



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

**Appeal Number: PA/52875/2021  
(UI-2022-002713); IA/08270/2021**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 2 November 2022**

**Decision & Reasons Promulgated  
On the 21 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**Z S  
(ANONYMITY DIRECTION MADE)**

Appellant

**AND**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Schwenk, Counsel instructed on behalf of the appellant  
For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

**Anonymity :**

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:  
Anonymity is granted because the facts of the appeal involve a protection claim. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent.

Failure to comply with this direction could lead to contempt of court proceedings.

Introduction:

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection appeal in a decision promulgated on the 27 April 2022.
2. Permission to appeal that decision was sought on behalf of the appellant and on 9 June 2022 permission was granted by a FtTJ.

The background:

3. The appellant is a citizen of Iran. The basis of his claim is set out in the decision letters in the respondent's bundle and summarised in the decision of the FtTJ.
4. The Appellant is a national of Iran. He is of Kurdish ethnicity. He was brought up as a Sunni Muslim and attended religious school to learn Arabic and read the Quran. Up until the age of 12 or 13 he was a moderate Muslim and used to fast, but only kept half fast due to his age. He had doubts in God and the Quran and from the age of 14 or 15 began to question Islam and stopped praying. He was forced by his parents to attend prayers. From the age of 17 onwards he considered himself to be an atheist and agnostic. In or about 2012 he posted material online it was critical of the Iranian authorities which led him to come into contact with the Ettellat and he was given warnings about those posts by them.
5. In 2017 the Ettellat came to his house due to the posts that had criticised the Iranian authorities. He left Iran illegally in 2017 as they had a warrant for his arrest. The appellant claimed that he was also convicted in Iran in his absence.
6. The appellant's account was that on return to Iran he would be arrested for his activities on social media and the posts, being accused of insulting Iranian authorities and Islam. The appellant arrived in the UK after travelling through other countries on 19 August 2020 and claimed asylum the same day.
7. The respondent refused the application in a decision taken on 25 May 2021. Whilst it was accepted that the appellant was an Iranian Kurd who had left Iran illegally, it was not accepted that he was an atheist/agnostic or that he had come to the attention of the authorities for such views. The appellant had provided a relatively detailed and plausible account of how his doubts about Islam began and that his claim to be an atheist/agnostic from the age of 17 was plausible but was said to be inconsistent with this claim stop praying aged 14 - 15. References were made to his claim to be

both an atheist and agnostic to be inconsistent with external information. It was asserted that vague responses were given.

8. As to his claim of being arrested and questioned by the authorities it was said to have been a relatively detailed the claim but to have received a caution was inconsistent with the country information that students had been imprisoned and sentenced to lashings for similar offences and with the Iranian penal code. It was stated that while the appellant provided a detailed and plausible account of escaping the authorities it was inconsistent with the external information that the appellant would not have been monitored after coming to the attention of the authorities in 2012. It was not considered consistent that the appellant did not know the risks of posting critical material online. The decision letter referred to the appellant failing to provide evidence of his social media activities, the court hearing in Iran or the newspaper article that he had referred to thus his claim to have come to the attention of the authorities was rejected.
9. The FtTJ undertook an assessment of the issues of credibility raised in the decision letter and upon the documents provided by the appellant. The FtTJ described the appellant's account in summary that in his teens he stopped following Islam became atheist/agnostic. He posted issues on social media, and it came to the attention of the authorities, and he received a warning in 2012. He resumed his social media posting and the authorities sought to arrest him, and he fled in July 2017. He was then convicted and sentenced to death in his absence. The appellant had provided a document from the Iranian court to support his account. The appellant also provided copies of the social media activity which was addressed in the decision.
10. On his analysis of the evidence the FtTJ did not accept that the atheism/agnosticism was a generally held belief, nor that he had given a credible account of events in Iran and did not accept that the appellant or social media posts that come to the attention of the authorities in Iran. When considering risk on return, he was satisfied that prior to any application for an ETD would delete any Facebook or other social media accounts containing any posts espousing atheist/agnostic or such other views that would put him possibly at risk of persecution on return. As he would be returning as an Iranian Kurdish failed asylum seeker who left Iran illegally, in light of the country guidance decisions those factors whether singularly or cumulatively would not put him at risk on return. Thus the appeal was dismissed.
11. Permission to appeal that decision was sought on behalf of the appellant and granted by the FtTJ.

