



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

Appeal Number: PA/04660/2018

THE IMMIGRATION ACTS

**Heard at Newport
On the Papers
On 6th March 2019**

**Decision & Reasons Promulgated
On 29th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**[S A]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: No representation

DECISION AND REASONS

Introduction

1. The Appellant, now 18 or 19, claimed to be a citizen of Iran and made application for asylum on his arrival in the UK on 19th October 2017. The Respondent had refused the Appellant's application on 23rd March 2018 and the Appellant had appealed that decision.
2. The appeal was heard by Judge of the First-tier Tribunal Fowell at Newport on 14th May 2018. The judge had dismissed the Appellant's appeal on all grounds. Application for permission to appeal had been made and that

application had been granted on 15th June 2018. It was said that arguable errors of law had been disclosed and that there was overall an inadequacy of reasoning in particular in that the judge appeared to omit regard to country information and an expert report.

3. Directions had been issued for the Upper Tribunal firstly to decide whether an error of law had been made by the First-tier Tribunal and the matter came before Vice President M Ockelton and myself sitting as a panel at Newport on 15th November 2018 in accordance with those directions. Following submissions raised by the representatives at the hearing, namely Miss Bayoumi instructed by Barnes Harrild & Dyer Solicitors on behalf of the Appellant, and Mr Howell, a Senior Presenting Officer on behalf of the Respondent, we found for reasons provided in our decision promulgated on 4th December 2018 that a material error had been made such that the matter would need to be made afresh. In our decision we had indicated at paragraph 14 that we had before us all the material provided by both parties and that directions had been sent out to the parties in order for them to prepare for the error of law hearing on the basis that if the decision was to be set aside as erroneous in law the re-making would take place at the same hearing. We invited written submissions from both parties. In order to clarify matters given that no submissions were received within the fourteen days stipulated, further directions were issued on 16th January 2019 indicating that the Upper Tribunal was now ready to re-make the decision and that any submissions by either party would be taken into account if received within fourteen days of the date that these directions were sent out. Submissions were provided within time by the Respondent and no further submissions have been received on behalf of the Appellant.

Documents

4. The Respondent's documents consist of:
 - Immigration history.
 - Those documents listed at folios A to H on the index sheet to the Respondent's bundle.
 - Decision letter 23rd March 2018.
5. The Appellant's documents consist of:
 - Skeleton argument.
 - Those documents listed at pages 1 to 211 on the index sheet to the bundle.

The Law

Asylum

6. Paragraph 334 of the Immigration Rules states that the applicant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on an Appellant to satisfy us that he falls within the definition of a refugee in Regulation 2 of the Refugee or Person in Need of

International Protection (Qualification) Regulations 2006. In essence an Appellant will have to show there are substantial grounds for believing that he is outside his country of nationality or if applicable his country of former habitual residence by reason of a well-founded fear of persecution for a Refugee Convention reason and is unable or unwilling owing to such fear to avail himself of the protection of that country.

Humanitarian Protection

7. Paragraph 339C of the Immigration Rules states that an applicant who does not qualify as a refugee will be granted humanitarian protection if the provisions of that paragraph apply. The burden of proof rests on an Appellant to satisfy me he is entitled to humanitarian protection under paragraph 339 of the Immigration Rules. In essence an Appellant will have to show there are substantial grounds for believing that if returned he would face a real risk of suffering serious harm and he is unable or owing to such risk unwilling to avail himself of the protection of the country of return.

The ECHR

8. The burden of proof rests on an Appellant to satisfy me that there are substantial grounds for believing that as a result of the Respondent's decision he will be exposed to a real risk of torture or inhuman or degrading treatment or punishment contrary to Article 3.

