Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09367/2015

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)	**Decision & Reasons Promulgated**
On 19 July 2016	**On 28 July 2016**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S R
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: Mr O Manley instructed by Crowley & Co Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the respondent (SR). This direction applies to both the

appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. Although this is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing SR's appeal, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

3. The appellant is a citizen of Iraq. He is Kurdish. His precise date of birth is a matter of dispute. On arrival he claimed that his birthday was 1 January 1997 but thereafter that his date of birth was 2 April 1998. He was, therefore, at the date of the hearing on 21 March 2016 on the basis of these dates either 19 years of age or a little over a week short of his 18th birthday.

4. The appellant claimed that he left Iraq on 14 November 2014 and, having passed through a number of countries, arrived in the UK on 3 February 2015 in a lorry. On that date, he claimed asylum.

5. The basis of the appellant's claim was that ISIS had sought to recruit him in his home area of Jalawla. He refused to do so and was beaten. He and his family left Jalawla to live with his uncle in Khanqeen. After a few months, he was told by his uncle that he must leave as he was putting the rest of the family at risk. As a consequence, he left Iraq and came to the UK. The appellant claimed that he would be at risk on return to Iraq because of his history and that he could not internally relocate within Iraq.

6. On 12 July 2015, the Secretary of State refused the appellant's claim for asylum. The Secretary of State did not accept the credibility of the appellant's account and that therefore he had established he was at risk in his home area. In addition, the Secretary of State concluded that, in any event, the appellant could safely and reasonably internally relocate to Baghdad or the KRG.

The Appeal to the First-tier Tribunal

7. The appellant appealed to the First-tier Tribunal against the refusal of his protection claim. Judge Suffield-Thompson allowed the appellant's appeal on asylum grounds. First, she accepted that the appellant's account was credible and that he was at risk in his home area from ISIS. Further, the judge found that the appellant could not safely and reasonably be expected to internally relocate either to Khanqeen where his uncle lived or to Baghdad.

The Appeal to the Upper Tribunal

8. The Secretary of State sought permission to appeal to the Upper Tribunal. First, the Secretary of State argued that the judge had failed properly to consider the evidence concerning the appellant's age, in particular a report produced by Social Workers from Bedford Borough Council. That

evidence stated that the appellant was in his "late twenties". The grounds argue that this was relevant for two reasons:

(1) in assessing the appellant's credibility and whether he had lied about his age whether he was born in 1997 or 1998; and

(2) in assessing the internal relocation option.

Secondly, the grounds argue that the judge failed to give adequate reasons why the appellant could not internally relocate by returning to live with his uncle given the evidence that ISIS were no longer present in that area.

9. On 19 April 2016, the First-tier Tribunal (DJ Murray) granted the Secretary of State permission to appeal.

10. On 20 May 2016, the appellant filed a rule 24 notice seeking to uphold the judge's decision in his favour.

11. Thus, the appeal came before me.

Discussion

The Submissions

12. In his submissions, Mr Richards (who represented the Secretary of State) focused on the issue of the age assessment as the most significant part of the grounds. He submitted that the judge's reasons for not giving any weight to the social worker's assessment in para 35 of her determination were flawed.

13. At para 35 the judge said this:

> "The Respondent wishes me to give weight to three documents handed in at the hearing that are from Bedford Borough Council. These are not a full age assessment and contain simply an observation from a Social Worker that the Appellant is in his late twenties. I do not give any weight to these documents for two reasons. Firstly, having seen the Appellant in court and having heard his evidence the Appellant appeared to be in his early twenties so somewhere between the nearly 18 he claims to be and the late twenties that a Social Worker says. Secondly, and more significantly, I find that as these documents were served at court just before the hearing this has denied the Appellant the opportunity to obtain his own age assessment report and therefore in the interests of fairness and reliability I do not give any weight to this evidence."

14. Mr Richards accepted that the document had been handed in by the Secretary of State's representative at the hearing. That, he acknowledged, was part of the judge's reasons for giving the evidence no

weight. However, Mr Richards submitted that the judge could not simply disregard the evidence on that basis and always had the option of permitting an adjournment in order that the appellant could seek to deal with the evidence.

