IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001442

First-tier Tribunal No:
PA/54692/2023
LP/00335/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 June 2024

Before
UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A M
[ANONYMITY DIRECTION MADE]

Respondent

Representation:
For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Mr T Lester, Counsel instructed by Wick & Co solicitors

Heard at Field House on Wednesday 12 June 2024

Order Regarding Anonymity

This appeal includes protection grounds. For that reason, it is appropriate to grant anonymity to the Appellant (AM). 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. This is an appeal by the Secretary of State. For ease of reference, we refer to the parties as they were before the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Abebrese dated 14 March 2024 ("the Decision"), allowing on protection and human rights grounds the Appellant's appeal against the Respondent's decision dated 14 July 2023 refusing his protection and human rights claims in the context of a removal to Iran.

2. The Appellant claims to be at risk because his father was arrested, detained and later executed by the Iranian authorities. The Appellant is of Kurdish ethnicity and claims to be a supporter of but not a member of KDPI. He says that he worked as a "Kolbar" smuggling food between Iraq and Iran. He says that his mother permitted documents relating to the KDPI and firearms to be stored in her house as a result of association with friends of his father and that the Iranian authorities became aware of this. He claimed that his brother had been arrested. The Appellant also claims to be at risk as a result of his activities in the UK protesting against the Iranian authorities.

3. Having set out the evidence and submissions in brief, Judge Abebrese found the Appellant's account to be credible for reasons we will come to. He found that the Appellant would be at risk on return. His conclusion on the Article 8 issue is somewhat opaque (although is not challenged by either party).

4. The Respondent challenges the Decision on one ground only namely that the Judge has failed to provide adequate reasons for his conclusion and that the Respondent does not therefore know why he has lost.

5. Permission to appeal was granted by First-tier Tribunal Judge Lodato on 8 April 2024 in the following terms so far as relevant:

> "..2. In the only ground of appeal, it is argued that the judge did not give adequate reasons for the decisive findings of fact which related to the appellant's credibility. There is force to the argument that the judge has simply asserted that the appellant was credible about various factual matters without explaining why these conclusions were reached. It is difficult to understand why these decisive findings of fact were reached.
> 3. I grant permission for ground 1 to be argued."

6. The Appellant filed a Rule 24 response dated 10 May 2024 seeking to uphold the Decision to which was appended Counsel's note of the cross-examination of the Appellant. Counsel before the First-tier Tribunal was Mr Lester who could not act as both witness and representative before us (as Mr Lindsay pointed out). However, Mr Lindsay provided at the hearing without objection from Mr Lester the Presenting Officer's minute of the hearing before Judge Abebrese which was largely consistent with Mr Lester's notes. We did not therefore need to hear any evidence about what occurred at the First-tier Tribunal hearing. The notes of that hearing on both sides were useful

as illustrative of the issues which arise for us to determine but have no other relevance.

7. The matter comes before us to consider whether the Decision contains errors of law. If we conclude that it does, we then have to decide whether to set aside the Decision in consequence of those errors. If we do so, we then have to decide whether to re-make the decision or remit the appeal to the First-tier Tribunal to do so.

8. We had before us a bundle of documents lodged by the Respondent running to 907 pages which includes the core documents for the appeal and the Appellant's and Respondent's bundles before the First-tier Tribunal. We refer to documents in that bundle as [B/xx]. The Appellant also provided a supplementary bundle of background material in case of re-making before this Tribunal to which we also do not need to refer. As already noted, we also had Mr Lester's notes of the Appellant's cross-examination ("AC Notes") and the Presenting Officer's minute ("PO Notes"). Mr Lester also provided a skeleton argument.

9. Having heard submissions from Mr Lindsay and Mr Lester, we indicated that we found an error of law in the Decision and therefore set that aside. We also indicated that we would remit the appeal to the First-tier Tribunal and would provide reasons for our decision in writing which we now turn to do.

