IN THE UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER	**Case No: UI-2024-000176 First-tier Tribunal No: PA 54240 2022**

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 March 2024

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

HAH

Appellant

and

Secretary of State for the Home Department

Respondent

(ANONYMITY ORDER MADE)

Representation:

For the Appellant: Mr Eaton, Counsel instructed by Duncan Lewis Solicitors
For the Respondent: Ms Everett, a Senior Home Office Presenting Officer

Heard at Field House on 5 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

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Introduction

1. The appellant appeals against a decision and reasons of the First-tier Tribunal (Judge Herlihy, hereafter "the Judge"), promulgated on 1 December 2023, which dismissed his appeal against the refusal of his asylum claim by the respondent on 1 October 2022. The appellant, whose date of birth is 2 May 2002 is a citizen of Iran and of Kurdish ethnicity. He arrived in the UK as an unaccompanied minor aged 16 years and was aged 21 years at the time of the hearing. The Judge found that his claim to be in fear of the authorities in Iran was implausible and /or lacking in credibility.

2. In her decision at [5] the Judge summarised the evidence relied on by the appellant, which included a country expert report and medical reports. She noted that the appellant left Iran in 2018 and was a minor when he claimed asylum [7], [9]. The respondent accepted that he was an Iranian Kurd who had left illegally. The Judge recorded the appellant's evidence that he was unable to read and write in Kurdish but had now learned to do so in English [14] and that he had no contact with his family in Iran and no passport or ID [16]. The Judge found that his account, that he and his uncle were supporters/members of PJAK, and/or that he was wanted by the authorities following his uncle's arrest to be not credible. The appellant claimed that his uncle, who was married, was a high ranking member of PJAK. The Judge took into account the background material in the CPIN which stated that married men were unlikely to be high ranking professional members of PJAK. The Judge considered that if politically active and as a man with family, his uncle would be more likely to have been a low level member who did not participate in military activities [20]. The Judge found that the appellant and his family would have been exposed to risk of ill treatment given PJAK was an illegal organisation [21]. The Judge found that the appellant's evidence as to the location of the PJAK HQ and the identity of its leader was accurate [22], but that his account of when he took part in political activities and became involved was vague and lacking in detail.

He was unable to give a detailed account of the one PJAK event that he attended with his uncle, including his age. The Judge found it lacking in credibility that his uncle would have taken the appellant, a minor, to such an event where he would have encountered other PJAK members and been in a position to identify them and thus put them at risk, and that he would allow him to bring home 3 CDs containing information about PJAK, and in circumstances where the appellant had no CD player [21]. At [23] the Judge found that the appellant's claim to have delivered weapons to rebels in Sardasht, and that his uncle was well known for supplying weapons, to be lacking in credibility. It was not credible that PJAK would allow storage of weapons on the family farm and delivery of weapons in the manner claimed. The appellant, his mother and young sisters lived there with no adult male presence [23]. The Judge found it lacking in credibility that following the uncle's arrest in 2018, the appellant's mother and sister did not go onto hiding. At [24] the Judge concluded that the appellant was of no adverse interest to the authorities, had no political profile and his account was not credible.

3. In the following paragraph [25] the Judge considered the medical evidence including an expert psychiatric report. The Judge found that in 2020 the appellant was diagnosed with moderate depression in 2020 and he had not yet undergone any treatment [25][28]. The medical records showed that in 2019 the appellant had no mental health problems. The psychiatrist found a link between the deterioration in mental health and the refusal of his asylum claim which was a factor in his depression [26]. The Judge then states: "*Given that I have not found the appellant's account of events in Iran to be credible I do not find that his diagnosis is attributable to the events which he claims took place in Iran*." The remainder of the decision focussed on the sur place activities [29-34] which I do not propose to set out as no issues arise from the grounds of appeal.

<u>Grounds of appeal</u>

4. Ground 1 - The Judge failed to consider the appellant's age when he left Iran and claimed asylum. The Judge failed to make a decision as to

whether the appellant should be treated as a vulnerable witness applying the Presidential Guidance Note No 2 of 2010 ("the Guidance"). The Judge relied on plausibility in not accepting the appellant's account and failed to take into account the appellant's own evidence and the expert report that supported his account.

