



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006426
First-tier Tribunal No:
PA/53078/2022 (IA/07544/2022)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR A K
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Tan, Senior Home Office Presenting Officer

For the Respondent: Mr Hussain, Counsel, instructed by Halliday Reeves Solicitors

Heard at Manchester Civil Justice Centre on 1 August 2023

DECISION AND REASONS

1. Whilst it is the Respondent who is seeking leave to appeal today, I have hereinafter referred to the parties as they were identified in the First-tier Tribunal. Mr A K will be referred to as the Appellant and the Secretary of State for Home Department will be referred to as the Respondent.
2. The Appellant is a national of Iran, date of birth 13 January 1995, who on 17 October 2020 applied for asylum. The Respondent refused his application in a decision dated 22 July 2022 because the Respondent was not satisfied the Appellant was a KDP supporter whilst in Iran and also rejected his account of what was said to have happened to him whilst he was working as a Kolbar. As for his sur place activities whilst the

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Respondent accepted he had posted material online and attended demonstrations, she was not satisfied his motives were genuine or that he would come to the attention of the authorities.

3. The case was listed before Judge of the First-tier Tribunal Farrelly (hereinafter referred to as the FTTJ) on 7 December 2022 who subsequently allowed the Appellant's appeal under the Refugee Convention.
4. The Respondent sought permission to appeal arguing the FTTJ had erred by failing to engage with the inconsistencies in the evidence and by not providing adequate reasons for making his finding that the Appellant would be at risk on account of his association with his father and grandfather as the FTTJ had failed to make a finding as to whether these family members were killed as a result of KDP involvement.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Moon on 9 January 2022 who found the grounds arguable. The permission stated:

“The focus on the findings is in relation to the consistency of the appellants account with external background country evidence. The decision does not engage with issues taken in relation to the appellant's specific claim, the judge has failed to make findings on key aspects such as whether the appellant was involved in transporting members of the KDP across the border and whether his family members were killed as a result of KDP involvement. This failure to engage with material evidence is an arguable error of law. It is also arguable that insufficient reasons have been given.”
6. Mr Hussain had been given permission to appear via cvp today whilst myself and Mr Tan were present at court.
7. Mr Tan adopted the grounds of appeal and the grant of permission and invited the Tribunal to find there had been an error in law. The FTTJ's consideration of the case commenced from paragraph [35] onwards. The FTTJ sought to make findings from paragraph [36] onwards but made no reference to family background in those findings save to mention the Appellant's father and grandfather. No findings were made about their alleged activities and the FTTJ concluded that if the information was right the Appellant would be at risk. However, given his father died when he was 8 years of age and the Appellant did not leave the country until he was 21 years of age it was difficult to understand the relevance, if any, of his family's behaviour prior to the age of 8. The FTTJ did not describe their behaviour or give reasons why these would bring the Appellant to the attention of the authorities. A failure to make such findings was material to the decision and amounted to an error in law.
8. Mr Tan further argued that whilst the FTTJ set out the Respondent's concerns he failed to engage with those concerns in his decision. There

were inconsistencies and other failures which the FTTJ failed to deal with but the biggest failure was the FTTJ's failure to deal with the issues identified in the decision letter. Simply listing them was insufficient as the FTTJ needed to engage with them.

9. Mr Hussain adopted the Rule 24 response and invited the Tribunal to find there was no error in law and that the issues raised were simply a disagreement with the outcome. He referred to the decision and submitted the FTTJ had summarised the respective arguments despite the Respondent being absent from the appeal hearing. The FTTJ did not need to deal with every single point raised but accepted the Appellant operated as a Kolbar and delivered leaflets. This would have placed him at risk of persecution which is what the FTTJ recognised in his decision. The FTTJ went on to consider the Appellant's sur place activities and made findings open to him. There was no error in law.
10. In response Mr Tan submitted that it was difficult to find any specific findings and he maintained the FTTJ failed to make proper findings. For example at paragraph [26] of his decision the FTTJ said the Appellant may have worked from time to time as a smuggler and possibly was asked to transport men but such findings were not definitive findings.
11. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

DISCUSSION AND FINDINGS

12. This appeal is based on the Respondent's grounds of appeal that the FTTJ failed to make appropriate findings and/or give adequate reasons for his findings. The application was opposed by Mr Hussain. For the reasons hereinafter provided I found there was an error in law.
13. At paragraph [22] of the decision the FTTJ set out his consideration of the evidence and identified the primary issue was the likely truth of the account. It is a matter of law that such findings are a matter for the Judge to decide on the evidence presented.
14. The FTTJ concluded that if an individual was suspected of being involved with the KDP even at a relatively low level, then he would be at risk in Iran from the authorities and that being a Kurd would further increase that risk. This as a starting point would properly reflect the law as it currently stands.
15. The FTTJ did not identify any specific personal political profile but went on to state the Appellant's claim that his family did support the KDP and the authorities had been to the family home looking for him. The FTTJ did not provide any reasons for this finding and failed to make any specific

findings about the Appellant's father's or grandfather's activities. Whilst Mr Hussain argued his family's past was not part of his claim, I am satisfied the FTTJ made it a part of his assessment as he referred to their respective pasts in different parts of his decision.

