IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005500

First-tier Tribunal Nos: PA/50901/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 27th of February 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

AH
(ANONYMITY ORDER MAINTAINED)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms J Elliott-Kelly, Counsel; Fisher Jones Greenwood LLP
For the Respondent: Ms H Gilmore, Senior Home Office Presenting Officer

Heard at Field House on 31 January 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 is a citizen of Iran, born on 25 September 2004.

2. The basis of his protection and human rights claim is that he is from Tirkesh, near Kowpar, his father worked as a kolbar and the Appellant sometimes went with him on some of his kolbar trips. His father asked him to help with putting up

KDPI literature (leaflets/posters) in their village one night, after which armed forces came to the family home, found guns in the stable and his father was arrested. The Appellant said his mother told him that the Appellant had also been identified and so the Appellant went to his maternal uncle who took the Appellant to meet up with two men who then took the Appellant into Turkey, eventually arriving in the UK via lorry.

3. The Appellant applied for asylum on 9 July 2020 when he was aged 15 but his claim was only refused via a decision dated 31 January 2023 refusing his protection (asylum or humanitarian protection) and human rights claims. The Appellant appealed that decision to the First-tier Tribunal. First-tier Tribunal Judge Reid heard and dismissed the Appellant's appeal via a decision promulgated on 15 November 2023..

4. The Appellant sought permission to appeal on several grounds which was granted by First-tier Tribunal Judge Boyes in the following terms:

> 1. The application is in time.
>
> 2. The very detailed grounds assert that the Judge erred in numerous respects.
>
> 3. The grounds are very detailed, clearly set out and well argued. They need no further elucidation from me. They are clearly arguable in terms of alleged errors. I note in particular Ground 1 may be one of the strongest arguments of the arsenal deployed but that is not to take away from any of the others.
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> 4. For the reasons given in the grounds, permission is granted.

Discussion

5. The Grounds of Appeal can be summarised in the following terms:

(i) Ground 1: Reaching unsafe or perverse conclusions at §29 and §30 in respect of the 'plausibility' of the Appellant's account of what happened in Iran;

(ii) Ground 2: The judge's approach to the country expert report more generally, especially in cherry-picking from it and thus failing to give it anxious scrutiny;

(iii) Ground 3: Failing to give anxious scrutiny to the Appellant's evidence before her reaching the adverse credibility findings at §26 and §32;

(iv) Ground 4: Reaching perverse or unreasoned findings on the Appellant's contact with family members in Iran at §§35-40;

(v) Ground 5: The judge's assessment of the risk of the Appellant's sur place activities having come to, or coming to, the attention of the Iranian authorities at §§41-47.

6. At the hearing before us, we heard arguments from both representatives. The Respondent did not provide a Rule 24 Response. At the close of the hearing, we reserved our decision which we now give. We find that the grounds of appeal demonstrate material errors of law for the following reasons.

7. In respect of Ground 1, it was argued in the grounds of appeal that judges should not assess the nature of the claimed risk "based on their own perceptions of reasonability". Neuberger LJ (as he then was) stated in HK v. Secretary of State for the Home Department [2006] EWCA Civ 1037 at [29]:

> "Inherent probability, which may be helpful in many domestic cases, can be **a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases**. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in Hathaway on Law of Refugee Status (1991) at page 81: 'In assessing the general human rights information, **decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability**.'" (Emphasis supplied)

8. Ms Elliott-Kelly argued that, here, the judge applied her own 'perception of reasonability', particularly in a cultural context, as to what the Appellant's parents and the Appellant did. At §29, of the decision, the judge states that "[t]aking the clear increased risk into account (more than the likely risk associated with kolbar trips) and that he was an only child it is not plausible that the Appellant's father would involve him in this particular claimed exercise, taking into account it was right on their doorstep and he did not need the Appellant's help". It was highlighted by counsel that the *quid pro quo* of the judge's finding was that the parents would be more likely to put the Appellant at risk if he was not their only child which was a perception of 'acceptable' risk that could only have originated from the judge, and which was in conflict with the expert evidence accepted by the FTTJ that "young people can be drawn into KDPI activities by their families and that recruitment is along family lines" including that it is not unusual for children as young as 14 or 15 to be "drawn into" both dangerous kolbar (smuggling) and political activities. We find that the reference to the Appellant being the only child of his family was an extraneous factor not borne out by the expert evidence and the parents' willingness to place the Appellant at risk is consistent with the expert evidence the judge received and accepted and the finding as to the implausibility of placing the Appellant at risk is a recharacterization of the nature of the risk which much be based on the judge's own perception of whether the behaviour of the Appellants' parents was reasonable.

