



IAC-AH--V1

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

Appeal Number: PA/02624/2020

THE IMMIGRATION ACTS

**Decision on Papers (P)
On: 15 April 2021**

**Decision & Reasons Promulgated
On 27 April 2021**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

AYA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge GR Williams, promulgated on 23 November 2020. Permission to appeal was granted by First-tier Tribunal Judge O’Keeffe on 28 December 2020.

Anonymity

2. No direction has been made previously, however out of an abundance of caution such a direction is now made owing to the basis of the appellant’s protection claim.

Background

3. The appellant's claim was initially based solely upon his membership of a Particular Social Group and his fear of persecution in Iran as a perceived adulterer. The Secretary of State refused that claim in a decision dated 27 February 2020 primarily owing to a want of credibility.

The decision of the First-tier Tribunal

4. At the hearing, the appellant continued to rely on his original claim. The First-tier Tribunal judge also heard evidence that the appellant had taken part in protests against the Iranian government, had written blog posts to that effect and photographs of his attendance at demonstrations were on his Facebook page. His claims were comprehensively rejected, with the judge concluding that the appellant's internet presence is "*easily removed*" and that his activities would not bring him to the attention of the authorities.

The grounds of appeal

5. The grounds of appeal are two-fold. Firstly, it was argued that there was a failure by the judge to resolve a dispute between the parties, concerning the appellant's motivation for involving himself in political activities. Secondly, it was said that the judge had materially misdirected themselves in relation the Country Guidance cases in relation to the likely outcome of the appellant being questioned on return to Iran.
6. Permission to appeal was granted on both grounds, with Judge O'Keeffe making the following remarks:

"Although the Judge made reference to the timing of the appellant's sur place activities, there is no finding made as to whether those activities were opportunistic or genuine. It is arguable therefore that the Judge has erred in concluding that the appellant could shut down his internet presence without considering whether he would shut down that presence. Although the Judge has referred to the "hair trigger" approach from the Iranian authorities, it is arguable that the Tribunal has erred by failing to consider adequately the risk to the appellant at the pinch point of return."

Procedure

7. Upper Tribunal Judge Rintoul drafted directions dated 5 January 2021, which were served on the parties. Those directions stated that a provisional view had been taken that the matter could be decided without a hearing and invited written submissions regarding whether the First-tier Tribunal made an error of law and whether that decision should be set aside. The parties were further invited to submit reasons if it was considered that a hearing was necessary. Judge Rintoul expressed his preliminary view that the judge made an error of law in the following terms:

“the judge did err in his approach as to the risk to the appellant at the point of return in that there was a failure to consider what questions he would be asked as noted in the relevant country guidance, were he to be asked what he had done (and he could not lie), then this would be relevant to the assessment of risk.”

8. The respondent provided a Rule 24 response dated 8 January 2021. There is no response on the file from the appellant to the above-mentioned directions. No submissions were received by either party to the effect that a hearing was necessary in relation to the error of law issue.

Decision on error of law

9. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 states that the Upper Tribunal may make any decision with or without a hearing but must have regard to any view expressed by a party when deciding whether to do.
10. I have considered the judgment in *JCWI v The President of the Upper Tribunal* [2020] EWHC 3103 (Admin) and conclude that the appellant will not be disadvantaged by the error of law issue being decided without a hearing in this instance for the following reasons. The appellant’s representatives raised no objections to the proposed paper consideration. The respondent conceded the grounds of appeal as a whole, a concession which I have accepted below. In addition, the matter is to be remitted to the First-tier Tribunal for a de novo hearing before a different judge.
11. The respondent’s Rule 24 response states that the respondent does not oppose the appellant’s appeal *“in line with the issues highlighted in the grant of permission. The focus of the challenge concerns the appellant’s Facebook account and the attitude of the authorities on return.”* The respondent noted that the appellant had not challenged the judge’s adverse credibility findings and invited the Upper Tribunal to determine the appeal with a fresh oral continuance hearing on a limited basis.
12. The respondent is correct to concede that the First-tier Tribunal made no findings as to the appellant’s motivation in relation to his sur place political activity, whether he could reasonably be expected to delete his online presence or to suppress his political activities upon return to Iran. These issues are central to the appellant’s current protection claim. In these circumstances, the decision cannot stand.
13. The respondent accepts that a further oral hearing is required to determine the issues raised in the grounds of appeal. While mindful of the respondent’s view as well as of statement 7 of the Senior President’s Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

14. The findings of Judge GR Williams in relation to the sur place issue [86-99] of the decision and reasons are set aside in their entirety. There was no challenge to the judge's findings regarding the PSG/adultery claim [60-85] or Article 8 findings [100] and therefore those findings are preserved.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Manchester Piccadilly, with a time estimate of 3 hours, by any judge except First-tier Tribunal Judge GR Williams.

Signed:
Upper Tribunal Judge Kamara

Date 15 April 2021