



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

Appeal Number: PA/08453/2016

THE IMMIGRATION ACTS

**Heard at Newport
On 24 August 2017**

**Decision & Reasons
Promulgated
On 08 September 2017**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**K H H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Alban of Fountain Solicitors
For the Respondent: Mr M Diwncyz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the

appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant claims to be from Syria and to be at risk on return. The appellant claims to come from the northeast corner of Syria from a place called Al-Malikiyah. He claims to come from the Maktoumeen Group. It is not disputed that he would be at risk on return to Syria but the Secretary of State does not accept that he is from Syria.
3. The appellant claims that he left Syria on 29 January 2016 and he arrived in the UK on 10 February 2016. He was apprehended on 11 February 2016 as an illegal entrant. On that date, he also claimed asylum.
4. In a decision dated 28 July 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Art 8 of the ECHR. The Secretary of State did not accept that the appellant came from Syria. In part, the Secretary of State relied upon a language analysis report dated 28 June 2016 produced by an organisation called Verified AB.
5. In that report, following a telephone interview, an assessment was made of the appellant's language. Two conclusions were reached. First, as to him speaking the "SK" dialect of his claimed area in Syria (the Derik district of the Al-Hasakar governate), the report concluded that the results were "more likely than not inconsistent" with him speaking that dialect (page 46 of the bundle). On a scale running from minus three to plus three that is a result of "-2" in relation to the appellant speaking the dialect of the region from which he came. However, the report goes on (at page 49 of the bundle) to state that the results "more likely than not are consistent" with his speaking a dialect of Kurmanji locating him in the dialect region of "SEK" covering the Duhok province in Iraqi Kurdistan (IKR). On a scale running from minus three to plus three that is a result of "+1" in relation to the appellant speaking the dialect of the region from which he came.

The Appeal to the First-tier Tribunal

6. The appellant appealed to the First-tier Tribunal. The linguistic report featured significantly in Judge Fowell's decision to dismiss the appellant's appeal on the basis that he was not satisfied that the appellant was from Syria, in particular the area from which he claimed. Judge Fowell dealt with the linguistic report at paras 25 – 32 as follows:

"25. I will start with the language report itself which is the main evidence relied on by the respondent. For reasons which are unclear to me the full version of this report appears only in the appellant's bundle at pages 40 to 59. It is produced by a company called Verified AB. The interview was conducted on 28 June 2016 and the language for analysis was Kurmanji. It lasted 36 minutes. The hypothesis considered was quite specific - whether the language displayed was consistent with the language community in Derik district of the Al-Hasakah governorate in

Syria, and accordingly to the summary the phonological and morphological features were noted in the appellant which generally deviated from the eastern Al-Hasakah variety, i.e. there were differences in both the sound and in the structure and form of the words used.

26. The overall conclusion was that the language was from a different Kurdish language community, (more accurately was 'consistent with' this other community) labelled SEK, which covers the Duhok province in Iraqi Kurdistan. It is also called a Bahdini dialect.
27. It also stated that the 'morphological features' noted [i.e. structure and form] were partly consistent with and partly deviating from SEK.
28. The degree of confidence in these results as expressed on a scale of 1 to 3, with 3 showing certainty, 2 'clearly suggesting' and 1 'somewhat suggesting'. In the present case the conclusion was that the results clearly suggested that the appellant was not speaking the SK dialect, common to the Al-Hassakah Province and somewhat suggested that he was instead speaking the SEK dialect.
29. I have given careful consideration to this report, stating from a position of some scepticism that it would be possible to identify so precisely the dialect area. Nevertheless, the accompanying guidance on the methods and limitations used has addressed these concerns. It explains that there is essentially a collaboration between the native speaker analyst in each test and their linguistic colleagues. For each dialect groups there are a number of features for the native speaker analyst to detect:

'As a rule, reports specifically recorded occurrences of at least eight different features on at least two distinct levels (e.g. phonological, morphological and syntactic). Each feature is described by comparison with other relevant adjacent linguistic communities. After the description of the feature, examples of the person's speech, which are drawn from a recording and which pertain to the linguistic feature in question, are specified.'