9. In respect of the error at §30 of the judge's decision wherein the judge did "not find it plausible that the Appellant knew nothing about the KDPI until his father told him before they went out to do the posters/leaflets", we agree with the argument that given the Appellant being uneducated, and given that the country expert considers it plausible the Appellant's father would not have discussed this with him, the finding that "it is not plausible that teenage boys would not have passed round or discussed even briefly some basic understanding that the KDPI exists and what it stands for, given its prominence and given he referred at the hearing to having a group of friends he spent time with" is clearly a Western perception of what teenage boys would 'pass round or discuss' in Iran, which cannot be a legitimate substitute for the country expert's evidence. In short, it is not lawful for the judge to impute her own Western perception of what the

Appellant and his friends would or would not discuss in preference over the country evidence without more and certainly not without first taking into account the context of secrecy of the KDPI, for example.

10. Consequently, we find that the first ground is made out before us and demonstrates a material error in respect of the judge's findings on the plausibility of the Appellant's account.

11. Turning to Ground 2, it was argued in the grounds that judge's approach to the country expert evidence cherry-picks from it and thus fails to give it anxious scrutiny. Counsel argues that it is axiomatic that the country evidence which the FTTJ accepts she should give weight to "in light of the expertise" of Dr Kakhki (see §25) (i) can be potentially corroborative of an appellant's account, (ii) must be given 'anxious scrutiny' and (iii) must be assessed holistically i.e. it should not be treated as an add-on (see Mibanga v. Secretary of State for the Home Department [2005] EWCA Civ 367 at [24]). We find this ground of complaint is also established.

12. In terms of the potentially corroborative nature of the report being overlooked, we note that the judge reaches a finding on the Appellant's credibility at §26 in stating "the Appellant's account of these [Kolbar] trips was not credible, that having a knock on effect on credibility as to whether his father obtained and then distributed KDPI political material this way and the Appellant became involved in that". However, at §§27-30, the judge only refers to certain aspects of the country expert report that are potentially corroborative of the account that had already been rejected. For example, at §27, the judge states that "Dr Kakhki refers also to the Appellant being entrusted by the organisation (para 12)"; however, paragraph 12 of Dr Kakhi's Report is 'background evidence' about the KDPI and is not about the Appellant specifically. Therefore, Dr Kakhki is not stating that the Appellant was specifically entrusted by the KDPI, but rather that the KDPI recruit young people into the cause from those whose parents have been involved with the organisation, as is the case here. Thus, the judge is taking one aspect of the expert opinion without viewing it in totality or perhaps in its proper connotation, in contravention of Mibanga. We find this is one example of the report being engaged with piecemeal rather than the engaging with the report as a whole rather than ignoring it and then without giving proper reasons for so doing.

13. A further example of a failure to read the report as a whole is apparent from §28 of the decision wherein the judge states that "Dr Kakhki refers (para 19) to the Appellant's status within the organisation (supporter, member, associate) but the Appellant does not claim any such support or membership when in Iran". However, looking at paragraph 19, it appears that Dr Kakhki is discussing the regime's perception of the Appellant's activities. Indeed, Dr Kakhki expressly rejects any comparison with "the structures of conventional and legal Western-style political organisations".

14. A further such error is evident at §30 where the judge reaches a finding on the credibility of the Appellant's lack of knowledge of the KDPI without considering the country expert report. To the extent that she cites from the expert report, she does not give cogent reasons for rejecting it as potential corroboration but rather relies on certain passages as affirming her own perceptions of plausibility and risk which are inconsistent with the objective evidence and demonstrates that the expert evidence has not been rejected with reasons before that conclusion was

reached, nor that the evidence was considered in its totality, notwithstanding the error identified in the first ground.

15. Turning to Ground 3, and the complaint that the judge failed to give anxious scrutiny to the Appellant's evidence before reaching adverse credibility findings at §26 and §32, to the extent not already covered by the above grounds, we find that the judge has misconstrued the facts of the Appellant's claim. The judge refers to the Appellant not knowing "where the trip was to" whilst also acknowledging the Appellant's young age and that the trip took place at night, the judge however fails to take into account other evidence that might have had a material bearing such as whilst the Appellant "knows his local area", the trip could have been to a place further removed from his locality, particularly as the Appellant stated they would travel from dawn to dusk of the same day to reach, which would make sense that he would not necessarily know the area. We find that these points were insufficient to affect the core of the Appellant's claim, which we have already found was not comprehensively nor lawfully assessed. For example, in respect of the warrant for the Appellant's arrest, on the one hand, the judge says that she has ignored the interview transcript whereas she has used the Appellant's incorrect response that there was "definitely" a warrant against him, whereas the Appellant's interview record reveals that he did not say this; but rather said "they had taken my father, so they are certainly after me as well" (see AIR 147, [RB/174]).

16. In respect of Grounds 4 and 5, we find that as grounds 1 to 3 are made out, the decision must be set aside and the complaints concerning the judge's findings on the Appellant's contact with family member and his sur place activities are thus academic.

17. In light of the above findings, we find that the decision of the First-tier Tribunal contains material errors of law requiring it to be set aside in its entirety.

Notice of Decision

18. The Appellant's appeal is allowed.

19. The appeal is to be remitted to be heard *de novo* by any judge of the First-tier Tribunal other than Judge Reid.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 February 2024