Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03030/2018

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 25 April 2019	**On 29 May 2019**

Before

Mr C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

NMAAB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Bass of Asylum Justice
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) we make an anonymity order prohibiting the disclosure or publication of any matter likely to lead members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

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2. The appellant is a Palestinian who claims to have been born and habitually resident in Syria in a place called Dar'a. He is now 28 years old.

3. The appellant arrived in the United Kingdom on 21 October 2016 and claimed asylum. The basis of his claim was that as a Palestinian from Syria he was perceived as anti-government and feared the Syrian regime. He claimed that he had been detained and ill-treated on five occasions.

4. In his decision of 15 February 2018, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds. The Secretary of State did not accept that the appellant was a Palestinian from Syria. The Secretary of State did not accept that the appellant's identity was as he claimed. The Secretary of State relied, in part, upon evidence obtained from the US authorities which matched the appellant's fingerprints with an application for entry clearance to the US made on 6 November 2007 by a Jordanian national, whom we shall refer to as "NA". The Secretary of State concluded that the appellant was, in fact, a citizen of Jordan and that, therefore, his account was untrue and he did not have a well-founded fear of persecution in Syria as he claimed.

The Appellant to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. Judge O'Rourke dismissed the appellant's appeal on all grounds.

6. Before Judge O'Rourke, the appellant produced an expert report from Dr Fatah relating to the authenticity of the appellant's claimed Syrian ID documents. He also relied upon on a medical report. The respondent produced a linguistic origin report dated 15 March 2017. In addition, the respondent relied upon a document from his own National Document Fraud Unit relating to the authenticity of the documents. Finally, the respondent relied upon the US visa application in the name of NA and a witness statement from Mr Matthew Johnson, a Home Office official based at Lunar House dated 24 May 2018 reporting that the fingerprints taken from the appellant when he claimed asylum on 21 October 2016 matched those of the applicant for the US visa (NA) taken on 26 May 2011 in Amman, Jordan when that individual applied for his US visa.

7. Judge O'Rourke reached his adverse finding for the reasons he gave at para 22–26 as follows:

> "22. Appellant's Credibility. The Appellant's credibility is damaged by two matters, as follows:
>
> i. The documents he has provided are clearly false. Even his own expert effectively concludes that to be the case, as does (in respect of the ID card) the Respondent's document examiner. I do not accept Mr Simmonds' submissions that Dr Fatah is either unqualified to have expertise in this area, or that his report is somehow not an 'expert' one. Dr Fatah's CV is an impressive one and a cursory examination of some of the appeals in which he has been involved [paragraph 13

of his report] indicate that his evidence has been well regarded by and influential on those Tribunals who heard it. The report Dr Fatah now provides is detailed and considered and I accept it in its entirety. Applying s.8(2)(b) of the Asylum and Immigration (Treatment of Claimant's, etc.) Act 2004, the Claimant has exhibited, by providing these documents, behaviour designed or likely to mislead.

ii. His denial of having made the US visa application, despite, while now bearded and some years older than when the clean-shaven photograph was taken for that application, it bearing a striking resemblance to him, combined with the unlikely coincidence that his mother's name in both that application and the Civil Record document match.

iii. The sheer implausibility that on leaving Syria he would not have taken any documentation whatsoever with him, to include official documents, family documents, photographs, or retained access to social media data, any or all of which could have helped establish that he came from Syria, when, six years into the conflict there, it must have been common knowledge (and particularly to people smugglers) that simply being a Syrian would be sufficient to be granted asylum.

23. Appellant's Knowledge of Syria. In the absence, therefore, of any reliable documentary evidence to support his appeal, the Appellant is left to rely only on his oral evidence as to his life in Syria. In interview, he did exhibit a relatively detailed knowledge of that Country, to include geography, currency, politics and the war. However, all of this information is available from open sources. The Appellant is relatively well-educated (to secondary level) and would be capable, if so minded, of researching such matters. An alternative explanation may be that he did, at some point in the past, live in Syria, hence his knowledge of that Country, but perhaps prior to, or since the commencement of the war, he and his family moved to Jordan, thus also potentially providing some explanation for the visa application. I note, in this respect that Daraa is only thirteen kilometres from the border with Jordan. His account of being assaulted by either anti or pro-government forces has been a common account of many Syrians and in view of my findings above as to his credibility, could simply be a fabrication, or be matters that predated any move of his to Jordan.

