Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/00122/2020**
PA/50404/2020

THE IMMIGRATION ACTS

Sitting at the Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On the 12th July 2022	**On the 15th August 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA
and
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

RA
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Howard, Fountain Solicitors (Walsall)
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

DECISION AND REASONS

An anonymity direction was made by the First-tier Tribunal ("FtT"). As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, RA is granted anonymity. No report of these proceedings shall directly or indirectly

identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a national of Iran. He claims to have arrived in the UK in February 2019 having left Iran in September 2018. He claimed asylum on 11 April 2019. The reasons for his claim for international protection are summarised in paragraphs [15] to [32] of the respondent's decision dated 10 June 2020. The respondent accepts the appellant is an Iranian national and of Kurdish ethnicity. For present purposes it is sufficient for us to note that the appellant claimed, as recorded in paragraph [18] of the decision that the appellant claims that his father was killed by the Ettela'at and that following the death of the appellant's father, his paternal cousin was helping to look after the appellant and his family.

2. The appellant claims that he became involved in political activity distributing leaflets provided to him by his paternal cousin, who was a member of the Komala party. The appellant claims that his family home was raided by the Ettela'at on 26 September 2018 and that he received a call from his neighbour. He claims he spoke to his mother who informed him that the authorities had raided their home and found political materials in the home. The appellant claims he then contacted his paternal cousin who informed him that he should not return home and that he would contact the appellant's maternal uncle. The appellant met with his maternal uncle and informed him of the work that he had been doing for his paternal cousin. The appellant's maternal uncle informed the appellant that he could not stay in Iran and he made arrangements for the appellant to leave illegally.

3. Although the respondent accepts the appellant's nationality and ethnicity, the respondent rejected the core of the appellant's account. The respondent did not accept the appellant's paternal cousin was a member of the Komala party or that the appellant distributed leaflets. The respondent rejected the appellant's claim that the family home had

been raided by the Ettela'at and that political materials had been found there. The respondent also rejected the appellant's claimed illegal exit, and did not accept the appellant has lost contact with his family in Iran. Finally, the respondent rejected the appellant's claim that he has been politically active in the UK.

4. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Parkes for reasons set out in a decision dated 14 May 2021. The background to the appeal is set out at paragraphs [8] to [11] of the decision. At paragraph [10] of his decision, Judge Parkes said:

> "The appellant's identity, nationality and the fact of his father's death at the hands of the Ettela'at was accepted…"

5. The appellant had attended the hearing of the appeal and gave evidence with the assistance of an interpreter. The evidence is set out at paragraphs [12] to [20] of the decision. The judge's findings and conclusions are set out at paragraphs [21] to [37]. We do not need to set out in this decision the findings made but it is fair to say that the judge comprehensively rejected the core of the appellant's account. He found, at [36], that the account relied upon by the appellant has been created to facilitate the appellant's entry to the UK and in the hope that he can remain, and that he is an economic migrant. In reaching his decision the judge noted, at [21], that the overly sensitive approach of the Iranian authorities to Kurdish opposition activities, even if merely suspected, is well documented and summarised by the phrase "hair trigger". That is a reference to the country guidance set out in HB (Kurds) Iran CG [2018] UKUT 00430, which is referred to in paragraph [6] of the decision. In HB (Kurds) Iran, the Upper Tribunal said at headnote [10]:

> *"The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme."*

The appeal before us

6. The appellant advances five grounds of appeal in the undated "Grounds for permission to appeal", attached to the application for permission to appeal to the Upper Tribunal. First and foremost, the appellant claims that although the First-tier Tribunal Judge appears to accept that the appellant's father died at the hands of the Ettela'at, the judge failed to assess the enhanced risk that the appellant faces on return to Iran, as a consequence of his father's problems with the Ettela'at. It is said that a returnee without a passport is likely to be questioned on return, and that on a correct application of the country guidance, the appellant will at the very least, to the lower standard, be perceived to support Kurdish rights.

7. Permission to appeal was granted by First-tier Tribunal Judge Gumsley on 3 June 2021. Judge Gumsley said:

> "2. Having considered the 'Grounds for Permission to Appeal' with the care I am satisfied that it is arguable that the FtT judge did make an error/s of law in considering the Appellant's case.
>
> 3. In particular, I am satisfied that, whilst identifying the relevant case law and tests to be considered, it is arguable that in the light of his finding that the Appellant's father was killed by Ettela'at (albeit some years previously) the judge failed to have any or sufficient regard to this factor when considering any risk to the Appellant upon return to Iran.
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> 4. Although Ground 3 is misguided in that the judge is clearly referring to Afghanistan in the context of a comparison with Iran, the Appellant may argue the remaining grounds as pleaded. Permission is therefore granted."

8. At the outset of the hearing before us, we invited Mr Howard to draw our attention to the evidence that was before the First-tier Tribunal regarding the death of the appellant's father at the hands of the Ettela'at. Mr Howard, quite properly in our judgement, accepted that the respondent had referred to the appellant's claim in her decision, but had not made any concession that the claim was accepted by the respondent. Mr Howard had represented the appellant before the First-tier Tribunal and, again quite properly, accepted that he was unable to draw our attention to anything in the papers before us to confirm that the respondent accepts that the Ettela'at were responsible for the death of the appellant's father. In broad terms, he submits; (i) if the judge found that the appellant's father was killed by Ettela'at, that was relevant and

should have been a factor that the judge considered when considering the risk upon return and what the appellant would face at the 'pinch point' on return. Alternatively, (ii), the appellant had claimed that his father was killed by Ettela'at and that was relevant because it forms part of the appellant's profile. The judge should have made a finding as to whether or not he accepted the appellant's father had been killed, as claimed, and should have considered whether that places the appellant at risk upon return. Either way, there is a material error of law.

9. For his part, Mr Williams accepted that the question of whether the appellant's father was killed by the Ettela'at was a relevant factor and the judge appears to proceed on the basis that it was accepted. Mr Williams too, was unable to draw our attention to anything before the First-tier Tribunal which may have caused the judge to believe that the appellant's "..*father's death at the hands of the Ettela'at was accepted".* In the end, he was bound to accept that if the appellant's father had met his death at the hands of the Ettela'at, that is potentially a matter that is relevant to the appellant's profile upon return, but that has not been considered by the judge. Much may however depend upon when the appellant's father died and the circumstances surrounding his death. In the end, it was common ground before us that the decision of First-tier Tribunal Judge is vitiated by a material error of law and must be set aside. In the circumstances we do not need to address the remaining grounds of appeal.

10. We are satisfied in all the circumstances that the decision of the First-tier Tribunal is vitiated by a material error of law and must be set aside.

11. We must then consider whether to remit the case to the F*t*T, or to re-make the decision in the Upper Tribunal. Both Mr Howard and Mr Williams agree that in light of the error found, and the fact sensitive assessment that will be required afresh, the appeal should be remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved. Having considered paragraph 7.2 of the Senior President's Practice

Statement of 25th September 2012, the nature and extent of any judicial fact-finding necessary will be extensive. No findings can be preserved. We are satisfied that the appropriate course is for the appeal to be remitted to the FtT for hearing afresh. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

NOTICE OF DECISION

12. The decision of First-tier Tribunal Judge Parkes promulgated dated 14th May 2021 is set aside.

13. The appeal is remitted to the First-tier Tribunal for rehearing, with no findings preserved.

Signed **V. Mandalia** Date; 12th July 2022

Upper Tribunal Judge Mandalia