



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

Case No: UI-2023-000101

First-tier Tribunal No: PA/50772/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 13<sup>th</sup> of December 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SKINNER**

**Between**

**MHM (IRAN)**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C. Williams, Fountain Solicitors

For the Respondent: Ms A. Everett, Senior Home Office Presenting Officer

**Heard at Field House on 14 November 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**

### **Introduction**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Athwal (“the Judge”) promulgated on 21 November 2022 (“the FTT Decision”). By that decision the Judge dismissed the Appellant’s appeal on asylum, humanitarian protection and human rights grounds.
2. The essence of the Appellant’s claim is that he is at risk on return to Iran because he worked as a Kolbar transporting propaganda for the KDPI and was caught doing so by the Iranian regime. He also claims to be at risk by virtue of his activities against the Iranian regime undertaken since he arrived in the UK.
3. The key issue before the FTT was the Appellant’s credibility. The Secretary of State accepted before the FTT that, if the Appellant was found to be credible in relation to what occurred in Iran, he was at real risk of persecution on return and entitled to asylum. The Secretary of State did not however accept that what he alleged took place in fact did so and considered that his sur place activities were not genuine. The Judge agreed. As set out below, the Appellant’s appeal to this Tribunal attacks the Judge’s assessment of the Appellant’s credibility.
4. The hearing before me took place remotely. There were no technological issues and I was satisfied that everyone could see and hear each other and that the parties were properly able to put their respective cases.
5. The First-tier Tribunal made an anonymity order in this case and, notwithstanding the importance of open justice, I consider it appropriate to do so too. The Appellant claims to be at risk from the Iranian state and I consider that publication of the fact of his asylum claim may increase any such risk that he faces.

### **The FTT Decision**

6. The Judge considered the Appellant’s claimed political activities in Iran at paras. 27-35. At para. 27, the Judge stated her conclusion that she did not accept the Appellant’s account. This was for the reasons given in paras. 28-35.
7. At paras. 28-29, the Judge said:

“28.... The Appellant’s claim is that he started to help the KDPI in 2013. The Appellant stated M was always with him when they were smuggling KDPI material. A KDPI member in Iraq, gave M papers wrapped in Sellotape. The Appellant did not know if the package contained a single paper or several papers. The Appellant was handed the package by M and told that he must not open it. The Appellant carried it on the journey to Iran. He gave the package to M when they returned to Iran and M gave it to someone called ‘I’. The Appellant knew that the person he met in Iraq was a KDPI member and that the papers contained KDPI information because M told him this. He never met the person in Iran to whom the papers were given.

29. In oral evidence the Appellant was asked to explain why he was invited by M to support the KDPI. He stated that he was introduced to

the party in order to get to know it better and to show him how political activities were carried out. He stated that he was not allowed to look at the papers because “that is how it works in the beginning” but as he got to know the party “he would progress step by step”. If that is correct it does not explain why in the five years that the Appellant carried these packages he never met the contact in Iran and never delivered the papers to him. He was not allowed to open the packages to read the material. He was never given any other responsibilities or tasks that would develop his role within the KDPI. I find that Appellant’s evidence is inconsistent with his explanation for why he became a KDPI supporter and what his role was meant to be.”

8. At para. 30 the Judge noted that the Appellant accepted that his smuggling trips always took place with M, and that he could not provide a reasonable explanation why he was therefore needed.

9. At para 31, the Judge noted that,

“The Appellant states that his house was raided four times in two months. On the first occasion his father was beaten. He stated that for the next two months his father made weekly contact with the relative. The Appellant makes no further reference to any other threats or violence from the authorities, against his family.”

