IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003457
First-tier Tribunal No: PA/53780/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 12th of November 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

M A A F F
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M Mohzam, Counsel instructed by CB, Solicitors
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 30 September 2024

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 him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Anonymity

1. The First-tier Tribunal did not make an anonymity order. I take into account the principles of open justice and consider that an order is appropriate in this case because the appellant has made a protection claim and it is necessary so as to ensure that the publication of this decision does not inadvertently expose the appellant to a risk he does not currently face. This order shall stand until a Tribunal or Court directs otherwise.

Procedural background and disputed issues

2. This is an appeal against a decision of First-tier Tribunal Judge G J Ferguson ("the judge") promulgated on 8 March 2024, following a hearing on 8 December 2023, dismissing an appeal brought by the appellant against a decision of the Secretary of State dated 19 August 2022 to refuse his fresh claim for asylum. The judge heard the appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002. The appellant now appeals against the decision of the judge with the permission of First-tier Tribunal Judge Chowdhury dated 26 July 2024.

3. The factual background can be shortly stated. The proceedings before the First-tier Tribunal was the second time it had heard an appeal brought by this appellant addressing essentially the same principal issue – whether he is a national of Syria or Egypt – albeit by reference to different evidence. The appellant claims to be a national of Syria. The Secretary of State contends that the appellant is from Egypt. That is the foundational disputed issue from which all other disputes – and the grounds of appeal for consideration in these proceedings – flow.

The grounds of appeal

4. The essential complaint in the grounds (not drafted by Mr Mohzam) is two-fold. First, that the findings reached by the judge are inadequately reasoned, and the second is essentially a procedural point. The appellant seeks to make good these grounds by submitting that the judge failed properly to assess the documentation he relied upon confirming his identity and nationality and failed to consider whether the facts established a duty on the Secretary of State to verify that evidence.

The Law

5. The First-tier Tribunal is a specialist tribunal. In *HA (Iraq) v Secretary of State for the Home Department [2022] UKSC 22, [2022] 1 WLR 3784, [2023] 1 All ER 365* Lord Hamblen said, at para. 72:

> "It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular:
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> (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is

> probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently - see AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49; [2008] AC 678 per Baroness Hale of Richmond at para 30.
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> (ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49; [2011] 2 All ER 65 at para 45 per Sir John Dyson.
>
> (iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out - see R (Jones) v First-tier Tribunal (Social Entitlement Chamber) [2013] UKSC 19; [2013] 2 AC 48 at para 25 per Lord Hope."

6. In *Perry v Raleys Solicitors [2019] UKSC 5* at para. 52, Lady Hale PSC held that the constraints to which appellate judges are subject in relation to reviewing first instance judges' findings of fact may be summarised as: "…requiring a conclusion either that there was no evidence to support a challenged finding of fact, or that the trial judge's finding was one that no reasonable judge could have reached."

7. *Devaseelan v Secretary of State for the Home Department* [2002] UKAIT 702 held that an earlier judicial decision is the "starting point" for the subsequent judicial fact-finder. The "starting point" principle is not a legal straitjacket. It permits subsequent judicial fact-finders to depart from the earlier judicial decision on a principled and properly-reasoned basis. See *R (on the application of MW) v Secretary of State for the Home Department (Fast track appeal: Devaseelan guidelines)* [2019] UKUT 411 (IAC).

Discussion

8. I had before me a composite bundle filed by the appellant's representatives in compliance with the Tribunal's directions which I have considered. I asked Mr Mohzam at the outset to clarify the reference denoted as "[SB…]" in the grounds. It was likely to be a reference to a bundle, but it could not be identified as part of the composite bundle. Mr Mohzam was none the wiser and was content to rely on the bundle filed for this hearing.

9. I consider the grounds out of turn because if the appellant can establish that a procedural unfairness arose from the judge's failure to consider whether the Secretary of State was under a duty to verify the appellant's documentation then the decision is likely to be vitiated by legal error.

