



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

Appeal Number: AA/04184/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 9<sup>th</sup> December, 2013**

**Determination  
Promulgated**

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**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**MR OSMAN BAHONER**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr G Brown of Counsel, instructed by Broudie Jackson & Canter, Solicitors

For the Respondent: Mr G Harrison, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Iran who was born on 1<sup>st</sup> January, 1976. He entered the United Kingdom illegally on 25<sup>th</sup> January, 2013, and made a claim for asylum on the same day. On 17<sup>th</sup> April, 2013, the Secretary of

State decided to remove the appellant as an illegal entrant, having refused the appellant's claim for asylum and humanitarian protection and concluded that his removal would not breach his protected human rights.

2. The appellant appealed the Secretary of State's decision and his appeal was heard by First-tier Tribunal Judge Smith in Manchester on 31<sup>st</sup> May, 2013.
3. The judge found the appellant not to be credible and concluded that his removal from the United Kingdom would not cause the United Kingdom to breach the 1951 Convention. He dismissed the appellant's humanitarian protection appeal since it was based on the same factual matrix and he dismissed the appellant's human rights appeals.
4. The appellant challenged the judge's decision and, following a hearing on 2<sup>nd</sup> October, 2013, in Manchester, the Presenting Officer accepted that the First-tier Tribunal Judge had erred by failing to properly apply the "*Surendran* guidelines" endorsed in *MM v Secretary of State for the Home Department* [2000] 00 TH 02423. The Presenting Officer also accepted that the judge had erred by making adverse findings of credibility based on the Secretary of State's Reasons for Refusal Letter, without first demonstrating that he had considered the appellant's explanation for apparent discrepancies set out in the appellant's statement.
5. At the hearing on 2<sup>nd</sup> October, 2013, I set aside the determination of First-tier Tribunal Judge Smith.

### **Oral Evidence**

7. The appellant was called and I established that he and the Kurdish Sorani interpreter both understood each other. I told them both to notify me if they had any difficulty in understanding each other at any time. The appellant confirmed his full name, date of birth, and nationality.

### **Evidence-in-chief**

8. In answer to questions put to him by his Counsel, the appellant identified his signature at the foot of page 6 of his bundle. He was asked if the document at pages 1 to 6 of his bundle was his statement. He replied, "*What statement? I don't remember.*" Counsel then asked him if he recalled a statement being read to him. He appeared to be confused.
9. I asked Mr Brown if he was proposing to have the appellant adopt, as part of his evidence, the statements which appeared in the appellant's original bundle at pages 1 to 6. Mr Brown indicated that that had been his intention.

10. I pointed out to Mr Brown that given that the appellant did not appear to remember ever having made a statement, I could not allow him to adopt the statement as his evidence because he did not appear to be aware of its contents. I explained to Mr Brown that I would only allow the appellant to adopt his statement if he could confirm to me that he was aware of its contents and that the contents were true, accurate and not in need of any alterations or amendments. Were I to allow the appellant to adopt the statement, he might contradict something written in the statement if he had not approved that might cause me to believe that he was not telling the truth. I did not believe that I could allow him to adopt the statement when he appeared not to remember having made it, or ever having had it read back to him.
11. I appreciated it placed Mr Brown in some difficulty but, to allow the appellant to adopt his statement in such circumstances could very easily lead to unfairness.
12. In answer to further questions put to him by Counsel, the appellant confirmed that he was an Iranian Kurd and that before coming to the United Kingdom he had only ever lived in Tehran.
13. He did not go to school because of an injury to his leg. When he was a child, he was injected in hospital with a needle which caused his right leg to be numb.
14. The appellant confirmed that his claim to asylum related to an incident when he ran away from Iran. He said that he had been involved in political activities. These were activities against the government, designed to overthrow the government.
15. Four times the appellant agreed to deliver packages in return for money, but he did not know what the packages were. On the fourth occasion, an incident occurred. The appellant's younger brother was with him and his younger brother was arrested whilst the appellant managed to run away.
16. By way of explanation, the appellant told me that he and his brother had taken a load of printed publications given to him by Omar Samadi and taken them to Sakez where he handed them over to some "boys".
17. When he ran away, it was because the police attacked the boys. The police did not see the appellant, because it was evening and he was some distance away from them. The appellant was on a motorcycle and he accelerated away. He returned to his home in Sara, a small village where Sakez.
18. The appellant explained that he would take the box of printed materials on his three wheel motorbike and hand it over to other men as instructed. He had done this job three of four times before. He had no idea what the literature was about, because he is illiterate.

