



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/09193/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 14 June 2017**

**Promulgated**

**On 16 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

**Between**

**M R**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Khan, Counsel, instructed by Thompson & Co  
Solicitors (Morden)

For the Respondent: Mr P Armstrong, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal from the decision of First-tier Tribunal Judge M R Oliver which was promulgated on 7 April 2017. The appellant is an Iranian youth, aged 16 when the matter was before the First-tier Tribunal, who made a claim for asylum alleging fear of persecution upon his return to Iran. The judge dismissed the appeal on asylum grounds in what on any account is a short but nonetheless clear determination.
2. The appellant was given permission to appeal to the Upper Tribunal on three of the five grounds which accompanied the application.

3. The first ground relates to an alleged failure to consider and apply policy guidance promulgated by the Secretary of State for the Home Department, *Processing Children's Asylum Claims* (12 July 2016) As is accepted by the Secretary of State there is no mention to that policy guidance in the course of the determination. However, it is abundantly plain from the decision that the judge was well aware of the appellant's youth and took that into account in considering his evidence and all the surrounding circumstances. Page 40 of the guidance reminds those implementing it that a 'case by case' should be adopted and I can see nothing to suggest any departure from its letter or spirit.
4. The concept of a minor covers everything from a babe-in-arms to those just shy of their eighteenth birthday, and discretion must be applied to reflect growing levels of maturity. The evidence here was that the appellant returned home to discover that his parents and his younger brother had been taken away. The appellant at that time was aged about 15 or 16, the same age as his neighbour's son. It seems then that an uncle took the view that the appellant was in danger and spirited the son away. The judge did not draw any adverse inference based on the age, maturity or otherwise of the appellant. He simply - and properly - applied his mind to the material before him making appropriate allowance for the appellant's age and the particular circumstances of the case.
5. The second ground of appeal comprises a criticism of the judge for taking an adverse view of this matter due to the absence of corroborative evidence. It is helpful to read paragraph 20 of the judge's determination in full:

"There is no evidence in support of the appellant's claim that his parents were arrested and no evidence from his uncle, who appears to have left him to fend for himself in the United Kingdom. The appellant's complete ignorance of any basis for his parents' arrest is difficult to reconcile with his age. The coincidence of his uncle passing [the appellant's home] is striking. No enquiry appears to have been made as to what had happened to his parents. No reason is suggested why the reason for his parents' arrest should extend to a fear that he, then a 15 year old, would be arrested on return. His uncle, according to the appellant's account, did not pause for thought before taking the appellant away. This would appear to demonstrate that he knew that there was a basis for the arrests. He went out of his way to assist him but has not informed the appellant of what he knew or sought to contact and assist him in the United Kingdom to confirm his account."

6. I do not read that paragraph as suggesting that there was any adverse finding made by the judge in consequence of any lack of corroboration. The judge merely records what he considered to be relevant factual findings, namely that an uncle had been involved in the appellant's departure from Iran and that that uncle had not assisted the appellant following his arrival in the United Kingdom. Those matters are part of the

factual matrix of the case, properly recorded the course of the determination, and I can see no substance in the allegation that this amounts to an error of law.

7. I turn then to the third and final ground advanced by Mr Khan for the appellant. This is a more generalised allegation of failure to apply the most anxious scrutiny to this particular case. Mr Khan puts it attractively in saying that in a case where there is scant evidence, where by the very nature of the child being spirited away, he is unable to contribute meaningfully to the factual background, there is a heightened responsibility on a primary fact-finder to set out findings on the evidence, as opposed to the absence of evidence.
8. In my assessment, the judge has properly undertaken the judicial function of making findings and applying anxious scrutiny to the case. The judge took into account all that he had heard and read during the course of the hearing, noting enquiries which might have been made and those that did not yield any particular result. The judge was perfectly entitled to come to the conclusion on the evidence that the appellant had not discharged the burden of proof which lay upon him in demonstrating a well-founded fear of persecution on his return. The fact that there was a paucity of evidence is something which the judge took into account as he was entitled, indeed obliged, to do.
9. In essence, Mr Khan's complaint is mere disagreement with the decision the judge came to. There is no error of law. It therefore follows that this appeal must be dismissed. I record for the avoidance of any doubt that this appellant still has the benefit of discretionary leave to remain until he reaches the age of 18.

### **Notice of Decision**

The appeal is dismissed and the decision of the First-tier Tribunal affirmed.

### **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 his 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 *Mark Hill*

Date

16 June 2017

Deputy Upper Tribunal Judge Hill QC

