IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001989

First-tier Tribunal Nos: PA/51935/2023
LP/02605/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of November 2024

Before

UPPER TRIBUNAL JUDGE LOUGHRAN

Between

HMA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Patyna, Counsel instructed by Fisher Jones Greenwood LLP
For the Respondent: Ms S Nwachuku, Senior Home Office Presenting Officer

Heard at Field House on 15 October 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

Introduction

1. By a decision dated 4 March 2024, following a hearing on 1 March 2024, First-tier Tribunal, Judge Spicer ('the judge') dismissed an appeal brought by the appellant, an Iranian national, against a decision of the respondent dated 15

March 2023 refusing his protection and human rights claim. The appeal was brought under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.

2. The appellant now appeals against the decision of the judge with permission to appeal granted by Upper Tribunal Judge Norton Taylor on 7 June 2024.

Background

3. The appellant's date of birth is 1 January 2005 and he is of Kurdish ethnicity. The appellant arrived in the UK on 26 October 2021 when he was 16 years old and claimed asylum on arrival. The appellant claimed that his father subjected him to domestic violence so he went to live with his uncle. His uncle also subjected him to domestic violence. After approximately one and a half years the appellant's uncle told the appellant he could no longer stay with him and he assisted the appellant in leaving Iran.

The Respondent's Decision

4. In a decision dated 15 March 2023 the respondent refused the appellant's protection and human rights claim. The respondent accepted the appellant's age, Kurdish ethnicity and that he had exited Iran illegally. The respondent rejected the appellant's account to have been subjected to domestic violence at the hands of his father and his uncle. The respondent did not accept the appellant would be at risk on the basis of his illegal exit, Kurdish ethnicity or that he would face difficulties integrating back into Iran because his family would be able to help him.

The Respondent's Review

5. The respondent provided a review of the appellant's case on 20 September 2023 maintaining her decision and addressing the appellant's sur place activity.

6. The respondent considered that the appellant's evidence showed he had attended a demonstration on 11 June 2023 and 6 August 2023, but that the photos show limited details as to which demonstrations they were. The respondent concluded that there was no further evidence provided in relation to the appellant's online activity, which damaged his credibility.

7. The respondent accepted that the appellant had attended a demonstration, but noted that there was no evidence that showed the appellant's profile is one that would be considered a high level activist or that his activities are ones which would give him a profile that causes any further risk to him.

8. The respondent considered that the appellant is not an individual with a significant profile and there was no evidence that it is reasonably likely the appellant opposes the regime in Iran and supports Kurdish rights.

9. The respondent did not accept applying the factors set out in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 35 that the Iranian regime would consider the appellant a political activist based on his sur place activities which were not been accepted to amount to anything more than attendance at two demonstrations. The respondent did not accept that coupled with illegal exit and being of Kurdish ethnicity his sur place activities would heighten the appellant's risk.

Decision of the First tier Tribunal

10. The appellant appealed against the respondent's decision of 15 March 2023 and the appeal came before First-tier Tribunal Judge Spicer on 1 March 2024. The appellant was represented by Ms Patyna of Counsel, and the respondent was represented by Ms Sohal, a Home Office Presenting Officer. The appellant gave oral evidence through an interpreter.

11. The appellant relied on expert evidence in the form of two reports by Dr Mohammad Hedayati Kakhki. The judge recorded at [24]-[25] that Dr Kakhki was instructed to produce an expert report commenting on the plausibility of the appellant's account of being subjected to violence at the hands of his father and his uncle and also to comment on whether the appellant's Kurdish ethnicity, illegal exit and his failure to enrol for conscription would place him at increased risk. The judge outlined his reasons for placing little weight on Dr Kakhki's conclusions at [26]:

    a. Dr Kakhki failed to address the appellant's evidence that he had lived in Iran for eighteen months without experiencing harm from his father and the contradiction in the appellant's evidence that he had had a good relationship with his uncle.

    b. Dr Kakhki did not differentiate between the appellant's characteristics and those of the examples he provides of those arrested by the authorities.

    c. The examples given by Dr Kakhki in support of his conclusion that individuals who are returned to Iran following illegal departure are arrested on arrival and then either released on bail or kept in custody predate the appellant's departure from Iran and is not consistent with the country guidance case of **SSH and HR**.

    d. The appellant left Iran before he turned 18 and therefore before he would be called up for military service. He would therefore not face a real risk of serious harm as a draft evader.

    e. Although Dr Kakhki had provided examples of the identification and punishment of individuals who had attended demonstrations and criticised the Iranian regime on Facebook they were based on press reports and contained limited information about those individuals.

    f. Dr Kakhki did not consider the appellant's specific characteristics in respect of his sur place activity including that he had only shared content created by others and had only attended two demonstrations.

