



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

Appeal Number: PA/06597/2019

THE IMMIGRATION ACTS

Heard at Leeds Combined Court Centre **Decision & Reasons Promulgated**
On 17 January 2020 **On 4 March 2020**
Decision given orally at hearing

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

**SM
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ell, Paragon Law

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal which, following a hearing in Birmingham on 12 September 2019, dismissed the appellant's appeal against the refusal by the respondent of the appellant's protection claim.
2. The appellant was accepted to be a minor and a citizen of Iran. He said that he had been engaged in the transportation of goods in the mountainous Kurdish region that straddles the border between Iraq and

Iran. He was what is known as a Kolber, who is a form of trader tolerated to some extent by the Iranian authorities to take goods between Iraq and Iran in order for them to be sold in Iran. The expert report of Dr Kakhki, which was before the First-tier Tribunal Judge, explains in great detail the Kolber system and the way in which Kolbers operate at the margins, at least in some respects, of Iranian toleration. They are not, however, entitled to transport goods of an inherently illegal nature from Iraq to Iran. This was the matter that the appellant said had caused him to flee and seek international protection.

3. On a particular evening, he was travelling from Iraq to Iran with two horses when he was approached by individuals who compelled him to hand the horses over to them, and also to hand over his Kolber identification documentation. The appellant then travelled some little way behind these individuals, who attempted to cross the border but were intercepted by guards, whereupon there was shooting. The upshot of this, according to the appellant, is that police came to his village and were told by the local headman there that a horse or horses were in fact those belonging to the appellant. Fearing that his life was in danger because the authorities would regard him as being involved in the transportation of proscribed literature across the border by the individuals to whom I have made reference, the appellant sought international protection.
4. The First-tier Tribunal Judge described the appellant's evidence at paragraph 16 as confused and contradictory. At paragraph 17 he wrote: "Second, even if I am wrong about this, the plain ...". This sentence then breaks off, and we do not know what was intended to be said. That may not be necessarily material if the judge nevertheless had made cogent findings regarding the appellant's lack of credibility. However, reading on from paragraph 17, it is in my view apparent that the judge failed to make such findings.
5. Paragraph 20 contains some aspects of the evidence that the judge considered to be in effect confused and contradictory. One passage that troubles me, however, is that related to the oral evidence given by the appellant, who said that he never showed the ID card to anyone. The judge considered that that ID card was the so-called Kolber booklet. However, since the judge has not placed in the file any Record of Proceedings, it is difficult to know quite what the judge meant by this.
6. The judge in any event in my view failed to place his findings regarding the credibility of the appellant's account in the context of the detailed expert report, to which I have made reference. That further undermines the safety of the adverse credibility findings that the judge made.
7. At paragraph 22, the judge noted that the appellant was a licensed Kolber; but then said: "There is no suggestion that he himself is involved in any illegal activity. There is no evidence that he has been apprehended with proscribed literature materials". Whether that was a finding that is compatible with the contents of paragraph 20 is in my view doubtful. It is

unclear whether at paragraph 22 the judge is saying that even if the appellant's account were correct, he has not been apprehended with proscribed literature materials. If that was what the judge was saying, then plainly there is a problem because the Iranian authorities, according to the appellant, suspect him of involvement with the transshipment of such materials.

8. Quite apart from this, I also consider that there is merit in Mr Ell's submission that the expert report, taken with the relevant Country Guidance, required consideration by the First-tier Tribunal Judge, even if that judge had decided that details of the appellant's account, in particular the events on that particular night, were not to be believed. The judge found that the appellant was a licensed Kolber. Given that and his Kurdish ethnicity, there is an issue as to whether the appellant would be at real risk of serious harm on return, even if he has not told the truth about the events of that particular evening.
9. For these reasons, I find that the judge's decision cannot stand. I accordingly set it aside in its entirety. It will be for a new Judge of the First-tier Tribunal to decide all questions of fact and then apply to them the relevant law and Country Guidance in order to reach a sustainable decision.

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 20 February 2020

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber