Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06052/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 October 2018	**On 18 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

M A M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton (Counsel) instructed by Brighton Housing Trust
For the Respondent: Mr E Tufan (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a national of Iran born on 31 July 2000. He arrived in the United Kingdom on 28 September 2017 clandestinely and claimed asylum the same day. The basis of his claim is that he is Kurdish Sorani speaking from the small village of Ashkran and then lived in Harzna. He stated that the majority of the people in his village, including his brother Awara, were smugglers and that he began to accompany his brother on smuggling trips from about the age of 12 and 13. The smuggling would be over the border into Iraq and would generally be oil or gas and in return they would bring back clothing, walnuts, almonds and makeup. The Appellant stated that whilst his family home was searched many times and goods found and seized by the authority, nobody was arrested. However one late afternoon

two members of the Pasdaran forced their way into the family home and called to him by name. The Appellant escaped through a back window to avoid what he believed would be his arrest as a consequence of his belief that one of the locals had informed on him. He was given a lift from his village to Sardasht and thereafter fled Iran.

2. The Appellant's asylum application was refused in a decision dated 24 April 2018. He appealed against that decision and his appeal came before First-tier Tribunal Judge Manyarara on 13 June 2018. In a decision and reasons promulgated on 10 July 2018, the judge dismissed the appeal on the basis she rejected the Appellant's credibility; attached no weight to the expert report from Sheri Laizer and found that the Appellant would not otherwise be at risk on return to Iran whether due to his illegal exit or his ethnicity.

3. Permission to appeal was sought in time essentially on three grounds. One, that the judge erred in her approach to the credibility of the Appellant's claim at [41] to [43], not only in failing to apply the applicable guidance in respect of the assessment of a claim by a minor but also in making her assessment without reference to the background evidence or indeed the Appellant's evidence and her conclusions were based on erroneous assumptions about how the Pasdaran would choose to act. It was further asserted that the First-tier Tribunal reached a perverse conclusion in that having accepted the Appellant's evidence that he carried his birth certificate with him at all times, as he did not have a birth ID card, that it damaged his credibility that he had it with him when the Pasdaran raided his home. Secondly, the judge erred in her treatment of the country expert evidence on the basis that it was based on the applicant's account and in so doing the judge erroneously failed to take into account the fact that the expert commented on the context to the appeal, in particular the ubiquity of smuggling by Kurdish groups in the Appellant's area of Iran, the actions of the Pasdaran in the area and the likely treatment of the Appellant if returned. And thirdly, the judge misdirected herself in respect of the evidence relating to whether the Appellant would face prosecution or persecution if returned to Iran at [48], this finding being based on the Respondent's CIG regarding smuggling in Iran. In so doing the judge failed to take into account the evidence of the disproportionate nature of the treatment of Kurdish people in the criminal justice system and the background evidence, e.g. the 2017 US State Department Report that:

> *"The Iranian government's application of the death penalty disproportionately affected ethnic minorities. In pre-trial detention authorities reportedly repeatedly subjected members of minority ethnicities and religious groups to more severe physical punishment including torture than other prisoners regardless of the type of crime for which the authorities accused them".*

4. Permission to appeal was granted by Judge of the First-tier Tribunal Doyle on the basis:

"3. Between [32] and [38] the Judge correctly prepares himself to deal with the evidence of a minor. Between [41] and [43] the Judge sets out three reasons for rejecting the appellant's evidence, but it is arguable that all the Judge says is that he does not believe the appellant.

4. At [45] the Judge deals with the country expert report in arguably superficial terms. It is arguable that the decision is not adequately reasoned. The grounds raise arguable errors of law. Permission to appeal is granted."

