, is credible. No specific points were raised regarding his account of the way in which he came to leave Syria. I find it is probable that he is from Syria as he claims, and is a Syrian national.

7. The immigration decision purports to remove the Appellant to Egypt in relation to which it was submitted there was a real risk of refoulement to Syria which the Judge accepted [45]. By reference to the country guidance material, and in light of the fact that it had not been shown that Mr Haltash was likely to be perceived as a supporter of the Assad regime, the appeal was allowed.

**Error of law**

8. The Secretary of State's challenge to the determination is in effect a weight challenge to the Judges conclusions relating to the linguistic report. Since permission was given in this case the Supreme Court has handed down its judgement in SSHD v MN and KY [2014] UKSC 30 in which they find that for the most part, the general guidance given by the Upper Tribunal [in RB]was helpful and appropriate but on two aspects the guidance appears unduly prescriptive and potentially misleading. The first is as to the weight to be given to such evidence in future cases. It seems 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. The other concern is similar, relating to the guidance on anonymity. It is important to emphasise that it would remain the duty of the tribunal in any future case to determine what justice requires, in the light of the evidence and submissions made to them [**44-50**].

9. In the cases before the Supreme Court it was found there were clear reasons for dismissing the appeals on their own facts. The comments in the reports upon which the Secretary of State originally relied on knowledge of country and culture were inadequately supported by any demonstrated expertise of the authors. In some respects the evidence went beyond the proper role of a witness. Expert witnesses should never act or appear to act as advocates. The judge in the Upper Tribunal was entitled to regard the guidance in *RB* as persuasive on the procedural matters covered by it, but it was no substitute for a

critical analysis of the particular reports relied on and of the reasoning of the first tribunal [**52-60**].

10. In the determination Judge Rose appears to have done precisely what the Supreme Court stated he should have done, namely undertake a critical analysis of the report and the conclusions arrived at by its author. It is clear the Judge considered such evidence with the degree of care required in an appeal of this nature and gave adequate reasons for the findings made, as a result of which the weight to be given to the report and the evidence generally was a matter for the Judge – see SS (Sri Lanka) v SSHD [2012] EWCA Civ 155.

11. I do not find that the grounds or submissions establish any arguable error in the approach taken by the Judge to the evidence, the weight given to that evidence, or the adequacy of reasoning. The question is not whether another judge will make the same decision but whether the conclusion as to nationality is within the range of findings available to the Judge on the evidence. I find the Secretary of State has not substantiated her claim that it is not. As the judge found Mr Haltash had discharged the burden of proof upon him to prove that he is a Syrian national, has accepted that there was a credible risk of refoulement from Egypt, and that Mr Haltash would not be perceived as a supporter of the Assad regime, he is entitled to a grant of international protection as a refugee. Such a finding is in accordance with the relevant case law.

12. No legal error material to the decision to allow the appeal has been proved. The fault is not in the decision of the Judge but the format of the evidence the Secretary of State sought to rely upon which will hopefully be addressed in future reports following the guidance provided by the Supreme Court.

## Decision

13. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 5th June 2014