



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

Appeal Numbers: PA/09162/2016  
PA/09173/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham Civil Justice  
Centre  
On 6<sup>th</sup> June 2019**

**Decision & Reasons Promulgated  
On 18<sup>th</sup> June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**S R (FIRST APPELLANT)  
H R (SECOND APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr M Jones of Counsel instructed by Hasan Solicitors  
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellants appeal against a decision of Judge Juss (the judge) of the First-tier Tribunal (the FtT) promulgated on 2<sup>nd</sup> January 2018.

2. The Appellants are Iranian citizens of Kurdish ethnicity. They are brothers and were born on 30<sup>th</sup> October 2000 and 12 January 2002 respectively.
3. They arrived in the UK clandestinely in February 2016 and claimed asylum. Their claim was that their parents had been supporters of the PJAK Party in Iran which is a Kurdish Party working for the rights and freedoms of the Kurdish people. Members and supporters of this party would be at risk from the authorities in Iran.
4. The Appellants' case was that their parents made clothes for PJAK and delivered them. On occasions the first Appellant had accompanied his father.
5. On 26<sup>th</sup> December 2015 the Appellants were on their way home after grazing sheep. They were met by their maternal uncle who told them that their parents had been arrested in relation to their activities for PJAK and the lives of the Appellants would be in danger. The uncle hid the Appellants in a house in a nearby village for fifteen days. During this time their uncle told the Appellants that the authorities had visited his home, and also homes of his neighbours looking for the Appellants. The Appellants left Iran on 10<sup>th</sup> January 2016 illegally.
6. The Respondent refused the claims for international protection on 19 August 2016. The Appellants' appeals were initially heard on 16<sup>th</sup> March 2017 by Judge Graham of the FtT. The appeals were dismissed. That decision was however set aside by the Upper Tribunal in a decision promulgated on 18<sup>th</sup> September 2017, and the appeals were remitted back to the FtT to be heard afresh.
7. The judge heard the appeals on 7<sup>th</sup> December 2017. The judge dismissed the appeals and made findings in paragraph 18 of his decision which is set out below;
  - “18. However, the fact is that the maternal uncle of both Appellants is the direct relative of the Appellants' mother and the Iranian authorities had not targeted him in any way, making him of no adverse interest to the authorities there. Accordingly, on the lower standard, I find that the Appellants are not at risk of ill-treatment or persecution. If the Iranian authorities are not interested in a close adult relative they are not likely to be interested in boys who were 14-15 years old. Even if their account is believed, therefore, they fail to establish a well-founded fear of persecution.”
8. The Appellants then applied for permission to appeal to the Upper Tribunal.

### **The Application for Permission to Appeal**

9. It was contended that the judge had failed to adequately consider the Appellants' claims. At paragraph 18 the judge had provided his only justification for rejecting the asylum claims, which was that their maternal

uncle had not been arrested and therefore there was no risk to the Appellants.

10. It was contended that the judge had failed to consider the first Appellant's explanation at paragraph 37 of his witness statement and the judge had failed to point to any evidence that a relative as distant as an uncle (or brother in their mother's case) would be reasonably likely to be targeted by the authorities. The first Appellant accompanied his father on deliveries to PJAk, whereas there was no suggestion that the maternal uncle had any such involvement.

### **Permission to Appeal**

11. Permission to appeal was granted by Deputy Upper Tribunal Judge O'Ryan who noted that the sole reason why the appeals were dismissed is contained within paragraph 18. It was found arguable that the judge erred in law in failing to adequately consider the Appellants' claims. The first Appellant's account was that he not only assisted his father in making uniforms for PJAk but accompanied his father to deliver them. It was arguable that the judge had failed to take into account the first Appellant's claim that he had been involved, whereas his maternal uncle had not.
12. Following the grant of permission to appeal, directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

### **The Upper Tribunal Hearing**

13. Mr Jones relied upon the grounds upon which permission to appeal had been granted, and the grant of permission.
14. Mrs Aboni submitted that there was no material error and relied upon a response dated 21<sup>st</sup> November 2018, prepared pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the judge had directed himself appropriately and was entitled to take into account the lack of interest by the Iranian authorities in the Appellant's uncle. It was submitted that objective evidence referred to in the Respondent's refusal decision supported the judge's view that if there was no interest from the authorities in an adult relative, there will be no interest in children.
15. Mr Jones disagreed with that submission, contending that the Respondent had been selective in relation to references made to the Country Information and Guidance, Iran: Kurds August 2015.
16. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

17. Both representatives before me agreed that the only findings in the FtT decision are those contained in paragraph 18. I am afraid that I conclude

that those findings are not adequate. No finding is made as to whether the parents of the Appellants were arrested as claimed. This was a central point. Their arrest was not accepted by the Respondent in the refusal decisions.

18. No findings were made in relation to the claim that the Appellants' parents supported PJAK and made uniforms for them. No finding was made as to whether the Appellants' father delivered the uniforms to PJAK, and no finding made as to whether the first Appellant accompanied his father on those trips.
19. No finding was made as to what involvement the Appellants' maternal uncle had if any, in relation to PJAK. It is contended on behalf of the Appellants, that there was no suggestion that the maternal uncle had any involvement.
20. The judge does not specify in paragraph 18 which objective evidence he has considered and relied upon.
21. The Appellants complain that the judge did not make adequate findings of fact, and did not provide adequate reasons for concluding that they would not be at risk.
22. Guidance on giving reasons for decisions is contained in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) and for ease of reference I set out the head note to that decision below;

"It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in the case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."
23. I do not find that the judge has complied with the guidance referred to above. As there is no finding as to the involvement of the uncle, it is unclear why the authorities' lack of interest in him, would mean there would be no interest in the first Appellant, given his involvement in accompanying his father to provide uniforms for PJAK. The second Appellant is said to have had no knowledge of this, but his case very much depends upon what view the authorities would take in relation to the first Appellant.
24. As I find that adequate findings of fact, and adequate reasons have not been given, I must set aside the decision of the FtT with no findings preserved.
25. Both representatives agreed at the hearing, when I reserved my decision, that if a material error of law was found, as contended, then it would be appropriate to remit the appeal back to the FtT to be heard again.

26. I am conscious that there have already been two hearings in the FtT. That is regrettable. However I have considered paragraph 7 of the Senior President's Practice Statements and find that the appropriate course must be to remit the appeal back to the FtT again, because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be remade.
27. The appeal will be heard at the Birmingham Hearing Centre and the parties will be advised at the time and date in due course. The appeal is to be heard by an FtT judge who has had no previous involvement in this case.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings of fact preserved.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made because this is a claim for international protection, and the second Appellant is a minor.

Signed

Date: 6<sup>th</sup> June 2019

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

I make no fee award. The issue of any fee award will need to be considered by the First-tier Tribunal.

Signed

Date: 6<sup>th</sup> June 2019

Deputy Upper Tribunal Judge M A Hall

