



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

Appeal Number: PA/00157/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> August 2017**

**Decision & Reasons Promulgated  
On 31<sup>st</sup> August 2017**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**BP  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No representation

For the Respondent: Mr L Tarlow, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity**

*The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.*

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the Secretary of State's refusal of protection under paragraphs 326, 339 and 339F of HC 395 (as amended).
2. The core of the appellant's account is that he grew up from the age of 6 with his uncle and eventually moved to live with his brother and his wife when his brother joined the PJAK, that he had a girlfriend in Iran and difficulties were caused when the girlfriend's brother saw them together and threatened to kill him, and that the girlfriend's brother stabbed him in the arm causing scarring and resulting in a family dispute which escalated to the point where the girlfriend's brother threatened to tell the revolutionary guards about the link between the appellant and his brother and PJAK.
3. The judge's credibility finding is founded in part on her disbelief of the account regarding the girlfriend. At [33] the judge said:-
  - "33. I find that if the incident had occurred as the appellant claims then [the girlfriend's brother] and his family would have felt dishonoured not only by the appellant but by his sister ... and I find having considered the objective evidence, it is more likely that the appellant's girlfriend would have been killed for dishonouring her family. The appellant has not mentioned anything happening to his girlfriend ...
  34. I also find that [the girlfriend's brother] would not have attempted to kill or harm the appellant because he would have considered the consequence to himself. According to the objective evidence 'Islamic law includes a principle called qisas, which gives private individuals the right to demand retaliation in kind for a murder or deliberate bodily injury'.
  35. The appellant relies on the scars he has on his arm and he provided photographs taken on a mobile phone showing scars on his left arm. *As I do not accept the appellant is telling the truth about his claim, I do not accept that the injuries on his arm were caused in the way he claimed it did.*"
4. There are three significant flaws in that core analysis, the first being that the assessment of the account of the threat is made to the standard "more likely than not" which is the ordinary civil standard of proof and not the lower standard applicable to protection claims. It is impossible to determine what the judge would have decided had she applied the correct standard. The second point is that at [34] the information about Islamic law and qisas comes from the respondent's Country Information and Guidance Note on Women for Iran April 2016 which is in the public domain, but given that the judge was intending to rely on it she should have given an opportunity for the appellant's representatives to make submissions on the contents of that report, which does not seem to have occurred.
5. Finally, at [35] the judge erroneously applies what by this point appears to be a decided assessment of the appellant's credibility to the photographs of the scarring on his arm rather than taking the admittedly rather limited

evidence of the scarring into account when arriving at the decision on the credibility of his overall account.

**Conclusions**

Given the seriousness of these three errors this decision cannot stand. There is a material error of law therein and I set it aside. The appeal will be reheard in the First-tier Tribunal on a date to be fixed.

Signed: **Judith A J C Gleeson**  
Upper Tribunal Judge Gleeson

Date: 31 August 2017