IN THE UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001457

First-tier Tribunal No: PA/57037/2023
LP/00760/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 July 2024

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SI
(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Holmes of Counsel
For the Respondent: Mr Thompson a Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 24 June 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 the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

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1. The Appellant was born on 17 August 1994. His claim to be a citizen of the Syrian Arab Republic is disputed. He appealed against the decision of the Respondent dated 8 September 2023, refusing his protection and human rights appeal.

2. He appeals against the decision of First-tier Tribunal Judge Swinnerton ("the Judge"), promulgated on 19 February 2024, dismissing the appeal.

Permission to appeal

3. Permission was granted by Deputy Upper Tribunal Judge Shepherd on 9 May 2024 on the following grounds only, there being no application to reopen those grounds on which permission to appeal had been refused:

> "6. … it is arguable that the Judge reaches his finding that the appellant is not credible by looking at these matters alone, and without concurrent consideration of the expert linguistic report. If this is the case, then the Judge has not truly considered all of the evidence "in the round". It is also arguable that the Judge's reasons for rejecting the conclusions of the linguistic report are inadequate, particularly given the Judge records at [12] that the respondent accepts the expert's expertise, there does not appear to have been any particular challenge to the contents of the report, and the report itself appears considered in its opinions."

The First-tier Tribunal decision

4. The Judge made the following findings in relation to the issues before us:

> "18. In relation to the Syrian national ID provided by the Appellant, in his statement of 2.5.2023, the Appellant stated: "I was approached to fight by the Syrian army. I refused to do this and I was assaulted by them. They hit me with a gun and I suffered a head injury because of this. This happened at this particular time as it was when I went to get my ID card with my father". As at May 2023, therefore, the account of the Appellant was that he suffered a head injury from the Syrian army which happened at the same time that he went with his father to obtain his Syrian national ID card.
> 19. About two months later, in July 2023, in his asylum interview the Appellant was asked in relation to his ID card (at question 30): "Can you tell me where you obtained it"? He answered: "I don't know where it was obtained, my paternal uncle obtained it".
> 20. In relation to his head injury, the Appellant was asked in his asylum interview (at question 149: "Can you tell me how you received your head injury"? He answered: "As they were coming often to my house to recruit me and one time I was at home, they attempted to take me away by force and I refused so they hit my head with the bat [butt] of the gun".
> 21. In his witness statement of 29.11.2013, the Appellant states: "With regards to how I obtained my ID card, I now believe that when I said in my witness statement that my father took me to get it that this was a definite error. I am certain now that it was, as I said in my main interview, my uncle who went and got it for me". In respect of the head injury, it is stated: "My head injury was quite severe. I was hit with the butt of a gun when I refused to join in with the fighting for the YPG". At the hearing, the Appellant gave evidence that he was hit in the head by the YPG at his home.
> 22. In relation to the Appellant's ID, it is clear that there is a significant discrepancy in the Appellant's account between his witness statement of May 2023 and his asylum interview that took place only two months later in July 2023. The Appellant claimed asylum in February 2021 such that his statement of May 2023 was provided

more than two years after that point in time therefore allowing the Appellant considerable time in which to be clear about his account. I find that the Appellant has not given any credible explanation for such a significant discrepancy in respect of a fundamental aspect of his account.
23. In respect of the Appellant's head injury, it is also clear that there is a significant discrepancy in the Appellant's account between his witness statement of May 2023 and his asylum interview two months later. The Appellant stated in May 2023 that he was hit in the head when obtaining his ID card and then changed his account to being hit in his head whilst at home due to his resistance to being recruited. I find that the Appellant has not given any credible explanation for such a discrepancy in respect of another fundamental aspect of his account…
26. I find that the change in the account of the Appellant in relation to the fundamental aspects of obtaining his ID card and how he obtained his head injury have damaged the credibility of his account. I did not find the evidence of the Appellant given at the hearing in relation to these aspects of his account to be at all credible. Overall, I did not find the Appellant to be a credible witness. For these reasons, I give little weight to the ID card provided by the Appellant…
28. In respect of the language report of Dr Matras, this refers to the instructions of Dr Matras having been to "*provide guidance notes for the elicitation of a speech sample from the applicant, to evaluate the audio recording provided by the applicant's representatives and on that basis to provide my opinion as to whether the linguistic data support the applicant's account to which he was socialised in Quldman village in the district of eastern Al-Hasaka in northern Syria*". Dr Matras states as well that he provided similar guidance notes to ascertain the applicant's level of spoken Arabic, his secondary language.
29. The report of Dr Matras refers to having received a recorded sample of the applicant's speech (of Kurmanji Kurdish) from the applicant's representatives which was about 45 minutes duration and the audio quality of which was variable but allowed for the extraction of sufficient data for the analysis.
30. In his report, Dr Matras states that the terms Kurmanji and Bahdini "*both refer essentially to the same language and to the same dialect group within the Kurdish dialect continuum*". In the section of his report entitled 'Conclusion', Dr Matras refers to the Appellant demonstrating some active command of Arabic (the official language of Syria) which along with his ability to understand the language would tend to rule out a background in Turkey, where Arabic is not a language of public life, as well as in the Kurdish areas of northern Iraq. Dr Matras states also that on the basis of the applicant's Kurmanji Kurdish, as well as additional data and observations from his interaction in Arabic, "*I find that the linguistic data strongly support the applicant's statement according to which his background is in a border community in the eastern Al-Hasaka area of northeastern Syria*".
31. I do give weight to the report of Dr Matras but not decisive weight and particularly so given the significant discrepancies in the account of the Appellant as detailed above."

