



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06603/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3 April 2017

Decision & Reasons Promulgated
On 13 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

MASTER F A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp, of Counsel, instructed by Caveat Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION ON ERROR OF LAW

Anonymity

1. The First-tier Tribunal made an anonymity order. I have not been invited to rescind that order. The order remains appropriate as this is a protection claim.

Background

2. This is an appeal from a decision of First-tier Tribunal Judge P J Carroll (hereafter "the Judge") which was promulgated on 25 November 2016, whereby she dismissed the Appellant's appeal against the decision of the Secretary of State to refuse to recognise him as a refugee, or as a person otherwise requiring international protection.

3. The Appellant is a national of Iran who claims to have entered the UK shortly before he was encountered by the police on 4 August 2015. He claimed asylum on 8 October 2015 on the basis that if he returned to Iran, he would face mistreatment due to his mother's Afghan nationality.
4. Before the Judge, the Appellant was 14 ½ years old. The Judge heard oral evidence from the Appellant and her findings of fact are set out at paragraphs [22] onwards. Essentially, while the Judge accepted the Appellant was of mixed heritage – his mother is of Afghan origin and his late father is an Iranian national – and observed that the claim was one of societal discrimination, she was not satisfied that “core aspects” of his account were credible. The Judge's reasons are set out in four subparagraphs (a) – (d) at [23] and can be summarised as follows. The Judge noted inconsistencies in the Appellant's account and his failure to adequately explain why he was unable to remain in contact with his mother by means of letter. These findings were construed as being fatal to the Appellant's credibility leading the Judge to dismiss the protection claim. The Judge then turned to address the Appellant's claim contrary to Article 8 of the ECHR. In a succinct paragraph the Judge found there was no infringement of the Appellant's human rights given there was no question of him being returned to Iran before he reached the age of majority [26].

The Application for Permission to Appeal

5. The Appellant's representatives applied on his behalf for permission to appeal to the Upper Tribunal and permission was granted by the First-tier Tribunal on 30 January 2017. A Rule 24 response was subsequently settled on behalf of the Secretary of State opposing the Appellant's appeal.

The Hearing in the Upper Tribunal

6. At the hearing before me, I heard submissions from both representatives. While Mr Kotas initially sought to defend the Judge's decision, he accepted following observations made by the Tribunal that the Judge's decision cannot stand. I announced by decision at the hearing that I was satisfied the Judge erred in law and I set aside the decision of the First-tier Tribunal. I now give my reasons for doing so.

Error of Law

7. In an otherwise concise and focused decision I am satisfied the Judge's decision is marred by material errors of law. In view of the Respondent's concession that the decision could not stand it is not necessary to traverse all the grounds raised by Mr Fripp or set out my reasons in detail, but I briefly do so below.
8. I am satisfied that the Judge adopted an unclear and unsustainable approach to her assessment of credibility. The Judge draws negative inferences from the evidence she refers to at [23], but her analysis is unclear and inadequate in a case concerning a minor. In such cases regard, should be given to the *Joint Presidential Guidance Note No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance* which

should be followed when considering the evidence of child witnesses. There is no reference to it at all in the decision. It seems therefore that no consideration was given to the fact that this Appellant as a child was vulnerable within the meaning of that Guidance Note. In the particular circumstances of this case the failure to address that matter is significant because it has an effect on all that follows. In my judgment, this is fatal to the Judge's assessment of credibility as the appropriate allowance was not made and considerations given in respect of the Appellant's evidence. A material error of law has thereby been committed.

9. Further, the Judge failed to examine a material element of the Appellant's case namely, whether he was able in practice to achieve recognition of his entitlement to Iranian nationality by the Iranian authorities in circumstances where his father is deceased; his mother's Afghan origin and the fact that there is serious discrimination against Afghans in Iran.
10. In all the circumstances, the Judge materially erred in law. I thus set aside the decision of the First-tier Tribunal. I agree with position adopted by both representatives that the appropriate course is to remit this matter to the First-tier Tribunal for rehearing. In view of my finding that the Judge's assessment of the Appellant's credibility is flawed it is not appropriate to preserve the favourable findings at [22] made on behalf of the Appellant. As there is no challenge to the Judge's decision in respect of the Article 8 claim, the hearing is confined to a de novo hearing on whether the Appellant is entitled to international protection.

Decision

11. The decision of the First-tier Tribunal contains material errors of law, such that it shall be set aside.
12. The appeal is remitted to the First-tier Tribunal for a de novo hearing of the Appellant's protection claim before any judge apart from Judge P.J Carroll. A Case Management Review hearing to consider the implications of a change in the Appellant's circumstances as notified by Mr Fripp (in that he no longer follows a religion), and the future progress of the appeal generally, shall be fixed as soon as that can be arranged.

Direction 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 direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 18 May 2017

Deputy Upper Tribunal Judge Bagral