



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

Case No: UI-2023-004227

First-tier Tribunal No: PA/54340/2022

IA/10600/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 4 December 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HARIA**

**Between**

**OHM (Iran)  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E Rutherford of Counsel (instructed by Rodman Pearce Solicitors)

For the Respondent: Mr E Tufan Senior Home Office Presenting Officer

**Heard at Field House on 30 October 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 is an Iranian national born on the 25th February 2004. He appeals with permission of First-tier Tribunal Judge Austin against the decision of Judge Chohan ("the Judge") promulgated on 4 September 2023

to dismiss his appeal against the respondent's decision dated 3 October 2022 to refuse his protection claim.

## **Anonymity**

2. The Judge did not grant anonymity, however as this is a protection claim and the appellant may be at risk, I grant anonymity.

## **Background**

3. In summary, the appellant is a national of Iran of Kurdish ethnicity. He left Iran on 8 November 2021 by car travelling through Italy and France and entered the United Kingdom ("UK") on 29 December 2021 by lorry and claimed asylum on 15 January 2022.
4. The appellant claims he began smuggling alcohol, cigarettes and tyres at the age of 15 as his father requested help with their living. On 6 November 2020, the appellant and eight others were encountered by the authorities and the appellant managed to run away to his home. The appellant claims the next morning due to the arrest of another group member who smuggled political materials a crowd gathered outside his house and the Iranian authorities raided his house and came to arrest him. The appellant claims that on the same day, his father arranged for him to flee Iran. The appellant claims that on return he fears the Iranian government will hang him as a Kolbar/smuggler.
5. In essence, the appellant's protection claim is on the basis that he is at risk of persecution or serious harm based on his imputed and actual political opinion and race.
6. The respondent accepted:
  1. the appellant was a smuggler;
  2. the appellant's illegal exit from Iran; and
  3. the appellant's political activity in the UK.
7. The respondent did not accept that the appellant has come to the adverse attention of the Iranian authorities.
8. The Judge in his decision addressed the following issues:
  1. Did the appellant come to the adverse attention of the authorities in Iran?
  2. Whether the appellant would be at risk on return to Iran due to his sur place activities?
  3. Whether the appellant would be at risk on return to Iran due to his illegal exit?

## **The First-tier Tribunal Decision (“the Decision”)**

9. The Judge found the appellant’s account of coming to the adverse attention of the authorities lacked credibility. The Judge did not accept that the appellant was ever ambushed by the authorities or that the authorities raided his home.
10. The appellant relied on a Country Expert report dated 31 December 2022 from Dr K Ghobadi. In relation to the appellant’s sur place activities, the Judge took into account the opinion of Dr Ghobadi and noted that at paragraph 126 of his report Dr Ghobadi states “In my view, the risk to the Appellant from the Iranian authorities is not very serious for merely attending two demonstrations in the United Kingdom, unless he was one of its organisers or he did play a key role in them.” The Judge found the appellant was not at any real risk on the basis that the appellant had attended two demonstrations, and he did not claim to be an organiser or to play any significant role in the demonstrations.
11. In the context of his finding that whilst in Iran the appellant had no political profile and had never come to the adverse attention of the authorities, the Judge found that the appellant’s minimal Facebook posts would not put him at any real risk on return to Iran.
12. The Judge whilst acknowledging that the appellant may be detained and interrogated for leaving the country illegally found that the appellant would not experience difficulties and would be allowed to make his way home, on the basis that he has never come to the adverse attention of the Iranian authorities and he has no prominent political profile. The Judge accepted the opinion of Dr Ghobadi who states at paragraph 127 that, “It is my opinion that the Appellant faces a risk of being detained on return to Iran for illegal exit of the country. However, it is unlikely that he will come to the adverse interest of the Iranian authorities merely on the ground of leaving Iran illegally”.
13. The Judge dismissed the appellant’s asylum, humanitarian protection and human rights claims. The appellant appealed to the Upper Tribunal.

