



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

Appeal Number: AA/09285/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 13 April 2015**

**Determination  
Promulgated  
On 7 May 2015**

**Before**

**UPPER TRIBUNAL JUDGE LATTER  
UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**ND  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Burrett, instructed by Wick & Co Solicitors  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing him further leave to remain following the refusal of his claim for asylum.

Background

2. The appellant is a citizen of Iran born on 24 September 1994. He arrived in the UK on 2 November 2010 as an illegal entrant and claimed asylum. His application was refused but on 17 December 2010 he was granted discretionary leave to remain until 24 March 2012 in accordance with the

respondent's public policy on the handling of asylum applications from unaccompanied asylum-seeking children. There was no appeal against that decision but on 22 March 2012 the appellant applied for further leave to remain. That application was refused for the reasons given in the respondent's Reasons for Refusal Letter of 16 October 2014. The respondent was not satisfied that the appellant had demonstrated that he had a well-founded fear of persecution in Iran. The appellant appealed against that decision and his appeal was heard on 22 December 2014.

3. The appellant's claim was that he was an Iranian citizen of Kurdish ethnic origin who would be at risk on return because the government had found out that he had been involved in selling alcoholic drinks found in his house. He said that this had happened some 26 days before his interview and the next day he had left Iran, being taken to the border by car and then travelling to Turkey by horse and on foot where he stayed for one night before travelling across Europe by lorry. He also claimed that about three years previously he had been arrested because a photograph of "Imam Kumaini" had been taken from his local mosque. Three other men were also arrested. He was kept in a room at the police station for about two months, subjected to regular beatings and eventually was released. When he returned to his village he was told that the three men arrested had been executed. The appellant also gave evidence that he had attended a demonstration outside the Iranian Embassy in July 2011. There were many people taking photographs and someone came out of the embassy to look at them. A friend later told him that there were pictures on the internet. He had also attended a demonstration in January 2013 but this was not outside the Iranian Embassy, which was closed at the time, but was a walk between the French and Turkish Embassies.
4. The respondent noted that the appellant's fingerprints had been taken by the French authorities in Coquelles on 21 September 2010 when he had given his correct name and age but a different date of birth. It was the respondent's view that the appellant had spent a considerable time in France and it was reasonable to expect him to have claimed asylum there.

#### The Findings of the First-tier Tribunal

5. The judge set out his findings of credibility and fact in [33] - [49] of his decision. He said that he was aware of the provisions of s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. He noted that at his interview the appellant had said that his journey from Iran to the UK took 20 to 25 days and that the raid on his house took place 26 days before the screening interview, which had taken place on 3 November 2010. He had arrived in the UK on 27 October 2010 and so the raid must have taken place in the early part of October 2010 but this could not be reconciled with the fact that the appellant's fingerprints were taken by the French authorities on 21 September 2010. The judge noted that the appellant had given his correct name and age but a different date of birth when fingerprinted and at interview had denied that his fingerprints had been taken during his journey. He found that this inconsistency and his willingness to lie significantly undermined his credibility. He was satisfied

that the appellant had spent more time than he had claimed in France, that he must have passed through other EEA states on his journey and that his failure to claim asylum before arrival was not the action of a person genuinely seeking Refugee Convention protection.

6. The judge found that the appellant had been inconsistent in his accounts of the events leading to his departure from Iran, in particular in his initial statement saying that “we were selling alcohol drinks” as opposed to a later claim that the alcohol was simply hidden in a storeroom by illegal traders under an arrangement with his uncle. For these reasons the judge found the appellant to lack credibility and rejected his account. He considered whether there would be a risk from the fact that the appellant had attended demonstrations in this country but was not satisfied that he would have been of any interest to the authorities in the past or that they would be able to identify him assuming they were minded to do so. He also considered the risk to the appellant on return as a failed asylum-seeker referring to the findings in SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053. He went on to consider the appellant’s article 8 rights but found that in so far as family life had been established and removal would amount to an interference, the adverse decision was lawful, for a legitimate purpose and proportionate to the need to maintain immigration control. Accordingly the appeal was dismissed on all grounds.

