



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005013
First-tier Tribunal Nos:
PA/50281/2021
LP/00251/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 May 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

N E
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms E King, Counsel instructed by Ata & Co Solicitors
For the Respondent: Mr E Tuvan, Senior Home Office Presenting Officer

Heard at Field House on 31 January 2023

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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

(extempore)

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appeal of the appellant against the decision of the Secretary of State refusing her international protection.
2. The appellant is a citizen of Iran. The core of her case is that near to the end of a visit, when she was lawfully in the United Kingdom, she had news of a change

of circumstances in her home area. According to the news she says she received, her home had been raided by the authorities who said that they were looking for her and that two members of a loose political group known to her had difficulties. As a result, one of them felt it necessary to escape to Turkey and the other had been arrested.

3. The judge has not really engaged with this evidence but, additionally, there was a startling omission in the consideration of the evidence, which was brought to our attention today. There is a supportive statement from the appellant's daughter who claims to be in Iran and who claims to have been there when the house was raided. She purported to have given a detailed account. We accept that the statement that can only have limited value because it is made by someone who was not in a position to give evidence, but it was ignored completely. That is very concerning.
4. There is also equivocation about the appropriate standard of proof because the judge does refer on occasions to things being probable or not and although not necessarily fatal, Ms King fairly pointed out that it was not easy to read the decision and be confident that the judge was applying his mind directly to the lower real risk standard. We are not sure that the judge was wrong but that is not really the point.
5. There is another element in the case which concerns us. The appellant based part of her claim very firmly on no longer following Islam and her expressed fear is that if she is questioned at the airport on return, and that might be thought rather likely, questions would be asked about her religious observance and she would be required to say she does not observe Islam anymore. There are occasions when such questioning that can lead to great difficulty and the judge has not engaged with this point either.
6. What the judge has done is to have looked in considerable detail at the past history of persecution advanced by this appellant going back many, many years. If the claims are true, they would give context and reasons tending to add credence to her claim that she risks further trouble now. Her case does not depend on that. Her case is based on what she says happened shortly before she claimed asylum.
7. Cumulatively we find that the judge has not got to grips with this case and we set aside the decision of the First-tier Tribunal essentially for lack of reasoning and we direct that the case be heard again in the First-tier Tribunal.
8. We add a rider to this for the attention of the First-tier Tribunal Judge and that is that the judge did refer to some possible personal matters concerning Counsel who presented the case in the First-tier Tribunal. We see no need to identify the barrister concerned but there were comments made about his or her personal circumstances which were just completely unnecessary and although we do not say that the judge erred in law by doing that, we respectfully suggest that the judge thinks very carefully before making such comments again. They are not relevant to the issues and do not assist.
9. Another matter we wish to add at this point, because I mentioned it at the start of the hearing, and it should be part of our decision, is that Ms King joined by video link today at her request because of matters relating to her health and the possibility of her being infectious. The decision to give a video link was not made for Ms King's personal convenience but in part out of consideration for the safety of others.

Notice of Decision

10. The First-tier Tribunal erred in law. We set aside its decision and direct that the appeal be heard again in the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 May 2023