



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

Appeal Number: PA/01372/2018

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE  
On 2<sup>nd</sup> April 2019**

**Decision & Reasons Promulgated  
On 9<sup>th</sup> April 2019**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL  
Ms G A BLACK**

**Between**

**MR O H  
ANONYMITY ORDER MADE**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms G. Kiai (Counsel)

For the Respondent: Mr S. Kandola (Home Office Presenting Officer)

**ERROR OF LAW DECISION AND REASONS**

1. This is an error of law hearing. The appellant appeals against the decision of the First-tier Tribunal (Judge Obhi) (FtT) promulgated on 25<sup>th</sup> July 2018 in which the appellant's protection and human rights claim was dismissed.

## **Background**

2. The appellant is a citizen of Iran, whose date of birth is [~] 1998. He entered the UK on 14.7.2015 as an unaccompanied minor. He claimed asylum on 16.9.2015 on the grounds that the authorities in Iran were adversely interested in him because he had been spotted near a border checkpoint. He and his cousin were transporting illegal goods (unbeknown to the appellant) across the border in to Iran. They ran off and escaped. He claimed that he was suspected of having transported illegal goods into Iran from Iraq. He ran home and made arrangements to leave Iran, illegally. He believed that would not have a fair trial if prosecuted. In addition he claimed that he would face ill treatment on religious grounds because it was known by his Imam that he had not been circumcised and he would be forced to undergo circumcision. It was accepted by the respondent that the appellant had been involved in transporting goods legally across the border. The respondent was of the view that as an adult the appellant would not be forced to undergo circumcision.

## **FtT findings**

3. The FtT found the appellant's claim to be lacking in credibility [26]. It considered if that the appellant had come to the attention of the authorities it was either by chance or through intelligence. In either circumstance the FtT found that his account of escape from the guards was not credible having regard to the background material. The background material stated that the border guards or authorities acted harshly and would shoot indiscriminately at those found attempting to smuggle illegal goods.

## **Grounds of application for permission to appeal**

4. In grounds of appeal the appellant argued that the FtT erred by failing to make factual findings on material issues central to the appellant's claim and failing to give adequate reasons for the findings made. The FtT's analysis of the circumstances surrounding the escape were not rational and failed to engage with the appellant's account.
5. The FtT failed to properly consider the appellant's explanation as to why the Imam knew that he had not been circumcised, namely that people were talking about it. The FtT failed to ask the appellant for a more precise explanation and was wrong to hold any lack of precision against him. There was no dispute that the appellant was not circumcised. The FtT failed to consider the implications of that fact.

## **Permission to appeal**

6. Permission to appeal to the Upper Tribunal (UT) was granted on renewal by UTJ Canavan on 13.12.2018. In granting permission the UTJ stated, "*It is at least arguable that the judge might not have given adequate reasons to explain why the appellant's account of his escape from the checkpoint was so implausible given that his account appeared to be limited to saying that they ran away as soon as they saw the guards at the checkpoint [26]. It is also arguable that inadequate reasons were given to explain why his*

*account of how he left Iran was implausible [27]. The judge arguably failed to take into account the appellant's explanation as to how he thought the authorities might have identified him i.e. through the temporary permit issued to those trading across the border. "*

### **Submissions**

7. At the hearing before me Ms Kiai, representing the appellant, expanded on the grounds of appeal and argued that the FtT failed make findings on material matters in respect of the appellant's account of his escape.
8. In response Mr Kandola, for the Respondent, contended that the decision was sound and the FtT had given sufficient reasoning for the findings made.

### **Discussion and conclusion**

9. There was no dispute that the appellant was an Iranian Kurd, that he had been involved in transportation of legal goods across the Iran/Iraq border and that he left Iran illegally. Ms Kiai submitted that the FtT failed to engage with the appellant's factual account (that having taken a diversion they ran off when spotted by the guards at the checkpoint) in reaching its findings as to credibility and its conclusion was irrational.
10. The appellant gave an account of the incident claiming that he and his cousin returned across the border without going through an official checkpoint and instead they took a diversion. The appellant was following instructions given by his cousin. He did not know that they were carrying illegal goods. It was dark but they were spotted by guards and his cousin told him to run. There were 15-20 guards who shined lights on them. The appellant would have been identifiable and recognised by the guards. They travelled from Iran across the border with a permit recording their personal details. The authorities would have been able to identify him from the permit or from having seen him. The authorities later came to his home looking for him. The FtT recorded a summary of the claim at [2] and his evidence under cross-examination [10].
11. The FtT took into account the background material and the appellant's own evidence that the Iranian border guards indiscriminately shoot at people found smuggling illegal goods across the border, killing and wounding them [26]. The FtT also took into account that the appellant was a minor when he made the claim. The FtT considered the plausibility of the account in the alternative that the guards were watching (or waiting for) the appellant when crossing the border, having been tipped off. Or, that it was a chance encounter. The FtT found that in the latter instance it was unclear how the authorities would have known that they were carrying illegal goods, given that the appellant himself did not know. In either scenario the FtT found that appellant's account of his escape was not credible in the light of the background material.
12. The FtT found that he was vague as to how he came to know that his cousin was importing illegal goods [26]. The FtT emphasised the background material [26-27] and the plausibility of actually deciding to

transport illegal goods, given the risks posed to those found smuggling and the likelihood of being shot at. There was no evidence that the guards had found any illegal goods, the appellant's account was that because they ran off this raised suspicions. I am satisfied that the FtT engaged with the appellant's account sufficiently to make sustainable findings and to give reasons that were adequately explained and which justified the decision having regard to the background material. The appellant had not simply claimed that he and his cousin claimed to have run off, but he described that they were being watched by 15-20 border guards who were shining lights on them. In that context the FtT's findings and reasons are entirely sustainable in light of the background material. The appellant's claim was not simply that he ran off near the checkpoint, it was that the guards had seen them and were acting on that.

13. I am further satisfied that the FtT's finding that the appellant's account that he was able to run home and make arrangements to leave Iran before the guards attended his home is not plausible. Whilst accepting that the FtT at [27] recorded in the decision that the appellant's account cumulatively implausible and did not specify reasons, I am satisfied that the FtT 's main reasoning in support of an adverse credibility finding was sufficient to reject the appellant's claim as a whole. The FtT was entitled to find on the evidence that the appellant's account of his contact with his uncle was inconsistent. The FtT was aware of the appellant's evidence that the guards may have identified the appellant (from recognition at the scene or from the permit) [25] but found that in such circumstances it was not credible that the appellant was able to run away and return home and leave the country without being caught.
14. As to the issue of circumcision, I am satisfied that the FtT's conclusions were justified and sustainable on the evidence before it. The onus is on the appellant to discharge the burden on him to make out his claim. The FtT found his explanation that the Imam came to know that he was not circumcised to be lacking in precision [28]. It is argued that the FtT ought to have asked the appellant for further information. However, given that it was accepted that the appellant was not circumcised the FtT's failure was not material, particularly in the light of the fact that the appellant's explanation was lacking detail and there was no background material to support the claim that the appellant as an adult could be forcibly circumcised or that he would be at risk of being suspected on anti Islamic behaviour. There was no evidence adduced to show that the appellant would face ill treatment or persecution for either religious or political reasons.
15. There is no material error of law disclosed in the decision which shall stand.

### **Decision**

16. The appeal is dismissed.

Signed

Date 2.4.2019

GA Black  
Deputy Judge of the Upper Tribunal

**Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

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 their 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.

NO FEE AWARD

Signed

Date 2.4.2019

GA Black  
Deputy Judge of the Upper Tribunal