Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07590/2019 (P)

THE IMMIGRATION ACTS

Decided without a hearing

Decision & Reasons Promulgated
On 6 August 2020

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

SWA (IRAN)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. The appellant is an Iranian national who was born in May 2002. He appeals, with permission granted by Judge Keane, against a decision which was issued by Judge Andrew on 21 October 2019. In that decision, the judge dismissed the appellant's appeal against the respondent's refusal of the appellant's protection and human rights claims.

2. The appellant claimed asylum on the day that he arrived in the UK: 25 June 2018. He claimed to fear persecution from the authorities in Iran because of his imputed political opinion and also from his father being involved in a land dispute which had resulted in the death of a member of another family.

3. In her decision of 26 July 2019, the respondent accepted that the appellant was a minor of Kurdish ethnicity from Iran but she rejected the substance of his claim for asylum, concluding that the account given was not credible.

4. In her decision, the judge also found that the appellant had not given a truthful account of the reasons why he had left Iran. She stated that she had made due allowance for his age at the time but she considered that aspects of the account were implausible, speculative, vague and unsupported by documentary evidence. She found him to be a person with no political profile in Iran and did not consider that he would be at risk on return. So it was that she dismissed the appeal on protection grounds. Considering the appellant's limited Article 8 ECHR claim, the judge considered that the private life he had accrued since his arrival was outweighed by the public interest considerations to which she was bound to have regard.

5. Permission to appeal was sought on several grounds:

   (i) The judge made no real allowance for the appellant's age or background in assessing his credibility;

   (ii) The judge had overlooked aspects of the appellant's evidence, in particular from his asylum interview, in rejecting his account;

   (iii) The judge had failed to consider the plausibility of the appellant's account against the backdrop provided by the country evidence;

   (iv) The judge had reached a finding regarding the appellant's exit from Iran which was at odds with the respondent's acceptance; and

   (v) The judge's conclusion regarding the appellant's Kurdish ethnicity was contrary to HB (Kurds) Iran CG [2018] UKUT 430 (IAC).

6. Permission was granted on each of these grounds by Judge Keane. The appeal was due to be heard on 3 April 2020 but the pandemic rendered that impossible. Directions were duly sent to the parties, seeking their submissions on the merits of the appeal and on whether it might properly be disposed of without a hearing. Both parties filed further submissions. The appellant sought an oral hearing. The respondent did not.

7. Given that the respondent accepts that the judge's decision cannot stand, I see no reason to convene an oral hearing, remotely or otherwise.

8. In his concise written submissions for the respondent, Mr Kotas accepts that the judge erred in law and that her decision falls to be set aside for the following reasons. At [20], the judge found that the appellant was simply speculating when he stated that his father was involved in anti-regime activities. She said that the appellant 'had simply made assumptions and has speculated'. Mr Kotas accepts, however, that this finding was reached without reference to material matters, namely certain answers given by the appellant in his interview. In answer to questions 74 and 76 of the interview in particular, the appellant had told the respondent that he had overheard his father speaking on the telephone, saying that he 'worked against the government'. Mr Kotas notes that the appellant had not mentioned any such conversation in his witness statement and that the judge may, for that reason, have validly held that there was an inconsistency between the two accounts. That was not the judge's conclusion, however, and the conclusion she did reach was clearly reached without taking into account the relevant evidence which the appellant had given in his asylum interview. Mr Kotas accepts that this was an error of law and that it justifies the setting aside of the judge's decision.

9. I consider that concession to be properly made. Possibly because of the fact that the appellant gave a slightly different account in his witness statement, the judge does appear to have overlooked the account the appellant gave in response to questions 74 and 76 of the asylum interview. Given that this was a central reason for the judge's rejection of the appellant's account, I am satisfied that her assessment of his credibility cannot stand.

10. Both parties have urged the Upper Tribunal to remit the case to the FtT, in light of the scope of the next hearing. I also consider that to be the appropriate course. I should add that I do not accept the submission made by Mr Kotas at [10] of his written submissions, by which he invited the Upper Tribunal to preserve the judge's dismissal of the appeal on Article 8 ECHR grounds. The appellant is a young Kurdish man who maintains that he has no family in Iran. In the event that he is found to be partly truthful by the next judge, there might be a suggestion of a claim under paragraph 276ADE(1)(vi), even if he is found not to be positively at risk in Iran. Given the common factual consideration which underpin both questions (protection and paragraph 276ADE(1)(vi)), I consider that it would be wholly artificial to remit only the protection aspect of the enquiry to the FtT. The remittal will therefore be *de novo.*

Notice of Decision

The decision of the FtT was erroneous in law and is hereby set aside. The appeal is remitted to the FtT to be heard de novo by a judge other than Judge Andrew.

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.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 August 2020