



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05293/2017

THE IMMIGRATION ACTS

Heard at Field House
On 21st May 2018

Decision & Reasons Promulgated
On 13th June 2018

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

Y N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Fisher, instructed by CK Solicitors

For the Respondent: Ms Z Ahmed, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born in May 1999. His appeal against the refusal of his protection claim was dismissed by First-tier Tribunal Judge Swaniker on 10 October 2017.
2. Permission to appeal was granted by Upper Tribunal Judge Allen on the grounds that it was arguable the judge should have factored the Appellant's age into her evaluation of credibility.

3. The Appellant left Iran undocumented in September 2015. He travelled through Turkey and other countries on his journey arriving clandestinely in the UK in a lorry on 17 October 2015. He claimed asylum immediately upon arrival.

Appellant's Submissions

4. Ms Fisher submitted that the judge's failure to consider that the Appellant was a minor when he arrived in the UK, and when he completed his screening interview [SCR] and SEF statement, had affected the judge's credibility findings. She relied on paragraph 10 of the grounds which states:

"The Respondent's Asylum Policy Guidance, cited with approval in AA (unattended children) Afghanistan CG [2012] UKUT 16 (IAC) (paragraph 40) and KS (benefit of the doubt) [2014] UKUT 552 (IAC) contains the following principles to be applied in the determination of a claim to asylum by a child:

- (1) more weight must be given to objective indications of risk than to the child's state of mind;
 - (2) other factors to consider might include: documentary evidence, objective country evidence, evidence from people with knowledge of the child - including post arrival in the UK;
 - (3) a case owner must not draw an adverse credibility interference from omissions in the child's knowledge if it is likely that their age or maturity is a factor or if there are logical or other reasons for their omissions;
 - (4) the benefit of the doubt will need to be applied more generously when dealing with a child particularly where a child is unable to provide detail on a particular element of their claim."
5. Ms Fisher submitted that the SEF and the Appellant's substantive interview [AIR] were conducted when the Appellant was 16 or 17 years of age. All the evidence was collected before the Appellant had attained the age of 18. In his first SEF statement there was an issue in relation to the interpreter's dialect and therefore the Appellant submitted an amended SEF statement dated 1 June 2016.
 6. The SCR was conducted by telephone and the Appellant was only 16 years of age when he left Iran. The Appellant explained the discrepancies relied on in the refusal letter at paragraph 9 of the grounds of appeal dated 2 June 2017. Accordingly, there were no discrepancies in his evidence. He confirmed (at paragraph 21 of his SEF dated 1 June 2016) that he could not return to Iran because the Iranian Government would sentence him for running away and his father might kill him. He did not go to

the police because they were very corrupt and would not listen to a young boy like him.

7. Ms Fisher submitted that there was no discrepancy in relation to when the Appellant left Iran and when he was notified that his father intended to sell his kidney. Any discrepancy in relation to what was said in the SCR was not significant given that he was only 16 at the time and it took place over the telephone.
8. The Appellant had not mentioned that his father was a member of the Basij in his amended SEF dated 1 June 2016. He first mentioned this in his AIR on 28 April 2017 and thereafter in his appeal statement dated 21 June 2017. The two other discrepancies relied on by the judge were minor. However, taking into account the Appellant's age and own understanding, the judge's reasoning was flimsy and an attempt to make the discrepancy in relation to membership of the Basij more powerful.
9. The Appellant had problems with the interpreter and he may not have told Mrs Stewart (his witness) the full story because he was shy. The judge failed to give the Appellant the benefit of the doubt. The Appellant had been attending church and the question was how this would be perceived on return to Iran. There was a clear lack of understanding that the Appellant was minor and the judge did not grapple with the perceived risk of attending church. If the Appellant could not continue his Christian journey and attend church that should have been taken into account.
10. Ms Fisher submitted that the judge had a complete disregard for the Appellant's evidence on every level with no consideration that he was a minor. The Appellant's reasons for leaving Iran were multi-faceted and included recruitment into the Basij as well as the fact that his father had tried to sell his kidney. The judge failed to attach sufficient weight to the evidence of the Appellant's witness.
11. Furthermore, the judge did not accept the Appellant's account that he found it difficult to tell what was inside him because he only did so in re-examination. This was a conclusion which may have been different if the judge had taken the Appellant's age into account because a young person may find it more difficult to express themselves under cross-examination. The judge failed to apply the benefit of the doubt more generously for the Appellant as she did not recognise that he was a child.
12. The Appellant would be perceived as a Christian on return to Iran following HJ (Iran) and the risk would emanate from that. The judge relied on credibility alone which was dangerous, given that the Appellant was a minor.

