IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002353

First-tier Tribunal No: PA/54700/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of December 2024

Before

UPPER TRIBUNAL JUDGE PINDER

Between

H I
(ANONYMITY ORDER MADE)

Appellant in the FtT

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent in the FtT

Representation:
For the Appellant: None.
For the Respondent: Ms Nwachukwu, Senior Presenting Officer.

Heard at Field House on 19 November 2024

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

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1. The Secretary of State appeals with the permission of First-tier Judge Galloway granted on 20th May 2024 against the decision of First-tier Tribunal Judge Boyes. By his decision of 31st March 2024, Judge Boyes (‘the Judge’) allowed the Appellant HI’s appeal against the Respondent Secretary of State’s decision dated 13th July 2023 to refuse his protection claim.

2. For ease of reference, I refer to the Secretary of State as the Respondent and to HI as the Appellant, as they respectively appeared before the First-tier Tribunal (‘FtT’). This also applies to the Anonymity Order set out above, which I have maintained in favour of the Appellant HI.

Background

3. The Appellant is a national of Iraq and of Kurdish ethnicity. He entered the UK in November 2021, when aged 15 years old. His age was not disputed by the Home Office and following his lodging of a protection claim on the grounds of his political opinion, he was granted leave until 24th December 2023 in accordance with the Unaccompanied Asylum Seeking Child policy. The Respondent did however refuse his protection claim and refused to recognise the Appellant has a refugee under the Refugee Convention.

4. The Appellant duly appealed against this decision and his appeal was heard by the Judge on 20th March 2024. Before the Judge, the Appellant was represented by Counsel and the Respondent by a Presenting Officer. The Judge heard from the Appellant himself and oral submissions from both parties.

The Decision of the First-tier Tribunal Judge

5. The Judge recorded the Appellant’s reliance at the hearing on two written statements and he then proceeded to extract at [4], it would appear in its entirety, the Appellant’s second and most recent statement stating the following: “that given that this stood as his evidence in chief it was important to see that in detail”. This extract consisted of 16 paragraphs and spanned two pages of the Judge’s decision. The statement summarised the Appellant’s claim to have stored KDPI leaflets in his teashop when in Iran and when 14 years old. The Appellant also explained his claim of how this was discovered by the authorities, leading to him fleeing Iran. The Appellant set out the details and experiences of his journey to the UK and other matters relating to him living in the UK, including the undertaking of political activities here.

6. In a separate section entitled ‘additional evidence’, the Judge introduced at [5] the opinion of the Appellant’s support worker and also proceeded to cite at length from that document. The extract included the support worker’s qualifications and expertise and his experiences of and involvement with the Appellant –spanning 8 paragraphs and amounting to one page of the Judge’s decision. The support worker was of the opinion that the Appellant had experienced significant trauma, providing

details of his presentation, and confirming that in his view the Appellant needed a lot of support from his professional network, which included his social worker, carers, college, GP and CAMHS. It is not clear from the Judge's decision whether the support worker also gave oral evidence in support of the Appellant.

7. Similarly at [6], the Judge extracted the contents of a letter provided by the Appellant's Clinical Psychologist, Dr Young. Dr Young opined that it was highly likely that the Appellant had Post-Traumatic Stress Disorder ('PTSD') and provided details of the work undertaken with the Appellant as part of their assessment of him but also of the number of months remaining for the treatment required by the Appellant. Lastly, Dr Young touched on what, in their view, would happen if the Appellant was removed from the UK and/or if he was not able to access the treatment he required. This extract also amounted to a full page citation.

8. After noting at [7] another piece of evidence relied upon by the Appellant, consisting of a photograph depicting the Appellant at a claimed demonstration at or near the Iranian embassy in London, the Judge set out his findings at [9]-[18] of his decision. I return to these in the section further below when setting out my analysis of the Respondent's grounds of appeal.

<u>The Appeal to the Upper Tribunal</u>

9. In a single ground of appeal, the Respondent argued that there was a failure by the Judge to provide reasons, or any adequate reasons, for his findings on material matters. It was argued that the Judge reached bare findings of fact relating to the credibility of the Appellant's account, instead of providing evidence-based reasons to support those findings. It was further argued that the Judge had failed to address the inconsistencies in the Appellant's account, which had been raised by the Respondent in her decision letter, review and in oral submissions.

10. Judge Galloway when granting permission noted that the Respondent's ground of appeal and submissions were arguable and that whilst the Judge's decision appeared quite lengthy, much of its content consisted of the extracted evidence, as I have summarised above. Judge Galloway observed that there did appear to be a paucity of reasoning and a lack of consideration given to the inconsistencies in the evidence, as raised by the Respondent before the Judge. She also noted that even within a context where evidence had arguably not been properly explored under cross-examination, there was a duty on the part of a judge to give overall reasons for a decision and arguably, the Judge had not done so.

11. At the hearing before me via Cloud Video Platform ('CVP'), the Appellant did not attend nor was he represented, legally or otherwise. The Tribunal had been informed by the Appellant's previous legal representatives on 18th October 2024 by e-mail that they were no longer

acting for the Appellant. Helpfully, the author also provided the Tribunal with the Appellant's e-mail address as well as confirmation that they had already forwarded the Notice of Hearing, served upon them, to the Appellant directly. Following this correspondence, the Tribunal also sent by e-mail and by post on the same day, namely 18th October 2024, a copy of the Notice of Hearing to the Appellant himself. No further correspondence was received thereafter and there was no indication that the Appellant had not received the Notice of Hearing that had been e-mailed to him.

