Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07750/2017

THE IMMIGRATION ACTS

Heard at RCJ Belfast	**Decision & Reasons Promulgated**
On 6 June 2019	**On 27 June 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

T M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Beech, instructed by Nelson- Singleton Solicitors
For the Respondent: Ms Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Fox promulgated on 2 February 2018 dismissing his appeal against the decision of the respondent to refuse the same for asylum. The applicant's case is put simply that he is a Syrian national who cannot return home owing to the current situation in Syria. The Secretary of State did not however accept the appellant is a Syrian national for a number of reasons, firstly as a result of enquiries made using his fingerprints which resulted in a positive hit with the Department of Homeland Security in the United States to the effect that the fingerprints had been taken on 17 September 2015 in Amman Jordan and that the person to whom the

fingerprints relate is a [TE] born on 4 July 1968 and had a Jordanian passport. The second reason for disbelieving is on account the results are a linguistic analysis. The Secretary of State also considered that after questions the appellant was able to answer correctly in interview were not sufficiently probative.

2. The appellant's explanation for the fact that the fingerprints appeared on the American database (a fact which he does not dispute) is that he got an agent to make an application on his behalf. The agent took his photographs and his fingerprints and made an application to the US Embassy. This issue was the subject of a Case Management Review at which the appellant was given an opportunity to provide documents to address this and to provide a skeleton argument.

3. The judge heard evidence from the appellant and made findings as to credibility. He started at paragraph [15] with findings in respect of Section 8 of the 2004 Act. He records the fact the respondent had received information from the US authorities that the appellant's fingerprints were linked to a [TE] a Jordanian national. The judge records that the fingerprints were submitted with a visa application on or about 17 September 2015, stating:

> "The appellant disputes this. He does not demonstrate that the fingerprints were not his. He claims himself to be a Syrian national… He acknowledges that he had his own passport this was lost prior to departure."

4. The judge then goes on to consider other matters turning to credibility at paragraph [20]. The judge says rightly that the core of the application is the appellant's identity and nationality. He records that the appellant is aware of this issue. He then goes on to relate at [22], [23] and [24] how the issue was developed before him by both representatives.

5. The judge then goes on to deal with the fingerprints again at paragraphs [26] to [27] stating [26]:

> "The appellant has not been able to demonstrate, even to the lower standard of, that these are not his fingerprints."

That was not, however, how the appellant put his case. The judge continued:

> "There is no suggestion from anyone that the fingerprints held by the US authorities are not the appellant's. It is for the appellant to demonstrate that these are not his fingerprints or that some mistake has arisen that he can explain in some fashion no such explanation is put before me today."

6. The judge then states that it is clear from the information that all application to the US authorities must be accompanied in person by the applicant, noting that the appellant himself acknowledges he claims that he had not gone to the embassy but that this would appear to be untrue.

7. The judge said [27]:

> "I acknowledge some doubt must hover over this finding. The US authorities and respondent have not provided a photograph that may have accompanied the US visa application which may have lent further weight to the respondent's point. However, there is sufficient evidence before me today to make a finding that the appellant did apply as a Jordanian national for a US visa in 2015."

8. The judge then goes on to make a number of other factors rejecting the documentary evidence and concluding at 38 that:

> "The appellant may be safely returned to his home country which I find on balance is more likely to be Jordan without fear, misfortune, adverse attention or otherwise. I find he can also be returned to Syria also without fear or misfortune, adverse attention or otherwise."

There is thus a finding by the judge the appellant is a Jordanian national.

9. The appellant sought permission to appeal on the grounds that the judge had acted irrationally in his approach to the evidence of identity particularly the fingerprints and had failed to give adequate reasons for his finding taking in paragraph 18 and thereby making a flawed analysis with regard to Section 8 of the 2004 Act. Second that the judge failed to have in line with **Tanveer Ahmed** to make an alternative finding in respect to the documents. Third the judge erred irrationally in ignoring evidence the appellant signed one of the authorities' forms.

10. It is also noted the judge erred in finding the appellant can be safely returned to Syria and thereby failing to make any findings in light of country guidance **KB (Failed asylum seekers) Syria CG [2012] UKUT 426**.

11. There is an apparent inconsistency in the judge's approach to the appellant's evidence put forward as the explanation for his fingerprints appearing on the American database and linked to a Jordanian national. The judge observes that the applicant has made no explanation at paragraph 26 yet goes on apparently to consider an explanation at paragraph 27. It is evident from what the judge says in the phrase "he claims that he did not go to the US Embassy that would appear to be untrue" that he found the explanation untrue. Equally there is an equivocation when the judge refers to some doubt "hovering over this finding".

12. On a proper analysis of paragraph 26 it is clear that "such explanation" refers back to the previous sentence that is, "It is for the appellant to show that these are not his fingerprints or that some mistake has arisen that he can explain in some fashion". But that is not quite what the appellant's case was. That said, it is clear from the following paragraph that the explanation – that the agent had taken the fingerprints - was considered. For that reason, the apparent confusion at [26] is not necessarily relevant or material.

13. It is I consider sufficiently clear from what is said at paragraph 27 that the judge did take into account the appellant's explanation for not having been present at the embassy when the evidence was that this was necessary, and the judge rejected that in light of the evidence from the background information that all applications made to the US must be accompanied in person. It was open to him to note some doubt but it was not necessary for the Secretary of State to prove this case on the identity point to the criminal standard. Some doubt is consistent with a finding that on the balance of probabilities that this issue is made out.

14. It has to be remembered that the appellant' accepts that his fingerprints did appear on an American database. It was also the evidence that applications have to be made in person. That is inherently likely, otherwise it would not be possible to link fingerprints to a particular individual with certainty, thereby defeating the purpose of taking fingerprints. I consider that in the circumstances that albeit the decision is unclear in places, it is sufficiently clear from the decision that the judge did have regard to the explanation put forward by the appellant for his fingerprints appearing on an American database and rejected it in light of the evidence. I consider that that was the decision open to him and is adequately and sufficiently reasoned. I do not accept that the apparent confusion at [26] and earlier at [15] undermine the core finding on this aspect.

15. I do not consider that the decision was infected by the judge's approach to section 8 of the 2004 Act about which he made observations at paragraph 15 of the decision. That is because although the judge refers section 8, he does not in reality make any findings of substance on that point with an exception in paragraph 16 which relates to the failure to claim in Turkey. There has to be a starting point in making findings, and it is evident also that the judge did not reject all the evidence in this case noting in particular the evidence from the voice analysis this is not a sufficient basis for determining the appeal.

16. Whilst it is evident that the judge did not refer directly to **Tanveer Ahmed** it is in the context of the current findings open to the judge to reach the conclusion he did with regard to the documents. I do not consider that it can be properly said that he simply adopted the view set out in the refusal letter.

17. I do not consider that the remainder of the grounds identified any material errors. The issue with regard to the finding at paragraph [35] being unclear is not capable of being relevant given the core finding is sustainable. At paragraph [39] there is an unfortunate errors: whilst I accept that the judge may have erred in saying that the appellant could return safely to Syria thereby failing properly to engage with **KB and Others** it is not I consider material, given that the judge for sustainable reasons found the appellant was a Jordanian national who could be returned to Jordan. On that basis the issues regarding return to Syria was not a material error. The judge for good reasons found the appellant to be Jordanian and, absent a finding that he was at risk there (or as well as in

Syria had he been found to be a dual national), he was simply not a refugee as he did not have to return to Syria.

18. Accordingly, for these reasons I conclude the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it

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 their 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 24 June 2019

Upper Tribunal Judge Rintoul