12. The judge accepted that the appellant may have suffered violence at the hands of his father before he left the family home but rejected his claim to be at risk from his father because he was able to live with his uncle without his father harming him for eighteen months. In respect of the appellant's illegal exit, Kurdish ethnicity and sur place activities the judge made the following findings:

    a. The appellant's attendance at the demonstrations are not a reflection of any genuine political belief but were opportunistic and undertaken to bolster his claim, at [36].

b. It is not reasonably likely the appellant's attendance at two protests as "a face in the crowd" would have brought him to the attention of the authorities, at [37].

c. Given his level of literacy it is not reasonably likely the appellant was able to read the material he shared to Facebook, at [38].

d. The low level of likes (56 and 87) of the photographs of the appellant at the demonstrations indicates that there is little interest in his Facebook activity regardless of the fact he has 3,500 friends on Facebook, at [40].

e. It is reasonably likely there were no posts on the appellant's Facebook page prior to June 2023, at [41].

f. The appellant's Facebook account does not have the features of a genuine account, at [42].

g. It is reasonably likely that the Facebook account was set up for the sole purpose of bolstering a weak asylum claim, at [43].

h. There is nothing to suggest that the appellant would have come to the attention of the Iranian authorities or targeted for surveillance, at [47].

i. The appellant has no "social graph" which would have led to attention being drawn to him, at [48].

j. There is no reason why the appellant could not close his Facebook account, at [49], the appellant would not be required to volunteer information about his activities which were not based on expressions of genuinely held beliefs, at [50] and there would be no interest flagged up in relation to the appellant on arrival in Iran, at [51].

The Appeal

13. The appellant applied for permission to appeal to the First-tier Tribunal. The appellant relied on the following grounds.

a. Ground 1: The judge erred in considering Dr Kakhki's expert reports, the allegedly erroneous approach was predicated upon irrationality and/or procedural fairness.

b. Ground 2: The judge was unfair not to have raised at the hearing matters later relied on in relation to the appellant's Facebook activity.

c. Ground 3: The appellant submitted that the judge failed to properly apply relevant country guidance decisions to the appellant's circumstances as a returning failed asylum seeker of Kurdish ethnicity.

14. The First-tier Tribunal refused the appellant permission to appeal on 18 April 2024 and the appellant applied for permission to appeal from the Upper Tribunal. In a decision dated 3 June 2024 the Upper Tribunal granted the appellant permission to appeal on all grounds.

15. The respondent served and filed a response to the grounds under Rule 24 of the Upper Tribunal's Procedure Rules on 18 June 2024. In respect of ground 1 the

respondent submitted the judge set out the adequate and clear reasons as to why little weight was given to the expert reports. In respect of ground 2 the respondent submitted that the only question not specifically put to the appellant was the evidence of social interaction and that it was not material to the overall findings in respect of the Facebook account. In respect of ground 3 the respondent submitted that the judge correctly applied the country guidance case and assessed the risk to the appellant in Iran.

16. At the hearing before me I heard submissions from Ms A Patyna and Ms S Nwachuku. I reserved my decision which I now give.

Discussion

17. I am satisfied that the judge materially erred in his approach to Dr Kakhki's expert evidence.

18. The judge failed to address Dr Kakhki's e evidence addressing the current political situation, which Dr Kakhki describes as "very volatile due to ongoing widespread protests over death of a Kurdish woman, Mahsa Amini in custody." Dr Kakhki explained that it is an "issue of particular relevance to the assessment of risk on return."

19. There is no consideration of this aspect of Dr Kakhki's evidence. This aspect of his evidence was plainly material to the assessment of risk to the appellant. The reasons the judge gave (outlined above at [11]) for giving Dr Kakhki's conclusions little weight do not impact on this aspect of his evidence, particularly as the judge accepted that Dr Kakhki had the appropriate credentials to comment on the country situation in Iran

20. Further, I am satisfied that the judge materially erred by failing to raise his concerns in respect of Dr Kakhki's evidence and the appellant's Facebook page to the appellant and his representatives. That in turn resulted in procedural unfairness as the appellant did not have an opportunity to address those concerns in the circumstances where they had not been raised by the respondent prior to the hearing.

21. Finally, I am satisfied that although the judge referred to the relevant country guidance cases, the judge materially erred in his approach to the nature of investigation on return to Iran. The judge did not adequately address the potential risk to the appellant arising from information which might be elicited either during the emergency travel document process or on return in Iran in the circumstances where it was accepted that the appellant had left Iran illegally and was of Kurdish ethnicity.

22. In the circumstances, the decision of the judge is vitiated by legal error and cannot stand.

23. I consider it is appropriate to remit the case to the First-tier Tribunal for a fresh hearing, see AEB v Secretary of State [2022] EWCA Civ 1512 and Begum (remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

Notice of Decision

24. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision of the First-tier Tribunal and remit

the case to the First-tier Tribunal to be heard by a different judge, with no findings of fact preserved.

G.Loughran

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 November 2024 (Rev1)