The Appellant's grounds seeking permission to appeal

5. The grounds asserted that:

"15. A submits that the FTTJ has erred materially in law by failing to consider all the evidence in the round. It is arguable that he has reached his adverse credibility findings before considering the entirety of the evidence, in particular …the expert report of Dr Matras…
17. In relation to the evidence of Dr Matras: the FTTJ acknowledges his expertise [12] and the fact that the expert concludes that A is from Syria [30]. At [31] he states: "*I do give weight to the report of Dr Matras but not decisive weight and particularly so given the significant discrepancies in the account of the Appellant as detailed above*."
18. A respectfully submits that when the determination is read as a whole and [26] in particular, it is arguable that the FTTJ has reached his adverse credibility findings

> before considering the evidence of … the expert linguist. Further, A submits that the FTTJ's reasons for dismissing the expert report are inadequate. A submits that the FTTJ has arguably materially erred in law."

Rule 24 notice

6. There was no rule 24 notice.

Oral submissions

7. Mr Holmes submitted that there are 3 essential points.

8. Firstly, Dr Matras was a leading linguistic expert in relation to the languages used in this particular region. The Respondent had not put forward an alternative position of where the Appellant came from. There was no independent report from the Respondent.

9. There was no challenge to Dr Matras's comments. The Judge recorded at [12] that the Respondent had submitted in the refusal letter;

> "It is acknowledged that the language report has been provided by an expert whose expertise was accepted and it is for the Tribunal to decide the weight to attribute to it."

10. The Respondent did not seek to cross-examine Dr Matras. As the evidence was unchallenged, the principles identified in TUI UK Ltd v Griffiths [2023] UKSC 48 at [70] apply.

11. At [22] of the decision the Judge considered the evidence in relation to how the Appellant obtained his ID card. At [23] the Judge noted the differing explanations regarding when and how the Appellant had been hit on the back of the head. At [26] the Judge gave omnibus conclusions on these issues.

12. At [28 to 30] the Judge looks at Dr Matras's report and then at [31] considers the issue of the weight to attached to the report. The Judge did not look at the report in the round, gave inadequate reasons for rejecting the report, and made findings that are irrational. The Judge dismissed the Appellant's credibility and then considered the expert's report, and consequently erred in failing to adhere to the principle explained in AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123 at 19(a);

> "…the FtT rejected the asylum claim on adverse credibility grounds before considering the objective country evidence (contrary to the well established principle that credibility should be made on the basis of a holistic assessment): it is an error of approach to come to a negative assessment of credibility and then ask whether that assessment is displaced by other material Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367, [2005] INLR 377 at [24] to [25]."

13. Secondly, there was a lack of reasons. There was independent evidence that was powerful, cogent, and stood alone and separate from credibility. It was capable of leading the Appellant to success by itself. Some reason had to be given for the lack of significant weight being given to it. The evidence was unchallenged. There was no assessment of the significance of any lies as explained in Chiver (Asylum; Discrimination; Employment; Persecution) (Romania) [1994] UKIAT 10758;

> "It is only when an adjudicator after stating that evidence is believed or disbelieved reaches a conclusion which has no foundation in the belief or disbelief that a determination cannot stand because of inherent inconsistencies."

14. Thirdly, the decision attaching little weight to Dr Matras's report was irrational, as telling a lie about being hit on head does not undermine the unchallenged expert evidence. More was needed.

15. Mr Thompson submitted that it was wrong to say the Judge did not consider the evidence in the round. At [16] the Judge said;

> "I have considered all of the documentation provided, even if I do not refer to it specifically in my decision. The documentation provided to me included a hearing bundle of 694 pages."

16. The weight to attach to the report of Dr Matras was a matter for the Judge.

17. Regarding the identification documents, at [17] the Judge noted Tanveer Ahmed [2002] UKIAT 00438;

> "…that the burden of proof is on the applicant to show that documentary evidence submitted can be relied upon."

18. At [18 to 21] of the decision, the Judge noted the conflicting evidence regarding the identification document, and at [22] the Judge gave reasons for the adverse credibility finding.

19. In relation to the head injury, the Judge noted at [23] of the decision the passage of time. At [24 to 26] of the decision, the Judge the noted the memory issues and dealt with this. It was the cumulative impact of the discrepancies.

20. Regarding Dr Matras's report, at [31] the Judge stated that weight was attached to the report. The reasons for the weight not being decisive were clearly explained when the decision is read in full. Notwithstanding the Mibanga error, the Judge did enough to make the decision as the Judge was not hiding behind the expert alone.

