



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000087
First-tier Tribunal Nos:
PA/53544/2022
IA/08490/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

H M K M
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ell, instructed by Paragon Law
For the Respondent: Ms T Rixon, Senior Home Office Presenting Officer

Heard at Field House on 22 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 is a citizen of Iran whose date of birth is recorded as 23rd October 2002. On 19th March 2019 he arrived in the United Kingdom as a minor by lorry. On 1st August 2019 he made application for international protection as a refugee on the basis that he was at risk in Iran because of perceived and actual opposition to the government there with involvement in Kurdish political activities.
2. On 17th August 2002 a decision was made to refuse the application. The Appellant appealed. His appeal was heard on 9th November 2023 by First-tier Tribunal Judge Row sitting at Nottingham. In a decision dated 11th November 2023 Judge Rowe dismissed the appeal on all grounds. Not content with that decision the Appellant sought permission to appeal to the Upper Tribunal. There were six grounds upon which the Appellant relied but these essentially reduced to the following:
 - (i) perversity, it being said that the judge made inconsistent findings with an over-emphasis on the nature of the journey undertaken by the Appellant as the determining factor;
 - (ii) applied too high a standard;
 - (iii) made a material mistake of fact in stating that “the Appellant has not provided a full disclosure in electronic format of his Facebook” when such was not the case and impacted upon the Appellant’s “sur place” claim; and
 - (iv) generally inadequate reasoning.
3. On 8th January 2024 First-tier Tribunal Judge Cox granted permission thus the matter came before me. It is instructive in this matter to note the observations of Judge Cox when he granted permission:

“It is arguable that the judge erred in law, in finding that he does not believe what the Appellant says. The sole reason for rejecting the Appellant’s account was that the judge did not find it credible that a responsible uncle would subject a 15 year old to a very dangerous journey to the United Kingdom, when safety could have been arranged far closer to Iran and with far less physical danger and expense (paragraphs 35 – 36). In this context the judge noted that such a journey would make sense if it was made for economic reasons. The judge’s reasoning is arguably irrational, as firstly, it assumes individuals take risk only for monetary reasons. Secondly, the rationale of the decision would mean any asylum seeker, especially a child, whose journey to the UK involved risk could not be credible. The error is arguably compounded by the Judge’s conclusion at [34] that the appellant’s failure to claim before arrival in the United Kingdom does not damage his credibility. “
4. I was grateful to both parties in this case because there was a general consensus with which I agree that the decision when read as a whole lacked balance. The decision reads as if the judge was going to allow the appeal and then changed his mind. I agree with the observation of Judge Cox that the reasoning in this case suggests that it would be virtually impossible for any young person who had travelled a long distance to ever succeed in an international protection claim.

5. Observations were made by Ms Rixon concerning the Facebook page, the nature of the disclosure and the sufficiency of the evidence. It is not necessary for me to make any directions other than to note that Mr Ell indicated that at the rehearing, which will be in the First-tier Tribunal, printed pages from the Facebook page will be produced. It will be a matter for the First-tier Tribunal to consider the sufficiency of evidence.

DECISION

6. I find that the decision does contain an error of law in that it is perverse.
7. The appeal to the Upper Tribunal is allowed.
8. The decision of the First-tier Tribunal is set aside to be reheard de novo in the First-tier Tribunal.

A handwritten signature in black ink, consisting of stylized initials and a long horizontal flourish.

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 March 2024