IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: PA/51048/2020**
IA/00553/2020

THE IMMIGRATION ACTS

Heard at Field House via Teams **Decision & Reasons Promulgated**
On the 16 June 2022 **On the 15 August 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

BA
(ANONYMITY DIRECTION MADE)
Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellant: Ms M Cleghorn instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appeal is with permission against the decision of First-tier Tribunal Judge A M Buchanan promulgated on 13 May 2021. In that decision, the judge dismissed the appellant's asylum and protection claim.

2. The appellant is a citizen of Iran of Kurdish ethnicity. His case is that he had previously been a kolbar, that is, a smuggler, involved in smuggling goods between Iran and Iraq and that as a result had been arrested,

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detained and ill-treated by the Iranian authorities. He claims also to be a supporter of the Kurdish Democratic Party of Iran ("KDPI"). Since his arrival in the UK he has become involved in anti-regime politics in support of Kurds and uses his Facebook to publicise events in Iran. He has also been photographed attending demonstrations outside the Iranian Embassy in London, photographs which appear also on his Facebook account.

3. The judge did not find the appellant to be credible for the reasons set out in paragraphs [29] to [33]. The judge stated [30.5] that the respondent had accepted that the appellant was a smuggler, arrested and beaten and fined for smuggling and did not seek to go behind that concession. He then wrote "I take from the background information that smuggling in Iran is a serious offence and the appellant's evidence of his arrest and subsequent release without being taken before a court but released upon payment by his father is not credible". He also found that there was no medical evidence of ill-treatment. He did not accept the appellant's account of what had happened to him in Iran before he left.

4. Turning to the appellant's sur place activities [34] to [37] the judge considered that his account lacks detail and credibility, the appellant giving no details of the demonstrations [37] and that:-

> "I had no evidence from anyone present at any of those demonstrations to vouch for the appellant's attendance" ...
>
> "The photographs before me do not show the Appellant taking any particularly leading role in any demonstration and I was given no information that any demonstration had attracted publicity or any evidence of surveillance by the Iranian authorities other than a general assertion (which I can accept) that the authorities would have some surveillance in place. The photographs which were placed before me could have been manufactured and I can place only minimal reliance on them. In reaching this conclusion, I take account of the guidance in **Tanveer Ahmed**".

5. He accepted that if returned to Iran there would be an "pinch point" when the appellant was returned and would bring him under close scrutiny and that they would adopt a "hair-trigger scrutiny". He concluded that the appellant's Facebook account could be deleted [42] and nor was he satisfied that he had a Facebook account or posted messages critical of the regimes [41] and if so, was not satisfied the Iranian authorities would be aware of what he had said. He concluded that it was possible that the Facebook entries could have been manufactured [40].

6. The appellant sought permission to appeal against the decision on the grounds that the judge had erred:-

   (i) In failing to apply anxious scrutiny as he gone behind the accepted facts as set out in the refusal letter that the appellant had opened a Facebook account and that on the basis of the applicable case law he

would be at risk not least as it was accepted that he was a smuggler and had been arrested, been fined as such.

(ii) in not identifying at the hearing to the appellant or his representatives that there were allegations that the photographs had been forged.

7. On 2 June 2021 First-tier Tribunal Judge Andrew granted permission.

8. I heard submissions from Ms Cleghorn and Ms Cunha. I then gave an extempore decision which as the recording system has proven defective, was unrecorded. I have to the best of my ability sought to recreate the reasons I gave for finding an error of law and remitting the decision to the First-tier Tribunal.

9. I agree with Ms Cleghorn's submission that it was not open to the judge, without giving notice to the appellant or his representatives, to go behind the concessions of fact made by the respondent. This goes to the extent to which it was accepted that the Facebook pages were his and that he had been arrested and detained for being a smuggler. It was not raised at the hearing that the photographs of his participation in demonstrations could have been faked and I am frankly at a loss to understand how the judge could have thought it reasonable to behave in such a manner. And in that respect the judge appears to have misunderstood the import of **Tanveer Ahmed**.

10. Further, the judge has failed adequately to deal with the fact that the appellant is already known to the authorities as a smuggler. He would have been returned from the United Kingdom on a one-way travel document which would cause enquiries to be asked and this was not adequately dealt with.

11. Whilst I accept, as Ms Cunha submitted, it is possible for a judge to go behind a concession of fact, the basis on which she could do so requires her to give notice of an intention to do so and allow the appellant to make submissions on that.

12. I conclude that in this case the judge went behind concessions in a material way. The concession that the appellant had Facebook pages required her to look at whether they were open or not and whether there was a risk that they could have come to the attention of the authorities already. It is also necessary to consider whether the appellant would have been photographed outside the embassy and it has to be borne in mind in the context that the appellant already has a criminal history in Iran. Even leaving that aside, the fact is that he would be identifiable as a Kurd on return with a criminal history.

13. Accordingly, this procedural failure was material and accordingly I set aside the decision. Given that the defects in this case included procedural defects, I consider that the decision must be set aside in its entirety with none of the findings of fact made by the First-tier Tribunal preserved. It

also follows that the appellant did not have a fair hearing and the appeal must be remitted to the First-tier Tribunal for a fresh hearing on all issues.

Notice of Decision

(1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

(2) I re-make the decision by remitting it to the First-tier Tribunal for a fresh decision on all issues before a judge other than A M J Buchanan.

(3) The anonymity order is maintained.

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 25 July 2022

Jeremy K H Rintoul

Upper Tribunal Judge Rintoul