IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-002868
UI-2024-003103

First-tier Tribunal No: PA/58324/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 22nd of October 2024

Before

UPPER TRIBUNAL JUDGE HOFFMAN

Between

KS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Greer of Counsel, instructed by Parker Rhodes Hickmotts
For the Respondent: Ms C Newton, Senior Home Office Presenting Officer

Heard remotely at Field House on 15 October 2024

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 appeals with permission the decision of First-tier Tribunal Judge Ruck promulgated on 4 May 2024 dismissing his appeal against the respondent's decision dated 20 September 2023 to refuse his protection claim.

Background

2. The appellant is a citizen of Iran of Kurdish ethnicity. He arrived in the UK clandestinely on 18 July 2021 and claimed asylum the same day. He claimed that he feared persecution in Iran because the authorities had discovered that he and his brother illegally made wine and that their business associate had run over several soldiers while trying to evade them. The appellant also claimed that he could not return to Iran because he had taken part in demonstrations against the regime in the UK.

3. In the decision dated 20 September 2023, the respondent refused the appellant's protection claim. His appeal against that decision was heard by First-tier Tribunal Judge Ruck ("the judge") on 16 February 2024 and dismissed on 4 May 2024.

The grounds of appeal

4. The appellant was granted permission to appeal the judge's decision on four grounds by First-tier Tribunal Judge F E Robinson on 19 June 2024. The appellant was subsequently granted permission to rely on two further grounds by Upper Tribunal Judge Blundell on 6 August 2024.

5. The appellant's grounds are as follows:

(1) The judge gave undue weight to immaterial considerations by relying on her own independent view of the inherent probability of the appellant's account.

(2) The judge gave undue weight to immaterial considerations by drawing an adverse inference from the failure by the appellant to produce certain forms of evidence.

(3) The judge acted unfairly in criticising the appellant for not having given an explanation as to what happened to his wine-making tools and equipment when this was not a point taken against him by the respondent and it was not put to the appellant during the hearing.

(4) The judge made a perverse and unreasoned departure from the country guidance in relation to the penalty for illegal alcohol production.

(5) The judge made a mistake of fact in finding that the appellant had not disclosed his Facebook account by using the "Download Your Information" function.

(6) The judge made a perverse finding that the appellant did not hold any political opinions.

Findings – Error of Law

Ground 1: Giving undue weight to immaterial considerations

6. At [13], the judge found that the appellant had provided a sufficiently detailed account of how he and his brother produced wine. However, the judge was not satisfied that they had come to the adverse attention of the Iranian authorities

because of this. In reaching that finding, the judge found that it was implausible that the Iranian authorities would tell the appellant's village mukhtar that he and his brother were under investigation. At [18], the judge also found it to be implausible that the Iranian authorities would be interested in the appellant and his brother because the running over of the soldiers by their business associate did not involve them.

7. The appellant argues that neither of these findings were open to the judge on the basis that the judge reached them by impermissibly speculating on "how life goes on in Iran" with no reference to the country evidence.

8. In response, the respondent argues that the judge was entitled to make those findings. She submits that the judge took into account that there was no witness statements from the mukhtar or the appellant's sister confirming the appellant's version of events and, furthermore, the appellant had not sought to challenge the judge's findings at [14] regarding the inconsistencies in his evidence.

9. On careful consideration, I am satisfied that the judge's finding that it is implausible that the Iranian authorities would tell the village mukhtar that the appellant and his brother were under investigation can only be attributed to speculation on her part given the lack of any reasons or reference to the country evidence. It is trite law that judges should be cautious about imposing their views on how matters are likely to be conducted in other countries, and that would include how the Iranian authorities go about their criminal investigations.

10. I am also satisfied that the judge's finding at [18] that it was implausible the appellant and his brother would be wanted over the actions of their business associate is also based on speculation. The judge does provide a brief explanation for reaching that finding: that the "driving incident had nothing to do with the Appellant" who was not nearby when it happened. However, the appellant's case was that their associate was encountered by soldiers outside of their orchard and he had panicked and run over them, killing two. The appellant also claimed that their associate was subsequently arrested and may have passed the names of him and his brother to the authorities. There is no indication that the judge considered whether the authorities would be interested in the appellant and his brother on account of them working with their associate in the business of producing illicit alcohol and, in the absence of any reference to country evidence, I am satisfied that she impermissibly made her finding based on her own views of how the authorities in another country might act.

11. The respondent argues that the judge's findings were, in any event, immaterial because she had also relied on inconsistencies in the appellant's evidence at [14]. In fact, only one inconsistency was highlighted in [14] regarding the appellant's evidence about how he discovered his brother had been killed by the authorities and, in my view, that does not render the judge's findings at [14] and [18] immaterial. To the contrary, I am satisfied that the judge's findings in relation to whether the authorities would have told the mukhtar they were investigating the appellant, and whether the authorities would have been interested in the appellant and his brother, were plainly material to the judge's conclusion at [19] that the appellant was not at risk on return to Iran on account of the events he had set out. I am not satisfied the judge's findings would have been the same had she not made those errors.

12. This ground is therefore made out for the reasons argued by the appellant.

Ground 2: Undue weight given to immaterial considerations by drawing an adverse inference from the failure by the appellant to produce certain forms of evidence

13. At [13] and [15], the judge drew adverse inferences from the appellant's failure to obtain a witness statement from his sister in Iran or a copy of his brother's death certificate. The appellant argues that it is trite law that it is unnecessary for an asylum applicant to provide corroborative evidence in support of their claim. He also argues that given the appellant's sister's illiteracy and the likelihood of her being monitored by the Iranian authorities, it was not open to the appellant to obtain a witness statement from her. Furthermore, the appellant claims that there is no reason to suggest a death certificate exists for his brother.