Respondent's submissions

13. Ms Ahmed submitted that the judge did not misapply the four points set out at paragraph 10 of the grounds. The Appellant was an adult at the date of hearing and an adult when questioned at the hearing. When he claimed asylum, he was 16 years old. The judge did not have to specifically refer to this because she was well aware of the Appellant's age having recorded his date of birth. He was of greater maturity than a 12 year old and the judge did not seek to apply a higher threshold test in assessing the Appellant's evidence. There was no merit in the Appellant's submission.
14. The judge's finding that the Appellant's evidence about when he found out that his father intended to sell his kidney was inconsistent and damaged his credibility was open to the judge. There was a significant difference between ten days and two days. The failure to mention the father's membership of the Basij was a clear discrepancy and none of the four points in the Asylum Policy Guidance applied. These were not omissions or a failure to provide details and the Appellant was not stating that he had never given such evidence. The judge's credibility findings were open to her. There was no specific challenge in the grounds to paragraphs 21 and 25, only that the judge had not taken into account the Appellant's age.
15. At paragraph 29, the judge considered the Appellant's own evidence that, as an 18 year old, he did not consider himself to be a Christian. There was no misdirection at paragraph 30 and following AH (Sudan) [2007] UKHL 49, the judge's decision should be respected unless there was a clear misdirection in law. The judge was aware of the Appellant's date of birth and the fact that he claimed asylum at the age of 16. She did not put a higher threshold test on the Appellant and the judge's findings that the discrepancies in his account damaged his credibility was open to her on the evidence before her. There was no misdirection or misapplication of the facts. The grounds merely disagreed with the judge's conclusions.

Appellant's response

16. Ms Fisher submitted that the Appellant's age and maturity were important, particularly when looking at his own view as a Christian. It was important to how he was expressing himself and to how he expressed himself to his witness. It was the same standard for all minors. It did not matter whether they were aged 12 or 16. There was also delay by the Home Office between the SCR and AIR, and the events would not have been fresh in the Appellant's mind. There was a requirement for the judge to consider that the Appellant was a minor when he made his claim. The duty on the judge was set out in the policy guidance and there was nothing in the decision, when read as a whole, that led one to believe that the judge was assessing the Appellant's evidence as a minor. Credibility was challenged in the grounds and no weight should be attached to AH (Sudan). It was important that there was a careful assessment of the evidence when credibility was the deciding issue.

17. There were two limbs to the Appellant's claim, namely that his father was a member of the Basij and was putting pressure on him to join, and the Appellant's conversion to Christianity since he came to the UK. The decision was made purely on credibility grounds and the judge's conclusions had tainted her subsequent findings on Christianity. Even if the discrepancy in relation to the Basij was significant, it was not the end of the matter because the judge's credibility findings affected her assessment of the risk on return as a Christian.

Discussion and Conclusions

18. The judge did not find the Appellant to be a credible witness for four reasons:
 - (i) In his SEF of 1 June 2016, he stated that two days before he left Afghanistan his mother found out that his father intended to sell his kidney and that they had found out from his father's friend, FS. The Appellant was unable to say when FS informed the Appellant and his mother of his father's intention. This was inconsistent with the Appellant's SCR in which he said that he found out his father intended to sell his kidney ten days before he left Iran.
 - (ii) In his SEF of 1 June 2016, he stated that his father's friend, FS, was a member of the Basij. He made no mention in his SEF that his father was a member of the Basij or that he was being pressured into joining the Basij. He first mentioned this in his AIR.
 - (iii) In his SEF of 1 June 2016, he stated that his father's friend was called FS, but in his AIR he stated that he was called HS.
 - (iv) The Appellant had told Mrs Stewart, his witness, that he fled Iran because of the pressure from his father to join the Basij. However, his own account given in his AIR was that his father had forced him to be a member of the Basij and he had become a member of that group two-and-half years prior to leaving Iran.
19. I agree with Ms Fisher's submission that it was unfair to hold the SCR against the Appellant given that it was conducted over the telephone and the Appellant was only 16 years old. I find that the discrepancies in relation to when the Appellant's mother found out about his father's intention to sell the Appellant's kidney and the name of his father's friend was not significant and did not go to the core of the Appellant's claim.
20. However, the other two discrepancies are significant. The Appellant failed to mention his father's membership of the Basij or the pressure exerted on him to join the Basij in his SEF dated 1 June 2016. The first time the Appellant mentioned his father's membership and his membership of the Basij was in the AIR where he stated that he had been a member of the Basij for two-and-half years. Further, the account given in the Appellant's AIR was inconsistent with what he said to Mrs Stewart, his

witness. He told her that he had come to the UK because his father was pressuring him to join the Basij.

