Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05553/2017

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 19 October 2018	**On 13 November 2018**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S N
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr C Howells, Senior Home Office Presenting Officer
For the Respondent: Ms S Dipnarain of Duncan Lewis Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the respondent (SN). A failure to comply with this direction could lead to Contempt of Court proceedings.

2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

3. The appellant is a citizen of Iran of Kurdish ethnicity. He was born on 20 May 2000. On 5 November 2016, he arrived in the United Kingdom and on 22 December 2016 he claimed asylum. The basis of his claim was that his father had worked for the KDPI (a Kurdish political organisation in Iran) and had been publicly executed by the Iranian authorities. The appellant feared that he would be associated with his father's political activities and would, himself, be at risk from the Iranian authorities.

4. On 25 May 2017, the Secretary of State refused the appellant's application for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. The appeal was heard by Judge Trevaskis on 8 August 2017. Central to the appellant's claim before the judge was his credibility which had not been accepted by the Secretary of State. Judge Trevaskis found the appellant's claim to be credible and accepted that, as a consequence, he had a well-founded fear of persecution for a Convention reason if he returned to Iran. Judge Trevaskis, therefore, allowed the appellant's appeal on asylum grounds.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal. The single ground of appeal was that the judge had failed to give adequate reasons for accepting the appellant's claim and rejecting the respondent's case that his claim was not credible.

7. Permission was initially refused by the First-tier Tribunal (Judge C A Parker) on 7 November 2017. However, on 10 January 2018, the Upper Tribunal (UTJ Kékic) granted the Secretary of State permission to appeal.

8. On 17 October 2018, the appellant filed a rule 24 response seeking to uphold the judge's positive credibility finding and his decision to allow the appellant's appeal on asylum grounds.

The Submissions

9. On behalf of the Secretary of State, Mr Howells submitted that there had been a strong credibility challenge to the appellant's asylum account in the Reasons for Refusal Letter at paras 18-31. There were inconsistencies in his account, there were inconsistencies with the background evidence and part of his account was implausible. Mr Howells submitted that before the judge, the Presenting Officer had relied upon the Reasons for Refusal Letter together with additional supplementary submissions. Mr Howells submitted that the judge dealt with the respondent's reasons in a couple of sentences in para 34 of his determination. He rejected those reasons stating that:

> "I would characterise those inconsistencies as minor, trivial and not damaging to the central core of the appellant's claims".

10. Mr Howells submitted that these reasons were not adequate, in the sense that they did not explain to the losing party (here the Secretary of State) why the appellant's claim had been accepted. Mr Howells referred me to, and relied upon, the Upper Tribunal's decision in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) at [14] that it was:

> "necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explaining clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost."

11. Mr Howells submitted that the very brief reasons of the judge were insufficient to meet that requirement.

12. Mr Howells accepted that the Secretary of State's case was a "reasons" challenge. He quite properly accepted that the initial grounds in the application to the First-tier Tribunal had gone too far in suggesting that the brevity of the judge's reasons suggested that he had already made his mind up and he closed his mind to the evidence such that the hearing was unfair.

13. On behalf of the appellant, Ms Dipnarain relied upon the Rule 24 Notice. She submitted that the judge had complied with the requirement as set out in [14] of Budhathoki. She submitted that he had sufficiently set out the issues at paras 31-34 of his determination. The judge acknowledged that he had the benefit of hearing the appellant's oral evidence (at para 31). Further, he had assessed the appellant's credibility in the light of his age, namely that he was only 16 years old when he left Iran and only 17 years at the date of his asylum interview and had received "little or no education" (see para 33 of his determination). Ms Dipnarain submitted that the Secretary of State had accepted the appellant's lack of knowledge at para 17 of the refusal letter but nevertheless went on to accept that he was Iranian and Kurdish. She submitted that the judge had referred to the background evidence (at paras 17 and 18 of his determination) and that his reason for rejecting the inconsistencies as "minor, trivial and not damaging to the central core of the appellant's claims", together with appropriate allowance being given for shortcomings in his evidence due to his education and age, and that his claim was consistent with the background evidence, were adequate reasons to support his positive credibility finding and finding that the appellant was at real risk of persecution on return to Iran.

