



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/11282/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
On 13th May 2019**

**Decision & Reasons Promulgated
On 22nd May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**MA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer of Counsel, instructed by Parker Rhodes
Hickmotts Solicitors

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Atkinson made following a hearing at Bradford on 22nd October 2018.

Background

2. The appellant is a citizen of Iran born on 20th August 2000. He arrived in the UK on 13th November 2017 and claimed asylum some four months later on 12th March 2018 as an unaccompanied minor.
3. The basis for his claim is that he began a relationship with a girl in Iran whose father worked for the Etelaat. On one occasion he went to her home, where she was alone, and the couple had sex. Her parents returned and her father pushed the appellant, who was naked, and

shouted to his wife to get his pistol. The appellant picked up a nearby vase and struck the father over the head rendering him unconscious. The appellant then put on his clothes and fled. He asked his girlfriend to leave with him but she refused. He rang his paternal uncle who arranged for an agent to enable the appellant to leave Iran.

4. The judge said that he found various aspects of the appellant's account not to be credible as on its face, it appeared unlikely.
5. It was unlikely that the appellant would not have been aware of the risks of having sex in his girlfriend's father's house. It was unlikely that on discovery he would have been able to knock out his girlfriend's father as claimed. It was unlikely that he would have had time to dress and escape in the manner described. It was unlikely that his girlfriend would choose to remain with her father and not flee. He also considered that the appellant's denial of any contact with his family since he left Iran lacked credibility. On that basis he dismissed the appeal.

The Grounds of Appeal

6. The appellant sought permission to appeal on the grounds that the judge had applied the wrong standard of proof appearing to apply the civil standard when he consistently referred to the account as being unlikely. The determination was also at odds with the well-established principle that inherent probability could be a dangerous and even a wholly inappropriate factor to rely on in asylum cases. In any event there was nothing inherently improbable about the account given that the appellant was only 16 at the time. Moreover the judge's finding in relation to a lack of contact with his family since leaving Iran, which he said was not credible and suggestive that he was not telling the truth, ignores the fact that the appellant was a child during his journey through Europe and overlooks what is known about the modus operandi of those who smuggle young boys through Europe.
7. Permission to appeal was initially refused by Judge Smith on 20th December 2018 but subsequently granted by Upper Tribunal Judge Kamara on 11th March 2019.

Submissions

8. Mr Greer relied upon his grounds. He said that the judge had substituted his own view of what was likely to have occurred which was irrelevant. The appellant's account was not so unlikely that it could not have happened. In his view the determination was insufficiently reasoned and could not be sustained.
9. Mr Diwnycz defended the determination and said that the judge was entitled not to believe the appellant's account for the reasons which he gave.

Findings and Conclusions

10. This determination is a little thin which renders it vulnerable to appeal. However I am satisfied that the judge did not err in law.

11. First, this is a very experienced Immigration Judge. I conclude that his use of the term unlikely does not indicate that he was applying the civil standard of proof, rather that it was shorthand for the correct standard which is that of reasonable degree of likelihood.
12. Second, the appellant's account is indeed inherently implausible. He says that he entered his girlfriend's house with a view to having a cup of tea and in the course of the visit they became intimate and moved into her bedroom. This in itself is not entirely impossible but it is highly unlikely in the context of rural Iran, particularly since his girlfriend's father was clearly a significant figure in the village who had his own pistol.
13. Although the grounds of appeal refer to a large vase, so far as I can see there is nothing in the appellant's evidence which suggests how big the vase was. It is variously described as a vase with flowers in it in his statement and a pot in the interview. The judge was entitled to conclude that it was wholly implausible that the appellant, who was unclothed at the time, would have been able to knock out his girlfriend's father as claimed and then have time to escape, leaving his girlfriend behind.
14. So far as the second ground is concerned whilst it is indeed quite possible that the appellant would have had difficulty in contacting his family during the journey to the UK, at the date of the hearing, he had been here for almost a year. It was open to the judge to conclude that the fact that he had not been in contact with his family during that time cast doubt upon the credibility of his claim.
15. This determination could have been more detailed. Nevertheless for the above reasons, it is sustainable.

Notice of Decision

The original judge did not err in law. His decision stands. The appellant's appeal is dismissed.

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 their 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.

Deborah Taylor

Signed

Date 21 May 2019

Deputy Upper Tribunal Judge Taylor