



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

Appeal Number: PA/02953/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC**

**Decision & Reasons**

**On 5 October 2018**

**Promulgated**

**On 23 October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**BB**

**(ANONYMITY DIRECTION CONTINUED)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr E Nicholson, Counsel instructed by Burton & Burton Solicitors

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Bell promulgated on 31 July 2017 dismissing the protection appeal of BB against a decision of the Respondent refusing asylum in the UK for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 10 March 2017. The appeal is brought pursuant to permission granted by Upper Tribunal Judge Rintoul on 2 January 2018.

2. The Appellant is a 27 year old citizen of Iran. His personal details are a matter of record on file and I do not reproduce them here in keeping with the anonymity direction that has been made in these proceedings and which I continue.
3. The Appellant's claim for protection was based on events that occurred on 26 or 27 February 2016 during the course of his voluntary work with the Red Cross/Red Crescent in Iran. The Appellant claims that in consequence of those events he is now at risk on the basis of being a perceived supporter of the Komaleh Democratic Party ('KDP'), a Kurdish pro-independence movement.
4. The nature of the incident on 26 or 27 February 2016 is summarised at paragraph 5 of the Decision of the First-tier Tribunal. In essence, the Appellant was part of a crew sent to attend a collision that had occurred between a car and a lorry. The driver of the car was found to be dead, but the passenger was alive albeit badly injured. The passenger of the car was taken by the Appellant and his colleague from the car and placed in the ambulance which then headed towards the hospital in Marivan. During the course of the journey a car pulled out in front of the ambulance stopping it, and two armed men emerged, opened the back door of the ambulance, took the injured man's mobile telephone from the crew, and transferred the patient into their car before driving off. The Appellant and his colleague then returned to the Red Crescent base where they noticed a lot of unusual activity involving vehicles of the security services. It is the Appellant's case that he was then detained, questioned and ill-treated in respect of what had happened to the patient - who, it was said, was a significant member of the KDP; the Appellant was accused of assisting the party.
5. The Secretary of State for the Home Department rejected the substance of the Appellant's claim for reasons set out in the RFRL. A summary of the Respondent's conclusions appears at paragraph 36: the Respondent rejected the Appellant's claim to have been a volunteer with the Red Cross/Red Crescent, and rejected the Appellant's claim to be of adverse interest on the part of the authorities.
6. On appeal the First-tier Tribunal Judge accepted that the Appellant had established that he was indeed a volunteer with the Red Cross/Red Crescent (paragraph 19). It is to be noted that the First-tier Tribunal Judge also accepted that if the Appellant were perceived to be someone involved with the KDP then he would be at risk on return (paragraph 17). However, the Judge did not accept the Appellant's account of the key event that had, on his case, led to the adverse interest in him: (see paragraph 20 *et seq.*).

7. In considering the key event the Judge in part said this:

*“He claims that the authorities took the injured person out of the ambulance and arrested, detained and tortured the Appellant and his colleague”* (paragraph 22).

8. It is accepted by the Respondent that the Judge was in error of fact to characterise the Appellant’s claim in these terms. It was no part of the Appellant’s account that it was the authorities that had taken the injured person out of the ambulance; rather his account carries with it the possibility that it was the KDP members who had intercepted the ambulance, perhaps in order to sequester their injured colleague and thereby avoid him falling into the hands of the authorities as might happen at the hospital.

9. The Respondent has filed a Rule 24 response in these proceedings acknowledging an error of fact on the part of the First-tier Tribunal Judge, and also in terms accepting that *“this error affects the Judge’s credibility findings”*. In the circumstances the Respondent invites the Tribunal to determine the appeal again.

10. I accept that the error of fact was sufficiently fundamental as to amount to an error of law, and that it was material to the Judge’s evaluation of the core of the Appellant’s claim.

11. Indeed, it is common ground before me that in circumstances where there has been a fundamental misunderstanding of a key element of the Appellant’s case, it is right and appropriate that he should have a fresh hearing of his appeal before a different First-tier Tribunal Judge.

12. In this context Mr Nicholson brought to my attention that the Appellant would now also like to advance an additional element in support of his claim for protection in the UK: his claimed conversion to Christianity. This is not a matter that has previously been raised and I leave it to the Appellant and his representatives to determine the best way forward in this regard, bearing in mind that this may be considered to be a ‘new matter’ which will require the consent of the Respondent if it is to feature as an element of the current proceedings: see section 85(5) and (6) of the Nationality, Immigration and Asylum Act 2002. This is not a matter for me to make any findings or determination upon today.

**Notice of Decision**

13. The decision of First-tier Tribunal contained a material error of law and is set aside.
  
14. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Bell.

**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.

Signed:

Date: **18 October 2018**

**Deputy Upper Tribunal Judge I A Lewis**