Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number: AA/10647/2013**

THE IMMIGRATION ACTS

Heard at Field House, London	**Determination Promulgated**
On 3 December 2014	**On 5 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

AF
(ANONYMITY ORDER CONTINUED)

Appellant
and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms P Solanki, instructed by Asylum Aid
For the Respondent: Mr M Shilliday, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Iran, appealed to the First-tier Tribunal against the decision by the Secretary of State of 15 November 2013 to refuse his application for asylum. First-tier Tribunal Judge C M

Phillips dismissed the appeal and the appellant now appeals with permission to this Tribunal.

2. The background to this appeal is that the appellant claims to be a minor with a date of birth of 13 March 1997. The respondent disputes this and considers his date of birth to be 13 March 1995. In summary the appellant's case is that in 2009 he attended three demonstrations in Iran with his brother who was involved in the Green Movement. The appellant went to join his sister for the summer holidays. Whilst he was there his brother was arrested and has not been seen since. He says that there were photographs of him in green clothing taken at the demonstrations on his brother's camera which the authorities must have seen and that the family home was raided and the authorities were looking for him. The appellant went from his sister's home to the tribal area to stay with his grandfather's tribe. He stayed there for 1 year and three months. His family arranged for him to leave Iran with an agent and he left in 2010. Ten days later he arrived in Italy where he was arrested and fingerprinted on 31 December 2010. The appellant's account is that the group travelled onwards and he was raped by an agent. They spent a long time in the forest and the appellant arrived in the UK and claimed asylum on 30 March 2011. The appellant claims that he attended a meeting of the United Iranian Party in the UK. He produced a photograph from a magazine which he claims shows him there. The appellant claims to have converted to Christianity in the UK. The appellant's sister came to the UK in January 2014 and has claimed asylum.

Error of law

3. The First-tier Tribunal Judge found that the appellant was born on 13 March 1995 as assessed in the age assessment carried out by City of London Department of Community and Children's Services. The Judge also took into account that the appellant had withdrawn his judicial review challenge to the age assessment *'which on the face of it demonstrates that he has accepted the assessment'* [36]. The grounds of appeal to the Upper Tribunal challenge this finding because it is contended that only the last page of the age assessment was before the First-tier Tribunal and that the Judge could not therefore have been satisfied that the age assessment was compliant with the decisions in R (B) v Merton LBC [2003] EWHC 1689 (Admin) and R (T) v Enfield [2004] EWHC 2297 (Admin). At the hearing Ms Solanki relied on Home Office guidance on assessing age, she referred to paragraph 5.3 which says that case owners should request a full copy of the age assessment. She also submitted that there could be a number of reasons why the appellant withdrew his challenge to the age assessment.

4. Mr Shilliday submitted that it is for the appellant to prove that he is a child and not for the respondent to prove that he is not. He submitted

that in challenging the age assessment the appellant must have seen the full assessment and that the Secretary of State has not. He submitted that the Judge considered all of the other evidence before him in reaching his conclusion as to the appellant's age including the birth certificate.

5. I accept that the full age assessment was not before the Judge. However Mr Shilliday made a valid submission that the appellant must have seen the assessment if he sought to challenge it by way of judicial review. If there were aspects of it which made it unreliable the appellant could, and perhaps should, have produced it for the Judge to support those submissions. Also, the Judge took into account the fact that the appellant had withdrawn his challenge to the age assessment. Whilst Ms Solanki submitted that there could have been a number of reasons for doing so there was no evidence before the Judge as to why those proceedings were withdrawn. Had they been withdrawn for reasons other than reasons relating to the merits of the challenge evidence to that effect could have been put before the Judge. The Judge was entitled in these circumstances and in the context of all of the evidence to draw the inference she did from the fact that the appellant had withdrawn the challenge to the age assessment.

6. The Judge also relied on the issues highlighted by the expert in relation to the birth certificate and the conflict between the appellant's claimed age and the evidence of his sister [36]. The Judge also relied on the conflicting evidence as to the appellant's date of birth such as the fact that his year of birth was given as 1990 when he was fingerprinted in Italy and as 1995 and 1996 in medical records and medical reports [35]. Whilst the Judge wrongly states that the onus of proof in relation to this matter was on the respondent in relation to the appellant's age [36], I am satisfied that this is not a material error as the Judge properly weighed all of the evidence before her and concluded that the appellant’s year of birth is 1995, making him 18 at the date of decision and 19 at the date of the First-tier Tribunal hearing.

7. The second ground of appeal is that the Judge erred in failing to make a specific finding on the appellant's claim that he was raped on the journey to the UK. However I am satisfied that the Judge did accept the appellant's claim in relation to this matter. Whilst it would have been clearer had the Judge specifically said that she accepted it I am satisfied that it is sufficiently clear that she did so. The Judge referred to it in the context of the human rights grounds. She referred to the appellant's ‘traumatic experience’ and ‘trauma’ that occurred as a result of a ‘criminal act during his journey’ [62] and his ‘traumatic life experience’ [63]. I am satisfied that this demonstrates that the Judge did accept the appellant's account that he was raped on the journey to the UK.