19. The first time he became involved in delivering this literature was on 20<sup>th</sup> February, 2013. His brother, Yasim, told the appellant to trust him. The appellant agreed to do this work in return for money. The appellant was paid in Iranian currency, sometimes 60,000 tomans and sometimes 70,000 tomans. Occasionally, it was even more. The appellant said that he had taken “the boxes” from Sarchawa, from the home of Omar Samadi, and had to take them to a road called Enkelab Islami Road in Sakez. There, he had to hand over the boxes to boys who were expecting him and approached him. The appellant did not know their names and had been told to go to a particular street where he would be met.
20. The appellant transported these “boxes” on his motorbike. It was a three wheeled Honda motorbike. It had been converted to a three wheeled vehicle for use in agriculture. The boxes were placed on the back.
21. The last time the appellant had carried out this work was on 24<sup>th</sup> February, 2013, and then he ran away. He ran away because the police attacked the place where he had delivered the leaflets. This was Enklab Islami Street, Sarchawa. The leaflets themselves were in big boxes. He could not lift them. The men had collected some boxes and there were two boxes left on the bike and they were supposed to come back and collect these two boxes but they did not. Instead, the appellant saw a police car and saw the boys running away. The appellant dropped the two boxes onto the street and he ran away too. The appellant confirmed that there were two big boxes. He then said that there were boxes inside the two big boxes and that the leaflets had been put into a “bag”. The appellant collected the literature and it was all wrapped up and then the wrapped up literature was placed into the boxes. The boys the appellant referred to had been the men who had been waiting for the delivery. The appellant said he did not know any of them and that they had worked for Omar Samadi. On the occasion of the last visit, he had seen two boys.
22. The police arrived after the boys had taken some of the items from the appellant and had told him to wait until they returned to collect the remaining boxes. They were due to come back to the appellant to remove two more boxes, but did not return. The appellant saw the police car arrive and noticed that the boys were running away. The appellant dropped the two remaining boxes and ran away too by driving off on his three wheeled motorcycle. He thought that something bad must be happening for the police to be there. The appellant went home and asked his wife if anyone had come to the house. She told him that they had not. She asked him where his brother Yasim was and she said that she had not seen him. He lived in a house next door to the family house and so he went to the family house and asked his mother if his brother Yasim had returned. She said that he had not. By this time it was getting light, but still Yasim had not returned. When it was completely daylight, the appellant left his mother’s home and went to his uncle’s house in Buchan. On arrival, he discovered that Yasim was not with his uncle either.

23. Yasim did not return to his mother's house and it was uncharacteristic of him ever to stay away anywhere overnight. When he had not returned by daylight, the appellant thought that he might have been arrested.
24. The appellant remained in Buchan for three days and then his uncle took him to Rezaieh. His uncle had found out that Yasim had been arrested. His uncle told the appellant that Yasim had been arrested for "conspiracy for political activity to overthrow the government" and asked if the appellant had been involved too. He told his uncle that he had. His uncle was very angry.
25. Yasim had been involved in the delivery of material, but he had not delivered it to Enkelab Islami Road but instead to another area of Sakez.
26. The appellant's uncle told the appellant that what he had delivered was not commercial material but political in nature. His uncle knew a lot of people and by asking around he discovered the arrests.
27. When the appellant went to Buchan, to his uncle's, he took his wife and children with him. They were all moved to Rezaieh by the uncle. His uncle told him that the people who had been arrested would be tortured and under duress would give the appellant's details. His uncle told him that he had to leave the country. His uncle gave money to "Mafia people" and the appellant came to the United Kingdom via Turkey. It took 27 days. The appellant travelled by small car and then lorry to Turkey, crossing the border by avoiding a checkpoint.
28. The appellant confirmed that he had been in touch with his uncle after he arrived in the United Kingdom. His uncle had told him not to call him again because that would cause a risk to his uncle. The appellant did not know what had happened to Yasim. His uncle said he had not been sentenced. His uncle did not tell him what had happened to the other people who had been arrested.
29. The appellant was referred to the Secretary of State's Reasons for Refusal Letter dated 12<sup>th</sup> April, 2013. He was referred first to paragraph 14. There, the Secretary of State had said:-

