



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04207/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 7 August 2018

Decision & Reasons Promulgated  
On 24 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

A A A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Mukherjee, Counsel instructed by Rodman Pearce Solicitors  
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order preserving that already in force. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to Contempt of Court proceedings.
2. The Respondent refused the Appellant's application for asylum or ancillary protection on 13 March 2018. His appeal against that was dismissed by First-tier Tribunal Judge Burns (the Judge) following a hearing on 1 May 2018. The basis of his case was that he had been forced to smuggle ammunition for Kurdish separatists and

they were ambushed by the authorities who knew he was involved because they had subsequently attended his mother's house looking for him. That summary is to be found at [16] of the Judge's decision.

### Permission to appeal

3. Permission to appeal was granted by Judge Cruthers (1 June 2018) on the basis that it seemed that there is sufficient to attack on the credibility points of the Judge that a material error of law might be established on further examination.

### Respondent's position

4. No Rule 24 notice was filed. Mr Avery submitted that nothing had been pointed out to show that what the Judge had said was incorrect. The decision was open to the Judge. The Appellant had given precise timings on matters in contention. The finding regarding his lack of local knowledge was open to the Judge. The age issue was not a key matter for the Judge.

### Appellant's position

5. The basis of ground (1) was that the Judge had failed to identify objective evidence to indicate how individuals were targeted for assistance by those the Appellant had been asked to help, namely the KDPI.
6. Ground (2) was that the Judge had speculated regarding how or why the Appellant had been chosen to assist the KDPI.
7. Ground (3) was that the Judge failed to record the Appellant's evidence regarding the ambush in that he apparently said the timings were an approximation, whereas the Judge found it was very specific [49].
8. Ground (4) was that the Judge has misunderstood the evidence regarding where the ammunition was taken because the Appellant said he was asked in cross-examination where he was taking it and at re-examination he was asked where he was when he was taking it. The Judge confused these two answers to indicate that there was a discrepancy whereas none existed.
9. Ground (5) was that the Judge did not take into account that the Appellant was a child when these events occurred.

### The Judgement

10. The Judge considered the background evidence and noted [35 to 39] that it was not possible to confirm or refute the possibility that family members of former Kurdish activists would be targeted by the authorities. There is a structure of organised intelligence in the Kurdish areas which has increased lately. Kurdish activists are treated very badly and can be targeted for arrest, imprisonment and execution. There is very significant torture and ill-treatment of prisoners, and very poor prison conditions.

11. In relation to the Appellant's credibility, the Judge bore in mind his limited education and cultural difficulties [42]. No challenge has been made to the finding that the Appellant's credibility was damaged by him having given false details. The Judge found [44] that the difficulties faced by Kurds would be well-known to the Appellant and his father, and yet they say they assisted in the moving of ammunition with no doubt very severe consequences if apprehended. The Judge noted that there is nothing in the background evidence that would lead him to conclude that armed men randomly select farmers to help in the transportation of arms. The Judge went on to say [45] that it is unclear why the smugglers did not take the mules that were kept outside the Appellant's house and not involve the Appellant and his father. The Judge accepted the Respondent's submission that it is highly unlikely that smugglers would explain that they were carrying ammunition.
12. The Judge found that the Appellant's explanation that they did so to persuade his father to assist did not have the ring of truth. In relation to those specific findings I note the submission in essence is that there is an assumption that all groups seeking to overthrow the authorities in whatever country act consistently or irrationally and that the absence of evidence of how they operated does not mean they do not operate in that way. I was taken to the Appellant's interview record and in particular question 87 where he explained how the Kurdish militants came to the house and asked for support and his father refused to do this because of the risk to them. He said that the separatists warned his father that if he did not come to help they would kill him. Following further threats, he and his father were forced to do the job.

### Discussion

13. In relation to Ground (1) and (2) the Judge noted how the authorities behave rather than how the Kurdish separatists behave. I am not satisfied that the Judge has materially erred in this respect because of the lack of evidence to support what the Appellant says. It is for the Appellant to make out his claim to the lower standard and the Judge was entitled to find because of a lack of evidence before him that he had failed to do so. I am not satisfied the Judge simply speculated. All he was doing was noting what was said, rejecting that account, and giving reasons for it.
14. In relation to Ground (3), the Judge records the evidence [49]..."The Appellant said that he was ambushed 1 hour and 10 minutes or 1 hour and 15 minutes after leaving his home. This is very very specific. This does not fit well with the Appellant's representative's submission that he is a non-educated man who has difficulty in assessing time. He is either very good at assessing time or he has simply made up the timings."
15. The Judge discusses the evidence surrounding the Eurodac evidence and finds that the Appellant had not been truthful about that matter. The reason he linked those two points was because on the Eurodac evidence he was denying the number of times he had been fingerprinted, where he said it was once but showed it was twice. The Judge made findings available to him on the evidence and the Appellant simply disagrees with it. The Appellant's credibility on timings was relevant from the Eurodac evidence and the Judge was entitled to consider that.

16. In relation to Ground (4) the Judge stated [50] that the Appellant was asked where he was taking the ammunition to and he replied "I don't know. It was a mountainous area. I was taking it to their storage. I don't know where it was. I didn't know where I was because it was mountainous, and I don't have a name". However, when re-examined he said he was very familiar with his surroundings and he knew that the area belonged to Maradan because it was in the border of his village. I am not satisfied that was a material error of law in the way the Judge considered this evidence. He has summarised it fairly and accurately and it has not been made out that the Judge misconstrued what he was being told.
17. In relation Ground (5), at the time the Appellant gave his evidence he was 19 years old. He was interviewed substantively on 20 September 2016. The interview record (q88) identifies the dates of the complaint as to when the Kurdish separatists came round to his family home as eight months and a week earlier. The incident therefore will have been around about February 2016. He was then about 16 years 10 months old because he was born in April 1999. There is nothing before me to suggest that he has a cognitive difficulty in recollecting events from when he was almost 17. I am not satisfied that his age when these events occurred, or his age when he gave his interview, or his age when he was at the hearing is a factor within the credibility assessment given the lack of any evidence of cognitive impairment or discrepancies arising from that.

### Decision

I am not satisfied that the Appellant has established that the Judge materially erred.

I do not set aside the decision.

A handwritten signature in black ink, appearing to read 'Saffer', with a large, sweeping initial stroke on the left side.

Signed:  
Deputy Upper Tribunal Judge Saffer  
17 August 2018