IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003633

First-tier Tribunal No:
PA/53478/2022
IA/08398/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22nd April 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

T R R
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Ms S Ferrin, instructed by JKR Solicitors
For the Respondent: Ms S Simbi, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 19 April 2024

DECISION AND REASONS

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.

INTRODUCTION

1. The appellant is a national of Iran. He claims to have left Iran in 2020 when he was sixteen years old. He arrived in the UK and claimed asylum on 4 July 2021. He was seventeen when he arrived in the UK. The appellant provided a witness statement dated 21 March 2022 to the respondent outlining his claim and he was then interviewed on 17 June 2022 when he was eighteen years old.

2. His claim was refused by the respondent for reasons set out in a decision dated 19 August 2022. As set out in paragraph [36] of the respondent's decision the respondent accepted the appellant is a national of Iran and that he is of Kurdish ethnicity. The respondent also accepted the appellant's age, and that he had illegally exited Iran. However the respondent rejected the core of the appellant's claim and having also considered the appellant's claim regarding his *sur* place activities in the UK, concluded the appellant will not be at risk upon return to Iran.

3. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge French ("the judge") or reasons set out in a decision dated 22 July 2023.

THE GROUNDS OF APPEAL

4. In summary, the appellant advances three grounds of appeal. First, he claims that in reaching the decision the judge failed to make a finding as to, or consider the appellant's illegal exit from Iran, as a factor relevant to the assessment of the risk the appellant will face on return. The appellant refers to the guidance set out in *HB (Kurds) Iran CG* [2018] UKUT 00430 in which the Tribunal confirmed that a returnee without a passport is likely to be questioned on return. The fact that the appellant is of Kurdish ethnicity, and that he left Iran illegally, are cumulative factors that the judge failed to have regard to.

5. Second, the judge made 'unsafe findings' as to the appellant's *sur place* activities. The judge accepts the appellant has undertaken *sur place* activities, but failed to consider the heightened risk that exposes the appellant to on return, owing to his Kurdish ethnicity. The appellant claims the background material makes it clear that the Iranian authorities have no tolerance for activities connected to Kurdish political groups and persecute those involved. Even those speaking about Kurdish rights, regardless of profile, can be regarded as a threat.

6. Finally, the appellant claims that in reaching his decision, the Judge made "incomplete/unsafe" findings with regards to the appellant's credibility. The appellant claims insufficient weight was placed upon the appellant's age and background, that arguably explain any inconsistencies in his account. The appellant refers to the decision of the Court of Appeal in *WAS (Pakistan) v SSHD* [2023] EWCA Civ 894, in which Laing LJ said, at [77], that findings that some aspects of a witness's evidence are not credible should not, in a protection claim, be generalised to all his evidence. The fact finder must also consider the intrinsic likelihood, to the lower

standard, of the significant aspects of his claim. The appellant claims the judge failed to consider the traumatic experiences that have been suffered by the appellant arising from his separation from his family as a minor, and his difficult journey to the UK.

7. Permission to appeal to the Upper Tribunal was granted by FtT Judge Clarke on 28 August 2023. Judge Clarke said:

> "3. It is arguable that the Judge did not make findings on the Appellant's alleged illegal exit from Iran and how that will impact on his return, given his accepted Kurdish ethnicity. From Paragraph 8, it is apparent that the Judge was aware that the Appellant's alleged illegal exit from Iran was in issue. In Paragraph 10 the Judge finds, inter alia, "…he had not fled Iran to avoid arrest…" However, there are no findings in respect of whether the Appellant left Iran illegally and, if so, the risk on return. If not, the Judge has failed to make findings on the Appellant's risk on return in the context of his Kurdish ethnicity.
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> 4. While it seems to me as if this first Ground of Appeal has the most merit, I do not restrict the grant."

THE HEARING BEFORE ME

8. On behalf of the appellant, Ms Ferrin adopted the three grounds of appeal. She submits the appellant's 'illegal exit' from Iran was not in issue between the parties, but in reaching his decision, the judge failed to consider that as a factor relevant to the assessment of the risk upon return, when taken together with the appellant's Kurdish ethnicity and the finding made by the Judge that the appellant has taken part in *sur place* activities in the UK. She submits that in *HB Kurds (Iran) CG*, the Upper Tribunal noted, at [97], that a returnee without a passport is likely to be questioned on return. The respondent's CPIN on illegal exit from Iran confirms, at [5.1.1] that any Iranian who leaves the country illegally, will be sentenced to between one and three-years imprisonment, or will receive a fine. Ms Ferrin submits the judge should have considered whether the appellant's illegal exit, taken together with his ethnicity and *sup place* activities, would put him at risk on return.