"Consideration has been given to your claim that you are wanted by the authorities in Iran because you were delivering political leaflets. For the following reasons, this is not accepted. You state that in February 2013 you were asked by your brother to deliver some commercial advertisement leaflets, and he told you that you would be well paid for it. You never saw the leaflets as they were packaged up when you collected them, and you did not have any idea that they were political leaflets. You were asked if you had made any enquiries as to why you were being paid more than you would normally earn in one week to deliver these leaflets, and you stated that you were told that there was good money in advertising (AI Q46). Your assertion that you believed that the leaflets were just advertisements is inconsistent with the evidence that you provided that you were concerned and scared about the situation (AI Q53 and 54). This inconsistency is considered to damage the credibility of your account."

30. The appellant said that he did not say that he was scared because of the work he was doing. What he meant was that he was scared because he was working at night. His brother gave him the work and he loved him. He trusted his brother. It was because he had to do this work at night that he was scared.

31. The appellant was then referred to paragraph 15 of the Reasons for Refusal Letter. This said:-

“You claim that you only discovered that the leaflets were political ones after you were delivering them and you saw the people who were supposed to collect them running away from the security forces (AI Q60). You state that you had put the bags down so that the people could collect them, when you saw the security forces, and saw the people running away (AI Q63). This is inconsistent with the evidence you have provided that the people were still some distance away from you because you had not arrived at the collection place yet (AI Q66). Both of these statements are also inconsistent with your claim that somebody had already been to collect one of the bags, and had told you to wait where you were and they would return for the other bag (AI Q69-72). This inconsistency is considered to damage the credibility of your account. Further, you were unable to state how many security officers there were, nor how far away they were from you when you saw them. Your inability to provide this information further undermines the credibility of your account.”

32. The appellant explained that he met the boys some 50 metres away from their building. They would never take him to their destination. They told him not to come and that they would come to him. He saw the car. It was travelling fast and then suddenly stopped. He knew it was the police. It was a marked police car with its red and blue roof lights flashing. The appellant could not remember if it had its siren on or not.

33. The appellant was then referred to what the Secretary of State had said at paragraph 16 of the letter. She said:-

“16. After running away from the security forces, you went to stay with your uncle. He told you that your brother had been arrested and had given your name under torture, because the leaflets were political ones. When asked what kind of leaflets you stated ‘demonstrations’ (AI Q96) and you could not give any further information. You state that your uncle was able to find out all of this information by asking around, but you cannot provide any detail of who was able to provide this information. You do not know if the police had been looking for you in connection with this. It is considered that you have not demonstrated that the authorities in Iran have any interest in you.”

34. The appellant said that if you make a small mistake in Iran and you are Kurdish you could be hung in the street.

### **Cross-examination**

35. The appellant confirmed that he had two children. He denied having said that he left a child behind in Iran. One of his children was ill on the journey to the United Kingdom. The appellant agreed that he was

interviewed on two occasions and he said that he had told the truth this morning and whatever he had said was the truth.

