



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

Appeal Number: PA/05634/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2018**

**Decision & Reasons
Promulgated
On 23 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**A Z
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Masood, Counsel, instructed by Courtland Solicitors
For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

The Appellant claims to be a national of Myanmar born on 1 January 1989 and asserts that he is stateless. He claims to be a Rohingya Muslim who fled aged 3 from Myanmar to Bangladesh in 1992 with his family when his village was attacked by Buddhists and the Myanmar/Burmese military. He asserts that his family was placed in the Adarshagram refugee camp and he left that camp in 2000 to seek a better life, travelling to and staying in Chittagong for a short period and then to Dhaka for approximately ten years, until he came to the United Kingdom via Dubai in 2011.

He initially stayed in the UK without leave and made an asylum application on 26 November 2014. That application was refused by the Secretary of State in a decision dated 17 April 2018. The Appellant appealed against that decision and his appeal came before Judge of the First-tier Tribunal Brewer for hearing on 1 June 2018. In a Decision and Reasons promulgated on 26 June 2018, the judge dismissed the appeal, placing reliance on a Sprakab Report in respect of the Appellant's language and dialect. He further made adverse findings in respect of a family book that the Appellant stated was given to his family when they stayed in the refugee camp in Bangladesh.

Permission to appeal was sought on the basis of three grounds: firstly, that the judge had erred in his approach to the Sprakab Language Analysis Report; secondly, that his finding in respect of this report was perverse and thirdly that the judge had erred in his approach to the family refugee book, both in that the Respondent's position in respect of the book was challenged the Respondent failed to produce the original book at the hearing and that the judge's finding in relation to the number of family members, which was adverse to the Appellant, had not been put to the Appellant or his representative at the hearing in order to give them the opportunity to provide an explanation.

Permission to appeal was granted by Upper Tribunal Judge Kekić in a decision dated 7 November 2018 on the basis:

"The grounds argue that the judge's approach to the language analysis report was flawed and that his findings in that respect were perverse. It is also argued that he was wrong in his interpretation of the contents of the family refugee book. Arguably someone who has lived in Bangladesh since the age of 3 would have the local accent rather than the linguistics of Myanmar. The grounds in respect of the family book are less persuasive because the copy of the book itself was incomplete. It would be helpful if the complete book is made available for the hearing."

Hearing

At the hearing before me, Ms Masood made detailed submissions in line with the grounds of appeal. In particular, she submitted in relation to ground 1, that the judge simply failed to analyse the Sprakab Report, that he relied on the Tribunal's decision in RB [2010] UKUT 329 at [22] through to [24] and failed to take account of the Supreme Court judgment in MN and KY [2014] UKSC 30, which was expressly set out in her skeleton argument before the First-tier Tribunal, where the Supreme Court reviewed the case in RB and expressed concerns about aspects of the guidance set out therein at [44] and [46] and held that critical analysis requires consideration of the report in light of the evidence as a whole and the reasoning supporting the conclusion expressed in the report needs to be analysed, the Supreme Court concluding at [47] that such reports are not decisive. The judge, however, relied wholly on the findings in RB but that was not sustainable in light of the Supreme Court judgment in MN and KY.

She submitted that the judge fell precisely into the error identified by the Supreme Court in MN, see [24], [26] to [28] of the judge's decision. The judge failed to examine the linguistic report critically and in any event, the judge focuses on the opinion in the report that it was unlikely that the Appellant had linguistic traits consistent with national origins and spoke Bengali as a native. However, this was never disputed and that was consistent with the Appellant's linguistic background.

In respect of ground 2, Ms Masood took issue with the judge's finding at [27] where he states: *"In this case Sprakab states that it is unlikely that the Appellant had the linguistic background of Rakhine State Myanmar. I read that to mean that it is unlikely he "came from" that place"* and then at [28]: *"It seems to me that in order to displace this conclusion it is necessary to consider what evidence the Appellant brings and in that context I have considered the Appellant's account in the round."* Ms Masood submitted that this was an erroneous approach. It was not whether the Appellant's account that he came from Rakhine State should be displaced by other evidence but rather whether, looked at in the round, the Appellant had established that he originally came from Rakhine State in Myanmar as opposed to being a national of Bangladesh.

She submitted that the judge had failed in any event to consider the evidence in the round and it was clear from the Sprakab Report at paragraph 1.2 page 2 that careful consideration must be given to linguistic analysis relating to border areas, a point that she had relied upon at paragraph 12(b) of her grounds of appeal, which provides that the report cannot be used reliably to determine national origin, nationality or citizenships because these are political or bureaucratic characteristics which have no necessary connection to language. This was particularly so in this case, given the young age that the Appellant left Myanmar, or Burma, as it then was, and the fact that Rakhine State is on the border with Bangladesh. The most the report can do, Ms Masood submitted, is to inform the reader where the Appellant was socialised. On his own claim, he was socialised in Bangladesh, and it is therefore no surprise he speaks Bengali as a native.

In terms of the third ground of appeal, the family refugee book, this was present at the hearing before the Upper Tribunal, the Appellant having handed the original of this book to the Home Office at his substantive interview. Ms Masood's point is that absent the original version of the family refugee book, both she and the Appellant were precluded from addressing the points raised in the refusal decision, nor was the judge assisted in determining those points absent the book. There is what appears to be a partial photocopy of the book at Annex C of the Respondent's bundle but some of the pages are missing and it is unclear.

Ms Masood submitted that with regard to the fact that another female has been added to the numbers of females recorded in the book, there is an explanation for this and that is that one of the Appellant's sisters was born in the camp on 4 January 1993: see C24, and that this was after the family arrived in the refugee camp. In relation to the fact that the Respondent asserted that the book appeared to have been signed in 2002, which is two years after the Appellant

left the camp, it is not possible to ascertain from the photocopy any 2002 date. Ms Masood submitted that in relying on that date at [34] the judge had not analysed the evidence himself but simply taken the date from what the Respondent had said, absent any evidential basis upon which to do so.

In his submissions, Mr Mills fairly accepted that the judge had made material errors of law, one in referring only to RB when dealing with the Sprakab Report and not going on to refer to the findings of their Lordships in the Supreme Court in MN, and secondly, Mr Mills helpfully confirmed, being in possession of the original refugee family book, that there are gaps in the pagination within the book itself and so far as he could tell, the copy contained at Annex C of the Respondent's bundle is a correct copy of the original. He accepted that there did not appear to be the date 2002 contained within the book and that this aspect of the Respondent's claim was thus unsustainable.

Findings and Reasons

In light of Mr Mills' helpful concession that the judge made material errors of law, which I accept for the reasons set out in the grounds of appeal, I set that decision aside and remit the appeal for a hearing de novo before the First-tier Tribunal.

I make the following directions:

The appeal should be listed for three hours.

A Bengali interpreter should be provided.

The Respondent is to produce the original refugee family book at the re-listed appeal hearing.

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 Rebecca Chapman

Date

10 January 2019

Deputy Upper Tribunal Judge Chapman