



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

**Case No: UI-2023-005625**  
**First-tier Tribunal No:**  
**PA/52475/2022**  
**IA/06511/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 07 October 2024**

**Before**

**UPPER TRIBUNAL JUDGE MEAH**

**Between**

**SA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for Home Department**

Respondent

**Representation:**

For the Appellant: Mr Samra, Harbans Singh Solicitors

For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

**Heard at Field House on 5 September 2024**

**DECISION AND REASONS**

**Introduction and Background**

1. The appellant appeals against the decision of First-tier Tribunal Judge Broe promulgated on 12 February 2023 (“the decision”). By the decision, the Judge dismissed the appellant’s appeal against the respondent’s decision dated 24 June 2022 refusing his claim for asylum/protection alongside also refusing his human rights claim.

**The Grounds**

2. The grounds raised challenging the decision were as follows:

“1. The Appellant seeks permission to appeal from the First Tier Tribunal to appeal to the Upper Tribunal on the following grounds:

2. The First Tier Judge Broe erred on a point of law.

3. The respected Tribunal Judge has made no material findings on the Appellants claimed involvement with the KDPI in Iran or his friendship with Kamal or being a Kolbar leading to A fleeing in Iran. Such core findings would have been fundamental in assessing risk on return. At no point during the Tribunals findings of fact is this assessed.

4. Further the respected Tribunal Judge erred in Paragraph 30 of the determination as to whether or not the Appellant has sought to manipulate the asylum system with surplace activities is not a material consideration as there is no requirement of good faith as per Danian CO/30274/97. This assessment may have clouded the Tribunals Judgement and assessment of the Appellants claim.

5. The Tribunal Judge erred in his assessment as they fail to appreciate the current situation in Iran and the excessive clamp down by the Iranian state on any form of political dissent or demonstrations. Mere presence at demonstrations in the UK regardless of motive or logic is sufficient to warrant an interest in a Kurdish returnee without a valid passport combined with illegal exit from Iran. The 'hair-trigger' approach in HB (Kurds) Iran CG [2018] means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.

6. The Tribunal Judge does not explain at Paragraph 32 why the Appellants account against the background has been rejected and in doing so has failed to give adequate reasoning for rejection or acceptance of the evidence. Is the Tribunal referring to the surplace activities or the activities in Iran with KDPI or A's friendship with Kamal or being a Kolbar? This uncertainty and unclarity renders the determination unsafe as a whole.

7. In view of the grounds of appeal it is humbly submitted that the findings are flawed rendering the determination unsafe and unsustainable and that the matter should be returned to the First Tier Tribunal to be heard afresh."

3. Permission to appeal was granted by First-tier Tribunal Judge G Clarke on 02 March 2023, in the following terms:

"1. The application is in time.

2. The grounds assert that the Judge erred in:

- (i) failing to make findings on material matters, such as the Appellant's claimed involvement with the KDPI in Iran.
- (ii) the assessment of the Appellant's sur place activities.
- (iii) the assessment of risk on return in light of the current situation in Iran.

3. It is arguable that the Judge did not make any findings on the Appellant's alleged involvement in Iran with the KDPI. This aspect of the Appellant's claim is material.

4. It is also arguable that the Judge may have placed too much weight on what they found was the "Appellant's sur place activities to be a cynical attempt to manipulate the asylum system" (Paragraph 30). It is well established in the case law that opportunistic sur place activities are not an automatic bar to a successful claim for asylum. Even when reading the decision as a whole, it is arguable that the Judge may not

have made adequate findings on the factors set out in BA (Demonstrators in Britain – risk on return) Iran 2011 UKUT 36.

5. Permission to appeal is GRANTED.”

### **Documents**

4. I had before me a composite bundle containing all necessary documents. This also included the bundles relied upon by the parties in the First-tier Tribunal.

### **Hearing and Submissions**

5. The hearing was conducted with myself sitting at Field House, whilst the representatives attended via Cloud Video Platform.

### **Discussion and Conclusions**

6. Ms Rushforth stated at the outset of the hearing that the respondent conceded the grounds of challenge and accepted the errors highlighted therein.

7. I am satisfied Ms Rushforth’s concession was fairly and sensibly made. I informed the parties that I did not seek to go behind the respondent’s concession, and I accept that there were material errors of law in the Judge’s decision as argued in the grounds seeking permission.

8. I therefore set aside the decision of the Judge.

9. Applying **AEB [2022] EWCA Civ 1512** and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC)**, I have considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement. I consider, however, that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process.

### **Notice of Decision**

10. The decision of the First-tier Tribunal sent to the parties on 12 February 2023, involved the making of a material error of law. It is set aside in its entirety.

11. The appeal is remitted back to the First-tier Tribunal at Birmingham to be heard by any judge other than First-tier Tribunal Judge Broe.

### **Anonymity**

12. The Anonymity Order made by the First-tier Tribunal is maintained.

***S Meah***  
**Judge of the Upper Tribunal**  
**Immigration and Asylum Chamber**

**04 October 2024**