



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/11801/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 September 2015**

**Decision & Reasons  
Promulgated  
On 6 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**MR EHSAN CHAPAVI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R Head, Lawrence Lupin Solicitors  
For the Respondent: Mr. P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge S J Clarke whereby she dismissed his appeal against the Respondent's decision to remove him from the United Kingdom following the refusal of asylum. Permission to appeal was granted as it was arguable that the judge had failed to give the Appellant's evidence the necessary anxious scrutiny,

particularly given that he was only 14 when he arrived in the United Kingdom.

2. I heard submissions from both representatives and at the hearing I announced that I found that the decision involved the making of an error of law and that my reasons for this would follow. I set my reasons out below.

### **Submissions**

3. Ms Head relied on the grounds of appeal. She submitted that the judge had failed to consider the evidence of the witnesses. I was referred to paragraph [13]. It was submitted that the judge did not challenge the reliability of what the witnesses had said, but that she had disregarded this evidence in her findings (paragraphs [18] and [21]). It was submitted that the witnesses had given independent evidence, and consisted of the Appellant's social worker, his foster mother and his girlfriend.
4. Secondly it was submitted that the judge had not considered the Appellant's responses to the Respondent's case made against him. I was referred to paragraph [19] relating to the difficulty with dates and the conversion from the Iranian calendar. It was submitted that the judge had failed to consider what the Appellant had said to explain this difference. Concern had been raised by the Appellant's representative at interview regarding the conversions of the Iranian calendar (C13 of the Respondent's bundle). It was submitted that this had not been taken into account.
5. In relation to paragraph [20], the fingerprinting of the Appellant, it was submitted that again the judge had failed to consider what the Appellant had said in response. He had given evidence at the hearing and the evidence was not in conflict.
6. It was also submitted with reference to paragraph [20] that the judge had not drawn an adverse inference against the Appellant for not claiming asylum in Greece. The Appellant claimed to have left Iran on 27 or 28 January and he was fingerprinted in Greece on 29 January. It was submitted that there was no reason why these dates were contradictory. No reason had been given by the judge as to why it was implausible that two days after he claimed to have left Iran he was fingerprinted in Greece. It was submitted that the judge had merely reiterated the Respondent's concerns and had not engaged with the Appellant's answers.
7. Further, in paragraph [21] there was no reference to the delay of three years which the Respondent had taken in coming to her decision. It was submitted that the consideration of Article 8 was woefully inadequate [25]. No regard had been had to the fact that the Appellant had had lawful leave to remain in the United Kingdom for over six years and no regard had been had to the undue delay on the part of the Respondent. It was submitted that these issues were raised in the skeleton argument.
8. Further, the judge had not dealt with all of the factors under Section 117B nor had she given adequate reasons for her findings. She had ignored the

evidence of the witnesses and her credibility findings were unsustainable given the fact that she had not taken into account the Appellant's responses to the Respondent's reasons for refusal.

9. Mr. Duffy submitted that paragraph [13] merely stated that the evidence of the witnesses did not add to the Appellant's claim for asylum, or his claim under Articles 2 and 3, which was understandable as the witnesses were based in the United Kingdom. It was clear that what the judge meant was that the Appellant had been in contact with his family secretly; the fact that the witnesses did not know that he was in contact with them was because this is what they had been told by the Appellant.
10. He submitted that the Appellant came to the United Kingdom when he was 14 and, although a minor, a 14 year old could be expected to give an accurate and reasonable account. The judge was entitled to take into account what he had said at his screening interview.
11. In relation to the dates (paragraph [19]) the Appellant had said he had left Iran on 27 January and then went on a long lorry journey of more than two days. The judge's findings were open to her on the evidence before her and there was no material error of law.
12. In response Ms Head submitted that even if Mr. Duffy was correct about paragraph [13], and the fact that the witnesses could not comment on the Appellant's asylum claim, it remained the case that the judge had failed to consider their evidence on other issues, for example contact with Iran. There was no reason given for rejecting this evidence and, as it was in direct contradiction to the judge's findings, she needed to give reasons for her findings. The Appellant was a minor living in a family home under the care of Social Services. It was reasonable to consider that the evidence of such witnesses would be reliable. If it were not found to be reliable, then reasons needed to be given. She submitted that it was not likely that he had pretended that there was no contact between him and Iran for six years.
13. In relation to travel, at Q5.1 of his screening interview (A4 of the Respondent's bundle) when the Appellant talked about the number of lorries that he had travelled in, he was answering the question of how he travelled to the United Kingdom, not how he had travelled to Greece. It was reasonable for him to have taken two or three days to travel from Iran overland to Greece. The judge had not addressed this.
14. She submitted again that the judge had ignored the Appellant's representative's concern regarding the dates. It was reasonable that the Appellant had continued to use the dates which had been given to him; he was a minor and they had been given to him in a calendar which he did not understand. The judge had ignored this explanation. She had failed to consider evidence which was before her on a number of issues and the decision was unsustainable.

