



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000644

First-tier Tribunal No: PA/51848/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

H H
(ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr M. Malik, Counsel, instructed by Hanson Law Ltd
For the Respondent: Mr S. Walker, senior presenting officer

Heard at Field House on 30 August 2024

This has been a remote hearing. The form of remote hearing was V (video). A face to face hearing was not required in the circumstances because the parties were represented, no evidence would be heard and all of the issues could be determined in a remote hearing.

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

1. The Appellant claims to be an Iranian national. He has appealed the Respondent's decision dated 24 February 2023 to refuse his claim for protection.
2. First-tier Tribunal Judge Lester ("the Judge") dismissed the appeal in a decision dated 19 December 2023 ("the Decision").
3. Permission to appeal was granted by First-tier Tribunal Judge Beach in a decision dated 22 February 2024 in which it was decided that the decision arguably contained one or more errors of law in:
 - a. Failing to give adequate reasons for rejecting the Appellant's claim to be an Iranian Kurd; and
 - b. Failing to give adequate reasons for rejecting evidence about the Appellant's claimed sur place activities.

The hearing before me

4. At the hearing Mr Walker conceded that the reasons in the Decision were inadequate. It appeared that the Judge had not taken proper account of the evidence of two witnesses and had instead been too hidebound by the previous FtT decisions in previous appeals made by the Appellant.

My decision

5. Given the concession by Mr Walker I gave the parties my decision at the hearing that the Decision contained one or more material errors of law:
 - a. The reasons in the Decision for rejecting the Appellant's claim to be an Iranian Kurd are inadequate;
 - b. The reasons in the Decision for rejecting the Appellant's claim to be at risk as a result of his sur place activities in the form of attending demonstrations are inadequate.
6. In each case it is not possible for the reader to understand what the preserved findings relying upon Devaseelan are, what new evidence has been considered and why that evidence (in particular, that of the two witnesses) has been found insufficient to depart from the previous findings. It appears that the Judge may have considered that the evidence of the witnesses should have been given no weight by virtue of them not having attended previous tribunal hearings but, if so, that itself would be an error of law.
7. However, I am satisfied that the Decision contains ample reasons for rejecting the Appellant's account of Facebook activities. I therefore preserve the findings made in relation to the Facebook activity in paras 35-37 of the Decision.
8. I also preserve the findings regarding the Appellant's involvement with demonstrations made at paragraph 38 of the Decision, except the last

sentence of that paragraph. However, those findings are insufficient by themselves to satisfy the requirements of the country guidance case: BA (demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC).

9. I have considered the principles set out in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC). The remaining issues are as follows:
 - a. Is the Appellant an Iranian Kurd?
 - b. Does the Appellant qualify for protection as a result of his participation in demonstrations?
10. Given the nature and extent of fact finding required to decide those issues, I have concluded that the case should be remitted for a fresh hearing in the First-tier Tribunal.
11. The Appellant should be aware that this decision does not mean that the next tribunal will allow the appeal. His case will be reheard and may be allowed or dismissed by the First-tier Tribunal.

Notice of Decision

12. The Decision contained one or more material errors of law. The decision of Judge Lester is set aside but the findings made in paragraphs 35-38 (excluding the last sentence of paragraph 38) are retained.
13. The case is remitted to the First-tier Tribunal for a rehearing of the appeal. Judge Lester is excluded.

Tracey Bowler
Judge of the Upper Tribunal
Immigration and Asylum Chamber

04/09/2024