



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06204/2017

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunals
On 24th May 2018

Decision & Reasons Promulgated
On 09th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[M M]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V James (Counsel)

For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge JWH Law, promulgated on 2nd August 2017, following a hearing at Stoke-on-Trent on 27th July 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, and was born on [] 2001. At the time of the decision by Judge Law, he was 16 years of age. He appealed against the decision of the Respondent Secretary of State, dated 15th June 2017, refusing his application for asylum and for humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that his father treated him less favourably than his siblings, who attended school when he did not, and that only a month before he left Iran on 2nd February 2015, did he learn that he and his brother, [H], were not his parents' real children. The Respondent did not accept this as it was not mentioned in the Appellant's first statement, which had been made with the help of his solicitors. The Respondent also did not accept the Appellant's claim that he had been treated less favourably because his father had arranged for him to go somewhere safe abroad, for a number of other additional reasons. For example, after the Appellant's arrival in Germany, his father telephoned him to ask him if he had enough money. Also, before he left Iran, his father had told him that he would never forget him. Moreover, when the Appellant was asked to give examples in his interview of his being treated less favourably, all he said was that his father told him he would not forget him. Finally, when asked if he had ever been hurt physically or mentally by his father, he only described slipping on a soap and hitting his head. It was accepted, however, that the Appellant was of Kurdish ethnicity.

The Judge's Findings

4. At the hearing before Judge JWH Law, there was evidence given by the Appellant that he feared returning to Iran because he had "a few problems with my family", but that also because he did not have an Iranian ID, which would cause him trouble, in that he may be arrested by the Pasdar or the police (see paragraph 13). Evidence was also given by the Appellant's foster carer that the Appellant feared the police may kill him in Iran (paragraph 16).
5. The judge went on to observe that various parts of the Appellant's account suggested either that he was being sent abroad for his own safety, or because his "parents" no longer wished to be responsible for someone who was not their child. The judge did not find it credible that the Appellant, who had not been harmed in any way in comparison to his parents alleged biological children, was not being looked after any longer by his parents. The judge also did not find it credible that the Appellant was being sent abroad for his own safety given that there had been a delay of about eight months in sending him abroad (following the alleged execution of [H]), which had not been explained in the evidence (see paragraph 25). Consideration was also given by the judge to the Appellant's second statement, made two months after the asylum interview, in which he now claimed that his stepbrother threatened in February 2015 to report the Appellant to the authorities for not having an identity card. He had not mentioned this earlier because he thought it would create a greater risk. The judge did not accept that the Appellant would be exposed to greater risk by telling the Home

Office of this and informing them that one of the children in the family had been executed by the authorities (paragraph 26).

6. The judge then went on to say that, "I've not been referred to objective evidence concerning the consequences of not having an identity card", and that he was not satisfied that there was not a system in place in Iran for those who lost their identity cards to obtain a replacement (paragraph 27). Moreover, the late evidence about the Appellant not having an identity card "is simply an attempt to fill a gap in the timeline, namely the seven/eight month gap between the alleged arrest/execution of [H] and the decision to send the Appellant abroad" (paragraph 28).
7. The judge concluded with the observation that he was not satisfied that the Appellant was not the real son of the people he refers to as his father and mother, who had expressed sufficient concern about him to telephone him while he was in Germany. Nor, was there a family dispute or any risk of another member of the family having reported the Appellant to the authorities, or being likely to do so on the Appellant's return (paragraph 31).
8. The appeal was dismissed.

The Grant of Permission

9. On 31st October 2017 permission to appeal was granted on the basis that the judge had wrongly stated that, "I have not been referred to objective evidence concerning the consequences of not having an identity card" when this had been expressly referred to at paragraph 44 of the refusal letter, and also replicated in the Appellant's bundle at page 94. Second, the Respondent had accepted (at page 85 of the Appellant's bundle) that, given the Appellant was an unaccompanied asylum seeking child, that "there are inadequate reception arrangements in Iran (the Appellant's) own country" and therefore the Appellant qualified for leave to remain. The efforts to trace the Appellant's family have proved fruitless.