Discussion

14. A "reasons" challenge to a judge's decision may take one of two forms.

15. First, a judge must provide adequate reasons for any findings of fact or determination of issues of law. Sometimes that is couched in terms that there must be sufficient and adequate reasons so that the parties understand why they have won or lost a case (see Budhathoki at [14]) or, sometimes, so as to permit an Appellate Court or Tribunal to understand why the judge reached the decision.

16. The latter is set out in the well-known passage of Bingham LJ in English v Emery Reimbold & Strick Ltd [2002] 1 WLR 2409 at p.2418 D-E as follows:

> "[I]f the Appellate process is to work satisfactorily, the judgment must enable the Appellate Court to understand why the judge reached his decision. This does not mean that every factor which weighed with the Judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the Judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the Judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which was demonstrated that his recollection could not be relied upon."

17. As will be clear from that passage, the issue of whether the reasons are "adequate" requires an evaluation of whether the explanation given by the judge for his decision sufficiently engages with the issues in dispute between the parties and offers a basis for the judge's conclusion on those issues (see in the administrative law context, South Bucks District Council v Porter (No. 2) [2004] 1 WLR 1953 at p.1964 D-G *per* Lord Brown).

18. In Budhathoki the UT, in the context of a judgment by the First-tier Tribunal, said this:

> "We are not for a moment suggesting that judgments have to set out the entire *interstices* of the evidence presented or analyse every nuance between the parties. Far from it. Indeed, we should make it clear that it is generally unnecessary, unhelpful and unhealthy for First-tier Tribunal judgments to seek to rehearse every detail or issue raised in the case. This leads to judgments becoming overly long and confused. Further, it is not a proportionate approach in deciding cases. It is however, necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost."

19. That is, in essence, the issue in this appeal. Has the judge provided "adequate" reasons in his determination to explain the basis upon which he has reached his positive adverse credibility finding in the light of the "issues" raised by the respondent.

20. The second type of "reasons" challenge is somewhat distinct. That is a challenge which does not raise the "adequacy" of reasons in the sense used in the first type of challenge but rather challenges the reasons actually given for a finding of fact. That is, in effect, a rationality challenge to the actual reasons given. The parties know why they have won or lost but contend that the reasons are not legally sound. In the context of a factual finding, that is likely to require an enquiry into the rationality of those reasons.

21. That is not the challenge brought by the Secretary of State in this appeal. The Secretary of State's grounds do not challenge the rationality of any reasons given by the judge but rather contend that he has not given sufficient reasons to explain his

positive credibility finding given the matters raised by the Secretary of State in the refusal letter.

22. In his determination, the judge set out the evidence and at paras 19-24 and 25-30 respectively he set out the parties' submissions as follows:

