



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

Appeal Number: AA041052015

THE IMMIGRATION ACTS

**Heard at Field House
On 25 May 2016**

**Decision & Reasons Promulgated
On 26 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**E K
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Dirie, Counsel

For the Respondent: Mr Duffy, Senior Presenting Officer

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by Upper Tribunal Judge Bruce dated 5 April 2016. The appeal relates to a decision by First-tier Tribunal Judge N M Paul promulgated on 21 January 2016. The Judge had dismissed the Appellant's appeal against the Respondent's decision on all grounds, including asylum grounds.
2. The Appellant's grounds of appeal seeking permission to appeal had contended that the Judge's decision was flawed because:

- (1) The Judge failed to make a finding as to whether it was accepted that the Appellant was a smuggler of alcohol and pornography between the Iran-Iraq border;
 - (2) The Judge failed to apply the correct standard of proof;
 - (3) The findings amount to only four paragraphs and although the Judge said that there were no arguments raised in respect of human rights, that was wrong; and
 - (4) There was a failure to provide adequate reasons. There was reliance on the screening interview and that was the wrong approach in law.
3. At the hearing before me Ms Dirie took me through her grounds and also referred at some length to the background material that was before the Judge. She also produced additional copies of background material that she had provided to the Judge on the day of the hearing. She submitted that the evidence was clear that there were smugglers just like the Appellant at the border between Iran and Iraq. In addition it was clear that smugglers do what they do as they have no choice. Despite the risk of losing one's life smuggling was still rife. The terrain of the area was mountainous and the Police do catch people.
 4. Mr Duffy said that in respect of paragraph 7 of the grounds, that related to the screening interview but the letter of complaint was about the substantive interview. Both the solicitor and the Appellant's own interpreter were present during the screening interview. The Appellant was not particularly young at the time of his interview, he was aged 17. The credibility findings were open to the Judge. The rest of the grounds amounted to a perversity challenge. There was a slight slip when the Judge said at paragraph 21 that it was drugs that were being smuggled. That was wrong but it was not the Appellant's case that he was smuggling drugs.
 5. After hearing in reply from Ms Dirie, I had reserved my decision.
 6. The Judge's findings are contained within four paragraphs. That of itself is obviously not an error of law, but it means that those four paragraphs had to deal with the multi-faceted aspect of the Appellant's case. In my judgment the reasoning is inadequate.
 7. I come to this view for the following reasons. Firstly, the background material highlighted to me and also apparently highlighted to the Judge does show that there is indeed smuggling of the type alleged to have been undertaken this Appellant by persons on the Iran-Iraq border. The evidence also explains how this is "life" for many and the career path has been passed along through the generations. The background material therefore provided some support for the Appellant's claim. Therefore in that respect I conclude that Ms Dirie is correct that the Judge erred in concluding that because the Appellant's uncle was prepared to fund him fleeing Iran, then that meant that there was no need for the Appellant to have been a smuggler. In my judgment it is quite clear that it was quite possible for the Appellant to have been a smuggler and for his uncle to

have come to his aid once the Appellant's position was so serious that he had to flee Iran. The fact that the Judge has not referred to or used the extensive background material in coming to his assessment is a material error of law. As Upper Tribunal Judge Bruce observed when granting permission to appeal, particular care was required before rejecting the evidence of this child (as he apparently was at the time of the hearing) as "incredible".

8. Secondly, the Judge has placed great weight on the screening interview. Whilst it is correct that the Appellant's solicitor and his own interpreter were present, it is also the case that the screening interview was not the time for the details and the intricacies of the claim to be dealt with. The Court of Appeal in **JA (Afghanistan) v Secretary of State for the Home Department** and in particular the judgment of Moore Bick LJ made it clear that it is particularly important when considering the significance to be attached to answers given in the course of an interview, there be proper assessment of factors such as reliance on an interpreter or vulnerability because of age. In my judgment the ground of appeal raised about the Appellant's solicitor's relatively contemporaneous complaint about the interpreter, albeit mainly in respect of the substantive interview, was more than capable of having a bearing on why discrepancies were recorded. This therefore required the Judge to explain in some detail why the screening interview was being given prominence as the first reason for rejecting the Appellant's appeal.
9. Thirdly, although not sufficient on its own, the Judge incorrectly recorded in his decision that there were no arguments in respect of human rights grounds. There were, albeit the human rights grounds would have been weak.
10. Overall the cumulative effect of these errors and the way in which the assessment of credibility was approached, particularly noting that the Appellant was apparently a minor, amounts to a material error of law.
11. I therefore allow the appeal. There shall be a rehearing at the First-tier Tribunal. None of the current findings shall stand.

Notice of Decision

The decision of the First tier Tribunal Judge involved the making of a material error of law and is set aside.

The appeal shall be reheard at the First-tier Tribunal.

An anonymity direction is made.

Signed

Date: 25 May 2016

Deputy Upper Tribunal Judge Mahmood