#### The Grounds and Submissions

7. In the grounds it is argued that the judge erred by starting his assessment of credibility with s.8 of the 2004 Act; he failed to take into consideration that the reason why the appellant might have entered the UK as he did was through being under the influence of agents; did not take into account the consideration that the appellant was a 15 year old unaccompanied minor travelling with the aid of an agent and, when considering what inferences should be drawn from what the appellant had said at his screening interview, failed to take into account that this interview was conducted without a responsible adult being present.
8. The grounds further challenge the finding that the appellant would not be at risk on return despite attending a demonstration outside the Iranian Embassy in 2011. They argue that the judge failed to take into account the added risk arising from his Kurdish ethnicity and failed to consider or make findings on the risk to the appellant due to his father’s political profile, the evidence before the judge being that his father was executed for protesting against a Persian candidate in the local elections in the largely populated Kurdish region of Iran. The grounds then assert that the judge had failed to consider the appellant’s claim under para 276ADE(vi) or to make any findings on the risk of return as a failed asylum-seeker.
9. Mr Burrett adopted these grounds in his submissions, arguing that starting with s.8 was indicative of the judge’s approach to the evidence. He had failed to take into account the appellant’s age when drawing adverse inferences from the screening interview, had failed to make any real findings about the demonstrations or to take all relevant matters into

account in his assessment of the risk on return and in particular the appellant's ethnicity and the fact that his father had been executed.

10. Mr Tufan submitted that the judge had clearly taken into account the appellant's age when reaching his conclusions on the evidence and it was for him to decide what inferences should be drawn from the evidence that the appellant had been in France at the time when he claimed to have been having problems with the Iranian authorities. The judge was entitled to give weight to inconsistencies in the evidence and his findings on the lack of risk arising from surveillance activities had been properly open to him. There had been no acceptance or evidence that the appellant had appeared in an online newspaper in July 2011 and the evidence in relation to his father's execution in about 2004 was irrelevant, as there was no evidence that the authorities pursued family members after that date.

#### Consideration of whether there is an Error of Law

11. We must consider whether the judge erred in law such that his decision should be set aside. We are satisfied that there are a number of factors which when taken as a whole undermine the safety of the judge's finding on credibility. It is not in dispute that the appellant arrived in the UK as a minor aged 15. His screening interview was on 8 November 2010 and his substantive interview on 9 December 2010. The judge was entitled to take into account inconsistencies in the interviews but when doing so he should also have taken into account the fact that when he was interviewed in 2010 he was a minor and it is clear from the record of the screening interview for children that there was no adult present as opposed to the substantive interview where a representative from solicitors was in attendance. Whilst the judge was also entitled to take into account the fact that the appellant's fingerprints had been taken by the French authorities in Coquelles on 21 September 2010 the inference that this was inconsistent with the appellant's account of events in Iran is substantially based on the answers the appellant had given at his screening interview that the raid on his home had taken place about 28 days previously.
12. When considering the risk arising from the appellant's attendance at a demonstration outside the Iranian Embassy in 2011 the judge said he did not accept that the appellant had a political profile or that he would already be known to the Iranian authorities. The appellant had provided photographs of himself at the demonstration and it was his evidence that he was visible in a photograph published in an online newspaper in July 2011. However, the judge said that he was not persuaded "as he has not been of interest in the past, that the authorities would be able to identify him assuming they were minded to do so." Any risk to the appellant would arise from whether he is perceived because of his activities to be of interest to the authorities and a lack of interest in the past is not in itself determinative of that issue.
13. It was part of the appellant's case that he was of Kurdish ethnicity and that his father had been executed in about 2004. These factors were not taken into account by the judge in his assessment of whether the

appellant in his particular circumstances would be at risk on return and they are not matters which can be discounted as irrelevant to that assessment.

14. When we take these various factors cumulatively we are satisfied that the judge erred in law by failing to take a number of relevant matters into account both in his assessment of credibility and of the risk on return. The error is such that the decision must be set aside.
15. Both representatives agreed that in these circumstances the proper course would be for the appeal to be re-heard and that this should be before the First-tier Tribunal rather than the Upper Tribunal. We agree with this submission as the appeal will have to be re-heard de novo. The appeal will therefore be remitted for a fresh hearing before the First-tier Tribunal.

### Decision

16. The First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted for a fresh hearing before the First-tier Tribunal.
17. The First-tier Tribunal judge did not anonymise his decision but there are orders on the appeal file indicating that the intention was to make an anonymity order. To preserve the position until the First-tier can consider the matter further we make an order under r.14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and accordingly 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

Date: 6 May 2015

Upper Tribunal Judge Latter