



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00298/2018

THE IMMIGRATION ACTS

Heard at Newport
On 5 October 2018

Decision & Reasons Promulgated
On 25 October 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR S S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Gardner, Counsel, instructed by Migrant Legal Project (Cardiff)

For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Iran, has permission to challenge the decision of Judge Clemes of the First-tier Tribunal (FtT) posted on 21 February 2018 dismissing his appeal against the decision made by the respondent on 14 December 2017 refusing his protection claim.

2. The appellant's two grounds aver that the judge materially erred in law in:
 - (1) making a material mistake of fact as regards the appellant's evidence of whether he had carried on openly engaging in cross-border trading with his father in the one and a half to two weeks before he left Iran; and
 - (2) failing to properly apply the Joint Presidential Guidance Note No. 2 of 2010 on vulnerable witnesses.
3. I consider ground 1 is made out. Mr Howells accepts that the judge wrongly recorded the appellant's evidence at paragraph 9. At paragraph 9 the judge stated:

"The appellant was cross examined by Ms Lewis, having been reminded of his option to take a break as and when he needed one. He said that he had last had contact with his family 1-1½ weeks before. He did not know if there had been contact between his family and the Iranian authorities. His father would not tell him. He had not asked his father to forward the threatening letters. He was unaware of what had happened to them. He had worked for five or six months transporting goods. His identity card had been lawfully issued. His father had obtained it for him. The pata was different for each load transported. That would be handed over the authorities. If there was no pata, he would not be let through. If it was too busy, he might not need to show his identity card and just show the pata. He had never had problems crossing the border. He had never worked for the gang before and had referred their request to his father. He would have liked to do it as they offered a lot of money but his father refused to let him. He had not been told explicitly that they were moving drugs but he presumed this from the amount of money being offered. His father still undertakes work as a trader, he said, and both he and his father did it whilst the gang were issuing the threatening letters. He denied that this meant that he was unlikely to be at risk on return. His father was telling him that he (his father) would be in a difficult position if he was returned. His father had also told him that loads were being passed through by the gang without papers being shown. He repeated that had never worked for this gang before. Other than the letters, there were no other threats issued. He did not know if his father saw the gang now. He was asked why he had waited until ten letters had been received before he left: he said that he had hoped that the gang would "back off"."

4. In fact the evidence the appellant gave in reply to cross-examination - as was accepted by Mr Howells - was that as soon as he informed his father that he had been approached by a gang, his father forbade him from continuing his trade at the border.
5. Mr Howells submitted that whilst paragraph 9 was an incorrect record of the appellant's evidence this did not give rise to a material error since on his own

account he had not gone into hiding during this period. Ms Gardner disagreed. The paragraph in contention is paragraph 23(e) wherein the judge said:

“The appellant was said by Ms Gardner to be less likely to have fabricated his claim when he easily could have done so. I am not satisfied that his claim that the gang were in some undefined way linked to Etelaat or the Iranian security services in some way. I am satisfied that he had added this to his claim to enhance his claim to persecution on the basis of imputed political opinion. Without it, such a claim has little traction. The difficulty with his account is this: his father – a cross-border trader like the appellant himself, I am satisfied – has carried on trading in the appellant’s absence without apparent difficulty. This – I am satisfied – would be most unlikely if the appellant had crossed the Iranian security services. The same problem shows itself with the delay – whether it is 1½ weeks or 2 weeks that the appellant delayed his departure and (I find) carried on openly trading. If he was in such peril, then it might be expected that the appellant would have gone into hiding or to have fled. As it stands, his account is that he was threatened with 10 letters over a week or two and carried on trading. Furthermore, his father has managed to do so without issues. I am satisfied the appellant has done exactly what Ms Gardner submitted he had avoided doing: embellished his claim. I am satisfied that there was no involvement by the security services of Iran and no link whatsoever from them to the traders operating on the border proximate to the appellant’s home.”

6. Mr Howells pointed out that at paragraph 19 of his witness statement the appellant had acknowledged that he remained in his village in the one and a half weeks to two weeks after the gang had approached him. Consequently, he submitted, the judge’s assessment, that “[i]f he was in such peril, then it might be expected that the appellant would have gone into hiding or to have fled”, was unaffected.
7. I am unable to accept that the judge’s mistake of fact was immaterial. Whilst the appellant’s statement does not refer to him going into hiding during the relevant period, it was clearly of particular importance to the judge that the appellant “carried on trading” – which was not in fact the appellant’s evidence. Furthermore, on the appellant’s evidence he was staying at his house during this time which was gated and the evidence was unclear regarding whether the gang would have seen fit to attack the appellant in his house whilst still sending threatening letters (at Q78 the appellant had said “my father did not let me go out as they want to harm me ...”).
8. As regards ground (2), I do not consider it has force on its own. At paragraph 24 the judge stated:

“I remind myself that the appellant was a child when he came to the UK and still is and that I must look at him through the filter of his age. However, I also take into account that he was towards the upper limit of the definition of a child’s age (15) when he arrived in the UK and gave his asylum interview and

statement of evidence when he was 17. I am satisfied that the inconsistencies evident from his account are not attributable to his age. He gave an account which showed knowledge of the practice of cross-border trading: the problem arises because the appellant has been inconsistent in parts of the fundamental problem that it is an implausible claim at its heart.”

9. The 2010 Guidance does not require judges to disregard discrepancies in a vulnerable person’s evidence, only to consider the extent to which the age or vulnerability of the witness was an element of that discrepancy (see paragraph 14 and also paragraph 3). I am satisfied the judge did give such consideration in all relevant respects, save as regards assessing the appellant’s evidence concerning his delay of one and a half to two weeks in leaving Iran. Whilst that was because of the judge’s failure to understand the appellant’s evidence correctly, I cannot exclude that the judge may not have given due consideration to it consistent with the 2010 guidance had he understood it correctly.
10. I do not intend by this decision to suggest in any way the appellant is entitled to succeed in his appeal – in my view the judge identified a number of other significant shortcomings in his account – but I cannot exclude that he may have viewed matters differently had he not incorrectly recorded and understood the appellant’s evidence about carrying on as a trader after allegedly receiving threats from a gang.
11. For the above reasons:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT. Although no findings of fact are preserved, the next judge may consider that Judge Clemes properly identified significant shortcomings in the appellant’s evidence (save for the issue regarding the appellant’s delay in leaving Iran) which have not been satisfactorily explained so far.

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 October 2018



Dr H H Storey
Judge of the Upper Tribunal