21. Mr Holmes in reply submitted that the credibility assessment can be relevant but not determinative as stated in JCK (s.32 NABA 2022) (Botswana) [2024] UKUT 100 (IAC) at [17].

Discussion

22. The guidance in TUI at [70] is;

"(i) The general rule in civil cases…is that a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted. That rule extends to both witnesses as to fact and expert witnesses.
(ii) In an adversarial system of justice, the purpose of the rule is to make sure that the trial is fair.
(iii) The rationale of the rule, ie preserving the fairness of the trial, includes fairness to the party who has adduced the evidence of the impugned witness.
(iv) Maintaining the fairness of the trial includes fairness to the witness whose evidence is being impugned, whether on the basis of dishonesty, inaccuracy or other inadequacy. An expert witness, in particular, may have a strong professional interest in maintaining his or her reputation from a challenge of inaccuracy or inadequacy as well as from a challenge to the expert's honesty.
(v) Maintaining such fairness also includes enabling the judge to make a proper assessment of all the evidence to achieve justice in the cause. The rule is directed to the integrity of the court process itself.
(vi) Cross-examination gives the witness the opportunity to explain or clarify his or her evidence. That opportunity is particularly important when the opposing party intends to accuse the witness of dishonesty, but there is no principled basis for confining the rule to cases of dishonesty.
(vii) The rule should not be applied rigidly…Its application depends upon the circumstances of the case as the criterion is the overall fairness of the trial...
(viii) There are also circumstances in which the rule may not apply…"

23. As stated in JCK at [17];

"it is well understood in this jurisdiction that claimants who are "in fact afraid" may seek to exaggerate, or even falsify, past events in order to prove their case."

24. There a material error of law for these reasons. Dr Matras found,

"5.4 Assessment of the applicant's linguistic features as documented in the recording
a) A series of features are consistent with a background in eastern Al-Hasaka province in northeastern Syria as well as with the dialects of the Mardin and Cizre regions in neighbouring Turkey but not with a background in the areas where Bahdini dialects are spoken around Duhok, Amediya and Zakho in Iraq or the Hakkari province in Turkey…
b) Consistent with a background in northeastern Syria but not with a background in Turkey or northern Iraq is the use of a series of contemporary Arabic loans.
c) A number of features are consistent specifically with the Ashiti border dialects of eastern Al-Hasaka in northeastern Syria... All features identified in the recording are consistent with the Ashiti Kurmanji dialect and so with a background in eastern Al-Hasaka province in Syria.
6.…all features of the applicant's Kurmanji Kurdish speech are consistent with his reported background in a village on the Syria-Iraq border in the province of eastern Al-Hasaka in Syria, where the Ashiti variety of Kurmanji is spoken."

25. The discrepancies considered by the Judge in the decision at [18 to 30] are the only basis for the rejection of the Appellant's account of his claimed nationality.

26. Dr Matras is an acknowledged expert in assessing languages used in the region the Appellant claimed to come from. There was no alternative hypothesis as to nationality put forward by the Respondent. Whether the Appellant lied about the ID card issue or his memory loss, is not relevant to the linguistic assessment which is based on the pharyngeal, morphological, lexical, and lexical-phonological features as explained by Dr Matras. The discrepancies are not a reason, by themselves, for rejecting the opinion of Dr Matras for the reason given in JCK at [17] and Chiver (see above [13]). The Respondent did not seek an adjournment for Dr Matras to be called to give evidence. The evidence was not challenged either in cross-examination or through a "paper" challenge to his opinions the importance of which was explained in TUI at [70]. There is no assessment of the report of Dr Matras.

27. The Judge fell into the Mibanga error identified in AM (Afghanistan) that "it is an error or approach to come to a negative assessment of credibility and then ask whether that assessment is displaced by other evidence" That is precisely what the Judge did here as the Judge came to a negative assessment of credibility in [22, 23, and 26], then considered the evidence of Dr Matras at [28 to 30], and then said at [31] that weight was given "but not decisive weight and particularly so given the significant discrepancies in the account of the Appellant as detailed above*.*"

28. No other reason is given explaining why the "weight to the report of Dr Matras" is "not decisive". Simply stating at [15] that "I have considered all of the documentation..." does not obviate the need for the evidence to be assessed, and for reasons to be given for rejecting the evidence of an acknowledged expert.

29. The Judge's finding at [32] "that the Appellant is not a Syrian national" was therefore a material error of law.

30. Having so found, we invited submissions from the representatives regarding the further conduct of the appeal. They both submitted that the appeal should be remitted for a de novo hearing before the First-tier Tribunal. We agree as there was no effective fair hearing given the manner in which the evidence of Dr Matras was considered.

Notice of Decision

31. The Judge made a material error of law. We set aside the decision of the First-tier Tribunal.

32. We remit the appeal to the First-tier Tribunal for a de novo rehearing not before Judge Swinnerton. Any further directions regarding the conduct of the appeal will be considered by the First-tier Tribunal.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 June 2024