



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-002668**  
**First-tier Tribunal No:**  
**PA/53413/2021**  
**LP/00011/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Promulgated**  
**On the 12 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SM**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Patel instructed by Jackson Lees Group Limited.  
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

**Heard at Manchester Civil Justice Centre on 31 May 2023**

**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 Lloyd-Smith ('the Judge'), promulgated following a hearing at Manchester on the 30 April 2022, in which the Judge dismissed the appeal on all grounds.
2. The appellant is a citizen of Iran born on the 17 June 1994.
3. The Judges findings are set out from [27] of the decision under challenge.

4. Permission to appeal was sought on a number of ground asserting: (1) a failure to give adequate reason in relation to the truthfulness of the appellants account, (2) making an irrational finding in relation to the risk facing the appellant on return, (3) giving undue weight to immaterial matters and requiring corroboration, (4) holding against the appellant the fact there was no evidence of A's disappearance when it was not established what documents might even be available in relation to this point, (5) requiring further corroboration from the KDPI, (6) requiring corroboration of ongoing interest from the Iranian authorities, (7) providing irrational reasoning in relation to the plausibility of the appellants account, and (8) failing to make any assessment of the treatment the appellant may encounter at the pinch point on return.
5. Permission to appeal was granted by another judge of the First-tier Tribunal on the 31 May 2022, the operative part of the grant being in the following terms:
  2. Of the various challenges advanced in the grounds, I consider the strongest to be that the judge appeared to find that the appellant would not be at risk on return even if his factual account were credible because the security services had not yet apprehended him. This argument is intimately related to ground 3(iii) where the judge is said to have relied upon an absence of documentary corroboration of a visit by the Iranian authorities to the appellant's family home after he departed the country. These adverse findings were plainly material and arguably not open to the judge on the available evidence and uncontroversial background information. It is arguable that the decision was wrong in law. The remaining grounds may also be argued.
6. Having considered the evidence and decision in detail, together with the grounds seeking permission to appeal, I find the Judge has erred in law. That was accepted by Mr Bates on behalf of the Secretary of State.
7. In relation to disposal, I find the errors pleaded give rise to concerns about the sustainability of the decision and the fairness of the process by which the Judge assessed the merits of the appeal.
8. In relation to disposal, recent guidance has been provided as to whether it is appropriate for an appeal to be retained within the Upper Tribunal or remitted to the First-Tier Tribunal in the case of Begum [2023] UKUT 00046.
9. Paragraph 7.2 (a) and (b) of the Practice Statement relating to disposals of appeals by the Upper Tribunal reads:
  - 7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
    - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
    - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
10. In the current appeal there is accepted legal error made by the Judge as pleaded. I find that considering matters as a whole the effect of the accepted errors has been to deny the appellant a fair hearing and to have his case considered by the First-tier Tribunal properly.
11. In relation to the extent of the fact finding that will be required in order to determine the appeal, it will be extensive. I find on that basis both exceptions set out in paragraph 7.2 are made out and that it is appropriate for the appeal

to be remitted to the First-tier Tribunal (IAC) sitting in Manchester to be heard afresh by a judge other than Judge Lloyd-Smith.

**Notice of Decision**

12. The First-tier Tribunal Judge materially erred in law. I set the determination aside with no preserved findings.
13. I remit the appeal to the First-tier Tribunal sitting at Manchester to be heard *d2022-Llo*e novo by a judge other than Judge Lloyd-Smith.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**9 June 2023**