> "*Respondent's Submissions*
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> 19. Ms Arnesen for the Respondent relied upon the reasons for refusal letter.
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> 20. The Appellant is now over 17; he was 16 when he fled from Iran, yet claims that he did not know what his father did for a living. He has given inconsistent accounts regarding his neighbours, when his father left and returned home and how he discovered his father was dead.
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> 21. He has claimed that his solicitors failed to give full details of his claims in his witness statement, but he has not given notice to those solicitors of his intention to make allegations of inadequate professional services.
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> 22. He has given an implausible account that, on a single day, he went to his neighbours, was told that his father was dead, sent for his brothers, gave the family home to a smuggler and left the country.
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> 23. In his interview he stated that his father and two brothers were in Iran; although his social worker sought to correct this answer, it is submitted that it was in fact true; he has never before said that his neighbour offered to look after his brothers after he left the country; he has provided very little detail of the journey. When he arrived in Italy he gave a false name. He has provided very little information to the Red Cross to assist in locating his family.
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> 24. He has limited leave until 20 November 2017. He does not face risk on return and will therefore be returned after he becomes an adult.
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> *Appellant's Submissions*
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> 25. The appellant's representative relied upon his skeleton argument.
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> 26. The assessment of the credibility of the appellant must bear in mind that his experiences in Iran were up to the age of 16, and that he was only 17 years old at the date of his asylum interview. He has given a consistent account, and the only matters raised by the respondent are minor. It is plausible that his father would not have wanted him to know about his activities with KDPI for his own protection; the character references describe the appellant as being respectful and honest, and it is therefore plausible that he would not have questioned his father about his activities.
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> 27. The appellant denies that he ever claimed that his father was out at night, and has always said that he was out during the day. There is background evidence that members of KDPI are publicly executed.
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> 28. His account of his flight from Iran is credible in the circumstances existing in that country. He has also provided a plausible explanation for the apparent alias recorded in Italy; that allegation is contradicted by the CID notes and should therefore be disregarded.

29. The Appellant has engaged with Red Cross because he is anxious to find his brothers.

30. The appellant has been in the United Kingdom since November 2016, and has established private life in this country which engages article 8."

23. Then, at paras 31-34 the judge made his findings, including a positive credibility finding in favour of the appellant as follows:

"Findings (international protection)

31. The appellant's claim depends upon a finding of credibility. I have had the benefit of hearing him give evidence and undergo cross examination. The respondent accepts that he is an Iranian national. There is no apparent challenge to his claim to be of Kurdish ethnicity but, if there is, I find as a fact that he is of Kurdish ethnicity, on the basis of his unchallenged evidence to that effect.

32. I have considered the claim by the appellant that he fears persecution because of his father's activities on behalf of KDPI. His case, taken at its highest, is that, unknown to him, his father was working for KDPI; he only became aware of this after his father had been missing for two days, and the appellant was informed by a neighbour that his father had been executed by the authorities, an event which had been reported and possibly photographed in a newspaper; the neighbour advised the appellant that he should flee the country, and assisted him to do so, after the appellant informed his younger brothers and handed over the family home to a smuggler as payment for helping him to escape.

33. In assessing the credibility of the appellant's claims, I remind myself that he was 16 years old when he says that he left Iran, and 17 years old at the date of his asylum interview; I also accept that it is likely, as he claims, that he received little or no education, and would therefore be likely to be somewhat vague about the details of his journey outside Iran.

34. I recognise that the burden of proof on the appellant is a very low one, namely a reasonable degree of likelihood; however, such a claim must contain elements of internal and external consistency, in the absence of compelling corroboration. There were a number of inconsistencies in the appellant's account, which have been identified in the reasons for refusal and in the respondent's submissions above, and which is not necessary for me to rehearse here. I would characterise those inconsistencies as minor, trivial and not damaging to the central core of the appellant's claims. Suffice to say, having made what I regard as appropriate allowance for the claimed shortcomings in the appellant's education and his age, I am satisfied that he has presented a claim which is sufficiently consistent with itself and with background information to persuade me to the required standard that he has a well-founded fear of persecution for a Convention reason."

24. To an extent, the judge does give reasons for his positive credibility finding. As Ms Dipnarain submitted, he noted that he had the benefit of hearing the appellant give evidence orally and be subject to cross-examination. He also noted the appellant's age and lack of education as being relevant to, in particular, the fact that he was "somewhat vague about the details of his journey outside Iran".

25. The bulk of the judge's reasons, however, are in para 34 and they are very brief indeed. Without setting out the "number of inconsistencies in the appellant's

account" relied on in the refusal letter, the judge explained that they were: "minor, trivial and not damaging to the central core of the appellant's claim". The judge again referred to making "appropriate allowance" for the appellant's lack of education and his age and that his claim was "sufficiently consistent with itself" and also "with background evidence" such that the judge accepted the appellant's account.