Decision and Reasons

9. I have carefully considered all the evidence in this case including the submissions received on behalf of the Respondent dated 4th February 2019.
10. The Appellant's claim was that he was Iranian living in the predominantly Kurdish region of Iran bordering Iraq. His father had been a smuggler and had been caught by the authorities smuggling KDPI material and had been taken by the authorities and not seen since. The Appellant had himself worked as a smuggler in the border region smuggling a variety of merchandise. He had been introduced to PJAK after working as a smuggler for about two years and on a number of occasions had smuggled documents for them, taking them to his home where someone would come and collect them. The Appellant received information from his uncle that the authorities had raided his home and the Appellant therefore stayed with a friend before leaving Iran.
11. The Appellant's precise date of birth and age was a matter of some dispute. However, as noted by the First-tier Tribunal Judge at the previous hearing, even on the Home Office view of the Appellant's age, he would be recalling events in Iran when was a teenager. Further, the Appellant's evidence in interview (question 7) suggested he had not been educated and that does not appear to be challenged by the Respondent. Furthermore, that lack of education is not inconsistent with circumstances for Kurdish children in that part of Iran.

12. The factors of his age and lack of education are matters that I take into account when assessing his evidence and credibility.
13. The Respondent challenges the Appellant's account to be Iranian. That was based on the Respondent's assertions that the Appellant was unable to accurately refer to geographical positions or towns and cities within the area. It was further said the Appellant had inaccurately described the ID book that as a minor he would possess. The refusal letter dealt with those issues of nationality at paragraphs 22 to 38.
14. I have already referred to the Appellant's age and lack of education when having to assess his evidence. I further find nothing inconsistent in the fact that a teenage border smuggler would not necessarily have travelled far beyond his recognised routes across the border and would have therefore little real knowledge or experience of life beyond that area. Further, if he had no formal education then it is most unlikely he would have gained knowledge of his country from books or newspapers. The question of whether the family home had a radio or television was never mentioned.
15. The Respondent accepts that the Appellant was able to answer some questions. For example, the Appellant gave the name of one of the Iranian leaders, namely the President, but could not provide the name of the Supreme Leader. The Appellant had also provided the names of villages that were similar to the names of two that the Respondent could reference from Google. I bear in mind that sometimes spelling and pronunciation of places may be different from that which is done locally and that which may appear internationally.
16. The Respondent also relied upon the fact that the Appellant had spoken about an adult Shunasmarer ID book rather than a minor's one which was found to be inconsistent with the Appellant's claimed age. However, I bear in mind that the Appellant at question 76 readily accepted that he had had two types of Iranian documents, an identity card and what he referred to as a Milly card which was small and yellow, contained his number (which he gave) and his date of birth and nothing else. The Appellant described an Iranian Shunasmarer ID booklet. However, careful examination of the interview record (question 76 to 78) indicates I find, that the Appellant was describing the small yellow Milly card as being one that he had and further describing in general a Shunasmarer. There is nothing to suggest his descriptions of those documents are not accurate and I find that his ability to describe seemingly quite readily matters such as those, which he is more likely to have seen or have knowledge about, rather than geographical questions sufficient together with his evidence generally to conclude that applying the appropriate standard of proof he is Iranian as claimed.
17. I have considered the Appellant's claimed history alongside country material and the expert report prepared by Dr Joffe. I find nothing intrinsically inconsistent or unfamiliar in the Appellant's father having been involved in border smuggling in that part of Iran. It may well be the case

that either because of political support or financial gain he may have smuggled documents on behalf of the KDPI. The regime's harsh dealing with Kurds and any form of Kurdish separatist movement is documented within the report. I find it unsurprising that the authorities would covertly and/or overtly be operating in that area and the potential for a smuggler to be unfortunately caught to be present. Further, mathematically the more often a smuggler operates then potentially the greater the risk of being caught. I do not find anything intrinsically implausible in the account given by the Appellant of the circumstances relating to his father and his evidence does not indicate exaggeration or aspects of implausibility.

