IAC-AH-LEM-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06569/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 15th March 2016	**On 14th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[A D]
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, Counsel
For the Respondent: Ms Johnstone, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant claims to have been born on [ ] 1982. He claims to be a Kuwaiti Bidoun. The Appellant claims to have left Kuwait in January 2014 and travelled to Turkey by aeroplane. Thereafter he contends he travelled by ship to Greece and onward across Europe arriving in the UK on 15th April 2014. The Appellant claimed asylum and his asylum claim was

refused by the Secretary of State on 8th August 2014. In that Notice of Refusal the Secretary of State contended that the Appellant was not a Kuwaiti Bidoun but was a citizen of Iraq and that the Appellant had not raised any fears of return to Iraq.

2. The Appellant appealed and the appeal came before Immigration Judge Fox sitting at Manchester on 6th November 2014. In a determination promulgated on 10th November 2014 the Appellant's appeal was dismissed on both asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection.

3. On 26th November 2014 Grounds of Appeal were lodged to the Upper Tribunal. Permission to appeal was refused by First-tier Tribunal Judge Osborne on 9th November 2014.

4. Renewed Grounds of Appeal were lodged and on 21st April 2015 Upper Tribunal Judge Taylor granted permission to appeal. Judge Taylor noted that the grounds stated that the Appellant's brother had been accepted as an undocumented Bidoun and had been granted asylum in the UK following DNA evidence. Moreover she acknowledged that there was strong evidence from Sprakab that the Appellant was Kuwaiti and that arguably therefore more detailed and cogent reasons were required to reject the Appellant's account in its entirety than are given within the First-tier Tribunal Judge's determination and that it may be that too high a standard of proof was applied.

5. On 1st May 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24. Those grounds contended that the findings of the First-tier Tribunal Judge were open to him and that the grounds suggest an artificially restricted approach to the evidence whereas the First-tier Tribunal Judge was obliged to consider all evidence in the round and was not bound to find any of the particular strands as determinative. The Rule 24 response contended that the approach to the Appellant's brother's refugee status was entirely in line with long-standing Tribunal authority in *AC (Somalia) [2005] UKAIT 00124* in that the Sprakab evidence was part of the evidential picture and that the First-tier Tribunal Judge approached that lawfully. Consequently the Secretary of State maintained the position as found by the First-tier Tribunal Judge.

6. It is on that basis that the appeal comes before me to determine whether there is a material error of law in the decision of the First-tier Tribunal. The Appellant appears by his instructed Counsel Mr Brown. The Secretary of State appears by her Home Office Presenting Officer Ms Johnstone.

Submissions/Discussion

7. Mr Brown submits that there is strong evidence that the Appellant was from Kuwait referring me to the interview record that took place on 8th July 2014 and to questions and answers put to the Appellant therein. By way of example he refers to questions 89 to 98 and the coherent response the

Appellant gave with regard to issues relating to Bidouns in Kuwait. He further points out that it was fully recognised that the Appellant's brother who had been granted asylum was a Kuwaiti Bidoun and that this had been proven by DNA evidence. He submits that this is an adequacy of reasons challenge and that the language analysis does not state that the Appellant is an Iraqi national. He refers to paragraph 22 of the First-tier Tribunal Judge's determination where the judge states therein "I note what is said in regard to the language analysis in that the Appellant could be an Iraqi national." He states that that is clearly not what is said in the language analysis report and that statement is simply wrong. On such grounds the decision is, he contends, not safe and should be set aside and be remitted for rehearing. He submits that it was on that basis that Upper Tribunal Judge Taylor granted permission to appeal.

8. He also considers that the findings set out at paragraph 26 of the First-tier Tribunal Judge's decision are disturbing and that the decision itself is littered with inaccuracies and sentences that do not make sense and that the only step that the court can contemplate is to remit the matter back to the First-tier for rehearing finding that there are multiple errors of law in the decision of the First-tier Tribunal Judge.

9. Ms Johnstone submits that the reference at paragraph 22 of the judge's decision is not what is said in the Sprakab Report but that it is taken from an extract from the Notice of Refusal. She refers to the witness statement of Christine Cafferkey dated 4th August 2014 that was before the First-tier Tribunal Judge and the fact that the Appellant had sought to obtain an Iraqi passport as an act of deception should not be ignored and had not been ignored by the First-tier Judge. She contends that the findings in paragraph 26 that the overall weight of unexplained inconsistencies outweighed the biological nexus between the Appellant and his brother was a finding that was open to the judge. She asked me to maintain the decision of the First-tier Tribunal.

The Law

10. Areas 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 fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

11. 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 of argument. Disagreement with an Immigration Judge's factual conclusion, 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 which 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 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.

Findings

12. I start by reminding myself that the issue before me is to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I am not rehearing the matter. The First-tier Tribunal Judge found at paragraph 26 that he was not prepared to accept that the Appellant was a Kuwaiti Bidoun. The main thrust of the First-tier Tribunal Judge's decision was that despite the fact that the Appellant's brother was acknowledged as a Kuwaiti Bidoun he did not consider even applying a lower standard of proof that the inconsistencies militating against the Appellant's credibility were outweighed by the biological link between the Appellant and his brother. In support of this the First-tier Tribunal Judge stated that the language analysis indicated that the Appellant could be an Iraqi national. That quite simply is not true. That finding is taken from an interpretation of paragraph 14 of the Notice of Refusal. Actually nowhere within the decision does the judge make any reference whatsoever to the Sprakab Report.

13. Whilst acknowledging the view expressed in the Rule 24 response that the Sprakab evidence is part only of the evidential picture there is clearly a responsibility upon the First-tier Tribunal Judge to give due consideration to the evidence available and in this instance the only evidence available of language analysis is that of Sprakab. Sprakab Reports are, it is acknowledged, not necessarily foolproof. The Sprakab Report acknowledges that it is not possible to determine if a speaker is part of the Al-Bidoon group or not solely from language analysis but made findings in the analysis and knowledge assessment which were supportive to the position of the Appellant. None of those factors were considered by the First-tier Tribunal Judge. There was clearly a responsibility upon him to do so. As to the level of evidential weight that he then gave to them that was a matter for the First-tier Tribunal Judge but it is clear that no reference is made therein whatsoever. In such circumstances the decision is unsafe and contains material errors of law.

14. In addition I agree with the contentions made by Mr Brown that the analysis at paragraph 26 of the judge's findings is unsafe. The decision, if it has been proofread, has not been corrected and there are substantial typographical errors throughout. Some sentences are difficult to follow and whilst Ms Johnstone indicates that they are not material Mr Brown urges the point that looked at in the round along with the failure to properly address the weight of the Sprakab Report and finding that the

Appellant's biological [brother] is a Kuwait Bidoun shows that the decision is unsafe and I agree with that finding.

15. In all the circumstances the correct approach is to find a material error of law, to set aside the decision of the First-tier Tribunal Judge and to remit the matter back to the First-tier Tribunal for rehearing before any judge other than Immigration Judge Fox.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law. The decision is set aside. Directions are given hereafter for the rehearing of this matter.

1. The decision of the First-tier Tribunal contained a material error of law. The decision is set aside and remitted to the First-tier Tribunal sitting at Manchester on the first available date 28 days hence with an ELH of three hours.

2. The matter be relisted before any First-tier Immigration Judge other than Immigration Judge Fox.

3. That there be leave to either party to file a supplemental bundle of evidence upon which they intend to rely at least seven days prehearing.

4. That none of the findings of fact of the original First-tier Tribunal Judge are to stand.

5. Arabic interpreter required.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris