IAC-AH-DN-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06772/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 September 2018	**On 4 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MR H D M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Imamović, Counsel instructed by Rodman Pearce Solicitors
For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a national of Iraq born on 1 March 2001. He is currently 17 years old. He appealed to the First-tier Tribunal against the decision of the respondent dated 15 May 2018 to refuse his claim for asylum leave. The appellant was granted discretionary leave as an unaccompanied

minor until 31 August 2018. In a decision promulgated on 9 July 2018, Judge of the First-tier Tribunal Row dismissed the appellant's appeal on all grounds.

2. The appellant appeals with permission on the following grounds:

(1) Failure to take into account a material matter in respect of the judge's findings that the appellant provided an inconsistent account whereas the judge identified only one inconsistency and that it could be reasonably inferred that the judge did not consider there to be substance in those other alleged inconsistencies.

(2) Failure to take into account a material matter in relation to the judge's assessment of plausibility at paragraphs [19] to [21]; the arrangements made to enter the UK were not the appellant's. The appellant had given evidence he had not been able to ask the agent and the judge did not take into consideration the appellant was a minor and that the agent was in a position of authority and the judge gave no weight to the fact that the agent had been in contact with his uncle and therefore his family would have known he was safe. It was also submitted that the appellant had sought to make contact with his family but this had been unsuccessful.

(3) Misdirection of law. The judge failed to note that it was the respondent who asserted that the restaurant was not genuine and the duty therefore was on the respondent to prove that allegation. The appellant produced a document which was asserted to be genuine and there was nothing granted to suggest that it was not and it was submitted the judge failed to properly assess the evidence in the round **Tanveer Ahmed v SSHD [2002] UKIAT 00439**.

(4) Failure to take into account a material matter with respect to the assertion that the appellant could relocate to the IKR and submitted that the appellant could not return home to obtain his CSID and the judge has already accepted that the appellant was at risk in his home area on account of the conditions there meeting Article 15(c) and submitted that the appellant would in any event face undue hardships by relocating to the IKR as he had no family connections there or connections there and did not have a CSID. It was submitted that the judge misapplied **AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944**. Although the judge referred to **AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC)** at paragraph 8, the judge failed to give substance to the guidance. The appellant has been accepted to have no adequate reception arrangements with his family by the respondent and the Immigration Judge did not take this into consideration.

Error of Law Discussion

Ground 1

3. Ms Imamović relied on her grounds for permission. With respect to the judge's findings at [19] and [20], although not raised in the grounds, Ms Imamović drew my attention to questions 99, 107 and 108 of the asylum interview record. However, it is evident that the judge took this into consideration together with the witness statement dated 3 April 2018: the appellant had said that his employer had been started to be asked to close the restaurant down two or three months after the appellant had started his job and 2-3 months after the first threat the restaurant was bombed. His evidence was that he started his job in 2016. The explosion was said to have happened on 22 August 2017. The appellant stated his witness statement was incorrect. The judge was entitled to take into consideration, as he did, that the witness statement had been prepared by the appellant's solicitors on instructions and the appellant would have had the benefit of the presence of a social worker (and I note that the judge took into consideration the appellant was a vulnerable witness, held the hearing in private and took into account that he is a young person and he might not remember anything important or think matters were important where they might seem so to an adult). Even if this ground was properly before me, which I am not satisfied it was, no error is disclosed in the judge's approach to this discrepancy.

4. The judge was entitled to reach the conclusion he did in relation to this discrepancy. It is also not the case that the judge could be said to have resolved the other discrepancies in the appellant's favour. This is evidently not the case including given that the judge concluded at [24] that he did not believe the appellant and at [26] that the account was fabricated. The judge was not required to set out all factual issues providing there were adequate reasons to justify the overall conclusion. The judge found, at [19], that there were aspects of the appellant's account which were not coherent and plausible. The judge was required to provide an explanation for the conclusions on the central issues on which the appeal was determined. There was no requirement for those reasons to be extensive if, as is the case in this decision, the decision as a whole makes sense (**Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC**)). No error of law is disclosed in ground 1.

5. Although the appellant's grounds appeared to suggest that only implausibilities were relied on, other than the inconsistency at [19], the judge went on at [23] to take into account that there had been no independent confirmation of the alleged bomb attack; whereas the appellant had been very precise with the date and location, there were no news reports of the bombing or the demonstrations that were said to follow it; there were news reports of other demonstrations in the area but not on the date that the appellant had stated. The judge was entitled to reach the finding that he did that it might have been expected that there would be a report available of something as significant as a bomb in an urban area.