9. Ms Ferrin submits the judge erred in his assessment of the appellant's *sur place* activities. He accepted the appellant has attended demonstrations and posted on his social media account. In *HB Kurds (Iran) CG* the Tribunal highlighted that the authorities demonstrate what could be described as a "hair trigger" approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. Ms Ferrin submits the judge failed to consider what would happen to the appellant at the 'pinch-point' of return. She submits the appellant cannot be expected to lie on return to Iran, and that in his witness statement dated 30 November 2022 he said, at paragraph [25], that he will not close his social media platforms as he wants to be one of the voices for Kurds.

10. Finally, Ms Ferrin submits the appellant's age was not in issue, but in reaching the findings that are set out in paragraph [9(4)] of the decision

the judge failed to have regard to the Joint Presidential Guidance Note No 2 of 2010 regarding child, vulnerable and sensitive witnesses. The guidance makes it clear that children often do not provide as much detail as adults in recalling experiences and may often manifest their fears differently from adults. A child will often also have difficulty measuring time and distance when recalling an account. Ms Ferrin submits the appellant had given a detailed account of his work as a Kolbar in his witness statement. She submits the judge noted the appellant had made no contact with any of the Kurdish political groups operating in the UK, but the judge appears to have substituted what he considered the appellant should have done, by reference to his own views. Ms Ferrin submits the judge's assessment of the appellant's credibility is flawed and that has infected his overall decision and the conclusions reached as to the risk on return.

DECISION

11. Before I address the three grounds of appeal, it is useful to record that under s11 Tribunals, Courts and Enforcement Act 2007, an appeal from the FtT only lies on points of law. In other words, it is only if there is an error of law that the Upper Tribunal is entitled to intervene.

12. It is sensible for me to start by addressing the third ground of appeal first. That concerns the judge's assessment of the appellant's credibility and concerns the judge's assessment of the core of the appellant's account of events in Iran. Plainly, if the judge's decision is vitiated by a material error of law in this respect that is likely to undermine the judge's assessment of the risk upon return.

GROUND THREE.

Incomplete/unsafe findings with regards the Appellant's Credibility

13. The judge summarised the appellant's claim at paragraphs [2] and [4] of the decision. He said:

> "2. The Chronology of Events - The Appellant said he had been born in Iran and had left Iran in September 2020. He claims that he fled because he was fearful of persecution by the authorities for being involved in smuggling activities. He arrived in the UK through illicit means in July 2021 at the age of 17 and applied for asylum. Once in the UK the Appellant engaged in "sur place" political activities, which he suggested had brought him to the adverse attention of the Iranian authorities. On his own evidence he had not been involved in politics whilst living in Iran.
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> …
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> 4. Skeleton Argument - The essential point being made is that the Appellant is entitled to asylum because if he returned to Iran he would be subject to persecution because he had come to the adverse attention of the Iranian authorities through being detected whilst engaged in smuggling activities and moreover since he had been in the UK, had antagonised the authorities by demonstrating against the Iranian government. It was argued that this would have increased the Appellant's jeopardy still further."

14. In an appeal such as the present where the credibility of the appellant is in issue, a Tribunal Judge adopts a variety of different evaluative techniques to assess the evidence. The judge will for instance consider: (i) the consistency (or otherwise) of accounts given by the appellant at different points in time; (ii) the consistency (or otherwise) of an appellant's narrative case for asylum with his actual conduct at earlier stages and periods in time; (iii) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should be able to adduce in order to support his or her case; and (iv), the overall plausibility of an appellant's account.

