



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

PA/01123/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
on 22 November 2018**

**Decision & Reasons
on 28 November 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

M J A

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms H Cosgrove, of Latta & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant has permission to appeal against a decision by FtT Judge Kempton, promulgated on 26 March 2018, dismissing his appeal against refusal of protection.
2. The grounds are these:
 - (i) At [25] and [33] the judge found that the appellant's account started to fall down by reference to "closed gates"; but the appellant had not mentioned any closed gates in evidence.

- (ii) At [28] the judge thought that as there had been a search in 2011, the appellant's uncle would be "a prime suspect for the illegal alcohol trade", and so it was "very perplexing" that the authorities waited so long; but the appellant's evidence was that in 2011, no illegal goods were found.
 - (iii) At [31] the judge appeared to find it surprising that the authorities had not considered looking for the appellant when he was "so close and with another family member", his uncle; but the appellant's evidence was that he was "taken to his uncle's friend's house to hide".
3. Ground (i), by reference both to the typed record kept by Ms Cosgrove and by reference to the judge's handwritten record, is well taken. There was no evidence of "closed gates".
 4. Ground (ii) is also sound. There was no evidence to support the view that the appellant's uncle must have been a prime suspect, or that the practice of the authorities would have been to carry out searches under such circumstances at regular intervals, shorter than several years.
 5. Ground (iii) has lesser force. The judge thought that the authorities would have been likely to search in the uncle's area. Her point is not lessened by the hiding place being in another house. However, although it is not quite the issue raised by the ground, there appears to be considerable speculation in finding that the evidence, if true, showed that searching would have followed at houses of all relatives within the radius of 20 minutes driving.
 6. In some cases, such points might have been no more than minor quibbles on the facts. However, Mr Govan was unable to show that the reasoning remaining in this decision, after excision of error, is of such strength that it may safely stand as a resolution of the case.
 7. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
 8. There is a presumption that the UT will proceed to remake decisions, of which parties are reminded in directions issued with the grant of permission. However, the nature of this case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Kempton.
 9. The FtT made an anonymity direction. The reason is not apparent, but as the matter was not addressed in the UT, anonymity is maintained herein.



22 November 2018

Upper Tribunal Judge Macleman