IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003980
First-tier Tribunal No: PA/53336/2021
IA/15290/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 26 March 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

HHS
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Balroop, Counsel instructed by Barnes Harrild and Dyer
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 1 December 2022

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is appealing against a decision of the Judge of the First-tier Tribunal Easterman (“the judge”) promulgated on 7 June 2022.

2. The central issue in dispute before the judge was whether the appellant is a citizen of Iran as he claims, or a citizen of Iraq, as contended by the respondent.

3. The issue of whether the appellant is from Iran or Iraq has previously been considered by the First-tier Tribunal, in a decision by Immigration Judge Kamara ("the previous judge") promulgated on 20 January 2010.

Decision of the Previous Judge

4. The previous judge gave multiple reasons for not accepting that the appellant is Iranian. These included the following:

   (a) He was unable to answer questions regarding his claimed country and region (paragraph 21);

   (b) He could not speak Farsi (paragraph 21);

   (c) He was ignorant of the Iranian calendar (paragraph 21);

   (d) that he stated he was from a region which in fact is in Iraq. In paragraph 22 the previous judge stated as follows:

   > "The appellant stated that the province in which his claimed village, Konalajan is situated, is called Haji Omaran. The respondent noted that Haji Omaran is located in Iraq and this has not been challenged by those representing the appellant";

   (e) he stated that the Shamani and Muhamadi tribes are the only tribes in the Piranshahr area, whereas the respondent stated that the tribes in the area comprise of the Piran, Mamesh and Mangoor and the appellant's representatives did not identify any evidence contradicting the respondent's position;

   (f) the appellant did not know the product that Piranshahr is famous for producing, could not name the mountains in the area and wrongly stated that there was no river in that area;

   (g) he was unaware of various significant historical events in the area;

   (h) he had provided identity documents which, on analysis, appeared to be false; and

   (i) he told the screening officer that he speaks only Kurdish Sorani, whereas he stated subsequently that he speaks a little Farsi. Moreover during his screening interview he described how he conversed with fellow travellers of Arab origin even though he claims not to know a word of Arabic.

5. The previous judge's decision was upheld by the Upper Tribunal in a decision promulgated on 24 November 2010. One of the issues considered by the Upper Tribunal was the previous judge's finding about Haji Omaran being in Iraq (cited above in paragraph 4(d)). The Upper Tribunal stated, inter alia, that the appellant did not dispute that he said his home village is in a province called Haji Omaran. It was also stated by the Upper Tribunal that the appellant did not contend that Haji Omaran is in Iran but merely contended that the previous judge was not

entitled to find that it was not in Iran (see paragraphs 20 – 22 of the Upper Tribunal decision).

The Decision of Judge Easterman

6. The judge adjourned the hearing in order for further evidence about the location of the appellant's village to be obtained. The judge set out his reasoning for this in paragraph 10:

> "The hearing on 25th January commenced and we heard some evidence on that day but it became clear to me that there was a major issue of fact on whether the Appellant's home village was in Iran or Iraq and or whether it was in a named province which it was suggest was in Iraq. While this had been subject to certain findings made in the previous hearing before Judge Kamara, those findings appeared to have been based on the Appellant agreeing or stating that the home village was in a province called Piranshahr or Haji Omaran. As it was going to be crucial to determine whether the Appellant was in fact Iranian or Iraqi it seemed to me that the right course was to get adequate maps of the area and if possible the expert, who had already made a statement, to deal with precisely where the various locations mentioned were, as whatever the previous findings had been, they could not alter the geographical facts."

7. The judge noted that the appellant did not have any of the original documents that were considered by the previous judge as they were destroyed in a fire in 2011 (at the premises of his solicitors).

8. The appellant relied on evidence of an expert Dr Ghaderi who provided two reports analysing the linguistic origin of the language (Kurdish Sorani) spoken by the appellant. Dr Ghaderi also produced a report, following the adjournment of the hearing on 25 January, addressing the location of the village the appellant claims to come from.

9. With respect to where the appellant claims to have come from, the judge found that Kohne Lajan is in Iran, in the Paranshahr province (this was what Mr Ghaderi stated in his report). The judge also stated that Haji Omaran is a village or town in Iraq.

10. The judge noted that Dr Ghaderi undertook a detailed linguistic analysis and that his conclusion was that the appellant is a native Kurdish Sorani speaker with a subdialect that is spoken in both Iran and Iraq; and that although his linguistic background draws on both countries, overall his language use displays more of an Iranian influence.

