**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: PA/07911/2018**

**THE IMMIGRATION ACTS**

| **Heard at UT (IAC) Hearing in Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 28th February 2019** | **On 19th March 2019** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**MR ROUZBEH JAMALI**
(ANONYMITY ORDER NOT MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms J Fisher, Counsel instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Iran whose appeal was dismissed by First-tier Tribunal Judge Taylor in a decision promulgated on 31st August 2018.

2. Grounds of application were lodged. It was said that the judge had ignored the Appellant's initial SEF form and statement where he had clearly provided detailed responses to all the questions he was asked regarding Christianity and how he and his family practised their particular faith. His position remained that he did not know the reasoning behind his

mother's decision to continue with her activities and the judge had failed to take into account that the Appellant was a 16-year-old child and the Appellant's parents had asked him to help them with the deliveries and he did as he was told. It was not open to the judge to make adverse credibility findings that were not factual in nature and the Appellant was unable to explain the actions or intentions of his parents.

3. Permission to appeal was initially refused but granted by First-tier Tribunal Judge Holmes who considered that the judge may have erred by failing to show that he had given any thought to the age of the Appellant when he left Iran and the effect that this might have had on his ability to answer the questions put to him consistently or accurately. None of the relevant guidance in this respect was referred to and there was also no country guidance decision or country evidence referred to either.

4. The Secretary of State lodged a Rule 24 notice stating that the Appellant was an adult at the time of the drafting of his witness statement and giving oral evidence at his appeal. It followed that he had the opportunity and maturity to revisit earlier evidence given when a minor and re-assess his answers then given either by correction or elaboration. The judge had given cogent reasons for concluding that the Appellant had not made out his claim. The judge had properly rejected the credibility of the core account.

5. Thus, the matter came before me on the above date.

6. Before me Ms Fisher asked for a de novo hearing on the basis that there was a material error in law by the judge for the reasons given in the grounds and she also referred me to a note by Counsel, Mr Eric Fripp, dated 13th November 2018 which emphasised the fact that the judge had been wrong to conclude that the claim was not plausible having given no examination of the surrounding circumstances.

7. For the Secretary of State Mr Clarke relied on the Rule 24 notice. The scenario presented to the judge was a baffling one. The risks being taken by the parents were extraordinary. The judge had regard to all the outstanding issues and there was no challenge to paragraphs 16 and 17 of the decision which set out other matters relating to credibility. The judge had accepted the Appellant's account was broadly internally consistent but it was not an account that he found to be plausible or credible in the overall circumstances of the case. There was no error of law and the decision should stand.

8. I reserved my decision.

## Conclusions

9. The judge found that it was not plausible that the Appellant's parents would have allowed their son to act in the capacity of delivering leaflets. The judge noted (paragraph 15) that the Appellant was not paid and had no particular interest in the church as when his mother attended he would usually simply wait outside. The final sentence in paragraph 15 is "Why

he should put himself at risk in this way is not clear and I don't find it credible."

10. The difficulty in this conclusion is that the judge has not considered the age of the Appellant at the time and has not taken into account the fact that he would probably have obeyed the instructions of his parents. Indeed, the judge noted the Appellant's evidence on this point in paragraph 12 of his decision when the Appellant said he merely did what he was asked to do for no pay.

11. The clear reason why the Appellant put himself at risk was, on the evidence. because his parents told him that that was what they wanted him to do and as a child he would no doubt be used to following the instructions and directions of his parents. The judge does not factor this explanation into his decision which I consider lacks adequate reasoning. Nothing is said about how these particular parents would have reacted to the dangers they faced. No doubt some persons would cease their activities if there was a danger involved but history tells us that others would carry on regardless of the threat. It is notable that in not finding the account credible the judge does not refer to any background material nor give any guidance as to what yardstick he used in coming to those views. The judge is really concluding that the account is not plausible without any further reasoning. It cannot be said that facts presented by the Appellant are inherently incredible or even highly unusual. The judge appears not to have considered that it might have been perfectly normal for the Appellant to have followed the instructions of his parents and that was why he was putting himself at risk. On any view this was a matter which should have been carefully considered by the judge and it appears that it was not. He has not considered the Appellant's age at the time when the events took place and it was important to consider his age. The fact that the judge did not believe the Appellant would put himself at risk was a major plank in the decision to reject the claim. The judge has simply not considered the fact that the evidence before him was that the child did what he was told to do.

12. In my view this undermines the safety of this decision and it seems to me that the lack of proper reasoning amounts to a material error in law. It follows that the decision cannot stand and fresh factual findings will require to be made.

13. Further fact-finding is necessary and the matter will have to be heard again by the First-tier Tribunal.

14. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

**Notice of Decision**

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

16. I set aside the decision.

17. I remit the appeal to the First-tier Tribunal.

18. No anonymity order is made.

Signed *JG Macdonald* Date 14th March 2019

Deputy Upper Tribunal Judge J G Macdonald