### **Questions Put by Me in Order to Clarify the Appellant's Evidence**

36. I told the appellant that I wished to clarify some parts of his evidence with him. He explained that he worked as a farmer in Iran. His family owned land and he delivered the harvest of walnuts and apples to the market for his family and for other local farmers.
37. He used to earn approximately 10,000 toman per day but occasionally, because people felt sorry for him because of his leg and because he had a wife and children, they would give him 15,000 toman a day. He has one child who is 1 year of age and another child who is 7 or 8.
38. The appellant agreed that he had agreed to collect boxes and take them to Sakez. The place where he collected them, Sarchawa, was fifteen or twenty minutes walk from his home. He went to Omar Samadi's house to collect the boxes. Sakez is a distance of 30 minutes away on his motorbike. The roads were asphalt in surface and were good. The materials were all wrapped up and placed in boxes and some of them were placed in bags as well. The appellant's brother, Yasim, was also undertaking this delivery work, but he was delivering to a different district. His brother had never been involved in politics and, as far as the appellant was aware, he did not know what the material that they were delivering was, either.
39. The appellant said he was not suspicious about the delivery work, because Omar had said he needed the appellant and his brother to do the work because his own car had broken down.
40. The appellant's uncle lives in Buchan and this is about 25 minutes away from his home by motorbike.

### **Re-examination**

41. In answer to questions put to him by Mr Brown, the appellant explained that he used his Honda motorcycle to deliver the harvest of walnuts and apples. His brother had an identical motorbike which he had used.
42. The appellant explained that no-one would work at night-time delivering political literature, so he was not suspicious when he was offered the large sum of money. He had been concerned only because it meant working at night and while he did not know exactly what he was delivering, he had no reason to think that it would be material which would get him into difficulties or trouble..

43. It was after he had arrived in the United Kingdom that he spoke to his uncle and he was told that the authorities were looking for him at his mother's home. They had not been to his uncle's house.

## **Submissions**

44. The Presenting Officer relied on the Reasons for Refusal Letter and pointed out that the witness had been inconsistent. An interpreter had made a statement confirming that the witness statement had been read back to the appellant but that statement was only served on 5<sup>th</sup> December and yet the appellant's statement had been dated 15<sup>th</sup> May last. The appellant's evidence is confusing and in places contradictory. Mr Harrison asked that I dismiss the appeal.

45. Mr Brown suggested that the appellant had not been inconsistent. He reminded me that the appellant had never been to school, that he was from a farming background and had been employed as a delivery man. In the circumstances, it is very likely that he would have been approached to deliver leaflets; no-one would have suspected him because he would have been going about his normal business.

46. Even though the appellant was paid more money than he normally earned, the appellant says that he recognised that there was a danger but the danger was because the work was to be carried out at night-time.

47. The activity had only taken place over a matter of days. He had not realised that he would have been involved in any real danger. It was not until he saw the arrival of a police car and then people running away that he became concerned. Even then he went home and then went to his mother's home, but it was not until the following morning that he realised something was wrong when his brother had not appeared. It was only later, after the appellant had gone to stay with his uncle, that his uncle had discovered what had actually happened and the cause of the arrest of his brother. The appellant may well have been inconsistent but, suggested Mr Brown, the appellant has told a truthful account very simply. His brother has been arrested and while it is true that the appellant may well have asked more questions about the material he was delivering, he had no reason to do so. He could not read in any event. The appellant was given an entirely credible account and his appeal should be allowed.

48. Counsel asked me to bear in mind that the appellant made an illegal departure from Iran. As a result, if he is returned to Iran undocumented he will be at real risk.

49. Mr Harrison confirmed that the appellant would not be removed from the United Kingdom without documentation.



50. I reserved my determination.

### **The Law**

51. In asylum appeals the burden of proof is on the appellant to show that returning him to Iran will expose him to a **real risk** of persecution for one of the five grounds recognised by the 1951 Refugee Convention or to a breach of his protected human rights. The question of whether a person has a well-founded fear of persecution for a Convention reason has to be looked at in the round in the light of all the relevant circumstances and judged against the situation as at the time of the appeal. In human rights appeals, if it is established that there will be an interference with the appellant's human rights and that the relevant Article permits, then it is for the respondent to establish that the interference is justified.
52. The standard of proof in asylum appeals as regards both the likelihood of persecution and the establishment of past and future risks is a **real risk**. In *Kacaj v Secretary of State for the Home Department* (01/TH/0634\*) it was held by the former Immigration Appeal Tribunal that the standard of proof in human rights appeals is the same as that in asylum appeals.

