



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04121/2018

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 22<sup>nd</sup> February 2019

Decision & Reasons Promulgated  
On 21<sup>st</sup> May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

A.R.M  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms. L Mair, Counsel instructed by Greater Manchester  
Immigration Aid Unit

For the Respondent: Mr. Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. An anonymity direction was made by the First-tier Tribunal (“FtT”). As this a protection claim, it is appropriate that a direction is made. 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 amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a national of Iran who appealed to the FfT against a decision of the respondent dated 13<sup>th</sup> March 2018 refusing his claim for asylum and humanitarian protection. His appeal was dismissed for the reasons set out in the decision of FfT Judge Alis promulgated on 20<sup>th</sup> November 2018.
3. It appears that the appellant arrived in the United Kingdom in July 2017, aged 16. The respondent accepts that the appellant is a citizen of Iran and that he is of Kurdish ethnicity.

#### The decision of the FfT Judge

4. The account of events relied upon by the appellant leading to the claim for international protection are summarised by the FfT Judge at paragraphs [19] to [23] of the decision. The Judge's findings and conclusions are set out at paragraphs [31] to [62] of the decision. It is not necessary for me to refer to the particular findings made by the FfT Judge in this decision. It is sufficient to say that the Judge rejected the claim made by the appellant. The Judge noted, at [35], that the appellant has never personally experienced any problems with the authorities, and that his fear arises from what his mother may or may not have told him. The Judge found there to be an inconsistency between what the appellant had stated in his witness statement, and what he had told the Tribunal in oral evidence. That inconsistency is explained at paragraphs [36] to [38] of the decision. The Judge confirms, at [39], that he makes allowances for the appellant's lack of education and had in mind, the President's Guidance No.2 of 2010 and the decision in AM (Afghanistan) -v- SSHD [2017] EWCA Civ 1123. At paragraph [41], the FfT Judge states:

"Whilst accepting allowances must be made for vulnerable witnesses I do find that the appellant has provided an inconsistent account about what was perhaps the most important event in his life."

5. At paragraph [47] of the decision, the FfT Judge states as follows:

“47. For the appellant’s claim to have any credibility I have to accept his core claim that his father was detained and he fled because of that event. Whilst the appellant may have provided a consistent account on other issues I am not satisfied that either he or his father experienced any problems with the authorities.”

### The appeal before me

6. There are two grounds of appeal. First, in reaching the decision, the FfT Judge, failed to have proper regard to the fact that the appellant was a child at the time of the material events, and when he arrived in the United Kingdom. Although the Judge refers to the Presidential Guidance and the decision of the Court of Appeal in AM (Afghanistan), the Judge failed to apply the guidance given, in reaching the decision. Second, the FfT Judge found there to be an inconsistency between what the appellant had stated in his witness statement, and what he had told the Tribunal in oral evidence, when in fact there was no such inconsistency, and the appellant’s evidence has remained consistent throughout.
7. Permission to appeal was granted by Designated FfT Judge MacDonald on 14<sup>th</sup> December 2018. The matter comes before me to determine whether the decision of the FfT Judge contains a material error of law, and if so, the remake the decision.
8. Although I accept, as Mr Bates submits, that the Judge appears to have had regard to the appellant’s age and vulnerability in reaching the decision, in my judgement the Judge erred in his assessment of the evidence. The Judge rejected the appellant’s account, and made an adverse credibility finding having found that there is an inconsistency between what the appellant had stated in his witness statement, and what he told the Tribunal in oral evidence, regarding what he had been told by his mother, immediately before arrangements were made for the appellant to leave Iran. Having carefully read the interview record, the appellant’s witness statement and the decision of the FfT, there is, in my judgement, no inconsistency between the evidence referred to at paragraphs [36] to [39] of the decision. At questions [70] to [72] of the interview record, it is plain that the appellant was asked about what his mother told

him following the arrest of his father. He claimed he had been told that the authorities were asking about him. That is referred to at paragraph [38] of the decision. As the Judge sets out at paragraph [37], in his witness statement the appellant stated that his mother told him “the authorities were asking for me as well and wanted to arrest me”. That statement is consistent with what the appellant said at interview. At paragraph [36], the Judge records that in cross-examination, the appellant was asked whether his mother explained to him why the authorities were looking for him, and this response was “No. She simply told me to leave the country”. That answer does not appear to be inconsistent, with the information provided by the appellant at interview, and in his witness statement. In his interview and witness statement, the appellant confirms that he was told that the authorities were asking about him. The question in cross-examination, was not concerned with whether the authorities were looking for him, but why the authorities were looking for him. From the appellant’s answer to the question in cross examination, it appears that he was unable to explain why the authorities were looking for him

9. I have considered whether the reference to an inconsistency, when in fact, there does not appear to be an inconsistency, would be material to the outcome of the appeal. In the end, I cannot be satisfied that the Judge would have reached the same conclusion, were it not for that perceived inconsistency, that the Judge refers to, at paragraph [41], as relating to what was perhaps the most important event in the appellant’s life. I also note that at paragraph [47], the Judge records that “... *the appellant may have provided a consistent account on other issues...*”. The fact that the Judge erroneously perceived there to be an inconsistency regarding a matter that was at the heart of the appellants claim, is plainly a matter that impacts upon the outcome of the appeal.
10. I must then consider whether to remit the case to the FtT, or to re-make the decision myself.
11. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal.

The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The error of the FfT Judge vitiates other findings of fact and the conclusions reached by the Judge so that there has not been a valid determination of the issues in the appeal.

12. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the FfT, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

**Notice of Decision**

13. The appeal is allowed, and the decision of FfT Judge Alis is set aside.
14. The appeal is remitted to the FfT for a fresh hearing of the appeal with no findings preserved.

Signed \_\_\_\_\_ Date 2<sup>nd</sup> April 2019

**Deputy Upper Tribunal Judge Mandalia**

**TO THE RESPONDENT**

**FEE AWARD**

No fee is payable and there can be no fee award.

Signed \_\_\_\_\_ Date 2<sup>nd</sup> April 2019

**Deputy Upper Tribunal Judge Mandalia**