



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09162/2016**

Appeal Numbers:

PA/09173/2016

THE IMMIGRATION ACTS

**Heard at Birmingham
On 5 September 2017**

**Decision & Reasons
Promulgated
On 18 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

SR (1)

HR (2)

(ANONYMITY DIRECTION CONTINUED)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Woodhouse, instructed by Hasan Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are brothers from Afghanistan, born respectively on 30 October 2000 and 12 January 2001. The appeal with permission against the decision and reasons statement of FtT Judge Graham that was issued on 11 April 2017.
2. An anonymity direction was made by Judge Graham because of the appellants' ages and the content of the appeals. It is appropriate that

anonymity is continued and I make the appropriate order at the end of this decision and reasons statement.

3. The appellants challenge the decision because they are not happy with the way Judge Graham carried out the credibility assessment. They allege that if the credibility assessment is not sound, then Judge Graham also erred by failing to consider relevant background country information.
4. The first ground challenges Judge Graham's finding that it was unlikely or implausible the second appellant would not have overheard a conversation between the first appellant and his father about their political interests or activities. Judge Graham was concerned that the second appellant had no knowledge of his parents' political opinions although his parents disclosed them to his older brother.
5. This challenge centres on three factors. First, Judge Graham had no evidence about where the conversation took place and assumed it was in a place where the second appellant could overhear it. Second, Judge Graham did not have regard to the explanation given in the first appellant's witness statement about why the second appellant was not told about his parents' political opinions. Third, Judge Graham's conclusion that there was an inconsistency in the first appellant's accounts as to when he was told by his maternal uncle the reasons for his parents' arrest failed to take account of the explanations provided.
6. The second ground challenges the weight Judge Graham gave to the screening interview record, particularly because that interview was not recorded.
7. The third ground argues that Judge Graham failed to take account of background country information about the risk to family members of P/JAK members/sympathisers contained in the Home Office's policy guidance on Iranian Kurds.
8. Mr Woodhouse adopted these grounds.
9. Mr Woodhouse had nothing to add to the first issue about why the second appellant had no knowledge of his parents' political opinions. The second appellant, for whatever reason, was not informed. There is reference to his level of maturity as a reason for the non-disclosure by his parents, maternal uncle and first appellant.
10. Mr Woodhouse reminded me that the appellants had submitted statements following their interviews two days before the reasons for refusal letters were issued. The first appellant had said at interview that his uncle did not tell him the reasons why his parents had been arrested because his younger brother was with him. In his statement, submitted before the reasons for refusal letter was issued, he sought to clarify this answer by saying that his uncle mentioned briefly that his parents had been arrested because of their political opinions but gave no details because his brother was present. In his witness statement, the first appellant explained that he was not know the full details of why his parents were arrested, only finding that out later when at the home of one of his father's friends.

11. Mr Woodhouse also reminded me that the appellants were both under 18 and special care had to be given to the assessment of their evidence, particularly as it dealt with events in 2015.
12. As to the other grounds, Mr Woodhouse submitted that only limited weight could be given to a screening interview because of the way it was conducted. The fact Judge Graham relied at [38] on “all the above factors together” indicated her concerns with the screening interview record was part of her credibility assessment and decision to reject the whole account. This could only mean the credibility assessment was fundamentally flawed.
13. As to the final ground, Mr Woodhouse argued that as the appellants were both children, it was incumbent on Judge Graham to give more weight to background country information when assessing plausibility and general credibility than in cases involving adults. The failure to consider the evidence risk to family members of PJAK members/sympathisers contained in the Home Office’s policy guidance on Iranian Kurds meant the credibility assessment was flawed since this gave objective weight to the appellants’ claim.
14. Mr Mills relied on the rule 24 reply of 26 June 2017 and argued that Judge Graham’s decision and reasons was more than adequate and her credibility findings were sustainable. He reminded me that it was for Judge Graham to assess the evidence and it was open to her to find the second appellant’s lack of knowledge about his parents’ political opinion to be unlikely because they lived in the same household.
15. Mr Mills reminded me that Judge Graham considered the age of the second appellant (and in fact both appellants) at [35] when she said that “she made allowances for children maturing at different ages”, which indicated she had proper regard to case law and guidance regarding child appellants. It was open to her to find that the second appellant’s age and immaturity were not sufficient to explain why he had no knowledge of his parents’ involvement. Judge Graham was entitled to reject the explanations provided by the first appellant. Of course, Judge Graham did not have to recite the explanations given; it was clear that she rejected them.
16. Mr Mills submitted that Judge Graham was entitled to find at [37] that the failure of the first appellant to mention a key issue in his screening interview was a relevant factor to consider. She clearly took account of his age when reaching that conclusion.
17. Mr Mills relied on the alternative findings of Judge Graham at [43]. Therein she considered whether the appellants had a well-founded fear of persecution if she accepted their account. She concluded that the evidence did not show they were at risk merely because of their relationship. He reminded me that the maternal uncle was the direct relative of the appellants’ mother and the fact the Iranian authorities had shown no adverse interest in him was significant. Judge Graham was entitled to find that if the authorities were not interested in a close adult

