



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02261/2020 (P)**

THE IMMIGRATION ACTS

Determined without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 **Decision & Reasons Promulgated On 02 February 2021**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**BAK
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. This is an 'error of law' decision determined without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, paragraph 4 of the Practice Direction made by the Senior President of Tribunals: *Pilot Practice Direction: Contingency arrangements in the First-tier Tribunal and the Upper Tribunal* on 19 March 2020, and the Presidential Guidance Note no 1 2020: *Arrangements During the Covid-19 Pandemic*, as amended on 19 November 2020.
2. The appellant appeals against the decision of Judge of the First-tier Tribunal Freer (the judge) who, in a decision promulgated on 3 November 2020, dismissed his appeal in respect of a decision by the respondent dated 25 February 2020 refusing his protection and

human rights claim. The appellant is a national of Iraq and his protection claim depended, in part, on his alleged sur place political activities, including posts he made on Facebook. At paragraph 68 of his decision the judge found that the appellant had failed to produce any “compelling evidence that he is connected with or in control of the Facebook page that bears a name identical with his name.”

3. Permission to appeal to the Upper Tribunal was granted by Judge of the First-tier Tribunal Keane in a decision dated 21 December 2020 but sent on 23 December 2020.

4. In granting permission Judge Keane stated:

“The appellant applies in-time for permission to appeal against the decision of the judge promulgated on 3 November 2020 in which the judge dismissed the appeal on asylum, humanitarian protection and human rights (Articles 3 and 8) grounds. Very largely, the grounds amounted to no more than a disagreement with the findings of the judge, an attempt to re-argue the appeal and they did not disclose an arguable error or errors of law but for which the outcome of the appeal might have been different. However, in stating at paragraph 68 of his decision that the appellant had not provided “compelling evidence” that he was connected with or in control of Facebook pages, the judge was arguably applying a standard of proof in excess of the lower standard. Also at paragraph 68 of his decision the judge concluded that there was no evidence which established that the Facebook profile belonged to the appellate. At ground 5 of the grounds the author stated, “firstly, the respondent in the RFRL, cross-examination or closing submissions did not raise this point...”. At any hearing before the Upper Tribunal the appellant by his representatives should be to establish [*sic*] the factual premise which underlay the submission, namely that the issue that there was no evidence to show that the Facebook profile belonging to the appellant had not been raised by the respondent and had merely been taken up by the judge in his decision. While it was not incumbent upon the judge to put each and every concern to the appellant at the hearing it was incumbent upon the judge to act fairly and with procedural propriety. In circumstances, where an important facet of the appellant’s claim had not been the subject of dispute, notwithstanding many opportunities which availed the respondent to announce such a dispute, it was arguably incumbent upon the judge, acting fairly and with propriety, to draw the appellant’s attention to such concern so that the appellant might attempt to meet it. This is the judge arguably did not do. The application for permission is granted.”

5. On 7 January 2021 the Upper Tribunal issued directions to the parties authored by Upper Tribunal Judge Rintoul expressing his preliminary view that, as noted by Judge Keane, the judge did err in not putting his concerns about whether or not the Facebook profile in question belonged to the appellant, given this had not been in dispute before and had not been raised by the respondent. It was also Judge Rintoul’s preliminary view that the judge erred in relation to the

grounds of appeal at [8] and [12] (relating to speculative findings unsupported by the evidence) and ground 9 (relating to the judge's assessment of internal relocation). Judge Rintoul stated:

“Accordingly, it is my preliminary view that the decision did involve the making of an error of law, should be set aside, and should be remitted to the First-tier Tribunal to be heard again de novo.”

6. Judge Rintoul issued a set of directions that included the following:

“The parties must indicate in the responses whether or not they agree with my preliminary views [...] and as to whether they agree with the proposed course of action. **This must be done by the appellant within 14 days after this notice is sent out and within 21 days by the respondent.**”

7. By an email response received by the Tribunal on 11 January 2021 Mr E Tufan, Senior Home office Presenting Officer, indicated that the respondent was content and in agreement with Judge Rintoul's view.

8. By an email response received by the Tribunal on 11 January 2021 Mr F Ahmad of Hanson Law (the appellant's solicitors), indicated that the appellant was content and in agreement with Judge Rintoul's view.

9. Having regard to the overriding interest in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to deal with cases justly and fairly, and having considered the nature of the appellant's challenge to the judge's decision and the written responses from the parties, and having satisfied itself that both parties have been given a fair opportunity of fully advancing their cases, and having regard to the judgment in **JCWI v President of the Upper Tribunal** [2020] EWHC 3103 (Admin), the Upper Tribunal considers it appropriate, in light of the Covid-19 pandemic, to determine questions (i) and (ii) without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and to allow the appeal on the basis indicated by Judges Keane and Rintoul and agreed by the parties.

10. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 18 June 2018 a case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective

in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

11. Both parties agree that the judge's decision is undermined by material legal errors, including errors relating to the appellant's credibility. The judge's findings on credibility are therefore unsafe. As indicated by Judge Rintoul, and agreed by the parties, the appeal will be remitted to the First-tier Tribunal so that a new fact-finding exercise can be undertaken. It will be for the First-tier Tribunal to determine the most appropriate mode of hearing the appeal.

Notice of Decision

The making of the First-tier Tribunal's decision involved the making of errors on points of law and is set aside.

The case is remitted back to the First-tier Tribunal to be decided afresh by a judge other than judge of the First-tier Tribunal Freer.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the respondent in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

D.Blum

Signed
Upper Tribunal Judge Blum
20 January 2021

Date: