



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

Appeal Number: PA/13607/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 22 March 2019**

**Decision & Reasons
Promulgated
On 1 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**K A A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mallick of Counsel

For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Reasons for Decision

1. Judge Burns (the judge) dismissed the appellant's appeal against the respondent's refusal to grant asylum, humanitarian protection and on human rights grounds because he did not find the appellant to be a credible witness or that he would be at risk on return.

2. The grounds claim the judge made material errors of law as follows:
3. At [25] the judge failed to consider the appellant's young age. When he claimed asylum and as at the date of the hearing, he was still a minor. The judge failed to give the appellant the benefit of the doubt when he was recalling events that happened to him in Iran in 2016.
4. At [27] the judge also failed to consider properly the appellant's witness statement. The appellant clearly stated that in 2017 he did not know about the existence of the document.
5. At [28] the judge failed to give proper consideration to the appellant's witness statement. He said in that statement that Star only informed him of the existence of the document and only sent the appellant photos because he was too afraid to send the original. The original was posted to him at a later date by [JZ].
6. At [31] the judge's finding lacked reasoning. The appellant would be at risk either way. Either fear of conscription to the military or imprisonment for being actively involved with a political party opposing the government.
7. At [32] the judge failed to give reasons as to what expertise he had to make a finding that the document was forged. The judge is not a country expert.
8. At [33] the judge failed to consider the appellant's young age when he was questioned about the claim. The appellant was a vulnerable witness.
9. Overall, the grounds claimed that the errors identified were sufficient individually or cumulatively to vitiate the decision as a whole. In particular, the errors as identified undermined the adverse credibility findings of the judge.
10. Judge L Murray granted permission on 6 February 2019. She said inter alia as follows:
 3. *The appellant is a minor and the First-tier Tribunal did not consider his evidence in accordance with the Joint Presidential Guidance Note No 2 of 2010: child, vulnerable adult and sensitive appellant guidance. This arguably amounts to an error of law affecting his findings on credibility.*
11. The Rule 24 response was handed up at the hearing.

Submissions on Error of Law

12. There was no skeleton argument for the appellant. Ms Mallick submitted that the judge had erred in failing to have regard to the Joint Presidential Guidance Note with regard to children. The appellant was a child at the

date of the hearing. In any event, there were problems with the decision itself; see grounds.

13. Mr Melvin relied upon the Rule 24 response. The grounds were nothing more than a fishing expedition in the hope of establishing an error of law when there was none.

Conclusion on Error of Law

14. It is always good practice to bear in mind and apply the Joint Presidential Guidance when hearing the appeal of a child but it does not necessarily follow that failure to mention the guidance will result in an error of law.
15. The judge was aware of the appellant's age. He said he had been born on 28 May 2001. The hearing was on 4 January 2019. In assessing the appellant's asylum claim, the judge was mindful of the fact that when he first gave his account, the appellant was 15 years of age and that as of the date of the hearing, he was still a minor. See the decision at [39]. There is nothing to suggest in a close reading of the decision that the judge conducted the hearing in any way that was at odds with the guidance.
16. The appellant was represented at the hearing by an experienced immigration practitioner. There was no complaint from Mr J D Knight following the hearing that the judge had conducted the hearing in any way inappropriate to the Appellant's age or such as to establish unfairness on the part of the judge.
17. The judge comprehensively set out the appellant's account and the reasons why he said he would be at risk on return. Ms Mallick drew my attention to [18] of the decision as evidence that the judge failed to take account of and did not ensure the appellant's understanding particularly given his age. I find that the judge did not err in the manner in which he approached the new development with regard to military service which had been raised for the first time at the date of the hearing. The judge recited the events at [17] - [20] of the decision. The skeleton argument handed up at the hearing included a reference to the appellant being at risk on return as a draft evader but in discussion at the hearing, Mr Knight confirmed that there was no suggestion the appellant was a draft evader or deserter or was wanted for military service in Iran. Further, there was no suggestion that if on return the appellant was conscripted into the Iranian military, that that would amount to persecution. Mr Knight confirmed the only reference to military service was because of the fact that the appellant was close to the age of conscription and that might be a possible additional reason for him to be questioned at the airport on return. It appears from what the judge said at [18] that the appellant, possibly prompted by the exchange between the judge and Mr Knight, referred to military service and other separate issues with regard to his claim. There is nothing to suggest that the appellant did not understand or that the exchange was in any way significant in terms of the Joint Presidential Guidance.

18. Another criticism raised by Ms Mallick is the judge's failure to refer to **Tanveer Ahmed** when making an adverse credibility finding at [32] that a document recently produced had been forged such that the judge said he would give it little weight. Whilst it would have been useful for the judge to remind himself of the principles in **Tanveer Ahmed**, he did not err in the particular circumstances of this case bearing in mind his wholesale adverse credibility findings. The judge did not believe the whole of the appellant's account. That was a finding the judge was entitled to come to on the evidence before him.
19. I do accept as Mr Melvin acknowledged that there appeared to be some confusion on the part of the judge at [31], however, I do not find that to be material. It can be viewed and ignored in isolation. It in no way infects the rest of the decision.

Notice of Decision

20. The judge's decision contains no material error of law and shall stand.

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 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.

Signed

Date 29 March 2019

Deputy Upper Tribunal Judge Peart