Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07852/2018

THE IMMIGRATION ACTS

Heard at UT (IAC) Hearing in Field House	**Decision & Reasons Promulgated**
On 28th February 2019	**On 18th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

M K A M
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Butler of Counsel instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran whose appeal was dismissed by First-tier Tribunal Judge Mailer in a decision promulgated on 5th November 2018.

2. Grounds of application were lodged. Ground 1 states that it is unclear what factual findings the judge made about the Appellant's claim. He

appears to have accepted the Appellant's claim to be the son of a murdered Kurdish activist.

3. The judge had gone on to find that the Appellant was not telling the truth about his arrests and detention but the decision did not disclose which parts of his arrest and detention were believed to be fabrications. It was unclear how much, if any of the Appellant's account the judge had accepted. Reference is made to well-known case law. In Ground 2 there was a failure to consider relevant evidence and there was a lack of reasoning and a failure to consider the impact of the Appellant's age. The judge had rejected part of the Appellant's account on the grounds that there was no explanation as to why Mohammed was unable to obtain an ID for the Appellant (126 to 127) and it was not credible that Mohammed would not give the Appellant his mobile number (128 to 129). However, the Appellant had provided an explanation as to why Mohammed was unable to obtain an ID - as set out in the grounds. The Appellant gave a number of answers when questioned about Mohammed and the mobile telephone number. It was said that the judge's conclusions failed to take into account the Appellant's age and situation at the time in question. Ground 3 is an attack on the findings against the Appellant in terms of his credibility and it is said there is a failure to give adequate reasons. Ground 4 relates to the failure to take into account relevant considerations in relation to persecution due to his father's activism.

4. Permission to appeal was initially refused but granted by Deputy Upper Tribunal Judge McGeachy in a note dated 29th January 2019. Judge McGeachy said that,

> "I consider that it is arguable that the judge has been unclear in his conclusions as to whether or not the Appellant was or was not detained on the three occasions he claims. If he were detained it would have been for the judge to make a finding on the consequences of that – whether the fact that he had been detained, albeit merely because in the first two case occasions he was only asked about his ID documents and only on the third occasion asked about his father."

Before me Ms Butler relied on her grounds and picking up on a point raised by me said that at paragraph 140 of the decision the judge had begun the final sentence saying "As noted" where it was said that the Appellant had been arrested and detained on three occasions. This phrase added to the proposition that the decision was a confused one. The questioning of the Appellant had been escalating. In response to comments from Mr Clarke she said that repetition of what was said by the Appellant was not an analysis of what had really happened. The Appellant's age had not been properly factored in by the judge. I was asked to set aside the decision and remit it to the First-tier Tribunal having found an error in law.

5. For the Home Office Mr Clarke said the judge had dealt with all the issues very carefully. He had gone through the evidence in detail - see paragraphs 111 et seq. He had borne in mind that he was 16 years old

when he entered the UK and claimed asylum. He had set out the Appellant's claim in considerable detail. In terms of paragraph 129 he did not find it credible that a man who had supposedly acted as his father since his birth until he left Iran would have not taken the opportunity to provide the Appellant with his contact number. In paragraph 132 he said that having regard to the evidence as a whole he found that the Appellant had not told the truth about his arrest and detention. The comment at paragraph 140 that he had been arrested and detained on three occasions had to be seen in the context that the judge was considering the Appellant's case if it was true- see paragraph 134.

6. There was no material error. The judge had been entitled to make his comments on plausibility. Reliance was placed on **HK v SSHD [2006] EWCA Civ 1037** and in particular to paragraphs 29 and 30 of that decision.

7. I reserved my decision.

Conclusions

8. I think there is force in the submissions in the grounds of application referred to by Counsel and in the reasoning provided by Deputy Upper Tribunal Judge McGeachy. It is possible to read paragraph 132 of the decision as the judge completely rejecting the Appellant's account. After all he did say the Appellant had not told the truth about his arrests and detention and followed that up by saying that the Iranian state had no adverse interest in him. Nevertheless, I consider, picking up on the points taken in the grounds of application and the comments of Deputy Upper Tribunal Judge McGeachy that it is not entirely clear whether the judge is rejecting the totality of the Appellant's evidence on this important point. The issue goes to the core of the Appellant's account as if his account is true then he may have a claim that to return him to Iran would breach the 1951 Convention and Article 3 ECHR.

9. I have taken Mr Clarke's point that the judge's comments in paragraph 140 which seem to accept that the Appellant was arrested and detained on three occasions should be seen in the context that the judge was considering, even if his account of arrest and detention was true, whether he would face a risk of persecution on return. Nevertheless, the fundamental problem remains that the judge has not made it specifically clear whether the Appellant's account of his arrests and detention should be entirely rejected and if so why all three arrests fall into that category. As such there is a lack of clear reasoning and findings on this important issue and it goes without saying that an Appellant is entitled to know what facts are accepted and what facts are rejected.

10. There is also considerable merit in Ground 2 of the grounds. Contrary to what the judge said the Appellant did provide an explanation as to why Mohammed was unable to obtain an ID for him. That explanation was not considered by the judge. The Appellant also gave a number of answers

when questioned about Mohammed in relation to his mobile phone. The judge did not appear to have taken that explanation into account and by not doing so, in my view, translates into the factual findings being unsafe. As the grounds indicate the evidence suggests that there was a deferential relationship between an adult and an illiterate child which the judge has not properly considered.

11. It is crucial to know in this case exactly what the correct findings should be in relation to the Appellant's claim that he was arrested and detained. The Appellant's account (as noted by the judge in paragraph 23 of the decision) is that on the third occasion he was shouted at and pushed aggressively around the room but the judge made no specific factual findings on that evidence which goes to the heart of the claim.

12. Absent clear reasons on these points I have concluded that the judge's reasoning is not adequate which amounts to a material error in law; the decision is not safe and it is not necessary to make any further comment on the grounds of application.

13. It therefore seems to me that further fact-finding is necessary and the matter will have to be heard again by the First-tier Tribunal as it is necessary to set this decision aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

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

15. I set aside the decision.

16. I remit the appeal to the First-tier Tribunal.

Order Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This order applies both to the Appellant and to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed *JG Macdonald* Date 13th March 2019

Deputy Upper Tribunal Judge J G Macdonald