



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006244
First-tier Tribunal No:
PA/54140/2021
IA/12205/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 September 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

KR
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms K McCarthy, counsel, instructed by Barnes Harrild & Dyer
For the Respondent: Mr C Howells, Senior Home Office Caseworker

Heard at Cardiff Civil Justice Centre on 15 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Lester heard on 16 August 2022.

2. Permission to appeal was granted by First-tier Tribunal Judge Austin on 21 December 2022.

Anonymity

3. An anonymity direction was made previously and is reiterated because this is appeal concerns a protection claim.

Factual Background

4. The appellant is a national of Iraq now aged twenty-six. He entered the United Kingdom clandestinely during 2015 and immediately claimed asylum. That claim was refused on 23 July 2015 and the appellant's appeals against that decision were exhausted on 19 December 2017.
5. On 13 April 2020, the appellant lodged further submissions. Those submissions were refused by way of a decision dated 3 August 2021 which is the matter under appeal. In short, the respondent noted that a judge had found the appellant's protection claim to lack credibility and the respondent rejected the appellant's current claims regarding the documentation issue.

The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the appellant and two witnesses gave evidence, and none were found to be credible. The appeal was dismissed.

The grounds of appeal

7. The grounds of appeal argued, firstly, that the Tribunal failed to adequately consider the issue of redocumentation. Secondly, there was a failure to adequately assess the impact of the appellant's sur place activities and lastly, to adequately assess Article 8 in the decision.
8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

The 2nd ground, ground c), discloses an arguable material error of law as to whether the Tribunal made an adequate assessment of the appellant's sur place activities in the UK.

9. The respondent filed no Rule 24 response.

Decision on error of law

10. When this matter came before me, Mr Howells confirmed that there was no Rule 24 response, however the respondent accepted that the grounds were made out. Mr Howells made the following points. Despite it being a lengthy decision, there was a lack of reasoning. The Secretary of State accepted that the judge's reasoning was inadequate regarding the issues of redocumentation and on the assessment of the appellant's sur place activity, including Facebook and other material. It was not enough for the judge to refer to XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023, without providing reasons. As for the third ground, Mr Howells confirmed that the respondent accepted that the reasoning at [55] was inadequate but that the appellant was not formally advancing Article 8 prior to we accept that the decision should be set aside and remitted to the First-tier Tribunal as substantial findings of fact to be made.

11. Ms McCarthy added that the findings on grounds one and two were conceded, they were likely to affect the Article 8 assessment and it was clear that the judge understood that it was being argued.
12. At the conclusion of the hearing, I confirmed that the respondent's concessions were rightly made and that I was content to set aside the decision of the First-tier Tribunal on the basis that all three grounds identified material errors of law. As there were no preserved findings, I was further content to acceded to the parties' wishes and to remit the matter to the First-tier Tribunal for a de novo hearing.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Lester.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 September 2023