Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06816/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 November 2019	**On 3 January 2020**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

SA (IRAQ)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Schon, instructed by Brighton Housing Trust
For the Respondent: Mr Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is an Iraqi national who was born on 18 August 2000. He appeals against a decision which was issued by Judge Rae-Reeves ("the judge") on 30 August 2019, dismissing his appeal against the respondent's refusal of his claim for international protection.

2. For present purposes it suffices to adopt the concise summary of the appellant's claim which appears at [1]-[5] of the grounds of appeal to this Tribunal. The appellant is a Sunni Kurd from Kirkuk. He lost his mother

in a car accident at the age of six and lost his father when he was a teenager. The appellant stated that his father had been in debt to an official from the Patriotic Union of Kurdistan ("PUK"). After his father' death, that man had kidnapped the appellant and tried to extort money from the appellant's family. A threat was also made to sell the appellant into prostitution. The appellant managed to escape and fled Iraq with the assistance of his neighbour's son, with whom he travelled for much the ensuing journey. He arrived in the UK and claimed asylum on 13 November 2016 (aged 16). The appellant's protection claim was based on the events which preceded his departure. He also claimed to be entitled to subsidiary protection as a Sunni Kurd from Kirkuk.

3. The respondent refused the application nearly three years later, on 30 June 2019. She did not accept that the appellant was from Kirkuk and concluded that he was actually from the IKR: [20]-[25]. She did not accept any part of the appellant's account of the events which preceded his departure from Iraq: [26]-[33]. She considered that the appellant could return directly to the IKR and that he could obtain replacement civil status documentation there, with the assistance of his male relatives: [36]-[45]. She concluded that the appellant could avail himself of a sufficiency of protection in the IKR and that he could relocate to Sulaymaniyah or Dohuk: [46]-[56] and [57]-[67]. She did not consider there to be any alternative basis upon which she was required to grant the appellant leave to remain: [69]-[90].

The Appeal to the First-tier Tribunal

4. The appeal came before the judge, sitting at Hatton Cross, on 15 August 2019. The appellant was present and represented by Ms Schon of counsel. The respondent was also represented by counsel. Ms Schon presented the judge with a very lengthy skeleton which contained copious citation from authority. The appellant gave evidence and the representatives made submissions.

5. In his reserved decision, the judge comprehensively disbelieved the appellant's account. At [22], he explained that his concerns as to the truthfulness of the appellants account stemmed from three points: his ability to fund the trip to the UK; his account of the kidnapping; and his ability to obtain a CSID. At [23]-[26], [27]-[30] and [31]-[40] respectively, the judge explained why his concerns about those aspects of the appellant's account caused him to reject it and to dismiss the appeal. The judge did not accept that the appellant was in fear of the PUK. Nor did he accept that he was from Kirkuk. He concluded that the appellant could return to the IKR and could obtain a replacement document with the assistance of is family members.

The Appeal to the Upper Tribunal

6. Permission to appeal was sought on no fewer than seven grounds. At nine pages of single-spaced type, the grounds are only marginally shorter than the decision under appeal. It was submitted that:

   (i) the judge had failed to bear the appellant's age in mind when assessing the credibility of his account;

   (ii) insufficient reasons had been given for rejecting the appellant's claim to be from Kirkuk;

   (iii) the judge had not considered the appellant's entitlement to humanitarian protection;

   (iv) various concerns had not been put to the appellant;

   (v) material matters had been overlooked in assessing the credibility of the appellant's account;

   (vi) the judge had made findings which were confused and irrational regarding the appellant's entry to the UK; and

   (vii) the judge had failed to apply anxious scrutiny to the appellant's claim.

7. Designated First-tier Tribunal Judge Macdonald considered each of these grounds to be arguable.

8. By ground one, Ms Schon highlights the fact that the appellant attained his majority on 18 August 2018. He was a child during the claimed events in Iraq, as he was when he entered the UK and when he gave his account of those events to the respondent during two interviews and an initial witness statement. Although the appellant was an adult by the date of the hearing, she submits that it was incumbent on the judge, when assessing the credibility of the appellant's account, to take into account the fact that he was a minor when the events occurred and when he gave his account of those events to the respondent. She notes that this point was made at [31]-[33] of her skeleton argument before the FtT. Amongst other authorities, she cites the decision of the Upper Tribunal in KS (benefit of the doubt) [2014] UKUT 552 (IAC), in which it was held that 'a child-sensitive application of the lower standard of proof may still need to be given to persons if they are recounting relevant events that took place at a time when they were minors'.

9. At the outset of the hearing before me, I invited Mr Tufan to make submissions on the first ground. I explained that it was my provisional view that there was merit in this ground. Mr Tufan submitted that the ground disclosed no legal error on the part of the judge. He submitted that the judge was clearly aware of the fact that the appellant was a minor at material times. He submitted that it was clear from [23](v) and [32] of

the judge's decision that the judge had adopted a proper approach to the evaluation of the appellant's account.

