



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05631/2015

THE IMMIGRATION ACTS

Heard at Field House
On 19 February 2016

Decision and Reasons Promulgated
On 8 March 2016

Before

Deputy Upper Tribunal Judge Pickup
Between

ARM
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms G Kiai, instructed by Bindmans LLP
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, ARM, with assessed date of birth 21.11.94, is a citizen of Iran.
2. This is his appeal against the decision of First-tier Tribunal Judge Hawden-Beal promulgated 13.7.15, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 12.3.15, to refuse his asylum, humanitarian protection and human rights claims and to remove him from the UK. The Judge heard the appeal on 6.7.15.

3. First-tier Tribunal Judge Foudy refused permission to appeal on 8.9.15. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Coker granted permission to appeal on 23.11.15.
4. Thus the matter came before me on 19.2.16 as an appeal in the Upper Tribunal.
5. When first mentioned with all other cases listed at 10:10, Ms Kiai indicated that she was not quite ready and the appellant's previous representatives had not passed on their bundle. She had borrowed Mr Tufan's copy of the Secretary of State's bundle and sought that the case be taken last to enable her to complete preparation for hearing. When the case was called back on at 11:49 Ms Kiai indicated that she was ready to proceed.

Error of Law

6. For the reasons set out below I find no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Hawden-Beal to be set aside.
7. Although Judge Foudy considered the grounds of application for permission to appeal no more than a disagreement with the judge's findings, in granting permission to appeal Judge Coker found it arguable that "the judge failed to have adequate regard to the appellant's age when he left Iran, when he was screened and in his witness statements given that he was an adult at the date of the hearing. It is arguable that had he considered the appellant's age, his conclusions as to credibility may have been different."
8. The appellant arrived in the UK on 30.3.12, having left Iran some 7-8 months earlier, and claimed asylum on 23.5.12, asserting that he was 14 years of age. His screening interview took place the same day. A first age assessment by Hertfordshire Children's Services in April 2012, prior to the asylum claim, accepted his claimed date of birth of 21.11.97. However, in interview he gave a different age and date of birth of 9.1.98. A further age assessment was undertaken in June 2014, with the conclusion that he was then 19 years of age with a date of birth of 21.11.94.
9. At appears at §29 of the refusal decision, the Secretary of State concluded that the appellant was "not a minor" when he claimed asylum, being over 17 years and 6 months, and was 20 years of age at the date of the refusal decision. At the date of the asylum interview in March 2013 he was certainly over the age of 18 and was fully able to answer questions put to him. That he was "not a minor" was taken into account in the Secretary of State's assessment of his credibility. Strictly speaking he was still a minor, being under the age of 18, but as has been pointed out there is no 'bright line' between the maturity of an older child and that of an adult because of age. It is also relevant to point out that the date of birth is an assessment and must of a necessity be an approximation and not a precision of the date of birth.
10. At §26 of the decision, after considering the two age assessments, Judge Hawden-Beal was satisfied that at the date of the appeal hearing the appellant was an adult.

The judge then proceeded to assess the evidence of the appellant's claim, noting several significant inconsistencies, and reaching the view at §33 that the appellant "is a complete stranger to the truth and that this claim is a fabrication. This young man is an adult who has attempted to manipulate the asylum system for his own ends and has been caught out by a complete lack of consistency in his claim." At §35 the judge concluded, "I therefore find that his claim lacks credibility and am satisfied that he is not wanted by the authorities for anything and will not be at risk upon return. He has not discharged the burden of having a well-founded fear of persecution for any convention reason and therefore does not qualify as a refugee."

11. In summary, the grounds of application for permission to appeal and as amplified by Ms Kiai's able submissions argue that the First-tier Tribunal Judge failed to take into account that the appellant was a minor when the events he described occurred in Iran, and when his screening interview took place. It is further submitted that the judge erred in rejecting the first age assessment but at the same time made findings based on it.
12. The grounds point to 'UNHCR Refugee Children: Guidelines for Protection and Care,' suggesting there should be a liberal application of the principle of the benefit of the doubt. Further reliance is placed on the ILPA Guidelines for best practice on working with children and young people, and on GM (Risk on Return - Family) DRC [2002] UKAIR 06741, where the applicant was 17 years of age at the date of interview, the Tribunal urged caution before drawing any adverse inferences from omissions or discrepancies in the interview.
13. The ILPA Guidelines state that, "Children and young people may also struggle to understand the significance of certain events, and so fail to mention them when first interviewed. If such details emerge under further questioning at the hearing, the credibility of the child's account should not be undermined."
14. However, in this case the appellant was 18 and an adult at the date of his asylum interview. It appears that little from his screening interview, when he was still 17, was relied on as containing omissions. There are discrepancies, such as having given an address for his father in the screening interview, yet later he revealed that his father had been dead for 7-8 years. Such discrepancies are not such that can be explained by immaturity or that are explicable by confusion, or memory problems, or any other issues that might be attributed to being child.
15. Further, this was not a case where the appellant may have forgotten to mention certain events in an earlier account. In the main, the inconsistencies relied on by the First-tier Tribunal Judge were direct and stark contradictions between one account and another, accounts that were mutually inconsistent. The appellant did not claim that he had forgotten or did not understand the significance of parts of his account. In fact, as the judge noted at §32 of the decision, the appellant's explanation for the discrepancies is that he claimed he was told not to tell the truth, for various reasons, including that he had been fingerprinted in other countries. He said it was only later on that he was told he would have to tell the truth if he wanted to stay in the UK. The

