Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00318/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 December 2018	**On 15 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

K H I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Harvey, Counsel
For the Respondent: Ms Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran, aged 15 who appealed the respondent's decision dated 21 December 2017 to refuse the appellant's protection claim. In a decision promulgated on 28 September 2018, Judge of the First-tier Tribunal Geraint Jones QC dismissed the appellant's appeal on all grounds.

2. The appellant appeals with permission on the grounds:

Ground 1: The judge erred in making a decision based on errors of fact in respect of the risk to the appellant's uncle and contact with his family;

Ground 2: Reliance on matters not put to the appellant;

Ground 3: Error in approach to Article 8.

Error of Law Hearing

3. Ms Harvey submitted that the appellant fled in haste and has maintained he does not know what happened to his uncle. At the appeal before the First-tier Tribunal it was his evidence that when the social worker telephoned they were told that his uncle was in prison. It was submitted that the judge ignored the evidence before him including the evidence of what was said by the social worker and what was set out in the appellant's second witness statement. It was submitted that there were insufficient reasons to address this. It was Ms Harvey's submission that either the judge has got the evidence wrong or he has drawn an inference not open to him.

4. In respect of ground 2 it was Ms Harvey's submission that the judge relied on matters not put to the appellant; for example it was held that there was no suggestion that the appellant's mother "could not obtain an untraceable mobile phone of the type routinely used by criminals involved in the drug trade in this country". It was submitted that this came out of the blue and that it was material as it was relevant to credibility and also to the judge's findings on Article 8. The judge found that the appellant claimed not to be in touch with his family whereas that was not what the appellant had said, rather he said that he could not get in touch with them because of his fear. In respect of the third ground, it was submitted that the judge did not make adequate findings on Article 8. Ms Harvey that particularly in relation to a 15-year-old child and an ethnic Kurd that there was "no basis whatsoever" for finding it would not be disproportionate to return him.

5. Ms Willocks-Briscoe submitted that the issue in relation to the appellant's uncle and the evidence given at the hearing before the First-tier Tribunal (on 14 September 2018) that his uncle was in prison, was not reflective of the appellant's evidence in general up to that point. In the appellant's first witness statement, at paragraph 30, the appellant referred to his uncle taking him to meet two other people and then taking him on foot to somewhere in the village and then handing him on to two people and then telling the appellant to hurry up. At paragraph 43 of the first witness statement the appellant stated that on the journey he was talking to his mother and his uncle and that he checked if his uncle was ok and his mother said he was fine although the appellant also stated that he did not know if 'he was just saying this'. At paragraph 44 of his first witness statement, the appellant refers to his mother telling him that the authorities had come and raided his house twice.

6. In the second witness statement, dated 5 September 2018, at page 314 of the appellant's bundle, the appellant addresses the issue of his uncle (the core of the appellant's claim being that he is Kurdish (which is not disputed) and that he had been delivering leaflets for his uncle and that the authorities found out about this and he had to flee) which the respondent had found to be speculative and inconsistent. At page 315 where the appellant addresses the refusal letter he states: "The Home Office have questioned why they would not arrest my uncle as well. I believe now that my uncle may not have been reported". It was only at the hearing, Ms Willocks-Briscoe submitted, just a week after that witness statement, that additional evidence was submitted in respect of the contact from the social worker, [KS] which, in a letter dated 6 September 2018 refers to contact she had with the appellant's mother suggests, at page 319 of the appellant's bundle, that the uncle "has been a victim of chemical warfare and is currently a political prisoner". Ms Willocks-Briscoe submitted that this evidence was considered by the judge as part of the evidence considered at [16] to [18] of the decision and reasons.

7. The judge considers the letter from [KS] and that the letter addresses the contact with the appellant's mother. At [27] the judge records the appellant being cross-examined in relation to the letter from the appellant's social worker [KS], including that "He said that he could not be specific about what had happened to his uncle but believed simply that 'something' had happened to him". It was Ms Willocks-Briscoe's submission that the judge had before him contradictory evidence and the fact that the judge came to the view that the appellant's uncle had not been arrested was a finding open to the judge. It was further submitted that the judge's findings had to be considered in the context of the credibility finding in relation to the fact that the appellant's uncle, who was with the children when they were distributing leaflets, did not have any difficulties from the authorities at the time when they did.

8. The judge finds at [34(ii)]:

> "The allegation is that all three were somehow identified and arrested. That allegation must be predicated on the basis that the authorities had somehow monitored those three accomplices so as to know who to arrest. And yet the uncle was not approached, let alone arrested."

