



IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005627

First-tier Tribunal No:  
PA/52047/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19<sup>th</sup> of September 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

A R  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K. Wood , Counsel instructed on behalf of the appellant

For the Respondent : Mr J. Thompson, Senior Presenting Officer

Heard at (IAC) on 9 September 2024

DECISION AND DIRECTIONS

1. The appellant appeals, with permission, against the determination of the First-tier Tribunal promulgated on 8 February 2023. By its decision, the Tribunal dismissed the appellant's appeal on all grounds against the Secretary of State's decision dated 13 May 2022 to refuse his protection and human rights claim.
2. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

3. 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.

The background:

4. The factual background can be summarised as follows. The appellant is a national of Iran of Kurdish ethnicity. He left Iran and entered the United Kingdom on 9 July 2021 and claimed asylum on that day. The basis of his claim was that he feared persecution in Iran based on having smuggled goods from Iraq into Iran as a Kolbar and due to an adverse political profile attributed to him as a result of his sur place activity whilst in the UK.
5. The respondent refused the claim in a decision taken on 13 May 2022 which led to the appeal before the FtT in 2023. In a decision promulgated on 8 February 2023, the FtTJ dismissed the appeal.
6. The appellant applied for permission to appeal, based on 3 grounds and it was granted by FtTJ Khurram on the 2 March 2023.
7. The hearing took place on 9 September 2024. The appellant was represented by Mr Wood, Counsel and the respondent by Mr Thompson, Senior Presenting Officer. Mr Wood relied upon the grounds of challenge.
8. The respondent had filed a Rule 24 response on 31 March 2023. In that response at paragraph 2 it stated that the respondent did not oppose the appellant's application for permission to appeal and invited the tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the appellant's account of being a Kolbar was rejected for legally sound reasons. However there was a further paragraph which gave the appearance of inconsistency with that paragraph. Mr Thompson, who was not the author of the Rule 24 response, was given time to consider the contents of the Rule 24 response as it stood and to inform the Tribunal and Mr Wood of the respondent's position and to clarify any ambiguity in that response.
9. Having had time to consider the respondent's position, Mr Thompson stated that the respondent no longer sought to rely on the rule 24 response due to the ambiguity. However, he stated that he accepted that there was a material error of law based on ground one ( the procedural unfairness/irregularity argument). He further stated that it was the respondent's view that the appeal should be remitted to the FtT for a fresh hearing due to the level of fact finding that would be required. He further confirmed that in respect of the assessment of the sur place claim, this would also be affected by the material error of law on credibility, as risk on return would have to be viewed and assessed in the light of any factual findings made as to whether he was of adverse interest to the Iranian authorities before he left that country.

10. Mr Wood agreed with that approach as to error of law and its materiality to both the credibility findings in respect of events in Iran and the effect upon any subsequent risk on return.
11. Both advocates have agreed that the errors were material to the outcome and that as a result the decision should be set aside and heard afresh.
12. In light of the concession made by the respondent, it is accepted that the decision of the FtTJ should be set aside the appellant having established the principal ground of challenge. As set out by in the grounds and accepted by Mr Thompson, there was a procedural irregularity which related to a finding of fact made relevant to the issues of credibility and his account of having been working as a Kolbar in Iran. The finding of fact concerned part of the appellant's evidence as to the remuneration he had received but in the context of exchange rates between US dollars and Iranian Rials as at 2016. Both parties agree that this point was not one raised by the respondent the decision letter, nor in the review and the summary of submissions made. It was therefore a matter that the appellant had not had the opportunity to consider or deal with. There was no evidence regarding exchange rates before the FtT therefore both parties have concluded that this must only have occurred via post hearing research. The appellant stated he commenced work as a smuggler in May 2021 and it was not clear why the exchange rates for 2016 were the ones that were utilised in the fact-finding in any event. The grounds also refer to a related issue ( at paragraphs 8 - 14 of the grounds) and a challenge to paragraph 50. There was no recorded evidence of the amount paid by the appellant's father to the agent, it is therefore difficult to see the evidential basis upon which that finding was made. If it was inferential, that should be made clear from the assessment. Those findings of fact identified in the grounds went to the credibility of the appellant's account of working as a Kolbar and being of adverse interest to the authorities.
13. In the light of the grounds challenging the assessment of credibility, and the factual findings as to risk on the central core of his claim, any error based on ground one would necessarily affect the consideration of the issues set out in the sur place claim as to risk on return and whether there is any adverse interest in the appellant by the Iranian authorities.
14. Both parties therefore agree that the decision of the FtT involved the making of a material error of law for the reasons identified and, in a manner which could have a material effect on the outcome. The decision is therefore set aside pursuant to Section 12 (2) (a) of the Tribunals, Courts and Enforcement Act 2007 (TCE 2007). No findings are preserved.
15. The parties were also in agreement that the decision should be set aside to be remade afresh. Both advocates also submitted that it should be in the First-tier Tribunal, where primary findings of fact on credibility and risk on return had to be re- made. In reaching a decision as to the venue for the hearing, I have given careful consideration to the Joint Practice

Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-  
(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or  
(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

16. Having considered the practice statement recited and the decision of the Court of Appeal in AEB v SSHD[2022] EWCA Civ 1512 and that of the Upper Tribunal in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46, and in the light of the overriding objective I am satisfied that the appeal falls within both 7.2 (a) and (b) as the error was one of a procedural irregularity and also when considering paragraph 7.2(b) it will be necessary to undertake an assessment of all the factual evidence, oral and documentary, when reaching a decision. The decision shall therefore be remitted to the FtT for a hearing on a date to be fixed at Newcastle with a Kurdish Sorani interpreter. Having remitted the appeal to the FtT, any further directions are a matter for the FTT to make. Mr Wood sought some clarification on the part of the respondent as to whether any point would be taken by the respondent at the FtT concerning the country information and exchange rates which formed the first part of the grounds. Mr Thompson was not able to provide any clarification given that the appeal would be remitted to the FtT. It would be preferable for the respondent to provide some clarification prior to the remitted hearing if there are any additional points relied upon.

Notice of Decision:

17. The decision of the FtTJ involved the making of a material error of law and is set aside and remitted to the FtT for a rehearing.

Upper Tribunal Judge Reeds  
Upper Tribunal Judge Reeds

11 September 2024