Ground 2

6. Ms Imamović asserted the judge's findings were flawed from [19] to [22] and she cited the "power struggle" with the agent. She submitted it was inconsistent for the judge to resolve the Section 8 matter in the appellant's favour, as not damaging to the appellant's credibility for not claiming asylum before he came to the UK, given that he was very young and was doing what he was told, and then for the judge to take this as a matter relevant to plausibility in that if the appellant's family were seeking to ensure his safety this could have been done much closer to Iraq and at much less expense.

7. It is difficult to see where the alleged inconsistency lies: The first matter relates to whether the appellant's credibility was specifically damaged by his failure to claim in a safe country, which the judge found it was not given his age and that he was with an agent; the second matter is in relation to the judge's overall finding as to the credibility of the appellant's story that he had been sent to the UK for safety. The judge properly took into consideration all the evidence and it was available to the judge to find this to be implausible given the expense and length of the journey and that if his uncle wanted to ensure his safely this could have been done far closer to Iraq and at less expense and less danger to the appellant. That was a finding available to the judge.

8. Ms Imamović relied on the grounds, that the appellant had sought the assistance of friends and the community in the UK to locate his family and that this had been misrecorded. Although it is asserted the judge has incorrectly recorded this there has been no attempt to verify that assertion, for example by seeking permission to produce further evidence such as Counsel's record of the proceedings. Although it is asserted the judge has incorrectly recorded this, there has been no attempt to verify the assertion for example by seeking permission to produce further evidence such as Counsel's record of the proceedings.

9. The judge was entitled to take into account all the evidence including the appellant's oral evidence, which the judge recorded at [22], that the appellant had been in regular contact with his family by telephone until he entered France but since that time he had had no contact with them and had not telephoned and had made no enquiries of friends and had not sought their whereabouts on Facebook. He had not written to them at their home address, had not attempted to find them through Kurdish associations in the United Kingdom his explanation for that being that he did not have a telephone on the journey from Iraq and that his family did not give him a telephone number and that he used the agent's phone but did not ask the agent for his family's telephone number which the judge did not accept. I note that the alleged misrecording relates to seeking assistance of friends and the community to locate his family, whereas, as set out above, the judge has provided a number of other routes which the appellant did not pursue (which have not been challenged). Any error in misrecording therefore would not be material.

10. The First-tier Tribunal Judge gave adequate reasons for the conclusions he reached and was entitled to find that information from the appellant's family would have been invaluable in assisting his case and to find the flaws he did with the appellant's account for not having that information.

Ground 3

11. In respect of the arrest warrant, the judge stated, at [18], that there was "a challenge to the authenticity of the arrest warrant". The respondent in the refusal, at paragraph 40, noted that the warrant was issued to the appellant's address by post and was dated 24 August 2017 and the respondent stated that the arrest warrant was considered in line with **Tanveer Ahmed**: that it was of poor quality, the Iraqi imperial eagle was blurred with no strong defined lines, that the official stamps appeared to be stamped prior to the print as the type was covering the stamp, that there was no reference number for the case and no crime listed under the type of crime in legal provisions. The Judge recorded those difficulties, at [14]. Therefore, the respondent concluded, at 41, that no weight was given to this document in support of the claim.

12. The judge at [18] therefore might have worded his summary of the respondent's position differently. The respondent, at [40] and [41], set out the reasons why no weight was given to the document. Although the judge states that in short the respondent did not "believe that the document was genuine" any error in the judge's wording was not material. The error was one of terminology rather than a substantive error. The respondent had concluded that little weight could be given to the documents. It is settled law that if the respondent was not satisfied that the document was genuine that it was for the respondent to demonstrate that it was not genuine. Whereas if the respondent was not satisfied that any weight could be attached to the document, as was the case in this appeal, considered in the round the burden of proof remains with the appellant to establish that the document can be relied on.

13. In that context, there is no material error in the judge's findings at [18] that the appellant ought to have been in a position to provide further information or evidence in relation to the document although he was 17 and could not personally be blamed for making enquiries, he was represented by solicitors and such information ought reasonably to be have been available to him. That is not to have required corroboration and the judge correctly directed himself at [15] that there was no obligation to provide corroboration, although it remained for an appellant to make genuine efforts to substantiate his case and to submit all material facts at the appellant's disposal in line with the provisions of paragraphs 339L. The judge was not satisfied, for the sustainable reasons he gave, that the appellant had done so.

