



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

Appeal Number: PA/10836/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House *via Teams*
On 23 July 2021**

**Decision & Reasons Promulgated
On 19 August 2021**

Before

**UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE O'CALLAGHAN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MOK
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr. T Melvin, Senior Presenting Officer

For the Respondent: Ms. E Sanders, Counsel, instructed by Wimbledon Solicitors

DECISION AND REASONS

Introduction

The appellant in this matter is referred to as the 'Secretary of State', the respondent as the 'claimant'.

The Secretary of State appeals against a decision of the First-tier Tribunal (Judges Welsh and Scott) ('the panel') who allowed the claimant's appeal

against a decision by the Secretary of State not to grant him leave to remain on international protection grounds, or in the alternative on human rights grounds. The decision of the panel was sent to the parties on 30 November 2020.

Upper Tribunal Judge Martin granted the Secretary of State permission to appeal by a decision dated 5 January 2021.

Remote hearing

The hearing before us was a Teams hearing held during the Covid-19 pandemic. We were present in a hearing room at Field House. The hearing room and the building were open to the public. The hearing and its start time were listed in the cause list. We were addressed by the representatives in the same way as if we were together in the hearing room. We are satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate.

Anonymity

The First-tier Tribunal issued an anonymity order and neither party sought for it to be set aside. We confirm the order at the conclusion of this decision. We do so as it is presently in the interests of justice that the claimant is not publicly recognised as someone seeking international protection: paragraph 13 of Upper Tribunal Immigration and Asylum Chamber Guidance Note 2013 No 1: Anonymity Orders.

Background

The claimant is a national of Iran and is ethnically Kurdish. His age has been subject to dispute. The Secretary of State initially believed the claimant to have been born in 1997. A local authority concluded after a 'Merton' compliant age assessment that he was born in 1995¹. The panel concluded that at the date of their decision the claimant was aged 18 and so was aged 16 on his arrival in this country. The panel's finding as to fact identifies the claimant as having born in 2002.

The claimant asserts that he did not attend school and so can neither read nor write. Whilst in Iran he worked with his father as a shepherd and assisted with farming.

In July 2018, in the company of two friends, he met a group of armed people who were known to his friends. The claimant was informed that the armed men

¹ There is no prescribed way in which local authorities are obliged to carry out age assessments; however, general guidance was given to local authorities in *R(B) v. Merton London Borough Council* [2003] EWHC 1689 (Admin) and abidance with the guidance will usually establish a 'Merton' compliant decision.

were members of the KDPI. One of his friends provided the armed men with a piece of paper and in turn received an envelope containing papers.

Two days later officials from Ettelaat, the Ministry of Intelligence, attended the family home whilst the claimant was working in the fields. They informed his grandmother that his two friends had been arrested and KDPI leaflets had been found in their possession. The friends named the claimant to the officials, leading to the visit to the family home. Consequently, arrangements were made for the claimant to leave Iran.

The claimant travelled to the United Kingdom and following his arrival in August 2018 he claimed asylum. Whilst present in this country, the claimant attended demonstrations outside of the Iranian embassy in London on several occasions.

A friend of the claimant set up a Facebook account for him and showed him how to upload pictures onto his account. Material was uploaded that was negative of the present Iranian authorities. The claimant's Facebook account is open, with no restriction upon who can view it. Friends have written comments in English and Kurdish on pages of the claimant's account.

Consequent to the age assessment, the Secretary of State treated the claimant as an adult and following a substantive asylum interview held on 4 October 2018 the application for international protection was refused by a decision dated 25 October 2019.

Hearing before the First-tier Tribunal

The hearing came before the panel at Taylor House on 23 October 2020. The parties were represented. The claimant gave evidence.

As a preliminary matter the panel considered the claimant's age. It noted that the age assessment conducted by the local authority was procedurally compliant. Consideration was then given to the substance of the assessment. The panel concluded that the assessors, who were social workers, had placed too great an adverse reliance upon the presence of body hair upon the claimant. The stated concern of the assessors as to the claimant's ability to recall his date of birth was held not to be a matter sufficient to warrant an adverse credibility finding in circumstances where it was perfectly plausible that the claimant could recall the date of birth provided to him by his father despite his not being able to read or write. The assessors reliance upon the applicant's ability to count to 10 was found not to be properly capable of being an adverse factor as numeracy is not a determinative indicator of literacy.

