



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12988/2017

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 10<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 24<sup>th</sup> July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

AR  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss N Patel of Lei Dat & Baig Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against the decision of Judge Brookfield (the judge) of the First-tier Tribunal (the FtT) promulgated on 23<sup>rd</sup> January 2018.
2. The Appellant is a male Iranian citizen born 21<sup>st</sup> March 1990. He arrived in the UK illegally on 21<sup>st</sup> August 2017 and claimed asylum.

3. His claim was based on imputed political opinion. He claimed to have worked as a kolber (goods transporter), legally transporting goods across the border from Iraq to Iran. In July 2017 he was carrying goods with six other kolbers when weapons were found in their goods. The Appellant was unaware that a weapon had been placed in the load he was carrying. He panicked at the border and fled and shots were fired. He managed to escape. His father informed him that the authorities had searched the family home looking for him. He left Iran fearing that he would be executed for transporting weapons, as he believed that the Iranian authorities would perceive him as belonging to one of the opposition groups such as the KDPI.
4. The Respondent refused the application on 23<sup>rd</sup> November 2017 and the Appellant appealed to the FtT.
5. The judge heard the appeal on 15<sup>th</sup> January 2018. The judge found the Appellant to be an incredible witness. It was not accepted that he had worked as a kolber on the Iran/Iraq border or that he unknowingly carried a weapon. The judge found that the Appellant's account was fabricated.
6. The judge accepted that the Appellant had exited Iran illegally but did not find that he would be at risk on return because of illegal exit, and being a failed asylum seeker. The appeal was dismissed on all grounds.
7. Following dismissal of his appeal the Appellant applied for permission to appeal to the Upper Tribunal. He had been legally represented before the FtT, but submitted the Grounds of Appeal without legal representation. In summary the Appellant maintained in his grounds that he had worked as a kolber, and that the judge was wrong to have found him incredible.
8. Permission to appeal was granted by Judge Bird of the FtT in the following terms;
  3. The Appellant seeks permission to appeal on the grounds that the judge failed to properly consider the evidence he gave at the hearing.
  4. It is arguable that the judge failed to properly consider the evidence he heard and saw. In paragraph 10(ii) the judge notes the background evidence about the earning of kolbers taken from a report he had before him. In paragraph 10(iii) the judge considers the Appellant's evidence. At (iv) there is a discussion of the two. From the reading of this it appears the judge failed to appreciate that the Appellant made three journeys a week and not just one. The judge went on to make a negative credibility finding on the basis of this misunderstanding. The decision contains other findings on the Appellant's evidence which are not supported by adequate reasons.
  5. An arguable error of law has been made.
9. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the judge did not materially err in law, and had given adequate reasons for disbelieving the Appellant's account.

10. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

### **The Upper Tribunal Hearing**

11. Miss Patel relied upon the grounds and the grant of permission to appeal. It was submitted that the judge had misunderstood the evidence which caused erroneous findings to be made at paragraph 10(iv). The judge found that the Appellant was claiming that he earned three times more than what an independent report on kolbers stated was the average earnings. The judge found this incredible. The misunderstanding was that the judge failed to appreciate that the Appellant crossed the border three times per week and therefore his earnings were based on three trips rather than one.
12. Miss Patel submitted that the misunderstanding of the evidence as set out in paragraph 10(iv) infected the other findings made by the judge in relation to credibility, and therefore the decision should be set aside.
13. Mr Tan accepted that the judge had misunderstood the evidence in relation to the Appellant's earnings. Therefore the finding at paragraph 10(iv) was an error. It was submitted that this was not material because of the numerous other findings on credibility which the judge had made, for which adequate reasons had been given.

### **My Conclusions and Reasons**

14. It is common ground between the parties that the judge misunderstood the Appellant's evidence in relation to his earnings and erred in the conclusion set out at paragraph 10(iv). I do find that the judge erred on this point.
15. However I do not find the error to be material. I do not find that it has been demonstrated that the misunderstanding by the judge as to the amount earned by the Appellant in any way infected the other findings made by the judge in relation to credibility.
16. The findings made by the judge are extensive and comprehensive. They are set out at paragraph 10 (iv)-(xxii).
17. The judge found that the Appellant had failed to prove that he worked as a kolber on the Iran/Iraq border and that he had failed to prove that he unknowingly carried a weapon, and thereafter he ran away from the border and shots were fired at him.
18. The judge found that the Appellant had failed to establish he was of any adverse interest to the Iranian authorities. There has been no specific challenge to the numerous findings made by the judge in relation to credibility other than the finding at paragraph 10 (iv). I find that the credibility findings are supported by sustainable reasons, explaining why the judge finds the Appellant to be an incredible witness, and why the Appellant's account was not accepted.

19. An FtT Judge must make findings on evidence that is in dispute, and give reasons for those findings. The obligation on a judge is summarised in Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC) the headnote of which is set out below;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

20. In my view the judge has complied with the guidance set out above. In my view it is clear why the judge rejected the Appellant's account as incredible, and adequate and sustainable reasons for the findings have been given.
21. The grounds upon which permission to appeal has been granted, display a disagreement with the conclusions reached by the judge but do not disclose a material error of law.

### **Notice of Decision**

The decision of the FtT does not disclose a material error of law. The decision is not set aside. The appeal is dismissed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

An anonymity direction is made because the Appellant has made a claim for international protection. 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 17<sup>th</sup> July 2018

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 17<sup>th</sup> July 2018

Deputy Upper Tribunal Judge M A Hall