15. Mr Richards accepted that the document was not a 'Merton compliant assessment' but that was unnecessary as it was a case where it was "very obvious that a person is under or over 18" and such an assessment was not required (see [27] of the judgment in R (B) v London Borough of Merton [2003] EWHC 1689 (Admin)).

16. Mr Richards submitted that as a result, the judge's positive credibility finding in paras 36-40 was flawed as the judge had failed to deal with the argument that, if the social workers were correct that the appellant was in his late twenties, he had lied by giving his date of birth as being in 1997 or 1998. Further, the appellant's age was relevant to the issue of internal relocation which the judge found in favour of the appellant at para 49 of her determination.

17. Mr Richards made no explicit reference in his oral submissions to that part of the grounds dealing with the judge's finding that the appellant could not internally relocate to live again with his uncle. However, he relied on the grounds as drafted and so I understood him to continue to rely on that point.

18. On behalf of the appellant, Mr Manley submitted that the grounds misunderstood what the judge had decided in para 35 of her determination. The judge had simply said that she placed no weight on the social worker report as it was not reasoned. Although she had made reference to the late production of the document, that was not the basis upon which she declined to give any weight to it. Mr Manley submitted that in effect, the judge found that there was no 'Merton compliant' report when there should have been.

19. As regard internal relocation, Mr Manley indicated that at the hearing the Presenting Officer, although he initially relied upon the possibility of relocation to Khanqeen where the appellant's uncle lived, had focused instead upon Baghdad as a place for internal relocation when the judge had raised with the Presenting Officer the fact that the situation with ISIS in his uncle's area remained volatile. Mr Manley submitted that it was, therefore, proper for the judge to focus on Baghdad and in accordance with the country guidance case of AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) to conclude that internal relocation for the appellant as a "young man" (as the judge referred to the appellant) was neither safe nor reasonable for the reasons she gave in para 49.

Analysis

20. As regards the issue concerning the appellant's age, I prefer the submissions of Mr Manley.

21. The social workers' report stated that:

> "[The appellant] presented physically significantly over – late twenties. Demeanour that of an adult".

22. This was, of course, self-evidently not a 'Merton compliant' report. I accept that Stanley Burnton J (as he then was) stated in the Merton case at [27] that "… there may be cases where it is very obvious that a person is under or over 18. In such cases there is normally no need for prolonged enquiry", but that, of course, was said in the context of a case where the important demarcation line in relation to age was drawn at 18. The issue there was whether the individual was under or over 18. Clearly, if the individual is 'very obviously' under or over that age there may be no need for a Merton compliant report drilling down into the particularity of the individual's age. All that is needed to be known, is which side of the demarcation line of 18 he is on and that may be capable of determination without "prolonged enquiry".

23. That, however, does not deal with the issue whether demeanour or physical appearance can properly found a factual finding on an individual's age, particularly when a more specific factual finding is called for. Clearly, in extreme cases it can. It would be difficult to confuse a 3 year old child or a 65 year old adult with a person who claims to be 18 or 19 years old. But, outside of those extremes, reliance upon demeanour and physical appearance may be problematic and the very reason why the more nuanced and interdisciplinary assessment of a Merton compliant assessment is desirable. The point is well made in R (GE) (Eritrea) v SSHD [2015] EWHC 1406 (Admin) by Alexandra Marks QC (sitting as a Deputy High Court Judge) at [73]-[74]:

> "73. … I am unconvinced of the value of observations of demeanour made during a short interview between an individual and strange adults. People can behave in a formal interview in a way that is very different from their normal behaviour, perhaps because they are nervous, afraid, intimidated or simply want the experience to end. Despite the purported expertise of the social worker leading the interview in this case, there seems to me to have been lacking an appropriate level of insight, sensitivity and judgment, as illustrated by events at the abortive September assessment when the same assessors consulted with the UKBA, and then expelled the appropriate adult. In my view, it would normally be unsafe to reach an age assessment largely based on an interviewee's behaviour (including a purported reluctance to share information) but particularly so in this case.
>
> 74. The same applies to physical appearance. The *Merton* guidelines (as refined by *FZ*, and summarised in *AS*) make clear that assessors should take a history from the interviewee, and make an holistic assessment, taking all relevant factors into account. *Physical appearance should never form a major reason*