11. The judge observed that even though Dr Ghardi has the appropriate expertise, he did not address any of the multiple issues identified by the previous judge (as summarised above in paragraph 4). In paragraph 68 the judge stated:

> "The expert's conclusions amount to only a finding that the appellant's language displays more of an Iranian than an Iraqi influence, yet as a person professing to be an expert in Kurdish nationalism, language and literature and as a person who had been appointed as the director of the Kurdistan Centre for Gender Studies, albeit in Iraq Kurdistan, and having been since 2012, a person providing country expert's reports on Iran, Iraq, Iraqi Kurdistan, Turkey and Saudi Arabia and having assessed the nationality of Kurds from Iran and Iraq, whose nationalities have been disputed, I would have expected this

> expert to have been able to deal with some of the matters raised in Judge Kamara's decision."

In paragraph 76 the judge stated:

> "I can only conclude that Dr. Ghaderi did not think it would be helpful to consider those [other issues raised by the previous Judge] issues. I assume if the Judge had been wrong in the conclusion she drew, Dr. Ghaderi would have felt bound to comment. As a result I do not place a great deal of weight on the finding that the Appellant appears to have been more influenced to the Iranian lexicon, rather than the Iraqi lexicon, as proving even to a low standard that he is in fact Iranian."

The judge referred in paragraph 80 to *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* * [2002] UKIAT 00702 and stated that he needed to:

> "view with particular circumspection anything that could have been presented but was not at the original hearing, or explanations seeking to undermine the findings of the judge after the event".

Grounds of Appeal

12. There are three grounds of appeal.

13. The first ground of appeal submits that the judge failed to adequately consider the evidence of Dr Ghaderi concerning the appellant's language. It is stated that the judge failed to address or attach any weight to the detailed comparative analysis undertaken by Dr Ghaderi which showed that it is more likely than not that the appellant comes from Iran.

14. It is argued that the judge erred by dismissing Dr Ghaderi's report on the basis of Dr Ghaderi not addressing issues that were outside the remit of his instruction. He had only been instructed to consider the appellant's linguistic origin and the grounds submit that failure to address matters beyond his instruction is not a reason to reduce the weight attached to Dr Ghaderi's evidence about the appellant's linguistic origin.

15. The second ground of appeal submits that the judge failed to adequately (or at all) address Dr Ghaderi's report about the location of Kohne Lajan. It is argued that although the judge specifically requested this report and acknowledged its significance, he did not ultimately have regard to it when determining that the appellant was not from Iran. The grounds submit that, at the very least, the judge should have acknowledged that the appellant has been consistent in his evidence about being from a village in Iran.

16. The third ground advanced in the grounds concerns the application of recent country guidance caselaw about risk of persecution in Iran arising from social media activities. Both Mr Balroop and Ms Ahmed agreed that the case turns on the question of whether the judge erred in respect of the appellant's nationality and therefore it was not necessary to address this ground.

Rule 24 response

17. The respondent submitted a Rule 24 response. Paragraph 4 of the response states as follows:

> "Whilst the FTTJ observed that the same expert appeared suitably qualified to have addressed some of the *Devaseelan* adverse credibility points and speculated as to why they may not have this was mere obiter speculation. The simple fact was the FTTJ did not have an expert report before them addressing the holistic problems with the evidence and the FTTJ was, therefore, entitled to not to attach 'a great deal of weight' (which is not 'no weight') to the linguistic report in the context of establishing 'nationality'. Ultimately the FTTJ's conclusion is clear and cogently reasoned that the linguistic evidence was insufficient to account for all the other adverse *Devaseelan* findings and even to the lower standard the Appellant had failed to discharge the burden of proof in establishing Iranian nationality."

Submissions

18. Mr Balroop submitted that, having correctly identified the significance of whether, as a matter of fact, the appellant's village is located in Iran or Iraq, the judge fell into error by failing to factor into his overall assessment that the uncontested expert evidence of Dr Ghaderi that the village is in Iran. He also submitted that it was erroneous for the judge to discount the expert evidence because of a failure to consider matters that were outside of the expert's instruction. He argued that the expert report clearly explained why it is more likely than not, based on the appellant's language, that he is from Iran.

19. Mr Balroop also submitted that one of the main reasons given by the previous judge for rejecting the appellant's claim to be from Iran was his ignorance of historical and other information. He contended that the appellant's ignorance on these issues can readily be explained by his background (being from a small village and lack of literacy and education).

20. Ms Ahmed submitted that the linguistic reports are in no way determinative of whether the appellant is from Iran and Iraq and that the judge was entitled to find that they did not outweigh the "mountain of evidence" pointing the other way.

21. As to the question of where the appellant's village is located, she submitted that it is clear that the appellant previously stated (and maintained) that his village was located within the Haji Omaran province. She referred to paragraphs 20 – 22 of Upper Tribunal decision where, as summarised in paragraph 5 above, it was stated that the appellant did not dispute that he described Haji Omaran as the province in which his village is located.

