



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/07164/2019**

**THE IMMIGRATION ACTS**

**Heard Remotely at Manchester  
CJC  
Heard On: 27<sup>th</sup> October 2020**

**Decision & Reasons Promulgated  
On: 30<sup>th</sup> October 2020**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**AS  
(anonymity order made)**

Appellant

**And**

**Secretary of State for the Home Department**

Respondent

**For the Appellant: Ms R. Moffatt, Counsel instructed by Fisher Jones Greenwood**

**For the Respondent: Mr A. Tan, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Iran born in 2001. He appeals with permission against the 29<sup>th</sup> January 2020 decision of the First-tier Tribunal (Judge Lucas) to dismiss his appeal on asylum grounds.

**Anonymity Order**

2. This appeal concerns a claim for protection made when the Appellant was a minor. Having had regard to Rule 14 of the Tribunal Procedure

(Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Background and Matters in Issue**

3. The basis of the Appellant’s claim to protection was that he has a well-founded fear of persecution in Iran for reasons of his imputed political opinion. The Appellant is a Kurd from Sardasht, a town in the border province of West Azerbaijan. He claims that he made a living smuggling goods in and out of Iraq and that he came to the adverse attention of the Etelaat who suspect him of smuggling alcohol, and banned political materials, into Iran. The Etelaat are said to have evidence of the same, recovered during a raid on the Appellant’s home in September 2018. The Appellant says that both alcohol and materials were brought by him into Iran at the behest of his uncle, whom he believes to be an activist for the banned Kurdish group the KDPI.
4. The Respondent accepted that if the account were true, the Appellant would be entitled to protection: HB (Kurds) CG [2018] UKUT 00430 (IAC). The Respondent was not however satisfied that the Appellant had told the truth. The Respondent set out at paragraph 38 of her refusal letter what appears to be fairly confusing – or confused – evidence given by the Appellant about whether his uncle had a job and where he lived. The Respondent drew adverse inference from this confusion. Further adverse inference is drawn from what the Respondent found to be discrepancies in the Appellant’s evidence about how much he was paid by his uncle for bringing goods in from Iraq, how many people might have attended his uncle’s KDPI meetings, whether the Appellant ever actually set eyes on the banned materials later found by the Etelaat agents, and the circumstances on the night of the raid.
5. Asylum having been refused, the Appellant lodged an appeal. Those representing him prepared a bundle which included:
  - i) A report by country expert Professor Bluth of the University of Bradford. Dr Bluth’s evidence went to the overall plausibility of the account in the context of conditions known by Prof. Bluth to exist in the province of West Azerbaijan [see for instance his 5.4.20], and further provided commentary on what Prof. Bluth considered the risk to an individual such as the Appellant might be if returned to Iran;
  - ii) A supplementary witness statement by the Appellant offering commentary and explanation for the matters raised in the refusal letter;

- iii) A skeleton argument by Counsel which further sought to address, point by point, the issues raised in the refusal letter.
6. The First-tier Tribunal found the claim to be implausible and lacking in detail, and agreed with the Respondent that the evidence did contain inconsistencies. The Tribunal rejected the claim that the Appellant's uncle was a member of the KDPI because it considered it implausible that he would tell his nephew if this was the case. The Appellant's evidence that he carried KDPI materials was supposition at best because on his own account he is illiterate and the leaflets were in any event wrapped up. The evidence that the Appellant's sister witnessed the raid on the Appellant's home from her own, some 100 metres away, is a fabrication since it is just implausible that she would from that distance be able to see the Etelaat removing the leaflets from the house. Setting that aside it is left unexplained why the Appellant's uncle, who owned the house, would send his nephew away whilst remaining in Iran himself.
7. The Appellant now challenges the First-tier Tribunal's findings on the grounds that the Tribunal:
  - i) Failed to take proper account of the expert evidence, in particular in its findings on the plausibility of the account in which the Tribunal apparently supplanted the reasoned views of an expert on Iran with its own view about what might be plausible in Sardasht;
  - ii) Failed to take material matters into account/failed to make reasoned findings, in particular the Tribunal simply adopts the negative conclusions reached by the Respondent without giving consideration to the rebuttal evidence offered by the Appellant, or submissions made by Counsel on his behalf;
  - iii) Failed to make findings, in particular in respect of the assertion that the Appellant left Iran illegally, and his claim under paragraph 276ADE(1)(vi) of the Immigration Rules;
  - iv) Made errors of fact in its assessment of the evidence, in particular in its finding that the Appellant lived with his uncle and that his uncle intended to remain in Iran - the evidence on both matters was to the contrary.
8. Permission was granted on all grounds by First-tier Tribunal Kelly on the 3<sup>rd</sup> March 2020.
9. Before me Mr Tan for the Respondent accepted that each of the grounds were made out. The plausibility findings were not reasonably open to the Tribunal, particularly where the Tribunal had given no apparent consideration to the views expressed by the country expert that the Appellant's general account was wholly plausible. The credibility findings were further infected by material error of fact as set out in ground (iv). Mr Tan invited the Tribunal to set the decision of Judge Lucas aside and to remit the matter to the First-tier Tribunal to be determined *de novo*. The matter is therefore settled by consent.

**Decisions**

10. The decision of the First-tier Tribunal contains errors of law such that it must be set aside.
11. The decision in the appeal is to be remade in the First-tier Tribunal.
12. There is an order for anonymity.

A handwritten signature in black ink, consisting of the letters 'CBE' in a cursive, stylized font.

Upper Tribunal Judge Bruce  
27<sup>th</sup> October 2020