



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/00460/2018

THE IMMIGRATION ACT

Heard at Field House

On 13th June 2018

Decision & Reasons Promulgated

On 19 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

BA

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Fisher Counsel instructed by CK Solicitors

For the Respondent : Mr Tarlow, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Chana promulgated on the 5th March 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the

appellant's protection claim on the grounds of asylum, humanitarian protection and Articles 2 and 3 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. The appellant is a minor. In the circumstances I make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Chohan on 2nd April 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The grounds of appeal raise amongst other things the following issues: –
 - a) As the appellant's nationality was in dispute, the judge erred by failing to grant an adjournment in order to obtain an expert report to establish the appellant's nationality.
 - b) The judge erred by failing to take account of the fact that the appellant was a minor and therefore a vulnerable witness in assessing credibility.
 - c) Having found, contrary to the assertion by the appellant, that the appellant was an Iraq national, given that the appellant was a minor an assessment should have been made as to whether the appellant would be at risk on return to Iraq. The judge has failed to assess whether or not there was any risk to the appellant on being returned to Iraq.
5. Nowhere within the determination has the judge referred to the fact that the appellant is a minor or that due consideration has been given to that fact in assessing the credibility of the appellant. Whilst the judge has noted the date of birth of the appellant, nowhere has the judge indicated that in considering credibility due consideration has been given to the age of the appellant and whether the appellant is a vulnerable witness.
6. In the decision the judge acknowledges that an application for an adjournment was made so that an expert report could be prepared on the appellant's nationality. The appellant's representative was requesting a report to assess the nationality of the appellant as that had clearly been put in issue by the respondent. The judge in refusing the application for an adjournment indicates that she did not consider such a report was necessary given that there was ample background evidence with regard to Iran, sufficient to enable her to assess the appellant's nationality. In paragraph 32 Judge Chana states that the appellant has not provided any credible evidence that he is an Iranian National. The fact that he is a minor was material in considering whether he would know that evidence was needed and what evidence was relevant.
7. In assessing nationality the judge had noted that according to parts of the background evidence education in Iran was conducted in Farsi. However an examination of the background evidence submitted does indicate that the country of origin information report refers to the fact that "most" schools teach

in Farsi and that the authorities do not permit schools to teach in any of the Kurdish dialects. Most is not all and accordingly to base a conclusion that the appellant cannot be Iranian because he does not speak any Farsi and that he would have done if he had been educated in Iran failed properly to take account of the whole of the background evidence. Most was clearly indicative that some schools must permit teaching to take place in the Kurdish language, although such was not officially approved.

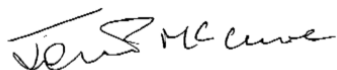
8. I also take account of the point made by the judge in respect of the Iranian calendar. Having given due consideration to matters set out, to make a finding on nationality in light of the appellant's age and without giving the appellant an opportunity of obtaining an expert report was in the circumstances a procedural error amounting to an error of law. Whilst some explanation may have been appropriate as to why no expert report had been prepared beforehand, clearly an expert's report was material to the issues in the case especially in light of the fact that the appellant was a minor.
9. Further having found that the appellant, a minor, was an Iraqi national the judge should have considered the country guidance cases in respect of Iraq to determine whether or not the appellant a Kurd could be returned to the Kurdish area, whether or not the appellant could obtain the required documentation to enable him to return and if so to which area of Iraq and what if any risk there was to a minor of being returned to Iraq. The judge appears not to have considered the country guidance case especially in light of the guidance given in it in respect of Article 15C humanitarian protection. Consideration should have been given to the cases of AA (Article 15C) Iraq CG 2015 UKUT 344 (IAC) and AA (Iraq) v SSHD 2017 EWCA Civ 944.
10. The representative of the respondent accepted that given the background evidence and given the information provided in the asylum interview record the conclusion that the nationality of the appellant could be determined without an expert report may not be sustainable.
11. It was also accepted that nowhere within the decision had consideration been given to the fact that the appellant was a minor nor was there any evidence that due consideration of that factor has been given in assessing credibility.
12. It was accepted that, as it had been found that the appellant was a national of Iraq and given the age of the appellant, an assessment should have been made of the risks appellant would face if returned to Iraq in light of the case law especially with regard to Article 15 C.
13. Whilst the judge has made an assessment otherwise of the credibility of the appellant's account, there is no assessment of the risk that the appellant would face if return were proposed to Iraq.
14. In the circumstances it was accepted that the grounds were made out and they clearly were such as to undermine the decision. It was accepted that there were

material errors of law in the decision and accordingly that the decision could not stand. Those issues impact upon the findings with regard to credibility, especially whether the appellant a minor is a vulnerable witness. In those circumstances the findings of fact cannot stand.

15. It was accepted that the proper course was for this matter to be remitted back to the First-tier Tribunal for hearing afresh with none of the findings of fact preserved.

Notice of Decision

16. I allow the appeal. I set the decision aside and direct that this matter be remitted back to the First-tier Tribunal and that the appeal be heard afresh
17. I make an anonymity direction



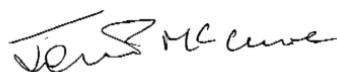
Signed

Deputy Upper Tribunal Judge McClure

Date 14th June 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 the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed

Deputy Upper Tribunal Judge McClure

Date 14 June 2018