



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-002825  
First-tier Tribunal No:  
PA/01434/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Promulgated**  
**On 16 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**AM**  
**[ANONYMITY DIRECTION MADE]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Haywood, Counsel instructed on a direct access basis  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**Heard at Field House on 12 January 2023**

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Although no anonymity order was made by the First-tier Tribunal, the Appellant asked that one be made. As this is an appeal on protection grounds, I make that order. Unless and until a Tribunal or court directs otherwise, the Appellant [AM] is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

## **DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Bart-Stewart promulgated on 10 March 2022 (“the Decision”). By the Decision, Judge Bart-Stewart dismissed the Appellant’s appeal against the Respondent’s decision dated 18 February 2021 refusing his protection claim.
2. The Appellant is an Iranian national of Kurdish ethnicity. He came to the UK as a student on 26 September 2019. He claimed asylum on 9 June 2020. His wife is also in the UK, having joined him as a dependent on 5 January 2020. The Appellant’s claim is based on a fear of the Iranian authorities due to his criticism of those authorities which began when he became part of a group of students in Iran. One of his fellow former students was later arrested and the Appellant claims that the authorities are interested in him as a result. He says that his mother’s house was raided by the authorities and his belongings were taken. His mother received a court summons ordering the Appellant to appear at court. He was convicted in his absence. He also says that his late father was a prominent Sunni cleric who was arrested by the Iranian authorities in 2012 when he was studying for a Masters degree in Iran. He was turned out of university. The authorities raided his home and he died one year later.
3. The Respondent accepted that the events leading to the claim were said to have arisen since the Appellant entered the UK but did not believe it. The Judge similarly found the claim not to be credible.
4. The Appellant appeals the Decision on the following grounds:  
  
Ground one: the Judge failed to consider all the documentary evidence and/or failed to make findings on that evidence and/or made findings which were speculative.  
  
Ground two: the Judge failed to make any finding on the evidence of the Appellant’s wife.
5. Permission to appeal was granted by First-tier Tribunal Judge Hatton on 11 May 2022 in the following terms so far as relevant:  
  
“... 2. The grounds assert the Judge erred in failing to find the Appellant is a refugee, primarily on account of a manifest failure to consider documentary evidence adduced in support of his protection claim. In particular, the grounds refer at [10(a)-(d)] to a media article about adverse treatment experienced by the Appellant’s father, an email pertaining to the detention of a person known to the Appellant, a report about the raiding of the Appellant’s house, and a summons requiring the Appellant to attend the Revolutionary Court in [O].

3. Correspondingly, I am mindful there is no substantive consideration of the above documents in the Judge's determination and reasons. This is a striking omission, especially in view of the Judge's finding at [44] that the Appellant's claim to be engaged in anti-regime activity is 'fabricated'.

4. Accordingly, I consider that the Judge's failure to consider all documentation material to the substance of the Appellant's protection claim arguably tainted their ultimate assessment of the Appellant's credibility.

5. Permission is granted on all grounds."

6. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to consider whether to set it aside. If the Decision is set aside, it is then necessary for the decision to be re-made either in this Tribunal or on remittal to the First-tier Tribunal.
7. I had before me a core bundle of documents relating to the appeal, the Respondent's bundle and the Appellant's bundles which were before the First-tier Tribunal. I need to refer to only limited documents as identified below. At the outset of the hearing, the parties confirmed that agreement had been reached, Mr Walker conceding on behalf of the Respondent that the Decision did contain an error of law. Having heard from Mr Haywood and Mr Walker, I accepted that concession and agreed that the Decision should be set aside and the appeal remitted to the First-tier Tribunal. I indicated that I would provide my reasons in writing which I now turn to do.

