Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06076/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 September 2018	**On 05 November 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR A B A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Kiai, Counsel, instructed by B.H.T. Immigration Legal Services
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The decision under consideration in this case is that by Judge Manyarara of the First-tier Tribunal (FtT) sent on 11 July 2018 dismissing the appeal of the appellant, a national of Iran, against the decision made by the respondent dated 26 April 2018 refusing his asylum claim on protection grounds but allowing it on Article 8 grounds. Her decision attracted two challenges, one from the appellant challenging the dismissal of the appeal

on protection grounds; the other from the respondent challenging her decision to allow the appeal on Article 8 grounds.

2. I received excellent submissions from both representatives.

3. I am persuaded by both sets of grounds that the judge materially erred in law.

4. In respect of the judge's treatment of the appellant's appeal based on protection grounds, the judge noted at paragraphs 13 and 29 that the appellant was a minor and that she was required by the Joint Presidential Guidance Note of 2010 on vulnerable witnesses to treat him as a vulnerable witness. Whilst in some passages in her assessment she noted that she took into account the appellant's age, 35, 54, her approach to two inconsistencies in the appellant's account (relating to the nature and extent of his brother's political involvement and to whether he always accompanied his brother on smuggling trips) (see paragraphs 57 and 59) failed to show she considered whether to make any allowances for his young age, either when evaluating the weight to be attached to these inconsistencies or his explanation for them.

5. The error interacts with another connected to the fact that when assessing the evidence of a minor the judge was required by paragraph 351 of the Immigration Rules to place more weight on the objective indications of risk. In the bundle of documents before the judge there was a report from country expert, Sheri Laizer. The judge referred to this report when assessing the appellant's nationality (which the respondent had disputed) (see paragraph 54) and also when considering the appellant's claim to have been involved in smuggling (see paragraph 60), but in the latter context considered that all it showed was that "smuggling occurs in the appellant's home area" and that it "does not necessarily establish the appellant's claim to have been actively involved in smuggling and to have been placed in a climate of insecurity as a result". However, Ms Laizer's report went much further than simply saying smuggling occurred in the appellant's area. At point 2 of her conclusions she stated that "I consider [the appellant] very likely engaged in smuggling ..." and she also noted that somebody with the appellant's father's name had been arrested and the incident had been reported. At the very least, the judge should have given reasons why she did not consider Ms Laizer's conclusions carried weight.

6. Ms Willocks-Briscoe stated that she would have to accept that the judge failed to make material findings on some salient matters. That acceptance adds to my reasons for considering the judge's assessment of the credibility of the appellant's protection claim vitiated by legal error.

7. I reach the same conclusion regarding the respondent's criticisms of the judge's treatment of the Article 8 grounds of appeal. At paragraph 104 the judge stated:

> "Having considered the appellant's circumstances through the lens of the Rules, I find that there is an existing gap in the Rules and the part played by the respondent's discretion is greater when the appellant's circumstances are considered against the background of his mental health problems, for which he is currently receiving input. I find that to prematurely disrupt the appellant's treatment at this stage would be detrimental to his mental health. This is not a finding that the appellant would not be able to get medical treatment in Iran but is a balanced appraisal of all of the circumstances of his case in light of the current treatment he is receiving. I find that the appellant would benefit from the grant of a temporary period of leave whilst he is receiving mental health services, in light of his age."

8. Given that the judge expressly did not base her Article 8 assessment on a finding that the appellant would be unable to get medical treatment in Iran (nor make any finding that if returned to Iran he would lack family support), the only possible contents to her "balanced appraisal" was her finding that the appellant had a serious mental health condition for which he is currently receiving help from professional medical services in the UK. When one turns to consider the extent and severity of the appellant's medical condition, however, the medical evidence the judge recites says only that the appellant displays high levels of stress and PTSD with some record of attempts of self-harm (see paragraphs 97-99). Such evidence falls well short of establishing that the mental health condition of the appellant is of such severity that he needs to continue to receive treatment for it in the UK as opposed to Iran. It shows no awareness of the high threshold set for success in both Article 3 and Article 8 ill health cases by Strasbourg jurisprudence.

9. A further difficulty, acknowledged by Ms Kiai, is that the judge's proportionality assessment provides no analysis of the public interest factors outlined in S. 117B of the NIAA 2002; it is impossible to say in this case that the judge gave the statutory requirements of this section full effect. At most one can extract from the judge's lengthy quotes from case law and her observations at paragraph 105 that she required that little weight could be attached to the appellant's private life because his immigration status was precarious. The judge nowhere squares this recognition with her earlier attachment of decisive weight to the appellant's private life based on medical grounds: see paragraphs 95-96.

Notice of Decision

10. For the above reasons I consider that the judge materially erred in law and her decision needs to be set aside in its entirety.

11. I see no alternative to the case being remitted to the FtT (not before Judge Manyarara).

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: 4 October 2018

Dr H H Storey
Judge of the Upper Tribunal