Hearing

5. At the hearing before me I heard submissions from Mr Eaton on behalf of the Appellant, who sought to rely on the grant of permission to appeal by Judge Doyle. Mr Eaton submitted that the judge's credibility findings were solely predicated on the proposition that the Iranian authorities would be more interested in the Appellant's brother than in the Appellant himself. However, it was always the Appellant's evidence that he did not know what happened to his brother who was not present when the Iranian authorities came to the family home. Mr Eaton submitted that the judge had ignored the key issue that the brother was not there at that time. The only other finding of fact in relation to credibility is that at [43] having accepted that the Appellant always carried his identity document with him, this was not a reason to find the whole claim was not credible particularly in light of the Appellant's evidence that he always carried this document. Mr Eaton submitted that the credibility findings were clearly inadequate.

6. In relation to ground 2, Mr Eaton submitted that Judge Doyle had neatly summarised the points. In the expert evidence of Sheri Laizer there were specific points that corroborated the Appellant's evidence but these had not been addressed by the judge. The Appellant is a minor and whilst at [32] onwards the judge at some length set out specific guidance on the assessment of claims by a minor she did not apply this in practice. It is clear from that guidance that where a minor is involved more weight should be put on the background supporting evidence.

7. In relation to ground 3, Mr Eaton submitted that the judge goes on to find even if the Appellant were telling the truth he would be at risk of prosecution rather than persecution, although she does not give reasons as to why she reaches this conclusion. In any event, he submitted that she erred in failing to consider this through the prism of the background evidence set out at [13] to [15] of the grounds of appeal. He submitted there had been a wanton disregard for international standards of fairness and in order to have a fair assessment it was necessary to look at the specific treatment of ethnic minorities and the pre-trial conditions in Iranian prisons. He submitted that even if the Appellant was likely to be prosecuted rather than persecuted on return there was a clearly arguable Article 3 breach as a consequence of the prison conditions that a young Kurd would face. However the judge erroneously made no finding on this point at all.

8. In his submissions Mr Tufan sought to rely on the decision in Gheisari v Secretary of State for the Home Department [2004] EWCA Civ 1854 at [14] in support of the adequacy of the judge's findings on credibility, which provides as follows, per Lord Justice Sedley:

> *"What in the end in my view and it is a view I have come to after much hesitation saves the adjudicator's decision from a deficiency of reasons, which is Mr O'Donnell's ground of attack upon it, is the single passage that I have quoted, ending: 'His evidence lacks the ring of truth.' This, I am prepared on consideration to accept, goes beyond simply echoing the Secretary of State's incredulity. It expresses, however laconically, the adjudicator's own evaluation of the veracity of the account that he has been given. That was his task. Although for much of this appeal I was of the view that he had failed to perform it, I am prepared in the end to accept, slender though it is, that it represents his independent judgment on the critical matter upon which the issue of risk to the appellant hinged, namely whether he had indeed been arrested, ill-treated and liberated as he claimed. The adjudicator had recorded the father's tragic history but in the absence of any weight placed on it by the appellant's own advocate, he was not obliged to bring it explicitly back into the account when explaining his rejection of the appellant's story."*

9. I also note Lord Justice Sedley continued as follows at paragraph 15:

> *"I wish only to add that such jejune decision-making is not to be regarded as a model of any kind. As Mr. Grodzinski accepts, more needed to be said by reasoning if this decision was to be visibly sound. But, for the reasons that I have given, the appeal must fail."*

10. Mr Tufan queried the reason why the Appellant would go on smuggling expeditions carrying his identity documents. He submitted the judge's negative credibility findings are set out quite fully at [41] to [43] and the Appellant had been found not credible and that was a finding open to the judge to make. Mr Tufan submitted that [46] raises credibility issues in relation to the expert and that was open to the judge to make such findings. He did not accept that the judgment in Mibanga [2005] EWCA Civ 367 was engaged as the expert proceeded on the basis that the Appellant's account is credible. Mr Tufan submitted that the judge had looked at the background evidence in the CPIN and concluded that the Appellant would not be at risk (see [53] and [54] of the judge's decision). The Appellant has no profile in Iran and in his submission the judge has done enough.

