IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005507

First-tier Tribunal No: PA/54826/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27th of February 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

TSH
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mt T Husssain, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Hybrid Heard at Manchester Civil Justice Centre on 20 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. To avoid confusion the parties are referred to herein as they were before the First-tier Tribunal.

2. This was a hybrid hearing. Mr Hussain appeared via video link (Teams) and Mr Tan and myself were in the courtroom at Manchester Civil Justice Centre. There were no connection difficulties.

3. By the decision of the First-tier Tribunal (Judge Parkes) dated 17.12.23, the respondent has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Sweet) promulgated 2.11.23 allowing the appellant's appeal against the respondent's decision.

4. Following the helpful submissions of both legal representatives, I reserved my decision to be provided in writing, and to be able to read the late-served Rule 24 reply and a 'note' on the SIAC case of D8 which Mr Hussain had provided to the First-tier Tribunal following the appeal at the judge's invitation, as referred to at [15] of the decision. That note was not received within 24 hours following the hearing, but I have looked at the decision and carefully considered the Rule 24 reply.

5. Although it was common ground that the appellant was of Kurdish ethnicity, his nationality was in dispute. His claim to be Iranian was not accepted by the respondent but no positive assertion was made that he was Iraqi, or any other nationality. Effectively, the respondent left the nationality for the Tribunal to decide. The burden was, therefore, on the appellant to demonstrate that he was Iraqi as he claimed, to the lower standard of proof. As noted at [16] of the decision, the linguistic report "confirms that the appellant is a native Kurdish Sorani speaker who speaks Mukri sub-dialect of Sorani, which is spoken in both Iran and Iraq. However, the expert confirms that he cannot rely on language analysis to determine the origin of the appellant". It follows that the expert language report could not resolve the issue of nationality.

6. At [17] of the decision, the First-tier Tribunal rejected the appellant's claimed version of events and concluded that save for the issue of *sur place* activities, he was not at risk on return to Iran but the judge did not go on to reach any conclusion on nationality, instead effectively providing two alternative decisions, one if he is Iranian and the other if he is Iraqi.

7. In summary, the respondent's grounds argue that the First-tier Tribunal erred by failing to make findings on the appellant's nationality, thereby allowing the appeal on a flawed basis amounting to a material error of law. The respondent also complains that the alternative decisions, between the appellant being Iranian or Iraqi, are each inadequately reasoned. Mr Tan further submitted that the error was compounded by a failure to consider relevant factors as to the risk on return. For example, it was suggested there was an inconsistency in finding a risk based on Facebook posts at [19] of the decision after having found at [18] that those posts could be deleted.

8. If the appellant is Iranian, the grounds submit that the judge failed to apply the guidance in XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 23 (IAC), where the burden of proof is on the appellant to demonstrate that the Iranian authorities are aware of his *sur place* activity and that he would be at risk on return. He would also have to satisfy the lower standard of proof that his political beliefs are genuinely held so that it would not be reasonable to expect him to supress his Facebook account or posts so as to avoid any risk on return arising from such posts.

9. On the other hand, if the appellant is Iraqi, then it is submitted that the Tribunal should have addressed the issue of identity documentation, determining whether he would be able to access such documentation to enable his safe return.

10. In granting permission, Judge Parkes, “with some hesitation,” granted permission, stating, “The evidence appeared to be ambiguous and the Judge considered the position in the alternative. It might be that some guidance about the approach in these circumstances would assist others in the future.”

11. I am satisfied that the decision of is inadequately reasoned and that the First-tier Tribunal failed to make sustainable findings on nationality and risk on return. As the burden of proof was on the appellant to demonstrate to the lower standard of a reasonable degree of likelihood that he would face persecution it was also for him to demonstrate that he was Iranian as claimed. Whilst this may have been a difficult task given the limitations of the evidence, the judge was required to make a finding one way or the other whether the appellant had demonstrated to the lower standard of proof that he was Iranian as claimed. That was never done and in the circumstances, the decision is fatally flawed for that reason alone. To be able to go forward, both parties needed a resolution of the issue of nationality. The judge left the issue hanging in the balance. Making findings of risk on return to Iran or alternatively Iraq was insufficient to discharge the task of the First-tier Tribunal.

12. I do not accept Mr Husssain’s submission that it was open to the judge to make alternative findings. In reality, no nationality findings were made at all. In any event, I am satisfied that the findings as to risk on return were inadequately reasoned, whether the consideration was for a return to Iran or to Iraq.

13. In relation to the finding of a risk on return to Iran, the judge concluded at [17] that there was no risk on return save as to the issue of the appellant’s *sur place* activities. As stated above, the judge found that Facebook posts could be deleted but failed to make any assessment as to whether his political views were genuinely held and whether he would be known to the Iranian authorities. Whilst at [18] the judge set out the claim of attending demonstrations, there is no finding as to whether that assertion is accepted. Also as stated above, it is difficult to see how the judge could base the risk on return on Facebook posts after suggesting that those posts could be deleted. There needed to be clear reasoning for the findings and the decision is devoid of any cogent reasoning.

14. At [20] of the decision the assessment of risk on the alternative of return to Iraq is contained in one single sentence. No reasoning provided for finding that the appellant does not have a CSID or INID. However, at [17] the judge appears to reject the appellant’s claim to have lost his Iraqi identity documentation and suggested that his sister and brother-in-law in Iraq could assist him with documentation. Both Mr Tan and Mr Hussain made submissions as to whether or not the appellant’s return to Iraq was feasible on the law and fact as it currently stands, but the important point remains that the judge failed to reason the findings, failing to set out why the appellant could not be assisted to obtain necessary identity documentation before returning to the IKR.

15. In summary, whilst brevity is generally commendable, the crucial issue of the claimed Iranian nationality is left entirely unresolved. Furthermore, the findings are made without adequate reasoning and in part appear inconsistent.

16. It follows that the decision cannot stand and must be set aside to be remade afresh, with no findings preserved.

17. Given that the appeal must be entirely remade, I am satisfied that this is a case which falls squarely within paragraph 7.2 of the Practice Direction and should be remitted to the First-tier Tribunal.

Notice of Decision

The respondent's appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside with no findings preserved.

The making of the decision in the appeal is remitted to the First-tier Tribunal to be made de novo.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 February 2024