The hearing before the Upper Tribunal:

12. The appellant is represented by Mr Schwenk of Counsel, and the respondent is represented by Mr Diwnycz, Senior Presenting Officer. Mr Schwenk relied upon the written grounds of challenge although he

indicated that he did not rely upon all the paragraphs. Mr Schwenk provided his oral submissions. There was a Rule 24 response provided on behalf of the respondent which had not been uploaded to the CE file and had not been seen by Mr Schwenk. A copy a provided to the Tribunal and to Counsel.

13. The written grounds set out the following 5 grounds relied upon:
  - (i)The FTTJ failed to reconvene the hearing in order for him to hear further submissions/or oral evidence on the additional documents submitted
  - ii) The FTTJ has failed to consider material matters.
    - iii) The FTTJ has failed to put material matters to the Appellant on issues that he found of concern resulting in procedural irregularities capable of affecting the outcome of the proceedings.
    - iv) The FTTJ has failed to properly apply the country guidance case of HB Iran in relation to the risk on return for the Appellant.
      - v)The FTTJ has failed to properly apply the country guidance case of XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC).
14. After hearing the oral submissions of Mr Schwenk, Mr Diwnycz submitted that whilst the FtTJ found that the appellant was not a genuine atheist when looking at the Facebook post, that finding floundered on the principles set out in HJ (Iran) and RT(Zimbabwe). He submitted that the appellant presented to the FTT as a critic of the regime and the question was whether he had abandoned this, and this was relevant to the questions the appellant would be asked on return at the identified “pinch point.” When Mr Diwnycz was asked to explain his submission further, he submitted that there was an error by the FtTJ and that notwithstanding the findings made there was an insufficiency of reasoning on risk on return in light of the evidence that the appellant had been before the Iranian authorities in 2012 and the risk of return had to be seen in that light irrespective of whether he deleted his account. Mr Diwnycz on behalf of the respondent accepted the submission made by Mr Schwenk that the decision in XX had identified ways that material could come to the attention of the authorities; firstly when the application was made for an ETD ( in XX at paragraphs 118-119 and later in the decision it was stated that material could be deleted 30 days before checks made but there remains a question as to whether he would. This was an account which was in existence in Iran and questions arose as to whether they already had any information about him.
15. The further issue identified in the grant is that the FtTJ found at paragraph 16 that the appellant had given a broadly plausible account of ceasing to practice Islam are becoming an atheist/agnostic and the later finding that in general terms had been able to demonstrate a reasonably convincing grasp of atheism/agnosticism. However the FtTJ did not give reasons as to

why the appellant would delete his social media post espousing atheist/agnostic views if returned to Iran (see paragraph 34). Whilst the FtTJ found that he was satisfied that the appellant would delete his account, it does not appear that the appellant was asked about the deletion of his posts and what he would do in the circumstances. If the appellant would delete posts because he feared persecution and not because he did not hold agnostic, atheistic beliefs that was relevant to the question posed in HJ(Iran) and RT(Zimbabwe) and XX. The other point made by Mr Schwenk was this was relevant to the assessment of risk even if he was not genuine.

