Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08554/2019

THE IMMIGRATION ACTS

Heard at Bradford via Skype	**Decision & Reasons Promulgated**
On 9 October 2020	**20 October 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

YM
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Greer instructed by Ison Harrison Solicitors.
For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Myers, promulgated on the 15 October 2019, in which the Judge dismissed the appellant's appeal on protection and human rights grounds.
2. Permission to appeal was granted by another judge of the First-tier Tribunal in the following terms:

> "The grounds amount to no more than a disagreement with the findings of the judge, an attempt to reargue the appeal and they did not identify any arguable error or errors of law but for which the outcome of the appeal might have been different. Mindful however that the appellant prepared the grounds personally I have considered the judge's decision in order to ascertain whether it disclosed an arguable error or errors of law but for which the outcome of the appeal might have been different. Two arguable concerns arose. First, the judge arguably failed to take into account a relevant consideration before finding that the appellant had not given a credible account of events and of his experiences in his country. Notwithstanding that the appellant's bundle contained a substantial body of background evidence confirming conditions prevailing in Iraq the judge did not avert to such evidence or propositions to be distilled from such evidence before arriving at a finding that the appellant had not given a credible account. Second, the judge arguably failed to provide any or any adequate reasons before arriving at her findings as to the appellant's credibility. The judge's extremely short analysis was to be found at paragraphs 22 to 28 inclusive and may fairly be characterised as amounting to an outright rejection of the appellant's claims of fact. The judge arguably did not embark upon that global assessment which is the essence of an assessment of the credibility of one such as the appellant. The application for permission is granted."

Error of law

3. Both parties have filed written submissions in support of their case following the issue of Covid – 19 directions by the Upper Tribunal.

4. The Judges findings are set out between [22 – 28] and are in the following terms:

> "22. I only make a finding on credibility after taking great care and reminding myself that asylum seekers may exaggerate and embellish their cases and yet still be telling the truth. However, in this case I find that the Appellant lacks credibility for the reasons given below.
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> 23. I do not accept that the Appellant, who was only aged 16 at the time, decided to accompany his cousin [N] to a gunfight which did not involve him despite being scared. In such dangerous circumstances I would expect a 16 year old child to either hide in the house where he was safe or go back to his own home, rather than accompany his cousin on a 15 to 20 minute jog to [S's] house while carrying a Kalashnikov and a big bag of bullets. I cannot accept the submission made on the Appellant's behalf it was reasonable for him to think that he will be safer outside with his cousin in the middle of the gunfight rather than staying in the house by himself.
>
> 24. Furthermore, on his own evidence the Appellant then hid downstairs at [S's] house and could not have had any first-

hand knowledge of what [N] with doing on the roof, although he claims to know what [N] did.

25. The Appellant describes being scared and deciding to run away. I find that it makes no sense that rather than keep to the back of the house where it was dark, and he could not be seen that he decided to go to the front where he would be visible and in the line of fire. Neither do I accept that he was seen by [S's] brother who allowed him to proceed without firing at him.

26. In addition, I do not accept that by coincidence he happened to meet his cousin [SA] while he was running away even though [SA] lives in Erbil.

27. I find it lacks credibility his family would send a 16 year old child away from his family and homeland without giving him their contact details so he could get in touch and let them know that he was safe. Neither do I accept the Appellant's evidence that despite owning an iPhone he does not have any social media accounts or know how to operate them.

28. In conclusion I find that he has fabricated his account and I do not accept he is at risk on return to the IKR. Neither do I accept that he has no contact with his family. Accordingly I find that even if he is not currently in possession of his CSID he can contact family to have it sent to him or obtain a replacement and as a Kurd originating from the IKR there is nothing to prevent him from returning once he reaches the age of majority in a few months' time.

5. At the date of the hearing before the Judge the appellant was still a minor. The Judge was required to consider the application of the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance when assessing the appellant's evidence. Such guidance is mandatory as confirmed by the Court of Appeal in AM [2017] EWCA Civ 1123. The failure to make reference to the guidance and conscientiously apply it is an error of law. There is nothing in the decision to indicate the Judge, who was clearly aware of the appellant's age, did so. There is no reference to the guidance and no reference to whether any special arrangements needed to be made to assist the appellant. Even if there were none, of more concern is that there is no reference to how the Judge factored the appellant's age into the assessment of his evidence. As there is no expressed or implied reference to this aspect, the only conclusion open to this Tribunal is that the Judge failed to take into account the appellant's age when assessing his credibility.

6. There is also merit in the appellant's submission the Judge finds the appellant's account inherently improbable and implausible based upon the Judge's own view of the possibility of the events referred to by the appellant occurring. If a Judge considers an account implausible proper reasons must be given for such a conclusion which can, arguably, only be undertaken by assessing the subjective evidence against the available country evidence and based upon

reasonably draw inferences rather than conjecture and speculation. A finding that because an alternative approach is more believable and using the same to reject the appellant's own account, amounts to an arguable legal error in the circumstances of this appeal. There is no evidence the required holistic assessment of the evidence was undertaken.

7. Also of concern is the Judge's finding the appellant's account is implausible and lacks credibility partly on the basis of the Judge's own assessment of how a 16-year-old boy will be expected to behave and that, accordingly, the appellant's account of how he did behave is irrational. It is not clear from the determination the basis on which it was concluded a 16-year-old Kurdish boy from Iraq is expected to behave and how the behaviour of this appellant differed, supported by adequate reasons. There is merit in Mr Greer's argument that even if the appellant did not behave in a reasonable manner or a manner that made sense to the Judge that this meant the claim was not true. The appellant in his witness statement explained why he behaved in the manner he did which Judge does not deal with adequately in the body of the determination.

8. I find when considering matters a whole that the Judge has erred in law in a manner material to the decision to dismiss the appeal such that that determination must be set aside. The failure to properly consider the guidance relating to vulnerable witnesses means the appellant has not had a proper assessment of the merits of his appeal and that the findings made to date are unsafe. There can therefore be no preserved findings.

9. Following discussion it was agreed that as there has been a further country guidance case relating to Iraq since the original appeal was heard and in light of the need for extensive further findings of fact to be made supported by adequate reasons, and in light of the Presidential Guidance on remittal of appeals, this is a case that must be remitted to the First-tier Tribunal sitting at Bradford to be heard afresh, de novo, by a judge other than Judge Myers.

Decision

10. The First-tier Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to the First-tier Tribunal sitting at Bradford for a heard of fresh, de novo, by a judge other than Judge Myers.

Anonymity.

11. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 9 October 2020