



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/06837/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 9 January 2018**

Decision & Reasons Promulgated

On 18 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

**R F
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Stevens of Fadiga & Co
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq born on 9 September 1998. He appealed against a decision of the respondent on 16 June 2016 to refuse his asylum claim. His appeal came before Judge of the First-tier Tribunal Herlihy (“the FTTJ”) who, in a decision promulgated on 13 July 2017, dismissed his appeal.
2. The appellant sought permission to appeal. This was granted by Judge of the First-tier Tribunal Shimmin in the following terms:

“...

2. It is arguable that the judge has erred materially when applying the facts he [sic] has found in this appeal to the country guidance.
3. Furthermore, it is arguable that the judge failed to properly consider the undue harshness of internal relocation in the particular circumstances of the appellant.
4. It is arguable that the judge failed to properly give the appellant credit and the benefit of the doubt as an unaccompanied minor.
5. I grant permission on all grounds.”

3. Hence the matter came before me.

Submissions

4. I indicated at the outset of the hearing that I had noted there was no reference, in the FTTJ’s assessment of the evidence, to the application of the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. This is despite the appellant being a minor at the date of the claimed events in Iraq which led to his flight, his arrival in the UK and at the date of his substantive asylum interview. Both Mr Stevens, for the appellant, and Mr Tufan, for the respondent, agreed this was the case.
5. For the appellant, Mr Stevens adopted his grounds of appeal to this tribunal. He submitted the FTTJ had failed to consider properly and to take into account, in assessing risk on return, the country guidance, **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC)**. The FTTJ had failed to consider the general risk the appellant would face on return to Baghdad, his city of origin; the FTTJ merely repeated the respondent’s claims in her refusal letter. Contrary to the FTTJ’s findings, effective protection was not available for the appellant (**BA (Returns to Baghdad)** referred). The FTTJ did not address the appellant’s specific case that he was at risk of kidnapping, given the risk factors identified in **BA (Returns to Baghdad)**. Mr Stevens also submitted the FTTJ had failed to consider properly the undue harshness of internal relocation to the Iraqi Kurdish Regions (“IKR”) in the light of **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)**: she did not consider the practicality of travel to the IKR or the appellant’s circumstances, including his age and lack of experience. The failure of the FTTJ to take the appellant’s age into account in her assessment of his evidence undermined her assessment of his credibility. It also tainted her adverse findings on risk on return, including the reliability of the appellant’s claim to fear militia groups and kidnapping. The FTTJ had failed to appreciate the appellant was not from the IKR; he was from Baghdad. He would have to relocate from his home area where he was at risk yet no findings were made as to how he could do this.
6. For the respondent, Mr Tufan accepted that, even if the assessment of credibility were tainted by the failure of the FTTJ to take into account the appellant’s age at relevant times, there was an issue as regards the assessment of risk on return: the country guidance had been modified by **AA (Iraq) v SSHD [2017] EWCA Civ 944**. While this judgment had been published only days before the decision of the FTTJ had been promulgated, it had been applicable nonetheless. A finding was required, in accordance with that latest country guidance, as to whether the appellant could access a Iraqi Civil Status Identity Document (“CSID”). That said, he submitted that, notwithstanding the failure of the FTTJ to take into account the vulnerable witness guidance, her findings of fact were such that they could stand in any event.

In any event, mere failure to refer to the guidance did not infer the FTTJ had not had it in mind. The documentary evidence was considered in accordance with **Tanveer Ahmed [2002] UKIAT 00439***. The FTTJ’s criticisms about “discrepant” evidence were valid and applied in any event, irrespective of the appellant’s age. It was accepted there was no analysis regarding internal relocation and there should have been. Insofar as the FTTJ’s adoption of the respondent’s case was concerned, Mr Tufan referred me to paragraph 14 of **Gheisari v SSHD [2004] EWCA Civ 1854**.

Discussion

7. It is not in dispute before me that the appellant was a minor when the events which allegedly caused him to flee from Iraq occurred. He was also a minor when he travelled to the UK, when he arrived here and when he was interviewed by the respondent. Nor is it in dispute that the FTTJ made no specific reference to the Joint Presidential Guidance. The guidance in **AM (Afghanistan) v SSHD [2017] EWCA Civ 1123** was published after the FTTJ’s decision was promulgated and she cannot be criticised for failing to refer to it. Nonetheless it provides helpful guidance on “the general approach to be adopted in law and practice by the First-tier Tribunal ... and the Upper Tribunal ... to the fair determination of claims for asylum from children, young people and other incapacitated or vulnerable persons whose ability to effectively participate in proceedings may be limited” [1].
8. **AM (Afghanistan)** reinforced at [33] the relevance of the Joint Presidential Guidance thus:

“Given the emphasis on the determination of credibility on the facts of this appeal, there is particular force in the Guidance at [13] to [15]:

“13. The weight to be placed upon factors of vulnerability may differ depending on the matter under appeal, the burden and standard of proof and whether the individual is a witness or an appellant.

14. Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those [who] are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.

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.”
9. The asylum interview record shows that the responsible adult who accompanied the appellant to that interview stated that “questions were sometimes hard to understand, such as can you explain what the people who attacked you looked like, it seems like a big question”. The appellant’s legal representative, who also attended that interview, is then noted to have said “I think it could be his age as well”. Thus even at the interview stage, there were apparent concerns about the impact of the appellant’s age on his ability to give a coherent account.

10. The FTTJ identified various discrepancies in the evidence of the appellant; she described at [31] his evidence as “vague and lacking in detail; he was only able to name Shia groups that he says kidnapped his father after talking to his mother or former neighbour from the United Kingdom”. No account is taken of the fact that the appellant was a minor, aged about 16 or 17, when his father was allegedly kidnapped in 2015, or the impact of his minority on his ability to give a detailed account. The FTTJ concludes “I find it likely this information would have been known to his mother and the Appellant at a much earlier stage”. Again, no account is taken of the appellant’s minority at that time in drawing that conclusion. The FTTJ notes the appellant’s “account of his [father’s] role is very vague and he is contradictory in claiming that his father did not speak about his activities but also claiming that his father’s role was well known”. No consideration appears to have been given to the impact of the appellant’s age in drawing that adverse conclusion.
11. I bear in mind Mr Tufan’s submission that there are sufficient other adverse findings on credibility such as to render immaterial any failure to take into account the appellant’s age; he submitted the appellant’s account would not have been found credible in any event. I do not accept that submission: the appellant’s account should have been assessed in the context of his age, development and maturity at the time he experienced the events central to his appeal and in the light of his age and maturity at the time he told the respondent about them. In both situations he was a minor (albeit no longer a minor at the date of hearing). It may be that some of the criticisms of the appellant’s evidence are validly made and would withstand scrutiny in the context of the appellant’s age and maturity at relevant times, but that is not an assessment which has yet taken place.
12. Mr Tufan further submitted that the FTTJ had rightly assessed the documentary evidence in the round in the light of **Tanveer Ahmed**. I cannot accept this submission when the assessment of the documentary evidence took place against the backdrop of a failure to take account of the impact of the appellant’s minority and maturity. Had the FTTJ taken into account, for example, the appellant’s immaturity in noting the late receipt of documents from Iran (paragraph 34 refers), this might have impacted on her assessment of his credibility overall. The FTTJ questions why the appellant only produced documents to the respondent “just prior to the hearing” yet failed to take into account that when he arrived in the United Kingdom in December 2015 he was aged 17.
13. The FTTJ did not take into account, in assessing the credibility of the appellant’s account of his father’s kidnapping, the guidance in **AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)** (which, to that extent, has not been overturned) that kidnapping has been, and remains, a significant and persistent problem which is likely to be underreported. Kidnappings are said to be linked inter alia to political motives. Thus, to that extent, the appellant’s account of his father’s kidnapping could be said to be consistent with the country guidance.
14. The appellant’s credibility is relevant to risk on return: the FTTJ did not accept he had lost contact with his mother (see [37]). She drew adverse inference from the failure of the appellant to have provided evidence that he had sought the protection of the authorities in Iraq yet failed to take into account he was a minor when living in Iraq. Whether or not the appellant has family support in Iraq is an issue of relevance to the assessment of risk on return (**AA (Iraq) v SSHD [2017] EWCA Civ 944**).
15. Similarly, as was conceded rightly by Mr Tufan, regardless of the feasibility of the appellant’s return, it was necessary for the FTTJ to decide whether the appellant had a CSID, or would be able to obtain one reasonably soon after arrival in Iraq (**AA (Iraq)**). The FTTJ made no such

finding: her findings on risk on return are based primarily on her adverse credibility finding as regards the appellant's claim to have lost contact with his mother (at [37]).

16. Given the above, it was not appropriate for the FTTJ merely to adopt the position of the respondent regarding risk on return (see [37]).
17. Taking these factors into account, I am satisfied that they, together, render unsustainable the adverse findings of the FTTJ on the appellant's credibility.
18. The decision of the First-tier Tribunal contains an error of law in the assessment of the evidence and the FTTJ's decision must be set aside in its entirety. No findings are preserved. Both parties were agreed that, in such circumstances, it was appropriate for the appeal to be decided afresh in the First-tier Tribunal.

Decision

19. 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. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from FTTJ Herlihy.
20. The anonymity direction made in the First-tier Tribunal is maintained.

A M Black

Deputy Upper Tribunal Judge

Dated: 6 February 2018

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.

A M Black

Deputy Upper Tribunal Judge

Dated: 6 February 2018