### **Background Objective Evidence**

53. I reminded myself of the situation in Iran by reading the background evidence.
54. The first document in the appellant's bundle was a report in Iran Daily Brief of the Chief Prosecutor warning that activists who fled Iran after the 2009 presidential elections will face charges if they return to Iran. He was reported to have said,

“let's assume that those who were engaged in attacks on the nation and system in the 88 sedition (referring to the June 2009 post-presidential election protest) if anyone committed a crime and then officially left the country with a passport and even unofficially, we will not ban them from entering the country, but once they come here, they will be prosecuted and charged.”

55. I was provided with an extract from the Home Office Country of Origin Information Report of 26<sup>th</sup> September, 2013. This suggested that the prison population was at 217,000, although the capacity of the prison system was stated to be 113,000. The US State Department Report referred to prison conditions being harsh and life threatening. It also spoke of prisoners being subjected to rape by guards and interrogators, who use rape to crush detainees' spirits, inflict humiliation and discourage dissent and force confessions of crimes. The report of a Special Rapporteur showed that prison conditions fell below minimum standards proclaimed by the United Nations, that there was severe overcrowding, inadequate access to water, insufficient prisoner segregation practices, poor quality and unhygienic facilities, hazardous ventilation conditions, insufficient access to medical services and poor nutritional provisions. The US State Department Report said that record keeping on prisoners was

inadequate and statistics on the country's prison population were not publicly available.

56. The report also spoke of the death penalty being involved for certain crimes including adultery, incest, rape, fornication for the fourth time by an unmarried person, drinking alcohol for the third time, sodomy, sexual conduct between men without penetration for the fourth time, lesbianism for the fourth time, fornication by a non-Muslim man with a Muslim woman and false accusation of adultery or sodomy for a fourth time. It can also be applied for crimes such as smuggling, trafficking drugs, murder, espionage and crimes against national security.
57. A Human Rights Watch Report spoke of the practice of torturing prisoners to extract confessions being relatively common and forced confessions being accepted as evidence. Amnesty International reported that torture was routine and widely used. The US State Department Report said that the government defended its use of flogging and amputation as "punishment" not torture. The International Campaign for Human Rights in Iran spoke of reported methods of torture including rape, severe beatings, sleep deprivation, threats of harm to family members, pouring iced cold water on prisoners with heart conditions after they had been subjected to intense heat, prolonged periods of solitary confinement and deprivation of healthcare, basic necessities and toilet use.
58. The report made it clear that bribery is rife. A Danish fact-finding report stated that there are easy ways to leave Iran illegally and pointed to the land border with Turkey. Security measures are said to be efficient and airlines are strict on control of documents but added that anything is possible in Iran. The majority of the population living in the poverty stricken regions of south-east Iran were said to report to lucrative activities such as smuggling goods and human beings. Kurds living on both sides of the border between Iran and Turkey help people to pass across the border and the fact that the Kurds have been passing through the border, coupled with the difficulty of controlling borders in the mountainous region of Kurdistan make the smuggling of goods and people easier for smugglers. A May 2011 Amnesty International Report referred to a 19 year old student having been arrested on arrival in Tehran after returning from France where he was an asylum seeker. The circumstances of his departure from France were unclear and his current whereabouts were unknown. It said that he may have been subjected to enforced disappearance.
59. The Amnesty International Report also referred to asylum seekers being interrogated on return and asked whether or not they had been political activists either in Iran or abroad. If they have tried to conduct propaganda against Iran then they are culpable and detained until a judge decides to sentence. Returnees are therefore held for a few days until it is clear to the police that they have not been involved in political activity. If a person was either politically active in Iran before leaving or has been active

abroad then they will be tried and receive a punishment appropriate to their activities.

