



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

Case No: UI-2024-003421

First-tier Tribunal No: PA/00930/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

6<sup>th</sup> December 2024

**Before**

**UPPER TRIBUNAL JUDGE PINDER**

**Between**

**M A K**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Eaton, Counsel instructed by Leonard Solicitors LLP.  
For the Respondent: Mr S Walker, Senior Presenting Officer.

**Heard at Field House on 7 November 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 the permission of First-tier Tribunal Judge Dainty against the decision of First-tier Tribunal Judge Buckwell. By his decision of 24<sup>th</sup> June 2024, Judge Buckwell ('the Judge') dismissed the Appellant's appeal against the Respondent's decision to refuse his protection and human rights claim.

## **Background**

2. The Appellant is a citizen of Iran, of Kurdish ethnicity. He entered the UK on 10<sup>th</sup> October 2022 and claimed asylum on arrival. The Appellant was aged approximately 16 years old when he arrived and his age was not disputed then and has not been disputed since. Upon his arrival, the Appellant was placed in the care of the local authority as an unaccompanied asylum-seeking child.
3. The Appellant has claimed that his father supported the KDPI and that he assisted his father by unloading and loading boxes of KDPI leaflets that his father would collect and later deliver. On one occasion, he had also assisted his father in delivering the leaflets to a person in Sardasht, where the Appellant lived with his family. When away from the home, the Appellant was contacted by his mother, who informed him that his father had been arrested and detained, that their home and shop had been raided and the political leaflets had also been found. The Appellant did not return home and he made arrangements with a family member to leave Iran.
4. The Appellant's protection claim was refused by the Respondent on 13<sup>th</sup> June 2023. In summary, the Respondent did not accept the Appellant's account to have assisted his father with the leaflets. The Respondent considered that the Appellant should have been able to give dates of when he had assisted his father with the leaflet boxes, where these were distributed and when he had helped him deliver the leaflets in Sardasht. The Respondent had also stated that it was not credible that the Appellant's mother was not also arrested, alongside the Appellant's father, and that it was reasonable to expect the Appellant to be able to describe the contents of the leaflets.
5. The Appellant appealed against that decision and his appeal was heard by the Judge on 7<sup>th</sup> June 2024. The Appellant pursued his appeal on the basis that he would be at risk on return to Iran in breach of the Refugee Convention on grounds of his actual/imputed political opinion. The Appellant also put forward a *sur place* claim based on his political activities undertaken in the UK.
6. Before the Judge, the Appellant was represented by Ms Bayati, Counsel and the Respondent by a Presenting Officer. The Judge heard from the Appellant himself and following the parties' respective oral submissions, the Judge reserved his decision.

## **The Decision of the First-tier Tribunal Judge**

7. In his reserved decision at [12]-[41], the Judge recorded and provided a detailed summary of the Appellant's oral evidence at the hearing. The parties' respective oral submissions are then recorded at [43]-[65] and the Judge summarised the applicable legal framework at [66]-[69].
8. The Judge's findings on the Appellant's Refugee Convention protection claim start at [71]. The Judge had also recorded at [8] that he agreed with Ms Bayati that the Appellant should be treated as a vulnerable witness. The Judge returned to this at [73] where he acknowledged and confirmed that he strongly took into account that the Appellant was a minor when he was interviewed as part of his protection claim and that he had been a minor when his application was made. The Judge continued to note at [73] that "(n)evertheless, he was professionally

represented” - a matter I return to below in my analysis of the Appellant’s grounds of appeal.

9. After recording the Appellant’s accounts of what was done with the leaflets, as contained in his interview and separate written statements, the Judge found at [79] that there was a contradiction in the Appellant’s account relating to whether the leaflets were placed in envelopes or plastic bags. The Judge stated that this contradiction was very significant in his assessment of the credibility of the evidence given by the Appellant and that he was “not persuaded at all by the Appellant that the alternative version for the ‘packaging’ of the leaflets forms part of a truthful account”.
10. At [80], the Judge went on to consider another issue that concerned him, namely that the Appellant had indicated in his statement that he had participated in the delivery, with his father, to a third party on just one occasion. The Judge compared this account with what the Appellant had stated in his oral evidence, which was recorded by the Judge at [80] as being that the Appellant had been involved in such an activity on between one and three occasions. The Judge then found as follows:

If the appellant had been involved in transferring and delivering leaflets, it is totally inconceivable, even then as a juvenile, that the appellant would have forgotten say, two other occasions. That discrepancy also vary significantly weakened the credibility of the overall account by the appellant.

11. On those two basis alone, which the Judge found to be of very high significance to the Appellant’s overall credibility, the Judge concluded that the Appellant’s account had not been established and that he would not be at risk of the authorities because of his father, or anyone else, and because of the Appellant’s involvement in pro-KDPI activities prior to leaving Iran.
12. The Judge then went on to consider and reject the Appellant’s *sur place* claim at [83] and the Appellant’s human rights claim at [85]-[86]. The Judge dismissed the Appellant’s appeal on all grounds.

