



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005585

First-tier Tribunal No: PA/52113/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 22nd of March 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

BKT
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wood of the IAS.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 18 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Hillis ('the Judge'), promulgated following a hearing at Newcastle on 25 January 2023, in which the Judge dismissed his appeal against the refusal of his

- application for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The appellant is a male citizen of Iran born on 1 September 1990 who arrived in the UK on 3 October 2019 and claimed asylum the following day. The decision giving rise to the appeal is to be found within the Refusal Letter of 20 May 2022.
 3. The Judge's findings of fact are set out from [41] of the decision under challenge. At [54] the Judge deals with the first issue, whether the appellant worked as a Kolbar in Iran, concluding on the evidence taken as a whole that he had failed to show that he was. The Judge considers the appellant's political activity in the UK from [55] concluding at [63] that the appellant had failed to show that he would have come to the attention of the Iraqi (sic) authorities as a political activist in the diaspora in the UK by reason of his Facebook posts and/or his attendance at demonstrations or that he was at risk of targeted questioning and persecution on return due to any political opinion he may have as a result of them. I accept in relation to this paragraph the reference to Iraqi is erroneous as the Judge was well aware that the appellant is a citizen of Iran.
 4. The appellant had raised the issue of current unrest in Iran, but the Judge finds no credible or reliable evidence he will face risk on return as a result of this or as a result of his ethnicity or his having left Iran illegally, on the basis the appellant was not found to be credible [67].
 5. The Judge also dismisses the appellant's human rights claim both under the Immigration Rules and Article 8 ECHR.
 6. The appellant sought permission to appeal which was granted by another judge the First-tier Tribunal on the basis it was arguable the Judge failed to consider a material fact relating to the appellant's Facebook post at interview, set out in Ground 1, which may have infected subsequent findings. The grant of permission is not limited.

Discussion and analysis

7. Ground 1 refers to [55] of the decision under challenge. In this paragraph the Judge wrote:
 55. I have also taken into account that at AI 45 he stated that the reasons he could not return to Iran were that he had been smuggling alcohol and had attended at a demonstration. This interview was conducted on 13th April, 2022 and he made no reference to his Fb posts which are said to have been posted in 2019, 2020, 2021 and as recently in relation to his interview as 19th January, 2022 and even after his interview on 29th June 2022. In my judgment, if the Appellant was genuinely politically motivated to inform the world about the plight of the Kurds in Iran by posting material on FB account against the Iranian regime he would have volunteered this information in interview. He would not have forgotten to do so at that point in his AI if he was genuinely concerned.
8. The point being taken by the appellant is a simple one, namely that the appellant expressly mentioned his Facebook account in reply to question 140 of the asylum interview, the nature of what he posted at question 142, and he provided evidence of the account after the substantive interview, having been asked to do so. Copies of these documents are set out in the respondent's bundle at pages 53 - 89.
9. The appellant submitted the Judge had failed to anxiously scrutinise the evidence before him in which he seems to be recording that the appellant had not provided such evidence.
10. A judge is required to consider all the evidence provided with the required degree of anxious scrutiny. Whilst a judge is not required to set out each and

every aspect of the evidence provided or considered and it is settled, following guidance provided by the Court of Appeal, that judges of the First-tier Tribunal are taken to have considered the evidence made available unless proved otherwise, this is one of those cases in which the Judge's specific wording indicates that he did not believe he had the evidence to consider when clearly he did.

11. I find the Judge's failure to consider the evidence with the required degree of scrutiny a material error of law on the basis of procedural irregularity amounting to unfairness in denying the appellant a proper hearing in which all the evidence relied upon has been taken into account.
12. Ground 2 asserts the Judge made an error of law in failing to make a finding on a material matter by reference to risk on return when attending demonstrations in Iran at [65] of the decision under challenge. In that paragraph the Judge writes:
 65. The Appellant was not asked in his oral testimony if he held any views about the current protests in Iran or whether he would seek to take part in them. He was not even asked if he was aware of the current security situation in Iran and did not volunteer any testimony about it. In the absence of such evidence I infer that the Appellant would seek to join in those protests.
13. It is asserted that as the Judge appears to be finding that the appellant will seek to join protests in Iran the Judge was required to assess any real risk to the appellant in joining such protests. The grounds refer to HB (Kurds) Iran CG [2018] UKUT 00430(IAC) in support of this argument.
14. If the Judge was genuinely finding the appellant will be involved in protests and demonstrations in Iran he was required to undertake the further assessment of risk as highlighted in the grounds. If the Judge really intended to indicate the appellant would not take place in protests, this is a further indication of a lack of care in the determination as such a material mistake should have been picked up during the process of checking the document prior to promulgation.
15. The grounds also raise additional points one of which, at [8], is that had the Judge at [55] made a finding that if the appellant is a genuinely politically motivated individual he would have volunteered the Facebook evidence, and that the appellant had done this, on the basis of Judge Hillis finding he was entitled to succeed on the application of the correct legal test. I do not accept the appeal can be allowed on this argument. The problem is that the Judge's finding at [55] is unsafe. It is not clear had the evidence been properly considered what conclusion the Judge would have come to.
16. I find the appellant has established that the Judge has erred in law in a manner material to the decision to dismiss the appeal. I set the decision aside. In relation to the future conduct of this appeal, find it is appropriate in all the circumstances for the appeal to be remitted to the First-tier Tribunal sitting at Newcastle to be heard afresh by a judge other than Judge Hillis. There shall be no preserved findings.
17. I find it is appropriate for the appeal to be remitted as the error made by the Judge in failing to consider the evidence means the appellant has been denied a fair hearing. The Judge clearly impugned the appellant's credibility, in part, as a result of the error about the nature of evidence provided which, arguably, affects the reliability of a number of other findings upon which weight may be placed at this time. It will be necessary for extensive fact finding in relation to material aspects of the appellant's appeal to be made once all the available evidence has been properly considered.
18. I have considered the guidance provided by the Upper Tribunal in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 and the relevant Practice

Direction and Practice Statement. Taking into account the general principle that the Upper Tribunal will retain the case if the decision to be remade, and that not every finding concerning unfairness will require a remittal, I still concluding in this appeal, in light of the failure to consider material aspects of the evidence, that remittal is justified.

Notice of Decision

19. The First-tier Tribunal has been found to have materially erred in law. I set that decision aside.
20. The appeal shall be remitted to the First-tier Tribunal at Newcastle to be heard afresh by a judge other than Judge Hillis.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 March 2024