



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2023-005089

First-tier Tribunal Nos: PA/55749/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

HH
(ANONYMITY ORDER MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V. Easty, Counsel instructed by Wimbledon Solicitors

For the Respondent: Ms H. Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 26 June 2024

DECISION AND REASONS

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Iran born on 1.1.91. He is Kurdish and claims to be a supporter of PJAK which forms the basis of his asylum claim. He arrived in the United Kingdom on 5 April 2016 and claimed asylum but his application was refused on 29 November 2022. He appealed against that decision and his appeal came before the First tier Tribunal for hearing on 17 October 2023. In a decision and reasons dated 3 November 2023 the determination was promulgated dismissing his appeal. Permission to appeal to the Upper Tribunal was sought on 17 November 2023 on the basis that the FtTJ erred:

- (i) in his assessment of nationality;
- (ii) in misdirecting himself as to the purpose and weight to be attached to the screening interview;
- (iii) in relying on the erroneous findings of fact that the Appellant would be at risk on return and treatment of social media history;
- (iv) in relying on anonymity as showing the Appellant would not be at risk on return but in failing to make such an order.

2. In a decision dated 28 November 2023 permission to appeal was granted on all grounds by FtTJ Buchanan in the following terms:

“GOA(1): It is arguable that the FTTJ erred in assessing the evidence about the appellant’s nationality, if it is shown by reference to the cited evidence that the appellant argued that he was not ‘from’ Sardasht but rather was ‘from’ Mazinabad.

GOA(2): it is arguable that the language used by the FTTJ illustrates that the FTTJ considered that there was a ‘case to answer’..

GOA(3): It is arguable that attaching no weight to Facebook postings [#44 – the appellant being entitled to rely on the no weight option set out in the decision] because, among other things, translations had not been provided when it is arguable that they had [GOA #18], is an error of law.

GOA(4): There is arguably an inconsistency in the ‘Instance’ of the case which declares ‘Anonymity Direction Not Made’ and #45 of the Decision where the FTTJ states that anonymity has been granted.”

Hearing

3. At the hearing before the Upper Tribunal, Ms Gilmour agreed that the First tier Tribunal Judge had materially erred in law in relation to his reliance upon the screening interview (ground 2) given that it took place late at night after a long journey and in light of the decision in *YL (Rely on SEF) China* [2004] UKIAT 00145 and that she accepted that this went to the core of the findings.
4. In light of Ms Gilmour's helpful concession, I set the decision of the First tier Tribunal aside and remit the appeal for a hearing *de novo* before the First tier Tribunal, given that none of the findings can stand.

Notice of Decision

5. The decision of the First tier Tribunal contains material errors of law. That decision is set aside and remitted for a hearing *de novo* before the First tier Tribunal.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman
Immigration & Asylum Chamber

15 July 2024