DISCUSSION

10. We do not need to refer to the case-law to which both parties referred us, the Respondent in his pleaded grounds and the Appellant in Mr Lester's skeleton argument. We accept that the Judge did not have to determine factual issues which were not in dispute. We also accept that issues have to be identified by the parties in order for them arise for consideration by a Judge – it is not enough for a party to remain silent on an issue or simply not consider it and then seek to place a burden on a Judge to identify it as an issue. Equally, though, where there is an issue which is identified by the parties and not conceded and is therefore required to be considered, it is incumbent on a Judge to provide reasons for findings on that issue which are sufficient for the losing party to know why he has lost.

11. We therefore turn to what was or was not disputed. Those issues are to be identified by reference to the Respondent's decision letter, the Respondent's review, the Appellant's skeleton argument and witness statement and the way in which the case was pursued by each side.

12. The Respondent's decision letter is at [B/695-706] (repeated at [B/784-795]).

13. The Respondent expressly accepted (a) that the Appellant is of Kurdish ethnicity (b) that he worked as a Kolbar and (c) that he had

been involved in political activity in accordance with the evidence he had provided. However, the Respondent expressly did not accept that the Appellant had come to the adverse attention of the Iranian authorities as a result of those activities. The Respondent accepted that Kurds faced discrimination from the Iranian authorities but not that they were persecuted on account of their ethnicity.

14. The Respondent noted that the Appellant was a supporter but not a member of the KDPI. The same was said in relation to the Appellant's brother. Although the Respondent noted that the Appellant said that his brother had been arrested, he did not expressly accept this, noting that the claim was inconsistent with background evidence for various reasons. The Respondent also did not accept that the Appellant's mother would not also have been arrested had the family been of continuing interest to the authorities.

15. The Respondent expressly did not accept that the Appellant's mother would have permitted friends of the Appellant's father to visit and stay and to store documents and firearms in the family's home, particularly so long after the Appellant's father's death (in 2010) and where it was said that storage of documents and firearms had led to that death. The fact of the execution of the Appellant's father was not disputed. However, the Respondent did not accept that this placed the Appellant at risk since he had continued to live in Iran for ten years after his father's death. The events leading up to the Appellant's departure from Iran were therefore expressly not accepted.

16. As the Respondent did not accept that the Appellant was of interest to the Iranian authorities before he left Iran, he did not accept that he would be of interest to them when monitoring protests in the UK. He would not be the subject of active monitoring and the background evidence suggested that the authorities could not monitor on a large scale and ad hoc surveillance focussed therefore on those of significant adverse interest.

17. The Respondent's review is at [B/902-907]. That set out at [3] the issues to be determined. Those included that credibility of the claim was at issue generally. It also made clear that the Appellant's political opinion and risk on that account was not accepted, that ethnicity was not accepted to give rise to a real risk of persecution and that, while the Appellant had posted evidence of his activities in the UK, it was not accepted that those would have come to the attention of the Iranian authorities.

18. The Appellant's witness statement is at [B/58-60]. It is clear from this statement what the Appellant understood the Respondent to accept or not. He explains his position in response. For example, he says at [6] of the statement that his father's friends were permitted to store documents and firearms at his home because they in turn provided support to the family.

19. The Appellant's skeleton argument is at [B/26-38]. That in essence reflects the issues as set out by the Respondent including that credibility was at issue. It correctly records the parts of the Appellant's account which were accepted as set out in the Respondent's decision and goes on to make submissions about the other parts of the account including the central question whether the Appellant would be at risk on return to Iran by reason of such parts of the account as might be accepted.

20. then to the AC Note and PO Note, those show that the Appellant was asked questions about his activities in the UK, about his and his brother's support for the KDPI, about the visits from the friends of his father and the support that was provided to them, and about the interest which the authorities were said to have shown in the family as a result.

21. The AC Note is limited to the Appellant's cross-examination, but the PO Note also records other parts of the hearing. It makes clear that no concessions were made and that the submissions began by relying on the Respondent's decision letter.

22. We turn then to the findings made by the Judge about the protection claim which appear at [18] to [22] of the Decision as follows:

> "18. I make the following findings in this appeal. I found the appellant to be a credible witness in respect of claim to have a fear of being persecuted on his return to Iran on the basis of imputed political opinion for the following reasons. The Appellant [sic]
> 19 I find it credible that the Appellant's father was a member of the KDPI and that he was eventually arrested by the authorities and executed. I also find it credible that the Appellant became a supporter of the same organisation and that he was active. I find the reasons as to why the Appellant left Iran to be credible in that it no longer because safe for him to reside in that country and he was eventually smuggled out of the country by his uncle.
> 20. I also find it credible that the Appellant family home was visited by the authorities and that they questioned his mother. The fact that his mother has never been arrested I do not think undermines his case. The Appellant on the basis of the subjective and objective evidence will be at risk if he were to return to Iran because whilst in Iran he did have a profile and association with the KDPI and this was known to the authorities because of the activities of his father and also his brother who was arrested and detained.
> 21. I am also of the view that the Appellant has continued to be active whilst in this country and that his sur place activities are credible and consistent. I find it credible that the Appellant has attended demonstrations at the Embassy and that he and friends took photographs. I have determined that the authorities do collect and store data and that this is the case with this Appellant. This in my view puts the Appellant at risk on returning to Iran. I am of the view that the photos taken either by himself or his friends are likely to have been shared on social media which would put him at further risk of returning to Iran.

> 22. The Appellants accounts of the photographs taken by him and his presence at the demonstrations are also in my view credible and consistent with the objective evidence. The profile of the Appellant of himself, brother and father, in addition to face book and sur place activities in my view would put him at risk on return."

23. There can be no doubt that those findings are brief but that does not necessarily mean that the reasoning is insufficient. We did express a concern at the start of the hearing that the Respondent's challenge might amount to a requirement of reasons for reasons. However, having heard the submissions developed by both parties we are satisfied that it simply cannot be said that the reasons are sufficient. The findings are merely a recitation and acceptance of the credibility of the Appellant's claim without any engagement with the position of the Respondent and the Appellant's evidence in response. We set out below two examples by way of illustration.

24. First, in relation to the storage of documents and firearms which it is said led to the authorities' interest in the family and provided the reason why the Appellant left Iran, the Respondent's position was that the Appellant's mother would not have allowed this to happen because of the danger it would pose and knowing as she did that involvement with KDPI at this level could lead to death as it had of the Appellant's father. The Respondent also pointed to background evidence which suggested that the Appellant's mother would also have been arrested had the authorities discovered that she was assisting the KDPI in this way. The Appellant's case was also that his brother (who he said had been arrested by the authorities) was only a supporter and not a member of the KDPI.

25. The Appellant's case was that the storage of documents and firearms had been permitted because the friends had supported the family in return. In response to cross-examination, the Appellant also said that the friends had visited and stored documents and firearms in their home because they trusted the family.

26. The Judge's findings do not engage with the Respondent's position. He does not say why he finds that the lack of arrest of the Appellant's mother does not undermine the Appellant's case. He makes no mention of the background evidence relied upon in that regard. He does not mention the Appellant's brother's position as a supporter and not member of the KDPI. He does not consider the plausibility of the Appellant's mother providing shelter to the friends of the Appellant's father given the fate which had befallen the Appellant's father. In short, the findings provide no reasons but merely accept the Appellant's account as credible without any consideration of the Respondent's position or reference to relevant evidence. There is as Mr Lindsay pointed out, no reference to the consistency or inconsistency in the account, reference to consistency or otherwise with the background evidence nor any consideration of the plausibility of the account having

regard to relevant factors (such as the passage of time since the death of the Appellant's father).

27. Turning then to the Appellant's activities in the UK, whilst the Respondent accepted the fact of those activities, he did not accept that any risk flowed from this. Of course, the starting point here is whether the authorities would be aware of the Appellant due to events in Iran and so there is an overlap with the lack of reasoned findings in relation to those events.

