Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10193/2017**

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**

On 30 November 2018 **On 12 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

AKO [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Childs (counsel) instructed by CK Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Carroll promulgated on 26/04/2018, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 03/12/2001 and is a national of Iran. On 29/09/2017 the Secretary of State refused the Appellant's protection claim but granted discretionary leave to remain in the UK until 12/12/2018 because the appellant was an unaccompanied minor.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Carroll ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 16/10/2018 Deputy Upper Tribunal Judge Chapman gave permission to appeal stating inter alia

> "4. Contrary to the assertion in ground 1, the Judge provided reasons for her findings at [19](a) –(i) albeit she asserts that "*aspects of his evidence were characterised by extreme evasiveness*" without identifying which aspects, which does raise an arguable error of law, albeit she directed herself to make allowances for the appellant's youth. The weight to be attached to the expert and background evidence, which the Judge recorded at [11] and [12] is a matter for the Judge, however. It is arguable that she failed to record any consistency between the appellant's account and that evidence and factor that into her assessment of credibility. In respect of the appellant's brother's claim, the Judge was entitled to take account of the discrepancy between the oral evidence, when he said that he was in Gloucestershire and he believed that he had had a hearing on 17 April 2018 and his witness statement when he stated that he had no contact with him.
>
> 5. Permission to appeal is granted, however, whether any of the issues raised amount to material errors of law will be a matter for the Upper Tribunal Judge hearing the appeal."

The hearing

5. (a) For the appellant, Ms Childs moved the grounds of appeal. She told me that the Judge's credibility assessment is flawed. She took me to [19] of the decision and told me that although the Judge acknowledges the appellant's apparent youth, the Judge fails to follow the guidance given in KS (benefit of the doubt) [2014] EWCA Civ 10. She told me that the appellant's account is supported by an expert report and by background materials, but the Judge does not place weight on the supporting evidence; instead the Judge is critical of a child's performance as a witness.

(b) Ms Childs told me that the Judge provided inadequate reasons for rejecting the appellant's account of finding that the appellant is

"extremely evasive". She told me that the second sentence of [19] is not explained and has no support. She told me that the Judge's opening sentences of [19] are wrong and infect the Judge's overall credibility assessment

(c) Ms Childs told me that the Judge placed too much weight on the appellant's inability to comply with directions to provide the determination in his brother's appeal, and the Judge was wrong to make adverse credibility findings because the appellant's brother did not offer evidence in this appellant's appeal. She urged me to set the decision aside but to preserve the findings in relation to the appellant's nationality.

6. For the respondent, Mr Bramble told me that the decision does not contain errors, material or otherwise. He took me straight to [19] of the decision and told me that [19] contains adequate reasons for the Judge's decision. He told me the Judge has written a carefully balanced and well-reasoned decision containing sufficient credibility findings. He told me that the Judge's finding at [19] that the appellant was evasive refers back to a finding [17] and is adequately supported. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. At [11] the Judge quotes from background materials. At [12] the Judge rehearses paragraphs from a report prepared by Dr Fatah. The background materials and Dr Fatah's report confirm that there is a significant trade in smuggling across the Iranian border. The appellant claims that he is an Iranian Kurd who became involved in smuggling at a young age.

8. The appellant was born on December 2001. He left Iran just before his 14th birthday. He claimed asylum in January 2016, just after his 15th birthday. The appellant's asylum interview took place on 12 July 2016 when the appellant was 15. The appellant recounts events said to have happened in November 2015, when he was 13 years and 11 months old.

9. Between [13] and [18] the Judge considers the dispute about the appellant's nationality. At [18] the Judge concludes that the appellant is an Iranian national. At [19] the Judge considers the substance of the appellant's claim and assesses his credibility. In the second sentence the Judge says

> "As I have noted above, however, aspects of his evidence were characterised by extreme evasiveness and I am not satisfied that the appellant is credible ..."

10. The only other reference to evasiveness is at [17], where, when discussing how the appellant obtained a birth certificate, the Judge says

> "Much of the evidence given by the appellant in the context of the obtaining and receipt of this document was characterised by extreme evasiveness ..."

11. The Judge does not explain why she concludes that the appellant's evidence is tainted by extreme evasiveness. The Judge does not say why she finds the appellant to be not just evasive, but evasive in the extreme.

12. At [19] the Judge sets out her credibility findings. In KS (benefit of doubt) [2014] UKUT 00552 it was held that the proposition in paragraph 219 of the UNHCR Handbook, that when assessing the evidence of minors there may need to be a "liberal application of the benefit of the doubt" is also not to be regarded as a rule of law or, indeed, a statement of universal application. As a reminder about what the examiner should bear in mind at the end point of an assessment of credibility, the proposition adds nothing of substance to the lower standard of proof. If, for example, an applicant possesses the same maturity as an adult, it may not be appropriate to resort to a liberal application of the benefit of the doubt.

13. KS also sets out the principles where more weight must be given to objective indications of risk than to a child's state of mind. The Judge quotes from objective materials and from Dr Fatah's report, but does not factor the background materials and the expert report into the overall assessment of either the appellant's credibility or risk on return.

14. The problem is that the Judge's credibility assessment is incomplete. At [19] she sets out criticisms of the child's evidence. The various strands of the child's evidence are given when he was 15 and 16 years of age and refer back to recollection of incidents when he was less than 14 years of age. The Judge finds that the appellant is an Iranian national, the Judge quotes from background and expert materials which support the appellant's account, but no weight is given to the strands of evidence which support the appellant. No attempt is made to reconcile the strands of evidence which support the appellant with the Judge's criticisms of the appellant's evidence at [19].

15. Because the credibility assessment is incomplete the decision is tainted by a material error of law. I set the decision aside. I consider whether I can substitute my own decision but find I cannot because the bundle which was before the First-tier Tribunal is not before me. All that I have is the respondent's bundle. A further fact-finding exercise is necessary because it is the Judge's credibility findings that create the material error of law.

Remittal to First-Tier Tribunal

16. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

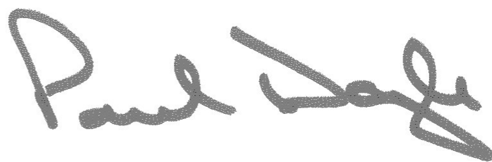
> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

18. I remit the matter to the First-tier Tribunal sitting at Taylor House to be heard before any First-tier Judge other than Judge Carroll.

Decision



The decision of the First-tier Tribunal is tainted by material errors of law.

I set aside the Judge's decision promulgated on 26 April 2018. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Date 7 December 2018

Deputy Upper Tribunal Judge Doyle