11. There was no reply by Mr Eaton on the Appellant's behalf.

12. I reserved my decision which I now give with my reasons.

Findings and reasons

13. In relation to the first ground, the judge found inter alia as follows at [40]:

"40. The appellant claims to be of interest to the Iranian authorities as a result of smuggling. I have considered the appellant's claim in the round and find that his account to have come to the attention of the Iranian authorities as a result of his activities as a smuggler is not credible.

41. Firstly, whilst the appellant is from an area where smuggling is rife, I find that the appellant's claim to have succeeded in escaping from the authorities on numerous occasions when he was crossing the border during the hours of darkness, whilst smuggling goods, does not sit well with his claim that the authorities were subsequently able to identify him and call him by name when he claims they attended his family home shortly before his departure from Iran. The appellant does not claim to have ever come face to face with the Pasdars and he does not claim to have ever been identified by them in the past whilst undertaking smuggling trips. Whilst the appellant suggests that a person from the village may have informed on him thus leading to the authorities' interest, I find that it is not credible that the appellant's brother would not also have been identified to the authorities given the appellant's claim that he was involved in smuggling goods together with his brother. I am fortified in my view as a result of the fact that the appellant's claim is that his brother was involved in smuggling for significantly longer than he was.

42. Secondly, whilst the appellant also suggests that the authorities are more interested in the youngest member of the family, thus explaining the lack of interest in his brother, I find that this suggestion does not however sit well with the authorities' actions in simply confiscating the goods that the appellant claims were found at his family home. I do not accept that the authorities would have waited for an informant to tell them about the appellant if in fact the authorities had already found smuggled goods at the appellant's family home on numerous occasions. I find that if the authorities wanted to make an example out of the youngest member of the family, then they would have done so on the numerous occasions when they attended the family home and confiscated goods.

43. Thirdly, I do not accept that the appellant was able to leave his family home in the manner described shortly before his departure from Iran when he says the Pasdar attended his family home and called out his name. This is because I do not find credible that on hearing his name being called out, the appellant would have had sufficient time to locate his birth certificate, given the fact that the visit was unannounced. Despite the appellant's claim that he always carried his birth certificate on him because he did not have an ID card, his claim is that he was at home when the Pasdar arrived and he would not therefore have had his birth certificate on his person. I find the appellant's

ability to have his birth certificate in his possession suggests that his departure from Iran was planned.

44. I therefore do not find the appellant's written and oral evidence to be a truthful or accurate description in his activities and circumstances prior to his departure from Iran."

14. I find that the judge erred in her assessment in the Appellant's credibility for the following reasons:

(1) Firstly, whilst it is the case at [32] through to [39] the judge correctly directed herself in respect of the assessment of the credibility of a minor with reference to paragraphs 350 to 352X of HC 395, the Respondent's asylum policy guidance, UNHCR guidelines 2009 in respect of children, and AA Afghanistan [2012] UKUT 00016 (IAC) and DS (Afghanistan) [2011] EWCA Civ 36 when assessing the Appellant's claim, it is not apparent that she applied that guidance to her assessment.

(2) Secondly, the judge's reasoning at [41] and [42] is essentially based on speculation as to the motives and behaviour of the persecuting authorities i.e. the Iranian Pasdaran. As a minor it is not possible for the Appellant or indeed the Tribunal to know why previously the Pasdar simply raided the Appellant and others' homes and confiscated goods whereas on this particular occasion they attended the family home in order to detain the Appellant. An answer to this may perhaps be found in the expert report of Sheri Laizer, given that her evidence was that the authorities are now cracking down on smuggling. The judge failed to assess the Appellant's evidence on this particular issue in light of that expert evidence.