28. However, taken in isolation, the Judge also fails to make relevant findings about the risk flowing from the sur place activities. He says at [21] of the Decision that he has determined that the authorities collect and store data of demonstrations, but we can find no finding to that effect nor reasons for it. Nor can we find any reference to reasons why the Appellant would be monitored given the background evidence upon which the Respondent relies. What purports to be a finding of credibility at [22] is not in fact a finding of credibility at all. The Appellant's account that he attended demonstrations and took photographs was not disputed but, in any event, cannot be "consistent with the objective evidence". The background evidence relied upon by the Respondent was in relation to monitoring and surveillance. There is no engagement with this. There is no reference to relevant reported Tribunal guidance in this regard.

29. Mr Lester submitted that the Judge had not been required to engage with the Respondent's position as that had not been pressed by the Presenting Officer at the hearing. We simply cannot accept that to be the position. The Presenting Officer asked questions about the areas of the Appellant's account which were not accepted. The Appellant provided answers in explanation but the fact that he provided an explanation which was not followed by a further question does not mean that this explanation was accepted by the Respondent.

30. Mr Lester said that the Appellant's account was not "effectively challenged" but we were unpersuaded that this was the case. The Presenting Officer was not required to put to the Appellant that he was not telling the truth about his claim. So much was evident both from the decision under appeal and the questions which were asked in cross-examination. The Respondent's decision under appeal made clear that there were issues of credibility regarding some fundamental elements of the Appellant's account. Whilst other elements of that account were not disputed, the impact of them was also disputed. Both parties understood that credibility was at issue as did the Judge.

31. Mr Lester also suggested that the Respondent's grounds of appeal did not challenge a lack of reasons more generally but were confined to [19] of the Decision which largely contains a summary of the elements of the claim which were not disputed by the Respondent (that the Appellant's father had been executed and that the Appellant was a

supporter of the KDPI). However, the grounds make clear that this paragraph is only cited by way of example. In any event, as the Respondent points out, the issue was whether it was credible on those facts that the Iranian authorities would have an interest in the Appellant and that paragraph does not make any findings on the evidence as to why that would be so.

32. In those circumstances, the Judge was required to determine the credibility of the Appellant's account so far as it was disputed and to explain why the claim insofar as he accepted it would put the Appellant at risk having regard to the Respondent's position and all the evidence including the background evidence put forward by both parties.

33. As Mr Lindsay submitted and we accept, it simply cannot be said that the Judge has provided adequate reasons to explain why the Appellant won and the Respondent lost. The Judge failed to engage with the Respondent's position and failed to provide sufficient reasons for accepting the Appellant's account. As Mr Lindsay pointed out, there is not even an assessment of the Appellant as a witness. It may be that the Judge intended to say something about this at the end of [18] of the Decision but he did not do so.

34. For those reasons, we are satisfied that the Respondent's grounds are made out.

35. As this appeal turns largely on issues of credibility and we have found the Judge's findings to be wanting, it follows that, in fairness to both parties, the appeal should be remitted to the First-tier Tribunal for a determination afresh of all issues.

36. We add as a postscript that the allowing of the appeal on Article 8 grounds (if that was intended) cannot be preserved either. The Judge appears to have concluded at [23] of the Decision that the Respondent's decision was "justified and proportionate under Article 8 …ECHR" but goes on to say that "it would not be in the public interest for the Appellant to be returned to Iran" and does not make clear in the notice of decision whether the appeal was being allowed or dismissed on Article 8 grounds. It goes without saying that, if the Appellant's appeal on protection grounds is successful on redetermination, he cannot be removed in any event. However, for the benefit of the First-tier Tribunal on remittal, we make clear that no findings in this regard are or can be preserved.

CONCLUSION

37. An error of law is disclosed by the Respondent's grounds. We set aside the Decision with no findings preserved. We remit the appeal to the First-tier Tribunal (Hatton Cross hearing centre) for re-hearing before a Judge other than Judge Abebrese. A Kurdish Sorani interpreter will be required for the appeal.

NOTICE OF DECISION

The decision of Judge Abebrese dated 14 March 2024 contains errors of law which are material. We set that decision aside in its entirety and remit the appeal to the First-tier Tribunal (Hatton Cross hearing centre) for re-hearing before a Judge other than First-tier Tribunal Judge Abebrese. A Kurdish Sorani interpreter will be required for the hearing.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 June 2024