> *for an age assessment* yet GE's appearance seems to have weighed heavily with the second age assessors, as evidenced by the summary of reasons they gave the Council." (emphasis added)

24. The Deputy Judge went on to identify the very real difficulty in assessing an individual's age based upon appearance and demeanour at [75]:

> "Mr Greatorex concedes the court's difficulty in making its own judgment of GE's age on the basis of her physical appearance and demeanour now that she is, by any reckoning, at least 20 years old. I am no expert in this area, but having two daughters myself who are now aged 20 and 22, I have experienced considerable recent exposure to young women of this age group. However, that exposure has revealed to me the wide range of maturity, appearance and demeanour which applies even to a homogenous group of young women, let alone those from hugely different backgrounds and cultures, and dramatically different experiences of life and trauma. Any assessment that I could make of GE's age on the basis of her physical appearance and demeanour would therefore be no more than a guess – and that has no place in a fact-finding exercise."

25. In my judgment what Judge Suffield-Thompson was saying in para 35 of her determination (set out above at para 13) was that the social workers' assessment based simply on an interview and the appellant's physical appearance and demeanour was not sufficient to make any proper finding as to his age. Her own assessment based upon the appellant's physical appearance and demeanour would have differed from that of the social workers. Wisely, the judge did not seek to prefer her own view to that of the social workers. That too would, in my view, fall into the trap which the Deputy Judge in GE (Eritrea) identified. Nevertheless, as a result, the social workers' evidence was not sufficiently robust to support any finding as to the appellant's age.

26. Whilst the judge does also point out the lateness of the evidence, her first reason is, in my judgment, wholly adequate to justify her decision not to place weight upon the rudimentary assessment of age contained in the social workers' report. In truth, there was no reliable evidence before the judge that would have allowed her to determine the appellant's true age beyond that given by the appellant himself. In my judgment, the judge did not err in law by failing to rely upon the briefly stated and undeveloped assessed view of the social workers. There was, therefore, no proper basis upon which the judge can be said to have failed to determine whether the appellant was lying about his age and, therefore, a matter which was relevant to his credibility.

27. But, there is a further point. Mr Richards did not seek in his oral submissions (and there is nothing in the grounds) to challenge the judge's detailed and careful reasoning in paras 36-40 in which she ultimately

found the appellant to be a credible witness. The judge dealt *seriatim* with the respondent's reasons in the refusal letter and effectively countered each reason as a basis for doubting the appellant's credibility. It does not seem to me that even if the appellant could be shown to have given a false age on arrival or thereafter that that would, in any event, have been a sufficiently significant matter so as to lead the judge to a different conclusion on the appellant's credibility. However, given my conclusion above, that point does not in fact arise.

28. Finally, I see no conceivable error, therefore, in the judge treating the appellant as a "young man" in para 49 when assessing the possibility of internal relocation to Baghdad. He was that on any view of the evidence. The judge was entitled to take that as part of the factual matrix in determining whether the appellant could internally relocate to Baghdad.

29. Turning now to the issue of internal relocation, Mr Richards did not seek to counter Mr Manley's submission that the Presenting Officer 'backtracked' from his initial argument that the appellant could internally relocate back to the area where his uncle lived in Khanqeen. Whether or not the Presenting Officer ultimately placed reliance upon this possibility, the judge dealt with it in para 48 of her determination as follows:

> "The Respondent has submitted that the Appellant could either go back to Khanaqin or live with his uncle and parents again or he could go and relocate to Baghdad. I do not find that the Appellant could return to his Uncle's home. He lived there for 3-4 months and his uncle told him he could no longer remain there as he was putting the family at risk due to his encounters with ISIS. The Appellant would not be offered a home with his uncle."

