



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002256

First-tier Tribunal No: PA/01719/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18 September 2024**

Before

UPPER TRIBUNAL JUDGE MEAH

Between

**AK
(ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for Home Department

Respondent

Representation:

For the Appellant: Ms G Patel, Counsel, instructed by Parker Rhodes Hickmott Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 5 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant has been granted anonymity, and is to be referred to in these proceedings by the initials AK. No-one shall publish or reveal any information, including the name or address of the claimant, likely to lead members of the public to identify the claimant.

Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction and Background

1. The appellant appeals against the decision of First-tier Tribunal Judge Hena promulgated on 11 April 2024 (“the decision”). By the decision, the Judge dismissed the appellant’s appeal against the respondent’s decision dated 31 December 2021, refusing his claim for asylum/protection.

The Grounds

2. The grounds raised challenging the decision are that the Judge made material mistake of fact at [3]-[4] of her decision. The Judge failed to consider material matters and failed to give proper reasons and she also failed to consider background country evidence. In summary, the Judge stated the appellant’s claim was one of imputed political opinion and religion when it was only on imputed political opinion. She misgendered the appellant by referring to him as ‘she’ and she stated his claim to be made by way of further submissions when he was claiming protection for the first time and his was not a ‘further submissions’ case. It is further stated that the Judge noted the respondent’s submissions, but then failed to make any findings on these. It is also stated that the Judge failed to give any proper reasons as to why the group he feared would not look for the appellant given that it was claimed that he had assisted two of their former members escape checkpoints. The Judge had also failed to give any proper reasons as to why the appellant was not identifiable by the group he feared if he had given his name to the group’s members whom he had assisted, whom later punished for trying to break the group’s regulations. Finally, it was stated that the Judge had failed to consider background evidence that had been placed before her that supported the appellant's account.
3. Permission to appeal was granted by First-tier Tribunal Judge Buchanan on 03 May 2024, in the following terms:

“1. The appellant seeks permission to appeal, (in time), against a Decision of a FTTJ (Judge Hena) who, in a Decision and Reasons promulgated on 11 April 2024, dismissed the appellant’s appeal.

2. The Grounds of Appeal [GOA] contend that the FTTJ arguably erred in law because (1) making material mistakes of fact; (2) failed to consider material matters/failed to give proper reasons; (3) failed to consider the background evidence;

3. GOA(1): having regard to the other Grounds of Appeal which essentially argue that there is inadequate reasoning in the Decision, it is arguable in that context that the matters raised in GOA(1) may be arguable in support of claimed errors of law GOA(2): it is arguable, as contended, that the FTTJ fails adequately to explain the Decision about identity. At #25, the FTTJ concludes that there is ‘no evidence as to what made him so easily identifiable’; but it is arguable that the FTTJ having just mentioned the evidence available in the case about ‘giving his name to the PKK members” and about the provision of a physical ‘description’ of him it cannot be said that there was ‘no’ evidence. GOA(3): There is little reference to country background information by the FTTJ, but it is arguable by reference to #21 of Grounds that the

operative part of the Decision at #24 and #25 are so brief and absent on detailed reasoning that there is error of law. It is arguable by reference to the Grounds of Appeal that there may have been error of law in the Decision as identified in the application. I grant permission to appeal.”

Conclusions

4. I had before me the appellant’s composite bundle which included the bundle before the First-tier Tribunal together and a core bundle of documents relating to the appeal including the respondent’s bundle.

5. Mr Walker referred me to the Judge’s findings made at [24] and [25] as follows:

“24. I accept that the appellant would not be able to flee with documentation regarding the risk to him and do not hold his lack of documentation against him. However, whilst I accept that that the appellant lives in area that would have a PKK base due to the location being near the border of Iran, even on the low standard of proof I do not find the appellant’s account be credible. I do not find it to be reasonably likely that the appellant simply informing the PKK members where the village was would be sufficient to be seen as someone who is against the PKK. The PKK punished the members severely for attempting to break their rules and it does not seem likely they would spend their time and resources on the appellant who played such a minor part in what occurred.

25. I accept the appellant’s interview with the respondent was very brief but there are issues with the core of the appellant’s account such as how the PKK knew his identity as being the shepherd who assisted the PKK members when there were other shepherd in the same area as him. I do not accept the submissions that by giving his name to the PKK members that made him so identifiable. I do not accept a description of the appellant would have made him easily identifiable – there was no evidence as to what made him so easily identifiable and distinguished from all the other shepherds who were there...”

6. Mr Walker submitted that these findings were vague and confused insofar as facts stated in these paragraphs appeared either mixed or conflated. I clarified whether he was conceding that there were, therefore, material errors of law in the Judge’s decision. Mr Walker conceded that there were such material errors of law.

7. I am satisfied that this is a concession which was fairly and sensibly made. The Judge’s decision is brief, and the findings are confined to the two short paragraphs referred to by Mr Walker. There is a paucity of reasoning in the Judge’s overall decision, and she has made basic errors of fact. This shows a lack of care and anxious scrutiny which the Judge was required to apply in deciding the appeal, all of which amount to material errors of law.

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 24 April 2024, 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 sitting at Birmingham to be heard by any judge other than First-tier Tribunal Judge Hena.

S Meah

Judge of the Upper Tribunal
Immigration and Asylum Chamber

05 September 2024