15. The core of the appellant's claim was, as the judge noted at paragraph [4] of the decision, that he would be at risk upon return because he engaged in smuggling activities that brought him to the adverse attention of the authorities in Iran, and that he has engaged in *sur place* activities in the UK. I accept as Ms Ferrin submits that if a court concludes that a witness has lied about one matter, it does not follow that he has lied about everything. A person's motives may be different as respects different questions. Although a self-direction to that effect is always useful, endless citation of authorities and legal principles is unnecessary when a specialist Tribunal is dealing with an appeal that is typical of the type of appeal that specialist judges of the FtT deal with on a daily basis. There is nothing in the decision of the judge that even begins to suggest that the judge failed to consider the separate strands of the appellant's claim or failed to give adequate reasons for rejecting the claims made. Reading the decision as a whole, the judge did not reject all the appellant's claims simply because he was not credible in respect of one strand of his claim.

16. Ms Ferrin refers to the decision of the Court of Appeal in *Y –v- SSHD* [2006] EWCA Civ 1223. There, Keene LJ referred to the authorities and confirmed that a judge should be cautious before finding an account to be inherently incredible, because there is a considerable risk that they will be over influenced by their own views on what is or is not plausible, and those views will have inevitably been influenced by their own background in this country and by the customs and ways of our own society. However, he went on to say, at [26].

> "None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be…"

17. Although the judge does not refer to the Joint Presidential Guidance Note No 2 of 2010, it is right to note that the appellant was seventeen years old when he arrived in the UK and 18 years old when he was interviewed by the respondent. He was 19 years old when his appeal was heard by the FtT in July 2023. The grounds of appeal refer to a failure to consider or place any weight on the likelihood that the appellant has suffered traumatic experiences such as separation from his family as a minor and a difficult journey to the UK. There was however no evidence before the Tribunal that the appellant has an impaired memory or that the order and

manner in which his evidence was given may have been affected by mental, psychological or emotional trauma or disability.

18. The appellant's age and lack of education were factors the judge plainly had in mind. The appellant attended the hearing of the appeal and gave evidence as recorded in paragraph [6] of the decision. The parties' submissions are set out at paragraph [7] of the decision. The Judge set out his findings and conclusions at paragraph [9] of the decision. The Judge recorded at paragraphs [9(1) and (2)] that he was satisfied that the appellant is an Iranian Kurd, and that when he arrived in the UK the appellant was 17 years of age.

19. In paragraph [9] of the decision, the judge went on to say that even taking account of his youth and lack of education, there were very many inconsistencies and implausible assertions. It is fair to say the judge found the appellant had not given a truthful account of events and he rejected the core of the appellant's account regarding the events that caused the appellant to flee Iran. In particular:

    a. The judge did not believe the appellant was a Kolbar. *Paragraph 9(4)(a))*

    b. Even if (which was not accepted), the appellant was a Kolbar, his account of an 'ambush' was rejected. The appellant was vague about where and when the ambush took place, how many soldiers were involved in the attack and how he managed to evade capture by the soldiers, even though he said he had gone back to look for his ID, which he had dropped. He had given conflicting evidence about what had happened to his father. *(Paragraph 9(4)(b))*

    c. The appellant was unwilling or unable to provide any details of his journey to the UK and did not appear to know whether his uncle had paid for his passage. *(Paragraph 9(4)(d))*

20. At paragraph 10 of his decision, the judge concluded:

> "For the avoidance of doubt I would make it clear that I am satisfied that he was not a Kolbar and had not been in a group which had been ambushed by government forces. He had not dropped his identification at the scene. He had not seen his father shot. I have no reason to believe that he was isolated from his family. He had not fled Iran to avoid arrest. He was not actually politically active, nor was he perceived as being so by the Iranian government. I am satisfied that he would not be persecuted if he returned to Iran. Such a return would not result in a breach of his rights under Articles 2 or 3. No details were provided as the family life that she claimed to have developed in the UK. A refusal of this application would not amount to a breach of his rights under Article 8."

21. The judge also considered the appellant's claim regarding his *sur place* activities in the UK. The judge noted at paragraph [9(4)(e)] that the appellant on his own admission, had not engaged in any political activity while he was living in Iran, and that since his arrival in the UK, the

appellant had made no contact with any of the Kurdish political groups operating in the UK. He went on to say:

a. The appellant had only opened up the social media accounts purporting to criticise the Iranian government because his "friends had told him it would help with his application for asylum". *(Paragraph 9(4)(e))*

b. The appellant did not have any genuine political beliefs. *(Paragraph 9(4)(e) and (f))*

c. Although the appellant has attended various demonstrations in the UK, he had played no part in the organisation of such demonstrations. He was just an observer. *(Paragraph 9(4)(g))*

d. The mere presence at various demonstrations is not sufficient to attract the adverse attention of the Iranian authorities. *(Paragraph 9(4)(g))*

e. I do not accept that some low-grade posts by someone without any significant following would cause him to be of any interest to the Iranian authorities. *(Paragraph 9(4)(g))*