10. This account, the Judge said, was undermined by the Country and Policy Information Note: Kurds and Kurdish Political Groups, published May 2022. The Judge then set out a lengthy passage from the CPIN, emboldening parts of it which she appeared to consider undermined the Appellant’s account. Those relevant passages were as follows:

- i. ‘The Iranian government relies on extracting information from family members, in order for the family members to put pressure on the political party member or supporter. One source stated that if the authorities are aware that a person is a family member to a political party member, s/he is at risk of being subjected to torture.
- ii. ‘Family members of anyone conducting social or political activities will be put under surveillance, which includes monitoring of phone calls and computer use as well as their movement.
- iii. The approach taken by the authorities towards the family can vary from case to case. In some cases a father is required to report to the intelligence authorities and pledge that he has not left the city or taken any other action to meet with his son/daughter.
- iv. ‘The punishment of the family members varies depending on the activity level of the activist. In some cases, the families have been arrested and charged. Close family members, such as spouses, children, parents, or siblings are more likely to be subject to arrest. In some cases, the authorities have arrested extended family members, because they were in touch with the politically active individual outside of the country.

- v. It was common for the Iranian authorities to pressure parents to travel to the KRI and bring home their sons or daughters who had joined Kurdish political parties.
11. At para.32, the Judge considered it not to be credibility that the Appellant had been unable to name the leader of the KDPI and to give a history of the party.
12. At para. 33-34, the Judge stated as follows:

“33. I turn to whether the Appellant is of interest to the authorities. The Appellant confirmed that he was not carrying any form of identification in his bag. He and four others abandoned their bags when the ambush occurred. He did not know if these men were KDPI supporters or carrying any material for the party. I am therefore satisfied that the bag itself could not have been linked to the Appellant. The Appellant states that M was arrested and tortured, he disclosed the Appellant’s involvement to the authorities and identified the bag as belonging to him. The Appellant did not return home after the ambush. When he spoke to his father the following day he did not tell his father the truth about why he had not returned. The Appellant states that M was arrested during the ambush. He was not told of M’s torture until one week after. In oral evidence he was unable to provide a cogent explanation for his why he failed to return home the day after the ambush and why it was necessary to lie to his father.

34. The Appellant states his house was raided four times in two months. He has not explained why, if this is true, an arrest warrant was not issued for the Appellant or why actions as set out in the CPIN, were not pursued against his family.”
13. For these reasons, the Judge concluded that the Appellant was not a supporter of KDPI, he did not smuggle documents for them and he did not come to the attention of the Iranian authorities.
14. At paras. 36-40, the Judge considered the Appellant’s attendance at demonstrations in the UK. The Judge was however not satisfied that his claimed activities would have attracted the attention of the authorities. Even if it had, the Appellant’s political profile was not such that he would be recognised on return.
15. At paras. 41-43, the Judge considered the Appellant’s online activities since his arrival in the UK. She concluded however that his activities would not lead to him coming to the attention of the Iranian authorities. This was because he had never been a person of significant interest to them, and none of his online posts had been shared by anyone who would be of interest.
16. At para. 44, the Judge considered that the Appellant’s professed political beliefs were not genuine. He accordingly had no HJ (Iran) claim.
17. At para. 45, the Judge rejected the Appellant’s Article 8 claim. That was based, in part, on his having lost contact with his parents in order not to put them at risk by reason of his activities in Iran. However, as the Judge did not accept that he had undertaken such activities, there was no need for him to cease contact in the way alleged.

## Appeal to the Upper Tribunal

18. The Appellant filed grounds which were long and discursive. However, before me Mr Williams confirmed that he was relying solely on those identified as arguable in the grant of permission (notwithstanding that permission was not limited to them). These were (with numbering added) that:
- i. Ground 1: The reasoning in para. 29 is insufficient for the reader of the decision to understand why the Judge found it to be inconsistent with the Appellant's explanation for supporting the KDPI and what his role was meant to be that he never met the contact in Iran and was not permitted to open the packages.
  - ii. Ground 2: In paragraph 31 the Judge has not explained why the Appellant's evidence concerning raids on his home and his father being beaten is undermined by the country evidence quoted in that paragraph.
19. By a decision dated 12 October 2023, permission to appeal was granted by Upper Tribunal Judge Blundell on the basis that these two grounds were arguable. Judge Blundell considered the other grounds to be little more than disagreement with the Judge, but did not restrict permission.
20. The Respondent did not file a response to the appeal pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

