



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05989/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester CJC

Decision

&

Reasons

On 19 October 2018

Promulgated

On 07 November 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR DARBAZ MUSTAPHA MOHAMMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Jagadesham, Counsel, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr D Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant who claims to be a national of Iran has permission to challenge the decision of Judge Andrew Davies of the First-tier Tribunal sent on 20 June 2018 dismissing his appeal against the decision made by the respondent on 25 April 2018 refusing his protection claim. The respondent considered that the appellant was a national of Iraq, not Iran. The judge agreed.
2. The grounds principally focus on the judge's findings on the nationality issue. Prior to reaching her decision the respondent obtained a Sprakab

linguistic analysis report dated 1 November 2017 which assessed the appellant's linguistic background as being Iraq with a "high" degree of certainty and his stated linguistic background of Iran, Azarbaijan-e Gharbi, Sardasht as being "unlikely". In the appellant's skeleton argument before the FtT Judge this report was subjected to a number of criticisms, especially of the expertise and qualifications of the principal analyst. The judge considered these in detail and rejected them. At paragraphs 38-39 the judge stated:

"38. In **RB (Linguistic evidence-Sprakab) Somalia** [2010] UKUT 329 (IAC) the Upper Tribunal confirmed that Sprakab reports were entitled to be accorded considerable weight. That conclusion derived from the data available to Sprakab and the process used. The reports were not infallible. The Tribunal gave some general guidance on the reports. The process of language analysis involved the interaction of several employees and this minimised the opportunity for incompetence and false results. A person's origin should not be based solely on linguistic analysis but where a clear opinion was expressed in terms of certainty little more would be required. In the present appeal the conclusion was of a high possibility so it is important to consider the report in the context of other evidence as well, as I have done. I am satisfied that the Appellant and his representatives have had the opportunity to challenge the report and indeed counsel has submitted detailed representations on the report albeit that no thought was apparently given by his instructing solicitors to obtaining a linguistic report.

39. In **RM (Sierra Leone)** 2015 EWCA Civ 541 the Court of Appeal held that the correct approach was set out in **RB**. Considerable weight should be given to the reports although they were not infallible."

3. The appellant's grounds of appeal before me mount to three main criticisms of the judge's reliance on this report:
 - (1) that it mistakenly proceeded on the basis that in **RM** the Court of Appeal held that the correct approach to Sprakab reports was set out by the UT in **RB**;
 - (2) that it erroneously considered the analyst was fluent in Sorani and had the requisite expertise and knowledge in being able to comment on the specific different dialects apparently spoken in the appellant's claimed home area of Sardashi (Iran) as opposed to that spoken in Arbil (or Erbil) Iraq; and
 - (3) that the judge did not engage with the additional submission made in the skeleton argument that the linguist's view that the main difference between Kurdish Sorani spoken in the two regions was that those from Iran "typically" demonstrated an influence of Farsi, was "unsourced and unsubstantiated".

4. I was greatly aided by excellent submissions from both representatives.
5. Dealing together with grounds 2 and 3, I am not persuaded by them that the judge erred in law. Mr Jagadesham seeks to rely on various observations made by Lord Carnwath in **MN and KY (Scotland)** [2014] UKSC 30 and by Underhill LJ in **RM**, the crux of which is that linguistic analysts must demonstrate an expertise in the particular issue on which they are expressing an opinion. However, in neither of these decisions is it said that to possess the necessary expertise analysts have to have lived in or visited the area or areas they are considering, or that they must evidence or source every one of their findings. Having looked at the stated practical experience and expertise of the principal linguist who authored the report at issue in this case, I observe that his expertise is partly said to be based on membership of a linguistic group who meet twice a year in different Kurdish areas to discuss differences and similarities between Kurmanji dialects, and that the report clearly draws on a broad database of information about various Kurmanji dialects, with reference to academic authorities. Considering what the principal analyst sets down regarding his experience and expertise, I consider it was within the range of reasonable responses for the judge to conclude that the principal analyst was “appropriately qualified” (paragraph 33). I would also observe that although **RM** did not confirm that the UT in **RM** applied the correct approach, it did acknowledge that the general evidence about Sprakab training given to the UT in **RB** was a factor that could be taken into account (see paragraph 53).
6. I consider it was open to the judge to conclude that the principal analyst had demonstrated appropriate expertise both as regards the Kurdish Sorani spoken in the appellant’s home area of Sardashi (Iran) as opposed to that spoken in Arbil (or Erbil) (Iraq) and that the judge was entitled to treat as relevant in assessing the report findings overall that another Sprakab expert, whose experience and qualifications were also outlined, had endorsed the principal analyst’s findings.
7. As regards ground 1, I would accept that the judge wrongly stated at paragraph 39 that **RM** endorsed the approach in **RB** as correct, and also that at paragraph 38 the judge wrongly endorsed the view expressed in **RB** that (I use the judge’s paraphrase here) “where a clear opinion was expressed in terms of certainty little more would be required”. However, the judge went on to say that “in the present appeal the conclusion was of a high possibility so it is important to consider the report in the context of other evidence as well, as I have done”. The grounds assail the judge for attaching “considerable weight” to the report in this case. I would accept that the judge went too far in implying by reference to **RB** that all Sprakab reports should be given considerable weight (which is the effect of the second sentence of paragraph 38). But I cannot agree that this gave rise to my material error in the judge’s consideration of the report in this case. That consideration was not simply deduced from **RB**. It was clearly based on precisely what **MN and KY** at paragraph 51 and **RM** at paragraph 55 enjoins, namely a specific consideration of the particular report and the

report was given considerable weight by the judge by virtue of the perceived quality of its analysis. Further, the judge clearly considered the arguments directed against the report by the appellant in his skeleton argument and in my judgement was entitled to find they did not undermine its value. I would also note that the judge was entitled to take into consideration that the appellant's representatives had not taken the opportunity afforded to them when they appealed of obtaining their own linguistic report.

8. The judge made clear that because the report in this case assessed a "high possibility that [the appellant's] linguistic background was Iranian", he needed to consider the report in the context of the evidence as a whole. Separately from the linguistic analysis the judge went on to identify extensive shortcomings in the appellant's account of difficulties arising from his smuggling activities, his claimed involvement with the KDPI and of facing threats from another family because of his brother's affair. None of these findings are challenged in the grounds.
9. To conclude, I am not persuaded that the judge materially erred in law and accordingly his decision must stand.

No anonymity direction is made.

Signed

Date: 26 October 2018



Dr H H Storey
Judge of the Upper Tribunal