



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02670/2019 (P)

**THE IMMIGRATION ACTS**

Decided Without a Hearing at Field House  
On 19 June 2020

Decision & Reasons Promulgated  
On 29 June 2020

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

R K I  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker. I find it surprising that the First-tier Tribunal Judge did not make an anonymity order. An asylum seeker is entitled to anonymity no matter how weak a case might seem to a judge who dismisses an appeal.
2. The appeal is brought by the Appellant with the permission of the First-tier Tribunal against a decision of a different First-tier Tribunal Judge promulgated on 17 December 2019 dismissing his appeal against a decision of the Secretary of State refusing him international protection.
3. Appropriate special directions have been sent to the parties in light of the well-known national lockdown provisions. The appellant has responded to those directions with full submissions. The respondent has not sent in any more detailed response but I do not criticise her for that. A Rule 24 notice, described appropriately by the appellant's Counsel, Mr Allan Briddock, a "formulaic" has been served.

4. I have no hesitation in setting aside the decision for error of law. The Appellant identifies himself as a citizen of Iran and the Secretary of State accepts that by reason of his in-country activity he needs international protection from the authorities in the event of his return to Iran. The Secretary of State does not accept that the appellant is in fact an Iranian national.
5. He has previously been refused leave and appealed and the appeal was dismissed at a hearing that the Appellant did not attend because he failed to show that he was Iranian.
6. The appeal was presented on this occasion with the appellant attending and additional supporting evidence. The First-tier Tribunal did not consider it properly or at all. Whilst it is right that where a point has been determined then the Tribunal is bound for the reasons given in Devaseelan v SSHD [2002] UKIAT 00702 to take that decision as a necessary starting point it does not create an irrebuttable presumption. There is clearly additional evidence here that had to be considered. First the appellant gave evidence and was cross-examined. It may be that the oral evidence did not add much to what had been said previously but as far as I can see the First-tier Tribunal Judge made no attempt to look for anything new and then evaluate it with the rest of the evidence.
7. More significantly there was oral evidence from a friend and a supporting letter. There is no consideration of the letter and I find no proper reasons given for writing-off the evidence of a supporter. Crucially the judge does not seem to deal with the witness' assertion that he knows the appellant to be Iranian because of his accent. That is a potentially very contentious area but it needs to be considered properly and it has not been.
8. I agree too with the second ground which is summarised as a criticism that the judge rather than using the determination of Immigration Judge L Murray is not being treated "as a starting point, but rather erroneously viewed that previous determination as if she were deciding whether the previous Judge had made an error of law."
9. I may not have formulated the point in quite that way but it is substantially made out.
10. The third point is that the judge made findings before considering the evidence in the round. That is always an easy argument to raise but can be quite difficult to sustain. A judge making a decision has to start somewhere and in my experience, particularly in difficult and contentious cases, the writing on the page does not reflect the starting point of the analysis but is the beginning of an explanation derived at after considerable thought. Nevertheless, there is merit in Mr Briddock's point. The Determination does read as if the original findings were set in stone and nothing powerful was found to move away from them rather than looking at them on their own terms and deciding the case mindful that things had been decided previously.
11. I have no hesitation in setting aside the decision for error of law. I find that this is a case that has to be heard again in the First-tier Tribunal because there has been no proper consideration of the Appellant's case.

12. In the response to Directions the Appellant's representative said: "The appeal cannot be determined on the papers if the Tribunal is minded to dismiss it."
13. I am not going to determine it on the papers. This is not because I am minded to dismiss it. I am quite satisfied that there is an arguable case here but it is one that needs to be presented and any evidence called must be seen to be considered. It would be wrong to decide this appeal on the papers. I have also decided it should be remitted to the First-tier Tribunal. The whole point of the appeal was for a decision to be made on the new evidence and there has not been one.
14. I also note there are certain linguistic curiosities in the First-tier Tribunal's decision. For example, at paragraph 21, we are told: "The appellant can read girlish but not righted. He can read girlish texts in English alphabet."
15. I am very aware of the imaginative properties of software that is deliciously misnamed as "voice recognition". I wonder if the judge meant: "The appellant can read Kurdish but not write it. He can read Kurdish texts in English alphabet."
16. Mr Briddock drew attention to these errors but was too much of a gentleman to make much of them. They should not have happened and the judge might want to think carefully about her proofreading.

### **Notice of Decision**

17. The appeal is allowed. The decision of the First-tier Tribunal is set aside and I direct that the appeal be heard again in the First-tier Tribunal.

*Jonathan Perkins*

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 24 June 2020