## Ground 1

21. Appellate case law is replete with descriptions of what is required by way of reasons by lower courts and tribunals. Many of the relevant cases were reviewed in Simetra Global Assets Ltd v Ikon Finance Ltd [2019] EWCA Civ 1413, [2019] 4 WLR 112 by Males LJ (with whom Peter Jackson and McCombe LJ agreed) at [39]-[47]. The key points for present purposes that come out of that review are as follows:
- i. A failure to give reasons may be a ground of appeal in itself even where the conclusion reached is one that would have been open to the judge on the evidence.
  - ii. The extent of the duty to give reasons, or rather the reach of what is required to fulfil it, depends on the nature of the case. Nonetheless, a judgment needs to make clear not only to the parties but to an appellate court the judge's reasons for his conclusions on the critical issues.
  - iii. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained, but the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained.
22. I do not accept that paragraph 29 is insufficient. The Judge's reasoning could be better expressed but I consider her reasoning clear. The basic point being made

by the Judge is that it was the Appellant's case that he was assisting the KDPI for 5 years, and he had stated in oral evidence in response to questions about his limited role, that this is how it was in the beginning, i.e. when first undertaking work for the KDPI. This does not explain why the Appellant's activities did not develop. Further, he had said that he was introduced to the KDPI to get to know it better (which I take to be what the Judge is referring to as why he became a KDPI supporter), but he was never permitted to get to know it better by meeting relevant individuals or read any of the material.

23. This ground is accordingly rejected.

## **Ground 2**

24. I do however consider that the Appellant's ground in relation to para.31 is made out. The Judge has simply stated that the Appellant's account is inconsistent with the CPIN without explaining in what way. As already noted, she has emboldened parts of the CPIN in an apparent attempt to make clear which parts she considered inconsistent with his account. However, parts of the emboldened passages are, far from being inconsistent, plainly consistent with the Appellant's account. The Appellant alleged that his father was beaten by the regime, and the CPIN states that there is a risk of a family member being tortured, as is said to have happened. Moreover the CPIN makes clear that the approach of the authorities to family members of those engaging in political activities varies. Arrests occur 'in some cases', reporting is required by a father 'in some cases' and it is 'common' (not invariable) that pressure is put on family members to bring home children from the KRI. It is not clear to me what the Judge considered to be inconsistent between the Appellant's account summarised in para. 31 and the CPIN passages that follow it.

25. Ms Everett submitted that the Judge's reasoning was tolerably clear, namely that the response of the regime would, on the basis of the CPIN, have been more severe than that described by the Appellant. That is not however what the Judge has said and, as noted, given the variability in response from the regime recorded in the CPIN and the lower standard of proof applicable, if the Judge was going to find that it was in effect inevitable that the regime would have acted more forcefully than the Appellant described, the Judge would have needed in my judgment to explain why she considered that the variable practice described by the CPIN would in this case have been exercised in a particular way.

26. This ground accordingly succeeds.

## **Materiality and preserved findings**

27. I have thought carefully about whether it can be said that the error I have accepted is material or not. On any view, there are other difficulties which the Judge found as to the Appellant's credibility. It may be that the Judge would therefore have reached the same conclusion on the Appellant's credibility. However, I cannot say that the Judge would have been bound to do so, as consistency with background country evidence is an important part of any assessment of the credibility of an asylum-seeker's account.

28. I have also considered whether the Judge's findings on sur place activities and the HJ (Iran) claim should be preserved, given that the ground only relates to the Appellant's activities in Iran. I have however concluded that the credibility of the Appellant's account of what occurred in Iran affects the Judge's conclusions on

the other issues. The extent to which the Appellant's sur place activities would have attracted the Iranian authorities' attention is bound up with the profile that he would have had (or not) by virtue of his activities (or lack thereof) in Iran. Likewise, the genuineness or otherwise of his claimed political beliefs turns, in part, on the Judge's rejection of his political activities in Iran.

29. It follows that the FTT Decision must be set aside in full and the appeal determined de novo. Given the extent of the fact-finding that will now be needed to be undertaken, I remit the appeal to the FTT.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The appeal is remitted to the First-tier Tribunal. There are no preserved findings of fact.

**Paul Skinner**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

3 December 2023