



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

Appeal Number: PA/00296/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20th September 2017**

**Decision & Reasons
Promulgated
On 22nd September 2017**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**BH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Chakmakjian, Counsel instructed on behalf of the Appellant

For the Respondent: Mr P. Nath, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran.

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

2. 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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.
3. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who in a determination promulgated on the 21st June 2017 dismissed his claim for protection.
4. The Appellant's immigration history is set out within the determination at paragraphs 1-2 and in the decision letter issued by the Secretary of State. The Appellant left Iran in or about the 22nd August 2015 and travelled through Turkey. He arrived in the United Kingdom in May 2016 and claimed asylum on the 27th June 2016. It is common ground that on arrival he was an unaccompanied minor aged 17.
5. The basis of the Appellant's protection claim is recorded in the decision of the First-tier Tribunal at paragraphs 6-18 which is also referred to in the detailed reasons for refusal.
6. It can be summarised briefly as follows. The Appellant had problems due to his sight and had surgery on his eyes when he was very young and had lost vision in his eyes. As a result of medical problems he had not been educated at school and only taught basics at home by his sister. His ability to read is limited and he did not leave the house much until he was 16 years of age. He only had one particular friend, A, whom he had known since he was young. He had been told by his friend A that he had been approached by someone who could offer them employment once twice or three times a week. The Appellant was taken to meet a man called H who told them that they would be sticking leaflets at night time. They could not do this during the days they would be caught and charged with littering the area which is a criminal offence. He began working for H when approximately 16 and worked with him for a year. After a couple of months to others joined them to work together. When they became involved the amount of paper to be distributed increased to 3 times per week. One night he was distributing leaflets. At the end of the night, his two colleagues failed to meet him. He went with A to look for them and they noticed a white car. A set from the intelligence service and to colleagues were in the car and they were looking for others. He was told by A he could not go home and went to another friend's home. He explained to his father what he had been doing and this was the first time that he knew that he'd been helping the Democratic Party. He had no idea that he been working for the Kurdish Democratic Party thought he was delivering leaflets at night for the "prosperity of the Kurdish people". His friend had not told him that delivering would be dangerous or that he

could be punished by the government. It was later confirmed that the Iranian intelligence had visited the family home looking for the Appellant.

7. The claim was refused by the Respondent and the reasons given for that decision are set out in a detailed reasons for refusal letter dated 22 December 2016. The decision letter was summarised by the First-tier Tribunal at paragraphs 19 - 34. The Respondent considered his claim for asylum due to his imputed political opinion from being involved in distributing illegal leaflets for the Kurdish Democratic Party but for reasons of credibility, it was not accepted that he had been involved in distributing leaflets or that the Iranian authorities had any interest in him.
8. The Appellant exercised his right to appeal that decision and the appeal came before the First-tier Tribunal on the 7th June 2017.
9. The judge set out his findings at paragraphs [36] to [48]. The judge found at [36] the Appellant had not provided a credible basis the challenging the assertions, analysis and conclusions in the refusal letter and rejected his account of being involved with the distribution of material in Iran and that the Iranian authorities had become aware of this and was sought by them.
10. The Appellant sought permission to appeal that decision and the grounds are set out in the papers.
11. The FTT (Judge Robertson) granted permission to appeal.
12. At the hearing before this Tribunal Mr Chakmakjian, who had drafted the grounds, relied on those written grounds. His overarching submissions related to the assessment of credibility and that when dealing with the issue the Tribunal had neglected to take into account the Appellant's age. In particular, when making an assessment of the events in Iran the judge failed to consider it in the context of the Appellant's age as to whether the events were plausible in the light of the fact he was a child at the relevant time. He submitted the ground 4 was an illustration of how the Tribunal overlooked his age. This concerned the failure to claim asylum at the first reasonable opportunity. The Appellant had given reasons as to why he had not as he was under the control of an adult agent. The Appellant was a child at the time and this was recognised in the decision of AA (unattended children) Afghanistan CG [2012] UKUT 00016 at paragraphs 114-115. Whilst this referred to children in Afghanistan, he submitted that it applied to children in general.
13. As to ground 2, he submitted that the plausibility of the Appellant's account was consistent with the objective material but that the Tribunal had not considered that material when reaching findings of credibility. In particular he made reference to the two Danish reports which were before the Tribunal which dealt with political activity of the type undertaken by Appellant and in particular circumstances. He submitted that those reports gave and lent weight to the Appellant's account but did not feature in the overall assessment.

