



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: UI-2023-001834**

**First-tier Tribunal No: PA/52366/2022**

**IA/06258/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On the 17 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM  
DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY**

**Between**

**AMH  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Heard at Field House on 06/07/2023**

**Representation:**

For the Appellant: Ms G Brown, instructed by Barnes, Harrild & Dyer

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**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. As announced at the end of the hearing, our decision is that the determination of First-tier Tribunal Judge Cohen contains legal error that requires us to set it aside and remit the appeal to the First-tier Tribunal to

be decided afresh before a different judge. We reserved our reasons, which we now give.

2. The appeal has a lengthy history that includes two earlier decisions (from 2014 and 2019), which were dismissed because the judges did not find that the appellant was Iranian as claimed but Iraqi. Neither of those decisions was overturned, and therefore they formed the starting point for Judge Cohen. The appellant's complaint in essence is that Judge Cohen did not merely use the previous decisions as his starting point, but he adopted the conclusions reached by the other judges without giving anxious scrutiny to the additional evidence provided for the appeal he was hearing. As such, the challenge is to the way Judge Cohen applied the *Devaseelan* principles.
3. During the error of law hearing, Ms Isherwood conceded that Judge Cohen had failed to analyse whether the appellant's substantial involvement in anti-Iranian regime activity over a number of years might add weight to his claim to be Iranian. At paragraph 19 of his decision, Judge Cohen recorded that he was "additionally provided with substantial evidence to the appellant's Facebook activity and photographs of him attending demonstrations together with translations of the same when appropriate." Despite this, at no juncture does Judge Cohen assess the reliability of that additional evidence and makes no finding on it.
4. Mr Brown expanded on the grounds of application settled by Ms Imamovic. The fourth ground complained that Judge Cohen failed to engage with the argument that the additional evidence showed the appellant's passion for the Kurdish cause in Iran, and his activities raised the question why he would have such passion if he was not Iranian. This is a question Judge Cohen failed to consider before deciding that the appellant was not Iranian.
5. Ms Isherwood accepted that Judge Cohen should have considered this question. She argued, however, that the answer to the question would have been immaterial to the outcome because of the other findings Judge Cohen made and because it was implicit that he was adopting the finding of Judge Row that these activities were to bolster the claim. We cannot accept this position because it would in effect either require us to ignore the additional substantial evidence Judge Cohen had or to make our own findings on that evidence. Neither approach is permissible.
6. Because we accept that the additional evidence was provided in part to show how passionate the appellant is regarding the Kurdish cause in Iran, we also accept that it was relevant to the question of his nationality. We find that it was incumbent on Judge Cohen to analyse the evidence of the appellant's *sur place* activities before he made findings that the appellant's credibility was so damaged as to undermine his claim to be Iranian. We do not know if Judge Cohen would or would not have reached the same decision had he analysed the evidence and arguments.

7. As fresh findings will have to be made, and since they will be part of an assessment of the appellant's credibility, what is required is a fresh hearing. In these circumstances having properly considered Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 we remit the appeal to the First-tier Tribunal. It was not possible to preserve any of the findings made by Judge Cohen because the flawed credibility assessment infected the decision.
8. We add for clarity, because it was an issue raised at the end of the error of law hearing, that our decision in relation to Judge Cohen's decision has no bearing whatsoever on the standing of the earlier decisions of Judge Bell and Judge Row. Those decisions will be the starting point for the judge hearing the appeal afresh. The judge allocated the remitted appeal will remember the need for anxious scrutiny and that past decisions can only be regarded as a starting point.
9. We also add that nothing in our findings should be taken as suggesting that there is particular strength in the appellant's argument that his passion for Kurds in Iran. We are neutral on the matter. Our finding is no more than it is a factor that should have been considered and the failure to consider it is an error of law.

#### Notice of Decision

The decision of Judge Cohen contains legal error and is set aside.

The appeal is remitted to the First-tier Tribunal for a fresh hearing before a different judge.

**Judge John McCarthy**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**10/07/2023**