



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/03472/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 15 February 2022 via Microsoft
Teams**

**Decision & Reasons Promulgated
On 23 March 2022**

Before

**UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE HALL**

Between

**FAH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Kumar, Optimus Law
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The appellant appeals against a decision of First-tier Tribunal Judge Juss (the judge) promulgated on 6 July 2021 following a hearing on 19 April 2021.
2. The appellant is an Iranian citizen of Kurdish ethnicity born in January 2003. He arrived in the United Kingdom clandestinely on 15 November

2018 and claimed asylum on 17 January 2019. He claimed to be at risk if returned to Iran on the basis of imputed political opinion.

3. The appellant claimed that his father supported the Kurdish Komala Party in Iran and the appellant had been supporting his father and would be viewed as a supporter of the Party which was opposed to the Iranian regime, and therefore he would be at risk from the Iranian authorities. The appellant explained that his father had helped two injured Peshmerga fighters and as a result had been arrested by the Iranian authorities. Thereafter the appellant's family home had been raided by the authorities, while the appellant was away from the property, but the appellant's mother and sister had been taken into custody although they had subsequently been released.
4. Arrangements were made by the appellant's paternal aunt for him to leave Iran as he would be at risk from the authorities if he remained. The appellant travelled with the assistance of an agent, travelling in various vehicles. He was unaware which countries he had travelled through before arriving in the United Kingdom. Since arriving in this country the appellant has managed to contact his mother by telephone who told him that it is not safe for him to return to Iran as the authorities were still looking for him and the whereabouts of his father was unknown. The appellant has not been able to contact his mother again since the telephone contact which was in January 2019.
5. The appellant was interviewed in connection with his claim for asylum on 21 January 2020, and on 2 June 2020 the respondent decided that the appellant was not entitled to a grant of asylum or humanitarian protection, and that his removal from the United Kingdom would not breach any rights protected by the 1950 European Convention on Human Rights. The respondent accepted the appellant's identity, nationality, age and ethnicity, and accepted that he had left Iran illegally.
6. The respondent did not accept that the appellant's father had supported the Komala Party and did not accept that the appellant had been involved in supporting his father or the Party. It was not accepted that the appellant's father had been arrested and detained and it was not accepted that the appellant or his father had been of any adverse interest to the Iranian authorities. The respondent did not accept that the appellant had given a credible account.

The Decision of the First-tier Tribunal

7. The decision is briefly summarised as follows. The judge heard evidence from the appellant and described his evidence at paragraph 17 as being 'confused and contradictory.' The judge did not accept that the appellant's evidence proved that his father had any involvement with the Komala Party in any meaningful sense.

8. At paragraph 18 the judge noted that the appellant did not know what had happened to his father and found this was significant 'in the context of the fact that his mother and sister have both been released after their alleged arrest.' The judge noted that 'their arrest is something that is only confirmed to the appellant through third-party evidence because the appellant was in the mountains in the morning and it was only as he was returning that his neighbour told him of their arrests, after which his mother and sister were released afterwards with no further risk being shown to them.'
9. At paragraph 19 the judge found that in the context of the release of his mother and sister, the appellant's father's alleged disappearance could not be taken at face value on the evidence of the appellant. The appellant had said that his mother and sister did not know what had happened to his father and the appellant had said that he knew how people who supported Komala were treated. The judge found that the appellant's evidence on this point 'does not make sense at all given that the appellant had, on his own evidence, only seen his father on one occasion with one or two people and even that in his own house.'
10. The judge went on at paragraphs 20-21 to find that even if what the appellant had said was true, which was not accepted, the appellant would be of no interest to the Iranian authorities as he had been in the United Kingdom since 2018 and had not engaged in any meaningful political activity in this country in opposition to the Iranian regime. The judge described the appellant's political activities in the UK at paragraph 20 as being opportunistic attendance at demonstrations, and the judge did not see why he could not be expected to delete some Facebook postings. The appellant would be returned to Iran 'as no more than a failed asylum seeker of Iranian Kurdish ethnicity.' The judge concluded that the appellant would not be at risk from the Iranian authorities and was not entitled to a grant of asylum.
11. The judge dealt briefly with humanitarian protection at paragraph 22 concluding that because the appellant had not established a well-founded fear of persecution, by analogy he could not qualify for humanitarian protection.
12. At paragraph 23 the judge found that because the appellant had not established a well-founded fear of persecution, by analogy his claim did not engage article 3 of the 1950 European Convention.
13. Paragraph 24 is the concluding paragraph in which the judge finds that in relation to article 8, the appellant cannot succeed with reference to Appendix FM or paragraphs 276 ADE to 276DH for the reasons set out in the respondent's refusal letter. The judge did not find any exceptional circumstances and concluded that the appeal could not succeed by relying upon article 8 outside the Immigration Rules.

