



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: PA/08844/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 23 November 2018

Decision and Reasons Promulgated
On: 5 December 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

MR EVAR RAHIM
ANONYMITY DIRECTION NOT MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr A Gilbert of counsel, instructed by B.H.T. Immigration Legal Services

For the Respondent: Ms Z Kiss, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq, of Kurdish nationality, born on 1 January 2001. He appeals with permission against the decision of the First-tier Tribunal Judge who, in a decision promulgated on 3 September 2018, dismissed his appeal against the respondent's decision, dated 29 June 2018, refusing his asylum, humanitarian protection and human rights claims.
2. The appellant was an unaccompanied child. The respondent contended that he could relocate within Iraq, away from his home town of Hawija, Kirkuk Governate.

3. The Judge at [23] had regard to a letter dated 6 August 2018 from Ms Louisa Tomlinson, who described herself as a counsellor with children and young people. He noted that she did not claim to have medical qualification, let alone a qualification in psychiatry. In the final paragraph of her report, she said that it is her belief that on account of the appellant's vulnerability, if he were sent back to Iraq, he would not be able to cope mentally or emotionally and it would have a devastating, long lasting effect that would likely end in the taking of his own life.
4. However, the Judge gave no weight to that opinion. He stated that before an opinion of that type can be given any credence or weight it needs to come from a suitably qualified medical professional who understands his/her duty to the Tribunal; has demonstrated independence and objectivity in his/her consideration of the circumstances and has so certified by giving the usual Experts' declaration. He was thus far from satisfied that she had brought to bear the required level of objectivity or independence of consideration [24].
5. He set out his findings at [36]. He was satisfied that upon return to Iraq, he could and would return to his family and in all probability take up the role of being the senior male figure therein. There was no objective background evidence in support of the proposition that the appellant would face a real risk of harm from indiscriminate violence in and around Kirkuk or whilst en route to the family home [38].
6. In granting permission to appeal First-tier Tribunal Judge Andrews found it arguable that the Judge did not clarify whether he considered that the appellant to be a vulnerable witness, having been asked to do so by his representative. Further, he did not consider all the evidence before him, in particular the evidence of two independent social workers and the report of Dr Fateh, which he dismissed as being generic. Nor did he consider paragraph 339K of the Rules or the possibility of his destitution.
7. In the grounds of appeal prepared by Mr Gilbert, who represented the appellant before the First-tier Tribunal, he contended that the Judge failed to record whether he was treating the appellant as a vulnerable witness in assessing his evidence. Nor did he consider the appellant's vulnerability in assessing his evidence, contrary to the Joint Presidential Guidance Note Number 2: Child, Vulnerable Adult and Sensitive Appellant Guidance which provides that
 - (a) the Tribunal must consider the evidence, allowing for possible different degrees of understanding by witnesses and the appellant compared to those who are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before the Tribunal.
 - (b) where there are clear discrepancies in the oral evidence, the Tribunal is to consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.

- (c) the decision should record whether the Tribunal has concluded that the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his case to the relevant standard of proof. In asylum appeals weight should be given to objective indications of risk rather than necessarily to a state of mind.
8. Mr Gilbert submitted in Ground 1 that the First-tier tribunal Judge erred as the appellant is a child; the respondent has accepted his overall traumatic account as truthful; the Tribunal was invited to treat the appellant as a vulnerable witness; there was independent evidence of his trauma/vulnerability in the psychotherapeutic report dated 6 August 2018 after weekly sessions in the previous four months that he exhibits typical symptoms of PTSD.
 9. He also submitted in Ground 2 that the Judge failed to consider the relevant evidence of two independent social workers produced in the appellant's bundle at AB 11-14. This was relevant to the question of the appellant's vulnerability and credibility and to the weight to be attached to the psychotherapeutic report dated 6 August 2018.
 10. He also failed to consider relevant evidence of the Country Guidance expert, Dr Fateh, or made a perverse or irrational finding at [28] that it was of little or no significance, despite its relevance to the determination of core issues.
 11. He also contended that the Judge failed to consider material relevant to his findings as to the credibility of the appellant's claim including his influence by agents en-route to the UK and the fact that he had not made a claim for asylum earlier. His passport was destroyed by the agent and he had stated that he obeyed his mother's instructions to follow the agent's instructions. If the Judge did consider it, he failed to give adequate reasons for its implicit rejection.
 12. Mr Gilbert also relied on other grounds, including the assertion that the Judge failed to apply paragraph 339K of the Immigration Rules. Past harm to his family was relevant to the assessment of whether they faced harm after the appellant left.
 13. It was also contended that the Judge failed to consider relevant matters pertaining on the circumstances on return relevant to the issue of destitution and/or Article 15C of the Qualification Directive. The material, (including AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212, showed that as a child, the appellant would be unable to work and his mother would be unable to support them. That affected the overall assessment of Article 3 of the Human Rights Convention, Article 15(C) of the Qualification Directive and paragraph 276ADE of the Immigration Rules.
 14. During the course of Mr Gilbert's submissions, Ms Kiss informed me that although she would contend that the report of Ms Louisa Tomlinson was inadequate, she nevertheless considered that the Judge had failed to consider the evidence of two

independent social workers, one of whom had worked with the appellant since his arrival in the UK in 2017 as well as that of the supervising social worker, at pages 45-46 in the appellant's bundle produced to the Upper Tribunal.

15. She therefore accepted that the failure to consider those two statements which supported the opinion of Louisa Tomlinson rendered the decision unsafe.
16. In the circumstances, she submitted that the decision of the First-tier Tribunal should be set aside and re-made. In passing, she expressed her surprise that no proper psychiatric or medical report had been obtained. Both parties agreed that the appeal should be remitted to the First-tier Tribunal for a fresh decision to be made.

Assessment

17. I find that the concession by Ms Kiss was properly made. It is evident that the Judge did not take into account in the credibility assessment that the appellant was to be treated as a vulnerable witness in the circumstances. In that respect, all the Judge stated was that the appellant would be a minor for a few more months as at the date of hearing. That meant that he must keep in mind s.55 of the Borders, Citizenship and Immigration Act 2009.
18. Nevertheless, it does not appear that in evaluating his evidence, he treated the appellant as vulnerable. Further, I am also satisfied that the Judge failed to consider the evidence of the two independent social workers which was relevant to the issue of the appellant's vulnerability and accordingly his credibility. It was also relevant to the weight to be attached to the report of Ms Tomlinson.
19. In the circumstances, I find that the decision of the First-tier Tribunal involved the making of an error on a point of law and I set it aside. I am satisfied that the extent of judicial fact finding which is necessary in order for the decision to be re-made will be extensive. I find that it is just and fair to remit the case.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. The appeal is remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made by another Judge.

Anonymity direction not made.

Signed: Deputy Upper Tribunal Judge Mailer 30 November 2018