22. Ms Ahmed submitted that the appellant has now effectively changed his evidence; having previously said he was from the Haji Omaran province, he now contends that he is from the Piranshahr province. She submitted that this change in account damages his credibility.

23. With respect to Dr Ghaderi's evidence, Ms Ahmed submitted that the judge was entitled to take into account that the appellant failed to adduce expert evidence to counter the multiple adverse points taken by the previous judge. Moreover, the judge was entitled to note that the appellant had instructed an expert who, on the face of it, had the relevant expertise to opine on these issues, but had not done so and had limited his evidence to a narrow question which the expert himself accepted was not determinative (the appellant's language). With respect to the appellant's language, she noted that it would not be inconsistent with Dr Ghaderi's assessment for the appellant to be from Iraq. She noted that Dr Ghaderi had stated that the appellant had said that he travelled frequently

between Iraq and Iran and knew people in both countries. She highlighted that the expert evidence was that the appellant spoke a dialect common in both countries.

Analysis

24. The starting point for the judge was that the previous judge did not accept that the appellant was from Iran, and gave multiple reasons for reaching this conclusion.

25. The only significant new evidence before the judge relevant to the appellant's nationality consisted of (1) Dr Ghaderi's linguistic assessment; and (2) Dr Ghaderi's evidence concerning the location of the village the appellant claims to be from.

26. Dr Ghaderi's two reports relating to the appellant's language provide some support for the appellant's claim to be from Iran. Dr Ghaderi, who clearly has the appropriate expertise, reached the conclusion that the appellant's language makes it likely that he is from Iran. However, it is clear from the report that the subdialect of Kurdish Sorani spoken by the appellant is one that is spoken in both Iran and Iraq and that there are lexical features of the appellant's language that are consistent with both countries (although more so with Iran). Ms Ahmed pointed to paragraph 32 of the report dated 18 September 2021, where it is stated that the appellant:

> "explained that he has Kurdish friends in both Iran and Iraq and has worked with Sorani speakers from Iraq for years, which can explain the presence of lexical items cited above".

27. I agree with Ms Ahmed that the appellant's regular interaction with people from both sides of the border could explain why, if the appellant is from Iraq, there are lexical features from the Iranian side of the border. Ultimately, the evidence of Dr Ghaderi provides some support for the appellant's claim but, as submitted by Ms Ahmed, it is far from determinative; it is just one of multiple factors to be considered.

28. It was for the appellant to adduce evidence to support his case and he was entitled to confine Dr Ghaderi to undertaking a linguistic analysis rather than looking at broader issues. However, by limiting the expert evidence in this way, the appellant was left in a position where he did not have any expert evidence to support other aspects his case. As stated in the rule 24 response:

> "the simple fact was the FTTJ did not have an expert report before them addressing the holistic problems with the evidence"

29. This is problematic for the appellant because, as the starred decision of *Devaseelan* makes clear, the previous judge's decision was the starting point and the authoritative assessment of the appellant's status at the time it was made. In the absence of any expert or other evidence addressing the issues identified by the previous judge (as summarised in paragraph 4 above) it was plainly open to the judge to leave them undisturbed. The judge was entitled to find that although the linguistic analysis provided some support for the appellant's case, it was insufficient to overcome the multiple issues identified by the previous judge in respect of which no expert evidence was obtained. The appellant therefore cannot succeed on the ground 1.

30. I now turn to Dr Ghaderi's evidence about the location of the appellant's village. His evidence is that the village of Kohne Lajan is in Iran (in Pirinshar County). That, however, was never in dispute. The issue identified by the previous judge is that the appellant stated that his village was situated within the province of Haji Omaran, which is located in Iraq. Nothing in Dr Ghaderi's evidence undermines the finding that Haji Omaran is located in Iraq.

31. The appellant maintains that he never really said that he was from a province called Haji Omaran and the previous judge got this wrong. This argument is problematic for three reasons. First, this is not an appeal against the previous judge's decision. Second, there has already been an appeal of the previous judge's decision and the Upper Tribunal stated in clear terms that the appellant did not dispute that he said his home village is in a province called Haji Omaran (see paragraph 5 above). Third, the evidence of Dr Ghaderi about the location of the village the appellant claims to be from does not shed any light on why the appellant previously identified Haji Omaran as the province in which the village is located and it does not contain any information that would justify the judge going behind the previous judge's and Upper Tribunal's findings on this issue. I therefore do not accept that there is merit to the second ground of appeal.

32. In the light of my findings in respect of grounds 1 and 2, it is unnecessary to consider ground 3.

Notice of Decision

33. The decision of the First-tier Tribunal did not involve the making of an error of law and stands. The appeal is dismissed

D. Sheridan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
20 January 2023