Ms Willocks-Briscoe submitted that the judge's findings had to be considered in the context of all the evidence, including that prior to 6 September 2018 the appellant had confirmed in his witness statement, of the previous day, that he was in touch with the family and his mother confirmed that nothing had happened to the uncle. It was only at the very last minute that evidence was produced in the form of a letter from the social worker reporting a telephone call with the appellant's mother that it was alleged that his uncle had now been arrested.

9. At [34(ii), (iii), (iv)] the judge made findings on the appellant's account and found the appellant's evidence to be fundamentally flawed and untruthful because at the time the children were caught the appellant's uncle was

not. Ms Willocks-Briscoe submitted that those findings were open to the judge for the reasons he gave and the fact that he did not go into every point did not undermine his general findings.

10. In respect of ground 2 and the issue in relation to the phone, this did not take the appellant's account any further and Ms Willocks-Briscoe noted at paragraph 44 of the appellant's first witness statement, respondent's bundle E(8), the appellant referred to his mother using a sim card obtained illegally. In any event however Ms Willocks-Briscoe submitted that at [34(ix)] there was no suggestion that the appellant could not use Facebook to keep in contact with his family. Although the appellant says that he had been told not to contact his family because of the risk, in the context where the appellant's account was not accepted as credible by the judge it was open to the judge to find that the family were still in contact. The judge had not accepted the basis of the claimed fear and the judge has to weigh this in his credibility consideration.

11. The judge at [34(x)] addressed **SSH Iran CG [2016] UKUT 38** that someone of Kurdish ethnicity who left the country without a valid departure visa may find that their ethnicity is an exacerbating factor for a returnee otherwise of interest. But as the judge found that the appellant was not otherwise of interest the appellant did not fall foul of the country guidance. In respect of ground 3 again the fact that the judge had not found the appellant to be credible and found that he was able to contact his family was relevant to the findings in Article 8 and the judge was entitled to find that it was proportionate for him to return.

12. In reply Ms Harvey submitted that Ms Willocks-Briscoe had dealt with the evidence and not with the findings. The only way that the judge had addressed the issue of the uncle was with the single word "seemingly", that seemingly the name of the uncle had not been provided. Either the judge had misread the evidence or given it inadequate consideration. The appellant's evidence is that his mother had told him not to get in contact. In relation to the contact with the mother it could well have been that the mother was in Iran with an Iraqi SIM card but none of this was in the judgment. In respect of Article 8 it was submitted that a bold assertion was made and the judge has not weighed the evidence.

Discussion

13. The decision does not disclose an error of law. In respect of the appellant's uncle it is not the case that the judge's findings were limited to the word "seemingly" at [13]. The judge's findings at [13] were as follows:

> 'The appellant then claims that one (unspecified) day he went on a family tip to Mirawe and upon returning to his home village his mother informed him that he had done something very bad and a problem had arisen. He claimed that his uncle was also present and each of them informed him that the authorities had been to the house and were looking for him. He claimed that his uncle was in panic and said that the appellant must leave the country because if he was caught he

> would be executed. The appellant went on to claim that his uncle informed him that his three young accomplices had been arrested and the assumption was made that they had provided the appellant's name, but, seemingly, not that of his uncle, with whom they had contact; from whom they obtained the materials to be distributed; by whom they were directed concerning the houses to which distributions were to be made; and to whom they then returned for payment.'

14. It was the appellant's evidence including in both his witness statements that there was no evidence of any difficulties experienced by his uncle at the time he was arrested. Although the permission grounds rely on the fact that the appellant at interview said that he only stayed in the house for ten to fifteen minutes, as highlighted in the witness statements the appellant was talking to both his mother and his uncle on the journey to the UK and was subsequently in contact with his family and there were no difficulties highlighted with his uncle. In the appellant's second witness statement the evidence given is contradictory.

15. At paragraph 10 of his second witness statement the appellant stated, in response to the respondent's questioning in the refusal letter why they would not arrest his uncle as well, that "I believe now my uncle may not have been reported. I don't know why" and the appellant gives a number of reasons including that the uncle was not in the same area and that he would tell us where to go. However at paragraph 16 of the appellant's second witness statement, as recorded by the judge at [25], it is recorded that 'something has happened to my uncle but I am not sure if he was shot at or had a landmine explode under his foot'.

