Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/04012/2018

THE IMMIGRATION ACTS

Heard at Field House	Decision and Reasons Promulgated
On 17th December 2018	On 17th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

M Y M
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Eaton (Counsel, instructed by Fadiga & Co)
For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's asylum claim was rejected by the Secretary of State for the reasons given in the Refusal Letter of the * and his appeal dismissed by First-tier Tribunal Judge Mays in a decision promulgated on the 21st of May 2018. The Judge accepted that the Appellant was a minor and a vulnerable witness and Iranian as he claimed, that his father had had some involvement in the KDPI and the family had fled Iran with his parents being killed in crossing the sea to Greece. The Judge found that the Appellant would not be of interest to the Iranian authorities and could safely return.

2. The grounds argue that having found the Appellant would be interrogated on return and would relate what he knew of his father's activities when questioned the Judge erred in finding that that would not place him at risk in Iran. Permission to appeal was granted on a renewed application to the Upper Tribunal.

3. In submissions at the hearing reliance was placed on HB (Kurds) Iran CG [2018] UKUT 430 (IAC). It was argued by Mr Eaton that the positive findings made by the Judge in the context of the guidance in HB was more than enough for the appeal to have been allowed as the case showed that any level of involvement created a risk. It was also argued that there were contradictory findings as to why the family had left Iran.

4. Referring to paragraph 80 of HB it was argued that there was evidence before the Upper Tribunal of a risk based on family association although no specific findings were made the Upper Tribunal noted the evidence before them. That was supported by the contents of the relevant CIG set out in paragraph 12 of the grounds. There was no tolerance of any form of dissent regarding Kurds and perception was sufficient. Family members were detained, ill-treated and harassed. Paragraph 42 was relevant to the weight given to the 2 experts. From paragraph 93 of Annexe B there was a likely assumption of political activity down the male line.

5. The Appellant had left Iran via the KRI which would increase the level of suspicion. The error was regard to the level of activity of the Appellant's father and the totality of what he did and the question would be how the Appellant would be treated on his return. He could not be expected to hide his involvement.

6. For the Home Office Mr Tarlow argued that in paragraph 86 there was little detail of any activity and although in paragraph 88 it was found that the family had left because of their activities the Judge had been unable to make a finding on the type of interest. Paragraph 80 of HB did not extend to family. Given that the Appellant was a child the conclusions were sustainable even under HB.

7. In reply Mr Eaton referred to paragraph 94 and the specific reference to the CIG.

8. Although not material the observations in paragraph 89 are not inconsistent, the Judge was aware that something arose that led to the family leaving Iran but "not exactly what it was" and that Judge had noted that there was an element of speculation. In any event this is hardly central and the Appellant benefitted from a what was effectively an acceptance of his overall credibility with regard to events. The issue is whether the Judge was entitled to find, in the light of the decision in HB that because he was a child and not involved the Appellant would not be at risk on return.

9. From the headnote in HB it is clear that the Iranian authorities do not require much to have their suspicions aroused with regard to Kurdish

rights and perceived supporters and once aroused overreact. Many of the features of the Appellant's circumstances, his being a Kurd, having travelled through the KRI and having left illegally would not by themselves place him at risk on return but would lead to additional questioning.

10. This in turn leads to the case effectively turning on what the effect of his information about his father's known, albeit limited, involvement with the KDPI would have on his treatment by the Iranian authorities when that was made to known them during questioning. HB was promulgated on the 12th of December 2018 and through no fault of his own could not have been aware of the guidance that it contained. Nevertheless the case is declaratory, I note that it was heard in February and May 2018 and so the guidance and the evidence relied on relates to the time that the Judge was considering this appeal. In the circumstances it would be an error of law to apply the guidance that now applies.

11. Although a minor at the date of the hearing the Appellant would not have been returned until an adult and he has now reached that milestone. Given the hair trigger approach of the Iranian authorities, the evidence that the political opinions of adults is imputed down the male line and the departure via the IKR added to the finding that the Appellant would give the authorities any information requested lead me to find that to the lower standard, on the unchallenged findings of the Judge, the Appellant would be at risk of persecutory treatment on return. It is difficult to see that someone aged 17 would be treated in practical terms differently from an 18 year old.

12. In reaching the opposite conclusion, albeit relying on the situation as it was then understood, the Judge made an error of law and the decision cannot stand. For the reasons given the appropriate course of action is to set the decision of First-tier Tribunal Judge Mays aside and to remake the decision allowing the appeal of the Appellant.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

I remake the decision and allow the appeal of M Y M on refugee grounds.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

The Appellant did not pay a fee to bring his appeal and accordingly a fee award is not appropriate.

Signed:
Deputy Judge of the Upper Tribunal (IAC)

Dated: 8th January 2019