judge took this explanation into account in assessing the appellant's credibility. He thus admitted that he had not told the truth about some aspects and clearly was able to distinguish between truth and falsehood.

16. Ms Kiai's submissions focused more on a point of principle rather than an assessment of the substance of the actual evidence before the judge. When in his submissions Mr Tufan referred to the specific content of the evidential inconsistencies, Ms Kiai said she was not able to deal with those issues. For example, Mr Tufan referred to §33 of the decision, where the judge pointed out that the appellant could not decide if his father is alive or not; which uncle he left Iran with; what cousins he has in the UK; whether or not he has contacted his family since arriving in the UK; or whether he knows their contact details. As stated above, the appellant admitted that he had been told not to tell the truth. Mr Tufan submitted that given the extent and nature of discrepancies and inconsistencies in his evidence, giving the appellant the benefit of any doubt would have made no difference to the conclusions and thus any failure to accord greater attention to the appellant's immature age when in Iran or when giving his screening interview was immaterial to the outcome of the appeal.
17. Ms Kiai explained that she had not had time to consider the detail of the evidence as she had not had the Secretary of State's bundle prior to the hearing. I passed her a copy of the core bundle, which contains the Secretary of State's bundle (she had earlier borrowed that of Mr Tufan), and I agreed to allow her a further period of time to consider the point raised by Mr Tufan further and make any further submissions she wished on this discrete point.
18. She returned to the hearing later in the day and made cogent submissions, to the effect that the alleged inconsistencies were in respect of areas where the benefit of the doubt should have been accorded to the appellant. For example, she pointed to §29 & §33 where the judge relied on the fact that the appellant gave inconsistent accounts in failing to mention that his father was dead in some accounts, but not others. His explanation was that where it wasn't mentioned he wasn't asked. However, as the judge pointed out, this discrepancy is more than not being asked or having failed to mention because he didn't know he should have done. In his second age assessment, his SEF and witness statements, he positively stated that he lived with his father, mother, brother and sister. Further at Q25 of his asylum interview he asserted that the person he lived with was his father and not his step-father. In this, and in respect of her other specific responses to this issue, Ms Kiai was unable to identify how the discrepancy could be explained or accounted for by the youth or immaturity of the appellant, or giving the appellant the benefit of the doubt.
19. I have carefully considered Ms Kiai's submissions and the nature and content of the discrepancies relied on by both the Secretary of State and the First-tier Tribunal Judge. Whilst the judge should perhaps have demonstrated within the body of the decision that he taken account of the appellant's youth, I am not satisfied that on the particular facts of this case and the number and extent of discrepancies and inconsistencies relied on any caution, allowance, or giving of the benefit of the doubt

for the appellant's youth when either 17 or 18, would or could have made any difference to the credibility assessment and ultimately outcome of the appeal and thus any error in this regard is immaterial to the outcome of the appeal. There were stark differences in accounts, as the judge explained at §35 of the decision. In my view, these could not be accounted for or reconciled by making allowance for immaturity, or giving the benefit of the doubt because of immaturity. To do as suggested by Ms Kiai, the judge would have had to simply accept the appellant's case in its entirety, as if unchallenged, and to ignore all discrepancies and inconsistencies. That cannot be the correct approach.

20. Further, I find no error of law disclosed in the judge's assessment of the two age assessments. The judge has provided cogent, justifiable reasons for accepting the second assessment as to the appellant's age. There is nothing improper or inconsistent in the judge taking account of what was said by the appellant in that first age assessment as to why he came to the UK, as set out at §34 of the decision.

Conclusions:

21. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

3 February 2017

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal made an order.

Given the circumstances, I continue the anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.

A handwritten signature in black ink, appearing to read 'J. Pickup', is centered on the page.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

3 February 2017