



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

Appeal Number: PA/11605/2018

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 21st February 2019**

**Decision & Reasons Promulgated
On 18th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**M M A H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Laura Gardener (Counsel)

For the Respondent: Mr Chris Howells (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judges Roblin and Lever (sitting as a panel) at Newport on 1st November 2018. The determination was promulgated on 19th November 2018. In the decision, the Appellant's appeal was refused, following which the Appellant applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, and was born on 1st July 1998. He appealed against the decision of the Respondent dated 28th March 2018 refusing his application for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he claims that he will be put in prison or killed if he is returned to Iran because he was working as a kolbary (porter) and was caught smuggling across the border to Iraq alcohol and if put in prison as a Kurdish man he will not be released (see paragraph 6). He claimed that he smuggled alcohol because he needed money for his mother's eye operation.

The Judge's Findings

4. The judge did not find the Appellant to be a credible witness and rejected his evidence. The judge found that the Appellant was unlikely to transport goods that were legal in their nature. Despite the Appellant's emphasis of smuggling of alcohol, the judge said that "I find no great risk to the Appellant in smuggling alcohol than there would be for other goods" (see paragraph 32(1)). The judge also held that the Appellant was unable to provide explanation as to how the soldiers were present and was unable to provide any obvious answer or cogent reason when he claimed that he had been ambushed (see paragraph 32(2)). It was further held that the Appellant produced no evidence that the authorities knew his name or that they possess any information or details relating to him (see paragraph 32(3)). Finally, that if the Appellant had been a genuine refugee he would have crossed the border in Iraq where Kurds live, and where there was stability and stayed there with his uncle. He also stayed in Greece for a period of two weeks and did not claim asylum.
5. The appeal was dismissed.

Submissions

6. At the hearing before me on 21st February 2019, there was a consensus between Mr Howells, appearing as Senior Home Office Presenting Officer on behalf of the Secretary of State, and the Appellant's representative, Ms Gardener, that the judge below had erred in the panel decision dated 19th November 2018. The judge had failed to conduct a holistic assessment having regard to the country background evidence which did confirm that the smuggling of alcohol does attract serious punishment. There was also a greater risk to somebody smuggling alcohol than other goods. A person caught smuggling alcohol risked imprisonment. It can lead to executions in secret or extrajudicially. Second, that the Appellant had provided extensive country evidence on smuggling in Iran which confirmed the presence of border guards and daily risks to the kolbary, such that it was plain that smugglers do routinely escape gunfire, and yet the judge's conclusion (at paragraph 31(2)) wrongly appear to reject this. Finally, the

conclusion that the Appellant as a genuine refugee would have sought asylum in neighbouring Iraq or Greece was contrary to long established authority that there is no requirement upon a refugee to claim asylum in the first country in which they reach.

7. Ms Gardener, stated that, given that this matter should properly speaking be returned back to the First-tier Tribunal to be determined by another judge, the only request she had was that there should be a Kurdish Sorani interpreter provided for the hearing.

Notice of Decision

8. The decision of the First-tier Tribunal involved the making of an error of law. The decision shall be set aside. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judges C E Roblin and Lever, pursuant to Practice Statement 7.2(b).
9. This appeal is allowed.
10. An anonymity direction is made.

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.

Signed

Date

Deputy Upper Tribunal Judge Juss

13th March 2019