IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002391
First-tier Tribunal No:
PA/52305/2023
LP/01260/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23rd September 2024

Before

UPPER TRIBUNAL JUDGE MAHMOOD

Between

ZK
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Tony Muman, counsel instructed by J.M.Wilson Solicitors
For the Respondent: Mr Edward Terrell, Senior Home Office Presenting Officer

Heard via Cloud Video Platform at Field House on 9 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, a national of Iran, appeals with permission against the decision of First-tier Tribunal Judge Row dated 21 March 2024, against the decision of the Respondent to refuse his protection and human rights claim.

2. Permission to appeal was granted by First-tier Tribunal Austin by way of a decision dated 10 May 2024.

3. The grounds of appeal were well drafted by Mr Ul-Haq of counsel. They contend in summary that:

   (a) The Judge materially erred in the assessment of the Appellant's credibility and adopted too a high a standard of proof; and
   (b) The Judge was wrong to hold that section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 ("section 8") was a mandatory consideration in this particular case.

4. On behalf of the Respondent, Mr Terrell provided me with a useful Rule 24 Reply pursuant to the Tribunals Procedure (Upper Tribunal) Rules 2008.

5. On behalf of the Appellant, Mr Muman amplified the grounds of appeal and he referred to matters set out within his useful speaking note which he had provided in readiness for the hearing. Mr Muman referred to the Asylum Interview Record (AIR) and to the Reasons for Refusal Letter. He said it was to be noted that the Respondent had expressly concluded that as a result of the Appellant's age and circumstances at the time of arrival in the United Kingdom and during his journey (he was then a minor) that his credibility had not been damaged. It was also to be noted that the Presenting Officer at the First-tier Tribunal had expressly confirmed that the Respondent was not taking a section 8 point because the Appellant was a child under the care of the Local Authority and a social worker was present during the hearing.

6. Mr Muman therefore said that the Judge was wrong to state as he did at paragraph 49 that section 8 was a mandatory consideration and to hold section 8 matters against the Appellant in the assessment of credibility.

7. Mr Muman also submitted that the Judge materially erred in respect of the standard of proof ground of appeal. That was because (1) the Judge had not referred to the standard of proof and (2) the Court of Appeal's decision in *MAH (Egypt) v Secretary of State for the Home Department* [2023] EWCA Civ 216 which referred to the low standard of proof and which stated that corroborative evidence is not required, was not followed by the Judge.

8. In his submissions, Mr Terrell referred to the Rule 24 Reply. He said that reading paragraphs 50 and 51 the Appellant was not being blamed, but his parents were. The Judge was not going behind the concession in the Reasons for Refusal Letter. It was submitted that the Judge was correct to invoke section 8 at paragraph 49 of his decision. In doing it was self-evident that the Judge's approach was to apply section 8 only in so far as it "potentially" damaged the Appellant's credibility. This was clear from the Judge's reasoning, which clearly took into account the Appellant's age and the circumstances of his flight.

9. Mr Terrell submitted that reliance on there being too high a standard of proof being applied did not get the Appellant anywhere. The Judge was not seeking corroboration. It was a statement of fact. A clear inconsistency was noted. Submissions today in respect of the Appellant being a vulnerable person were not raised previously.

10. I then heard from Mr Muman in reply, and I also heard from the parties in respect of disposal if I was to find that there was a material error of law in the Judge's decision.

11. Having considered the rival submissions I conclude that the Judge materially erred in law in applying section 8. I come to this conclusion for the following reasons.

12. Firstly, the Respondent's Reasons for Refusal Letter (cross referred with the Asylum Interview Record)) specifically dealt with section 8 and specifically stated that section 8 matters were not being held against the Appellant.

13. Secondly, the Respondent's Presenting Officer specifically stated at the hearing that section 8 matters were not being held against the Appellant.

14. Thirdly, the Court of Appeal at paragraphs 16 and 19 in *JT (Cameroon) v Secretary of State for the Home Department* [2008] EWCA Civ 878 made clear that a global assessment of credibility is required when assessing section 8 matters.

15. Fourthly, in *KG [2022] EWCA Civ 1578* the Court of Appeal held,

“22. In JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA (Civ) 878, [2009] 1 WLR 1411, it was held that it was mandatory to take the section 8 factors into account when assessing credibility, but that the phrase "as damaging the claimant's credibility" should be interpreted as meaning "as potentially damaging the claimant's credibility". It was still open to the fact-finding tribunal to decide on the facts of an individual case that the delay did not damage the claimant's credibility. Pill LJ explained at [21] that the statutory provision was:

> "*no more than a reminder to fact-finding tribunals that conduct coming within the categories stated in section 8 shall be taken into account in assessing credibility.*"

23. In an earlier passage, at [19], Pill LJ said that s.8:

> "*plainly has its dangers, first, if it is read as a direction as to how fact-finding should be conducted, which in my judgment it is not, and in any event, in distorting the fact-finding exercise by an undue concentration on minutiae, which may arise under the section at the expense of, and as a distraction from, an overall assessment. Decision makers should guard against that. A global assessment of* credibility *is required.*"

16. In my judgment, the Judge should have (1) alerted the parties that he would be taking section 8 into consideration, despite the Respondent’s concessions in the Reasons for Refusal Letter and confirmed during the hearing by the Presenting Officer and (2) in any event, to hold the matters against the Appellant (and not just his parents) when the Appellant was clearly a child in a very vulnerable position distorted the fact-finding exercise. The Judge specifically said he was taking section 8 into account, and he said at paragraph 51 that it went to the plausibility of the account and that, *“If fleeing harm in Iran the United Kingdom is a long way to flee. Safety could have been obtained far close to home at far less physical danger and expense…”*

17. The Judge's findings are thereby infected by the section 8 matters which he clearly took into account when assessing credibility.

18. In respect of the standard of proof ground of appeal, whilst this ground is not as clear-cut, in my judgment the Judge did seek corroboration and did not provide any or any sufficient self-direction, whether in the form of a modified Lucas direction or otherwise. The Judge's reference to the Appellant not seeking to obtain evidence which was relevant at paragraph 55 of his decision was clearly seeking corroboration. Against a background to there being no reference to the correct standard of proof also leads me to conclude that the Judge materially erred in law in relation to this ground of appeal too.

19. In my judgment, had the Judge applied the correct standard of proof and had the Judge followed the guidance of the Court of Appeal in *MAH (Egypt) v Secretary of State for the Home Department* [2023] EWCA Civ 216 then he might have come to a different decision. Paragraph 77 of the Court of Appeal's judgment provides,

> "…*where certain criteria are met, corroborative evidence is not required."*

20. I canvassed with the parties the appropriate disposal of this case in terms of future steps.

21. I have applied *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh*__[2023] UKUT 00046 (IAC) and have carefully considered whether to retain the matter for remaking in the Upper Tribunal in line with the general principle set out in Paragraph 7 of the Senior President's Practice Statement. I take into account the history of this case, the nature and extent of the findings to be made. In considering paragraph 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made, I consider that it is appropriate that the First-tier Tribunal remake the decision.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. None of the current findings shall stand.

2. I remit the matter to the First-tier Tribunal for re-hearing.

Signed Date: 10 September 2024

Abid Mahmood

Judge of the Upper Tribunal