



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/06508/2014

**THE IMMIGRATION ACTS**

Heard at Columbus House, Newport  
On 15<sup>th</sup> July 2015

Decision and Reasons Promulgated  
On 30<sup>th</sup> July 2015

Before

UPPER TRIBUNAL JUDGE POOLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BSM

(ANONYMITY DIRECTION CONTINUED)

Respondent

**Representation:**

For the Appellant: Mr Irwin Richards, Home Office Presenting Officer

For the Respondent: Mr Andrew Joseph, Counsel

**REMITTAL AND REASONS**

1. In this appeal I will refer to the parties in the style by which they appeared before the First-Tier Tribunal.
2. I make an order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269). Unless the Upper Tribunal or a Court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others,

all parties. Any failure to comply with this direction may give rise to a contempt of court proceedings. I make this order notwithstanding that the determination of the First-Tier Tribunal Judge purported to make no anonymity direction. Such a direction would have been made at the commencement of the appeal proceedings. It is clear that no application was made to the First-Tier Tribunal Judge for the lifting of such a direction, thus such original direction continues.

3. The appellant claimed to be a citizen of Iran, born 19 July 1990. He entered the United Kingdom via Greece on an unknown date and claimed asylum in December 2013. His claim was rejected by the respondent in a decision dated 7 August 2014. He appealed against that decision. His appeal came before Judge of the First-Tier Tribunal Eames sitting at Newport on 9 March 2015. Both parties were represented (the appellant again by Mr Joseph). In dealing with the appeal Judge Eames had the benefit of a Sprakab report. The appellant gave evidence. The judge found the appellant credible.
4. Judge Eames set out his findings from paragraphs 61 to 65 reaching a conclusion at paragraph 66. The judge purported to allow the appeal both on asylum grounds and on humanitarian protection grounds.
5. The respondent sought leave to appeal. The grounds alleged that Judge Eames made a material error of law in finding that the appellant was from Iran as claimed having placed no weight on the Sprakab report which had concluded that the appellant was from Iraq, despite also evidence that the appellant had claimed to be from Sulaymaniyah (Iraq) when arrested and finger printed in Greece. The judge had failed to consider or mention that evidence at all and that as such the judge's findings in respect of nationality became "untenable".
6. In granting leave to appeal, Judge of the First-Tier Tribunal Kelly gave the following as his reasons:
  1. The Respondent seeks permission to appeal, in time, against a decision of First-Tier Tribunal Judge Eames, promulgated on the 21<sup>st</sup> April 2015, to allow the appeal against the Respondent's decision to refuse the Appellant's application for asylum and to remove him from the United Kingdom.
  2. It is arguable that whilst the Tribunal recorded the evidence that the Appellant had previously informed the Greek authorities that he was from Suleymania (as opposed to Iran) [see paragraph 39], it nevertheless failed to engage with that evidence and to consider it in conjunction with the conclusion in a Sprakab report that the Appellant was from Suleymania. It is further arguable that this affected the outcome of the appeal".
7. Thus the matter came before me in the Upper Tribunal. Mr Joseph acknowledged that no Rule 24 Response had been provided by the appellant's solicitors.
8. Mr Richards in his submission relied upon the grounds. He emphasised the findings of the Sprakab report, together with the appellant's comments when arrested in Greece that he was from Sulaymaniyah in Iraq. It was clear that the judge had been aware of that, but had not dealt with it in his findings. His failure to engage with the

evidence amounted to an error of law and that error infected all the findings, and his conclusions must be set aside.

9. Mr Joseph commented that it was a very narrow issue. He submitted that the judge (paragraph 37) had engaged with the evidence. Mr Joseph agreed that the judge had not mentioned that aspect of the evidence (the admission in Greece) again in the determination. He had given an explanation which had been accepted by the Tribunal. Inconsistencies in the evidence were dealt with at paragraph 53 and the judge dealt with the Sprakab report at paragraphs 55 to 57. Mr Joseph indicated that there was no need on the part of the judge to make a specific finding. He had made findings on all aspects of the evidence, the appellant had volunteered the information about Greece. If an error existed it was not material.
10. Mr Richards in response noted that the judge had made positive findings, but had failed to deal with an important piece of evidence.
11. At the end of the hearing I indicated I was reserving my decision, which I now give with reasons.
12. The very narrow issue in relation to this appeal is the nationality of the appellant. He claims to be from Iran, whilst the Secretary of State is of the view that the appellant is from Sulaymaniyah in Iraq. The respondents view throughout has been that the evidence of the Sprakab report combined with the appellant's comments when arrested in Greece (that he was from Sulaymaniyah) effectively disprove the appellant's claim that now that he is from Iran and not Iraq.
13. A reading of Judge Eames determination shows that he was aware of both aspects of this evidence of nationality. At paragraphs 55 and 56, Judge Eames deals with the Sprakab report and for reasons given discounts the linguistic assessment provided by that report. In short he finds the "Swedish linguists" deficient in their knowledge of Sorani. However what Judge Eames does not do in assessing the Sprakab report is to assess the linguists' view that the appellant is from Sulaymaniyah with the appellants own unchallenged evidence given in Greece that indeed he was from Sulaymaniyah.
14. Judge Eames does note the appellant's evidence at the hearing that he said he was from Sulaymaniyah out of fear, but nowhere is it suggested what the fear was based upon. Why was he frightened and why did he think that saying he was from Sulaymaniyah would be a safer option?
15. The nationality of the appellant was a prime consideration in respect of his claim for asylum and I do not consider that Judge Eames has adequately dealt with the evidence in reaching the conclusion that he did. Weight had to be given to the Sprakab report and if Judge Eames had taken into account the appellants admission he may well have come to a different conclusion with regard to that report. Failure to engage with the evidence amounts to an error of law and in the circumstances it must be material to the outcome of the appeal. In short the judge did not give due consideration to the evidence before him.

16. I therefore find a material error of law in the decision of Judge Eames and it falls to be set aside.
17. At the hearing before me both representatives acknowledged that in the event of me reaching this conclusion it would be appropriate to remit the case for re-hearing before the First-Tier Tribunal, where findings will need to be made with regard to the appellant's nationality based upon all the evidence that is available. I do not preserve any of Judge Eames' findings.

**Decision**

18. The decision of First-Tier Tribunal Judge Eames cannot stand and must be set aside. The appeal is remitted to the First-Tier Tribunal to be heard *de novo* by a judge other than Judge Eames.

Signed

Date

Upper Tribunal Judge Poole