



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

Appeal Number: PA/07183/2018

**THE IMMIGRATION ACTS**

**Heard at Cardiff CJC**

**Decision & Reasons**

**On 7 February 2019**

**Promulgated  
On 27 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY**

**Between**

**M S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Magennis, Counsel

For the Respondent: Mr Howells, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Iran. He made a claim for asylum and humanitarian protection on 13 February 2018. The respondent refused that application in a letter dated 20 May 2018. The appellant appealed to the First-tier Tribunal against the decision of the Secretary of State under Section 82 of the Immigration, Nationality and Asylum Act 2002. His appeal was heard by First-tier Tribunal Judge Coaster on 6 July 2018. In a decision promulgated on 22 August 2018 she dismissed his appeal on all grounds. The appellant sought permission to appeal to the Upper Tribunal. Permission was refused by the First-tier Tribunal and granted on renewal to the Upper Tribunal by Upper Tribunal Judge Blum on 5

December 2018. Permission was granted on the basis that although the Judge gave a number of detailed reasons for rejecting the appellant's account Judge Blum was satisfied that she may have failed to give adequate reasons or take account of relevant evidence for the reasons set out in the grounds of appeal. The appeal therefore comes before the Upper Tribunal to determine whether or not there is a material error of law in the decision of the First-tier Tribunal.

2. At the hearing Mr Howells accepted that there were material errors of law in the form of plausibility findings not founded on background evidence including that a Kurd could not be a member of Ettelaat, that a Kurdish woman could not be educated and that Kurdish women would not be able to have a relationship outside marriage.
3. I asked Mr Magennis whether he agreed in the light of the concessions made this would be a matter that should be remitted to the First-tier Tribunal. He submitted that the Upper Tribunal could remake the decision and that once the credibility findings that were accepted as having been materially flawed were taken away there was no objection to credibility and on the evidence before the court on the material issues the appeal should be allowed. He submitted that the evidence before the court was sufficient to determine the matters in issue. I concluded that the respondent was correct to make the concessions in relation to the plausibility findings highlighted in the grounds and that there was a material error of law in respect of those findings. However the effect of those errors was that the findings were vitiated and that credibility was still at large. In the circumstances the appropriate course was for the matter to be remitted to the First-tier Tribunal de novo before a judge other than Judge Coaster. With the agreement of the parties I give brief reasons for finding that there was a material error of law in the decision of the First-tier Tribunal.
4. There are three grounds of appeal, firstly that the First-tier Tribunal reached conclusions without any evidential basis in relation to the appellant's account that his former partner's father could work for Ettelaat as a Kurd. Secondly that the Judge failed to take into account relevant evidence and failed to give adequate reasons and thirdly in relation to the question of the appellant's political activism that the Judge failed to take into account relevant considerations.
5. At paragraphs 42 to 44 of the decision the Judge rejected the appellant's account that his former partner's father could work for Ettelaat on the grounds that he was a Kurd. This was not a point that was raised in the refusal letter or at the hearing. The assertion in the grounds that there was no evidence or argument before the Judge as to the likelihood or otherwise of Kurds working for Ettelaat is a sound one. The grounds highlight the respondent's Country Information and Guidance Iran: Kurds and Kurdish political groups, Version 2 dated 2016 which acknowledges that Kurds suffer from discrimination in Iran including in employment. However, it is noted that there is little detail given on the nature of this discrimination nor is it suggested that Kurds are unable to work for the

state or security services. It is submitted that the evidence does not show that it is unlikely that a Kurd may be a member of Ettelaat. The grounds also highlight that there is evidence in the Country Information and Guidance at paragraph 11.1.1 which shows that pressure can be put on the families of Kurdish political activists by depriving them of access to higher education or employment in public positions and on this basis the grounds argue that therefore there is evidence that shows that Kurds can access higher employment and public positions given that they can be revoked as a punishment.

6. I accept on the basis of this evidence that the Judge's findings were not only made in the absence of a reference to objective and background materials before her but also that there was material that contradicted this finding. Further it is argued that the Judge's findings that his former partner could have studied when she met him was not supported by objective evidence was made in the absence of reference to background materials and indeed that the Country Information and Guidance shows that female Kurds could access higher education. I accept that the Country Information and Guidance at 11.1.1 and 8.2.1 do demonstrate that female Kurds can access education and consequently that the implausibility finding in this respect cannot stand.
7. Further the Judge concluded that it was not credible that the appellant's former partner would meet with him and commit adultery given the risks it posed. The background material in the appellant's bundle at C21 to 23 demonstrates that this finding again was not a sound one. I also accept that the Judge's findings in relation to self-immolation did not take into account the most recent evidence referred to in the appellant's skeleton argument at C24 to 43 of the bundle. For these reasons, therefore, I find that there were material errors in relation to the findings on the implausibility of the appellant's account which were made in the absence of reference to material background evidence and therefore cannot stand. The appeal is therefore remitted de novo to be heard by a judge other than Judge Coaster with no findings preserved.

### **Notice of Decision**

The decision of the First-tier Tribunal contained a material error of law and I set it aside with no findings preserved.

### **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 26 March 2019

A handwritten signature in black ink, appearing to read 'L J Murray', enclosed within a thin black rectangular border.

Deputy Upper Tribunal Judge L J Murray