16. The judge took into consideration all the evidence, including the letter from the social worker [KS], and the judge records some of the contents of that letter at [16] to [18]. Although not expressly cited in the decision [KS] records that the appellant's mother told her that the 'uncle has been a victim of chemical warfare and is currently a political prisoner' (which differs from the appellant's account that he may have been shot at or had a landmine explode)

17. It was open to the judge to reach the core findings he did that it was not credible that the children were arrested and the uncle was not at the same time. The judge addressed, including at [25], [27] and at [34(v)] that it is now "belatedly" suggested that "something" happened to the appellant's uncle. It was the judge's findings that:

> "The authorities would inevitably have been far more interested in the person orchestrating the distribution of leaflets than the street runners who were actually distributing them. Perhaps that is why, belatedly, it is said that 'something' happened to the appellant's uncle. There has been no suggestion that anybody was able to provide any subsequent information to the authorities which would have led them to the uncle at a much later time. If, as the appellant speculates, his alleged teenage accomplices had identified him, it is beyond credence to think that they initially desisted from identifying or giving details about his uncle, but subsequently chose to do so."

18. It was the judge's findings, in essence, that the appellant's claim that he and the other children who were distributing leaflets were wanted by the authorities, yet his uncle who was with them at the time and who orchestrated the distribution, was not arrested at the same time, was fundamentally flawed, for the adequate reasons he gave. In rejecting that claim the judge also rejected (at [34(v)]) the belated suggestion that something had happened to the appellant's uncle (which was contained in the appellant's second witness statement). At 34(v) the judge gave adequate reasons for disbelieving that the appellant's uncle had subsequently had trouble with the authorities at a 'much later time' whereas he did not at the time the appellant claims he had to flee the authorities.

19. Those were findings which encompassed all the evidence and that were available to the First-tier Tribunal. It was not incumbent on the judge to cite each and every piece of evidence considered, but to give adequate reasons for the findings reached. I have reminded myself what was said in **MD (Turkey) v SSHD [2017] EWCA Civ 1958** that adequacy means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why he has lost. Ground 1 is not made out.

20. Equally in respect of contact with his family, although the permission grounds assert that the judge erred as the appellant has never claimed to be unable to get in touch with family but rather desisted as his mother told him it was dangerous, the judge was addressing the appellant's case. This included what was said in the skeleton argument (at paragraphs 52 and 53), that in respect of risk on return the respondent had stated that they had been unable to trace the appellant's family and it was submitted in those circumstances, where the social worker had used an Iraqi code to reach the appellant's mother and it was said that the appellant's mother had moved from her home, it was contended that the appellant could not be returned to his mother.

21. There was no error in the judge's finding that the family could continue to contact each other, including on Facebook as they had previously. Any error in the judge suggesting that an illegal telephone could be obtained without putting such a suggestion to the appellant (and as submitted by Ms Willocks-Briscoe, the judge would have been aware from the appellant's first witness statement that an illegally obtained sim card had been used previously) although perhaps not a finding that should have been made, is not therefore material.

22. Although the permission grounds assert that the judge made errors in his assessment of the contact with the family, which were material to the assessment of the appellant's credibility, I disagree. The judge records details of the contact including at [16] and [17] including that an Iraqi telephone code was used. This did not go to the core of the judge's

findings however and no adverse findings were made. Any factual error therefore, for example in stating that the appellant 'chose' to use an Iraqi code whereas the appellant's social worker tried the Iraqi code and his mother told her that she was in an Iranian border town and using an Iraqi sim card to avoid being traced, is not material

23. The judge took into consideration that the family had been in contact including through Facebook previously and found that the appellant would not be at risk and he could return to his family who could receive him upon return to Iran. The judge therefore, in terms, rejected the appellant's account that he could not contact his family as his mother told him it was dangerous as the judge had rejected the appellant's claimed account. Those were findings were available to the judge and disclose no material error.

24. In respect of ground 3 and the findings of the First-tier Tribunal on Article 8, it was submitted that the judge erred, at [37] in stating that he was 'far from persuaded that this case justifies a consideration outside the Immigration Rules'. The permission grounds concede however, that the First-tier Tribunal went on in the alternative to consider the key question of whether removal was proportionate. Albeit that such consideration was reasonably brief, it considered all the factors and in effect undertook the task required to conduct a 'balance sheet' approach (**Hesham Ali (Iraq) [2016] UKSC 60**).

25. I agree with Ms Willocks-Briscoe, that having made the findings he did, that the appellant's account was not credible and in rejecting the argument made on behalf of the appellant (including that the appellant's family members move around and the respondent is unable to trace any family members and therefore the appellant would be an unaccompanied child) and in finding that the appellant could contact his family and could return to his family in Iran, there can be no material error in the judge's subsequent finding that it would not be disproportionate for the appellant to be returned. Ground 3 is not made out.

26. The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

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: 28 December 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: 28 December 2018

Deputy Upper Tribunal Judge Hutchinson