



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06025/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27<sup>th</sup> October 2017

Decision & Reasons Promulgated  
On 31<sup>st</sup> October 2017

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

AS

Respondent

**Representation:**

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer

For the Respondent: Ms S Caseley, instructed by Migrant Legal Project

**DECISION AND REASONS**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant/parties in this determination identified as AS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings**

1. This is an appeal by the SSHD against a decision of First-tier Tribunal Judge Devittie who, for reasons given in a decision dated 5 May 2017, dismissed AS'

appeal against the SSHD's refusal of his claim for international protection. Although an appeal by the SSHD I refer to the parties as they were before the First-tier Tribunal.

2. The SSHD sought and was granted permission to appeal on the following grounds:

**(a) Failure to consider credibility in the round.**

In particular the SSHD asserted "...the FTTJ notes the Appellant has probably lied about his age, attempting to claim he was a minor. The FTTJ notes this *"undermines the credibility of his claim"*.

It is notable that the FTTJ then fails to consider the issue of the clear deception by the Appellant regarding his age at any point in his credibility assessment, indeed it is clear the FTTJ has appeared to accept everything the Appellant has said with little hesitation, and no further mention of this clear and material deception is made in the remainder of the determination. It is submitted that the deception regarding his age, cannot simply be artificially separated, as the IJ has done, and that the credibility of the Appellant must be considered in the round, taking into account all relevant factors.

**(b) Material misdirection**

....at paragraph 13(iv) of the determination the FTTJ has failed to adequately address the submissions made by the Presenting Officer and the credibility findings made fail to actually address the issue raised. It is evident submissions were made that it was unlikely that a father would place his son at such great risk by requesting him to hand out leaflets. The FTTJ has relied on a passage from the Danish report....

....the passage quoted in no way addresses the issue raised, in that a father would be highly unlikely to risk his son's life, particularly as the FTTJ has already found it plausible the Appellant did not know what his father did for the KDP.....

[13(iv)] *...If the authorities catch the person...the person carrying the information will be treated as a political opponent, even though the person in question had never been involved in the movement"*

It is submitted that this therefore clearly supports the submissions made by the Secretary of State and the findings of the FTTJ in this respect are clearly unsafe.

3. The appellant is an Iranian citizen. He claimed to have been born on 25 December 2000 but the respondent accepted what is described as (and doesn't appear to have been challenged) a Merton compliant age assessment undertaken by Kent Social Services that he was born on 1 January 1996. It seems the appellant continued to claim his date of birth to be 1 December 2000 at the hearing because that is the date of birth referred to by the judge.
4. The grounds upon which permission was granted incorrectly assert that the judge found the appellant had probably lied about his age. In paragraph 13, the judge states

In closing submissions respondent's counsel contended that the appellant's account should [sic] be believed because:

- (i) He had told a lie about his age. This undermines the credibility of his claim. I am prepared to accept that the appellant may not have been truthful about his exact age and this is a factor in my view that is relevant to my overall assessment of his credibility.

.....

- (ii) ....I do not consider that even if the appellant's age is as contended by the respondent, that the appellant can reasonably be expected to know details of his father's role in the KDP beyond what is stated in the evidence. I find that there is merit in the submission by appellant's counsel, that it is

- (iii) The appellant had failed to explain how it is that the authorities would have come to know of father's involvement in leaflet distribution.

In my view the appellant is not in a position to know either how his uncle obtained this information or how the authorities knew that he was involved in his father's activities and he cannot be expected to explain this. There is merit in counsel's submission that

The Danish report makes clear that the authorities engage in monitoring and surveillance of KDI activities, inter alia by tapping phones and using networks of unpaid informants: so it is plausible that the Etalat could have discovered his involvement by these means.

- (iv) It is not likely that the appellant's father would have willingly put him at risk by requesting him to hand out leaflets.

I do not consider much turns on this point because a 2009 Danish immigration service report

"as an example, a person may have been told by his uncle to carry a parcel from one place to another. The person may not know what he or she is carrying [sic] and may not even be in a position to question or refuse the demand from his uncle. If the authorities catch the person, and it turns out that the parcel contains for instance pamphlets or CD with political views opposing the government, the person carrying the information will be treated as a political opponent, even though the person in question had never been involved in the movement and hardly knows anything about it."

5. There is no specific finding by the judge as to the appellant's age but rather an acknowledgment that he may "not have been truthful" about his age.
6. The First-tier Tribunal judge found that the appellant's father had been involved in the distribution of leaflets and the appellant assisted him; that the appellant's father has been arrested and, "on the reasons given [by the appellant]", the authorities have an adverse interest in him.
7. Judge Devittie's judgment and its reasons are not particularly well expressed. Nevertheless, he did, contrary to what is pleaded by the respondent, take the appellant's possible deception as to his age into account and did find that relevant to the appellant's credibility overall. In so far as the second ground pleaded is concerned, the judge was entitled to reach the conclusion he reached as to the likelihood of the father involving the appellant in his political activities. The Danish report, whilst it could provide support for the respondent's submission, is not unqualified and the judge was entitled, on the basis of the evidence before him, which has not been the subject of challenge by the respondent in her grounds seeking permission to appeal, to reach the conclusion he reached.
8. The judge took account of matters that he described as adverse to the appellant's credibility and, although not the most clearly worded decision, gave adequate reasons for reaching the conclusion he did.

### Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The decision of the First-tier Tribunal judge stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

A handwritten signature in cursive script, appearing to read "Jane Coker".

Date 30<sup>th</sup> October 2017

Upper Tribunal Judge Coker