22. In an international protection claim, findings are made by specialist immigration tribunals on a daily basis, and appellate courts should not "rush to find misdirection" in their decision-making. The judge had the benefit of hearing and seeing the appellant give evidence. It is now well established that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors. The decision must be read as a whole and in reaching his decision, the judge was entitled to note the appellant, on his own account, had not engaged in political activity when he lived in Iran. He was also entitled to note the appellant had made no contact with any of the Kurdish political groups in the UK. At paragraph [6(2)(e)], the judge records the appellant's evidence when cross-examined that he had not been in contact with the Kurdish organisations but would in the future. His evidence was that he had not thought about it. The judge did not find the appellant's account to be inherently incredible by his own view on what is or is not plausible, but as a matter of common sense was entitled to have regard to the appellant's evidence that despite the passage of time and his claimed beliefs, he had not contacted any of the Kurdish organisations in the UK that share and promote his own views.

23. It is my judgement clear that in reaching his decision, the judge had regard to the appellant's age and lack of education. He considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to him on the evidence. It cannot be said that the judge's analysis of the evidence is irrational or perverse. The judge did not consider irrelevant factors, and the weight that he attached to the evidence either individually or cumulatively, was a matter for him. There is therefore no merit in the third ground of appeal.

GROUND ONE

Failure to make findings on the Appellant's illegal exit from Iran, particularly in light of his ethnicity.

24. There is in my judgement no merit to the first ground of appeal. As Ms Simba submits, and Ms Ferrin accepts, the appellant's illegal exit from Iran was not in issue. The respondent noted at paragraph [36] of his decision that the appellant's illegal exit from Iran was accepted. In the appellant's skeleton argument before the FtT, at paragraph [6], it was highlighted that the respondent accepts the appellant's illegal exit from Iran.

25. The first ground of appeal is headed "*Failure to make findings on the Appellant's illegal exit from Iran, particularly in light of his ethnicity*". As the illegal exit from Iran was accepted by the respondent, the judge was not required to decide whether the appellant had or had not illegal exited. In fact, had the judge done so, the appellant would undoubtedly have complained that the judge went behind a concession made by the respondent in his decision. The appellant does not claim, and Ms Ferrin does not point to any passage in the decision of the Judge which suggests the judge proceeds upon a mistake as to fact, perhaps by assessing the risk upon return on the understanding that the appellant had not illegally exited Iran.

26. In *HB (Kurds) Iran CG* [2018] UKUT 00430 (IAC), the Upper Tribunal provided *inter alia* the following guidance.

> "(1) *SSH and HR (illegal exit: failed asylum seeker) Iran CG* [2016] UKUT 308 (IAC) remains valid country guidance in terms of the country guidance offered in the headnote. For the avoidance of doubt, that decision is not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone.
>
> (2) Kurds in Iran face discrimination. However, the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment.
>
> (3) Since 2016 the Iranian authorities have become increasingly suspicious of, and sensitive to, Kurdish political activity. Those of Kurdish ethnicity are thus regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran.
>
> (4) However, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment.
>
> (5) Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Being a risk factor it means that Kurdish ethnicity is a factor of particular significance when assessing risk. Those "other factors" will include the matters identified in paragraphs (6)-(9) below.
>
> (6) A period of residence in the KRI by a Kurdish returnee is reasonably likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as

the length of residence in the KRI, what the person concerned was doing there and why they left.

(7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.

(8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.

(9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.

(10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme."

27. As the Tribunal highlighted in headnote [4], the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment. *(my emphasis)*. The Tribunal accepted Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. The Tribunal said "other factors" will include the matters identified in paragraphs (6)-(9). The appellant has not had a period of residence in the KRI. He had not engaged in any political activity while he was living in Iran. There is a finding that he has attended demonstrations in the UK, as an observer, and that his mere presence at demonstrations was not sufficient to attract the adverse attention of the Iranian authorities. Similarly there is a finding that the social media 'posts' by the appellant as someone without any significant following would not cause him to be of any interest to the Iranian authorities. He has no involvement in social welfare and charitable activities on behalf of Kurds.