14. The judge, in reaching his conclusions at [24] and [25], directed himself that he "take into account all the above matters" which included the inconsistencies, implausibilities and that the appellant had failed to submit

all material matters at his disposal including in relation to the arrest warrant. The judge correctly took into account, again, the appellant's age and the low standard of proof however given the findings there was no error in the judge's ultimate conclusion at [24] that "even taking that into account I do not believe what the appellant says".

15. Although again at [25] arguably the judge's wording, in stating that the appellant failed to make reasonable enquiries about the document, might have been different, what the judge was saying was that the appellant had failed to discharge the burden on him to demonstrate that the document could be relied on as claimed. There was no material error in any miswording.

Ground 4

16. There was no material error disclosed in the judge's approach to the country guidance case law, Although it was argued that the appellant had been unable to return to his home area and that there was no evidence of the appellant's CSID or passport and the judge had failed to take into account the undue hardships for him to relocate to IKR with no family or no connections and without a CSID and that he had failed to properly take into account the country guidance of **AA (Iraq)** and **AAH**, the judge's findings must be seen in the context of his factual findings.

17. The judge did not accept the appellant is a credible witness. The judge concluded at [26] that the appellant did not work in a restaurant which was bombed. The judge found that the appellant had not taken part in any demonstration. The judge found that the appellant was not wanted by the Iraqi authorities or that he would be arrested or mistreated. The judge concluded at [26] that "his account is fabricated. I find that he has been sent to the United Kingdom by his family for other purposes than to ensure his safety."

18. The judge's subsequent conclusions must be considered in light of those findings. The judge reminded himself that the country guidance in **AA** indicates that it was not safe for the appellant to return to his home province of Salahadin. Although the respondent suggested it was now safe for the appellant to return there the judge found that there was no cogent evidence to persuade him to depart from **AA** and find that he could not return to his home area and the issue was whether he could safely relocate somewhere else in Iraq and specifically the IKR.

19. The judge properly considered that although the appellant was not from the IKR, he was an Iraqi Kurd and the judge made findings on the basis of **AA** and **AAH** including that there were domestic flights between Baghdad and the IKR but that the appellant would require a CSID or a valid

passport. Although the appellant argued that he did not have a CSID the judge specifically considered that this was for him to establish and that it was unlikely that his mother did not have any identification documents. Again, this must be considered in light of the judge's findings that the appellant had fabricated his case and the judge specifically reiterated at [31] that "I have found him to be an unreliable witness as to fact. It is likely that his family have arranged and paid for him to come to the United Kingdom."

20. The judge went on to find that there was no reason why the appellant should not be able to obtain his CSID from his family members or use their assistance to obtain another one. The judge was entitled to take into account, as he did, that his family had assisted him financially and would be likely to do so again. Although the judge was mindful and took into account throughout the determination, the young age of the appellant and that he was a minor, it was also open to him to take into account that the appellant claimed to have worked in Iraq in the past and that there was no reason why he could not in the future.

21. The judge's findings of fact, at [31] were directly relevant to his consideration of the risk factors identified. Paragraph 9 of the headnote of **AAH** summarises that those without the assistance of family in the IKR have limited accommodation options and that it is not reasonably likely, absent special circumstances, for an appellant to gain access to one of the refugee camps. The guidance goes on to find that there are apartments available for $300 to $400 per month and that although there are 'critical shelter arrangements' it would be unduly harsh to expect an appellant to relocate to the IKR to a critical housing shelter without access to basic necessities such as food, clean water and clothing. The guidance continues, that whether an appellant would be able to access basic necessities necessitates consideration of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme (VRS) and consideration should be given to whether an appellant can obtain financial support from sources such as employment (and further consideration should be given to whether an appellant is likely to secure employment), remittances from relatives, charity.

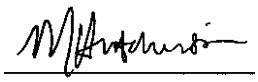
22. In reaching the findings the Tribunal did at [31], including that failed asylum seekers can apply for a VRS grant, that the judge was satisfied his family were likely to financially assist him and that the appellant, although a young man, had previously worked in Iraq and was a healthy young man and was therefore there was no reason he should not obtain employment again, the judge was properly applying the relevant country guidance and was satisfied in the appellant's case that he could safely relocate to the IKR. Those were findings the judge was entitled to reach on the available evidence._

Notice of Decision

23. The decision of the First-tier Tribunal does not contain an error of law and shall stand. The appellant's appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

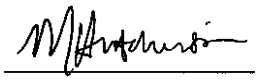
Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  Date: 26 September 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee was paid or payable so no fee award is made.

Signed  Date: 26 September 2018

Deputy Upper Tribunal Judge Hutchinson