



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

Appeal Number: PA/03179/2017

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Birmingham
On 6th February 2018**

**Decision & Reasons
Promulgated
On 6th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**R J J
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bedford, Counsel

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Iraq who said he was born on 22nd January 2000. He arrived in the UK on 23rd September 2016 and applied for asylum. That application was refused for the reasons given in an Asylum Decision dated 16th March 2017. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Row (the Judge) sitting at Birmingham on 12th September 2017. He decided to dismiss the appeal on asylum and human rights grounds for the reasons given in his Decision

dated 15th September 2017. The Appellant sought leave to appeal that decision and on 20th November 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Appellant claimed asylum on the basis that at the time of his claim he was 16 years of age and an ethnic Kurd from Kirkuk. The Appellant feared persecution if he returned to Kirkuk from ISIS because his father had been a member of the Ba'ath Party.
4. The Judge dismissed the appeal because although he found the Appellant's evidence to be plausible and that any discrepancies in that evidence were not of any consequence, he found the Appellant lacking in credibility and therefore although the Appellant was an ethnic Kurd from Kirkuk he was not at risk on return because the Judge did not believe the Appellant's account of events in Iraq. Further, although the Appellant was at risk on return to Kirkuk following the decision in **AA (Iraq) and SSHD [2017] EWCA Civ 944** it would be safe and not unreasonable for the Appellant to return elsewhere in the IKR.
5. At the hearing before me, Mr Bedford argued that the Judge had erred in coming to these conclusions. Although the Judge found that the Appellant satisfied the conditions set out in paragraph 339L of HC 395, the Judge had failed to give the Appellant the benefit of the doubt in his assessment of credibility. Further, when considering the Appellant's account, the Judge had failed to take into account the objective evidence relating to the conditions in Kirkuk at the relevant time. As regards the Judge's age assessment, he had put too much weight on the absence of an independent social worker's report. The Judge had ignored the Appellant's evidence as to his family background and childhood. Further, he had relied too heavily on the demeanour of the Appellant, and had failed to take account of the possibility of the Appellant being a vulnerable witness by virtue of his age and the advice of the Presidential Guidance in that event. Finally, the Judge had not dealt with the Appellant's account of what he had said whilst in Greece during his journey to the UK.
6. In response, Mr Mills argued that there had been no such errors of law. He pointed out that the Appellant had failed to satisfy all the conditions of paragraph 339L of HC 395, particularly paragraph 399L(v) as the Judge had made an adverse finding as to general credibility. The Judge had not insisted upon corroborative evidence. As regards the age assessment, the Judge had explained his decision at paragraphs 20 and 21 of the Decision. He had been entitled to take into account that there had been no response from the Appellant to the original adverse age assessment. The Skeleton Argument presented to the First-tier Tribunal had been silent on the subject. Again the Judge had been entitled to take account of his adverse general credibility finding when considering the Appellant's claims as to his age. The Judge had adopted a holistic approach to credibility. Finally, Mr Mills argued that the Guidance as to vulnerability did not apply when

the Judge made a clear-cut finding that the Appellant was well over 18 years of age. The Judge had referred to the finding in **AA (Iraq)** at paragraph 39 of the Decision and clearly had it in mind when considering the credibility of the Appellant.

7. I find no error of law in the decision of the Judge which I therefore do not set aside. The criticisms of the Decision relate entirely to the Judge's findings as to the credibility of the Appellant. In my view the Judge came to a conclusion about the Appellant's credibility open to him upon the evidence before him and which he fully explained at paragraphs 23 to 39 inclusive of the Decision. The Judge found a lack of corroborative evidence, but did not treat that factor as determinative. The Judge considered paragraph 339L of HC 395 but as Mr Mills argued, this paragraph could not operate to the benefit of the Appellant as the Judge made an adverse finding as to general credibility and therefore the conditions of that paragraph were not all met. The Judge found that the Appellant's claim was plausible in general terms and in that connection considered the decision in **AA (Iraq)** but he concluded that the Appellant had persistently lied about his age, and the Appellant had done little to help himself by way of obtaining documentary evidence. The Judge also found the Appellant's credibility to be damaged by operation of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The Judge applied the correct standard of proof and looked at in the round, his finding as to credibility cannot be faulted.
8. For these reasons I find no error of law in the decision of the Judge.

Notice of Decision

9. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

10. The First-tier Tribunal made an order for anonymity which I continue for the reasons given by the First-tier Tribunal.

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.

Signed

Dated 5th March 2018

Deputy Upper Tribunal Judge Renton