18. In like manner I can accept the Appellant may at a young age have himself become a smuggler. In some respects alternative means of earning money may simply not have been available to him. The Respondent questions whether the Appellant would have taken the risks of smuggling political material in particular knowing the attitude of the authorities and that which had occurred to his father. Those are valid points. However, I bear in mind the relatively young age of the Appellant at that time and the fact that he may not necessarily have given the same mature consideration to that point as given by the Respondent. Furthermore, intrinsically all smugglers accept a degree of risk even when the consequences are known.
19. The Appellant's account of his smuggling activities in interview I find to be a credible account not inconsistent with country material. The Appellant was able to provide details of goods, numbers involved, payment, and where goods were delivered such that I accept the credibility of that account.
20. Against that background and matters generally I do not find it implausible that the Appellant would have been asked and would have become involved in smuggling information for PJAK. It is not necessarily clear as to why [K] would have asked the Appellant to smuggle material and take it to the Appellant's home, given that [K] appeared to live in the same village, and that again is a matter raised by the Respondent in their submissions. One possible explanation of course is that it reduced the risk to [K] himself being caught with the material. There may be other unknown reasons. The Appellant has not sought to inflate his role in the respect of smuggling materials for PJAK. He does not claim to be a supporter or member of that organisation (question 20). He claimed to have smuggled PJAK material at the behest of [K] over a three year period but only on about five to nine occasions; so only an occasional aspect of his almost daily smuggling activities. I find his account of smuggling for [K] on behalf of PJAK plausible, not exaggerated and not inconsistent with his background and circumstances generally in that part of Iran.
21. Given the authorities kept a watchful eye upon the Kurdish region and potential Kurdish disaffection, it is perhaps unsurprising that after three years of smuggling activities the Appellant may well have come to the attention of the authorities. The fact his father had been caught some

years earlier may potentially have raised the Appellant's profile. It is also possible that the Appellant had come to the attention of the authorities through his occasional links with [K]. Applying the appropriate standard of proof I find it credible that the authorities may well have raided both [K]'s house and the Appellant's home. Although it seems somewhat convenient the Appellant was not at home and was warned by his uncle, I accept that as a possibility. The Appellant had already explained that he would be involved in smuggling four days a week and therefore would often be away from home. I accept that timings may have varied in terms of his smuggling activities. He had already explained earlier in interview that most in his village, including his uncle, were smugglers. I find it not inconsistent that they may have been a tight-knit group prepared to look out for and support each other and therefore consistent with that background the uncle would if he could, have warned the Appellant and therefore have assisted him thereafter in the manner described.

22. In summary, I find applying the appropriate standard of proof that the Appellant has provided a credible account of his circumstances in Iran and his reasons for leaving. It is consistent with country material and the expert report. I find therefore that the Appellant would be known to the authorities and that they take a harsh view of Kurds involved in separatist activities however minor their involvement. Accordingly, on return to Iran the Appellant would be at real risk of persecution. His Kurdish ethnicity and lack of passport would not of course assist.
23. I accept the Appellant did not claim asylum in a number of safe countries such as Italy or France before he came to the UK and I make, as I must, an adverse credibility finding in that respect under Section 8 when looking at his credibility in the round. However, I do not attach much weight to that particular feature given all the circumstances including the Appellant's age at the time that he was travelling outside of Iran.
24. In summary therefore, given my findings on fact and credibility, I find that there would be a real risk to the Appellant on return to Iran as a result of his direct or imputed political opinion and therefore he succeeds under the terms of the Geneva Convention.

Notice of Decision

25. I allow this appeal on asylum grounds.

An anonymity direction is made.

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

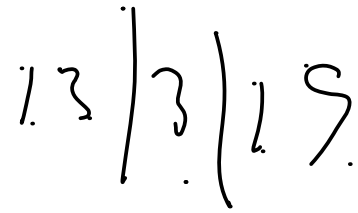
Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

A handwritten signature in black ink, appearing to read "J. Lever". The signature is written in a cursive style with a large, sweeping initial "J" and a long, vertical stroke at the end.


Deputy Upper Tribunal Judge Lever

Date

A handwritten date in black ink, "13/3/19". The numbers are written in a simple, slightly slanted font, with a vertical line separating the day from the month, and another vertical line separating the month from the year.

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

Signed 

Deputy Upper Tribunal Judge Lever

Date 13/3/17