16. In the circumstances it is conceded by Mr Diwnycz that the grounds were made out in respect of the assessment of risk on return and in the light of the country guidance cases relevant to this issue and that as this was central to the overall claim, it would require a rehearing afresh and where the issues about the documentation could be addressed. It is of note that he had relied upon the rule 24 response in relation to ground 1 if not the other paragraphs relying on the other issues relevant to risk on return. I have therefore considered ground 1 which related to the procedure adopted by the FtTJ in relation to the post hearing evidence and the asserted unfairness which he submits resulted from that.
17. The written grounds relevant to ground 1 assert that at paragraph 9 the FtTJ states that he was satisfied that in relation to the additional documents the appeal could be fairly and justly determined without a further hearing and that it was not unfair to the appellant to consider these documents without a further hearing. However, the FtTJ then questions the reliability of these additional documents at paragraphs 29 to 31 of his determination.
18. It is submitted that it was incumbent upon the FtTJ to reconvene a further hearing in order to deal with those additional documents either by way of oral evidence or further submissions especially since he queried how they were obtained and why there would be a delay of over a year between the attempt to arrest the appellant and the summons and the court order being issued and his failure to do so amounts to a procedural irregularity capable of affecting the outcome of the proceedings and thus contrary to his assertion resulted in the appeal being determined unfairly and unjust.
19. Prior to the parties beginning their submissions it was indicated to them that the electronic file on Judicial Case Manager ("CCD") which was available to the Upper Tribunal held its record of the chronology of events and the applications made post hearing alongside the directions made. This would not be necessarily available to the advocates and whilst the FtTJ set out some references to the events in his decision, it was plain that the rule 24 response proceeded on the basis that the FtTJ did not give permission for the documents. The entries were read out to the parties by reference to the applications made, the decisions made by the Tribunal caseworker and the responses received. The advocates were able to make

a note of those records to enable them to have a full picture of the chronological events relevant to Ground 1.

20. In his oral submissions Mr Schwenk submitted that there had been a complicated sequence of events which was now made clear from the information on the CCD which confirmed that there had been an application made to admit post hearing evidence which had been properly made and had been granted by the tribunal caseworker. He submitted there was nothing to suggest what occurred was irregular or in breach of any practice direction. Furthermore even if it was, the appellant should not have been penalised by this and that it was not in the interests of justice to look at the interlocutory decisions in case management and to reinvestigate those when an application was properly made and granted. It would have been open to the FtTJ to have taken a different approach.
21. Mr Schwenk submitted that given the application was made and the application was granted and thus the documents were admissible it followed that the tribunal was required to determine the treatment of that post hearing material with the assistance of both sides equally. He submitted that when looking at the factual findings made of the assessment of the evidence the judge set out he had serious concerns about the reliability of the documents and further referred to unexplained delay. Mr Schwenk submitted that those were matters properly addressed by oral evidence and on the basis of the submissions from the parties. Consequently it was unfair to find against the appellant on those issues without the opportunity of being able to address those matters. This was important evidence and there were questions arising from the documentation and the only fair way to resolve the issue was to admit the documents, as they were but to reconvene the hearing and the Home Office review had referred to that.
22. Mr Diwnycz on behalf of the respondent submitted that the FtTJ had admitted the document and there was the opportunity to respond but whatever had happened, the FtTJ had considered the documents and raised doubts about their reliability. Thus the findings made were sustainable regardless of how those documents had been placed before the FtTJ to assess.
23. The issue of the treatment of the post decision material is set out between paragraphs 7 - 9 and later in the decision at paragraph 26 and 29.
24. There is no dispute between the parties that during the hearing the FtTJ became aware that there had been issues identified with the translation of the Iranian court documents. This occurred as a result of issues identified in cross-examination concerning the translation of the document (see paragraph 26) and the meaning of the document. As a result the FtTJ properly granted permission to submit an amended translation. At paragraph 7, the judge recorded that he gave directions for the appellant to upload an amended translation with explanation within 5 days after the hearing and it was directed that the respondent was to make a written

submission in response. That was set out in the section of the CCD which dealt with directions. The appellant solicitors complied that direction and the CCD electronic file shows on 30 March 2022 and amended translation was provided.