24. Linguistic Origin Identification Report. The author of this report was not requested to test the hypothesis that the Appellant could be a Palestinian from Jordan. The report does not, as is asserted by Mr Simmonds, conclusively prove the Appellant can only come from Syria, but merely states that he speaks a Palestinian dialect and that many Palestinians live in Syria (but also of course in many other areas of the Middle East, to include Jordan) and in any event the Appellant, on his account, lived only thirteen kilometres from Jordan and therefore it would seem unlikely that his dialect would differ greatly from Palestinians living in that Country.

25. Fingerprint and Visa Application Evidence. I find that the Respondent has, just, on the balance of probabilities, shown that the Appellant is more likely than not to come (at least latterly) from Jordan. I do so for the following reasons:

    i. Based on Mr Johnson's statement, the Appellant's fingerprint record, taken on the day he claimed asylum, was sent to the US authorities and a match was found and which linked him to the visa application. Although Mr Johnson was not in attendance to give evidence, it seems unlikely to me that that core element of his evidence would have been likely to shift under cross-examination and therefore I afford it due weight. While, also, his statement is unsigned, I view that as an administrative error on the Respondent's part, rather than any attempt to evade the normal procedural requirements. I have no reason to doubt the honesty of what is set out in that statement. While the Respondent did not strictly comply with the Tribunal's direction as to disclosure of a fingerprint report, it seems unlikely that any such report is going to say any more than is set out by Mr Johnson, or be of such a form as to be challengeable by the Appellant.

    ii. The photograph in the application has a striking similarity to the Appellant.

    iii. There is the coincidence of the Appellant's since-stated desire to travel to the US and the match, or near match, of his mother's family name.

    iv. I don't view the misstating of the date of the visa application as particularly significant, the date of the actual document itself being clear.

26. Conclusion. Considering all the evidence in the round and seen through the prism of my findings as to the Appellant's credibility, I find that on the balance of probabilities he is from Jordan, not Syria. Accordingly, therefore the Convention is not engaged. For these reasons, therefore, I find that the Appellant has not shown that there are substantial grounds for believing that he has a well-founded fear of persecution or ill-treatment, or worse, if returned to Jordan. Accordingly, I find that the Respondent's decision to reject the Appellant's application for asylum does not place the United Kingdom in breach of the 1951 Convention or the ECHR".

8. As can be seen, the judge found that the appellant had not established, on the lower standard applicable in asylum cases, that he was Palestinian from Syria. The Secretary of State had, however, established on a balance of probabilities that he was from Jordan.

The Appeal to the Upper Tribunal

9. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds relating to the judge's reasoning in paras 22–26.

10. On 9 October 2018, the First-tier Tribunal (Judge Lambert) granted the appellant permission to appeal.

11. The respondent did not file a rule 24 response.

Discussion

12. Mr Bass, who represented the appellant, submitted that Judge O'Rourke had relied upon four matters in reaching his adverse finding: (1) the documentation said to identify the appellant; (2) the appellant's claimed knowledge of Syria; (3) the linguistic origin identification report; and (4) the fingerprint evidence linking the appellant to a US visa application by a Jordanian national, NA. In respect of (1) and (2) Mr Bass submitted that Judge O'Rourke's reasoning was irrational. In respect of (3) and (4) Mr Bass submitted that the judge's treatment of the evidence was unfair.

13. We deal first with the documents and the judge's reasoning in para 22(i)–(iii) which we have set out above.

14. The evidence concerning the documents was set out in the respondent's notification from the National Document Fraud Unit and in the appellant's own expert report prepared by Dr Fatah.