### **Error of law**

15. I find that the judge did not give reasons for why she did not take the evidence of the Appellant or the three witnesses into account. In find that paragraph [13] only addresses the fact that the witnesses cannot add to the Appellant's claim for asylum or under Articles 2 and 3, given that they are based in the United Kingdom. However, it does not address the value of their evidence on other issues, such as contact with Iran. No reason is given for why the evidence of these witnesses should not be relied on, and no analysis of their evidence is contained in the decision.
16. At paragraph [18] the judge finds that the most likely conclusion is that the Appellant has been in contact with his family since he left Iran. At paragraph [21] the judge finds again that the Appellant has always been in contact with his family. The evidence of the witnesses was in complete contradiction to this, yet there is no reference to this evidence.
17. I find that the judge has failed to give reasons for her finding that the Appellant is in contact with his family in Iran. In doing so, she has failed to give reasons for rejecting the evidence of three independent witnesses including the Appellant's social worker and his foster mother.
18. In relation to the Appellant's evidence, in particular the explanations given in response to the Respondent's reasons for refusing his application, there is no analysis of these by the judge. There is no reference to the Appellant's evidence given at the hearing relating to being fingerprinted. There is no reference to the concerns which were raised by the Appellant's representative at the screening interview in relation to the conversion of dates from the Iranian calendar.
19. Explanations have been given by the Appellant for the conflicting accounts of being fingerprinted, and for the difference in dates, but there is no analysis of these explanations and no reasons given as to why these explanations have been rejected. This is particularly relevant given that the Appellant was a minor when he arrived in the United Kingdom and, although the judge states in paragraph [13] that she has taken into account the fact that the Appellant was a minor, this is not borne out by her decision, particularly in relation to the issue of dates. She states that the Appellant gave the same answer four times but, as submitted by Ms Head, given that he had been told this date in an unfamiliar calendar, when he was a minor in a country to which he had only just arrived, it is not unreasonable that he would continue to repeat this date. However, there is no analysis of this.
20. Further there is no explanation given for why it is inconsistent that, if he left Iran on 27 January, he should have been fingerprinted in Greece on 29 January. There is no reason given for why he would not have been able to make the overland journey from Greece to Iran in two days. The judge merely finds that this is implausible and must indicate that the Appellant is lying.
21. The consideration of Article 8 is in paragraph [25]. There is no reference to the amount of time the Appellant has been living in the United Kingdom. Whilst saying that there are no exceptional circumstances, and no reasons

to consider the Appellant's circumstances outside of the immigration rules, the judge has considered some, but not all, of the factors set out in section 117B, although this section is only relevant if a proportionality assessment is carried out. It is not clear from paragraphs [25] and [26] that the judge has considered the Appellant's circumstances outside of the immigration rules.

22. The skeleton argument contains detailed arguments in relation to Article 8 (paragraphs 18 to 43), yet the judge has dealt with it in two paragraphs. The skeleton argument refers to the case of EU (Afghanistan) [2013] EWCA Civ 32. The judge refers to this in paragraph [21], but finds that this is a case where the primary facts are not credible, and fails to engage with the reasoning of EU.

23. I find that the judge failed to give reasons for her findings on material matters in relation to the evidence before her. I find that the decision involved the making of a material error of law.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The appeal is remitted to the First-tier Tribunal for rehearing.

No anonymity direction is made.

Signed

Date 5 October 2015

Deputy Upper Tribunal Judge Chamberlain