



IAC-FH-CK-V1

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

Appeal Number: AA/09076/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 February 2016**

**Decision &  
Promulgated  
On 23 March 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**A M A  
(AN ANONYMITY DIRECTION IS MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Rendle, Counsel instructed by Wai Leung Solicitors  
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, who was born on 25 December 1998, asserts that he was born in Damascus in Syria. It is also his account that in the spring of 2014 his parents were killed in Damascus during a bombing raid, whilst he was out of the house at their farm. Shortly after that he left Syria. He travelled to France where he worked in a restaurant in Paris to pay for the rest of his journey to the United Kingdom. He was discovered in a lorry in

Dover on 2 December 2014 and had a screening interview on 9 December 2014.

2. On 20 January 2015 Kent Social Services undertook an age assessment and accepted that he was a child. His substantive asylum interview took place on 23 April 2015. On 5 May 2015 he was interviewed over the telephone for seventeen minutes by Verified AB. His asylum application was refused on 4 June 2015 and he was granted discretionary leave to remain as an unaccompanied minor until 25 June 2016. He appealed against this decision on 15 June 2015 and on 3 December 2015 First-tier Tribunal Judge Hembrough dismissed his appeal. On 6 January 2016 First-tier Tribunal Judge White granted permission to appeal on five different bases and on 20 January 2016 the Respondent filed a Rule 24 response.

### **ERROR OF LAW HEARING**

3. The Appellant was still a child at the date of the error of law hearing and two social workers from Kent County Council accompanied him to the hearing and sat at the back of the court.
4. Counsel for the Appellant submitted that at the asylum appeal hearing First-tier Tribunal Judge Hembrough had accepted that there was an error in interpretation at the Appellant's screening interview which made it appear that he had initially stated that he left Syria in 2012. He also submitted that there was no evidence about the Appellant's ex-flatmate's background or that he had been found to be credible and that, therefore, First-tier Tribunal Judge Hembrough had erred when he stated at paragraph 46 of his decision; "moreover given the dearth of supporting evidence for his claim to be Syrian I do not find it credible that had his former flatmate Mohammad, whose credibility has been accepted by the Home Office, been satisfied as to his origins he would not have been called to give evidence in support of the appeal".
5. Counsel also submitted that discrepancies in the language report were caused by difficulties in interpretation and that the fact that the Appellant had been in transit in France meant that it was more difficult to pinpoint his origins from his language.
6. The Home Office Presenting Officer then replied. She noted that there was no record of proceedings to confirm that the First-tier Tribunal Judge had found that the discrepancy about when the Appellant left Syria was caused by an error made by the interpreter. She relied on the fact that the Judge stated at paragraph 34 of his decision that he had asked the Appellant why 2012 is recorded in his screening interview and that at paragraph 40 the Judge said that he found it difficult to accept that answers had been mistranslated or misrecorded. She also submitted that the fact that his former flatmate had not attended the asylum appeal hearing was something which the Judge could take into account.

7. The Home Office Presenting Officer also noted that in paragraphs 49 and 50 of his decision First-tier Tribunal Judge Hembrough had taken into account that there may be limitations to language analysis reports. She also accepted that no recording of the interview with Verified AB had been provided to the Appellant and his representatives but also noted that no such recording had been requested. She then submitted that the decision reached by First-tier Tribunal Judge Hembrough was one which was open to him on the totality of the evidence before him.