## **DISCUSSION AND CONCLUSIONS**

8. Since the main basis of the Respondent's concession was ground two, I begin with that ground. As set out at [7] of the grounds of appeal, the Appellant's wife was also interviewed in relation to the protection claim. In interview, she indicated that she had come to the UK as the Appellant's dependent and was unable to return to Iran because on 14 May 2020, she received a phone call from her sister-in-law informing her and the Appellant that the Iranian authorities had raided their house due to his political activities. She also confirmed that the summons and record of the Appellant's conviction in absentia had been sent to them by the Appellant's family in Iran.
9. That latter point is recorded at [29] of the Decision. However, there is no consideration of that potentially corroboratory evidence when the Judge dealt with the documents. There is no consideration of the evidence of the Appellant's wife about when the Iranian authorities became interested in the Appellant which was potentially relevant to the Judge's finding about the delay in the authorities taking an interest in the Appellant. That was linked to the claimed arrests of the Appellant's former fellow student which was said to have happened at about that time.

10. I accept as above that this evidence was potentially corroborative of the Appellant's case and needed to be considered. I accept therefore that the Judge failed to take into account relevant evidence and/or make findings on that evidence.
11. Turning to the first ground, the documents which it is said were left out of account are as follows:
  - (a) Evidence in the form of a media article relating to the Appellant's late father, that he had been stopped from studying following a summons for questioning and search of his property which arose from a requirement for him to explain "his religious beliefs".
  - (b) An email from one of the Appellant's former fellow students confirming the arrest of one of the group's members.
  - (c) A report confirming the items seized following the search of the Appellant's mother's house. The Appellant's sister had confirmed the raid (see also above in relation to the Appellant's wife's evidence about this).
  - (d) A copy of a summons requiring the Appellant to attend court.
12. The Appellant also complains that, although the Judge did consider a letter from the lawyer retained by the Appellant's family confirming his conviction in absentia and a letter from Komala confirming the detention of the Appellant's former fellow student and his connection to the Appellant, the Judge might have reached the opposite conclusion about the weight to be given to those documents if they had been considered with the documents which were not taken into account. The challenge is therefore of a failure to take into account relevant evidence and a failure, in relation to the evidence which was considered, to conduct a holistic assessment taking into account all the evidence. Further, it is asserted that the Judge failed to give adequate reasons for rejecting the documentary evidence which she did consider.
13. I have read with care the Judge's findings at [39] and [40] concerning the letters which she did consider. At [39], I think the Judge meant to say that she did not find "credible" not "incredible" that the author of the Komala letter would provide such information about the Appellant when he did not know him. The Judge also said that the letter lacked information about the nature of the Appellant's activities (or the activity of his group). The Judge was entitled to reject that letter for the reasons she gave but obviously needed to do so along with the other evidence about the arrest of the Appellant's former fellow student.
14. I agree with the grounds regarding the letter from the lawyer which the Judge deals with at [40] of the Decision. The Judge offers no reason for not accepting that letter as reliable given that it comes from a lawyer. Moreover, even if the Judge was entitled to discount that evidence for the

reasons given, it needed to be considered alongside the summons which potentially supported the fact that the Appellant's case had come before a court.

15. For those reasons, I find that ground one is made out.
16. In light of those conclusions, it is appropriate to set aside the Decision. I do not preserve any findings.
17. Both parties agreed that it would be appropriate to remit the appeal to the First-tier Tribunal for re-hearing. I consider that course to be appropriate. The appeal needs to be heard entirely afresh. The appeal turns on issues of credibility and in fairness to the Appellant, it would be wrong to deprive him of a layer of appeal.

### **CONCLUSION**

18. The Decision contains errors of law which are material. I therefore set aside the Decision. I remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than Judge Bart-Stewart. No findings are preserved.

### **DECISION**

**The Decision of First-tier Tribunal Judge Bart-Stewart promulgated on 10 March 2022 involves the making of material errors on a point of law. I therefore set aside the Decision. I remit the appeal to the First-tier Tribunal for hearing before a Judge other than Judge Bart-Stewart.**

Signed L K Smith  
Upper Tribunal Judge Smith

Dated: 12 January 2023