5. Ground 2 - The Judge failed to consider the expert evidence of Dr Rebwah Fatah and or whether it corroborated the appellant's account.

6. Ground 3 - The Judge misdirected herself in finding that the mental health diagnosis did not corroborate the appellant's account (Mibanga v SSHD [2005] EWCA Civ 367).

7. Ground 4 - The Judge misdirected herself as to the correct test of risk on return.

Permission to appeal

8. Permission to appeal was granted by UJT Reeds who considered it arguable that the Judge failed to address the issues raised in the expert report of Dr Rebwah Fatah at paragraphs 68 and 264 onwards, when assessing the plausibility of the events in Iran.

9. Whilst there was no reference in the ASA (or in the amended ASA) to the application for the Presidential Guidance Note No 2 of 2010 as to vulnerability to be applied, the appellant's age and matters set out in the medical evidence were arguably relevant to consideration of credibility, even if the Guidance was not raised.

10. It was also arguable that the Judge erred in considering credibility before assessing the medical evidence.

11. The remaining grounds as to assessment of risk on return would have to be considered in light of the other grounds.

Pre - hearing

12. Following the grant of permission, the Upper Tribunal issued standard directions for the Appellant to file and serve a composite error of law bundle pursuant to the Presidential Guidance on CE-Filing and Electronic Bundles, dated 18 September 2023.

13. In the event, the error of law bundles were uploaded as 5 separate bundles on 20 February 2024. Each bundle was significantly non-compliant with the standard directions and the Presidential Guidance. For reasons best known to the representatives, the index to the bundle was provided at the start of the first bundle and there was no index on any of the separate parts of the bundle. No bookmarks were provided, making it very difficult to navigate around the relevant materials. The 5 bundles were uploaded out of sequence numerically. No explanation for these deficiencies was provided. Mr Eaton confirmed that he had a consolidated bundle but was unable to explain why the Tribunal had not been provided with the same.

14. All of this is simply not good enough. It is imperative that representatives do their level best to comply with the standard directions and Presidential Guidance. The directions are clear. There has now been ample time in which to adapt to the new system. If there are difficulties with filing the bundle on CE-File, contact should be made with the Tribunal's administrative staff.

The hearing

15. This matter came before us as an error of law hearing. Mr Eaton identified Ground 2 as the main ground of appeal but he was also pursuing the remaining grounds. He accepted that the appellant was aged 21 years at the date of hearing and that there had been no application made before the Judge for the guidance as to vulnerability to be applied. His main concern was that the majority of the Judge's findings were based on plausibility, which was unsafe given the appellant's age and mental health difficulties, which had not been considered in assessing the evidence, together with the failure by the Judge to properly consider the expert evidence (A/B page 70-156). In circumstances where there were no inconsistencies found, but the appellant's account was deemed to be vague, the expert report ought to have been considered. Mr Eaton drew our attention to specific points in the expert report which he argued were capable of supporting the

appellant's account - the connection as between the uncle's status as a married man with his high profile membership of PJAK (expert report para 263), the appellant's age when taken to a PJAK meeting in light of the importance of family connections (para 267-271), the existence of videos made by PJAK (para 274) and the storage and distribution of leaflets by low level PJAK members (para 275-280). Mr Eaton acknowledged that none of the ASA identified specific aspects of the expert report to be taken into consideration and the references in the ASA were largely in relation to general issues as to the situation in Iran (see ASA paragraph 7). There was no reference at all to the paragraphs of the report that Mr Eaton now referred. He further submitted that the Judge made no reference in her assessment of the evidence to the appellant's young age at all.

16. Ms Everett submitted that there were some indications that the Judge was aware of the appellant's young age. No application for the Guidance to be considered or applied was made on behalf of the appellant. The Judge referred to the expert report in her decision [5] but Ms Everett accepted that there was no further engagement with it in the Judge's assessment of the evidence. However, having regard to the content of the expert report it was difficult to see what difference it would have made to the Judge's approach to the evidence. The expert concluded that low level members would be involved with storage of leaflets (expert report para 277 & 279). Whilst there were some issues that the expert dealt with that the Judge could have considered, this was not material.