16. The FTTJ was aware of the Respondent's decision letter and whilst he may have set those objections out I find it was necessary for him to either accept the events happened or did not happen as only then could the risk to the Appellant be properly evaluated. Even the issue of him being a Kolbar needed proper findings and it was not sufficient to simply say he may have smuggled items and/or transported people. Findings on his activities, given this is the basis of his claim, had to be made and the FTTJ did not do this.
17. The FTTJ rejected his sur place activities and attached little weight to either a letter from the KDP dated 25 August 2022 or his Facebook postings. He concluded at paragraph [39]:

“.... There is a possibility that if the appellant were returned, particularly on a travel document, he would be questioned at the point of return. It will be apparent he is Kurdish. If his claim about his father and grandfather is true then the authorities will be aware of the likely sympathies involved. He will be questioned about support or activities for the KDP and he cannot be expected to lie. If he is in this position then I find there would be a real risk of persecution. Consequently, his claim succeeds.”

18. The grounds of appeal argued that the FTTJ's findings were flawed because the FTTJ failed to have regard to inconsistencies contained within the decision letter.
19. The FTTJ's consideration of the Appellant's evidence can be found between paragraphs [21] and [34] and his conclusions are found between [35] and [39] of the said decision. These include:

Para [26]- “....I would find it credible that the appellant did not have regular employment and he may from time to time have worked as a smuggler. Whilst such activities are commonplace the country information indicates that the Iranian authorities have taken a harsh line which includes shooting at smugglers. It is possible therefore that the appellant was asked to transport to men and then he learnt they had been killed by the authorities and then was fearful he would be implicated.”

Para [27] “..... In his preliminary questionnaire he said again that he was a supporter of the KDP. He did not claim to be a member. He said he distributed leaflets between February and April 2016 and that was the extent of his political activities. He was asked about the difference between the KDP and the KDPI and was able to say there was a split

in 2006 and named the leaders. He said when he was a child growing up his sympathies would have been with the KDP. He was asked to explain the difference between a sympathiser and a supporter. He said the sympathiser was someone who internalise their support whereas a supporter meant someone who helped in an active way, such as distributing leaflets. When pressed further on the distinction the appellant referred to difficulties with the interpreter. He said when he was eight years old his father was killed for supporting the KDP. He then said his grandfather had been killed for a similar reason and that his uncle had faced persecution.”

Para [28]”Having considered the interview, I do not see evidence of any great discrepancies in the appellant’s evidence.”

Para [29] - “When he did become active he was able to give some details. He was asked about the contents of the leaflets he distributed. His response was that his job was to distribute leaflets rather than read them....”

Para [30]- “He was able to give details about how he brought people across the border. The detail seemed realistic.”

Para [33]- “He has provided translations of Facebook posts. They appear to amount to short general comments on incidents which may well have been reported in the media in or outside Iran. Overall, they could be seen as being critical of the regime but in a fairly general way.”

20. The FTTJ did not allow this appeal based on his activities in this country or the letter of support from the KDP but concluded given he was a Kurd, he may have worked as a Kolbar, his family were involved with the KDP and the authorities may have been to his home address looking for him that he had a political profile and as such would face a real risk of persecution upon return. Unfortunately, the FTTJ’s provided no reasoning for these “findings”.
21. In assessing whether there has been an error in law I have to consider whether any of the alleged failures advanced in the grounds of appeal would have undermined or altered the FTTJ’s conclusion had they been considered in the way the Respondent says they should have been.
22. The fact no weight was attached to the Facebook posts or the KDP letter should have been a factor the FTTJ should have considered when assessing the Appellant’s credibility. The Upper Tribunal made clear in HB (Kurds) Iran CG [2018] UKUT 430 that simply being Kurdish and/or leaving illegally is not sufficient to base a finding that a person was at risk of persecution.
23. I also accept Mr Tan’s submission that the FTTJ made no findings about the father’s/grandfather’s activities simply stating that according to the Appellant they were killed for assisting the KDP. No reasons were given for

that finding and as I stated earlier such a finding was necessary to consider why the Appellant may be an active supporter of the KDP.

24. By failing to make findings of fact, the FTTJ erred in his assessment on which means his conclusion that the Appellant had a profile as a Kolbar which would place him at risk upon return is flawed.
25. Paragraph 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the “Practice Statements”) recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:
 - a. the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or
 - b. the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
26. In my judgment, given that it is necessary for all the issues in this case to be considered afresh on the merits, this case falls within para 7.2 (a) and (b) because further evidence, including oral evidence is likely, and findings of fact on the issues will need to be made.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety.

This case is remitted to the First-tier Tribunal for a fresh hearing on all issues on the merits by a Judge other than Judge of the First-tier Tribunal Farrelly.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber
2 August 2023