25. On the same date further documents were uploaded to the CCD including a court document (summons) and a newspaper article. Under the case record headed "applications" it records that the appellant's solicitors made an application for post hearing material to be admitted on 5 April 2022. In the application itself it refers to the solicitors having notified the court of a newspaper article and a further court documentation which were uploaded. Reference is made having obtain certified translations and having uploaded them on 5 April 2022. The application sought permission from the tribunal to adduce further evidence which was not before the FtT at the time of the hearing. Under the heading "decision" it is recorded "granted" and under the heading "reasons" it is stated "the respondent will provide their written submissions in response no later than 14 April 2022". It is followed by "Tribunal caseworker" but no name is provided.
26. There was also a further application made "application 1" made by the respondent. The type of application was described as a "time extension" and a request was made to extend the response to the directions of 28 March 2022. It was said that "the case was currently being reviewed by member of staff who is on leave but will be back next week." The decision states "granted" with reasons stating, "granted until 14/4/22."
27. Pausing there, there had been an application made for the submission of post hearing documentation which had been considered and granted by the tribunal caseworker and they were the translated documents were uploaded on 5 April 2022.
28. On 17 April 2022 and downloaded on the CCD was the Home Office review. The document referred to the translated document and that the interpreter provide an explanation of the misinterpretation of the court document and whether that was accepted was a matter for the tribunal to determine. Reference is made to the decision of "Tanveer Ahmed." Further submissions were made concerning that document, and it was further stated "the respondent intends to explore this further in cross-examination.." At the conclusion of the document it is stated "the respondent requests an oral hearing."
29. It is in the light of those events as recorded above that the procedural issues arose. The FtTJ was correct to say that no previous permission being granted (see paragraph 9). However as Mr Schwenk submitted an application had been made which had been addressed by the tribunal caseworker who granted the application. That appears to have been accepted by the FtTJ at paragraph 8.
30. There were a number of problems which occurred thereafter. It did not seem clear to me at first whether the tribunal caseworker had realised that

the appeal had been before the FtT on an earlier date. However the reference to the section “post hearing” document suggests that the tribunal caseworker was so aware. It was also not clear at first whether the tribunal caseworker had conflated the permission given by the FtT for the amended translation to be provided with the submission of the new documentation. However Mr Schwenk made the point that the application plainly referred to 2 new documents and translations and the application was for permission to rely on those documents which was granted.

31. The direction to the respondent was to provide submissions in response. What occurred thereafter was problematical. First of all, the submissions made in the response were made by an advocate (presenting officer) with no prior knowledge of the appeal and not the presenting officer who had been involved in the proceedings or had given submissions previously. Secondly, whilst the FtTJ recorded that the respondent made no submissions on the additional documents submitted, this was explained by the confusion as to what application being granted, the nature of the application and that it had not been put before the correct advocate. The respondent’s review however referred to seeking to explore matters further in cross-examination and the request for an oral hearing. Whilst the FtTJ considered that the author of the response did not appreciate the hearing had taken place, the application in relation to the other documents have been granted by the tribunal caseworker with an extension of time to provide a reply.
32. The FtTJ was plainly correct that there was nothing about the new translation that would require a further hearing but in relation to the additional documents, it was clear that there were identifiable problems as to the documents being uploaded and that the advocate who should have been providing submissions did not do so and that an application had been granted by tribunal worker to admit documents which did not appear to have been seen or considered by the respondent or been put before the tribunal with both parties present to provide their submissions. The FtTJ stated that the respondent raised no issues about the new documentation, but it is not clear whether those documents had in fact been so considered. Furthermore the reference to requiring an oral hearing is equally consistent with the request for an oral hearing of the issues relating to the documents generally as it is with the explanation that the presenting officer submitting the response was not aware that a hearing had taken place.
33. Whilst the FtTJ stated that the appeal could be justly determined without a further hearing, the procedure adopted and acted upon led to a position of uncertainty as to who had been served with the documents, what would happen upon their admission and how they were to be considered. Whilst the FtTJ was correct to state that they had been uploaded without explanation as to the circumstances of the document, it appears that the presenting officer’s note read out by Mr Diwnycz referred to counsel at the hearing “being keen to expand” the production of documents but it was



stated that a formal application would be needed. Thus there was some discussion about documents that were already in existence.

