



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00467/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 24 February 2020**

**Decision & Reasons
Promulgated
On 21 April 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**AM
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Popal of Counsel, instructed by Barnes, Harrild & Dyer Solicitors

For the Respondent: Ms R Bassi, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Herhily dated 16 August 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 17 December 2018 was dismissed.
2. The Appellant is a national of Iran, born on 2 October 2000, who arrived in the United Kingdom 5 May 2017 and claimed asylum. He had

previously made a protection claim in Austria on 10 March 2017. The basis of the Appellant's claim was that he was at risk of persecution on return to Iran because prior to his departure, he had hidden political leaflets for his employer/landlord who was involved in an opposition political party.

3. The Respondent refused the application the basis that the Appellant's account was both inconsistent and vague and his claim in relation to his work and a raid on his home was not accepted. The Respondent did not consider that the Appellant was of any interest to the authorities in Iran and he was not at risk for having left the country illegally. The Appellant's credibility was damaged by the application of section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. In relation to human rights, the Appellant had not established any family life in the United Kingdom and he did not meet the requirements for a grant of leave to remain on the basis of private life contained in paragraph 276ADE of the Immigration Rules. Finally, there were no exceptional circumstances to warrant a grant of leave to remain.
4. Judge Herhily dismissed the appeal in a decision dated 16 August 2019 on all grounds. By the time of the appeal hearing, the Appellant also relied on sur place activities in the United Kingdom, primarily his political posts on a Facebook page. In summary, the First-tier Tribunal found that the Appellant had embellished his claim about political involvement and had created a false Facebook page with activity at the very low end of the spectrum. The Appellant was not considered to be credible, he had no political profile and it was found that the authorities would have no interest in him on return.

The appeal

5. The Appellant appeals on three grounds. First, that the First-tier Tribunal failed to apply the Joint Presidential Guidance Note No 2 of 2010: 'Child, vulnerable adult and sensitive appellant guidance' (the "Joint Presidential Guidance") to the Appellant as a vulnerable witness. Secondly, that the First-tier Tribunal erred in finding that there was only limited probative value in the medical report, in particular in circumstances where there was no challenge to the Appellant's diagnosis. Finally, that the First-tier Tribunal's assessment of the Appellant's Facebook activity was flawed because it was not in accordance with HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) and AB and Others (internet activity - state of evidence) Iran [2015] UKUT 0257 and discounted the possibility of risk-based of the Appellant's motive and the low-level nature of his activity, whereas both can still result in an objective risk on return.
6. At the oral hearing, Counsel for the Appellant relied on the written grounds of appeal, focusing on the failure by the First-tier Tribunal to engage with the Appellant's diagnosis of mental health problems, which is

a freestanding requirement even if those problems were not attributable to claimed events in Iran. This failure undermines the adverse credibility findings made, which relied on inconsistencies and discrepancies in the Appellant's account without taking into account whether such matters were impacted by or attributable to the Appellant's poor mental health.

7. Finally, in relation to the third ground of appeal, Counsel for the Appellant emphasised the country guidance in relation to sur place and facebook activity, in that the sincerity of a person making such posts, even at a low level, is not relevant to the question of risk. In this case there were a number of factors which pointed to the Appellant being at risk on return, including his Kurdish ethnicity, past persecution in Iran, the length of time he has been out of Iran and in the United Kingdom, the fact that he is from an area known to be supported by Kurdish dissidents, and his public Facebook posts of a political nature.
8. In response, Ms Bassi appropriately accepted on behalf of the Respondent that there had been no application by the First-tier Tribunal of the Joint Presidential Guidance which amounted to an error of law such that the decision under appeal should be set aside.

Findings and reasons

9. At paragraph 19 of the decision, the First-tier Tribunal recorded that the Appellant's Counsel submitted that in light of the medical evidence available, the Appellant should be treated as a vulnerable witness in accordance with the Joint Presidential Guidance, however there is no statement one way or the other as to whether this was accepted by the Judge and no apparent application of it in any event. The Judge, in the findings section of the decision between paragraphs 32 and 42, considers the Appellant's credibility and substance of his claim, rejecting this in its entirety, but without any reference at all to the medical evidence or whether the Appellant is a vulnerable witness.
10. The medical evidence is dealt with in paragraphs 43 to 44 of the decision, which makes a number of criticisms of the report from Dr Ali as to the Appellant's mental health, in particular that there was a failure to consider all of the Appellant's circumstances (including his uncertain immigration status and homelessness) and trauma (including being the victim of an assault during a robbery and being involved in a car accident) in the assessment and in particular, the contribution of these wider matters and the claimed events in Iran to the diagnosis of severe depression and complex PTSD. In conclusion, the First-tier Tribunal states, *"Given that I have not found the Appellant's account of events in Iran to be credible I do not find that his diagnosis is attributable to the events which he claims to place in Iran. I note that in fact the Appellant is not currently taking any medication for his mental health condition although he did indicate that he was receiving counselling."*

11. It is trite to note that medical evidence in relation to a person's mental health can be relevant to a protection and human rights appeal in a number of different ways, first in relation to whether the Appellant should be treated as a vulnerable witness in accordance with the Joint Presidential Guidance; secondly in relation to claimed past persecution and finally in relation to current risk on return. In the present case, although the diagnosis of severe depression and complex PTSD was not challenged at all, the First-tier Tribunal has only considered the medical evidence in terms of whether it supported the Appellant's claim of past persecution. There is a complete failure to consider the Appellant's diagnosis itself (regardless of causation) and that this means that he should have been treated as a vulnerable witness and his credibility assessed in accordance with the Joint Presidential Guidance in light of this. The failure to do so undermines the adverse credibility findings made in the decision and is a clear error of law which means that the decision of the First-tier Tribunal must be set aside in its entirety, with no preserved findings of fact, for that reason alone.
12. In these circumstances it is not necessary to deal with the remaining grounds of appeal in any detail as the appeal must be heard de novo in any event. The second ground of challenge is closely linked to the first as to the treatment of medical evidence, which has already been established to be an error of law in not fully considering it in all relevant ways.
13. For completeness I also find a material error of law on the third ground of challenge. Despite setting out in some detail the country guidance and the Appellant's evidence in paragraphs 45 to 47 of the decision, the conclusion in paragraph 48 runs counter to the country guidance in finding that the Appellant's low-level of Facebook activity, by creating a false Facebook profile, together with a lack of any political profile in Iran would not be sufficient for a real risk of persecution on return as the Appellant would not be reasonably likely to be of interest to the authorities. Those conclusions do not engage properly with the country guidance on risk on return, which can be established even if a person has not genuinely engaged in political activities, or has done so only at a very low level.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The appeal is remitted to the First-tier Tribunal (Taylor House hearing centre) to be heard de novo by any Judge except Judge Herhily.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed 

Date 9th April 2020

Upper Tribunal Judge Jackson

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email