IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-001498

First-tier Tribunal No: PA/52505/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 4th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MH
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss. N. Quadi, Counsel instructed by Fadiga & Co.
For the Respondent: Mr. C. Avery, Senior Home Office Presenting Officer

Heard at Field House on 23 May 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, 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. This is an appeal by the appellant against a decision of First-tier Tribunal Judge Chana (the "Judge"), dated 12 March 2024, in which she dismissed the appellant's appeal against the respondent's decision to refuse his protection claim.

2. I make an anonymity direction, continuing that made in the First-tier Tribunal, given that this is a protection claim.

3. Permission to appeal was granted by First-tier Tribunal Judge Fisher in a decision dated 9 April 2024 as follows:

> "Nevertheless, it is arguable that the Judge has conflated the conversation between the Appellant and the stranger who approached him in the mountains with the conversation which the Appellant had with the person to whom he claimed to have delivered an envelope in his village. Furthermore, the Judge made reference to background material which was said to undermine the claim that the KDPI would make use of leaflets, and that political parties in the IKR would make use of children or young persons. However, she fails to identify that material, which appears to be contradicted by the expert's report.
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> 4. In all of the circumstances, it is arguable that the Judge has materially erred in her consideration of the evidence. I therefore grant permission to appeal. As all grounds relate to the evidence and are linked, I grant permission on all issues raised in the grounds."

4. There was no Rule 24 response.

The hearing

5. The appellant attended the hearing with his Key Worker.

6. At the outset of the hearing Mr. Avery conceded that the decision involved the making of material errors of law. I set the decision aside in its entirety and remitted it to the First-tier Tribunal to be remade.

Error of Law

7. I will first address Ground 2, which Mr. Avery accepted was made out. He referred to the Judge's findings that the KDPI would not have used a child to work for them. He accepted that it was not clear on the basis of what evidence the Judge had made this finding. Further, he stated that it had not been part of the respondent's case. He accepted that this affected the Judge's credibility findings, which therefore could not stand.

8. At [11] and [12] of her decision the Judge states:

> "I do not find it credible that the appellant would be asked to transport an envelope with leaflets, considering the background evidence, that the KDPI have their own highly organised supporters within Iran to carry out missions such as this minimising the risk of exposure. The PDPI (sic) only crosses the border when absolutely necessary but instead utilise armed units to conduct handovers with secret cells in Iran. Furthermore, the death penalty and long-term imprisonment for those affiliated with Kurdish political groups their activities are conducted in secrecy. I therefore find given the level of secrecy employed by Kurdish political

> groups in Iran, it is highly unlikely and risky that a stranger would approach the appellant, who was a child, to complete a mission for them.
>
> It is also inconsistent with background evidence that KDPI would need to physically transport leaflets. Background evidence shows that the political material is produced in Iraq and is sent to members in Iran electronically to print and distribute. The KDPI has a sophisticated technological infrastructure including a weekly magazine, radio stations, TV channel, social media and website to communicate with cells and supporters. Therefore there would be no reason to transport leaflets in an A4 size envelope."

9. The Judge has cited no evidence for her finding that the KDPI would not use a child. Neither has she cited any evidence for her finding that there would be "no reason to transport leaflets in an A4 sized envelope". As submitted at [12] to [14] of the grounds of appeal, irrespective of her criticisms of his report, the expert had cited authorities to confirm that Kurdish minors had been accused of and arrested for collaboration with Kurdish political groups. There is no reference to this evidence, or to any other evidence which contradicts it.

10. I find that the Judge has erred in her finding that it would be unlikely that the KDPI would have approached the appellant being a child. Given that this goes to the core of the appellant's account I find, as accepted by Mr. Avery, that the credibility findings cannot stand.

11. For completeness, I find that Ground 1 is also made out. I find that the Judge has conflated the appellant's evidence of meeting the stranger who gave him food, and subsequently the parcel, with his evidence of the individual to whom he delivered the parcel. At [10] she states:

> "The crux of the appellant's claim is that he delivered a package for a stranger and thereby came to the adverse attention of the Etellat as the envelope contained KDPI material, in the form of leaflets. However the appellant did not know the name of the stranger or where he came from. I do not find it credible that a stranger would come to the mountains and give food to the appellant but he would have no knowledge of his name or where he was from. This is even more incredible given that the appellant claims that he had a 10 minute conversation with the stranger. The appellant said at question 103 of his asylum interview, and that the man told him that he was in a hurry. I find that 10 minutes is sufficient time for the appellant and the stranger to exchange names, even if the stranger was to give him a false name. Even taking into account the appellant's age at the time, I do not find it credible that he would take food from the stranger and not ask him his name and whereabouts."

12. As set out in the grounds, this was not the appellant's evidence. I find that the Judge has not properly understood the appellant's evidence in relation to the issue at the core of his account. I find that this error in failing to properly consider the appellant's evidence is material and goes to the Judge's credibility findings.

13. Ground 3 refers to the Judge's treatment of the expert evidence. It is submitted that the Judge's criticism of his expertise is "unclearly stated and hard to follow", and the assertion that his evidence lacks impartiality is not particularised, with reference to [31].

14. The Judge states at [31]:

> "I have found the appellant not credible and credibility is an issue for the Tribunal to decide and not an expert. I find that the expert has not been impartial and has relied on cases which support the appellant's case and has made no reference to cases which do not. The expert has given his opinion on the bases that the appellant is credible and that his story is true. I have found that it is not."

15. The Judge found at [28] that Dr. Kahki "is an expert on the Iranian law and procedure". In his report Dr. Kahki stated at [7]:

> "I will begin the substantive analysis of [the appellant's] account by outlining the Iranian law relating to freedom of expression and the national security implications when boundaries of expression are breached by individuals. I will then discuss the legal liability of accomplices/associates in the context of political/national security offences, the treatment such individuals will receive at the hands of the Iranian authorities during the course of investigation and subsequent punishment."

16. Given that the Judge accepted that Dr. Khaki was an expert on Iranian law, and given his stated approach, she has failed to give reasons for why she considers that he has not been impartial. She has failed to give his report proper consideration and instead has focused at [29] and [30] on other cases in which he has given evidence, without full consideration of this particular report, and the evidence within it. I find that her treatment of the expert evidence involves the making of a material error of law.

17. I find that the Judge's consideration of the evidence involves the making of material errors of law. I find that the grounds are made out, and that the findings cannot stand. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade I have taken into account the case of 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."*

18. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). I find, as accepted by Mr. Avery, that there are no findings which can be preserved. Therefore, given the extent of fact-finding necessary, it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

19. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.

20. The appeal is remitted to the First-tier Tribunal for a de novo hearing.

21. The appeal is not to be listed before Judge Chana.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 May 2024