



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001453

First-tier Tribunal No: PA/55997/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of September 2024

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

AM
(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn of Counsel

For the Respondent: Mr Diwnycz a Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 23 September 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. Ms Cleghorn appeared by CVP link. She had appeared in the First-tier Tribunal and had drafted the grounds seeking permission to appeal. She indicated by email to the Tribunal at 9.39am on 23 September 2024 that she could not attend in person due to child care issues. Accordingly Mr Tassadat Hussain appears to have been instructed in her stead over the weekend. At 10.00am we were made aware that Mr Hussain had not arrived at the hearing centre. We were told he was expecting to represent the Appellant remotely and was “waiting for a CVP link”. He had not however applied for the hearing to be heard remotely. As a result no link had been set up. After some communication with the Tribunal Ms Cleghorn did apply for a CVP link, for her to appear remotely. We granted her application as we were satisfied that she was instructed to appear, no one else made an application for a CVP link, and it was plainly unfair for the Appellant not to be represented.
2. The Appellant was born on 22 November 2005. He is a citizen of Iran. He appealed against the decision of the Respondent dated 17 August 2023, refusing his application for international protection. His application had been made on 1 August 2022.
3. He appeals against the decision of First-tier Tribunal Judge Fisher whose decision was promulgated on 1 February 2024. Permission was granted by Upper Tribunal Judge O’Brien on 18 July 2024. It is not necessary to rehearse either decision or the grounds seeking permission to appeal here.
4. That is because Mr Diwnycz conceded that Judge Fisher had materially erred in stating “I conclude that a failure to disclose his smuggling activities would not amount to a denial of a fundamental right...”, and thereby dismissing the appeal on the basis that the Appellant could avoid any problems at the airport by staying quiet about his previous activities as a *kolbar*. The Tribunal is quite right to say that there is no fundamental right to be a *kolbar*, but that was not what was being argued. The point was that the Appellant is a Kurdish kolbar, who had left Iran illegally, evading military service as he did so, who had claimed asylum in the United Kingdom and who had posted anti-regime content online. It was the cumulative total of those factors which he relied upon to say that there was a reasonable likelihood of him being transferred for second line questioning at Imam Khomeini Airport, and thereby being exposed to a real risk of ill-treatment: HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) read with SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC). The United Kingdom cannot return the Appellant to Iran on the premise that he can hope to avoid serious harm by lying in these circumstances. In light of the Secretary of State’s concession we need not address the remaining grounds.
5. We agree that the decision should be set aside with no findings preserved and the appeal should be remitted to the First-tier Tribunal for a de novo hearing not before Judge Fisher.

Notice of Decision

6. The Judge made a material error of law. We set aside that decision. We remit the appeal to the First-tier Tribunal for a de novo hearing. The appeal will not be listed before Judge Fisher.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
24 September 2024