<u>Discussion and decision</u>

17. We consider the failure to apply the Guidance as to vulnerability. We fully acknowledge that the Judge made no specific reference to the appellant's age in her assessment of the evidence, although it is clear from the decision that the Judge was aware of his young age at the time of his asylum claim [7], [9]. We also accept that there was no application of, or reference to, the Guidance by the Judge or notably by

the appellant's representative. The aims of the Guidance are to create the best practicable conditions for the person to give evidence and for their vulnerability to be taken into account when assessing the credibility of that evidence. The ASA referred to the appellant's age and being an unaccompanied minor and to the medical evidence which set out effects of depression on his ability to give evidence in interview and at the hearing (ASA para 3, 20, 31 -33). The medical evidence opined that the appellant would find it stressful to be cross-examined and his depression could affect his ability to answer questions and recall information as to his past and ongoing fears in Iran (22.5.3 page 175 A/B). The appellant was an adult at the time of the hearing and was not receiving treatment for his depression. There was no cross-examination of the appellant as the respondent was not represented. The Judge asked a number of questions in respect of which there has been no criticism [17]. In such circumstances we find it difficult to criticise the Judge for not taking it upon herself to decide to apply the Guidance where no application was made for it to be applied.

18. In considering the country expert evidence of Dr R Fatah (A/B Page 70-156) we accept that there was no engagement with it at all in the decision and reasons. Either the report had not been read, or if it had then its content was not addressed in the decision, and so there must be real and substantial doubt as to what the Judge had made of the expert's views. If the report was rejected then reasons for so doing ought to have been given. Having read the very lengthy report and identified the points raised by Mr Eaton that were capable of supporting the appellant's claim (paragraphs 68 and 264 onwards), we emphasise that none of those specific references were identified for the Judge in the ASA. The points may have been the subject of submissions at the hearing but that has not been mentioned to us. Whether those points would have had any real impact on the assessment of the reliability of the evidence is questionable, but in any event the expert report was relevant evidence that the Judge ought to have considered.

19. The third ground raises the issue determined in Mibanga. We agree that the Judge appraised the medical evidence separately and addressed it only after having rejected the appellant's account as lacking in credibility or implausible [24][28]. We are not wholly satisfied however that the medical evidence was relied on as part of the credibility assessment. The causes of the appellant's depression were found to be unrelated to the events in Iran and that in 2019 there was no evidence of any depression or mental health issues. However, we do accept that the expert found that his depression could impact on his memory and recall. Whilst the majority of the Judge's findings were based on plausibility, there was a finding that his account of attending a PJAK event was vague and lacking in detail [22] and arguably his age and mental health should have been factored in.

20. Overall, considering the grounds raised individually, we find that these amounted to errors in law. In terms of materiality, we are just persuaded that, cumulatively and having particular regard to the fact that the majority of the Judge's findings were based on plausibility, the expert country evidence should have been given proper scrutiny and all of the evidence assessed in light of the appellant's young age and mental health, whether or not the Guidance was applied. We note, however, that if a Judge decides to treat a person as vulnerable that does not mean that any adverse credibility finding in respect of the person is to be regarded as inherently problematic and open to challenge on appeal.

21. Finally, we would add that in this appeal many of the concerns could have been resolved by the appellant's representatives making clear in the ASA and at the hearing what issues and evidence was regarded as material and they would do well to consider the points raised in Lata (FtT: principal controversial issues) [2023] UKUT 00163 (IAC).

22. Accordingly, we are in agreement with Mr Eaton that the Judge made a material error of law, such that her decision cannot stand and must be set aside.

23. The appropriate course, given the nature of the error, is for the matter to be decided afresh and, as both parties agreed, for the case to be remitted to the First-tier Tribunal for a *de novo* hearing before another judge aside from Judge Herlihy and with no preserved findings of fact.

Anonymity

24. It is appropriate to make an anonymity direction in this case, given that it concerns protection issues and that these proceedings are ongoing.

Notice of Decision

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside.

2. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Herlihy.

GA Black

Deputy Judge of the Upper Tribunal

Immigration and Asylum Chamber

14th March 2024