14. Ground 3 was pleaded as a procedural unfairness which related to a misunderstanding of the evidence that had been before the Tribunal dealing with the Appellant's eyesight. The simple point made by Counsel was that had this alleged inconsistency set out at paragraph 39 been put to the Appellant for clarification, it could have been dealt with. To have not given the Appellant and opportunity to deal with it when it was relied upon as significant and relevant to credibility amounted to a procedural unfairness.
15. Mr Nath on behalf of the Respondent confirmed that there had been no rule 24 response filed on behalf of the Secretary of State. Dealing with ground 1, he reminded the Tribunal that the Appellant was over 18 at the date of the interview (see paragraph 20). He submitted that the judge did take into account the Appellant's age and made reference to paragraph 37 of the decision. He submitted that the questions that the Appellant were asked when he was an adult although Mr Nath accepted that the events took place when he was a child. At paragraph 37 the judge was considering his cognitive and intellectual ability in the context of his factual claim.
16. As to ground 2, he submitted that paragraph 43 judge had made reference to the Danish report. It was clear from the Appellant's account that he was not a formal member of any organisation. As to ground 4, he submitted that the decision letter set out issues relating to section 8 at paragraph 29 and thus the judge was required to consider this issue. It was open to the judge to find that he had not taken advantage of a reasonable opportunity to make an asylum for human rights claim (at paragraph 48).

Discussion:

17. Having had the opportunity to consider the submissions from the advocates in the light of the determination and the issues raised, I have reached the conclusion that the Appellant has demonstrated that grounds are made out.
18. I shall therefore set out my reasons as to why have I have reached that conclusion.
19. Grounds 1 and 4 can be conveniently considered together which relate to the relevance of the Appellant's age when making an overall holistic analysis of the credibility or plausibility issues. As set out, there was no dispute that the Appellant was an unaccompanied minor when he arrived in the United Kingdom and that the events that he had recounted to the Tribunal related to an earlier time when he was 16 years of age. Whilst Mr Nath was right to observe that at the time of his interview he was 18 years, what has to be borne in mind is the age of the Appellant at the time the disputed events took place.
20. I have been referred to the relevant authorities and in particular AA (Afghanistan) (as cited). At paragraph 10 of that decision, the Tribunal

observed that when dealing with the credibility of a minor, their age at the time of the events country of origin is of “first and central importance” and that, “due allowance must be made for the Appellant’s age time of the events in question.” It is also right to observe that when reaching credibility findings which relate to the experiences of a child, it is important to have regard to the experience and maturity that may be expected of a child of that age. Whilst the judge was aware of his immigration history (see paragraph 4 and paragraph 20) and that he had entered as an unaccompanied minor that should be applied also to any assessment of credibility or plausibility of account. In this particular case, there was evidence of the Appellant’s early life which was relevant to his actions in Iran and thus were relevant to an assessment of his behaviour in the context plausibility. Whilst the judge at [37] as set out the Appellant’s account of his earlier problems in Iran and was contrasted with his oral evidence which did not indicate any “cognitive or intellectual deficit”. However whilst he may not have any particular cognitive deficit apparent during a hearing or recorded in any recent evidence, does not necessarily mean that his account of having been vulnerable at an earlier stage should be entirely discounted.

21. Much of the factual analysis was based general plausibility points relating to the distribution of leaflets (see paragraph 38 – 43) and whilst it might be presumed that an adult with some experience would realise the risks of being involved in such activity, it was necessary to consider his account in the context of his age, level of maturity and understanding as at the date of the events. The findings of fact were not made with that approach in mind.
22. The section 8 issue is recorded in the refusal letter at paragraphs 26 – 30. The Appellant travelled through Bulgaria and France but did not claim asylum and misled the authorities of his identity. Thus it was asserted that he failed to take advantage of a reasonable opportunity to make an asylum claim in a safe country which therefore damaged his credibility. The judge’s findings in this respect are set out at paragraphs 47 and 48. The judge did not find that he had given a satisfactory reason for not making an asylum claim en route. However reaching that finding the does not appear to have been any consideration given to his circumstances and in particular his age. There does not seem to be any dispute that his journey was a long one and had been facilitated by the use of an agent. The grounds make reference to material set out in the Tribunal decision of AA(Afghanistan) (as cited) which makes reference to the degree of control that some agents or facilitators have over those in their charge and that to “disregard the effect that they may have on the charges would be both unrealistic and unjust. ” It is therefore necessary to consider the reasonableness of being able to make such a claim against that background. As I indicated to the parties, the judge does not state that he attaches significant weight to that factor in the overall assessment and by itself would not demonstrate any error of law. However it was a matter placed in the balance of credibility and supports the overall emphasis set out in ground one.