The Application for Permission to Appeal

14. The grounds, prepared by the appellant's solicitors are overly long and not well structured. In brief summary they contend that the judge materially erred in law in the following ways.
15. The judge, when assessing the appellant's evidence and credibility, failed to consider that the appellant was a child when he left Iran and travelled to the UK, and was a child when he claimed asylum and was interviewed in connection with his claim.
16. It was contended that the judge had applied a higher standard of proof than was appropriate and had failed to consider objective evidence and country guidance case law as to how a supporter of the Komala Party would be treated by the Iranian authorities, particularly as the appellant had been involved in anti-regime activities in the United Kingdom by attending demonstrations against the Iranian Government and by publishing Facebook posts.

Permission to Appeal

17. The application for permission to appeal was considered by First-tier Tribunal Judge Boyes who stated, 'The grounds are lengthy, discursive and lack specificity.'
18. It was decided, notwithstanding the above criticism, that the grounds raised arguable errors of law and permission to appeal was granted.

The Upper Tribunal Hearing

19. On behalf of the appellant Mr Kumar relied upon the grounds, contending that the strongest point was that the judge had failed to take into account when assessing credibility that the appellant was a minor when the events in Iran had taken place and when the appellant was interviewed about his claim.
20. On behalf of the respondent Mr Tan submitted that the judge had not materially erred in law. It was submitted that the judge had analysed the evidence, made findings upon it, and had given adequate reasons for rejecting the appellant's account and for finding the appellant not to be a credible witness. Mr Tan submitted that the judge had demonstrated that he was aware of the appellant's age and had taken this into account when assessing credibility.
21. At the conclusion of oral submissions we reserved our decision.

Our Analysis and Conclusions

22. Credibility is a key issue in this appeal. The respondent found the appellant's account of events in Iran to be incredible and for that reason rejected it. The judge reached a similar conclusion.