14. In reply, the respondent argues that the judge was entitled to take into account the absence of corroborating evidence which might reasonably be expected from the appellant: see ST (Corroboration – Kosovo) Ethiopia [2004] UKAIT 00119 at para 15.

15. I am satisfied that the judge was rationally entitled to take into account the absence of a supporting statement from the appellant's sister or a death certificate for the appellant's brother. The appellant did not claim that he had no way of contacting his sister in Iran and, in the circumstances, the judge was entitled to assume that he might reasonably be expected to obtain the evidence in question in order to aid his appeal. Furthermore, any suggestion in the appellant's grounds of appeal that he would be unable to take at statement from his sister because the Iranian authorities might be monitoring her after several years or that no death certificate exists are no more than speculation on the appellant's part. Neither is it a good point that the appellant's sister is illiterate. The appellant also claims to be illiterate, and he has been able to make a statement with the support of his solicitors.

16. I am therefore satisfied that this ground does not disclose a material error of law.

Ground 3: Procedural unfairness

17. At [17], the judge found that the appellant had

> "not produced any evidence of what happened with the tools and equipment at the orchard used to produce the wine. Surely in accordance with the Penal Code that will have been confiscated by the authorities if they attended the orchard as he claims to arrest the Appellant and his brother for illegal alcohol production."

18. The appellant argues that it was procedurally unfair for the judge to take this point against him because it had not been raised by the respondent or put to him in oral evidence. The respondent, however, argues that this was not procedurally unfair because the burden is on the appellant to prove his case and, in any event, the error is not material.

19. The respondent is of course correct when she says that the burden is on the appellant to prove his case which, of course, is to the lower standard. However, it is difficult to understand how the appellant was expected to prove his case regarding what happened to the wine-making tools and equipment when this had not been raised in the decision letter and he was not cross-examined on the

point. I am therefore satisfied that it was unfair for the judge to take this point against him. When taken cumulatively with the errors identified in Ground 1, I am also satisfied that this error was material as it inevitably also formed part of the judge's reasons for rejecting the appellant's claim at [19].

Ground 4: Perverse and unreasoned departure from the country guidance in relation to the penalty for illegal alcohol production

20. At [16], the judge quoted from para 4.2.6 of the CPIN "Iran: Smugglers (23 February 2022)" which quoted Article 702 of the Iranian penal code regarding offences for alcohol use. Article 702 says that

> "Anyone who produces or buys or sells or proposes to sell or carries or keeps alcoholic beverages or provides to a third person, shall be sentenced to six months to one year of imprisonment and up to 74 lashes and a fine five times as much as the usual (commercial) value of the aforementioned object".

21. However, the judge then went on at [20] to say:

> "Furthermore, the Penal Code 702 (as referred to above) clearly states the penalty for illegal alcohol production is a fine or imprisonment. I am not persuaded by the Appellant's submissions that punishment for illegal production of alcohol would amount to persecution even if he did come to the attention of the authorities."

22. The respondent accepts that the judge made an error of law at [20] by failing to have regard to the fact that Article 702 also provides for a punishment of flogging, however, she argues that the judge's error is immaterial as the judge had already concluded that the appellant was not at risk on return on account of having illegally produced alcohol. Mr Greer submitted that whether this error was material depends on whether any of the other grounds are made out.

23. Given that I have already found that Ground 1 and 3 are made out, it is not necessary for me to decide whether the error identified in this ground is material.

Ground 5: Mistake of fact in finding that the appellant had not disclosed his Facebook account by using the "Download Your Information" function

24. The appellant argues that contrary to a finding made by the judge at [24], he had disclosed the entirety of his Facebook account using the Download Your Information function. The respondent argues that the material provided in the appellant's First-tier Tribunal bundle (much of which is not translated) does not accord with what one would expect where a person has used the Download Your Information tool. The respondent also argues the appellant had not challenged the judge's findings at [24] that it was unlikely his Facebook account was being monitored and at [30] that he could be expected to delete his Facebook account on return to Iran.

25. This was not a ground pursued with any vigour by Mr Greer before me and for the reasons argued by the respondent I am satisfied that, based on the evidence before her, the judge was rationally entitled to make the findings that she did at [24] and [30].

Ground 6: Perverse finding that the appellant did not hold any political opinions

26. At para 13 of his grounds, the appellant argues that the judge's findings at [28] that he does not hold *any* political views is perverse. The appellant asserts that it is "inherently improbable that any individual would lack any political views whatsoever".

27. However, I find that the appellant misstates the judge's findings at [28]. What the judge said was, "I find there is no genuinely held political opinion in this case". That finding must be read in the context of the findings made at [22] to [27] and [29] to [31] that the appellant's sur place activities were not carried out on the basis of any genuine motivation to be politically engaged, but as a way of bolstering his asylum claim. That finding was rationally open to the judge.

28. I am therefore satisfied that his ground does not disclose a material error of law.

Conclusions – Error of Law

29. For the reasons given above, I accept that Grounds 1 and 3 are made out.

Remaking

30. As the error of law identified in Ground 3 has deprived the appellant of a fair hearing, applying paragraph 7.2 of the *Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal*, I am satisfied that remittal for a de novo hearing is the appropriate course of action.

Notice of Decision

The decision of the First-tier Tribunal involved the making of material errors on a point of law.

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

The remaking of the decision in the appeal is remitted to the First-tier Tribunal at Manchester, to be remade afresh and heard by any judge other than Judge Ruck.

M R Hoffman

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17th October 2024