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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05120/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 February 2018	**On 27 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

K A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Childs, Counsel
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS ON ERROR OF LAW

1. The appellant claims to be a citizen of Iran. He claims to have entered the UK clandestinely on 6 September 2015, the date on which his asylum claim is recorded. He was then aged 16. The respondent refused the appellant's claim for protection. The reasons for refusal letter explained that the respondent did not accept the appellant was from Iran and considered it was more likely he came from Iraq. It was accepted he is Kurdish.

2. The appeal was heard by Judge of the First-tier Tribunal M B Hussein on 29 June 2017, shortly after the appellant's eighteenth birthday. The judge made adverse credibility findings against the appellant. The judge identified the two key issues in the appeal as being whether the appellant was an Iranian Kurd and whether his father had been a member of the KDP. He found the appellant had not shown he was from Iran but, even if he were wrong about that, the appellant had fabricated a claim concerning his father's political activity. Finally, the judge found the appellant would not be the subject of adverse interest on account of illegal exit.

3. Regarding article 8, the judge said merely this:

> "54. I have considered whether the appellant has claimed under article 8 of the human rights grounds, and, for the reasons given by the Secretary of State, I find that he does not."

4. The application for permission to appeal suggested the judge had erred in law by failing to apply anxious scrutiny in his findings about the appellant's country of origin. It was not open to the judge to conclude that the appellant would be able to obtain documents from Iran to establish his nationality. With regard to article 8, the judge should have considered whether there were very significant obstacles to his integration on return to Iran.

5. Permission to appeal was refused by the First-tier Tribunal but granted by the Upper Tribunal on all grounds:

> "The grounds are arguable, just. The grounds have a flavour of simple disagreement with the decision of the First-tier Tribunal Judge ("FtJ"). However, I consider that there is arguable merit in the contention that the FtJ failed to have regard to the appellant's age, and the other matters referred to at [9d.] of the grounds, when making his assessment of the credibility of his account, for example in relation to the matters referred to at [40], notwithstanding his reference to relevant authorities at [41]. The grounds do not reflect the issues in relation to the currency point accurately, but then again neither, arguably, does the FtJ's decision.
>
> Although not mentioned in the grounds, it is open to question whether the FtJ was right to say at [41] that there was "not a shred of objective evidence to connect [the appellant] to Iran".
>
> On a self-contained basis, I consider that the ground in relation to Article 8 is weak, but I do not limit the grounds that may be argued. I note that at [61] the FtJ said he found in favour of the appellant on human rights grounds, which is clearly not what he meant, but there is an indication there of a lack of care in the writing of the decision."

6. The respondent has not filed a rule 24 response. However, the grounds have been amended to incorporate the additional point highlighted in the UT's order.

7. I heard submissions from the representatives on the issue of whether the judge's decision contained a material error of law.

8. Ms Childs expanded in her submissions on her written grounds and the additional ground. She argued the judge's finding that the appellant's error at his interview in naming a 250 Toman note (which does not exist) was wrongly described by the judge as an error regarding the *currency*. In relying on the appellant's error in naming the KDP, rather than the KDPI or KDP-I, the judge had not taken account of the appellant's age and inexperience. He had not claimed to be a member himself. In rejecting the appellant's evidence that he would be unable to contact anyone in Iran as "fanciful", the judge had impermissibly viewed what was plausible from the standpoint of another country (*HK v SSHD* [2006] EWCA Civ 1037). There was also background evidence that family members of KDPI members could be targeted, as the appellant had claimed had happened. In relation to article 8, the judge had failed to consider the pertinent factors. The appellant had claimed his family were no longer in Iran and there was nobody he could return to.

9. Mr Bramble argued it was clear the judge had been mindful of the appellant's age. He was entitled to reach the conclusions he reached for the reasons he gave. His conclusion on article 8 was adequate.

10. Ms Childs disagreed the judge had been mindful of the appellant's age. She returned to the matters on which the judge had relied on when making his adverse findings and argued the reasoning was inadequate. He had ignored the matters which the appellant got right at his interview.

11. I indicated at the end of the hearing that I would dismiss the appeal because I did not consider the judge's decision contained any material error of law. My reasons are as follows.

12. The judge saw and heard the appellant give evidence and he simply did not believe what he was told. The reasons he gave for reaching his conclusions were based on the evidence and are sustainable. None of the grounds establish that the judge made a material error.

13. It is right that the judge was obliged to take account of the appellant's young age at the time of his interview and, to an extent, at the date of hearing. He reminded himself of the guidance given in *AA (unattended children) Afghanistan CG* [2012] UKUT 16 (IAC) and he stated it was "self-evidently correct". It was not necessary for the judge additionally to demonstrate his adherence to the guidance by setting out different aspects of it, such as making allowance on areas the appellant would have little knowledge of as a result of his age and inexperience. His mention of the case is sufficient to show he had the appellant's age in mind. Given the appellant was able at his interview to describe currency denominations, give the names of political leaders and name some geographical features, it is difficult to see how his age was an inhibiting factor in his performance. I accept the appellant did not have any personal involvement with his father's claimed party but that does not mean the judge was not entitled to give significant weight to the appellant's error.