## **Permission to appeal**

14. The grounds seeking permission to appeal settled by Ms Rutherford on 11 September 2023 are not enumerated, however Judge Austin in granting permission reformulated and summarised the grounds as follows:
  1. failing to give adequate reasons for rejecting the appellant’s factual account as to his reasons for leaving Iran, and in particular for not accepting that he was being sought by the authorities when he left;
  2. that there was a material error made in not considering the significance of the appellant’s sur place political activities;

3. that there was an error in failing to consider the risks to the appellant on return to Iran after what was accepted to be an illegal exit.

15. Judge Austin granted permission on restricted grounds as follows:

“The third ground amounts to an arguably material error of law, in that it was accepted that the appellant had worked as a kolbar smuggler before leaving Iran, that he had left illegally and that he had engaged in opposition sur place activity in the UK, and therefore it is arguable that the risk to the appellant on return was not adequately addressed”.

### **Rule 24 Response**

16. The respondent did not file a rule 24 response. Mr Tufan confirmed there was no rule 24 response.

### **Upper Tribunal hearing**

17. The hearing was attended by representatives for both parties as above. Both representatives made submissions and my conclusions below reflect those arguments and submissions where necessary.

### **Procedural matters**

18. A couple of procedural matters arose at the hearing.
19. At the start of the hearing, Ms Rutherford acknowledged that the grant of permission was limited to the third ground only and that there was no application to renew the grounds. She stated that the appellant’s representatives had not appreciated that the grant of permission was restricted to the third ground and unfortunately she could advance no good reason for this failure. Ms Rutherford tentatively sought my view on an oral application to renew the grounds. Mr Tufan objected and stated that the respondent would be caught by surprise if the hearing was to proceed on all grounds as opposed to the ground on which permission was granted. I indicated that the grant of permission in my opinion was clear and no good reason had been advanced for a failure to make an application to the Upper Tribunal to renew the grounds. Ms Rutherford very pragmatically acknowledged the third ground was in any event the strongest of the three grounds of appeal and confirmed that she was content to proceed on the basis of the third ground alone.
20. The Upper Tribunal in a decision of a Presidential Panel comprising the Presidents of both the First-tier Tribunal and the Upper Tribunal in TC (PS Compliance “issues based reasoning) Zimbabwe [2023] UKUT 164, approved the earlier decision of Joseph (permission to appeal requirements) [2022] UKUT 217 which states at paragraphs 63-64 as follows:

“63. There should be no underlying ambiguity in the grant or refusal of permission. It is not helpful to merely summarise the grounds of appeal and then only address some. Where a judge considers a ground to be unarguable and another arguable they should say so, and give concise reasons - see Joseph (permission to appeal requirements) [2022] UKUT 218 (IAC); [2022] Imm AR 1360.

64. When the order provides that permission to appeal is granted, the reasons for that grant should be concise, crisp, clear and focussed. This provides the parties with an understanding of what is the point upon which argument for the UT is being granted. Where permission is granted on a limited basis, and for identified grounds only, that must be specified in the heading, so that it is clear when it comes to an error of law hearing what the parties are preparing to argue. It is most unhelpful if that phrase is used and then the reasons for the decision undermine it by being unclear as to, for instance, in cases where there are several grounds of appeal, which of those grounds are being granted permission and which are not. This is another dimension of identifying the principal controversial issues which require to be resolved to determine the appeal, applying the same legal principles which have been set out above, on this occasion for the proceedings in the UT.

65. Whilst sometimes it may be that a judge granting permission to appeal would provide some indication of their view as to the relative strength of grounds, strictly speaking, that is of no assistance at all. A ground is either arguable or it is not. What the reasons for the decision need to focus upon, in a laser-like fashion, is those grounds which are arguable and those which are not. To secure procedural rigour in the UT and the efficient and effective use of Tribunal and party time in resolving the issues that are raised, it is necessary for the grant of permission to clearly set the agenda for the litigation for the future.”