15. As regards the former, the judge summarised the evidence at para 18 as follows:

> "18. The Respondent's National Document Fraud Unit was requested to examine the two documents subsequently provided by the Appellant and concluded the following:
>
> i. In respect of the 'civil Record' document, the Unit had no comparative documents against which it could be compared and could not be conclusive therefore about its authenticity. No alterations were noted on the document.
>
> ii. In respect of the ID card, that was considered to be a counterfeit, as the *'background print was not as expected. Document fluoresces highly under UV light.'*"

As will be clear, that report was neutral in respect of the 'Civil Record' document but was damning of the authenticity of the ID card upon which the appellant relied.

16. In relation to Dr Fatah's report the judge summarised his evidence at para 19 of his determination as follows:

> "19. Dr Fatah's CV makes it clear that he has extensive expertise in respect of the Middle East and has been working as an expert witness since 2000. While also providing country expert reports, he also has expertise in documentation authentication, having examined 'thousands of documents' from the region (also including North Africa). He has given evidence in five country guidance cases. His conclusions in respect of the Appellant's documents are that they *'lack the main characteristics of reliable documents issued by the Syrian authorities'*, because, in summary:

i. in respect of the ID card, a holographic stamp is of poor quality and not holographic; the card itself does not react to UV light, showing, as would be normal, shiny images; the barcode does not provide any information when scanned; the number of the card does not match the number on the Civil Record, when it should do and it is unusual for the Appellant's mother's name to be shown as 'Al Bargouthy' (rather than her own family's surname).

ii in respect of the Civil Record, again the mother's name is identified as a discrepancy, as is the serial number provided; the term 'sect' is used, rather than the normal 'religion and sect'; the use of the phrase 'for the first time' when recording the date of registration is unusual; there is one fewer duty stamp than there should be and the existing one is of the wrong value; the use of the heading 'events' is unusual; the issuing clerk's name would be handwritten, rather than printed; it is unusual that the place of issue is not recorded; no reason is given for the issuing of the document, when a reason would normally be provided, such as it being required by another organisation and at least one of the four stamps on the documents has been scanned and printed onto it, not stamped."

17. It is fair to say that Dr Fatah's report identified a significant number of anomalies with the appellant's ID card and 'Civil Record'. The report could not realistically be said to support the appellant despite it having been provided to the Tribunal by the appellant's legal representatives. Indeed, as is clear from para 21(i) of the judge's determination, the appellant's representatives sought to discount Dr Fatah's report on the basis that he was unqualified and lacked expertise in assessing these documents. That is a most unusual submission made by the party who had put an expert report before a Tribunal or court. Not surprisingly, given Dr Fatah's expertise and experience, Judge O'Rourke rejected that submission and, as he was undoubtedly entitled to, placed reliance upon his report. That report provided a sound evidential basis for concluding that the documents were, at best, unreliable, but, at worst, were not authentic but false. We see nothing irrational in Judge O'Rourke's conclusion or, indeed, his reasoning leading to that conclusion based upon Dr Fatah's report that the documents relied upon by the appellant were false.

18. Mr Bass did not address us in his oral submissions upon the judge's reasoning in para 22(ii) or (iii). We would, however, make the following observations in relation to para 22(i). The judge's assessment in para 22(i) that the "clean-shaven" photograph on the US visa taken some years ago was of a person "bearing a striking resemblance" to the appellant some years later when he has a beard, we doubt would be a sound reason for linking the appellant to that application if it were a central part of the judge's reasoning. A visual identification in these circumstances would be problematic. Of course, it was not central to the judge's reasoning. The important aspect of the evidence concerning the application for a US visa was the fingerprint evidence to which we shall turn shortly.

19. We turn now to the judge's reference to the appellant's knowledge of Syria in para 23. The judge acknowledged, and this was in the appellant's favour, that he had a "relatively detailed knowledge of that country, to include geography, currency, politics and the war". As Mr Mills submitted, this was in truth the only evidence that truly supported the appellant's claimed connection with Syria. The judge clearly took it into account but, in the context of all the evidence, did not find it persuasive to discharge the burden of proof upon the appellant. In our judgment, the judge was entitled to take into account that the knowledge could have been acquired without the appellant actually having lived in Syria, particularly given that he claimed to come from a place which was only thirteen kilometres from the Jordanian border. When taken in conjunction with the other evidence, in particular the fingerprint evidence, we see nothing irrational in the judge's reasoning and in not treating the appellant's knowledge of Syria as sufficient to discharge the burden of proof upon the appellant.

