



**Upper Tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/11533/2017

THE IMMIGRATION ACTS

**Heard at Liverpool
On 3 May 2018**

**Decision Promulgated
On 08 May 2018**

Before

Deputy Upper Tribunal Judge Pickup

Between

**TARIQ [A]
[No anonymity direction made]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms N Patel, instructed by Lei Dat Baig Solicitors

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Knowles promulgated 19.12.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 24.10.17, to refuse his protection claim.
2. First-tier Tribunal Judge Andrew granted permission to appeal on 17.1.18.
3. Thus the matter came before me on 3.5.18 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons summarised below, I found sufficient error of law in the making of the decision of the First-tier Tribunal as to require the decision to be set aside and remitted to the First-tier Tribunal to be remade.
5. The crucial issue in the appeal was that of the appellant's nationality. He claimed to be Syrian, which, if accepted, would have entitled him to refugee status. However, the respondent's case, based on expert language analysis, was that he is in fact Egyptian.
6. At [27] the judge noted that the burden is on the appellant to the lower standard of a reasonable degree of likelihood to demonstrate that he is Syrian. However, the judge may not have recognised that if the respondent positively asserts that he is not Syrian but Egyptian, the burden is on the Secretary of State to so demonstrate to the civil standard, the balance of probabilities.
7. The judge did address some of the evidence relevant to establishing nationality, such as the appellant's explanation for getting the colour of the Syrian passport wrong, or his claimed memory problems. At [31] of the decision the judge also addressed a number of inconsistencies in the appellant's account.
8. When at [32] in addressing the expert language report relied on by the respondent, the judge failed to engage with the arguments raised on behalf of the appellant as to why the report was unsatisfactory and those elements which were supportive of the claimed Syrian nationality. However, the grounds on this issue are insufficient to demonstrate any error of law. It was not necessary for the judge to "engage in a detailed analysis of the verified linguistic report," as claimed, nor to make a critical assessment of the analyst's credentials.
9. However, there are better points made in the grounds such as the absence of any findings about the issue of the Syrian ID card produced by the appellant, although it is referred to in the summary of the evidence at [16] of the decision. The respondent's case was that it could not be verified and the judge would have been entitled in the circumstances to accord little weight to such a document, applying Tanveer Ahmed [2002] UKAIT 00439, but it was not addressed. Nor did the judge make any findings as to the appellant's claimed visit to the Egyptian Embassy in London, referenced in the evidential summary at [17] of the decision.
10. Whilst it is not incumbent on a tribunal to resolve every single issue or factual dispute, there were potentially important elements supporting the appellant's claim in respect of which the tribunal made no actual findings. Mr McVeety conceded that the judge should have addressed these issues one way or another. I find the failure to do so amounts to an error of law in the making of the decision. It was also unfair to the appellant to effectively ignore the evidence that on its face supported his claim. In the

circumstances, the decision cannot stand and must be set aside to be remade.

Remittal

11. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the facts are unclear on a crucial issue at the heart of an appeal, as they are in this case, effectively there has not been a valid determination of those issues. The errors of the First-tier Tribunal Judge vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
12. In all the circumstances, I relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Conclusions:

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Consequential Directions

14. The appeal is remitted to the First-tier Tribunal sitting at Manchester;
15. The appeal is to be decided afresh with no findings of fact preserved;
16. The ELH is 3 hours;
17. An interpreter in Arabic will be required;
18. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judge Knowles;
19. The appellant is to ensure that all evidence to be relied on is contained within a single consolidated, indexed and paginated bundle of all objective and subjective material, together with any skeleton argument and copies of all case authorities to be relied on. The Tribunal will not accept materials submitted on the day of the forthcoming appeal hearing;
20. The First-tier Tribunal may give such further or alternative directions as are deemed appropriate.

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.



Signed

Deputy Upper Tribunal Judge Pickup

Dated