Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00400/2017

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 6th September 2017	**On 12th September 2017**

Before

UPPER TRIBUNAL JUDGE COKER

Between

ZS

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, instructed by Fountain solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant/parties in this determination identified as ZS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. The appellant, from the Sulimaniya Governate of the IKR and a minor date of birth 28th April 2000, was refused asylum by the respondent for the reasons set

out in the annex to a letter dated 29th December 2016. He was granted discretionary leave to remain until 28th October 2017. The basis of his asylum claim was:

(i) His father had been killed by a high-ranking member of the KDP when he, the appellant was aged about 3;
(ii) He was left in the care of his maternal grandmother aged about 7 and has had no contact with his mother since then;
(iii) Around the end of 2014 his grandmother told him he had either to take revenge for the killing of his father or leave home;
(iv) He feared the general security situation in Iraq and feared recruitment by ISIS and further abuse from his grandmother.

2. The appellant's appeal against the decision was heard and dismissed by First-tier Tribunal judge Ghani in a decision promulgated on 1st March 2017. The appellant was aged 16 years and 10 months at that time. The First-tier Tribunal Judge found it not credible that his maternal grandmother would require him to seek revenge for the alleged killing of his father; that he did not have a dispute with his grandmother; that he was not at risk of being recruited by ISIS. The First-tier Tribunal Judge found that he could return to IKR from where he originates and that even if the account of problems with his grandmother were to be accepted, there was sufficiency of protection available in the IKR. In so far as he feared recruitment by ISIS, the First-tier Tribunal judge found, although not explicitly stated, there was no evidence to indicate the appellant was at risk of recruitment by ISIS, that Sulimaniya is not contested and is virtually violence free.

3. Permission to appeal was sought, and granted, on the grounds that

(a) The judge erred in law in failing to take into account in reaching his decision that the appellant is a minor and thus falls into a Particular Social Group;
(b) That the judge erred in law in failing to consider and make findings on how he could return to the IKR as a minor and find his family
(c) The judge erred in law in failing to adequately consider s55 BCIA 2009 in that he only considered this in the context of Article 8 and not in the context of return and whether there were adequate reception arrangements;

4. The appellant was a minor at the date of the hearing. It does not appear from the documents before the Tribunal that any documentary evidence was placed before the Tribunal on the issue of return to IKR. The appellant's evidence was that his uncle's wife was someone with whom he did not wish to live and that his uncle had paid for him to leave IKR because he didn't want him around. The appellant also gave evidence that his grandmother was bedridden, after being bitten by a snake, and was living with the uncle and his wife.

5. The essence of the findings of the First-tier Tribunal judge were that the appellant's claim to be at risk or in dispute with his maternal grandmother were not credible. The appellant gave his uncle's address to the respondent but said he did not want to live with him and that he has had no contact with him since leaving the IKR. There has been no tracing undertaken by the respondent. Nor was it credible that he was at risk of forced recruitment to ISIS.

Error of law

6. There was no challenge to the credibility findings by the First-tier Tribunal judge, rather it was a claim that the judge had failed to make findings with regard to the appellant's return to the IKR. There was no evidence before the First-tier Tribunal, other than that which was disbelieved, in relation to his grandmother and his uncle. The appellant knows where his uncle lives and has expressed nothing significant other than he did not wish to live with him. There was no significant evidence that the uncle was not suitable or unable to care for the appellant. A desire not to be cared for by a relative does not, without more, enable a finding to be made that there are inadequate reception arrangements available. The appellant did not assert there were no adequate reception arrangements; he relied upon an account which was disbelieved namely that his grandmother had been threatening him. The grandmother may, in any event, be bedridden but she has not, according to the findings of the First-tier Tribunal judge, been threatening towards the appellant.

7. It does not appear that it was argued before the First-tier Tribunal that the appellant was a member of a Particular Social Group (lone minor) and at risk of being persecuted because of that. Although permission was sought and granted on that ground, it cannot be an error of law by the First-tier Tribunal to fail to consider and reach a decision on something that has not been pleaded. It seems this ground is relied upon because of the adverse findings by the First-tier Tribunal judge for the appellant's earlier account. In any event if the appellant is within the rubric of PSG, there was no evidence before the First-tier Tribunal that he would be or may be subject to persecutory action because of that. Although Mr Howard said that if I were to find an error of law he would seek to file evidence relating to this, that is not the purpose of the hearing before me today. This is not a rolling appeal where new grounds or claims can be raised before the Upper Tribunal when considering whether there is an error of law in the First-tier Tribunal's decision. There is no error of law by the First-tier Tribunal failing to take a decision on a matter that was not pleaded either in documents or orally, and where no evidence had been submitted to support such a claim.

8. Although the First-tier Tribunal did not make a finding that there were adequate reception facilities available for the appellant, the credible evidence before the First-tier Tribunal Judge was that he had an uncle whose address he knew, and a grandmother. There was no evidence of persecution of teenagers with family members and no credible evidence that this appellant was at risk of being persecuted on return to Sulimaniya. The findings of the First-tier Tribunal judge were that the appellant was not at risk of harm from his grandmother. There was no suggestion that he was at risk of being persecuted or harmed by his uncle. On this basis, the fact that the judge made no specific findings on adequate reception facilities is not an error of law – the appellant would be returning to family in the IKR where there is no risk of being persecuted.

9. Although the grounds of appeal assert that the First-tier Tribunal judge failed to consider adequately s55 BCIA 2009 in the context of the mechanics of return and whether there are adequate reception facilities, this ground is

unparticularised. There is no assertion that evidence was placed before the First-tier Tribunal judge that the respondent would seek to return the appellant as if he were an adult rather than as a minor with the usual safeguards that apply for minors travelling alone. Furthermore, the findings of the judge as regards family are such that in the absence of credible evidence and findings by the judge that the appellant would not be met by his family with whom he has no conflict, there is every reason to suppose that the appellant would be met by his family and would return to their care. This is particularly so given the appellant's own evidence that it was his uncle who helped him leave the country.

10. In summary, therefore there is no error of law by the First-tier Tribunal judge such as results in the decision being set aside to be remade.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

The decision of the First-tier Tribunal Judge dismissing the appeal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 7th September 2017

Upper Tribunal Judge Coker