



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/06474/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 31st of January 2020**

**Decision & Reasons
Promulgated
On 5th of February 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**MKSM
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Shaw of Counsel, instructed by Sultan Lloyd Solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Fox promulgated on 15 October 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claims dated 24 June 2019 was dismissed.
2. The Appellant is a national of Iran, born on 10 April 2002, who arrived in the United Kingdom in 2018 as a minor and claimed asylum on the basis that he would be at risk on return as a Kurdish person whose parents and sister had been killed in connection with his father's support of the KDP.

3. The Respondent refused the application the basis that the Appellant's claim was not credible, he had no significant profile nor would there be any perception of any such profile and the Appellant would not be at risk on return to Iran on the basis of his ethnicity or otherwise. The Appellant's removal would not be disproportionate interference with his right to respect for private and family life contrary to Article 8 of the European Convention on Human Rights.
4. Judge Fox dismissed the appeal in a decision promulgated on 15 October 2019, on the basis that the Appellant's claim was not considered to be credible and that there was a lack of supporting evidence for it. In accordance with the country guidance, it was concluded that the Appellant would not be at risk on return to Iran, nor would there be any disproportionate interference with his right to respect for private and family life.

The appeal

5. The Appellant appeals on nine grounds as follows. First, that the First-tier Tribunal failed to give sufficient reasons as to why the Appellant's second written statement was of 'limited probative value' and further failed to have sufficient regard to that evidence. Secondly, the First-tier Tribunal failed to make any clear findings on the Appellant's claimed sur place activities, rejecting these for a lack of corroboration and that the evidence that was put forward in support of the claim was of 'limited probative value'. The findings that were contained in the decision lacked sufficient reasons. Thirdly, that the First-tier Tribunal had failed to apply the country guidance in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) when assessing the Appellant's risk from his sur place activities. Fourthly, that the First-tier Tribunal had failed to have proper regard to the Appellant's age and failed to apply the relevant presidential guidance on vulnerable witnesses. Fifthly, that the First-tier Tribunal had failed to explain why the Appellant would know what was going on at his family home, a 4-5 minute bike journey away on the outskirts of the village. Sixthly, that the First-tier Tribunal had failed to give adequate reasons as to why the identification of the authorities at the family home was speculative. Seventhly, that the First-tier Tribunal applied the wrong standard of proof in looking for certainty of the source of information about what happened to the Appellant's family. Eighthly, there was an error of fact in the First-tier tribunal's decision and a irrational conclusion in finding an inconsistency about the identity of KDP members and the Appellant's fathers decision not to join the Peshmerga. Finally, overall that the decision of the First-tier Tribunal was irrational, with reasoning which was difficult to follow and lacking in structure. The decision showed that the evidence was not been assessed as a whole and the conclusion was lacking a proper evidential basis.
6. In her Rule 24 reply, the Respondent accepted that the decision of the First-tier Tribunal contained material errors of law such that it should be set aside and remitted to the First-tier Tribunal for a de novo hearing. In

particular, the Respondent agreed that the references to evidence having 'limited probative value' were inadequately explained; that it was impossible to ascertain what weight, if any was given to the Appellant's second witness statement and there was a lack of application of the guidance on vulnerable witnesses to the Appellant's evidence. Further, the Respondent agreed that there was a lack of clear findings as to the Appellant's sur place activity, focusing on why the Appellant may have attended demonstrations rather than whether he did and whether he would be at risk on return for this reason in accordance with the country guidance.

Findings and reasons

7. In the circumstances set out above, where the Respondent properly accepts that the First-tier Tribunal materially erred in law for most, if not all of the reasons set out in the original grounds of appeal, and where I fully agree that there were errors of law in the decision of the First-tier Tribunal as identified by the Appellant and accepted by the Respondent, the parties consented to a decision without reasons pursuant to Rule 40(3) (b) of the Tribunal Procedure (Upper Tribunal) Rules 2008. As such no further reasons are given in writing for the decision to find a material error of law and set aside the decision of the First-tier Tribunal. On the basis that the errors of law concerned assessment of the Appellant's credibility, no findings of fact can be preserved and it is appropriate to remit the appeal to the First-tier Tribunal for a de novo hearing.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The appeal is remitted to the First-tier Tribunal (Birmingham hearing centre) to be heard de Novo by any Judge except Judge Fox.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Date 3 February 2020

Upper Tribunal Judge Jackson