The panel was also critical as to the assessors' conclusion that the appellant had given a vague account regarding his leaving Iran. It was noted that the account provided to the assessors was largely consistent with that given to the Tribunal.

Upon considering the evidence placed before them the panel concluded, having regard to the guidelines provided in *R(B) v. Merton London Borough Council* [2003] EWHC 1689 (Admin) and the lower standard of proof applicable in asylum matters, that the claimant was presently aged 18 and so entered the United Kingdom when aged 16. When considering the claimant's credibility, the panel had regard to the fact that he was a minor when he entered this country and that he was a minor when he was substantively interviewed by the Secretary of State about his claim.

The panel found the claimant's account of events in Iran to be credible. It was accepted that the claimant uploaded anti-regime posts onto his Facebook account and that he attended demonstrations outside the Iranian Embassy in London. It was not accepted that he had attended these demonstrations because he was a political activist. Rather, his involvement in the demonstrations was limited to attending, holding up placards and shouting slogans. The panel concluded that such involvement was no more than that of an ordinary attendee. However, it was accepted that the claimant had uploaded onto his Facebook account photographs of himself demonstrating outside the Embassy.

The Tribunal held at para. 74(vi) of the decision:

'74(vi) Mr. Ojo [Presenting Officer] invited us to find that if the [claimant] was questioned regarding his Facebook account on returned to Iran, he could inform the authorities that he did not have the capability of uploading posts to Facebook, and that it was done by others on his behalf. This, he submits, would result in the [claimant] not being at risk of persecution. We do not agree with his submissions. As per the UT in BA, the Iranian authorities demonstrate a 'hair trigger' approach to those suspected or perceived to have been involved in Kurdish political activities. The UT qualified 'hair trigger' as 'threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme'. Further, the posts on Facebook show the [claimant] demonstrating outside of the Iranian embassy. Even if the Iranian authorities words are accept that others had uploaded posts to the [claimant's] Facebook page, they would still have evidence of the [claimant's] involvement in the demonstrations and this, we find, would put him at risk on return.'

The panel found that the claimant would be returning to Iran as a Kurd who was not in possession of a passport. There was a real likelihood of his being questioned upon his return resulting in his internet profile, including his Facebook account, being checked by the authorities. It was accepted that his Facebook account would present evidence to the authorities as to his attendance at the demonstrations, his support for Kurdish rights and his anti-regime position. Consequently, there was a real likelihood that he would be subject to prolonged detention and physical abuse at the hands of the Iranian authorities and so a real risk of persecution existed if the claimant were to be returned to Iran.

Grounds of Appeal

By means of her written grounds of appeal, the Secretary of State relied upon two grounds of challenge, identified as:

- i. The First-tier Tribunal found that the local authority assessment was procedurally compliant, and it concluded that the claimant was aged 22 at the date of assessment. The First-tier Tribunal 'departed' from the assessment and concluded that the appellant was age 16 when he arrived in this country. The Secretary of State contended that the conclusion reached as to the claimant's age infected the First-tier Tribunal's further findings that the inconsistencies in the claimant's evidence in regard of his international protection claim could be explained by his young age at the time of interview and hearing.
- ii. The First-tier Tribunal found that the claimant is not a political activist and so failed to consider that his sur place activities were an attempt to bolster his asylum claim. Further, the First-tier Tribunal failed to consider that Facebook posts are not determinative as to the appellant being of interest to the Iranian authorities, particularly in light of the fact that he does not have a high-profile.

Decision on Error of Law

Mr. Melvin filed and served a skeleton argument which we considered with care. Before us Mr. Melvin observed that a country guidance decision is awaited from this Tribunal in respect of Iran, the use of Facebook and sur place activities. No request was made to adjourn this hearing pending promulgation of the awaited country guidance decision.

