



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

Case No: UI-2024-002658

First-tier Tribunal Nos: PA/58856/2023  
LP/01629/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

29th November 2024

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**RM**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss G Patel, Counsel instructed by Barnes Harrild and Dyer Solicitors

For the Respondent: Mrs S Nwachuku, Senior Home Office Presenting Officer

**Heard at Field House on 3 October 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**

1. The Appellant is a citizen of Iran. His date of birth is 19 November 1995. The Appellant was granted permission by the Upper Tribunal (Upper Tribunal Judge Perkins) on 2 July 2024 to appeal against the decision of the First-tier Tribunal (First-tier Tribunal Judge N Malik) to dismiss his appeal against the decision of the Respondent dated 6 October 2023 to refuse his claim on protection grounds.
2. The Appellant says that he is at risk from the authorities in Iran as a supporter of the PJAK party who was working as a Kolbar. He says that he and others were ambushed at the border by the Iranian authorities.
3. Judge Malik said at paras 16 and 17 of her decision that she did not find the Appellant had given a credible account of either having worked as a kolbar or that he had come to the attention of the authorities because of his work as a kolbar or that he was found with Kurdish political materials.
4. For the purpose of this decision it is necessary for me to set out parts of the Respondent's decision ( "the decision") as follows:

**"Material facts I accept**

You have sur-place political activity in the form of protests and Facebook posts.

You are a supporter of the PJAK Party.

**Material facts I do not accept**

You were ambushed at the Iranian border.

You are of adverse interest to the Iranian Authorities.

**Credibility**

There are some elements of your account that were implausible with regards to the events with the Iranian authorities at the border.

You stated that you walked into the ambush and that you were shot at from a very close distance (AIR 88) by people you believe to be the Iranian authorities. You claim that there were a lot of shots that were fired (AIR 76) but that you were uninjured and fled on foot (AIR 75). It is not deemed reasonable that trained personnel would be unable to injure people at such a close distance and allow them to flee on foot unharmed.

You also stated only Iranian Authorities operate on the borders (AIR 73). This is not deemed to be a reasonable explanation, **as Kolbars such as yourself** (my emphasis) also operate on the borders.

You further stated that this ambush took place at night and that you could not see who was shooting at you or how many people there were (AIR 71). It is considered reasonable that if this were the case, the authorities would not have been able to get a close enough look at your face in order to later identify you".

5. Ground one states that the Respondent conceded in the decision that the Appellant had worked as a kolbar. The judge was not entitled to go behind this concession.
6. I heard submissions from the parties. Miss Patel said that the concession formed the basis of the Respondent having accepted that the Appellant was a supporter of PJAK. Miss Patel relied on questions 55 to 66 of the AIR. She said that there was no reference to the matter in the Respondent's review in which it was said that the Respondent relied on the decision. Mrs Nwachuku said that it was open to the judge to find that the Appellant was not a kolbar. She said that there was no concession made by the Respondent. She referred to the decision under the heading "material facts I accept" where it does not say that the Respondent accepted that the Appellant was a kolbar. She said that in any in any event the judge considered the position in the alternative and therefore there is no material error.

#### Error of law

7. I have taken into account what was said by Baroness Hale in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 at paragraph 30: "Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently". This was reaffirmed by the Court of Appeal in UT (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1095. I have also taken account of the more recent case of Volpi v Volpi [2022] EWCA Civ.
8. I exercise caution when interfering with the judge's findings on credibility. However, in this case I find that ground one is made out.
9. At the hearing the Appellant advanced his case on the basis that a concession had been made in the decision. The Respondent at the hearing did not accept this. Judge Malik said the following about the Respondent's submissions:

"In summary, in submissions, it was not accepted [the Appellant] was ambushed at the Iranian border, was of adverse interest to the Iranian authorities or that he was a Kolber. If it was accepted that he was a Kolber, it was not accepted he was ambushed or of adverse interest. His account was rejected as incredible. Alternatively, if it was accepted that he was a Kolber, and the respondent had made a concession in the RFRL - neither the ambush, nor adverse interest was credible for the same reasons".
10. I find that the decision, relied on in the Respondent's review, was made on the basis that the Appellant was a kolbar. While it was not listed as a material fact accepted by the Respondent neither was it listed as a material fact not accepted. Under the heading "credibility" the Respondent set out aspects of the Appellant's claim considered not credible or implausible which does not include the Appellant's claim to be a kolbar. At para 3 under the same heading, the decision reads "kolbars such as yourself." Furthermore it was accepted that he was a member of the PJAK on the basis of his activities in Iran. From the Appellant's account his activity was being a kolbar.
11. I am satisfied that the decision contains a concession that the Appellant was a kolbar. The judge was not entitled to go behind the concession without giving sound reasons for doing so. While at para 6 the judge purports to consider the

position in the alternative (on the basis that a concession had been made that the Appellant was a kolbar), she did not do so. Having considered the decision of the judge as a whole, her assessment of risk was confined to the Appellant having not worked as a kolbar. There is no need for me to consider the remaining grounds of appeal because the judge's error properly identified in ground one is material to the outcome.

12. I set aside the decision of the First-tier Tribunal to dismiss the Appellant's appeal.
13. On the basis that the error relates to the credibility findings, none of the findings of the First-tier Tribunal can be sustained. The parties agreed that the appeal should be remitted to the First-tier Tribunal. I have taken into account the decision in Begum (Remaking or remittal) Bangladesh [2023] UKUT 0046 and the Court of Appeal decision in AEB v Secretary of State for the Home Department [2022] EWCA Civ 1512. I accept that going behind a concession made by the Respondent deprived the Appellant of a fair hearing.
14. This matter is remitted to the First-tier Tribunal (Manchester) to be heard by a First-tier Tribunal Judge (not Judge N Malik). The Appellant will require a Kurdish Sorani interpreter and the hearing will be a face to face hearing.

**Joanna McWilliam**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**13 November 2024**