20. Turning now to the linguistic origin identification report, the judge rejected the submission of the appellant's (then) representative that it "conclusively" proved that the appellant was a Palestinian from Syria. We took Mr Bass to that report. It plainly does not have the effect that was claimed. In reality, it identifies that the appellant speaks a Palestinian dialect and comes from the relevant area in the Middle East including Syria and Jordan. It was, undoubtedly, strong evidence that the appellant was a Palestinian. Indeed, Judge O'Rourke did not suggest otherwise. The report did not, however, establish, conclusively or otherwise, that the appellant came from Syria. The report is equally consistent with the appellant coming from Syria as he claims, or from Jordan as the respondent alleged.

21. Mr Bass criticised the judge for referring in para 24 to the fact that the appellant claimed to come from a place only thirteen kilometres from Jordan and that his dialect was unlikely to differ greatly from Palestinians living in Jordan. In fact, that is entirely consistent with the report itself. The report only assisted the appellant to establish that he was a Palestinian and not in establishing from which country he claimed to be.

22. Turning now to the fingerprint evidence, Mr Bass criticised the judge's approach in para 25 on the basis that the witness statement was not signed by Mr Johnson and Mr Johnson was not present to be cross-examined. He submitted that it was unfair to place great weight on Mr Johnson's evidence of the link between the appellant's fingerprints and those of the individual (NA) who had made the US visa application in 2011.

23. The difficulty with the first aspect of that submission, as we pointed out to Mr Bass at the hearing, is that there is an electronic signature by "Matthew Johnson" at the end of his witness statement. That, in our judgment, is sufficient to treat this evidence as being evidence which its maker has according to the "statement of truth" attested to be true. Evidence transmitted by electronic means does not require hard copy or a "wet" signature unless there I some well-founded reason to doubt its

authenticity. In the absence of any evidence or suspicion that the typed signature was not, in fact, placed there by or at the behest of the maker of the witness statement, Judge O'Rourke was entitled to place weight upon the statement.

24. As regards the submission that the judge should not have placed weight upon Mr Johnson's statement because he was not available to cross-examine, that argument is simply untenable. There was no request to adjourn the hearing and no request to cross-examine Mr Johnson. The appellant's representative was content that the appeal should be determined in the light of the written evidence from Mr Johnson. In those circumstances, there was nothing unfair or irrational in Judge O'Rourke placing reliance upon Mr Johnson's evidence in reaching his factual finding adverse to the appellant.

25. Given that he had the US visa application before him and a document dated 3 October 2016 dealing with the data-sharing process (biometric data-sharing process (Five Country Conference (FCC) data-sharing process)) it was not, in our judgment, irrational for Judge O'Rourke to find that the appellant's fingerprints matched those of the different individual (both in name and nationality) who had made the US visa application in 2011. That was undoubtedly very powerful evidence indeed that the appellant was not whom he claimed to be and that he had not established, even on the lower standard applicable in international protection cases, that he was whom he claimed to be and to be from Syria. Indeed, on the basis of this evidence the judge was rationally entitled to conclude that the Secretary of State had proved on a balance of probabilities that the appellant was indeed from Jordan rather than Syria.

26. For these reasons, we reject Mr Bass's submissions that Judge O'Rourke erred in law in reaching his adverse findings at paras 22–26 of his determination. He was fully entitled to find that, although a Palestinian, the appellant had not established that he was from Syria as he claimed. The judge was entitled to find, in fact, that the Secretary of State had established that he was from Jordan. Accordingly, on the basis of those findings, the appellant failed to establish a well-founded fear of persecution in the country of his claimed habitual residence, namely Syria or, and the appellant did not put his case on this basis in any event, in Jordan.

Decision

27. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal on all grounds did not involve the making of an error of law. That decision stands.

28. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

29 May 2019