IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003501

First-tier Tribunal No: PA/01110/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 November 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AH
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Mr H Sadiq, Solicitor instructed by Adam Solicitors

Heard at Field House on 21 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

1. This is an appeal by the Secretary of State against a decision of Judge of the First-tier Tribunal Monson promulgated on 2 July 2024. Although the Secretary of State is now the appellant I will, for convenience, refer to the parties as they were designated in the First-tier Tribunal.

The appellant's claim

2. The appellant is a Kurdish citizen of Iran who claims to face a risk on return for two reasons. First, he claims that the authorities are seeking him because of distributing leaflets for the KDPI. Second, he claims to face a risk on account of his sur place activities which include attending demonstrations against the Iranian regime in London and posting anti-regime material on his Facebook account.

Decision of the First-tier Tribunal

3. The judge found that the appellant had not given a truthful account of events in Iran and rejected his protection claim based on those activities.

4. However, the judge accepted that the appellant would face a risk as a result of the activities he has engaged in whilst in the UK. The judge found that the appellant could not be expected to lie and therefore if asked would, on return, have to admit that he claimed asylum on account of political activities in the UK. The judge found that this would put him at risk even if he deleted his Facebook account (containing anti-regime posts) in a timely manner and even if he were to say that he had engaged in anti-regime activities in bad faith.

5. The judge did not direct himself as the applicable standard of proof. However, reading the decision as a whole, it is apparent that he applied the "lower standard" of "reasonable degree of likelihood" to the entire claim.

Grounds of Appeal

6. There is a single ground of appeal by the Secretary of State, which is that the judge failed to follow sections 31-36 of the Nationality and Borders Act 2022 in respect of the varying standard of proof and applied the wrong standard of proof. The grounds cite and rely on *JCK (s.32 NABA 2022) (Botswana)* [2024] UKUT 00100 (IAC).

Relevant Law

7. Where a protection claim is made after 28 June 2022, sections 31 – 36 of the 2022 Act apply. These provisions concern, inter alia, the applicable standard of proof in a protection claim. The Upper Tribunal in *JCK* summarised the relevant law as follows:

> 2. In an appeal to which s32 NABA 2022 applies, the proper approach is to address each of the questions posed by the section expressly and sequentially.
>
> 3. Question 1 is whether, on the balance of probabilities, the claimant has a characteristic which could cause them to fear for one of the five reasons set out in the Refugee Convention. In simple terms: is there a Convention reason?
>
> 4. Question 2 is whether, on the balance of probabilities, the claimant "does in fact fear" such persecution. This is the 'subjective fear' test.
>
> 5. Questions 3-5 are matters of objective evaluation and must each be determined on the lower standard of proof: 'a reasonable degree of likelihood'. Is it reasonably likely that there is:
>
> • a risk of harm

- an absence of state protection, and
- no reasonable internal flight alternative

Error of Law

8. As the protection claim was made after 28 June 2022, the judge fell into error by not following the 2022 Act in respect of the standard of proof. Mr Sadiq accepted that the judge erred, but maintained that the error was immaterial.

Materiality of the error

9. Had the judge followed the sequential approach described in *JCK*, the first question he would have asked would have been whether, on the balance of probabilities, there was a "Convention reason" that could cause the appellant to fear the authorities in Iran.

10. Following the sequential approach in *JCK*, the next question for the judge would have been whether, on the balance of probabilities, the claimant did in fact fear persecution.

11. The remaining question in the sequential approach set out in *JCK* would have been whether the appellant would face a risk of harm on return. (State protection and internal flight, the other issues identified in paragraph 5 of the headnote to *JCK*, are not relevant in this case).

12. I am in no doubt that, had the sequential approach been followed, the same outcome would inevitably have been reached. This is because the first and second questions in *JCK* (summarised in paragraphs 9 and 10 above) were not issues in dispute; ie it was not disputed by the respondent that there was a Convention reason (namely, the appellant's political – or imputed political – opinion); or that the appellant had a subjective fear. Accordingly, in respect of these issues, whether the judge applied the "balance of probabilities" standard or the "reasonable degree of likelihood" standard, the same finding would have been made; that is, these questions would have been answered in the affirmative.

13. The area of dispute between the parties was whether the appellant would face a risk of harm on account of his political (or imputed political) opinion. The standard of proof for this question is "reasonable degree of likelihood" and that is the standard the judge applied. The grounds do not criticise this aspect of the decision.

14. Accordingly, although the judge fell into error by not following the 2022 Act in respect of the standard of proof, the error was immaterial.

Notice of Decision

15. The decision did not involve the making of a material of the law and stands. The appeal is dismissed.

D. Sheridan

Judge of the Upper Tribunal

Immigration and Asylum Chamber
5.11.2024