IAC-BFD- MD

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11539/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 12th August 2015	**On 11th September 2015**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MISS RASHA ABDULLAH AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Schwenk, of Counsel instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant Rasha Abdullah Ahmed who claims to be a citizen of Syria was born 16th February 1988. Her claimed Syrian nationality is disputed by the Respondent who considers her to be a national of Iraq.

2. The Appellant arrived in the UK sometime in early December 2013 having travelled via Turkey and a number of other unknown countries by lorry. She was accompanied by her older brother Jamal who is disabled. He

suffers from spinal injuries resulting from an accident suffered about 10 years ago when he fell from a roof. He is wheelchair bound and is dependent upon the Appellant's claim.

3. Her claim to asylum amounts to this. She cannot return to Syria because she is an ethnic Kurd and would face mistreatment and sexual harassment due to the general situation in that country. Her brother, because of his disability, is unable to offer her protection. Her father is dead and she is now unaware of the whereabouts of her mother. She last saw her in Deryeki in Syria. She has a maternal uncle who facilitated her and her brother's entry to the UK, but the last she saw of him was in Turkey.

4. The Respondent did not accept the Appellant's history. She considered the Appellant to be an Iraqi national founded on two grounds: a LOID report and evidence that the appellant's brother had made a past application for entry, in which he described himself as an Iraqi citizen from Duhoq Iraq. That application contained a contact telephone number with an Iraqi dialling code. The Respondent therefore rejected the appellant's claim, concluding that as an Iraqi national she would not be at risk on return to Iraq.

5. Both parties agree therefore, that the dispute over nationality is central to this appeal.

FtT Hearing

6. When the appeal came before Judge Birkby, two expert reports formed the central parts of the documentary evidence submitted for consideration.

- A LOID Report which concluded strongly that the speech spoken by the Appellant showed that she belonged to the Kurdish linguistic community that occurs in Iraq. The Appellant's language was a Kurmanji sub-dialect.
- A report from Doctor Fatah. On the basis of his co linguistic examinations of the Appellant in both Kurmanji and Syrian Arabic, this concluded that the Appellant spoke Kurmanji to the level of a native speaker from Dereyeki and that she also displayed a native fluency in Syrian Arabic, speaking with a clear Syrian dialect and to a high level. He concluded, this strongly suggested that the Appellant is a Kurd native to Syria; but then tempered his conclusions with the following remark,

> "…Both her Arabic and Kurdish accents and vocabulary suggest she is a native of Kurdish areas of Syria. Yet, that she – an illiterate, uneducated tailor, who has never left the house in the village in which she has always lived – commands a native fluency in two languages to the level of a well-educated individual remains striking."

7. After considering the documentary evidence, the Appellant's oral evidence and the interviews relating to her claim, the Judge concluded that the

evidence pointed to the Appellant being an Iraqi national and therefore not in need of protection in Syria. In other words he found her claim to be an illiterate Syrian national not made out. He found he was also satisfied that the Appellant was from Iraq.

The UT Hearing

8. Mr Schwenk for the Appellant, advanced three grounds of challenge to Judge Birkby's decision, which cumulatively, he said amounted to legal error requiring the decision to be set aside and remade.

9. The first ground of challenge revolves around the assessment of the Appellant's credibility with particular reference to what the Judge says at [28]. He submitted that when it came to assessing the Appellant's credibility the Judge incorrectly drew adverse inferences in three areas.

- the Appellant's inability in interview to provide telephone codes for where she resided (Q87)
- her inability to name local parks (Q 89)
- an inability to explain the "false" visa application made in her brother's name (Q 63)

10. I find nothing really turns on this. The Judge has said at [28] he did not find the Appellant to be a credible witness. He says her evidence was at times *"implausible, inconsistent, vague and evasive. I shall cite some examples although these are not exhaustive".* The Judge has been criticised for saying he found the Appellant's response to Question 89 of her asylum interview as vague. Mr Schwenk submits that the Appellant's response was not vague it was a straight-forward one. Therefore the Judge erred. I disagree. I agree that the Judge has used the word 'vague' when describing the response to Q89. What is clear from a full reading of the determination, is that the Judge disbelieved the Appellant's response. Whilst the adjective implausible may have been a better way of expressing his disbelief, nevertheless it is clear that the Judge did not accept what she said, and with good reason, when her response is looked at in the context of the whole case. Her response is not simply a straight-forward response as claimed. She qualifies the sentence by saying that she is illiterate. The Judge had good reason to find this conflicted with other evidence, notably that from Doctor Fatah. The same can be said about telephone dialling codes.

11. The next challenge concerned the Judge's adverse credibility findings at [28(viii)]. Criticism is made because he questioned the Appellant's credibility when she was asked why she did not call her brother as a witness at the appeal hearing. The Appellant's response which is noted was this "I was not aware of the law of this country, or that it was possible for him to give evidence." It is said that the Judge failed to consider that the Appellant followed the instructions of her legal representatives who may or may not have suggested it to her.

12. Mr Schwenk added that the Appellant's brother is mentally/physically disabled and the Judge failed to acknowledge this when he drew the adverse inference he did in [28(viii)]. I find this to be an unfair criticism of the Judge. It is recorded that the question of the Appellant's brother giving evidence, was asked by the Presenting Officer. This was no doubt in the context of the Respondent having cogent evidence, that there had been a visa application made by the Appellant's brother (who is a dependant on her claim not an appellant as the Rule 24 response says) and which details the Appellant's brother as an Iraqi citizen.. This is one of the central planks of why the Respondent rejected the Appellant's claim to Syrian nationality. The Appellant's brother was present at the appeal hearing. The Appellant's claim has always been that she was unaware of her brother's visa application and that it must have been a fraudulent one instigated by her uncle.

13. Mr Schwenk tells me that the Appellant's brother is mentally and physically disabled. I accept that may be so. I take it from that the Appellant's brother is incapable of giving evidence directly. However if that be the case, it leaves unanswered the question of why he should have been troubled by being brought to the Tribunal hearing in the first place. Furthermore the evidence shows that the Appellant and her brother are able to communicate with one another; she looks after him. It is not unreasonable therefore to expect her, at the very least, to have asked her brother what he knew about the visa application. This may have taken matters no further but at least the question would have been asked.

14. The next ground of challenge advanced is that the Judge failed to adequately consider and give effect to the conclusion of the report prepared by Doctor Fatah. It is said that Doctor Fatah's report is more rounded than the LOID Report and therefore his conclusions should have been preferred. The Judge failed to give weight to material matters.

15. The weight to be given to the evidence is a matter for the Judge provided he considers the evidence with the appropriate degree of anxious scrutiny, and gives adequate reasons for the findings made. I find on a reading of the determination the Judge demonstrates that this is what he did. It must be kept in mind that Judge Birkby had the advantage in seeing and hearing from the parties. It may be that others would disagree with the findings or be of the opinion that greater weight should have been given to other issues when considering whether the evidence substantiated the claim, but that is not the correct test to be applied at this stage. I find the evidence was considered with the required degree of care. It has not been said that the findings are perverse or irrational. Therefore the findings made, are within the permissible range of those which the Judge was entitled to make.

16. Accordingly for the forgoing reasons, I find that the decision of the First-tier Tribunal does not contain any error of law. The decision therefore stands.

Decision

17. This appeal is dismissed.

No anonymity direction is made

Signature **Dated**
Judge of the Upper Tribunal