10. I indicated at the hearing that I did not accept Mr Tufan's submissions. I found that the judge had erred materially in law in the manner contended in ground one. I said that I would set aside the judge's decision and remit the appeal for a hearing *de novo* before another judge at Hatton Cross. My reasons for reaching that conclusion are as follows.

Analysis

11. Mr Tufan was evidently correct insofar as he submitted that the judge was aware of the appellant's age. The judge gave the appellant's date of birth at [1] and [3] of the decision. In the second of those paragraphs, the judge also noted that the appellant entered the UK when he was 16 years old. At [17], he recorded that he had received a letter from West Sussex County Council. That letter confirmed, amongst other things, that the appellant was a Former Relevant Child under s24 of the Children Act 1989. I note also that the judge's typed Record of Proceedings records a preliminary discussion with counsel for the respondent, in which she accepted (at the judge's request) that it would be inappropriate to adopt those parts of the refusal letter in which section 8 of the Treatment of Claimants Act was invoked against the appellant, given his age when he travelled to the UK.

12. At [23](v), the first of two paragraphs relied on by Mr Tufan in defence of the decision, we find this section:

> "I also reject the Respondent's assertion that the Appellant should not have gone into the car with Perot. As a teenage boy, he may have felt that he had absolutely no choice but to follow Perot's command if, indeed, the incident took place."

13. Then, at [32], there is a sentence in which the judge rejected an aspect of the appellant's account in the following way:

> "Even accounting for the Appellant's age and vulnerability, it is beyond credibility to think that by calling or contacting Haji Ali his alleged assailant will somehow track him or exert influence on him in the UK."

14. Notwithstanding those references, it is by no means clear from the judge's decision as a whole that he adopted the approach which had been correctly urged upon him a [31]-[33] of Ms Schon's skeleton. Consideration has been given to the proper approach to asylum claims made by children (or former children) in a number of authorities. Ms Schon cited KS (Afghanistan) and I have reproduced the relevant section of [99] of that decision above. Also worthy of mention is the rather shorter review of the authorities at [38]-[42] of AA (Afghanistan) CG [2012] UKUT 16 (IAC). Both decisions pre-date what was said by the Senior President of Tribunals in AM (Afghanistan) [2017] EWCA Civ 1123; [2018] 4 WLR 78, in

which the Ryder LJ (with whom Underhill and Gross LJJ agreed) gave general guidance on the approach to be adopted by the Immigration and Asylum Chamber to the fair determination of claims for asylum from children and other vulnerable individuals.

15. At [30]-[33] of his judgment, the Senior President emphasised the importance of the Joint Presidential Guidance Note No 2 of 2010. At [33], he cited paragraphs 13-15 of that guidance in full. Paragraph 15 is in the following terms:

> "[15] The decision should record whether the Tribunal has concluded 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 this whether the Tribunal was satisfied whether the appellant had established his or her 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."

16. In this case, it was not contended that the appellant was a vulnerable witness at the date of the hearing. What was contended, instead, was that the appellant had been vulnerable, by dint of his age, at all times prior to 18 August 2018, and that it was incumbent on the judge to consider and assess the effect that this vulnerability might have had on the account given by the appellant. In my judgment, the references at [23] and [32] of the judge's decision do not establish that he adopted that approach throughout his assessment of the appellant's credibility. The judge raised concerns about the plausibility of various aspects of the appellant's account throughout, and the appellant's age was relevant to the weight to be attached to those points. The judge made further criticism of the appellant's account because it was insufficiently detailed, but his age was relevant in that connection also. Equally, the judge noted that the appellant's later account was discrepant with that he had given to the respondent in some respects, but his age was also relevant to the evaluation of such inconsistencies.

17. The judge was obviously not required to accept the appellant's account simply because he had claimed asylum as a child. On any proper view, there are significant difficulties with the account given. But the context in which that account had initially been given had to colour the judge's assessment in the way set out in the authorities described above and it is by no means clear that the judge adopted that approach. In particular, it is by no means clear that the judge turned his mind to consider whether the difficulties with the appellant's account might be attributable to the age at which that account was originally provided, or the age of the appellant when the events in question occurred. Despite the obvious care with which the judge otherwise conducted the hearing and determined the

appeal, I have come to the clear conclusion that his decision is vitiated by the legal error I have described, and that it cannot stand.

18. In the circumstances, the proper course is for the appeal to be heard completely afresh in the FtT and I order that it be remitted for consideration by another judge at Hatton Cross to that end.

Notice of Decision

The decision of the FtT was erroneous in law and is set aside in its entirety. The appeal is to be remitted to another judge at Hatton Cross to be reheard de novo.

Anonymity

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.

MARK BLUNDELL
Judge of the Upper Tribunal (IAC)

02 January 2020