12. Before proceeding with the hearing, I requested the Tribunal administration to make the necessary checks, including to ascertain whether the Appellant had attended or had otherwise communicated with the Tribunal. Following those checks, I was satisfied that the Appellant had been duly served with the Notice of Hearing. Similarly, the Tribunal had duly provided the link to the Appellant at his e-mail address to enable him to join the CVP hearing.

13. I considered whether to proceed in the absence of the Appellant. In light of the above, I was satisfied that it was in the interests of justice to proceed and to hear the application in the Appellant's absence, pursuant to Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. This was particularly so in light of the Appellant having had notice of and access to the hearing, as addressed above, and there being no good reason before me explaining his absence or making any form of application to adjourn or otherwise delay the hearing.

14. Neither had the Appellant sought to file a response pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('Procedure Rules') to the Respondent's appeal.

15. In support of the Respondent's appeal, Ms Nwachukwu submitted that the Judge had failed to resolve clear conflicts in the evidence, which had been raised at §7 of the Respondent's Review. These concerned *inter alia* the Appellant's lack of knowledge of what the leaflets stated, his knowledge of the KDPI, and his account of the authorities coming to his shop. Ms Nwachukwu reiterated that the Judge had merely extracted at [4]-[7] of his decision parts of the written and/or documentary evidence without providing any form of assessment or analysis of that evidence. At [8] of his decision, the Judge summarised in two lines the Respondent's case noting only that this consisted of disputing the credibility of the Appellant's claims and that there were too many inconsistencies, without engaging or summarising further what these amounted to.

16. Lastly, Ms Nwachukwu submitted that it was clear that the Judge had strong reservations about the Appellant's account yet the Judge did not seek to resolve those concerns. In other places, the Judge had noted that the Appellant's account was broadly credible, without explaining why that was. The authority of *Budhathoki (reasons for decisions)* [2014]

UKUT 00341 (IAC) was relied upon and in particular [14] of that determination, where it was stressed that it is for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and to explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost.

17. Following Ms Nwachukwy's submissions, I was able to indicate that I was satisfied that the Respondent's ground of appeal was made out and that the Judge had materially erred in law with a failure to identify and resolve the key conflicts between the parties and with a failure to give sufficient reasons for finding in favour of the Appellant. I provide my reasons for my decision in more detail further below.

Analysis and Conslusions

18. The Judge noted at [10] that he had "some significant reservations about this case" and at [11] that there were "a number of inconsistencies in this case". The Judge did not state what those were in either instance. At [11], the Judge also recorded that the case was "on the whole, not very well prosecuted and a number of matters which ought to have been explored and examined were not which leads to significant holes in the factual matrix which can, in the circumstances, only benefit the Appellant." The Judge returned to this at [12] when he stated the following:

> The inconsistencies in his account are troubling and had they been explored properly and with more vigour one may have had a different picture or factual matrix to assess however there was nothing asked of him in cross examination which led me or causes me to depart from the broad and generous in the circumstances assessment that the appellant's case was credible. I find that the case is credible on the basis that the overall picture was plausible and there was no challenge to his account such that it allowed me to conclude that it was not credible. The inconsistencies as I have mentioned were troubling but were not examined to a level which would allow me to find that the appellant was not broadly credible.

19. I find that the Judge's concerns over the manner in which the Respondent's case was presented to be equivocal and it is not clear from that whether matters had simply not been disputed or whether matters had been disputed but not effectively or satisfactorily. If the former, the Judge should have clearly recorded what had not been disputed. If the latter, I do not consider that this absolved the Judge from needing to resolve the conflicts in the evidence and to set out sufficient reasoning for finding in favour of one party over the other.

20. At [18], the Judge correctly identified that the Appellant's ability to provide a consistent account may have been impacted upon by his age. But similarly, the Judge did not provide an analysis of what those inconstancies were, whether the Appellant's ability to provide his accounts was impacted by his age, and if so to what extent. Furthermore, the Judge repeatedly referred to the Appellant's age as his

"claimed age" - this was arguably unnecessary and incorrect since the Appellant's age had not been disputed by the Respondent and the Appellant was recognised as an unaccompanied asylum seeking child.

21. For the reasons above, and as indicated at the hearing, I am satisfied therefore that the Judge has materially erred in law and the Judge's decision to dismiss the appeal is therefore set aside pursuant to s.12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

22. Ms Nwachukwu agreed that since a decision needs to be re-made in respect of the core of the Appellant's protection claim, pursuant to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal at [7.2], it is appropriate to remit the matter back to the FtT for a hearing *de novo.* This is considering the level of fact-finding that will need to be re-made.

Notice of Decision

23. The decision of the First-tier Tribunal is set aside. No findings of fact are preserved.

24. The Appeal is remitted to the First-tier Tribunal for a hearing *de novo*, before any Judge of the First-tier Tribunal, other than Judge Boyes.

Sarah Pinder

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13.12.2024