21. Applying the principles set out above to the grant of permission in this appeal, I find the decision of Judge Austin granting permission limited to ground three is clear, concise, focussed and unambiguous. Furthermore the limitation in the grant of permission is clearly identified in the heading. Accordingly Ms Rutherford quite properly accepted that the hearing would proceed limited to a consideration of ground three only.
22. I proceeded to check the documents with the representatives. I had before me the appellant’s composite bundle and the court bundle containing inter alia the core documents in the appeal, including the appellant’s bundle, the respondent bundle and respondent’s review which were all before the First-tier Tribunal. Mr Tufan did not have the composite bundle or the court bundle but he confirmed he did have the core documents and was content to proceed on the basis of the documents before him. Ms Rutherford had the appellant’s composite bundle and she was content to proceed with the hearing.

23. Mr Tufan enquired as to where he could find the appellant's Facebook posts. I directed Mr Tufan to the two Facebook posts contained in the respondent's bundle [RB:112&113]. Ms Rutherford stated that there were also additional Facebook posts which had been produced at the First-tier Tribunal hearing, these posts are dated April 2022, May 2022, November 2022 and 14 March 2023. These additional Facebook posts did not appear in any of the documents before me. This appeal is case managed online by the First-tier Tribunal on MyHMCTS. I checked the file on MyHMCTS relating to this appeal. There is no record of any application being made for additional evidence to be admitted after the production of the Hearing Bundle or indeed any application on the day of the hearing and furthermore the additional Facebook posts have not been uploaded onto the MyHMCTS system.
24. Ms Rutherford assured me that the additional evidence was handed up to the Judge at the hearing and the Judge admitted it in evidence. I pointed out that there is no reference to this in the Judge's decision and no reference to any application being made to admit further evidence. Indeed, the Judge at [13] states " On the evidence before me, the appellant has simply attended two demonstrations ...". Ms Rutherford stated that her note of the hearing records additional evidence was handed up to the Judge and admitted in evidence. I appreciate that Ms Rutherford in her submission sought to assist, however as observed by the Upper Tribunal in BW (witness statements by advocates) Afghanistan [2014] UKUT 00568 (IAC) there is a distinction between legal submissions and the giving of evidence. The Upper Tribunal in BW stated as follows:
- " ...
- (ii) In certain cases, likely to be rare, evidence presented to the Upper Tribunal may include a witness statement compiled by a representative involved in the hearing before the First-tier Tribunal ("FtT"). In practice, this is most likely to occur in cases where such evidence is considered necessary to demonstrate that the appellant was deprived of his right to a fair hearing at first instance.
- (iii) Evidence of this kind will not be required if the determination of the FtT speaks for itself on the relevant issue.
- (iv) In applications for permission to appeal, the distinction between legal submissions and arguments (on the one hand) and evidence about events at the hearing (on the other) must be carefully observed."
25. Furthermore, there is no challenge in the grounds of appeal to the Judge's decision on the basis of procedural unfairness, nevertheless, Ms Rutherford suggested that the lack of reference to the additional evidence in the Judge's decision indicates that perhaps the Judge had failed to consider the additional evidence. The first difficulty with this submission is that it completely ignores the procedural rigour required in reform cases which

are managed on MyHMCTS, as emphasised in Lata and TC (PS compliance, “issues-based” reasoning) [2023] UKUT 00164. The First-tier Tribunal in reform cases is only required to consider the evidence uploaded to My HMCTS and to matters directly identified as in dispute by the parties. Secondly, as Ms Rutherford acknowledged the additional evidence was not accompanied by translations, this is clearly contrary to Rule 12 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and the evidence would not in any event have been admissible and even if it had been admitted it would have carried little weight.

26. Ms Rutherford submitted that she was content to proceed as she was of the view that nothing turns on the additional evidence of the Facebook posts as the respondent accepts the appellant has engaged in sur place activity.
27. Mr Tufan agreed that it is accepted the appellant attended some demonstrations and the Judge has noted the appellant had attended two demonstrations.