60. I was provided with a copy of a Freedom from Torture report of March 2013 published by the Medical Foundation. I did not find this at all helpful. One accepts that there are genuine refugees fleeing from Iran who have been tortured. However, that does not mean that *all* asylum seekers fleeing from Iran tell the truth when they describe their claims. Each claim needs to be considered carefully on its own merits.
61. I read the UK Border Agency Operational Guidance Note for Iran. It made depressing reading.
62. The report highlighted the fact that lack of access to justice continued to underpin a majority of human rights abuses in Iran. I paid particular attention to paragraphs 31 5.5 to 31 7.3 because Counsel had particularly drawn my attention to those paragraphs.
63. At pages 7 to 10 of the appellant's bundle was a copy of the report from the office of the UNHCR dated 16<sup>th</sup> May, 2013, describing discrimination against the Kurdish minority. It highlighted the fact that the Iranian government does nothing to prevent discrimination and human rights abuses against Kurds and those human rights violations are daily based in Iranian Kurdistan. Hundreds of Kurdish political and civil activists were said to be prisoners in Iran's prisons, sentenced to death. Dozens of Kurdish political and civil prisoners were said to have been sentenced in connection with their alleged membership of and activities for Kurdish proscribed organisations.
64. I read the Danish Immigration Service report of 26<sup>th</sup> February, 2013. This merely confirmed material in the earlier documents of continuing human rights abuses against Kurds or persons believed to be of Kurdish origin. The US State Department Report of 19<sup>th</sup> April, 2019 merely confirmed reports of the government committing acts of arbitrary or unlawful killings by torture, denial of medical treatment and beatings continued and many of the country's ethnic minority communities were disproportionately victims of such abuse. Prison conditions did not appear to have improved at all. They were said to be harsh and often life-threatening. Although prohibited by the constitution, arbitrary arrest and detention still continued and the security forces were not considered to be fully effective in combating crime and corruption and impunity were problems. Regular and paramilitary security forces committed numerous human rights abuses and there was no transparent mechanism to investigate or punish security force abuses and no reports of government actions to discipline abusers.
65. Lastly, I read the Iran Human Rights Documentation Centre report "On the margins arrest, imprisonment and execution of Kurdish activists in Iran

today". This, too, made depressing reading and merely served to reinforce material that I had already considered.

66. I have only quoted from part of the background material supplied to me although I emphasise that I have carefully considered it all, and it was against this background that I considered the appellant's evidence.

### **Consideration of the Appellant's Evidence and Findings of Fact**

67. In making my findings of fact, I have borne very much in mind that the appellant is uneducated and illiterate. I have made what I regard to be full allowance as a result. However, the appellant is certainly not unintelligent. Having considered the background evidence produced to me, I then considered the appellant's evidence and as a result I make the following findings of fact:-

- (i) I accept that the appellant is an Iranian Kurd.
- (ii) I accept also that the appellant is illiterate and did not attend school in Iran, because of a medical injury he sustained as a child when he was injected with a needle which caused him to lose feeling in his right leg.
- (iii) I accept that the appellant was employed in agriculture in Iran transporting apples and walnuts on behalf of his family and other local farmers to nearby markets. I accept that he has a brother in Iran and that his family own agricultural land.
- (iv) In so far as the remainder of the appellant's testimony is concerned, having considered it carefully, I concluded that I did not believe any of it. My reasons are given below.

68. The appellant asserts that he and his brother were approached by a man called Omar Samadi to transfer boxes at night-time, because Omar Samadi's own car had broken down. The Secretary of State did not believe the appellant's account, because the appellant said that he had no idea that the papers he was delivering were political leaflets and yet he was paid more than he would normally earn in one week and this, therefore, suggests that the appellant knew that what he was doing was risky and that he was aware that the material was political in nature. The Secretary of State maintains that the appellant's assertion that the leaflets were advertising is inconsistent with the appellant's claim to be concerned and scared about the situation.