10. It was common ground before the judge that if the appellant is a Syrian national, that would dispose of the appeal in his favour. As proof of his nationality the appellant relied on a birth certificate and a "national ID", the originals of which he claimed in his written testimony were

posted to the Home Office in June 2022 and unreturned. Mr Mohzam's submissions did not go beyond that which is stated in the grounds. He submitted that it was "crucial" and indeed incumbent on the judge to have determined first whether the original documentation had been retained by the Home Office in order to decide whether a duty to verify arose. Mr Mohzam referred to headnote (1) of QC (verification of documents; *Mibanga* duty) China [2021] UKUT 33 (IAC), which provides:

> *"(1) The decision of the Immigration Appeal Tribunal in Tanveer Ahmed [2002] UKIAT 00439 remains good law as regards the correct approach to documents adduced in immigration appeals. The overarching question for the judicial fact-finder will be whether the document in question can be regarded as reliable. An obligation on the respondent to take steps to verify the authenticity of the document relied on by an appellant will arise only exceptionally (in the sense of rarely). This will be where the document is central to the claim; can easily be authenticated; and where (as in Singh v Belgium (Application No. 33210/11)), authentication is unlikely to leave any "live" issue as to the reliability of its contents. It is for the tribunal to decide, in all the circumstances of the case, whether the obligation arises. If the respondent does not fulfil the obligation, the respondent cannot challenge the authenticity of the document in the proceedings; but that does not necessarily mean the respondent cannot question the reliability of what the document says. In all cases, it remains the task of the judicial fact-finder to assess the document's relevance to the claim in the light of, and by reference to, the rest of the evidence."*
>
> [my emphasis]

11. QC makes clear that an obligation on the Secretary of State to authenticate documentation will be rare and whether or not that obligation arises is entirely fact sensitive. That led this Tribunal to enquire with Mr Mohzam whether he made it clear to the judge that this was an issue he was required to determine. Mr Mohzam fairly acknowledged that he could not recall whether he raised it before the judge, but nonetheless submitted that the judge was under a duty to consider the same. I disagree. In an issue(s) focused appeal regime that is directed as a matter of practice in the First-tier Tribunal, the judge was required to determine the issues raised by the parties. Generally speaking, therefore, the judge cannot be fairly criticised for failing to consider an issue that was not raised before him. In the circumstances, I am inclined to agree with Mr Wain that the appellant did not make clear his case on this issue before the judge by reference to *QC*; it is not raised in the appellant's skeleton argument (which I also note refers to certified copies of documentation rather than originals) and nor was the judge referred to the guidance in *QC* at the hearing.

12. Nonetheless, whilst Mr Mohzam did not draw this to my attention, the judge was clearly alive to the issue of verification, as it formed part of the respondent's case, and was aware of the appellant's claim that the original documentation remained with the Home Office. At [15] the judge noted the respondent's submission that "*[w]hile the Home Office could verify documents in some circumstances if easy to authenticate and*

unlikely to leave live issues, the poor quality of these images meant that such verification would not be possible"; and at [16], noted Mr Mohzam's submission that, *"[t]he covering letter for the application referred to his birth certificate and identity document being provided, not copies of those documents".* This is essentially the extent to which the matter appears to have been raised before the judge.

13. The judge then began his evaluation of the evidence at [17]. He correctly identified that the findings made in the previous appeal was his starting point by reference to the principles in *Devaseelan* (the judge summarised these findings earlier in his decision at [5] and again at [22]). The judge then considered the evidence and the competing submissions of the parties concerning the documentation to the extent that it was advanced before him and stated thus:

> "18. The documents provided by the appellant certainly amount to new evidence and were accepted as such by the respondent in reconsidering the claim. Having done so, the evidence was not considered to be sufficient to establish his Syrian nationality. Neither the appellant nor the respondent sought to verify the documents. The respondent said that the documents provided were copies whereas the appellant said that the originals had been sent to him although he was less clear as to who had taken copies and what exactly had been sent to the Home Office."