34. Furthermore in the light of the nature of the documentary evidence, their admission and the uncertainty that occurred I am satisfied that a further hearing was the procedurally fair way of dealing with these issues. Reconvening a hearing is not a process generally to be encouraged. The parties should ensure that documents are properly provided at the hearing on the day that it is listed. There will, however, be occasions where reconvening the hearing may be necessary, for example, where issues germane to the appeal arise and require judicial consideration with both the parties present.
35. The difficulty with the approach taken was that the FtTJ considered the documents without giving either party the opportunity to address them. The FtTJ then analysed the original document that he had given permission for an amended translation in the light of the later documentation that had been produced (see paragraph 29) and made findings of fact about the original document in the context of the later documentation. In doing so, the judge found that he had serious concerns about the reliability and that the appellant had not explained how it obtained them nor an explanation given as to why they had not submitted earlier (see paragraph 29). However those were issues which were likely to be the substance of evidence and it was a reasonable assumption for the appellant's solicitors to make particularly in the light of the Home Office review which referred to matters of cross-examination and requiring an oral hearing.
36. I would agree that the FtTJ highlighted relevant concerns about the way in which the documents had been uploaded and the lack of information provided. However given the level of uncertainty created in the fact the tribunal caseworker had given permission, and the existence of the documents was not entirely new and were plainly relevant to the overall assessment, as in fact found by the FtTJ, the fair way for this issue to be ventilated was at a hearing. The issues identified such as provenance and the views as to the interpretation of the content of the documents would be a matter of argument as with the issue of delay. As Mr Schwenk submitted when relying on the other grounds, the appellant would not necessarily be able to provide evidence about the Iranian court system.
37. Drawing those issues together, Mr Diwnycz concedes a material error when assessing risk on return which he submits was of such materiality to require the setting aside of the decision. Mr Schwenk adopts that approach also. Whilst Mr Diwnycz did not concede that ground one was made out, for the reasons given above in addition to the concession made I find that the ground is made out.
38. There were other grounds raised which I do not consider demonstrate a material error of law. The challenge made to paragraph 32 of the decision which related to the failure to claim asylum was not determinative of the

issue of credibility. Furthermore whilst the grounds sought to challenge the assessment of the Facebook posts at paragraph 17, the FtTJ in fact reached the conclusion that the posts, whilst not explicitly showing propaganda against the Islamic republic and denial of the Quran, could possibly be interpreted as implicitly doing this, therefore the judge did not ignore the nature or contents of the posts. However in light of the concession made and the conclusions reached on ground one, it is not necessary to address them further.

39. Notwithstanding the evident care taken by the FtTJ in the decision and the analysis, the question of the documentation and the uncertainty created around their admission and how they should be addressed was plainly relevant to the overall conclusions that were reached.
40. Both parties have given their submissions as to the remaking of the appeal. Both are in agreement that if it requires further fact-finding that the appropriate forum is the FtT as the factual assessment requires consideration of all the relevant documents and for them to be viewed holistically when reaching conclusions on risk. I therefore do not preserve any factual findings. The decision will only stand as a record of the evidence given.
41. Therefore having taken into account the views of the advocates as to the forum for remaking the decision and in light of the practice statement, I am further satisfied that the appeal falls within paragraph 7.2 (b) of the practice statement, and I therefore remit the appeal to the First-tier Tribunal for that hearing to take place as both advocates have submitted. I do not preserve any findings of fact made and it will be for the tribunal to undertake a holistic assessment of credibility in the light of the evidence as a whole.

## **Decision**

The decision of the First.-tier Tribunal involved the making of an error on a point of law; the decision is set aside and is remitted to the FtT.

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

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Signed Upper Tribunal Judge Reeds  
Dated : 3 November 2022