30. It is the identification of these features which distinguishes the relevant dialect and so it is only the person conducting the interview who needs to be a native speaker. In this case the analyst is described as a native speaker of Kurdish with a northern Kurdish dialect, and also have an Arabic at mother-tongue level.
31. Despite the criticisms made of this exercise therefore, the conclusion that the language analysis 'clearly suggests' the appellant is not from the Al-Hassakah province has to be given due weight. The rival hypothesis that his dialect is that of southeast Turkey or northern Iraq is weaker, but since the area of Iraq in question is part of the Independent Kurdistan Region, in either of which areas he would be safe to return, there would clearly be an advantage to the appellant claiming to come from the Derik area."

7. At para 37, the judge concluded as follows:

- "37. The overall position therefore is that there is firm linguistic evidence that the appellant is not from the area claimed, that his answers in respect of hospital treatment reinforce those concerns to some extent, and there is in my view no positive evidence, whether from his knowledge of the local area or by virtue of his supporting witnesses, for the reasons

already given, which I find affect that view. I cannot therefore be satisfied in the circumstances, even to the lower standard, that the appellant's account is correct that he is from Syria. It follows that all his claims based on the risk to return to Syria must be dismissed."

The Appeal to the Upper Tribunal

8. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds, in particular that the judge had been wrong to place the weight that he did on the linguistic report as the expertise of the analyst was not established. Neither expert purported to speak the dialect which would be appropriate for the area where he claimed to live in northeast Syria. Reliance is also placed upon the Supreme Court's decision in SSHD v MN and KY [2014] UKSC 30 where the court considered the weight to be given to linguistic reports produced by Sprakab.
9. In addition, the grounds argue that the judge failed properly to consider the whole of the evidence, including the points in favour of the appellant concerning his knowledge and wrongly counted against the appellant matters such that he did not know the place of his birth and that, contrary to the objective evidence, some treatment was available to Maktoumeen in Syria when he had said his mother had obtained treatment.
10. On 29 March 2017, the First-tier Tribunal (Judge Nightingale) granted the appellant permission to appeal.
11. The respondent filed a rule 24 response but, in form only, as the writer did not have the determination available.

Discussion

12. Ms Alban relied on her skeleton argument which, in large measure, reflected the grounds of appeal. She took me through the language report and the background of the analysts which, she submitted, demonstrated that they lacked the expertise in the appellant's claimed dialect. Nowhere in the report was the required expertise explained. Further, she argued that the report does not grapple with the point that the appellant lived very close to the border with Iraq and what, if any, impact that might have on his dialect.
13. Mr Diwncyz, who represented the Secretary of State acknowledged that the linguistic report was not the strongest upon which the judge principally based his decision. The negative rating of "-2" that the language analysis "clearly suggests" the results are "most likely" to be "inconsistent" with him speaking the dialect from the area he claimed to come, taken together with the "+1" conclusion that the analysis "somewhat suggests" that the results are "more likely than not" consistent with him speaking a dialect from Duhok province in the IKR, were results which more might have been hoped for if relied upon as a primary reason for disbelieving the appellant's place of origin. Mr Diwncyz, candidly, said he was not making

a concession on this point relied upon by the appellant, but it did make the judge's decision questionable given the focus of his reasoning.