relative, then it was reasonably unlikely they would have an adverse interest in the appellants as children.

18. As a result, Mr Mills disagreed with Mr Woodhouse's submissions regarding the relevance of the background country information and argued that it did not help them establish the appellants' claim because even if their account was believed they failed to established they faced a real risk of persecution on return.
19. Mr Woodhouse replied and reminded me that Judge Graham's findings were illogical. At [37] she said the first appellant had embellished his claim by mentioning only for the first time his activities with his father after his screening interview. This conclusion made no sense of the appellants' admissions that the second appellant knew nothing about his parents' political opinions or actions; if they were embellishing their accounts, then they would have not denied such knowledge.
20. I reserved my decision and reasons, which I now give.
21. I am unable to infer that Judge Graham had regard to the explanations given by the first appellant about the two key issues. Although she refers to the witness statements at [14], she does not give any reason for rejecting the explanations provided regarding the apparent discrepancies in the accounts. Failure to consider evidence is a legal error.
22. Furthermore, I am not satisfied she has properly analysed the relevance of the second appellant's age and maturity. The appellants' parents would have known that disclosure of their political activities would bring them to the adverse attention of the Iranian authorities, with negative consequences for the appellants. It is usual not just for parents but for any person to keep sensitive information private to prevent unintended disclosure by a person, such as an immature child, who might not understand the consequences. The fact the first appellant is also a child made it incumbent on the judge to ensure this issue was fully explored either by the representatives or by herself. I find this to be a legal error because it failed to give proper regard to the vulnerability of both appellants, contrary to the Presidential Guidance and the assessment of credibility.
23. In addition, I accept that it is wrong in law to find that a failure to disclose at a screening interview every key factor that will be later relied upon. That is not the purpose of a screening interview (see para 19 of YL (Rely on SEF) China [2004] UKIAT 00145). I find the comments of Judge Graham at [37] to be contrary to such guidance and therefore a legal error.
24. In light of these findings, it is unnecessary to make a finding as to whether Judge Graham's approach to the background country information was correct in law. I find both representatives made relevant points in context. Mr Woodhouse was right to point out that background country information can help assess whether a claim is plausible. A claim which is consistent with independent sources is more likely to be credible than one that is not. Mr Mills was right to point out that the country information was not as clear cut as Mr Woodhouse portrayed.

25. This will be a matter that the next judge will have to consider in detail. I say that because in light of my findings that there are errors of law in Judge Graham's decision and reasons statement, I set her decision aside. The parties agreed that if I were to reach that conclusion, then given the nature of the errors it would be appropriate to remit the appeals to the First-tier Tribunal to be heard by a different judge. I find that approach to be consistent with the Senior President's guidance and make that direction.

Decision

The decision and reasons statement of FtT Judge Graham contains errors of law and is set aside.

The appeal is remitted to the First-tier Tribunal for a fresh hearing (de novo) before any judge other than Judge Graham.

Order regarding anonymity

I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the appellant. The appellant can be referred to as "SR" and "HR".

Signed

Date

15 September 2017

Judge McCarthy
Deputy Judge of the Upper Tribunal