21. The benefit of the doubt does not assist the Appellant here. These were inconsistencies for which the Appellant had no plausible explanation. It was not a failure to provide details but three different accounts. What the Appellant said to Mrs Stewart was different to what he said in his AIR and that was different to what he said in his SEF of 1 June 2016. These discrepancies go to the core of the Appellant's claim and it was open to the judge to find that the Appellant's account was not credible.
22. Even if the judge had given the Appellant the benefit of the doubt on points (i) and (iii) above, concluding that they did not damage the Appellant's credibility, this was insufficient to displace the core credibility findings at point (ii) and (iv).
23. The judge's credibility findings did not affect her findings on Christianity as submitted by Ms Fisher. The judge assessed the Appellant's conversion to Christianity on the basis of his own evidence and that of the Reverend Canon Jim Stewart (Mrs Stewart's husband). The Appellant had not shown that he was a committed Christian, such that he would publicly practise his faith on return to Iran. The Appellant did not come within the principles in HJ (Iran). His evidence was that he attended church. He was not baptised and had not commenced that part of his spiritual journey. It was the Appellant's own evidence that he did not consider himself to be a Christian because he was not baptised. This was the evidence the Appellant gave at the hearing when he was 18 years old.
24. The judge considered the Appellant's evidence at its highest, in that it amounted to attendance at church. She also assessed it against the evidence of the Appellant's witnesses. Mrs Stewart stated that her husband was never in a hurry to baptise people and that they generally had to attend a course beforehand. The judge found that the Appellant had not attended baptism classes, despite his regular attendance at church, and that he would not call himself a Christian because he was not baptised. Mrs Stewart's evidence regarding her husband's position on baptism undermined the Appellant's claim regarding his conversion to Christianity. If the Appellant was a practising Christian he would have taken steps to have himself baptised.
25. The judge also relied on the evidence of Reverend Canon Jim Stewart who did not state in terms that the Appellant was a Christian or held Christian beliefs, but rather concentrated on the dangers he believed faced the Appellant in connection with the Basij. The judge found that Reverend Stewart's mention of the Appellant's involvement in the church was almost an aside in the penultimate paragraph of his letter. Reverend Stewart failed to confirm that the Appellant was a Christian in that letter sent by email on 20 June 2017. Given that the Appellant did not consider himself to be a Christian and Reverend Stewart did not consider him to be a

Christian, then the judge found it implausible that the Appellant had converted to Christianity. This finding was open to the judge on the evidence before her.

26. The judge noted that the Appellant had given a different account to Mr and Mrs Stewart, in relation to his reasons for leaving Iran, to that given in his AIR. The judge's finding that the Appellant has not been truthful in his account to Reverend Stewart or his wife was open to the judge on the material before her.
27. The Appellant was a minor when he came to the UK, at his SCR and when he submitted his SEF statement on 1 June 2016. However, at the time his claim was decided he was 18 years of age and at the date of appeal he was 18 years of age. The delay in inviting him for interview cannot be considered to have diminished the Appellant's recollection of what had happened because the Appellant had recorded his claim in his SEF. The Appellant has in fact changed his account from what he said in his SEF to what he said in his AIR and that account was different to what he told his witnesses. The fact that he was a minor when he first made his claim does not explain why his account significantly changed over time.
28. This was not a case where the Appellant was unable to provide significant detail. The judge's failure to specifically refer to the Asylum Policy Guidance or to AA was not material. The judge was aware of the Appellant's date of birth and her findings were not inconsistent with the policy guidance. Had the judge specifically referred to it and applied it she would have come to the same conclusion because the fact that the Appellant was a minor when he made his claims was insufficient to explain the significant discrepancy of failing to mention that his father was a member of the Basij and that he had pressured the Appellant into joining, which was clearly the account given to the Appellant's witnesses which were called at the appeal.
29. Accordingly, I find that there is no material error of law in the judge's decision and I dismiss the Appellant's appeal.

Notice of Decision

Appeal dismissed

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 her or any member of her 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.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 11 June 2018