(3) Thirdly, the finding at [43] is confused and contradictory. Having apparently accepted the Appellant's evidence that he carried his birth certificate on him at all times, the judge then rejected his evidence that he had it on him because he was at home. There was no evidential basis to suggest that the Appellant only had his birth certificate on him when he was out of the family home and therefore no evidential basis for the judge to find it not credible that the Appellant had it on him when he was at home and thus planned his departure from Iran.

15. In relation to the second ground of appeal, I find that the judge failed to give adequate and sufficient reasons for rejecting the expert report. I find that the judge failed to assess the Appellant's credibility in light of all the evidence, including the expert report, which not only provided general corroborating support for the Appellant's claim but also, as Mr Eaton submitted, addressed specific points which I find should have been properly considered. The judge says this in relation to the expert at [45]:

"I have considered the expert report prepared by Sheri Laizer. I find however that this does not take the appellant's case any further. This is because all the report does is confirm that smuggling is common in

the appellant's home area. I further find that the report proceeds on the premise that the appellant's account is one that is credible. I find that the fact that smuggling occurs in the appellant's home area and the fact that the authorities are now cracking down on it does not automatically lead to the conclusion that the appellant's account is credible. Indeed if it were the case that the expert report could be viewed as substantiating the appellant's account, I find that the conclusion that the authorities are cracking down on smuggling does not in fact sit well with the appellant's claim that the authorities attended his family home on numerous occasions and simply confiscated the goods that they found there, without taking any further action against the appellant or his family."

16. I find the judge erred in her assessment not only for the reasons set out above but in stating that all the report does is confirm smuggling is common when it is clear that the report does quite a lot more than that. The report, which is at page 172 of the Appellant's bundle, and is dated 8 June 2018, makes a number of points, but in particular the conclusions provide as follows:

> *"1. I do not consider that the correct tests have been applied to assess the manner in which the lifestyle of rural Iranian Kurds is dictated by the difficult economic and political conditions that force many Kurds – young and old alike – to resort to smuggling.*
>
> *2. I consider M A M very likely engaged in smuggling given the area in question and his family's economic status.*
>
> *3. Kurdish smugglers face very high risks of being killed or captured on a random basis.*
>
> *4. Dissidents and individuals that fall under the suspicion of the Iranian authorities face high risks of torture, unfair trial and death. Kurdish ethnicity and origins from villages bordering the KRI may lead to an imputed opinion of providing support to Kurdish rebel groups or even as acting couriers for them, not just as smugglers. Interrogation itself poses high risks.*
>
> *5. Iran's intelligence, security and cyber intelligence capacity is one of the most sophisticated and is used in service of Iran's political objectives."*

17. I find that the judge's conclusions in respect of the expert report at [45] are contradictory and unsustainable.

18. In respect of the third ground of appeal, the judge states at [47]:

> *"Even if I were to accept that the appellant came to the attention of the authorities in Iran as a result of smuggling, I find that this would not place the appellant at risk of persecution on return."*

However there are no reasons provided as to why the judge has reached this conclusion, or at [49] in respect of the risk to the Appellant on the basis of his Kurdish ethnicity. The judge made reference to the country information and guidance in respect of Iranian smugglers dated April 2016 and the CIG in respect of Kurds and Kurdish political groups dated July 2016. However there was a substantial bundle of evidence submitted on behalf of the Appellant which included not only the expert report but background documents from a number of different sources relating to the risks to Kurdish nationals in Iran as well as to those who were involved in smuggling. I find that the judge's conclusions in respect of risk are flawed, not only as a result of her failure to consider the background evidence as a whole but also as set out in ground 3, in finding that if the Appellant were at risk of prosecution then that would not in itself be persecutory or in breach of Article 3, in light of the very poor prison conditions and the ill-treatment meted out to members of the Kurdish minority.

19. For the reasons set out above I find material errors of law in the decision of First-tier Tribunal Judge Manyarara. I set that decision aside and remit the appeal for a hearing de novo before the First-tier Tribunal.

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 Rebecca Chapman Date 15 October 2018

Deputy Upper Tribunal Judge Chapman