28. Although the Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights, on the facts here and the findings made by the judge, it is clear therefore that, on its own, failure to refer to the 'illegal exit' when assessing the risk upon return was immaterial to the outcome of the appeal.

GROUND TWO

Unsafe findings with regards the Appellant's sur place activity. Failure to consider this risk alongside the risk he faces as an Iranian Kurd

29. At paragraph [9(4)(e)], the judge recorded that the appellant on his own admission had not engaged in any political activity while he was living in Iran. The appellant had claimed to have become politically active when he arrived in the UK. The judge considered the appellant's claim that he had attended a number of demonstrations and opened up social media accounts on Facebook Instagram and Tik Tok. The judge did not accept the appellant has any genuinely held political beliefs and found the appellant had only opened up the social media accounts purporting to criticise the Iranian government because his "friends had told him it would help with his application for asylum". The judge nevertheless went on to consider whether the Iranian government would have taken note of the appellant's posts on social media and his attendance at demonstrations, and whether they would believe that he was politically active. At paragraph [9(4)(g)], the judge said:

> "Although the Appellant had attended various demonstrations in the UK, he had played no part in the organisation of such demonstrations. He was just an observer. As indicated above he had not joined the Kurdish political groups operating in the UK. I do not accept that mere presence was sufficient to attract the adverse attention of the Iranian authorities. Similarly I do not accept that some low grade posts by someone without any significant following would cause him to be of any interest to the Iranian authorities."

30. In *HB (Kurds) Iran CG*, the Upper Tribunal noted that even low-level political activity was considered to lead to a risk of persecution or article 3 ill-treatment by the authorities. The Iranian authorities have demonstrated what could be described as a "hair-trigger" response suspected or perceived to be involved in Kurdish political activities or support for Kurdish rights.

31. Here, beyond the photographs of the appellant attending demonstrations, the focus of the appellant's claim was upon his social media activity. In *XX (PJAK, sur place activities, Facebook) (CG)*, the Upper Tribunal provided some general guidance on social media evidence. In light of the other findings made by the judge, it was open to judge to find that the appellant is not genuinely politically motivated. The judge had rejected the core of the appellant's account that he was of interest to the authorities in Iran prior to his departure and there was nothing in the evidence before the FtT of the appellant having any sort of political profile that would arouse the interest of the authorities in Iran.

32. The appellant claims he will not close his 'social media platforms', however there is no reason why the appellant cannot simply delete his Facebook account prior to returning to Iran. As the appellant's *sur place* activities do not represent any genuinely held beliefs, the appellant would not, as Ms Ferrin submits, be expected to lie when questioned. The

deletion of the Facebook account will not therefore contravene the principles established and set out in *HJ (Iran) v SSHD* [2011] AC 596. It was in my judgement open to the judge to find that that the appellant is of no interest whatsoever to the authorities on return to Iran. The appellant would not be known to the authorities and he has no political profile that would, as the judge said, be of any interest to the Iranian authorities. It was in my judgement open to the judge to find that the appellant would not be at risk upon return on account of his *sur place* activities for the reasons that he gave.

CONCLUSION

33. The core issue in this appeal was whether the appellant will be at risk upon return to Iran. A fact-sensitive analysis of the risk upon return was required. It is now well established that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors. It is my judgement clear that in reaching his decision, the judge considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to him on the evidence. The findings and conclusions reached are neither irrational nor unreasonable.

34. The Upper Tribunal is not entitled to find an error of law simply because it does not agree with the decision, or because the Tribunal thinks the decision could be more clearly expressed or another judge can produce a better one. Baroness Hale put it in this way in *AH (Sudan) v SSHD* at [30]:

> "Appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently."

35. I am satisfied that standing back, the judge's decision was based upon the wide canvas of evidence before the Tribunal. His conclusion that the appellant will not be at risk upon return to Iran follows a fact sensitive analysis of the evidence and is a sufficiently reasoned decision that was open to him on the evidence before the Tribunal and the findings that he made.

36. It follows that I am satisfied that there is no material error of law in the decision of the FtT and I dismiss the appeal.

NOTICE OF DECISION

37. The appeal is dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 April 2024