26. During the course of argument, I enquired of Mr Howells why it was that the Secretary of State contended why he did not know the basis upon which the judge had found in the appellant's favour on the issue of credibility. Referring to the judge's characterisation of the inconsistencies as "minor, trivial and not damaging to the central core of the appellant's claims", I enquired whether Mr Howells was not, in effect, requiring the judge to give 'reasons for his reasons'. Mr Howells' response was that the brief reasons were not "adequate" as they did not engage with the matters relied upon by the respondent before the judge, namely that there were inconsistencies in his evidence about the involvement of his neighbours, whether his father worked at nights or returned home at night having worked in the day and as to how he discovered that his father was dead. Further, the judge had not engaged with the claimed implausibility of his account that in a single day, when his father did not return, he went to see his neighbours, was told that his father was dead, they had sent for his brothers and he gave away the family home to a smuggler that day and left the country.

27. This case is not on 'all fours' with that of Budhathoki. As is clear from the UT's judgment, which at [4] sets out the First-tier Judge's reasoning in that case, the judge effectively gave no reasons of any kind to support her findings of fact. That was a quintessential failure to provide "adequate" reasons allowing the parties and, indeed, an Appellate Tribunal to know the basis upon which the judge reached her findings of fact and decision to allow that appellant's appeal.

28. Here, by contrast, the judge has, as Miss Dipnarain submitted, given some reasons. However, even bearing in mind the "caveat" of the Upper Tribunal in Budhathoki at [14] that a judge need not "analyse every nuance between the parties", the judge was still required to engage sufficiently with the issues in dispute and to provide, albeit perhaps brief, reasons for preferring the appellant's account on those issues which would then sustain a rational factual finding in his favour. Mr Howells began his submissions by pointing out that there had been a strong credibility challenge both in the refusal letter and, not least through its reliance at the hearing, before the judge. That is, in my judgment, an entirely fair characterisation of the issues raised by the Secretary of State at paras 18-31 of the refusal letter. There were marked inconsistencies in the appellant's account, including how he had engaged with his neighbours and discovered that his father had been executed which was reported in one, or perhaps more than one, newspaper and whether his father worked during the day for the KDPI or at night (see especially paras 18-27). Likewise, it was a live issue that the appellant's account that all this transpired on a single day which included making arrangements with a smuggler to whom the appellant gave the family home.

29. The nature of these inconsistencies is not entirely clear from the judge's recitation of the respondent's submissions at paras 19-24. Although the judge refers to there being "a number of inconsistencies" set out in the refusal letter at para 34 of his determination, his only engagement with them is to say that they are "minor, trivial and not damaging to the central core of the appellant's claims". That, in my judgment, does not adequately engage with the "issues" raised, and relied upon, by the respondent before the judge. Whilst the Secretary of State (and indeed the Upper Tribunal) has some grasp of why the judge found in the appellant's favour, it is the very barest of understandings amounting to no more than an overarching conclusion applied to a range of points raised by the respondent. Even the cautiously curious reader is left unclear what was the substance of the judge's reasoning on the critical issues which had to be resolved in order to make a finding in respect of the appellant's credibility. In addition, there is no reference to the 'implausibility' issue raised by the respondent.

30. The judge has, in my judgment, failed to "resolve the key conflicts in the evidence and explain in clear and brief terms" his reasons for preferring the appellant's case to that of the respondent.

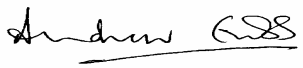
31. Accordingly, I am satisfied that the judge materially erred in law in reaching his adverse credibility finding and in allowing the appellant's appeal.

Decision

32. Thus, the decision of the First-tier Tribunal to allow the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

33. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* hearing before a judge other than Judge Trevaskis.

Signed



A Grubb
Judge of the Upper Tribunal

6, November 2018