In respect of ground 1, the core of Mr. Melvin's submission was that the panel members lacked sufficient expertise in respect of age assessment to depart from the conclusions reached by properly trained and experienced social workers. Further, complaint was made that the range between the conclusions as to age reached by the social workers and those of the panel was some six years.

There is no merit to the submission that the First-tier Tribunal was required to possess a particular expertise, beyond its statutory role, in respect of age assessments. McFarlane LJ confirmed in *Rawofi (age assessment - standard of proof)* [2012] UKUT 00197 (IAC) that where age is disputed in the context of an asylum appeal, in contrast to age assessment in judicial review proceedings, it is for a tribunal to make a factual conclusion with the burden being placed on the appellant and the standard of proof as laid down in *R v. Secretary of State for the Home Department, ex parte Sivakumaran* [1988] AC 958 and *R*

(Karanakaran) v. Secretary of State for the Home Department [2000] EWCA Civ 11.

The panel was not bound to accept the conclusions of the local authority's age assessment, even though it accepted that it was 'Merton' compliant and conducted by two experienced social workers. As Elisabeth Laing LJ reaffirmed in *MS (Zimbabwe) v Secretary of State for the Home Department* [2021] EWCA Civ 941, at [61], it is trite that a tribunal of fact is not bound to accept expert evidence if it disagrees with that evidence. That is so even if the expert witness is not cross-examined. The tribunal of fact is entitled, and obliged, to examine the analysis and reasoning in the expert's report. It is obliged to reach its own conclusions on any questions of fact, or mixed questions of fact and law, which it must decide in order to determine a case. Whilst it may accept guidance from an expert on those questions, a tribunal of fact is not obliged to accept it.

What weight is appropriately given to an expert or indeed any evidence is primarily a matter for a judge subject to perversity and irrationality. We note Stanley Burnton LJ's confirmation in *SS (Sri Lanka) v Secretary of State for the Home Department* [2012] EWCA Civ 155, at [21], that a judge's decision not to accept expert evidence does not involve an error of law on their part, provided they approach that evidence with appropriate care and give good reasons for their decision

We are satisfied that the panel gave adequate, lawful reasons for not agreeing with the assessors in respect of previously identified issues of concern. The panel was able to consider a wide range of evidence as well as assess the claimant's consistency in the round. We conclude that the Secretary of State's challenge simply amounts to a disagreement as to the conclusion reached and is incapable of establishing that the panel's decision is perverse or irrational. Consequently, this ground is dismissed.

With his usual candour Mr. Melvin accepted before us that if the Secretary of State was unsuccessful on ground 1, there would be an uphill struggle to succeed on ground 2 because the challenge was underpinned by the submission that the panel erred in considering the claimant's evidence at his interview through the prism of his having been a minor, and not an adult as asserted by the Secretary of State. We conclude that Mr. Melvin was correct to make such concession. This challenge is unsustainable consequent to the dismissal of ground 1. It has been reduced to a reasons challenge, and simply constitutes a disagreement with the conclusion reached. We find that the panel carefully considered the claimant's evidence, including inconsistencies in his evidence, and reached reasoned, lawful conclusions. The panel accepted that the claimant's attendance at demonstrations was genuine in nature, though his participation was no more than that of an ordinary attendee. Consequent to such finding of fact, there was no requirement to consider the appeal in light of the guidance provided by the Court of Appeal in *Danian v. Secretary of State for the Home Department* [2000] Imm AR 96. We are further satisfied that the panel gave lawful reasons in concluding that the claimant would be stopped on return to Tehran airport and his Facebook account would be identified, thereby

informing the authorities of his anti-government activity. This ground is dismissed.

Notice of decision

The decision of the First-tier Tribunal did not involve the making of a material error of law.

The decision of the First-tier Tribunal sent to the parties on 30 November 2020 is upheld, and the Secretary of State's appeal is dismissed.

Order Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The anonymity order issued by the First-tier Tribunal is confirmed in the following terms:

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the claimant. This direction applies to, amongst others, the claimant and the Secretary of State. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 29 July 2021

TO THE SECRETARY OF STATE
FEE AWARD

The First-tier Tribunal made a full fee award in favour of the claimant.

As no fee was paid by the claimant, such award could not properly be made.

No fee award is made.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 29 July 2021