



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

Appeal Number: PA/08590/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC

On 1st November 2018

**Decision & Reasons
Promulgated
On 30th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**M Z
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer (Counsel)
For the Respondent: Mr A Tann (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge M Davies, promulgated on 23rd August 2018, following a hearing at Manchester on 17th August 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant

subsequently 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 13th June 2002. He appealed against a decision of the Respondent dated 22nd June 2018, refusing his application for asylum and for humanitarian protection, pursuant to Section 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he lived with his father in Iran, and his mother had died when he was still very young. At the age of around 15 he started working with his father as a smuggler of alcohol, accompanying him on various smuggling trips, whilst smuggling alcohol from Iraq to Iran. For the last three months of the smuggling trips a man would give the Appellant's father a box to take to Iran. The father told him that the contents of the box were secret and contained things relating to the political group of the KDPI. After accompanying his father on a final smuggling trip, the Appellant was dropped off at his friend's house. His father returned home and was arrested in possession of alcohol and the box containing the political information. The Appellant was still at the friend's house when another friend called Jilal, rang to say that the family had been raided by Etelaat. The Appellant called his uncle. He went to his uncle's house. He stayed until arrangements were made for him to leave Iran. Then two days later, the Appellant was smuggled out of Iran following his father's arrest. The Appellant now claims that if he is returned to Iran he will be executed by the Iranian authorities because he believes that his father is under suspicion of having smuggled alcohol and items to the KDPI. These matters were referred to in detail by the judge (at paragraphs 12 to 22).

The Judge's Decision

4. The judge comprehensively disbelieved the Appellant. He held that the Appellant did not mention in his interview that he had been encountered by Etelaat in Iran several times previous to the incident that he complained about. There had been two encounters with Etelaat previously. He had done many trips with his father. Yet, he had said at question 7 of the interview that he had carried out two or three trips, when his father did seven to eight trips a month and the Appellant accompanied him on four to five occasions each month (paragraph 34). The Appellant also did not call his father when he was informed by Jilal that Etelaat had raided his family home because Jilal had said that his father had been detained (paragraph 35).
5. The judge's conclusion was that, assessing the claim on the lower standard the Appellant "has been an untruthful witness and that he has fabricated completely his claim to be at risk of persecution in Iran for the

reasons he puts forward” (paragraph 54). The Appellant would not be at risk (paragraph 55). He had failed to give any detailed account of his activity (paragraph 56). It was not credible that he would have been spirited out of Iran just two days after his father’s arrest with the assistance of his uncle (paragraph 57).

6. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge erred in a number of respects. First, he misdirected himself in respect of Section 8 of the 2004 Act because the Appellant was simply a child of 15 and could not be expected to remember the details that he was found deficient in. Second, there was an improper requirement for corroboration. Third, that there was a material misdirection in respect of the plausibility of the Appellant’s account.
8. On 17th September 2018 permission to appeal was granted by the Tribunal.

Submissions

9. At the hearing before me on 1st November 2018, Mr Greer, appearing on behalf of the Appellant, went through the grounds of application and argued that one must not forget that the Appellant was a 15 year old boy who had been helping his dad with smuggling alcohol across the border. His father was arrested. His uncle then whisked him out of the country. He was 16 when he arrived. He was immediately taken to the care of social services. It is simply not correct to say that, for someone who regularly is engaged in smuggling across the border, that his uncle, who would have known smugglers himself, would not have been able to arrange for his departure so quickly from Iran. In the same way, it was wrong to ask for corroboration of the Appellant’s account, because in an asylum claim, which is assessed on the lower standard, such a requirement is completely misplaced. In fact, the judge failed to give reasons for why he so comprehensively rejected the Appellant’s claim.
10. For his part, Mr Tann relied upon the fact that the judge had not found the Appellant to be a truthful witness because he had failed to give a detailed account of the activity that he was engaged in. The judge accepts that “he has given varying accounts of the number of trips he accompanied his father on smuggling excursions. I do not believe on account of his age that would explain those inconsistencies. I do not believe there is any credible evidence to indicate that his father was involved in the KDPI and that his father was arrested by the Etelaat on the basis of political activity or on the basis of smuggling alcohol (paragraph 56). The judge had also explained that it was not credible that the Appellant would have been spirited out of Iran in just two days thereafter (paragraph 57). Mr Tann then went on to say that, “I accept there is not a list of inconsistencies

which the judge could refer to” but the reasons for the refusal were still there.

11. In reply, Mr Greer submitted that it was not clear what aspects of the evidence the judge was taking exception to. There is far too much that one needs to read into the determination to be able to find those precise reasons.

Error of Law

12. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
13. First, the judge did not take into account the Appellant’s age in that he was a child, when the judge assessed whether there was a failure by him to claim asylum in another European country, which is the reason why the judge held that Section 8 of the 2004 Act stood to be applied to him. The Appellant was, after all, placed into foster care immediately upon his arrival in the UK. The judge was accordingly wrong to have said that “it is reasonably likely that the Appellant had every opportunity to claim international protection in a European country before arriving in the United Kingdom” (paragraph 61).
14. Second, the judge held that the Appellant failed to contact his father and uncle in Iran for corroboration. The judge held that,
“the Appellant and his representatives have had every opportunity to attempt to contact his father and uncle in Iran. The fact that they have not done so and the fact that we have no evidence from the Appellant’s uncle further damages the Appellant’s credibility ...”
(paragraph 59).
15. This is a requirement for corroboration. It is wrong to apply it in a case such as the present, involving a child who was 15 when he left Iran to come to the UK. It has to be borne in mind, moreover, that the Appellant’s father was imprisoned by the authorities, as claimed by the Appellant, and this would be another reason why a requirement of corroboration by the father was improper.
16. Third, the reason for disbelieving the Appellant on the ground that he was “spirited out of Iran in two days with the assistance of his uncle” (paragraph 57) is unsustainable in circumstances where this was a family involved in smuggling goods across the border. It would have been otherwise if there had been a delay of several months before the Appellant left Iran.
17. Finally, it would appear that the claim as put by the Appellant has not been properly comprehended. The claim was not that “his father was involved in the KDPI and that his father was arrested by the Etelaat on the

basis of political activity” (paragraph 56). He may or may not have been involved with the KDPI. The claim was that he was asked to take a box to Iran which was given to the Appellant’s father by another man and all that the father knew was the “contents of the box were secret and it contained things relating to the political group of the KDPI” (paragraph 61). That does not necessarily demonstrate a political involvement with the KDPI.

18. In any event, the rejection of the claim in such broad terms as to cover a range of matters, without giving proper reasons for each one of them, is unsustainable when the judge states that, “I do not believe there is any credible evidence to indicate that his father was involved in the KDPI and that his father was arrested by the Etelaat on the basis of political activity or on the basis of smuggling alcohol” (paragraph 56). It begs the question as to what further “credible evidence” the judge required.
19. I have accordingly remade the decision on the basis of the evidence before the judge, his decision, and the submissions that I have heard today. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge M Davies pursuant to practice Statement 7.2(a) of the Practice Directions.
20. 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

23rd November 2018