### **Decision on error of law**

28. Before proceeding to consider the grounds of appeal in detail, I remind myself of the many authorities on the approach an appellate court or tribunal should take when considering findings of fact reached by a first instance judge.
29. I appreciate that judicial restraint should be exercised when examining the reasons given by the First-tier Tribunal Judge for his decision and that I should not assume too readily that the Judge misdirected himself just because not every step in his reasoning is fully set out. This is the guidance given by the Court of Appeal at paragraph [77] of KM v SSHD [2021] EWCA Civ 693.
30. A recent summary of the well settled principles can be found in Volpi & Anor v Volpi [2022] EWCA Civ 464 at [2] where Lewison LJ stated:

“i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

31. The focus of this appeal is on the Judge’s findings on the risks to the appellant on return to Iran on the basis that it was accepted that the appellant worked as a kolbar smuggler before leaving Iran, that he left illegally and that he had engaged in sur place activities.
32. The thrust of the ground of appeal and Ms Rutherford’s submissions is that the Judge having directed himself to the relevant country guidance cases failed to have adequate regard to, or to properly apply the guidance therein.
33. Ms Rutherford whilst accepting that she would not be able to persuade me (or any other Judge) that attendance at two demonstrations and limited posts on Facebook will have come to the attention of the authorities, submitted that was not the test for assessing risk on return. She submitted that on the application of the binding country guidance to the accepted facts, of the appellant’s Kurdish ethnicity, that the appellant worked as a smuggler, his illegal exit, and his sur place activities, this appeal should have been allowed.
34. Ms Rutherford submitted in light of the ‘hair trigger’ approach taken by the Iranian authorities towards Kurdish returnees as found in HB (Kurds) Iran (illegal exit: failed asylum seeker) CG [2018] UKUT 430 (IAC), it is reasonably likely that that the appellant as a returning Kurd when questioned by the Iranian authorities about the basis of his asylum claim in the UK, matters would come to light which would lead to further questioning and prolonged detention, such as to amount to real risk of harm. Ms Rutherford submitted that the Judge engages in no assessment of whether these matters might come to light upon return. Ms Rutherford



submitted that the Judge failed to make a finding as to whether the appellant's Facebook posts and his evidence demonstrate his genuine political belief and the Judge failed to apply the approach set out by the Supreme Court in HJ (Iran) [2010] UKSC 31. She submitted that the error is apparent at paragraph 17 of the Judge's decision as although the Judge correctly sets out that there is no "... no fundamental right protected by the Refugee Convention to have access to a particular social media platform or that deletion of a Facebook account could equate to persecution", this misses the point that the entitlement to express views about Kurdish rights is an entitlement that is undoubtedly protected by the Refugee Convention. Ms Rutherford submitted that the principle which should have been at the heart of the Judge's risk analysis in respect of the risk to the appellant on return is the "hair trigger" approach of the Iranian authorities in relation to Kurdish returnees and that the appellant cannot be expected to lie about his genuinely held political beliefs upon being questioned.

35. In response to my questions as to the conclusions in particular at paragraphs 126-127 in Dr Ghobadi's report on which the Judge relied and based his findings on, Miss Rutherford explained that these should be read in the context of the report as a whole. Ms Rutherford stated that Dr Ghobadi sets out examples of the cases demonstrating the harsh punishments suffered by Kurdish political activists at paragraph 54-62, he considers the Home Office CPIN, the relevant country guidance cases and the appellant's Facebook posts in reaching his conclusions. Ms Rutherford pointed out that Dr Ghobadi whilst noting that it is unlikely that the appellant will be of great interest to the Iranian authorities for attending two demonstrations [paragraph 109], he stated another factor to be considered is the socio-political situation of the country and although the authorities are mostly interested in high profile activists and those with a high number of followers, he does not rule out "...the plausibility that he might have come to the adverse attention of the Iranian authorities due to his online activities and his attending protests against the Iranian regime" [paragraph 110]. Dr Ghobadi at paragraph 121, states that although the appellant is "... unlikely on return to Iran to face severe punishment merely for having left the country illegally, he is highly likely to be detained and questioned by the Iranian authorities about his reasons for leaving the country.... it is likely that the authorities would find out about the Appellant's imputed involvement with a Kurdish opposition party, which in turn could significantly increase the risk for him."
36. Mr Tufan's submissions were straightforward, he stated that the Judge accepts the appellant attended some demonstrations in October 2021 and January 2022, he has noted the appellant has attended two demonstrations and is in agreement at paragraph 16 of his decision with the Home Office Presenting Officer that the appellants Facebook posts are minimal and that he was not an organiser. Mr Tufan pointed out that looking at the Facebook posts it is not possible to discern whether the posts are open to the public or not but looking at the number of "like" which are only 16 people at the most it would seem the posts have a small

