



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

Appeal Number: PA/09424/2018

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 3 December 2019**

**Decision & Reasons Promulgated
On 13 December 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR A R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs M Chaggar, Counsel instructed by Fountain Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran of Kurdish ethnicity born on 16 May 2001 (as found by the First-tier Tribunal). The appellant appealed to the First-tier Tribunal against the decision of the respondent dated 24 July 2018 to refuse the appellant's protection claim. In a decision promulgated on 28 May 2019 Judge of the First-tier Tribunal Hatton dismissed the appellant's protection appeal on all grounds.
2. The appellant appealed to the Upper Tribunal on the grounds that:

- (1) The judge had made positive credibility findings including in relation to the appellant's age and had set out that the appellant was a child and that the relevant considerations applied and that the appellant had provided consistent evidence in relation to distributing of leaflets [31]. The judge also accepted at [41] that the appellant was not a party member due to being a child. It was argued that having accepted the appellant's consistency with his interview and the central part of his claim to have been involved in distributing leaflets, the judge went on to find the appellant not credible including in speculating about hypothetical and irrelevant matters and most notably in finding at [43] that the appellant had stated that at the time he left Iran his father was unwell whereas it had been the appellant's consistent case that he learned his father was unwell after he left Iran and Counsel's case report was attached to the grounds of appeal.
3. The parties had agreed prior to the commencement of the hearing that the decision contained a material error of law. Mrs Aboni conceded the appeal, primarily due to the error of fact in relation to the recording of the evidence as to when the appellant learnt his father was ill and the negative credibility findings that the judge went on to make about this finding of fact. I agree with the respondent's view that the decision could not stand.
4. Neither party required a reasoned decision in light of their agreement, a course open to the Tribunal pursuant to rule 40(3)(a) and (b) of the Tribunal Procedure (Upper Tribunal) Rules 2008.
5. The decision of the First-tier Tribunal is infected by this error which appears to be a misunderstanding of the evidence; whereas the correct position, maintained on behalf of the appellant, is also reflected in the judge's Record of Proceedings.
6. I am satisfied that this is material as it cannot be said definitively that the judge would have reached the same conclusions he did, including his negative plausibility findings, had he not made the error he did in relation to the appellant's evidence about his father, which was the judge's first consideration on credibility at [43] to [46].
7. Although I accept the judge went on to find that the most important element of the appellant's claim was in relation to his claim about the actions of the police, which given the judge's previous error it cannot be said that he would have necessarily reached the same decision had he not misstated the appellant's evidence about his father.

Decision

8. The decision of the First-tier Tribunal contains an error of law and is set aside. No findings are preserved. The appeal is remitted to the First-tier Tribunal for hearing de novo other than before Judge Hatton.

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: 12 December 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

As no fee has been paid I make no fee award.

Signed

Date: 12 December 2019

Deputy Upper Tribunal Judge Hutchinson