30. The point made by Mr Manley is that the judge addressed with the Presenting Officer the background material which showed that the Diyala Governorate was in disarray and a state of internal armed conflict. The appellant's uncle lived in that Governorate. In AA at [101]-[106], the Upper Tribunal noted the "volatility of the situation" in contested areas including the Governorate of Diyala. The conclusion in [106] of the UT's decision was that a civilian merely by their presence in one of the contested areas such as Diyala was at real risk of suffering harm contrary to Art 15(c) of the Qualification Directive. The "volatility" of the situation no doubt explained the Presenting Officer's stance at the hearing. At para 46, the judge referred to an Amnesty International document which noted that Jalawla (also in Diyala) and surroundings had been recaptured from ISIS fighters but that went on to note that residents had not been allowed to go home and looting and damage to property was ongoing.

31. There was also the appellant's evidence that his uncle would not take him back because of the danger.

In my judgment, there was ample evidence before the judge to justify her finding that, given in particular the "volatility" of the area and the shifting

control of the fighting parties, the appellant could not safely and reasonably be expected to internally relocate to live with his uncle in Khanqeen in the Diyala Governorate.

32. Turning now to the issue of relocation to Baghdad the judge dealt with this at para 49 as follows:

> "It has been suggested by the Respondent's representative that the Appellant could return to Baghdad. I do not find that this is a realistic alternative for this Appellant. Although I have made no definitive finding in relations to his age I do find he is a young man, with no family support in Baghdad. He has no home, no means of financial independence and no paperwork or ID. On the basis of all of this I find it highly likely that if he were to go to Baghdad he would be placed in an IDP camp. As he is a Kurd there are only certain areas that this Appellant would be able to go to and I find that due to the appalling internal conflict that is raging in Iraq it is not reasonable to expect this young man to relocate. I am assisted in this decision by the case of **E and another v SSHD [2003] EWCA 1032, [2004] QB 531**. In this case the test was established that relocation would be reasonable and safe. I do not find that there is anywhere in Iraq where this Appellant would be safe. I allow the appeal on asylum grounds."

33. I have already dealt with the issue of the judge's premise that the appellant, on return, should be treated as a "young man". That was the sole basis upon which the ground sought to challenge the judge's finding that the appellant could not reasonably and safely relocate to Baghdad.

34. The issue of relocation to Baghdad was dealt with by the Upper Tribunal in the country guidance case of AA. At para 14 of the head note the Upper Tribunal summarised the general position as follows:

> "As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or the Baghdad Belts."

35. However, at para 15 of the head note the UT recognised that a fact sensitive approach to the issue of whether relocation was "unreasonable/unduly harsh" having regard to a number of factors as follows:

> "15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:
>
> (a) whether P has a CSID or will be able to obtain one (see Part C above);

(b) whether P can speak Arabic (those who cannot are less likely to find employment);

(c) whether P has family members or friends in Baghdad able to accommodate him;

(d) whether P is a lone female (women face greater difficulties than men in finding employment);

(e) whether P can find a sponsor to access a hotel room or rent accommodation;

(f) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs."

36. Here, the judge found that the appellant, a young man, would have no family support in Baghdad, no home, no means of financial support and no documentation. Those findings are not challenged in the ground although the appellant would, in fact, not be returned to Iraq without proper documentation (see head note 6 of AA).

37. Whilst the judge's reasoning in para 49 is relatively brief, I am unable to conclude that her finding was irrational or was not otherwise open to her applying the approach in the country guidance case of AA. It was properly open to the judge to find that, given the lack of any support or connection with Baghdad, that the appellant was likely to be placed in an IDP camp and that it was unreasonable to expect him to relocate to Baghdad in those circumstances.

38. For these reasons, I reject the Secretary of State's grounds of appeal.

Decision

39. The First-tier Tribunal did not err in law in allowing the appellant's appeal on asylum grounds. That decision stands.

40. Accordingly, the Secretary of State's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

Date: **28 July 2016**