



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-001138

First-tier Tribunal No: PA/53820/2023  
LP/01885/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 31 December 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MM  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**At Cardiff Civil Justice Centre, on 19 December 2024, on the papers**

**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 appeals with permission a decision of First-tier Tribunal Judge Lester ('the Judge'), promulgated on 12 January 2024, in which the Judge dismissed his appeal against the Secretary of State's decision dated 9 June 2023 which refused his application for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The Judge made a number of findings including that it was not accepted the Appellant would be at risk on return is a result of his sur place activities [52].
3. The Appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 15 March 2024, the operative part of the grant being in the following terms:

3. It is arguable that the judge does not have regard to the two documents that were uploaded to MyHMCTS on 5 December 2023 which are stated to be downloads from the appellant's Facebook account. They are not referred to at paragraphs 9 or 26 of the decision and it is therefore unclear whether the judge considered them or, if they did, what weight was/was not given to them and why.
4. The grounds of appeal disclose an arguable error of law. The grant of permission is not limited.

### Discussion and analysis

4. The Judge's failure to have regard to Facebook evidence, which had been downloaded on 5 December 2023, is said to taint the approach to the rest of the evidence as there was a failure to consider the posts that the Appellant had submitted against the regime in Iran, which was also relevant to his political profile.
5. Whilst the Judge was not required to set out each and every aspect of the evidence in the determination it is important that that evidence was taken into account. The point being taken, as a point of procedural unfairness, is that the Judge stated there was no Facebook download provided when it was clearly the case that it had. This is therefore not a decision in which the Judge looked at and incorporated that evidence, but one in that evidence was excluded from the consideration of the merits of the case as a whole.
6. There was no explanation for why this occurred, but it did. On that basis I find there has been legal error based upon the failure to consider available evidence sufficient to amount to a material error of law. It cannot be said that had this material been factored into the Judge's assessment of the merits of the appeal the result would have been the same.
7. In her Rule 24 reply dated 18 December 2024 the Secretary of State wrote:
  2. The respondent accepts that the judge erred in the manner described in the grounds of appeal and invites the Upper Tribunal to remit the matter to the First Tier Tribunal for a *denovo* (sic) hearing.
8. The case had been listed for an error of law hearing on 20 December 2024 but in light of the Respondent's position that hearing is no longer required and the hearing is vacated.
9. Having considered the nature of the error, the Upper Tribunal guidance on remittals and related case law, I find the omission of the evidence arguably affects all aspects of the decision such that the matter will have to be considered afresh as part of an extensive fact-finding exercise. It is appropriate in all the circumstances for the appeal to be remitted to the First-tier Tribunal to be heard *de novo*.

### **Notice of Decision**

10. The First-tier Tribunal materially erred in law. The determination is set aside.
11. The appeal is remitted to the First-tier Tribunal (IAC) sitting at Newport to be heard *de novo* by a judge other than Judge Lester.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**19 December 2024**