8. Ms Solanki submitted that the Judge did not consider the medical evidence in the light of this finding. She submitted that there needs to be an assessment as to whether the treatment identified in Dr Fairweather's report should be carried out in the UK. However, I accept Mr Shilliday's submission that Dr Fairweather's report states only that any treatment should be carried out in a stable and safe environment [6.9.1, 6.9.4]. There was no evidence before the Judge as to whether such treatment was available in Iran so she cannot be criticised for so finding [61].

9. In terms of the medical evidence the Judge set out a summary of the reports before her and concluded that the report from Dr Fairweather commissioned by his representatives was 'different in content and scale' from the other medical evidence and conflicted with the other reports and the evidence of Rev Nodding who described the appellant as a 'self-confident, enquiring and capable young man'. The Judge concluded that the medical evidence did not support the appellant's evidence that he had been getting therapy for his mental health and that there was no evidence of a deterioration in his mental state. These were all findings open to the Judge on the evidence before her.

10. The third ground of appeal to the Upper Tribunal is that the Judge erred in her assessment of the appellant's credibility. The Judge found that the appellant's sister's claim not to have been at risk in Iran because of her political activities was used to explain why she was able to remain in Iran and not to have been of adverse interest to the authorities. Ms Solanki submitted that the Judge did not distinguish the activities of the appellant from those of his sister who said that her activities were not the same as the appellant's. However the sister's witness statement describes her activities as working on the Mousavi campaign, distributing leaflets and putting up posters. She said that she did not attend demonstrations. It is clear that the Judge did not find this distinction to be a real or significant one. The Judge heard from the appellant and his sister and found this aspect of their evidence to be contrived and designed to explain how the appellant's sister was able to remain in Iran until 2014 without coming to the attention of the authorities. This was a conclusion open to the Judge on the evidence.

11. Ms Solanki challenged the findings made by the Judge at paragraph 38 in relation to the photographs of the appellant. Mr Shilliday accepted that the Judge may have mistakenly noted that the witnesses said that there were photographs of the appellant at the demonstrations on display on the table in the family home. However he submitted that even if paragraph 38 was taken out of the determination the rest of the findings could still stand. I agree that paragraph 38 is not determinative of the Judge's credibility findings. However on reading the appellant's sister's statement (paragraph 11) and the note of her oral evidence in the

determination [20] it is not clear that the Judge's conclusion about the photographs at paragraph 38 is wrong.

12. Ms Solanki submitted that the Judge erred in her consideration of the magazine from January 2012 which was said to show the appellant at a United Iranian Party event. She submitted that the original photograph was available at the hearing in the First-tier Tribunal but that the Judge did not view it yet she found that the photographs were not reproduced well in the photocopy. However this is a misreading of paragraph 43 which says that the appellant is not otherwise identified and that even if this publication was available on the internet it was not enough to place the appellant in one of the categories of risk identified in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC). This was a finding open to the Judge given her finding that the appellant had attended a meeting of the UIP and that his involvement was 'minimal'.

13. Ms Solanki submitted that the Judge had not made a proper finding as to whether the appellant was in hiding when he was living in the tribal area before leaving in Iran and whether that impacted on him not being found by the authorities and whether it would be reasonable for him to have continued to live there in those circumstances. Mr Shilliday submitted that the circumstances of this case could be distinguished from the self-confinement described in EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC). I accept that the Judge in this case made a finding about the appellant's time with the tribes in the context of his credibility. She relied on inconsistencies between the appellant's evidence and that of his sister in relation to this issue [39]. It is clear that the Judge did not accept the appellant's account that he was being sought by the authorities during this time.

14. Ms Solanki submitted that the Judge erred in her finding that the appellant's account of his conversion to Christianity was not credible because the Judge failed to take account of the witness statement of an Iranian member of the Church. She submitted that this statement dealt with the Judge's doubts as to the appellant's ability to understand the Bible because of the language issue. However the Judge attached significant weight to the timing of the appellant's claimed resumed church attendance and baptism [47]. In any event I do not agree that the witness statement adds to the appellant's claim on this issue as it says that the witness had met the appellant one month previously and that he had attended one class for baptism.

15. The final ground raised by Ms Solanki is that the Judge failed to consider the risk to the appellant on return to Iran. She contended that the appellant is at risk of being questioned on return because of his illegal exit, the fact that he claimed asylum in the UK and the duration of his absence. However the guidance in BA (Iran) does not support the contention that the appellant is at risk because of these

factors alone. The Judge found that the appellant's account of events in Iran and his conversion to Christianity was not credible and his account of activities sur place to disclose no more than minimal involvement. There is nothing more the Judge could have found in relation to risk on return.

Conclusions:

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

Signed Date: 3 December 2014

A Grimes
Deputy Judge of the Upper Tribunal

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).

Signed Date: 3 December 2014

A Grimes
Deputy Judge of the Upper Tribunal