23. The main ground of appeal is that the judge materially erred in his assessment of the appellant's credibility by failing to consider that the appellant was a child when the events in Iran were said to have occurred. We note that the appellant's age was accepted by the respondent, and it was accepted that he arrived in the United Kingdom in November 2018. It was therefore accepted that the appellant was 15 years of age when he left Iran and entered the United Kingdom. He was 16 years of age when he completed his witness statement dated 27 March 2019 and 17 years of age when he was interviewed in connection with his asylum claim on 21 January 2020.
24. The appellant's case was that he was uneducated, never having attended school (as explained in paragraph 4 of his witness statement and in answer to question 22 of his asylum interview). The appellant was an adult, having attained the age of 18 at the date of his First-tier Tribunal hearing.
25. Particular care must be taken when assessing the credibility of evidence given by children, and guidance on this can be found in the Joint Presidential Guidance Note No 2 of 2010; Child, vulnerable adult and sensitive appellant guidance, and further guidance was given by the Court of Appeal in AM (Afghanistan) v the Secretary of State for the Home Department [2017] EWCA Civ 1123.
26. The reason that caution should be exercised when considering the evidence of children, is that there is an inherent vulnerability in varying degrees. It may be the case that a child may have difficulty in recalling events, particularly traumatic events. We have to consider whether the judge properly considered that although the appellant was an adult at the date of hearing, he was a child when the events in Iran were said to have occurred and when he was interviewed about those events.
27. On behalf of the respondent Mr Tan submitted that the judge was aware that the appellant was a child in Iran because he referred to this in paragraphs 2, 13, 14 and 20 of the First-tier Tribunal decision.
28. We note that the reference in paragraph 2 is simply a reference to the appellant's date of birth. Paragraph 13 is a summary of the submissions made on behalf of the respondent. The judge records that included in those submissions was an acceptance of the appellant's age and nationality, and that in relation to article 8 the appellant was now 18 years of age and as an adult could return to Iran.
29. Paragraph 14 is a summary of the submissions made on behalf of the appellant. Included in those submissions the judge records the appellant's representative stating in relation to the appellant, ' He was a minor (D3-D4) when he first gave his account. As such the account was credible.' The judge also records the submission 'bearing in mind that he is a minor then, and referred to the objectives of the Komala Party (Q84). Therefore, if one

looks at how as a 16 year old the appellant has handled the questions, he is very credible and cannot be caught out.'

30. In paragraph 20 there is a reference to the appellant having been in the UK for two and a half years, and even if the appellant's account was accepted as true, the Iranian authorities would not be interested in somebody who at that time would have been a minor.
31. We accept that it is clear from reading the First-tier Tribunal decision that on behalf of the appellant the point was made that he was a child when in Iran and the credibility of his evidence should be assessed taking that into account. The judge's findings and reasons are contained in paragraphs 15-24. At paragraph 16 the judge finds the appellant's evidence is 'not coherent and plausible for the following reasons.' In relation to events in Iran the judge's reasons for finding the account not coherent and plausible are contained in paragraphs 17-19.
32. There is no reference in those paragraphs to the judge considering the appellant's age and lack of education when assessing credibility. The only reference to the appellant being a child, in paragraphs 15-24 is in paragraph 20 as mentioned earlier in paragraph 30 of this decision.
33. At paragraph 9 of AM (Afghanistan) reference was made to rule 351 of the Immigration Rules which is set out below in part;
 - 351 However, account should be taken of the applicant's maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of [their] situation.
34. At paragraph 33 of AM (Afghanistan) it is stated 'Given the emphasis on the determination of credibility on the facts of this appeal there is particular force in the Guidance at [13] to [15];

13. The weight to be placed upon factors of vulnerability may differ depending on the matter under appeal, the burden and standard of proof and whether the individual is a witness or an appellant.

14. Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those [who] are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.

15. The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was

satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind.

35. We have considered the guidance given in relation to the assessment of evidence given by a child. We conclude that the judge's assessment at paragraphs 17-20 does not demonstrate that proper account was taken of the appellant's age and lack of education when the credibility of his evidence in relation to events said to have occurred in Iran was considered. Because of this we find that the credibility findings are unsafe, and this, without more, means that the decision cannot stand and must be set aside. It is our view that there must be an adequate credibility assessment so that the country guidance case law and background country evidence can properly be assessed.
36. The decision must be re-made. No findings can be preserved, save those conceded by the respondent that the appellant is an Iranian national of Kurdish ethnicity whose age is not in dispute and who left Iran illegally. We have decided that because there is substantial judicial fact-finding to be undertaken, it is not appropriate for the decision to be re-made in the Upper Tribunal and the appeal must be remitted to be heard afresh by the First-tier Tribunal by a judge other than Judge Juss.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law and is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal to be heard afresh.

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 his 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. This direction is made because the appellant has made a claim for international protection which has not yet been determined.

Signed

A handwritten signature in black ink, appearing to be 'M A Hall', written in a cursive style.

Date 1 March 2022

Deputy Upper Tribunal Judge M A Hall