14. Whilst the grounds submit that the judge ought to have made a finding in respect of the whereabouts of the original documentation, within the context of how the matter was put before the judge, and from the evidence itself, I am not persuaded that that failure, if it is one, is a material error of law. Even on the appellant's own account before the judge (summarised at [18]), the appellant's evidence was unclear as to what in fact his representatives had sent to the Home Office. On the evidence, therefore, it is unlikely that had the judge taken his reasoning a step further, that he would have reached the conclusion that the originals were in fact sent to the Home Office. I am not therefore satisfied that even if the judge was required to make a finding on the issue, that he was likely to have concluded that an obligation on the Secretary of State to verify the documentation arose on the facts of this case. I am satisfied that ground one is not made out.

15. The second ground is a reasons challenge; it being asserted that the judge gave inadequate reasons for rejecting the reliability of the documentation relied on by the appellant in order to establish his Syrian nationality. The judge summarised the documentation at [19] and then proceeded to evaluate that documentation, as required, within the context of the evidence overall including the findings made in the previous appeal at [20]-[26]. As *QC* makes clear by reference to *Tanveer Ahmed*, that was the overarching duty of the judge.

16. The grounds challenge the judge's rationale in concluding that the documentation was indeed unreliable as his reasoning was not supported by any background evidence, and by his failure to put his concerns about

the documentation to the appellant at the hearing. These submissions do not, in my judgement, withstand scrutiny, when the judge's decision is considered in context and moreover holistically.

17. The judge's findings in respect of the documentation is as follows:

> ”19. …the birth certificate and national certificate are laid out in a basic manner with details in the sort of table format which could be created in a basic word document.”
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> “20. The fact they were posted from Damascus does not establish that the appellant is from Syria. It establishes that some pages were posted to the appellant by a person in Syria. This person was not the appellant's sister but someone who is said to be an acquaintance of her.”
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> …
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> 25. The new evidence has to be considered against the background of the previous claims. Documents can be verified in various ways. [The appellant] could have provided what he termed the “originals” to an expert who could have examined the stamps and the documents. He did not do that. [The appellant] could have provided detailed evidence about the provenance of the documents. He did not do that either. This is a significant omission. [The appellant] said that he got in contact with his sister in 2019 through social media, particularly facebook. There is therefore significant evidence readily available about the initial contact, the process of him asking her for the documents and information as to what she obtained and how. None of that was provided. [The appellant] said that he had a conversation with his solicitor about whether he should provide the evidence and the solicitor said it was not necessary. Given that it was raised as an issue in both the refusal letter and the review I do not accept without evidence that this would have been what [the appellant] was advised. Facebook evidence is common in many appeals and solicitors would not have been unaware of its potential significance. Such evidence would also have established that the person obtaining the document was a family member who was in Syria.
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> 26. What [the appellant] has provided for this appeal are simple easily manufactured documents with some stamps which have not been authenticated. He is not provided any expert evidence that the documents are genuine and has not provided any significant evidence about the provenance of the documents even though that would have been available in his communications with his sister if that is what had happened. The fact the documents are posted in Damascus does not establish that they are genuine documents or that he is Syrian.”

18. The context in which these conclusions were reached is that the appellant was on notice from the outset that the respondent did not accept the documentation was reliable evidence of his nationality. The respondent, in her consideration of that evidence, plainly set out in her review, the issues she took with the provenance and reliability of that evidence and cited background evidence relating to Syrian identity documentation being readily available for purchase. Whilst the grounds assert that it was not open to the judge to have found the appellant had

adduced easily manufactured documentation, as this did not form part of the respondent's case in the refusal letter, ignores the respondent's position set out in the review which the grounds do not cite. It was ultimately a matter for the appellant to establish that the documentation he relied on to support his claim to be of Syrian nationality was reliable evidence of that fact. He failed to do that for the reasons set out by the judge (above). The judge's approach was neither erroneous nor unfair when considered in the context of the evidence; how the appellant's case was put, and indeed holistically.

The findings at [19] and [26] about which the grounds complain are adequately reasoned and were reasonably open to the judge on the evidence.

19. I find that the grounds disclose no more than selective disagreement with adequately reasoned resolution of the issues presented to the judge for determination.

20. I find the grounds do not establish the judge materially erred in law.

Notice of Decision

The appellant's appeal to this Tribunal is dismissed. The decision of the First-tier Tribunal stands.

R.Bagral

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
9 November 2024