audience. Mr Tufan submitted that the issue is whether the Judge had erred in law and in this case although the decision is brief the Judge considers the evidence including the expert report and applies the case to arrive conclusions that were open to him and there is no error of law.

37. The Judge accepts the finding at paragraph 127 of Dr Ghobadi's report in relation to the risk on return to the appellant as a consequence of his illegal exit and states as follows:

"19. Dr Ghobadi at paragraph 127 of the report, states: "It is my opinion that the Appellant faces a risk of being detained on return to Iran for illegal exit of the country. However, it is unlikely that he will come to the adverse interest of the Iranian authorities merely on the ground of leaving Iran illegally.

20. I am not sure what more I can add bearing in mind what the appellant's own expert has concluded. No doubt, on return to Iran, the appellant may well be detained and interrogated for leaving the country illegally. However, the fact that the appellant has never come to the adverse attention of the Iranian authorities and that he has no prominent or political profile, he should experience no difficulties and, in my view, would be allowed to make his way home."

38. The Judge makes the following relevant findings at [ paragraph 11-18 of the decision]:

"11. It is interesting to note that the country expert report by Dr K Ghobadi, dated 31 December 2022, provides a detailed analysis of Iran and the general risk on return of an individual. However, at no time does Dr Ghobadi consider the plausibility of the appellant's account of having come to the adverse attention of the authorities.

12. The appellant has attended demonstrations in the United Kingdom and has placed posts on Facebook. In relation to the demonstrations, Dr Ghobadi states at paragraph 126 as follows: "126. In my view, the risk to the Appellant from the Iranian authorities is not very serious for merely attending two demonstrations in the United Kingdom, unless he was one of its organisers or he did play a key role in them."

13. On the evidence before me, the appellant has simply attended two demonstrations and there is nothing to suggest he was one of the organisers or played a significant role in them. Mr Smith submitted that although the appellant attended the demonstrations, he had no profile. Ms Rutherford submitted that the appellant had not exaggerated his account and he has never claimed to have organised the demonstrations.

14. It must be accepted that the appellant has no prominent profile as an activist against the Iranian regime. He has simply attended, like many others, two demonstrations in the United Kingdom and nothing more. Taking into account the opinion of Dr Ghobadi that, per se, does not put the appellant at any real risk.

15. However, the additional factor is that the appellant has placed posts on his Facebook account. That is a factor to be considered as highlighted in Dr Ghobadi's report. The leading country guidance case is XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 00023. At headnote 2, the Upper Tribunal notes as follows: “The likelihood of Facebook material being available to the Iranian authorities is affected by whether the person is or has been at any material time a person of significant interest, because if so, they are, in general, reasonably likely to have been the subject of targeted Facebook surveillance.”

16. Mr Smith submitted that the Facebook posts were minimal and that the appellant had no political profile when he left Iran. On the appellant's behalf, Ms Rutherford submitted that the Facebook posts that were in the public domain would come to the attention of the Iranian authorities. Even if Ms Rutherford's submission were to be accepted, in view of the Upper Tribunal's findings above, it is difficult to see how the appellant would be of any significant interest to the Iranian authorities. Furthermore, in view of my findings above, I must agree with Mr Smith that the appellant, whilst in Iran, had no political profile and has never come to the adverse attention of the authorities. As such, the minimal Facebook posts would not put the appellant at any real risk on return to Iran.