## **ERRORS OF LAW**

8. One of the grounds on which First-tier Tribunal Judge White granted permission was that First-tier Tribunal Judge Hembrough had failed to have due regard and make due allowance for the fact that the Appellant was an unaccompanied minor. I accept that at paragraph 39 of his decision First-tier Tribunal Judge Hembrough stated “the Appellant is a minor” but he did not explain what weight he gave to this fact and just went on to say that “whilst I have taken this into account I find that I am left with considerable reservations about his credibility”. His acknowledgment that the Appellant was a child was not reflected in any of his subsequent findings of fact or when considering the credibility of different aspects of the Appellant’s account. This undermined his credibility findings.
9. The Home Office Presenting Officer submitted that First-tier Tribunal Judge Hembrough was entitled to draw an adverse inference from the fact that the Appellant’s former flatmate did not attend the asylum appeal hearing. However, even if the Appellant’s former flatmate had attended, the weight which could have been placed on his evidence would have been limited. In paragraphs 4 of *AB (Witness corroboration n asylum appeals) Somalia* [2014] UKAIT 00125 the Tribunal noted that when two witnesses “concur in their evidence that does not without more prove that they are telling the truth” and in paragraph 8 it found that evidence would be needed about the basis upon which the witness had been granted asylum. In *AC (Witness with refugee status - Effect) Somalia* [2005] UKAIT 00124 the Tribunal also found that a grant of refugee status was “capable of carrying weight but the grant is not to be equated with an Immigration Judge’s determination following a hearing. An Immigration Judge’s decision is likely to be fully reasoned and made after the evidence in support has been tested”. In the current case, First-tier Immigration Judge Hembrough did not make it clear whether the Appellant’s former flat-mate had been granted asylum after a hearing or the basis upon which he had been granted asylum.
10. In the current case Counsel for the Appellant accepted that the Appellant’s representatives had not asked for a recording of the Verified AB interview. However, in *RB (Linguistic evidence - Sprakab) Somalia* [2010] UKUT 329 (IAC) the Tribunal found that “recordings of all material derived from the appellant and used as material analysis should be made available to all parties if the analysis is to be relied on in the Tribunal.

11. I also find that the case of *RB* states that “linguistic analysis reports from Sprakab are entitled to considerable weight” and “that conclusion derives from the data available to Sprakab and the process it uses”. It did not find that all linguistic analysis reports or reports by Verified AB should be accorded similar weight. Therefore, First-tier Tribunal Judge Hembrough misdirected himself in paragraph 47 of his decision when he found that “the use of linguistic origin identification reports such as that provided by Verified AB in his appeal has been specifically approved by the Upper Tribunal in *RB*”.
12. Furthermore, although First-tier Tribunal Judge Hembrough did state at paragraph 57 of his decision that “looking at the totality of the evidence before me in the round and having regard to the lower standard of proof applicable I have not been satisfied that the Appellant is a Syrian national”, very little weight, if any, was placed on the information that the Appellant did provide about Damascus. Little weight was also given to the fact that the refusal letter does not assert that the Appellant gave false information about Syria but only that some places could not be found on the internet. In addition, no weight was given to the fact that the Appellant gave some information about number plates in Syria, albeit that it was not comprehensive.
13. Little or no weight was given to the fact that all events took place when the Appellant was a child. In particular, the expectation that the Appellant would go through the rubble in the house in which his parents had just been killed in order to find school reports, photos and receipts was unrealistic and presumed that a child would understand what evidence he would subsequently be asked to provide if he fled to Europe.
14. When reaching my decision I have also taken into account the fact that the Verified AB report states that “linguistic behaviour can also change in order to increase comprehension between two specific speakers” and that this can happen “when one wishes to accommodate the person one is speaking to”. The report also noted that “analysis regarding subjects with a more complex history of residence and regarding those having been socialized in particularly heterogeneous environments (e.g. refugee camps or certain points of transit countries) merits extra caution”.
15. For all those reasons I find that First-tier Tribunal Judge Hembrough did make material errors of law when reaching his decision.

## **DECISION**

1. The Appellant’s appeal is allowed.
2. The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Hembrough.

## **DIRECTIONS**

1. The Respondent do provide the Appellant and his solicitors with a copy of the recording of the interview conducted with the Appellant by Verified AB within 14 days of service of this decision.

### **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 him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 3 March 2016

**Nadine Finch**

Upper Tribunal Judge Finch