



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/11331/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 13 November 2020

On 17 November 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

PK

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the appellant: Mr M Mohzam, Alex James Solicitors

For the Respondent: Mr S Whitwell, Senior Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion

of the hearing I indicated that I found no error of law but reserved my full decision and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is an Iraqi national of Kurdish ethnicity from Erbil within the IKR, and with date of birth given as 31.5.02, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 20.1.20 (Judge Davies), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 6.11.19, to refuse his claim for international protection made on 10.7.18, on grounds of imputed political opinion.
2. The appellant was a minor at the date of his arrival in the UK on 22.6.18, being then just 16 years of age. He was 17 at the date of the First-tier Tribunal appeal hearing and is now 18 years of age.

Preliminary Matters

3. At the outset of the hearing, Mr Whitwell explained that he had taken over from Mr Tan at short notice and had been sent in error papers for an entirely different case with a similar reference number. He applied for an adjournment. I decided to hear Mr Mohzam's submissions first before deciding whether an adjournment of the hearing was necessary.
4. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal. In the event, I found it was not necessary to adjourn the matter.

Relevant Background

5. In essence, the appellant claimed to have a well-founded fear of persecution on return to Iraq on the basis of imputed political opinion because he feared he would be killed by the Iraqi authorities because his father was spying for the Iranian government. His father was a wholesaler importer of goods from Iran when the border was closed on 25.9.17 following the Iraqi referendum, so that his goods were stuck at the border. In order to have his goods released, the father was asked by an Iranian official to spy on the KDP Party in Iraq and the KDPI Party in Iran. It is alleged that the KDP and the Kurdish government in the IKR discovered this. The appellant was 15 years of age at the time and does not know what, if any, spying activity his father undertook. The family relocated to Turkey in May 2018 and he believes that his father was subsequently arrested in Turkey.
6. The appellant has no independent knowledge of these matters; he claims that his mother told him that they had left Iraq because his father had problems with the government of the IKR and the KDP and his witness statement of 11.10.18 advances the account of his father being asked to become an Iranian spy against the KRG (IKR), the KDP and the KDPI in Iran. His mother allegedly told him that in May 2018

his father was notified by a friend that the IKR government and both political parties had found out and accused him of being both a spy and trading in drugs. Despite that, no steps were taken to arrest him and the family was able to relocate to Turkey.

7. Permission to appeal was granted by the First-tier Tribunal, it being considered arguable that the judge “failed to have sufficient regard to the appellant’s age when assessing credibility and failed to fully appreciate the appellant’s case being that his father had been asked to spy for both Iraq and Iran upon which no finding arguably is made. All grounds may be argued.”
8. The grounds are somewhat inaccurate and have led to the grant of permission on a false premise. As drafted, in rather poor English, the grounds at [2] assert that the judge, “failed to deal with core aspect of the appellant’s claim; that he was ask to spy for both Iraqi KDP and Iranian KDPI, which was a crucial aspect of the appellant claim. The Judge failure to deal with this part taints the decision.” In fact, the appellant’s claim has never been that his father was asked to spy for either the KDP or the KDPI; he claims his father was asked to spy on the KDP and KDPI.
9. Permission was granted, at least in part, on the misunderstanding that the judge failed to appreciate that the appellant’s claim was that his father had been asked to spy for both Iraq and Iran and that the judge made no finding on this assertion. However, the appellant’s case has never been that his father was asked to spy for both Iraq and Iran; the claim is only that it was the Iranian authorities who asked him to spy.

Consideration of the Grounds

10. I am satisfied that the First-tier Tribunal Judge accurately set out the appellant’s case from [26] of the decision onwards. It is noted at [26] that the claim rested on the account that in exchange for the release of his goods he was asked to spy in the Kurdish region on behalf of the Iranian authorities, on both the KDP and KDPI. It is not clear from the appellant’s case whether his father ever did spy or report back to the Iranian authorities.
11. At [30] onwards of the decision the judge considered the issue as to when the Iran/Iraq border was closed but noted that the news reports were to the effect that the border had been unilaterally closed by the Iraqi and not the Iranian authorities and concluded that this would have been a short-term measure. There has been no challenge to this particular finding. The respondent’s refusal decision had suggested it was not credible that as an Iraqi citizen the appellant’s father had been asked to spy on a political party wholly located in Iran (the KDPI).
12. The First-tier Tribunal disbelieved the appellant’s account, completely rejecting the “central plank” of the claim, considering it implausible and, ultimately, incredible that his father would enter into such an arrangement in order to deal with a very

short-term border closure by the Iranian authorities. If the border was closed by Iraq, it could not be the Iranian authorities who were holding back the goods at the border because of the closure. Nor does the appellant's account make any sense that the agreement to spy arises out of the border closure by the Iraqi authorities. The judge noted the appellant's young age at the time and lack of knowledge of any details of information provided to him not by his father but allegedly by his mother. He was not aware of his father being a member of any political party or of knowing anyone in the IKR government, so that it is difficult to see how he would be in a position to spy for the Iranians. The judge considered that even if his father had spied, it was not credible that he had not arrested by the IKR authorities when they allegedly found out. At [36] of the decision the judge concluded that the appellant failed to demonstrate to the lower standard of proof that his father was engaged in espionage for the Iranians as claimed. I am satisfied that cogent reasons have been provided for that conclusion, so that no error of law is disclosed.

The Appellant as a Vulnerable Witness

13. Permission was also granted on the assertion in the grounds that in assessing credibility, the First-tier Tribunal failed to accord the appellant appropriate consideration given that he was a minor and therefore vulnerable at the date of the hearing. However, it is clear from a reading of the decision that the judge was very conscious of the appellant's young age. At [23] of the decision, the judge canvassed with the two representatives that the appellant was a minor, still a few months from his 18th birthday. It was agreed that he should be treated as a vulnerable witness and was assisted by a support worker. Questioning was limited and kept simple and straightforward. At [24] the judge was satisfied that notwithstanding his age, the appellant understood the questions put to him and was fully able to participate in the hearing.
14. Mr Mohzam submitted that the case authorities required a "liberal application of the benefit of the doubt" when considering the evidence of children. However, the assessment of credibility of the appellant's claim did not turn on his evidence at the appeal hearing or on his general reliability as a witness of the alleged facts. Neither did the judge rely on any inconsistency or contradiction in the appellant's account. In assessing the credibility of the claim, the judge took into account, as he had to, the appellant's young age at the date of the events of his claim, and that he had no direct knowledge of any of the events, allegedly reporting what his mother rather than his father told him. However, the credibility of the claim turned on the claim as advanced, the facts of which are not likely to vary whether the appellant was a vulnerable child or not. The judge was not obliged to accept the claim just because the appellant was young, immature, or vulnerable. It was not the manner in which the claim was advanced or failure to satisfactorily answer questions which led to its rejection; it was rejected as not credible on the facts taken at face value, for the cogent reasons set out in the decision.

15. In the circumstances, it is difficult to see how having any greater regard to the appellant's age could or would have made any difference to the credibility assessment. I am satisfied that no error of law is disclosed in this regard.
16. Having heard Mr Mohzan's oral submissions, I was satisfied that it was not necessary to hear from Mr Whitwell and, therefore, no adjournment was necessary.
17. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 13 November 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

"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 his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 13 November 2020