The judge explained in detail why he did give weight to this, noting the change in evidence as the case progressed.

14. The renewed grounds state the judge failed to apply anxious scrutiny in making his findings. The grounds argue there is a world of difference between getting the names of the Iranian president and supreme leader the wrong way around, as the appellant did, and being unable to name them, as the judge "asserted". The "assertion" Ms Childs complains of is presumably a reference to paragraphs 39 and 40. It is true the judge does express himself in terms that the appellant was unable to name the president and supreme leader. However, in the context of the case as a whole, it is perfectly clear what he meant. The fact a claimed citizen of Iran said the supreme leader was Hussain Rouhani and the president was Khamenei is a matter the judge was entitled to place weight on as undermining credibility even if the appellant had been only 16 and uneducated.

15. In the same vein, much has been made of the judge's choice of words when noting the error regarding the non-existent 250 Toman note. The grounds suggest the judge overestimated the magnitude of the error by stating the appellant got the denomination of the currency wrong. However, it is clear what the judge was saying. He knew the appellant had named a banknote which did not exist in Iran but which did exist in Iraq. This was, as the judge put it, "unhelpful" to him. The grounds appear to question why the judge felt it was appropriate to mention that the appellant had referred to a currency which exists in Iraq. It is obvious. The point had already been made in the reasons for refusal letter and the judge was endorsing it.

16. The structure of the decision shows that, when assessing the evidence of the appellant's country of origin, the judge set out the points which troubled him. He then added, at paragraph 41, the failure of the appellant to provide "objective evidence to connect him to Iran". Again, submissions were made on the meaning of the words used. The notion that the judge erred by ignoring the correct answers the appellant gave at interview about Iran is contrary to the clear meaning of paragraph 41. By "objective evidence", the judge clearly had in mind official documentation, such as a birth certificate. One only has to look to the end of the paragraph to understand that.

17. Arguments were also pursued about the judge's rejection of the appellant's claim that he would have been unable to contact anyone from his village. Mr Bramble agreed the judge's description of the appellant's evidence as "fanciful" might have been too strong. However, the judge was entitled to find the appellant could have made contact. Ms Childs argued the judge erred by making a finding of implausibility. She argued the judge had fallen into the trap of making a finding of something being inherently improbable based on the perspective of a person in the UK.

18. In *HK v SSHD*, a case containing colourful evidence of certain initiation rituals in Sierra Leone, the Court of Appeal explained the dangers of relying on inherent improbability in the context of asylum cases where the judge has no experience of the environmental context. Chadwick LJ summarised the point as follows:

> "72. On analysis of the tribunal's reasoning, I am unable to avoid the conclusion that the Applicant's account has been rejected simply because the facts that he describes are so unusual as to be thought unbelievable. But, as Neuberger LJ has pointed out, that is not a safe basis upon which to reject the existence of facts which are said to have occurred within an environment and culture which is so wholly outside the experience of the decision maker as that in the present case. There is simply no yardstick against which the decision maker can test whether the facts are inherently incredible or not. The tribunal's failure to confront that problem must lead to the conclusion that they erred in law."

19. Ms Childs listed the reasons put forward by the appellant for being unable to obtain evidence from Iran, including the fact Iran is a "police state" and not wanting to get anyone into trouble. However, all the judge is saying in paragraph 42 is that the appellant had not sufficiently explained why he had not taken the opportunity to contact someone to send him a document to establish his nationality. Even if he was no longer able to contact his uncle for some reason, there was no reason he could not go back to the same person who had given his uncle's number to him.

20. That is very far distant from the circumstances considered in *HK*. The judge was not relying on assumptions based on a UK perspective. On the contrary, he noted what the appellant had already said he had been able to do and considered his responses as to why he had not taken steps to retrieve his birth certificate. I see no error in this approach.

21. That leaves article 8. I begin by noting article 8 was not raised as a ground of appeal in the notice of appeal to the First-tier Tribunal but I note it was referred to in Ms Childs's skeleton argument which was handed to the judge. The point was made that the appellant had no family to return to in Iran and he would face discrimination as a Kurd. The circumstances amounted to "very significant obstacles" so as to fulfil the requirements of paragraph 276ADE(1)(vi) of the rules.

22. As seen, the judge's treatment of article 8 was extremely cursory. I understand paragraph 54 to mean the judge agreed with the respondent's analysis. It is not right therefore, as the grounds suggest, that the judge failed to consider article 8. The issue is whether his consideration was adequate.

23. The difficulty is that the judge found the appellant was not in truth from Iran and there was therefore no reason to base his assessment on anything the appellant had said about how he came to have left Iran. The judge also made findings in the alternative in case he was wrong about the appellant's country of nationality and found there was no truth in the claim

regarding his father's activities. It follows the decision for the appellant to leave Iran must have been made for other reasons. Either way, there was no evidential basis on which the judge should have considered the matters raised by Ms Childs as showing very significant obstacles to integration. The appellant can simply return home.

24. There is no error of law in the First-tier Tribunal's decision to dismiss the appeal and the decision shall stand.

25. The appellant's appeal is dismissed.

Notice of Decision

The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeal is upheld.

No anonymity direction is made.

Signed Date 21 February 2018

Deputy Upper Tribunal Judge Froom