### **The Appeal to the Upper Tribunal**

13. Permission was granted by First-tier Tribunal Judge Dainty, who considered that the grounds raised arguable errors of law. The Appellant had first submitted that the Judge had erred in law as a result of a complete failure to have regard to, or to consider the contents of, the psychiatric report before him and relied upon by the Appellant. It was submitted that this was plainly material to the credibility assessment carried out, the Judge’s approach to credibility, the Applicant’s diagnosis and causation of his PTSD (as diagnosed), his reasons for refusing treatment, and to the impact of removal to Iran. Ms Bayati, the author of the grounds of appeal and the Appellant’s Counsel before the Judge, confirmed that the Judge had specifically been requested to commence any assessment of credibility with consideration of the report. It was submitted that this would assist the Judge by providing guidance on *inter alia* the impact of his mental state and his illiteracy on his ability to provide a consistent account and recollection of events. Despite this, it was submitted that the Judge had made no reference to the report nor had made any findings on it.

14. In the Appellant's second ground, Ms Bayati addressed a factual mistake that it was said the Judge had made in recording the Appellant's oral evidence on how many times he had assisted his father in delivering the leaflets and what type of packaging the leaflets had been placed in. It was further submitted that the Judge had also erred in failing to take into account the Appellant's stated memory difficulties, his diagnosis (where this ground overlaps with the first ground) and the fact that the Appellant had provided his accounts each time through an interpreter.
15. The third ground of appeal pleaded was effectively the same submissions made under the first ground in so far as the Judge had also failed to consider and make findings on the Appellant's psychiatric report as relevant to his Article 8 claim – a material consideration in light of the Appellant's age and diagnosis of PTSD.
16. There was no response before me from the Respondent pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
17. At the start of the hearing, Mr Walker confirmed that although there was a clear record made by the Judge that he was treating the Appellant as a vulnerable witness ([8]) and that he had considered the report of Dr Verghese in advance of the hearing at [9], the Respondent conceded that there was simply no engagement with this evidence in the Judge's decision. Mr Walker very appropriately confirmed that it was not correct or fair in the circumstances that the Judge proceeded to make adverse findings against the Appellant without consideration of material and relevant evidence addressing the issue of the Appellant's vulnerability and matters that the Judge ought to have considered in relation to the Appellant's ability to recount certain events when a minor and with a diagnosis of PTSD. This was pursuant to the *Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant*.
18. In light of the parties' agreement, I confirmed that I would allow the Appellant's appeal on the basis that the Judge had materially erred in law by failing to consider and make findings on the psychiatric report relied upon by the Appellant. I confirmed that the Respondent's concession was entirely appropriate since the report was relevant to the issues in dispute, as was pleaded in the Appellant's grounds. Those issues included the credibility of the Appellant's account and whether his ability to provide that account was impacted upon by his vulnerabilities. It was also relevant to his Article 8 ECHR claim.
19. If a Tribunal fails to follow the above-mentioned guidance and fails to consider how a witness' vulnerability may impact the evidence they have given, this is capable of giving rise to a ground of appeal, as confirmed by Sir Ernest Ryder, then-Senior President of Tribunals in [AM \(Afghanistan\) v Secretary of State for the Home Department \[2017\] EWCA Civ 1123](#). Sir Ryder referred to the Joint Presidential Guidance and the Practice directions, stating that "*the directions and guidance contained in them are to be followed... Failure to follow them will most likely be a material error of law*".
20. Whilst the Judge did agree to treat the Appellant as a vulnerable witness, as confirmed by him, at [8], there is otherwise no indication that he in fact did so within his assessment of the Appellant's evidence and his findings set out at [71]-[82]. I also consider that the Judge may have implied that legal representation would temper or otherwise protect the Appellant and his vulnerabilities at [73]. It is also appropriate to note that in finding the Appellant's accounts to be

contradicting on the issue of whether the leaflets were placed into envelopes or bags, the Judge did not appear to consider whether those accounts might have been affected by the giving of evidence through various interpreters, between the Appellant's interviews, written statements and during the appeal hearing.

21. I am satisfied therefore that the Judge has materially erred in law and the Judge's decision to dismiss the appeal is therefore set aside pursuant to s.12(2) (a) of the Tribunals, Courts and Enforcement Act 2007 for the reasons above.
22. Both parties agreed that since a decision needs to be re-made in respect of the core of the Appellant's protection claim and his claim under Article 8 ECHR, pursuant to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal at [7.2], it is appropriate to remit the matter back to the FtT for a hearing *de novo*. This is considering the level of fact-finding that will need to be re-made.

### **Notice of Decision**

23. The decision of the First-tier Tribunal is set aside. No findings of fact are preserved.
24. The Appeal is remitted to the First-tier Tribunal for a hearing *de novo*, before any Judge of the First-tier Tribunal, other than Judge Buckwell.

Sarah Pinder

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

04 December 2024