17. On return to Iran, the appellant could delete his Facebook account. In the case of XX, the Upper Tribunal made it clear that, “Where an Iranian national of any age returns to Iran, the fact of them not having a Facebook account, or having deleted an account, will not as such raise suspicions or concerns on the part of the Iranian authorities.” Indeed, in XX, the Upper Tribunal went on to state that there was no fundamental right protected by the Refugee Convention to have access to a particular social media platform or that deletion of a Facebook account could equate to persecution.

18. Therefore, taking into account the above, I do find that even with the combination of the appellant's attendance at two demonstrations and his Facebook account, that would not put him at any real risk on return to Iran.”

39. The Judge finds that “...the appellant has no prominent profile as an activist against the Iranian regime” at [ 14] and that his Facebook posts are minimal at [16], however the Judge does not explicitly make a finding as to the appellant's genuinely held political beliefs. Although this is not

directly relevant to a risk due to sur place activities as an appellant may still be at risk based on sur place activities without any genuinely held belief, it is relevant to the assessment under the HJ(Iran) principles in that if the appellant would not continue his genuinely held political opposition to the Iranian authorities upon return for fear of the consequences to him and that fear was objectively well founded, he could not be returned.

40. The leading case on assessing risk concerning a Facebook account is XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC). That decision confirmed that the cases of BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC); SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC); and HB (Kurds) Iran CG [2018] UKUT 00430 continue accurately to reflect the situation for returnees to Iran.
41. The appellant does not have any documentation and he will be returned on a laissez passer. The case of SSH and HR (Illegal Exit: failed asylum seeker) tells us that on arrival he will be questioned. It is likely that this initial questioning will include the appellant being asked about the basis of his asylum claim in the UK, PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC). He cannot be expected to lie. It is also accepted that the appellant worked as a smuggler in Iran which in itself may result in detention and persecution: CPIN Iran: Smugglers Version 4.0 (February 2022) [2.4.7] of the report states:
- “2.4.7 Persons who have been involved solely in smuggling are likely to face prosecution. It is lawful for the authorities to prosecute those engaged in smuggling illegal items, or goods which would be subject to import tariffs. However, those prosecuted for such crimes may face a trial which does not meet international standards of fairness. Smuggling can incur a range of penalties, from fines to flogging, or the death penalty”.
42. It is likely that the appellant on return will be questioned because of his Kurdish ethnicity and it is reasonably likely that questioning about the appellant’s asylum claim will include asking him about whether he claimed any involvement in Kurdish politics. He cannot be expected to lie about his Facebook posts even if these have been deleted his posts and he cannot be expected to lie about the demonstrations that he has attended. Applying the ‘hair-trigger’ analysis set out in HB to those circumstances it is reasonably likely that ill treatment will be inflicted: this is the inevitable conclusion that the accepted facts, and the relevant country guidance leads to.
43. I cannot conclude with sufficient confidence that had the Judge properly addressed the matter, the outcome would have been the same. I find the Judge erred in the assessment of risk on return and so the decision is unsafe and cannot stand.

44. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. The representatives were both of the opinion that this was an appeal which is suitable to be retained in the Upper Tribunal.
45. I have taken into account the case of AEB v Secretary of State for the Home Department [2022] EWCA Civ 1512, where the Court of Appeal emphasised the importance of remitting a case where a party had been deprived of a fair hearing, the logic being that even if little further fact-finding is required, a party is still entitled to have a fair hearing before the First-tier Tribunal and then enjoy a right of appeal to the Upper Tribunal if need be, rather than being required to go straight to the Court of Appeal.
46. I have also taken into account the guidance in Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”

47. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b).
48. Given my findings I remake the decision and allow it on protection grounds.

### **Notice of Decision**

49. The decision of the First-tier Tribunal involves the making of a material error of law and is set aside.
50. The appeal decision is remade as follows: the appeal is allowed on protection grounds
51. There is an order for anonymity.

**N Haria**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

23 November 2023