



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003240

First-tier Tribunal Nos: PA/51539/2021
IA/04453/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 4 December 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**HNB
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Vijay Jagedesham (Counsel)

For the Respondent: Mr Alain Tan (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 4 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant should not be identified and 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge J A Gould, promulgated on 13th March 2023, following a hearing at Manchester on 6th March 2023. In the determination, the judge allowed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, who was born on 27th November 1992, and who claims to be a national of Syria. He appealed against the refusal of asylum and humanitarian protection by the Respondent in a decision dated 17th March 2021. He alleges that he is at risk on grounds of imputed political opinion and the ongoing country situation in Syria.

The Appellant's Claim

3. The Appellant claims that his father was killed fighting for YPG against ISIS in March 2014. In March 2015 the YPG tried to recruit him to fight for them. He fled to stay with his uncle in Derik and then left Syria in October 2015. The Respondent refused the application because there had been a previous decision by Judge Gurung-Thapa (PA/04068/2016) so that the starred case of **Devaseelan [2002] UKIAT 000702** applied as a starting point to a consideration of the facts now being asserted.

The Judge's Findings

4. The judge allowed the appeal on the basis of two reports that had been served by Professor Matras, namely in March 2020 and in August 2021. He regarded the Respondent's analysis to be flawed. This is because, "The principal author did not speak Kurdish and an analysis of a language which an expert was unable to speak was not appropriate and this fundamentally discredited the report". Professor Matras also went on to state, in the words of Judge Gould that, "The two further authors described themselves as native speaker analysts and neither of them appeared to have had any formal linguistic training, neither of them had visited the area from which the Appellant claims to originate and neither had identified any access to linguistic data from that area and therefore their opinions were impressions and anecdotal and not verifiable (paragraph 16).
5. At the judge's direction, Professor Matras then sat in the hearing room while the Appellant gave evidence, in order to be able to give any further opinion (paragraph 17).
6. In making the "requisite findings", the judge made it clear that, "Although the Appellant had an earlier appeal dismissed by the first-tier Tribunal I am satisfied it is appropriate to depart from this decision because the Appellant was unrepresented and without the benefit of his own expert's report". In fact,

"In circumstances where the Appellant is uneducated and unfamiliar with the court process and despite, I am sure, the very best efforts of the Judge to ensure a fair hearing, combined with the absence of an expert's report where the sole issue for appeal is the Appellant's nationality, it is appropriate to reach my own fresh findings ..." (paragraph 24).

The judge then referred to Professor Matras as "without doubt an expert in his field". Professor Matras "was socialised in a Koceri Kurdish community in Al-

Hasaka in Syria rather than northern Iraq” and that “Despite cross-examination, Professor Matras maintained his conclusion” (paragraph 26). This conclusion was that the Appellant was indeed Syrian by nationality. In his evidence, Professor Matras had made it clear that the Appellant had exhibited three features of speech that were typical of Syria Kurdish and not Iraqi Kurdish “and two sounds ‘oo’ and ‘ee’ were almost exclusive of the Derik area from whence the Appellant claimed to hail” (paragraph 20). The appeal was allowed.

Grounds of Application

7. The grounds of application by the Respondent Secretary of State are that the judge had not considered the appeal in accordance with the principles in **Devaseelan [2002] UKIAT 00702** and had failed to show that there were very good reasons to depart from the earlier findings of the previous judge. Second, the judge had failed to have regard to what was said in the refusal letter with respect to the reliability of Professor Matras’ report, because his language and analysis report had been based on a recorded sample and not a face to face or video link discussion.
8. On 2nd August 2023, permission to appeal was granted on the basis that it was arguable that the **Devaseelan** principles had not been followed in that the judge had not been able to demonstrate “cogent reasons” for departing from a previous decision. On 16th August 2023, a Rule 24 response was served by Mr Jagedesham asserting that the judge was fully aware of a previous Tribunal’s decision and that cogency of reasons had been present in the appeal before Judge Gould to enable the judge to depart from a previous Tribunal’s findings.

Submissions

9. At the hearing before me on 4th October 2023, Mr Tan submitted that it was plain that the **Devaseelan** Rules had not been observed. No express reference was made to that decision and the judge had not gone on to consider that there were cogent reasons for why he should depart from the decision of a previous judge. Second, the previous judge had made it clear (at paragraph 31) that the Appellant was not truthful and yet Judge Gould had gone on to say “The Appellant’s knowledge of his local area is consistent with country information and although there is always the possibility of research replacing first-hand knowledge having had the benefit of seeing the Appellant give evidence I am satisfied he is credible and reliable ...” (paragraph 25). However, given that a previous judge had not found the Appellant to be credible, one could not rule out the possibility that the Appellant had simply learned up information about his local area and his country.
10. For his part Mr Jagedesham submitted that the sole issue before the Tribunal was one which had been agreed by all parties, namely, whether the Appellant was a Syrian national. If that was the case, then regardless of any credibility issues with respect to the Appellant himself, the appeal stood to be allowed. The judge had found the Appellant to be credible on the basis of the expert evidence, which had previously been lacking, and so once the Appellant was able to establish that he was a Syrian national then he succeeded on the issue of protection. The judge was entitled to come to that view quite reasonably because there were two records of expert report analysis in 2016 and then in 2020. These were the scientific findings of an expert witness, and any assessment of an Appellant’s individual credibility, could not impact upon such a scientific finding. Indeed, the judge had properly addressed the different

circumstances that now appertained before him, namely, that the Appellant had not previously been represented, there was no expert report, and he was uneducated and unfamiliar with court “processes”. Yet, despite that, the judge was in any event satisfied about “the Appellant’s knowledge of his local area” which he described as being “consistent with country information” (paragraph 25). The Appellant had, in his first interview, already identified where he came from, naming the main river, the distance to the hospital, and the location, which had never been challenged by the Secretary of State, and was not challenged by the Secretary of State before Judge Gould.

11. I asked Mr Tan if he had any further submission to make by way a reply and he stated that he did not.

No error of law.

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law such that this decision should be overturned. My reasons are as follows. It is plain that the factual circumstances before the judge were entirely different to what they were before a previous Tribunal. Not only had the Appellant been unrepresented, but he did not have the benefit of an expert linguist’s report. In the instant case, not only was there an expert present, but he had furnished two reports, and was himself a person who had lived with the Koceri community in Al-Hasaka and was familiar with the particular nuances of the language pointing out how the words of “oo” and “ee” were particular to the Appellant’s community.
13. Indeed, the judge was entitled to take the view that the expert’s criticism of the fact that the Respondent’s analysis in itself was flawed because the language experts used by the Respondent were those where the principal author did not speak Kurdish and the two further authors had not had any formal linguistic training. It is salutary to note that in **MW v SSHD (Fast Track appeal: Devaseelan guidelines) [2019] UKUT 00411 (IAC)** it was made clear that although the first decision is “the starting point” the starting point principle is not a legal straitjacket and that it permits subsequent judicial factfinders to depart from the earlier judicial decision on a principled and properly reasoned basis. That was the case here.

Notice of Decision

14. There is no material error of law in Judge Gould’s decision. The determination shall stand.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29th November 2023

