Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09317/2017

THE IMMIGRATION ACTS

Decided Under Rule 34	**Decision & Reasons Promulgated**
On 19 November 2020	**On 19 November 2020**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

AR (IRAN)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. This is an appeal against a reserved decision which was issued by Judge Mark Davies following a hearing in Manchester on 9 March 2020. It is agreed between the parties that the judge erred in law and that his decision falls to be set aside. It was in those circumstances that Judge Keith considered (in contrast to another Upper Tribunal judge) that the appeal was suitable for determination on the papers. I agree, and have accordingly exercised my discretion under rule 34(1) to determine the appeal without a hearing.

2. The appellant claimed asylum on the basis that he was an Iranian national of Kurdish ethnicity who was suspected of association with the proscribed KDPI. The respondent did not accept his nationality or that he was of any interest to the Iranian authorities.

3. Before the judge, it was accepted by the Presenting Officer that the appellant was an Iranian national of Kurdish ethnicity. His credibility remained in issue, however, and the judge ultimately found that his account of events in Iran was not reasonably likely to be true. The reasons that the judge came to that conclusion were, in full, as follows:

> "[25] Whilst accepting and proceeding on the basis that the appellant is an Iranian national of Kurdish ethnicity, I find his evidence regarding the activities of his brother and father to be somewhat vague and lacking in detail. I do take into account the appellant's age at the time of those claimed activities.
>
> [26] I do not accept the appellant's account of why he left Iran.
>
> [27] The appellant's claim to have distributed leaflets on behalf of the KDPI is singularly lacking in detail and I do not believe that the appellant has given truthful evidence in that regard. The appellant's claim that his friend Ali gave his name to the Iranian authorities is pure conjecture on the appellant's behalf, in any event I do not accept that is reasonably likely as I do not accept he distributed leaflets as he claims."

4. The judge then took into account the appellant's *sur place* activity on Facebook before dismissing the appeal.

5. The first ground of appeal was to be expected, in the circumstances. It is that the judge gave legally inadequate reasons for concluding that the appellant's account of events pre-flight was not reasonably likely to be true.

6. In her written submissions in response to the grounds of appeal, the respondent accepts that the decision is flawed and that it cannot stand. She does not set out which of the complaints in the grounds is accepted to be made out but it is appreciably clear, given what I have set out above, that the respondent could not sensibly submit that the judge's conclusions on the appellant's pre-flight account are sustainable. He failed to set out with any clarity at all the respects in which he considered the appellant's account to be lacking. He expected the appellant – who was a child at the material times and was suffering from some mental health problems – to account for the actions of his family members. There is, in sum, not a single sustainable reason given by the judge for the conclusions he reached in the paragraphs I have reproduced above.

7. It is unsurprising that Judge Norton-Taylor, who reviewed these papers at an earlier stage in its passage through the Upper Tribunal, considered the grounds to have real merit. Whether as a result of that observation or otherwise, the respondent has quite properly conceded that the decision cannot stand. I agree, and the proper course is for this appeal to be remitted to be heard again by another judge of the FtT, given the absence of any real consideration in the decision of Judge Mark Davies. It is regrettable that I am required to make that order, given that the appeal has been remitted once before, but the conclusion is inevitable in these circumstances.

8. The parties are not fully *ad idem* as regards the scope of the remittal. The respondent submitted that the appeal should be remitted *de novo*. The appellant's solicitors (Greater Manchester Immigration Aid Unit) objected to that course, noting that there was no principled basis upon which the respondent could resile from the concession that the appellant is an Iranian national. I agree, and I consider that the concession (which was made by a Senior Presenting Officer) should remain in place for the remitted hearing. With that exception, the appeal must be reheard afresh.

Notice of Decision

The decision of the FtT is set aside because it contained an error of law. The appeal is hereby remitted to the FtT to be heard afresh, although the respondent's acceptance of the appellant's nationality is preserved.

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 his 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.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 November 2020