69. The question the appellant was actually asked at question 53 of his interview was:

*"Did you not think that there was anything unusual about being paid so much money for fifteen minutes work?"*

To which the appellant replied:

*"I was concerned but I wasn't sure".*

The appellant was then asked at question 54:

*"When you say you were concerned, what do you mean?"*

to which the appellant replied:

*"I was scared. I didn't know what it was."*

It was then put to him at question 55:

*"If you were scared, why did you take the risk of delivering these things?"*

And the appellant replied:

*"I wasn't sure. I didn't know what they were."*

70. I do not believe the appellant when he says that his expression of concern was because he was transporting goods at night-time. If the fact that he was being offered up to seven times more in pay for 15 or 30 minutes work than he normally earned for a whole week did not make him concerned, the fact that he was actually *required* to do this work at night-time should have given him even more reason to be worried about what he was getting into. I believe that at his interview the appellant did say that he was concerned about being paid so much money for fifteen minutes work and was scared because he did not know what he was being asked to transport.
71. I do not believe that those who wanted this material moved would have particularly chosen the appellant and his brother. It was suggested by Counsel that the appellant and his brother were the very people who would have been asked to transport this material, because they would not have given rise to any suspicion; they were two people riding their motorcycles who were known to do delivery work for local farmers however, the mere fact that they were riding their motorbikes at night-time, when they were normally employed to deliver goods to a market, would, I believe, have caused suspicion in anyone who saw them. The appellant said that he started undertaking this work on 20<sup>th</sup> February and made three or four deliveries, but on the last occasion, when he got to the place where he was supposed to deliver his goods, in Emklab Islami Street, two boys collected some parcels and told him to await their return to collect the remaining boxes, but did not return. The appellant maintains that he then saw a police car, which being driven fast which then stopped. The police car had its red and blue lights flashing and he saw the boys

running away. I believe that if the appellant was nearby and rode off on his motorbike, he would have been followed by the police. The appellant's evidence about whether the leaflets were in boxes or whether they were in bags was contradictory and confusing. I asked him to clarify whether the items were in bags or in boxes and he told me that they were wrapped up and wrapped up into the boxes. His inability to clarify what he meant caused me to believe that he was not telling the truth.

72. The appellant maintains that he went home and then went to his family home which was next door. The following morning, when his brother had not returned, he became concerned and he drove to Buchan with his wife and children and went to his uncle's home. However, according to the appellant, his brother was not delivering items to the same place as the appellant. The appellant had no cause to be alarmed for his brother and yet he thought his brother might have been arrested. He had no reason to believe his brother would have been arrested, because he did not know that the police had necessarily gone to the other area of the town where his brother was making a delivery.
73. The appellant claims that, after having been in Buchan for three days, his uncle found out that Yasim had been arrested for "conspiracy for political activity to overthrow the government".
74. I simply did not find this to be remotely credible. If the appellant's brother had indeed been arrested and had been thought to have been involved in political activities intending to overthrow the government, I believe that the authorities in Iran would have immediately gone to Yasim's home and to the home of his known relatives, including his uncle. The background material shows that the Iranian authorities do not tolerate any political dissent. When the appellant spoke to his uncle, he told his uncle that the authorities had been looking for him at his mother's home and yet they had not, apparently, been to the appellant's uncle's home. I did not believe him. This finding alone would, in my view, justify my finding the appellant not credible and dismissing his appeal.
75. A further reason I do not believe the appellant is because the appellant told me that he saw a marked police car with its red and blue lights flashing. However, when interviewed, he said that he saw "security agents". He made no mention of any car or, indeed of "policemen". The appellant also appears to have contradicted himself, because he told me that the boys had collected some of the materials from him and had told him to wait, but then did not return to collect the rest of the materials. However, at his asylum interview, he said that when he saw the security men (they were some distance away) and he added, "I hadn't quite arrived". He said, "I was at the top of the street, they were in the middle of the street". He explained that the security forces were "in the street and the others saw them and ran away".

76. At his interview, the appellant was asked when he realised that the leaflets were not actually adverts and, in answer to question 60, he said:-

*“When I saw the security agents in the street and I saw them running away and I ran away as well.”*

The appellant explained that what he meant by *“I hadn’t quite arrived”*, was that he was at the top of the street a distance away, but in the same street. However, according to what he told me, he had already delivered some of the documents and was waiting for the boys to return to collect the remaining documents.