14. In MN and KY, the Supreme Court acknowledged that weight could be given to expert linguistic analysis produced by the Sprakab organisation. However, central to that view was that the evidence considered by the Upper Tribunal was "sufficient to demonstrate acceptable expertise and method" (see [51] *per* Lord Carnwath). Here, the expertise of the analysts is to be found in their qualifications and experience at pages 56 - 59 of the appellant's bundle.
15. The expertise of the analyst dealing with an assessment of whether the appellant speaks the dialect from the area from which he claims to come is at page 59 of the bundle. There analyst "1642" is stated to be a "native speaker of Kurdish (Afrin variety of Kurmanji) and speaks Arabic (Aleppo City dialect) at mother-tongue level." His experience is that he has been commissioned by Verified AB in language analysis since 2005 and that he has undergone testing to test his ability to assess "other linguistically adjacent varieties than their native dialect". The analyst's place of origin and where he was raised is said to be Aleppo City, Syria with relatives in Afrin.
16. As Ms Alban submitted, it is clear from the report that that linguistic background is not that claimed by the appellant himself. He does not, as is clear from the statement of the "linguistic community" in para 3.2 of the report (at page 43) purport to speak any dialect or variety of Kurdish referred to as the "Afrin variety". He purports to speak the dialect of SK. Ms Alban submitted that the closest analyst was "1608" but he was the interviewer and did not prepare either section 3 of the report (dealing with the appellant's claimed language) or section 4 (dealing with an hypothesis that he spoke the dialect SEk from the Duhok province in the IKR).
17. I do not take the view that the report warranted no weight being placed upon it. As the judge pointed out in para 29, the methodology is set out whereby comparisons are drawn with linguistic communities adjacent to that claimed by the individual. The evidence of the two analysts was, according to the information concerning their competence, in particular at page 59 in relation to "1642", entitled to some weight. However, and Mr Diwncyz acknowledged this, the strength of their conclusions did not fall at the extremes of the attribution ranges between "-3" and "+3".
18. I am also persuaded by Ms Alban's submission that the expertise of the analyst is relevant in assessing what weight to give to their conclusions. That follows from what was said in MN and KY. Ms Alban's submission was that their expertise was not established since, in particular in relation to analyst "1608" to assess the appellant's language by reference to his claimed area, he did not speak the relevant dialect of SK. The issue of expertise was, in itself, a matter of evidence as the Supreme Court pointed out in MN and KY. No material was put before me as to whether an analyst, in order to function effectively, need be a speaker or native

speaker of the relevant dialect. I am simply unable to reach any conclusion on that on the material before me. However, no material was before the judge either and he placed considerable indeed, on a fair reading, central weight upon the conclusions of the report. Without further evidence and assistance on the issue of expertise, the judge was not entitled to do so.

19. Consequently, for these reasons and in the light of the position taken by Mr Diwncyz on behalf of the Secretary of State, I am satisfied that the judge materially erred in law in giving central importance to the language report in reaching its adverse finding.
20. I would also add that I accept Ms Alban's submission that the judge's reasoning in relation to a number of other matters also adds to the unsustainability of his findings. In particular, he rejected the supporting evidence of a witness who claimed to know the appellant from his home village on the basis that it was, in effect, wholly implausible that he would have met him in Swansea. That is simply not implausible.
21. Further, he doubted the reliability of the witness's evidence because it is claimed, although much older, he became acquainted with the appellant who was 11 or 12. That fails to take into account the appellant's evidence that the reason that he knew the witness was because he was friends with the witness's cousin who was also a child.
22. Also, in para 37, which I have set out above, the judge expressed the view that there was "no positive evidence" concerning his knowledge of the local area. That, with respect to the judge, is contradicted by his own finding in para 33 that the appellant's "knowledge of the local geography is something capable of supporting his account".
23. Further, doubting the appellant's credibility because he was unable to recall the details of his birth is, with respect, self-evidently impermissible. As Mr Diwncyz acknowledged, the appellant was undoubtedly at his birth, but he could not be expected to know any more than his parents had told him.
24. Finally, in relation to the appellant's claim that his parents had been able to obtain medical treatment, that was not, in fact, contrary to the background evidence since emergency treatment was available to Maktoumeen. It is not clear to me precisely why, therefore in para 34 of his determination, the judge counted against the appellant in assessing his credibility that his mother had been treated for heart disease in a state hospital.
25. For all these reasons, the judge materially erred in law in reaching his adverse finding in respect of the appellant's claimed place of origin and therefore in concluding that he was not at risk on return to Syria as his country of nationality. The judge's decision cannot stand and is set aside.

Decision

25. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

26. It was common ground between the parties that if the decision could not stand then the appeal should be remitted to the First-tier Tribunal.

27. Having regard to the nature and consent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Fowell.

Signed



A Grubb
Judge of the Upper Tribunal

7 September 2017