



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

Appeal Numbers: AA/00544/2014

THE IMMIGRATION ACTS

**Heard at Newport
On 2 October 2014**

**Promulgated on
On 14 November 2014**

Before

**MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARAN RASOULI

Respondent

Representation:

For the Appellant: Mr I Richards, Senior Home Office Presenting Officer

For the Respondent: No representative

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a decision of Judge Cresswell of the First-tier Tribunal on 4 March 2014 following the hearing of the appellant's appeal against the Secretary of State's refusal to grant asylum and her decision to give removal directions to the respondent, whom we shall call 'the claimant' as an illegal entrant.
2. The claimant's case is that he is a national of Iran from the Kurdish part of Iran and of Kurdish ethnicity and that he has been active in Kurdish politics; following which incidents occurred which caused him to fear for his life. It is not said by the Secretary of State as we understand it that the claimant's story, if true, would not give rise to a proper claim to asylum.

The Secretary of State's position on the contrary is and always has been that the story simply is not true; and, indeed, that the claimant is not Iranian.

3. In the course of the Secretary of State's investigation of the claim there was a telephone Sprakab interview. The interviewer asked the claimant a number of questions, some of which appear to go well beyond matters of the use of language. The Sprakab interviewer concluded that the claimant was not of the nationality he claimed.
4. At the hearing before Judge Cresswell the claimant appeared in person. He gave his account of his history and was subject to cross-examination by a Presenting Officer. In the course of his evidence, as is apparent from Judge Cresswell's determination, he provided explanations for a number of the factors that had caused the Sprakab interviewer to reach the conclusions that he did. In particular, the claimant's home town is very near the Iraqi border and the claimant's mother was herself Iraqi. Judge Cresswell decided to accept the claimant's explanations and that they outweighed the reasons and conclusion of the Sprakab report.
5. Judge Cresswell's decision is challenged on the grounds that he erred in law by failing to give sufficient weight to that report. It is said that he failed to follow the then authority which was that of RB (Somalia) v SSHD [2012] EWCA (Civ) 277.
6. Mr Richards has expanded today on the Secretary of State's grounds of appeal. Although we note that the judge did conclude that he would follow the oral evidence of the claimant rather than the report of Sprakab, it appears to us that the judge did nothing that he was not entitled to do. He clearly regarded the report as of the highest importance: indeed much of the determination is devoted to seeing whether the factors mentioned in the report were truly matters which should affect the judge's conclusion. That was, in our judgement, a perfectly proper way of approaching what the authorities say is always very important evidence. Nevertheless this was a case where the judge had the opportunity of seeing the claimant in person and seeing for himself the claimant's performance in cross-examination. He had before him two opposing possible conclusions and in our judgment he was entitled to make the choice that he did between them.
7. For those reasons we have concluded that the judge's determination discloses no error of law and the First-tier Tribunal's decision to allow the appeal accordingly stands.

C M G OCKELTON
VICE PRESIDENT OF THE UPPER

TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 4 November 2014