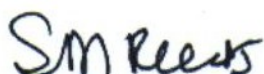
23. Dealing with ground 2, while an assessment of personal credibility may be a critical aspect to some claims particularly as in this case in the absence of independent supporting evidence, it is not an end in itself or a substitute for the application of the criteria for refugee status which must be holistically assessed. Therefore the Appellant's account of his fears and an assessment of credibility must also be judged in the context of the known objective circumstances and practices of the State in question. In this context, it is submitted that the Tribunal did not take account of the objective material when reaching the overall assessment of credibility. There were two reports that were relied upon by the Appellant in the form of the Danish reports -Danish Refugee Council: on conditions relating to Kurdish parties in Iran and the KR I dated June 2013 and further Danish report from the Danish Refugee Council. At paragraph 43, the Tribunal did not accept that the Appellant would have been involved in such high risk activity. Whilst the judge made reference to the report at paragraph 43 (stating that supporters of the KTP would get lesser sentences compared to Marxist parties and that if person was caught publishing or carrying a bunch of leaflets, this would be considered a crime and the punishment would be severe) that was not in dispute and in the context of Iran was uncontroversial. However there were other parts of the report which lent support and weight to his account, for example, at 2.1.2.1 (page 28) the material makes reference to the youth organisation of the party in Iran and sets out that there age ranges between 13 to 30 years of age and further information is given at page 30, that the identity of those producing printing flyers is not often known to those who distribute them. It gives an example that in a school, students distributing flyers may not know that the flies disputed are produced by his own teacher. The material also refers to flyers being posted in crowded places such as town square, on walls, cars and touristic sites. Therefore there was evidence that those under the age of 18 were involved in this type of political activity and that his account of not knowing who distributed them was consistent with the material. The material also makes reference to the contents of such documents (see page 29) that the languages used on the flyers are mostly both Kurdish and Farsi. This is consistent with the Appellant's account whereby he described the leaflets in that way. As Mr Chakmakijian submitted the use of dual languages is an unusual fact to know but it is confirmed in the country materials. The Appellant also gave evidence concerning how the leaflets are distributed in particular that it took place at night. This is also consistent with the material set out at page 59 of the report. Whilst Mr Nath submitted that the judge had referred to the report at paragraph 43, I prefer the submission of Mr Chakmakijian who submitted that the reference at that paragraph related to a point that was not in dispute and that the other matters set out above, if taken into account, would have provided support for the Appellant's account as being plausible and consistent with the objective material. Whilst the judge made a number of points on plausibility and credibility of his account, in reaching an overall assessment of credibility those matters that went to the Appellant's consistency of account should be balanced against the other elements identified.

24. Consequently I am satisfied that the grounds are made out and that given the gravity of the consequences of the decision on asylum that it has been demonstrated the findings of fact did not take into account those material factors in the credibility assessment.
25. As to the remaking of the decision, both advocates submitted that the correct course to adopt in a case of this nature would be for the appeal to be remitted to the First-tier Tribunal because it would enable the judge to consider the Appellant's evidence in the light of the country materials provided and for the issues to be determined in the light of all the relevant evidence.
26. In the light of those submissions, I am satisfied that this is the correct course to take and therefore I set aside the decision of the First-tier Tribunal and it will be remitted to the First-tier Tribunal to hear afresh.

Decision:

The decision of the First-tier Tribunal involved the making of an error on a point of law and is hereby set aside; it shall be remitted to the First-tier Tribunal for a further hearing.

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. The direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed
Upper Tribunal Judge Reeds

Date: 21/9/2017