Submissions

10. At the hearing before me on 24th May 2018, Ms James appearing on behalf of the Appellant, relied upon her skeleton argument. She submitted that the Appellant was effectively an orphan. His case had been that he was adopted and then sent away by his adoptive parents in January 2015. There is no trace of his adoptive family in Iran now. The Respondent had mistakenly stated (at paragraphs 43 to 49) that to enable the Appellant's return he can obtain a "*laisser passer*" from the Iranian Embassy in London, on proof of identity and nationality. However, the Iranian Embassy in London was currently not operational. In any event, the Appellant had no documents to prove, either his identity or his nationality. The option was not open to him. Second, the US Department of State Report 2016, under the section of children, identifies concerns regarding "unregistered, refugee and migrant children" (at page 113), such that there is the risk of abuse and ill-treatment of refugee children by the police and security forces.

11. For per part, Ms Aboni relied upon the Rule 24 response. She submitted that there was no error of law in the judge's determination. The Appellant was not credible in the account he gave before Judge Law. His account, that he was estranged from his family who did not want him was not accepted. Given that this was a case, the Appellant could establish his identity upon return, because his father, who had shown an interest in him right the way through his journey to Europe, would be willing and able to help him.
12. In reply, Ms James submitted that there was no evidence that the Appellant had a family there. All efforts to trace his family had failed. In the circumstances, the US State Department Report, expressing concerns over "unregistered, refugee and migrant children" was significant and could not be overlooked. There was a quite frightening picture of how returning children are dealt with, because they are subjected to "abuse and ill-treatment" (see page 114).

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, where it is the case that the judge erred in stating that, "I have not been referred to objective evidence concerning the consequences of not having an identity card" (paragraph 27), that does not mean to say that he was oblivious of the applicable situation to a case such as this. The reference to the "objective evidence" is meant, here to be a reference to paragraph 44 of the refusal letter. However, all that states is that "consideration has been given to **SSH & HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308**" and then sets out in two sub-paragraphs the position. This is that, "an Iranian male whom it is sought to return to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of identity and nationality".
14. Ms James, however, makes the relevant point that the Appellant would not even be able to obtain a laissez passer because he could not demonstrate proof of identity and nationality. He has arrived as an unaccompanied minor. Efforts to trace his family have failed. However, the second part of the reference in paragraph 44 goes on to say that, "an Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution...". Judge Kelly's determination does not contain an error of law in this respect because he is perfectly aware of the case of **SSH & HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308**, because he ends his determination with an expressed reference to this case (at paragraph 33), before concluding that "the authorities would have no interest in the Appellant and accordingly the fact of his illegal exit would not expose him to a risk on return".
15. Second, in the country guidance case both of the Appellants were Kurdish failed asylum seekers and neither had any political or other associations with the Kurdish

opposition groups. In the country guidance case what the Upper Tribunal determined was that the

“General consistency [of] evidence that a person returning on a laissez passer, having left Iran illegally, will be subjected to no more than a fine and probably a period of questioning although there was an indication in the evidence that questioning would be of a kind or in a place where ill-treatment could be expected, there is no evidence to show that a period of questioning in the context with which we are concerned can be equated to pre-trial detention; nor does the evidence suggest that it would take place in a prison” (paragraph 15).

16. Ms James has sought to persuade me that the very obtaining of a laissez passer would cause difficulties for the Appellant. I note that the head note of **SSH & HR** does not refer to returned Kurds. It may well also be the case that the attitude of Iranian authorities towards Iranian Kurds, who have returned to Iran, having left illegally, and without documents to establish their nationality, may be changing since the country guidance case was handed down, particularly with the current situation facing Kurds in Iran.
17. Nevertheless, **SSH & HR** were not appealed to the Court of Appeal and the country guidance case stands as it is, given that there was a noticeable lack of evidence before Judge Law, to justify departure from the country guidance case of **SSH & HR**. Accordingly, Judge Law did not err in any material sense.

Notice of Decision

There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

7th July 2018