IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000068

First-tier Tribunal No: PA/52049/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

BH
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr McGarvey, Counsel
For the Respondent: Miss Rushforth, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 6 March 2024

DECISION AND REASONS

Order Regarding Anonymity

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

Anonymity was granted by the First-tier Tribunal. I have not been asked to rescind that order. I have considered the principles of open justice. I am of the view that it is in the interests of justice that order continues. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Introduction

1. The Appellant is a national of Iran. His appeal against the Respondent's decision dated 17 March 2023 to refuse his claim to be in need of international protection was dismissed by First-tier Tribunal Judge Loughridge in a decision promulgated on 29 November 2023.

2. Permission to appeal was granted on all grounds by First-tier Tribunal Judge Grimes on 2 January 2024.

3. The matter came before me to determine whether the First-tier Tribunal Judge (FTTJ) had erred in law, and if so whether any such error was material such that the decision should be set aside.

The hearing

4. Miss Rushforth said that the Respondent accepted that there were material errors of law, as outlined in the grant of permission to appeal, and that the Respondent's position was that the appeal should be remitted to the First-tier Tribunal. Those errors were that inadequate reasons were given for the finding that the Appellant did not possess a genuine political opinion. Further, the Judge erred in failing to apply the guidance in BA (demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 and failed to apply the case law including the decision in HB (Kurds) Iran (Illegal Exit; failed asylum seekers) CG [2018] UKUT 430 in light of his findings at paragraph 19 of the decision as to the Appellant's activities in the UK and XX (PJAK -sur place activities -Facebook) Iran CG [2022] UKUT 00023 (IAC) in light of his findings about the appellant's social media activity at paragraph 26. She asked me to determine the appeal without reasons under Rule 40 (3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 with no findings preserved.

5. Mr McGarvey did not consent to the absence of written reasons under Rule 40 (3) as he argued that there were findings of fact favourable to the Appellant that should be preserved as they were not affected by the errors of law. The FTTJ found that the Appellant was generally a credible witness and found that in June 2021 he had an altercation with the son of the head of the police station in his village. He accepted that the following day he was taken from his home by policemen and assaulted. He accepted that he informed his father what had happened who said it was not safe for him to remain at home and he left with a agent. Mr McGarvey argued that those findings of fact should be preserved. In paragraph 22 the FTTJ found, on the basis of his findings of fact, that the Appellant was not at risk because the abduction and assault on him by the police was "properly seen as a local, non-political and isolated incident". Mr McGarvey argued that whilst this was an error of law when considered in the context of the country guidance case law and background evidence on the treatment of Kurds in Iran, the Appellant should retain the benefit of the factual findings which were not vitiated by the assessment of risk.

6. Miss Rushforth argued that it was not possible to extrapolate favourable and unfavourable findings. However, she accepted that the FTTJ's finding at paragraph 26, that there was no evidence that the Appellant's Facebook account had been manipulated, could be preserved.

7. Having heard arguments from both representatives, I reserved my decision. I confirmed with the representatives that the Respondent's concession was that the conceded errors of law were those set out in the grant of permission and that, in light of the lack of consent to the procedure under Rule 40 (3), I would give full reasons. Further in light of the nature and extent of the fact finding, the appeal should be remitted to the First-tier Tribunal.

Conclusions – Error of Law

8. The Respondent has conceded, and I find, that the FTTJ did not give adequate reasons for finding that the Appellant did not possess a genuine political opinion. He found that the Appellant was credible in relation to events in Iran but found at paragraph 21 of the decision that his "sur place activities were motivated by his asylum claim, in other words they are opportunistic and he does not hold genuine political beliefs of any significance in opposition to the Iranian regime". No reasons are given for this finding.

9. It is also conceded, and I find, that the FTTJ did not apply the guidance in BA (demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 as it applies to those found to be opportunistic participants in demonstrations in light of the finding at paragraph 19 that the photographs show that the demonstration was sufficient to draw the attention of Iranian officials at the Embassy.

10. It is also conceded, and I find, that the FTTJ failed to apply the case law including the decision in HB (Kurds) Iran (Illegal Exit; failed asylum seekers) CG [2018] UKUT 430 in light of his findings at paragraph 19 of the decision as to the Appellant's activities in the UK. He also failed to apply XX (PJAK -sur place activities -Facebook) Iran CG [2022] UKUT 00023 (IAC) in light of his findings about the Appellant's social media activity at paragraph 26. I find that the FTTJ failed to consider the 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities and, in light of his findings at paragraph 19 as to the attention of the Iranian officials being drawn to the demonstration, failed to consider that this could mean any additional risks that have arisen by creating a Facebook account containing material critical of the regime would not be mitigated by closure of that account (XX).

11. The issue between the parties is what, if any findings should be preserved. Miss Rushforth accepts that the finding that the Appellant's Facebook account has not been manipulated should be preserved.

12. The finding that the Appellant's sur place activities are motivated by his asylum claim and are opportunistic is vitiated through absence of reasons and therefore cannot stand. I find that the FTTJ's findings at paragraph 14 that the Appellant is a credible witness and the events described in Iran did occur is not vitiated by the error of law which

related to the assessment of risk to the Appellant on the basis of those factual findings at paragraph 22 of the decision. I find therefore that the findings at paragraph 14 should be preserved. However, the findings in relation to the Appellant's sur place activities cannot stand as the error does not relate solely to the assessment of risk on the basis of those activities but to an unreasoned conclusion that the activities are opportunistic.

13. I have considered whether to remit or retain the case within the Upper Tribunal with regard to the recent decisions of Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) and AEB v Secretary of State for the Home Department [2022] EWCA Civ 1512. I find that in view of the extensive fact finding required with regard to the Appellant's sur place activities and the assessment of risk both in relation to those activities and the risk as a result of the events in Iran, it is appropriate to remit. The findings of fact at paragraph 14 are preserved as is the finding that his Facebook account has not been manipulated at paragraph 26.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law.

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

The decision will be remade in the First-tier Tribunal with the findings set out at paragraph 13 above preserved, not before Judge Loughridge.

L Murray

Deputy Upper Tribunal Judge
Immigration and Asylum Chamber

19 March 2024