77. I do not believe the appellant’s account, and for the reasons I have given, do not believe that he was ever involved in the transportation of literature which was subsequently discovered to have been material of a political nature and which gave rise to a suspicion that he was involved in political activities.
78. I do not believe that on his return to Iran the appellant will be of any interest to the Iranian authorities. He will simply be regarded as being another failed asylum seeker who left Iran and sought asylum in Great Britain. I do not believe that he is wanted by the Iranian authorities, or that he is thought to have been involved in any activity likely to be regarded as political or anti-government.
79. I dismiss the appellant’s asylum claim.
80. Since the appellant’s humanitarian protection appeal and human rights appeals under Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms are based on the same factual matrix as the asylum appeal, I dismiss them also.
81. It was not argued before me that the appellant’s removal from the United Kingdom would cause the appellant’s rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms would be breached. Nonetheless, I have considered the appellant’s Article 8 rights.
82. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for respect for a person’s private and family life, their home and correspondence. An appellant has to show that the subject matter of Article 8 subsists and that the decision of the respondent will interfere with it. If he does so, then it is for the respondent to show that the respondent’s decision is in accordance with the law, that it is for one of the legitimate purposes set out in Article 8(2) (in this case for the economic well being of the country, for the prevention of disorder or crime and for the protection of the rights and freedoms of others) and that it is necessary in a democratic society, which means that it must be proportionate.

83. At paragraph 17 of *Razgar v Secretary of State for the Home Department* [2004] UKHL 27, Lord Bingham of Cornhill said this:-

“In considering whether a challenge to the Secretary of State’s decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal will be likely to fare before an Adjudicator as the Tribunal responsible for deciding an appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be asked by an Adjudicator. In a case where removal is resisted in reliance on Article 8, these questions are likely to be:-

- (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant’s right to respect for his private or (as the case may be) family life?
- (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
- (3) If so, is such interference in accordance with the law?
- (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
- (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?”

84. I accept that the appellant does of course enjoy family life with his wife and with his children. I must have regard to the best interests of the appellant’s children in the way required by paragraph 29 of the judgements in *ZH (Tanzania)* [2011] UKSC 4. There are no considerations inherently more significant than the best interests of the children. The appellant’s children’s best interests are served by their being together and both being with their parents. However, the respondent’s decision does not amount to an interference with that family life, because the family will be removed from the United Kingdom as a unit.

85. The appellant entered the United Kingdom illegally on 25<sup>th</sup> March, 2013. Given the short period of time the appellant has been in the United Kingdom, I do not accept that he has developed a significant private life in the United Kingdom. I accept, however, that he must have some limited private life in the United Kingdom, but I am not prepared to accept that such interference does have consequences of such gravity as potentially to engage the operation of Article 8. I accept that the threshold is not especially high, bearing in mind what Sedley LJ said at paragraph 28 of *AG (Eritrea) v Secretary of State for the Home Department* [2007] EWCA Civ 801.

86. In case I am wrong, I have gone on to consider whether the interference is in accordance with the law and is necessary in a democratic society for the well being of the country, for the prevention of disorder or crime, or for the

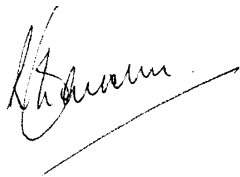


protection of the rights and freedoms of others. I have concluded that it is. It has certainly not been argued before me that the interference is not in accordance with the law or not necessary in a democratic society for the economic well being of the country, for the prevention of disorder or crime, and for the protections of the rights and freedoms of others.

87. I do not believe that removing the appellant and his wife and children from the United Kingdom will cause any breach of the appellant's family life and, given that I have heard no evidence at all which could lead me to believe that the appellant has developed any significant private life in the United Kingdom, I feel bound to conclude that the removal of the appellant is entirely proportionate.
88. The making of the decision by First-tier Tribunal Judge Smith did involve the making of an error on a point of law. I set aside his decision. My decision is that the appellant's asylum, humanitarian protection and human rights appeals should all be dismissed.

**Summary**

The appellant's asylum, humanitarian protection and human rights appeals are all dismissed.



Upper Tribunal Judge Chalkley